



**MONTGOMERY-GIBBS EXECUTIVE AIRPORT
LEASE AGREEMENT**

Between

THE CITY OF SAN DIEGO

And

**KHAM AND THANATHONE CHAREUNSOUK
DBA PEAR'S THAI CUISINE RESTAURANT**

**CITY OF SAN DIEGO
MONTGOMERY-GIBBS EXECUTIVE AIRPORT
LEASE AGREEMENT FOR RETAIL SPACE**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "CITY," and Kham and Thanathone Chareunsouk dba Pear's Thai Cuisine Restaurant hereinafter called "LESSEE."

RECITALS

- A. CITY owns the retail complex located at 8690 Aero Drive, San Diego, CA 92123 ("Property").
- B. LESSEE had previously subleased 2,111 sq. ft. of retail space (hereinafter the "premises" or "leased premises") on the Property, as described in this Lease from Montgomery Field Associates, LP who held a master lease ("Master Lease") covering the building, land and other improvements at 8690 Aero Drive, San Diego, CA 92123.
- C. As a result of the forfeiture and termination of the Master Lease, LESSEE's interest in the sublease was terminated on August 7, 2019.
- D. CITY and LESSEE desire to enter into this lease to provide for LESSEE's occupancy of the premises on a month-to-month basis.

SECTION 1: USES

1.1 A. Leased Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY the premises which consists of a retail space, referred to as Suite 114, located at 8690 Aero Drive, San Diego, CA 92123. The Premises is comprised of approximately two thousand one hundred and eleven (2,111 SF) of retail space, as depicted in **Exhibit A**, attached hereto.

B. Parking.

LESSEE shall have non-exclusive use of the common area parking lot ("Parking Lot") as described in Exhibit A, as set forth in this Section 1.1.B. LESSEE may use the parking spaces free of charge during the Term subject to the Parking Rules and Regulations attached hereto in **Exhibit B and B-1**, and as amended and established by CITY from time to time.

CITY shall manage, operate and control the Parking Lot in such manner as CITY, in its sole discretion, deems appropriate, including, establishing and enforcing reasonable rules and regulations applicable to all users of the Parking Lot. LESSEE and its Authorized Representatives shall comply with all rules and regulations established by CITY for the Parking Lot. CITY reserves the right to (a) change, alter or add to the Parking Lot, (b) rearrange parking spaces in the

Parking Lot, (c) temporarily close the Parking Lot, CITY will make reasonable efforts to provide alternative, temporary parking arrangements for LESSEE, but is under no obligation to provide LESSEE such alternative, temporary parking arrangements, and (d) repair, maintain, restore and perform such other acts with respect to the Parking Lot in the CITY's sole discretion.

1.2 Uses.

The premises is leased to LESSEE solely for the operation and maintenance of a Thai food restaurant and LESSEE shall not use or permit the premises to be used for any other purpose, except with CITY's prior written consent (which may be withheld in CITY's sole and absolute discretion).

The use of the premises for any unauthorized purpose shall constitute a substantial default of this lease and shall subject this lease to termination at the sole option of CITY.

LESSEE covenants and agrees to use the premises for the above-specified purpose and to diligently pursue said purpose throughout the Term hereof. Failure to continuously use the premises for said purpose, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

Further, LESSEE and its officers, employees, contractors, agents, and all others operating through LESSEE shall conform to the FAA covenants and reservations of rights set forth in **Exhibit C** attached hereto and by this reference made part of this lease.

1.3 Related Council Actions.

By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Term (defined below) peaceably and quietly have, hold, and enjoy the premises for the Allowed Use. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the Term, or if during the lease Term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting there from. In the case of

CITY being unable to deliver possession of the premises at the commencement of the Term, there shall be determined, and stated in writing by CITY, a proportionate reduction of the flat rate rent for the period during which LESSEE is prevented from having the quiet possession of the premises if caused solely by CITY.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. Notwithstanding anything to the contrary in this lease, the premises shall exclude the exterior walls, the foundation, the roof, the structural components of the building, any space in the premises used for shafts, pipes, conduits, ducts electrical equipment or other utilities or building facilities and the common areas of the building and the business park. CITY reserves the right, from time to time, to locate, install, repair and replace any pipes, utility lines, ducts, wires, mains and structural elements through the premises in locations that will not materially interfere with LESSEE's use of or access to the premises.
- d. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE's use of the premises and will reimburse LESSEE for physical damages caused by CITY, if any, to LESSEE's personal property located on the leased premises, resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Political Activities.

The leased premises shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a

“candidate forum” and similar events, subject to LESSEE’s compliance with all applicable laws.

SECTION 2: TERM

2.1 Commencement.

The term of this lease shall be month-to-month commencing on August 7, 2019 (“Effective Date”).

2.2 Termination.

CITY may terminate this lease, for any reason, by providing written notice of termination, sent by U.S. First Class Mail or hand delivered to the address for Notices under Section 9.1 between the hours of 8:00 AM to 5:00 PM on Monday through Friday at least 180 days prior to the date of termination.

LESSEE may terminate this Lease, for any reason, by providing written notice of termination, sent by U.S. First Class Mail or hand delivered to the address for Notices under Section 9.1 between the hours of 8:00 AM to 5:00 PM on Monday through Friday at least thirty (30) days prior to the date of termination.

2.3 Surrender of Premises.

At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE’S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all LESSEE’S rights to the premises.

SECTION 3: RENT

3.1 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month.

Checks should be made payable to the City Treasurer and mailed to:

City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Base Rent.

The monthly rent is Three Thousand Seven Hundred and Ninety-Nine Dollars and Eighty Cents (\$3,799.80) per month.

Said rent is subject to annual adjustments as described below.

3.3 Rent Adjustment.

Each year, on the anniversary of the Effective Date, and each subsequent year thereafter, the monthly rent shall be increased by three percent (3%).

3.4 Additional Rent for Common Area Operating Expenses.

Additional Rent. All sums payable by LESSEE under this Lease other than Base Rent are "Additional Rent"; the term "Rent" includes both Base Rent and Additional Rent. CITY will estimate in advance and charge to LESSEE the following Common Area Operating Expenses ("Operating Expenses"), which LESSEE will pay with the Base Rent on a monthly basis throughout the Lease Term: (a) all Real Property Taxes for which LESSEE is liable hereunder; (b) all utility costs (to the extent utilities are not separately metered) for which LESSEE is liable hereunder; (c) all insurance premiums for which LESSEE is liable hereunder; and (d) all Common Area Maintenance Expenses for which LESSEE is liable hereunder, if any. CITY may adjust its estimates of Operating Expenses at any time based upon CITY'S experience and reasonable anticipation of costs. Such adjustments will be effective as of the next Rent payment date after notice to LESSEE. "Occupancy Period" means the period from the time LESSEE first

enters the Premises, throughout the Lease Term, and thereafter as long as LESSEE remains in the Premises.

Common Area Maintenance Expenses. LESSEE will pay to CITY all Operating Expenses for Common Area Maintenance allocable to the Occupancy Period. "Common Area Maintenance Expenses" means all costs and expenses incurred by CITY with respect to the ownership, maintenance and operation of the Property including, but not limited to: maintenance, repair and replacement of the heating, ventilation, air conditioning, plumbing, electrical, mechanical, utility and safety systems, paving and parking areas, roads and driveways; maintenance of exterior areas such as sidewalks, gardening, landscaping, snow removal and signage; maintenance and repair of roof membrane, flashings, gutters, downspouts, roof drains, skylights and waterproofing; painting; lighting; cleaning; refuse removal; security; utilities for, or the maintenance of outside areas; Building personnel costs; personal property taxes; rentals or lease payments paid by CITY for rented or leased personal property used in the operation or maintenance of the Premises; fees for required licenses and permits; and a property management fee (not to exceed five percent (5%) of the gross rents of the Premises for the calendar year). Common Area Maintenance Expenses do not include: (a) the cost of capital repairs, replacements or improvements, other than annual depreciation (based on the useful life of the item under generally accepted accounting principles) on any such capital repair, replacement or improvement; (b) debt service under mortgages or ground rent underground leases; (c) costs of restoration to the extent of net insurance proceeds received by CITY; (d) leasing commissions and tenant improvement costs; and (e) litigation expenses relating to disputes with LESSEES.

"Common Areas" is defined as all areas and facilities outside the premises and within the exterior boundary line of the Property and interior utility raceways and installations within the Suite that are provided and designated by the CITY from time to time for the general non-exclusive use of CITY, LESSEE and other tenants of the Property and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

(1) Common Areas – Lessee's Rights

CITY grants to LESSEE, for the benefit of LESSEE and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Property. Under no circumstances shall the right herein granted to use the Common Areas be deemed to

include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of CITY, which Consent may be revoked at any time. In the event that any unauthorized storage shall occur them CITY shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property, and charge the cost to LESSEE, which cost shall be immediately payable upon demand by CITY.

(2) Common Areas – Changes

CITY shall have the right, in CITY'S sole discretion, from time to time:

- a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- c) To add additional buildings and improvements to the Common Areas;
- d) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Property, or any portion thereof; and
- e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Property as CITY may, in the exercise of sound business judgement, deem to be appropriate.

3.5 Delinquent Rent.

If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time.

LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

3.6 Security Deposit.

A security deposit shall be equivalent to three (3) month's initial rent or before the Commencement Date of this lease. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE's successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE's failure to faithfully perform all terms, covenants, and conditions of this lease.

LESSEE will maintain the required security deposit throughout the lease Term unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within ten (10) days of notice from CITY to bring the security deposit up to the full specified amount.

The security deposit or any balance thereof will be returned to LESSEE within the time periods proscribed by law following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants, and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days prior written notice from CITY of such required increase.

SECTION 4: ASSIGNMENT & ENCUMBRANCES

4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence for all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 Assignment and Subletting.

LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof. Any such assignment or subletting shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of CITY.

"Assignment" for the purposes of this clause shall include any transfer of any interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals, to any other person or entity.

4.3 Encumbrance.

LESSEE may not encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE.

SECTION 5: DEFAULTS AND REMEDIES

- a. Default. Each of the following shall constitute an event of default under this lease:
- (1) LESSEE fails to make any payment required under this lease;
 - (2) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - (3) LESSEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law;
 - (4) LESSEE is adjudicated a bankrupt; or
 - (5) LESSEE makes a general assignment for the benefit of creditors;
- b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written

"Three Day Notice to Pay or Quit," for failure to make required payments and/or (2) a "30-Day Notice of Termination", for defaults not requiring payment to CITY. Should LESSEE not make the required payment within the stated three days, or should LESSEE fail to cure said default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion - then CITY may seek to terminate the lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the premises or to possession thereof. Upon termination, CITY may enter and take possession of the premises, and may recover from LESSEE the sum of:

- (1) the worth at the time of any unpaid rent that was due at the time of termination;
- (2) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (4) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (5) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.
- (6) upon termination of the Lease, LESSEE shall be obligated to pay fees computed at the then current daily rates for comparable premises until LESSEE has removed all personal property, improvements and/or trash and debris from the assigned premises.

As used in clauses (1) and (2), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (3), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this lease.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by CITY in order to constitute a valid and binding waiver. CITY's delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

SECTION 6: EMINENT DOMAIN

If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements in the premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNIFICATION & INSURANCE

7.1 Indemnification & Hold Harmless

LESSEE will protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives, agents, and volunteers harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this lease or LESSEE's occupancy, use, development, maintenance, restoration, or improvement of the premises, and all expenses of investigating and defending against same, including without limitation, attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold City harmless will not include any established liability arising from the gross negligence or intentional misconduct of City or its elected officials, officers, employees, representatives, agents, or volunteers. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses to conduct its own defense,

participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE will pay all of the related costs, including without limitation reasonable attorney fees and costs.

7.2 Insurance.

LESSEE shall obtain and maintain throughout the Term of this lease, at its sole cost and expense, all insurance required by this lease. LESSEE's liabilities under this lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this lease. Notwithstanding any provision of this lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this lease. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under the lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the lease may be treated as a material breach of contract by CITY. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the lease. LESSEE shall obtain and deliver to CITY's Airport Division on the Commencement Date a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

- a. Commercial General Liability Insurance. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability Insurance: Commercial Automobile Liability Insurance ("Auto") if and when LESSEE uses vehicles on the premises and/or in connection with LESSEE's use of the premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or equivalent form providing coverage at

least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this lease.

- c. Liquor Liability. If LESSEE will be distributing, selling, or serving alcoholic beverages, LESSEE shall include liquor liability coverage with limits of no less than One Million Dollars (\$1,000,000).
 - d. Workers' Compensation Insurance. As required by applicable laws, for all of LESSEE's employees, if any, who work on the premises and/or in connection with LESSEE's use of the premises, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- 7.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; and, (d) the premises.
- 7.2.2 Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- 7.2.3 Severability of Interest. Each CGL and Auto policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 7.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that

are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- 7.2.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.2.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 7.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the premises or otherwise related to the allowed uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

7.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the lease use or the premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

7.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within twenty-four (24) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 7.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days of the occurrence of the damage, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. LESSEE'S responsibility to pay rent shall not be abated during said repairs, restoration or replacement. Notwithstanding the foregoing, CITY may, in its sole discretion, determine an equitable deduction in the monthly rent requirement for such period or periods that said leased premises are untenable by reason of such damage if such damage is not directly or indirectly caused by LESSEE or LESSEE's operations on the leased premises.

SECTION 8: ACCEPTANCE, ENTRY, IMPROVEMENTS/ALTERATIONS, REPAIRS & OTHER SPECIAL PROVISIONS

8.1 Acceptance of Premises.

By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and

observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous substances.

8.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. The CITY's right of entry will normally be performed with the LESSEE's authorization and presence, but the CITY also reserves and shall have the right, without notice, to enter upon the leased premises in an emergency. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

8.3 Maintenance and Repair.

8.3.1 City's Obligations.

CITY agrees to maintain in good condition, reasonable wear and tear excepted, and repair and replace the structural portions of the Building (including, without limitation, the exterior walls, underflooring and roof), the base building facilities and the Common Areas. If any damage is caused by the acts or omissions of LESSEE or LESSEE's authorized representative, or in violation of this lease, City shall perform such maintenance and repair at LESSEE's sole cost or require LESSEE to remedy such damage. LESSEE waives the benefit of any statute, ordinance, or judicial decision now or hereafter existing which permits LESSEE to make repairs at City's expense.

8.3.2 Lessee's Obligations.

- a. LESSEE, at its cost, shall maintain, in good condition and repair, all portions of the premises, including, without limitation, all fixtures, facilities or equipment contained therein, interior walls, ceilings, floors, floor coverings, windows, doors, LESSEE's personal property, alterations, LESSEE's work and LESSEE's trade fixtures and signs. If LESSEE fails to perform its obligations under this Section 8.3, CITY may, but need not, make such repairs and replacements and LESSEE shall pay CITY the cost thereof as Rent under this lease upon being billed for same.
- b. In the event fixtures and/or equipment are installed in, affixed to, or served by, roof vents or other similar air openings serving the premises, LESSEE shall keep such vents and openings free from the accumulation of grease, dirt, and other foreign matter, and shall furnish and service any and all filters or similar equipment considered necessary by the City, monthly or as often as necessary.
- c. LESSEE shall, at its expense, be responsible for extending its drain lines and connecting to any grease interceptor and maintaining all plumbing within the Premises.
- d. LESSEE shall be responsible for the proper containment and disposal of cooking grease from the Premises.
- e. LESSEE shall not allow for the accumulation of boxes, cartons, barrels, carts, equipment, or other similar items.
- f. LESSEE shall be responsible for the complete control of all rodents and insects or other pests within the premises.

8.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval of CITY. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval of CITY, and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

8.5 Utilities.

LESSEE shall pay all charges for any services or utilities used in or assessed against the Leased Premises, together with all taxes or other charges on such utilities.

8.6 Liens.

LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, repairs or replacements are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

8.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

8.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of CITY. Any permitted sign shall be professionally prepared. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE's cost.

8.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or sixty (60) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at LESSEE's sole cost and expense.
- e. Any necessary removal of LESSEE's property by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent (pro rata for every day beyond the expiration/termination date) to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

8.10 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes

beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

8.11 Hazardous/Toxic Waste.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For purposes of this lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- b. Hazardous Substance. For purposes of this lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the premises, LESSEE and/or LESSEE's

contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the premises immediately upon or prior to the expiration or earlier termination of this lease. CITY reserves the right to conduct inspections of the premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- e. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the premises.
- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a

professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

8.12 Water Quality – Best Management Practices.

City and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of City's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

8.13 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety

Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 9: GENERAL PROVISIONS

9.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

CITY:

Airports Deputy Director
Montgomery-Gibbs Executive Airport
3750 John J Montgomery Drive
San Diego, CA 92123

- b. Any party entitled or required to receive notice under this lease may designate a different address to which notices shall be sent, by giving the other party a prior thirty (30) day notice thereof.
- (a) Whenever in this lease the approval or consent of a party is required, such approval or consent shall be in advance, in writing, and shall be executed by a person having the express authority to grant such approval or consent. All written notices given in conjunction with this lease shall be effective when personally delivered or after three (3) working days upon deposit in the U. S. Mail, certified or registered, postage prepaid, to the address of record set forth in this lease, or to such other address as either party shall designate in writing.

9.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative, under the authority of any such law, statute, ordinance, or regulation.

9.3 CITY Approval.

The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the Mayor, or his designee, unless otherwise specified, without need for further resolution by the City Council.

9.4 Nondiscrimination.

This lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that LESSEE or any person claiming under or through LESSEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the premises.

9.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY's Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts.

LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

9.6 Equal Benefits.

LESSEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this lease. LESSEE'S failure to maintain equal benefits will be a default of this lease.

9.7 Equal Pay Ordinance.

Unless an exception applies, LESSEE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

- a. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the premises to the same extent as it would apply to LESSEE. LESSEE will require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- b. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

9.8 Survival.

Any obligation which accrues under this lease prior to its expiration or termination shall survive such expiration or termination.

9.9 Joint and Several Liability.

If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this lease.

9.10 Partial Invalidity.

If any term, covenant, condition, or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

9.11 Number and Gender.

Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural when the tense requires.

9.12 Captions.

The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

9.13 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

9.14 Restriction on Food Containers.

LESSEE shall not provide to its customers any prepared, takeout or supplied/resale food in polystyrene foam, nor shall LESSEE obtain or keep any such customer food packaging at or on the Premises. LESSEE's food packaging for all food shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by the LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverage to be consumed off the Premises or elsewhere in

the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE shall also limit its distribution of plastic bags to its customers.

9.15 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling rehabilitation, and employees assistance programs
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

9.15 Accessibility Compliance.

LESSEE will, as applicable to the premises and LESSEE'S possession, use and occupancy of the premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal

or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE'S compliance will include without limitation the following:

- a. LESSEE will not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- c. LESSEE will include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section. LESSEE and each of its sublessees will be individually responsible for their own ADA employment programs.
- d. LESSEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
- e. Where required by law, all improvements, fixtures, structures or installations on the premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the premises which deny access to individuals with disabilities. All improvements and alterations will be at LESSEE'S sole expense.

LESSEESS'S failure to comply with the accessibility requirements of this section or submitting false information in response to these requirements, or both, will be a default of this lease.

9.16 Accessibility Assessment.

In accordance with California Civil Code section 1938, City hereby states that the premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the LESSEE or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the LESSEE or tenant, if requested by the LESSEE or tenant. The

parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

9.17 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

9.18 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever by the acquisition of the Property or premises by the CITY or upon termination of this lease.

SECTION 10: AIRPORTS PROVISIONS - IF, AND AS, APPLICABLE TO LESSEE

10.1 Lease Subject to Federal Aviation Administration (FAA) Regulations.

LESSEE acknowledges and agrees, in addition to the foregoing terms and conditions of this lease, that LESSEE shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **EXHIBIT C**, which by this reference are made a part of this lease. Failure to strictly adhere to the FAA Regulations shall subject this lease to immediate termination with no liability to CITY.

SECTION 11: SAFETY MANAGEMENT SYSTEMS

- 11.1 Safety Management Systems Compliance.** Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this lease, it is anticipated that during the Term of this lease that the FAA will mandate SMS compliance for general aviation Airports, which would include the Airport. Because the use of SMS at Airports can contribute to helping Airports detect and correct safety problems before they result in Aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (1) CITY’s requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Leased Aircraft Ground Space and that LESSEE will compile and report said information in a form acceptable to the FAA and CITY; (2) all CITY requests for SMS-related data; (3) the CITY’s right to conduct SMS-related inspections of the Leased Aircraft Ground Space; (4) all other SMS-related requests made by CITY in its effort to implement a system-wide SMS and maintain an SMS

Manual for the CITY's Airport system or a part thereof; and (5) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by LESSEE shall be verified by LESSEE to be accurate and shall be provided without cost to CITY.

This Lease contains the entire understanding of the Parties. LESSEE, by signing this lease, agrees that there is no other written or oral understanding between the parties with respect to the leasing of the premises other than as set forth in this lease. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties (if any), representations (if any), and covenants set forth in this lease. The failure or refusal of any party to read the lease, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

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IN WITNESS WHEREOF, this lease is executed by CITY, acting by and through its Mayor, and by LESSEE, acting by and through its lawfully authorized representative.

THE CITY OF SAN DIEGO

Date: 11/14/19

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

KHAM AND THANATHONE CHAREUNSOUK
DBA PEAR'S THAI CUISINE RESTAURANT

Date: 11/4/19

By: [Signature]
Thanathone Chareunsouk

Date: 11/4/19

By: [Signature]
Kham Chareunsouk

Environmental Analysis Section Environmental Clearance:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the project; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

Date: 11/7/19

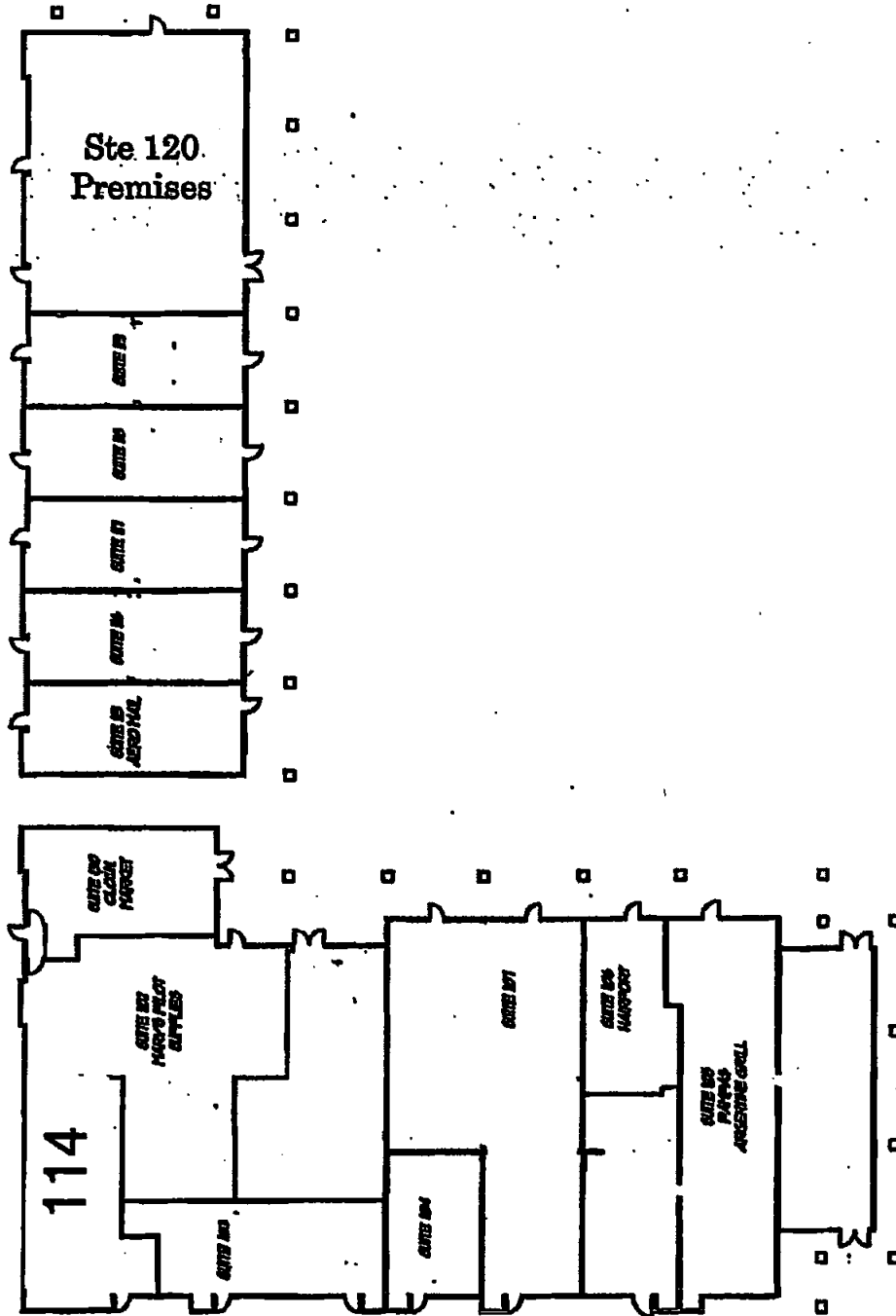
By: [Signature]
Name: Alyssa Muto
Title: Deputy Director, Planning Department

Approved as to form this 15th day
of November, 2019.

Mara W. Elliot, City Attorney

By: [Signature]
Name: Jane M. Boardman
Title: Deputy City Attorney

EXHIBIT A



LEGAL DESCRIPTION

PARCEL A:

THAT PORTION OF LOT 24 OF NEW RIVERSIDE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 679, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 11, 1891, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 24; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89° 22' 05" WEST, 37.00 FEET TO THE POINT CUSP WITH A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY FORMING A PORTION OF JOHN J. MONTGOMERY DRIVE; THENCE ALONG THE BOUNDARY OF SAID DRIVE AS FOLLOWS:

NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET; TANGENT TO SAID CURVE NORTH 00° 37' 55" WEST, 160.00 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; AND NORTHWESTERLY ALONG WITH ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET TO A POINT OF TANGENCY IN THE SOUTHERLY LINE OF GIBBS DRIVE; THENCE ALONG SAID SOUTHERLY LINE TANGENT TO SAID CURVE SOUTH 89° 22' 05" WEST, 678.57 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89° 22' 05" WEST, 550.57 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY FORMING PORTION OF GLEN L. CURTIS DRIVE; THENCE ALONG THE BOUNDARY OF SAID DRIVE, LAST ABOVE REFERRED TO, AS FOLLOWS:

SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET; TANGENT TO SAID CURVE SOUTH 00° 37' 55" EAST, 160.00 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET TO THE POINT OF TANGENCY IN THE SOUTHERLY LINE OF SAID LOT 24; THENCE ALONG SAID SOUTHERLY LINE, TANGENT TO SAID CURVE NORTH 89° 22' 05" EAST, 550.57 FEET TO A LINE WHICH BEARS SOUTH 00° 37' 55" EAST FROM THE TRUE POINT OF BEGINNING; THENCE NORTH 00° 37' 55" WEST, 200.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF LOT 24 OF NEW RIVERSIDE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 679, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 11, 1891, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 24; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 24, SOUTH 89° 22' 05" WEST, 37.00 FEET TO A POINT OF CUSP WITH THE ARC OF A 20.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY AND BEING THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET TO A POINT OF TANGENCY WITH THE WESTERLY LINE OF THE EASTERLY 17.00 FEET OF SAID LOT 24; THENCE ALONG SAID WESTERLY LINE, NORTH 00° 37' 55" WEST, 160.00 FEET TO THE BEGINNING OF A TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 00' 00" A DISTANCE OF 31.42 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 89° 22' 05" WEST, 678.57 FEET; THENCE SOUTH 00° 37' 55" EAST 200.00 FEET TO THE SOUTHERLY LINE OF SAID LOT 24; THENCE ALONG SAID SOUTHERLY LINE, NORTH 89° 22' 05" EAST, 678.57 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

RULES AND REGULATIONS

The sidewalks, entrances, halls, corridors and stairways of the building ("Building") and premises shall not be obstructed or used as a waiting or lounging place by any LESSEE, their agents, servants, employees, invitees, licensees and visitors. All entrance doors leading from any premises to the hallways are to be kept closed at all times.

1. In case of invasion, riot, public excitement or other commotion, CITY also reserves the right to prevent access to the Building during the continuance of same. CITY shall in no case be liable for damages for the admission or exclusion of any person to or from the Building. CITY reserves the right to exclude or expel from the Building any person who, in CITY's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.
2. CITY will furnish each LESSEE with keys to each door lock on the premises, and CITY may make a reasonable charge for any additional keys requested by any LESSEE. No LESSEE shall have any keys made for the premises; nor shall any LESSEE alter any lock, or install new or additional locks or bolts, on any door without the prior express written approval of CITY. In the event of such alteration or installation approved by CITY, the LESSEE making such alteration shall supply CITY with a key for any such lock or bolt. Each LESSEE, upon the expiration or termination of its tenancy, shall deliver to CITY all keys and access cards in any such LESSEE's possession for all locks and bolts in the Building and in the event of loss of any keys or cards so furnished, shall pay CITY therefore. If all keys are not returned to CITY at the office of the Building Manager upon lease expiration, then the cost to replace the keys will be deducted from the Security Deposit.
3. LESSEE shall not cause any unnecessary labor by reason of such LESSEE's carelessness or indifference in the preservation of good order and cleanliness of the premises. In the event LESSEE must dispose of crates, boxes, etc. which will not fit into office waste paper baskets, it will be the responsibility of LESSEE to dispose of same. In no event shall LESSEE set such items in the public hallways or other areas of the building or garage facility, excepting LESSEE's own premises, for disposal. LESSEE shall store all of its trash and garbage within its premises or in any other facilities provided by CITY. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by CITY.

4. CITY reserves the right to prescribe the date, time, method and conditions that any personal property, equipment, trade fixtures, merchandise and other similar items shall be delivered to or removed from the Building. No iron safe or other heavy or bulky object shall be delivered to or removed from the Building, except by experienced safe men, movers or riggers approved in writing in advance by CITY. All damage done to the Building by the delivery or removal of such items, or by reason of their presence in the Building, shall be paid to CITY, immediately upon demand, by the LESSEE by, through, or under whom such damage was done. There shall not be used in any space, or in the public halls of the Building, either by LESSEE or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires. LESSEE's initial move-in and subsequent deliveries of bulky items, such as furniture, safes and similar items shall, unless otherwise agreed in writing by CITY, be made during the hours of 5:30 p.m. to 7:00 a.m. or on Saturday or Sunday. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No delivery shall be made which impede or interfere with other LESSEES or the operations of the Building.
5. The walls, partitions, skylights, windows, doors and transoms that reflect or admit light into passageways or into any other part of the Building shall not be covered or obstructed by LESSEE.
6. The toilet rooms, toilets, urinals, wash bowls and water apparatus shall not be used for any purpose other than for those for which they were constructed or installed, and no sweepings, rubbish, chemicals, or other unsuitable substances shall be thrown or placed therein. The expense of any breakage, stoppage or damage resulting from violation(s) of this rule shall be borne by the LESSEE by whom, or by whose agents, employees, invitees, licensees or visitors, such breakage, stoppage or damage shall have been caused.
7. No sign, name, placard, advertisement or notice visible from the exterior of any premises, shall be inscribed, painted or affixed by any LESSEE on any part of the Building without the prior written approval of CITY.
8. No signaling, telegraphic or telephonic instruments or devices, burglar alarm systems or similar service, or other wire, instruments or devices, shall be installed in connection with the leased premises without the prior written approval of CITY. Such installations, and the boring or cutting for wires, shall be made at the sole cost and expense of the LESSEE and under the control and direction of CITY. CITY retains, in all cases, the right to require (i) the installation and use of such electrical protecting devices that prevent the transmission of excessive currents of electricity into or through the Building; (ii) the changing of wires and of their installation and arrangement underground or otherwise as CITY may direct; and (iii) compliance on

the part of all using or seeking to such wires with such rules as CITY may establish relating thereto. All such wires used by LESSEE must be clearly tagged at the distribution boards and junction boxes and elsewhere in the Building, with (i) the number of the premises to which said wires lead; (ii) the purpose for which said wires are used; and (iii) the name of the company operating same.

9. LESSEE, its agents, servants or employees, shall not (i) go on the roof of the Building; (ii) use any additional method of heating or air conditioning the premises; (iii) sweep or throw any dirt or other substance from the premises into any of the halls, corridors, elevators, or stairways of the Building; (iv) bring in or keep in or about the premises any vehicles or animals of any kind; (v) install any radio or television antennae or any other device or item on the roof, exterior walls, windows or window sills of the Building; (vi) place objects against glass partitions, doors or windows which would be unsightly from the interior or exterior of the Building; (vii) use the premises for any manufacturing, storage or sale of merchandise or property of any kind; (viii) cause or permit unusual or objectionable odor to be produced or permeate from the premises, including, without limitation, duplicating or printing equipment fumes; or (ix) install or operate any vending machines in the premises without the prior written consent of CITY. LESSEE, its agents, servants and employees, invitees, licensees, or visitors shall not permit the operation of any musical or sound producing instruments or device which may be heard outside the leased premises, building, or which may emit electrical waves which will impair radio or television broadcast or reception from or into the building.
10. LESSEE shall not store or use in any premises any (i) ether, naphtha, phosphorous, benzol, gasoline, benzine, petroleum, crude or refined earth or coal oils, flashlight power, kerosene or camphene; (ii) any other flammable, combustible, explosive or illuminating fluid, gas or material of any kind; or (iii) any other fluid, gas or material of any kind having an offensive odor, without the prior written consent of CITY.
11. No canvassing, soliciting, distribution of hand bills or other written material, or peddling shall be permitted in the Building, and LESSEE shall cooperate with CITY in presentation and elimination of same.
12. LESSEE shall give CITY prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electrical facilities or any part or appurtenances of the premises.
13. If any premises become infested with vermin, the LESSEE, at its sole cost and expense, shall cause its premises to be exterminated from time to time to the satisfaction of the CITY and shall employ such exterminators as shall be approved by CITY.

14. No curtains, blinds, shades, screens, awnings or other coverings or projections of any nature shall be attached to or hung in, or used in connection with any door, window or wall of a leased premise of the Building without the prior written consent of CITY.
15. LESSEE shall not place a load upon any floor of the leased premises which exceeds the load per square foot which such floor was designated to carry and which is allowed by law. CITY shall have right to prescribe weight, size and position of all equipment, materials, furniture or other property brought into the building. Heavy objects shall, if considered necessary by CITY, stand on such platform as determined by CITY to be necessary to properly distribute the weight, which platform shall be provided at LESSEE's expense. Business machines and mechanical equipment belonging to LESSEE, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to CITY or to any LESSEE in the Building shall be placed and maintained by LESSEE, at LESSEE's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. CITY will not be responsible for loss of, or damage to, any such equipment or other property for any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of LESSEE.
16. LESSEE shall not waste electricity, water or air conditioning and agrees to cooperate with CITY to assure the most effective operation of the building's heat and air conditioning and to comply with the governmental energy saving rules, laws or regulations of which LESSEE has actual notice, and shall refrain from attempting to adjust controls. LESSEE shall keep corridors closed, shall keep window coverings closed at the end of each business day.
17. CITY shall have the right to prohibit any advertising by LESSEE which, in CITY's opinion, tends to impair the reputation of CITY or of the Building, or its desirability as an office building for existing or prospective LESSEE who require the highest standards of integrity and respectability, and upon written notice from CITY, LESSEE shall immediately refrain from or discontinue such advertising.
18. Whenever the word "LESSEE" occurs, it is understood and agreed that it shall also mean LESSEE's associates, employees, agents and any other person entering the building or the leased premises under the express or implied invitation of LESSEE. LESSEE shall cooperate with CITY to assure compliance by all such parties with the Rules and Regulations.
19. CITY reserves the right to make reasonable amendments, modifications and additions to the Rules and Regulations heretofore set forth, and to make additional reasonable rules and regulations, as in CITY's sole judgment may from time to time be needed

for the safety, care, cleanliness and preservation or good order of the Building.

20. A request by LESSEE will be attended to only upon application at the office of the Building. Employees of CITY shall not perform any work or do anything outside of their regular duties unless under special instructions from CITY, and no employee will admit any person (LESSEE or otherwise) to any leased premises without specific instructions from CITY.
21. CITY shall have the right, exercisable without notice and without liability to LESSEE, to change the name and the street address of the Building of which leased premises are a part. CITY will pay for all reasonable cost incurred by LESSEE as a result of changing the street address of the Building unless the change is requested by an authorized governmental agency.
22. LESSEE shall not obtain for use upon the premises ice, towel or other similar services or accept barbering or boot blacking services on the premises, except from persons authorized by CITY and at the hours and under regulations fixed by CITY.
23. CITY may waive any one or more of these Rules and Regulations for the benefit of any LESSEE, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of LESSEE or any other LESSEE nor prevent CITY from thereafter enforcing any such Rules and Regulations against any or all of the LESSEE of the Building.
24. LESSEE assumes any and all responsibility for protecting its leased premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the leased premises secured. LESSEE shall comply with all safety and fire protection evacuation procedures and regulations established by CITY or any governmental agency.

EXHIBIT B-1

PARKING RULES AND REGULATIONS

These Rules shall apply to those parking lots as described as Parking Lot A, at 8525 Gibbs Dr., Parking Lot B, the concrete lot between buildings 8525 and 8575 Gibbs Dr., Parking Lot C, the asphalt lot between buildings 8575 and 8665 Gibbs Dr. and Parking Lot D, the asphalt lot between 8665 Gibbs Dr. and 8690 Aero Dr.

1. Parking areas shall be used only for parking of vehicles that are no longer than full size, passenger automobiles, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."
2. LESSEE shall not permit or allow any vehicles that belong to or are controlled by LESSEE or LESSEE's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those designated by CITY for such activities.
3. CITY reserves the right to refuse the sale of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.
4. CITY reserves the right to relocate all or part of parking spaces and/or to reasonably adjacent offsite locations and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.
5. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his/her own vehicle. CITY will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
8. The maintenance, washing, waxing or cleaning of vehicles in the parking area is strictly prohibited.
9. LESSEE shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.

10. CITY reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Smoking is prohibited in the Parking Garage (LOT A) and within 25 feet of any entrance.
13. Vehicles shall only drive through lots as indicated by directional markings. Cutting corners and driving through vacant stalls is prohibited.
14. Vehicles shall not travel faster than 5 miles per hour.
15. LESSEES and LESSEES' employees are strictly prohibited from parking in Visitor Parking at ANY TIME.
16. Overnight parking, defined herein as between the hours of 11 p.m. and 4 a.m., is prohibited unless otherwise specified in your Lease agreement.
17. Vehicles MUST be parked within the marked lines. Vehicles parked over the line or taking up more than one space will be towed away at the vehicle owner's expense.
18. CITY reserves the right to have any vehicle that violates any of these rules removed from the parking area at the vehicle owner's expense.
19. All persons receiving a parking permit MUST completely fill in all requested information on the vehicle registration form provided by Management.
20. Each permit holder is responsible for updating his/her information, including contact phone numbers and any changes in vehicle, license plates BEFORE parking in any lot.
21. Vehicles parked on-site must display a valid state registration sticker.
22. In compliance with California statutes all drivers must carry Liability insurance.

EXHIBIT C

FAA REQUIREMENTS

LESSEE shall adhere to the following terms and conditions during the entirety of the time period covered by this lease. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the lease, the terms and conditions contained in the main body of the lease shall prevail.

1. **LESSEE's Use to Conform with Law and Other Rules**

LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE's or its sublessee's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

2. **LESSEE's Use and Construction to Conform with Federal Aviation Regulations**

LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises and Airport. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the premises.

3. **LESSEE's Noninterference with Aircraft**

LESSEE, on behalf of itself and its successors, assigns, licensees and sublessees, agrees not to use the premises in any manner or act in any manner that might interfere with any aircraft landing or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of LESSEE and LESSEE agrees to reimburse CITY for all costs and fees, including attorney's fees, incurred by CITY involved with said abatement or elimination.

4. **Lease Subordinate to CITY/United States of America Agreements**

This lease shall be subordinate to the terms of any existing or future agreements between CITY and the United States of America, and to any United States of America legal requirement relative to the development, operation or maintenance of the Airport, and CITY shall not be liable for any claims, losses, or damages, of any type, that LESSEE, or

anyone claiming through LESSEE, may incur or suffer as a result of any such subordination.

5. Height Limitation

The LESSEE and the LESSEE'S successors and assigns agree not to erect or permit any structure unless it complies with all height limitations and other requirements of the FAA and the applicable Airport Land Use Compatibility Plan (also known as the "ALUCP"). If this covenant is breached in any way, CITY reserves the right to remove the structure or object at the expense of the LESSEE, and LESSEE agrees to reimburse CITY for all costs and fees, including attorney's fees, incurred by CITY involved with said removal.

6. Right of Flight Easement

CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near the Airport.

7. War or National Emergency

In the event of war or national emergency, this lease and all of its provisions shall be subject to any right of the United States of America, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the Airport. During any war or national emergency, CITY shall have the right to lease, or allow the use of, any part of the Airport, including its landing areas, to the United State of America. In this event, any provisions of this lease which are inconsistent with the provisions of the lease, or allowed use, to the United States of America shall be suspended. CITY shall not be liable for any claims, loss, or damages, of any type, that LESSEE, or anyone claiming through LESSEE, may incur or suffer as a result of this action. However, nothing in this lease shall prevent LESSEE from pursuing any rights it may have for reimbursement from the United States of America.

8. Airport Development

CITY reserves the right to further develop, change or improve the Airport and its routes and landing areas as CITY sees fit, without liability to LESSEE, and without LESSEE interference or hindrance and regardless of LESSEE's views and desires. CITY shall have the right to perform any and all such actions referred to in this section 8, including the right to shut parts or all of the Airport down, at no liability to CITY, regardless of any damages or losses LESSEE, or anyone claiming through LESSEE, may suffer from said actions.

9. Nonexclusive Right

LESSEE understands and agrees that nothing in this lease shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).

10. Landing Area Maintenance

CITY reserves the right, but not the obligation, to maintain and repair the Airport landing and travel areas and all other public facilities at the Airport, at CITY's sole discretion, without liability to LESSEE, or anyone claiming through LESSEE. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.

11. FAA Nondiscrimination Covenant

a. LESSEE, on behalf of itself and its representatives, successors, sublessees, licensees and assigns, as part of the consideration for this lease, agrees to the following nondiscrimination covenants:

(1) No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the premises based on race, color, sex or national origin.

(2) No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the premises, based on race, color, sex or national origin.

(3) LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

b. If any of the above nondiscrimination covenants are breached, CITY may terminate this lease and reenter and repossess the premises as if this lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

c. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision,

CITY has the right to terminate this lease, without liability, and either CITY or the United States of America may judicially enforce this entire covenant.

d. LESSEE agrees to include this entire covenant in any sublease or lease agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the premises.

12. Equal Opportunity

LESSEE on behalf of itself and its successors, assigns, sublessees, licensees and any suborganizations, agrees to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to ensure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

13. CITY to Mitigate Impacts of Subordination

If subordination agreements between CITY and the United States of America result in LESSEE's inability to operate as authorized by this lease, or if LESSEE's operations authorized under this lease are materially affected during a period of subordination, (1) CITY agrees to make a reasonable adjustment to the terms and conditions of the lease, as determined by CITY, in its sole discretion; or (2) upon written request from LESSEE, CITY will terminate this lease or extend the term of this lease for the period of time that LESSEE's operation is affected, and no rent shall accrue during any period of non-operation. LESSEE agrees that any damages claimed during this subordination period will be limited to the relief granted by CITY, if any, and that CITY will incur no liability for any losses suffered by LESSEE.

14. Hangar Keeper's Insurance

LESSEE agrees to maintain the following insurance at its sole expense, during the entirety of the time period covered by this lease: Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others. This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this lease.

15. Licenses and Certifications

LESSEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and CITY then has the right to terminate this lease without liability.

16. Employee Conduct

LESSEE shall be responsible for the conduct of any employee, contractor, agent, invitee, and guest on the entire Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with LESSEE's operations or activities on the Airport.

17. Subordination to Brown Field Quitclaim Deed

LESSEE agrees that this lease is subordinate to the provisions of the Brown Field Quitclaim Deed to CITY.

18. Aircraft Parking

LESSEE shall require that all aircraft under its control be parked only on the premises, except as otherwise provided by the direction of the CITY. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE's control, be allowed to obstruct any designated taxiways.

19. Minority Business Policy

If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

20. Provisions to be Included in All Pertinent Documents

LESSEE agrees that it shall insert all of the foregoing provisions in all subleases, contracts or agreements by which said LESSEE grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the premises.



Date of Notice: August 20, 2019

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Month-to-Month Flat Rate Lease for Retail Space at Montgomery-Gibbs Executive Airport

COMMUNITY PLAN AREA: Kearny Mesa

COUNCIL DISTRICT: District 6

LOCATION: 8690 Aero Drive, San Diego, CA 92123

PROJECT DESCRIPTION: Authorize the Mayor or his designee to enter into a month-to-month flat-rate lease with up to thirteen (13) tenants at Montgomery-Gibbs Executive Airport within the retail center located at 8690 Aero Drive. The premises will be leased to Lessees solely for uses pertaining to restaurant and retail businesses only, and Lessees shall not use or permit the premises to be used for any other purpose without prior written consent by the City. Lessees shall maintain in good operating condition and repair, all portions of the premises and no improvements, structures, installations, or alterations shall be constructed by the Lessees without prior written approval by the City.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; and where the exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Debbie Shauger, Property Agent
Real Estate Assets Department
MAILING ADDRESS: 3750 John J. Montgomery Drive, San Diego, CA 92123
PHONE NUMBER: (858) 573-1448

On August 20, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**September 4, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 8/20/2019

REMOVED: 9/5/2019

POSTED: E. Pasova