



THE CITY OF SAN DIEGO

Flat Rate Lease Agreement

Between

THE CITY OF SAN DIEGO

And

94TH AERO SQUADRON SD INC

(Restaurant Viewing Area)

**CITY OF SAN DIEGO
FLAT RATE LEASE AGREEMENT**

THIS FLAT RATE LEASE AGREEMENT ("Lease") is hereby made and executed between THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "CITY," and 94TH AERO SQUADRON SD INC, hereinafter called "LESSEE", to be effective July 1, 2020 ("Effective Date") when signed by the parties and approved by the San Diego City Attorney. CITY and LESSEE being herein sometimes referred to as a "Party" or "Parties."

RECITALS

A. CITY owns that certain real property consisting of 9,600 square feet of unimproved land (the "Premises") located at 3750 John J Montgomery Dr., San Diego, CA 92123, and commonly known as Montgomery-Gibbs Executive Airport (the "Airport"), as more particularly depicted and described on the attached Exhibit A: Depiction and Legal Descriptions of the "Premises".

B. Pursuant to that certain Flat Rate Parcel Ground Lease between CITY and LESSEE, on file with the San Diego City Clerk as Document No. RR-00-18537 ("Prior Lease"), CITY leased the Premises to LESSEE's predecessor, International Aero Squadron, LLC, for a restaurant viewing area. The Prior Lease was terminated effective April 30, 2020.

C. International Aero Squadron, LLC has sold its interest in the restaurant to LESSEE and LESSEE now desires to lease the Premises from CITY for use as a restaurant viewing area.

D. CITY desires to lease to LESSEE and LESSEE desires to lease from CITY the Premises pursuant to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Lease, and for valuable consideration, the receipt and sufficiency of which is acknowledged, CITY and LESSEE agree as follows:

SECTION 1: PREMISES AND USES

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY Premises, depicted and described on **Exhibit A** attached hereto and by this reference made part of this lease.

1.2 Uses.

LESSEE operates the 94th Aero Squadron Restaurant, located at 8885 Balboa Avenue, which is adjacent to the Premises. The Premises is leased to LESSEE for use as a fenced landscaped public viewing area for restaurant patrons ("Allowed Use") and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and 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.

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 rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the 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. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Term, or if during the 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, but there shall be determined and stated in writing by CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises caused solely by CITY.

1.5 Easements and Reservations.

- 1.5.1 CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises
- 1.5.2 CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- 1.5.3 CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.5.4 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 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 Competent Management.

Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the CITY. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an aircraft maintenance and repair services business in a fiscally responsible manner.

1.7 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 Three (3) years ("**Term**"), commencing on July 1, 2020 ("**Commencement Date**"). "Lease Year" as used in this Lease shall mean the 12-month period following the Commencement Date and each subsequent 12-month period. Notwithstanding the foregoing, should the Federal Aviation Administration determine the Premises may no longer be used for the purpose stated herein, CITY may terminate the Lease upon sixty (60) days advance written notice, with no additional obligation or compensation to LESSEE.

2.2 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, encumbrances, and personal property, 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.

2.3 Holdover

Any holding over by LESSEE after expiration of the Term shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration of the Term of this Lease shall constitute a month-to-month tenancy, and all other terms and conditions of the Lease shall continue in full force and effect; provided, however, CITY shall have the right to bring the Rent (as defined in Section 3.2 d, below) to the then market value and to terminate the holdover tenancy at will.

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 Rent.

3.2.1 Rent Amount. The total initial monthly rent is Eight Hundred Fifty-Five Dollars (\$855.00) per month beginning on the Commencement Date. Said rent is subject to annual adjustments as described below. Rent for any period that is less than one (1)

month shall be prorated based on the full number of days during such month.

- 3.2.2 Rent Adjustment. Each year, on the anniversary of the Commencement Date, the monthly rent shall be increased by three percent (3%) as follows:

2021 Lease Year: \$880.65

2022 Lease Year: \$907.07

3.3 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25). In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

3.4 Security Deposit.

A security deposit was paid to the CITY by LESSEE in the sum of Two Thousand Five Hundred Sixty-Five Dollars (\$2,565.00) 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.

The security deposit, and all increases thereto, shall take one of the forms set out below:

3.4.1 Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

3.4.2 Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease Term. 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 in compliance with applicable law following expiration or earlier termination of this Lease.

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

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. This Lease shall not, nor shall any interest therein, be assigned as to the interest of LESSEE by operation of law, without the written consent of the 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.

4.4 Defaults and Remedies.

4.4.1 Default. Each of the following shall constitute an event of default under this Lease:

4.4.1.1 LESSEE’S failure to make any payment required under this Lease when due, if the failure continues for five (5) calendar days past due following written notice of the failure by CITY; or

4.4.1.2 Other than the payment of rent, LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall 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; or

4.4.1.3 LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

4.4.1.3.1 LESSEE shall be adjudicated a bankrupt; or

4.4.1.3.2 LESSEE shall make a general assignment for the benefit of creditors; or

4.4.1.3.3 LESSEE uses the Premises for any unauthorized purpose

4.4.2 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 failures to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that 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 of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

4.4.2.1 the worth at the time of any unpaid rent that was due at the time of termination;

4.4.2.2 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;

4.4.2.3 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;

4.4.2.4 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

4.4.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

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.

4.4.3 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.

- 4.4.4 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.

4.5 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 will be as follows:

- 4.5.1 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.
- 4.5.2 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.
- 4.5.3 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 if the portion taken directly affects LESSEE's allowed operations, which determination shall be made by CITY in its reasonable discretion.

- 4.5.4 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 the Premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 4.5.5 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.
- 4.5.6 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 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

LESSEE shall defend, indemnify, protect, and hold the CITY, its elected officials, officers, representatives, agents, and employees 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 employees, invitees, guests, agents, contractors or officers, which arise out of or are in any manner directly or indirectly connected with this Lease, the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same including without limitation reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its elected officials, officers, agents, representatives, or employees. CITY may at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the CITY elects 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 shall pay the CITY all reasonable costs related thereto, including without limitation, reasonable attorneys' fees and costs.

5.2. Types of Insurance.

At all times during the term of this Permit, the PERMITTEE shall maintain insurance coverage as follows:

5.2.1. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. 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.

5.2.2. Commercial Automobile Liability. For all of the PERMITTEE's automobiles including owned, hired and non-owned automobiles, the PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

5.2.3. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of PERMITTEE's insurable property related to the Allowed Uses of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

5.2.4. Workers' Compensation. For all of the PERMITTEE's employees who are subject to this Permit and to the extent required by the applicable state or federal law, the PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

5.3. Deductibles. All deductibles on any policy shall be the responsibility of the PERMITTEE and shall be disclosed to the City at the time the evidence of insurance is provided.

5.4. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this PERMIT or in the Special General Conditions 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 the City.

The City will 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 (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

- 5.5. 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 PERMITTEE thirty (30) days prior written notice. PERMITTEE 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.
- 5.6. Accident Reports. PERMITTEE 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.
- 5.7. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Permit.
- 5.7.1. Commercial General Liability Insurance Endorsements:
- 5.7.1.1. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of: (i) ongoing operations performed by you or on your behalf; (ii) your products; (iii) your work, including but not limited to your completed operations performed by you or on your behalf; and/or (iv) premises owned, leased, controlled or used by you.
- 5.7.1.2. PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

5.7.2. Worker's Compensation Insurance Endorsements:

5.7.2.1. WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

- a. 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.
- i. 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.
- j. 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 Allowed Uses 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.

5.8 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within forty eight (48) 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 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 remises 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 5.2, 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. CITY may determine an equitable deduction in the monthly rent requirement for such period or periods that said Premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 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.

6.2 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. 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.

6.3 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

6.4 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 by the 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 by the 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, restoration and/or replacement of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.5 Utilities.

Upon prior written approval by CITY in each instance, LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities will be installed underground.

6.6 Liens.

LESSEE shall at all times hold 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:

6.6.1 take all actions necessary to record a valid release of lien, or

6.6.2 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.

6.7 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 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.

6.8 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. 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.

6.9 Ownership of Improvements and Personal Property.

- 6.9.1 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.
- 6.9.2 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 by CITY, LESSEE agrees to pay CITY the full cost of any removal.
- 6.9.3 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, subject to applicable law, become CITY'S property free of all claims

and liens, or CITY may, at its option, remove said items at LESSEE's expense.

- 6.9.4 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.
- 6.9.5 Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- 6.9.6 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.

6.10 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, 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 rent 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.

6.11 Hazardous Substance.

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.

- 6.11.1 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.
- 6.11.2 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.
- 6.11.3 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.
- 6.11.4 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.
- 6.11.5 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.
- 6.11.6 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.

6.11.7 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.

6.12 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

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 7: GENERAL PROVISIONS

7.1 Notices.

7.1.1 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 Premises or at such other address designated in writing by LESSEE; and to CITY as follows:

CITY:
Airports Deputy Director
Montgomery Field Terminal Building
3750 John J Montgomery Dr.
San Diego, CA 92123

7.1.2 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.

7.1.3 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.

7.2 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 CITY or other appropriate authority, under the authority of any such law, statute, ordinance, or regulation.

7.3 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.

7.4 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.

7.5 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 state and federal 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:

LESSEE will not discriminate against qualified individuals 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. 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.

LESSEE will include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section 8.5. LESSEE and each of its sublessees will be individually responsible for their own ADA employment programs. LESSEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.

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. LESSEE's failure to comply with the accessibility requirements of this section __ or submitting false information in response to these accessibility requirements, or both, will be a default of this Lease.

7.6 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, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

7.7 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.

7.8 Equal Benefits.

LESSEE shall 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.

7.9 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.

7.9.1 LESSEE and Sublease Requirement. The Equal Pay Ordinance applies to any sublessee of the Leased Aircraft Ground Space 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.

7.9.2 Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

7.10 Survival.

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

7.11 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.

7.12 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.

7.13 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.

7.14 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 not intentional and shall have no effect on the enforceability of this Lease.

7.15 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEE's 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.

7.16 Single Use Plastic Reduction Ordinance.

Unless an exception applies, comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Lease, Lessee certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

7.17 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same instrument, it being understood that all parties need not sign the same counterpart.

7.18 Entire Understanding.

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 Leased Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, 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.

SECTION 8: AIRPORTS PROVISIONS - IF, AND AS, APPLICABLE TO LESSEE

8.1 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 B, 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 9: SAFETY MANAGEMENT SYSTEMS

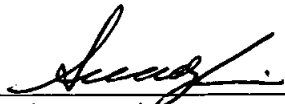
9.1 **Safety Management Systems Compliance.** Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term of this Lease that the FAA will mandate SMS compliance for general aviation Airports, which would 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 Premises 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 Premise; (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.

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

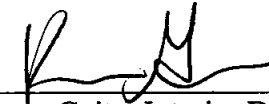
94TH AERO SQUADRON SD INC

Date 9/1/20

By 
Seung Kim, President

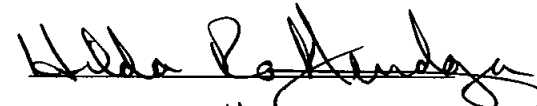
THE CITY OF SAN DIEGO, a California
municipal corporation

Date 9/29/2020

By 
Kristin Geitz, Interim Director
Real Estate Assets Department

Approved as to form this 8th day
of October, 2020.

MARA W. ELLIOTT, City Attorney

By: 

Name: Hilda R. Mendoza

Title: Deputy City Attorney

Exhibit A
Leased Premises



Exhibit B
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.

15 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.

16 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.

17 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: September 1, 2020

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME: Flat Rate Lease Agreement for a viewing area behind the 94th Aero Squadron Restaurant

COMMUNITY PLAN AREA: Kearny Mesa

COUNCIL DISTRICT: 6

LOCATION: 9,600 square feet of unimproved land located on the northern boundary of the Montgomery Gibbs Executive Airport located at 3750 John J Montgomery Drive, San Diego, CA 92123, behind the 94th Aero Squadron restaurant located at 8885 Balboa Avenue, San Diego, CA 92123. See Attachment A for specific location of leased premise.

PROJECT DESCRIPTION: Authorize the Mayor or his designee to enter into a Three-Year Flat-Rate Lease Agreement between the City of San Diego and 94TH Aero Squadron SD Inc (lessee) to lease 9,600 square feet of unimproved land located at 3750 John J Montgomery Dr., San Diego, CA 92123 (premise) solely for the purpose of a seating and viewing area for the patrons of 94th Aero Squadron restaurant to watch the aircrafts landing and taking off from Montgomery Gibbs Executive Airport.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from California Environmental Quality Act (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. 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.

PROJECT MANAGER: Debbie Shauger, Property Agent

MAILING ADDRESS: City of San Diego Real Estate Assets Department, 3750 John J. Montgomery Drive,
M.S. 14, San Diego, CA 92123

PHONE NUMBER: (858) 573-1448

On September 1, 2020, 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 Program Manager listed above.

Applications to appeal CEQA determination to the City Council must be filed with the Office of the Clerk within 10 business days from the date of the posting of this Notice (**September 16, 2020**). During the Statewide "Safer-at-Home" directive to reduce the spread of COVID-19, beginning March 19, 2020, appeals to the City Clerk must be filed by email or US Mail as follows:

1. Appeals filed via Email: Send the appeal by email to Hearings1@sandiego.gov; your email appeal will be acknowledged within 24 hours. You must separately mail the required appeal fee by check payable to the City Treasurer to: **City of San Diego Planning Department, Attn: Tara Ash-Reynolds, 9485 Aero Drive, M.S. 413, San Diego, CA 92123**. The appeal filing fee must be postmarked within 5 business days of the date the appeal is filed.
2. Appeals filed via US Mail: Send the appeal by US Mail to **City Clerk/Appeal, 202 C Street, M.S. 2A, San Diego, CA 92101**. Appeals filed by US Mail must have a United States Postal Service (USPS) postmark by the appeal deadline to be considered valid. You must separately mail the required appeal fee by check payable to the City Treasurer to: **City of San Diego Planning Department, Attn: Tara Ash-Reynolds, 9485 Aero Drive, M.S. 413, San Diego, CA 92123**. The appeal filing fee must be postmarked within 5 business days of the date the appeal is filed.

If you have any questions regarding the procedures to file the appeal, please contact **Tara Ash-Reynolds** at tashreynolds@sandiego.gov.

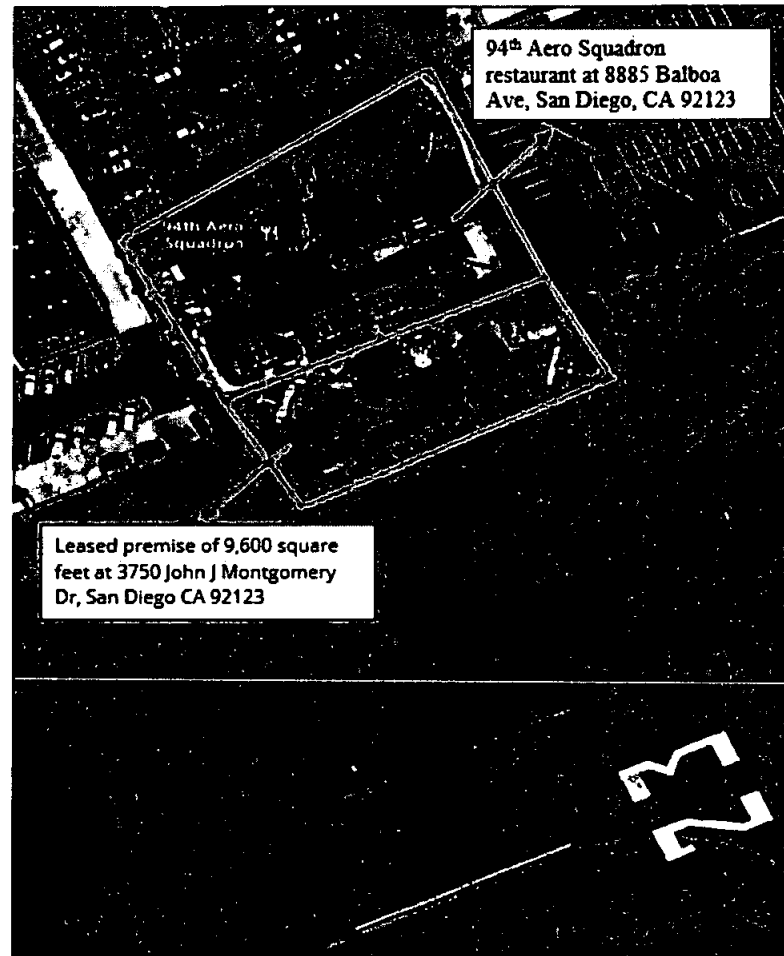
This information will be made available in alternative formats upon request.

POSTED: 9/1/2020

REMOVED: 9/17/2020

POSTED: T. Ash-Reynolds

Attachment A: Leased Premise



9/17/2020

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Tara Ash-Reynolds (tashreynolds@sandiego.gov)
Environmental Determination	This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities).
Date NORA Posted	9/1/2020
Date NORA Removed	9/17/2020