



THE CITY OF SAN DIEGO

November 8, 2006

Mr. Buzz Fink
Tactical Air Operations, Inc.
600 Margarita Avenue
Coronado, CA 92118

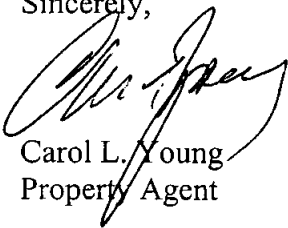
Reference: Flat Rate Lease between the City of San Diego ("City") and Air Adventures Skydiving, Inc. filed on September 18, 2000, as Document No. RR-293833 ("Lease")

Dear Mr. Fink:

This letter is written to acknowledge the assignment of the above-referenced lease from Air Adventures Skydiving, Inc. to Tactical Air Operations, Inc. All City files and records pertaining to the lease at Nichols Field will now be under Tactical Air Operations, Inc.

If you have any questions or need any assistance, please call me at (619) 236-6081.

Sincerely,



Carol L. Young
Property Agent

cc: James P. Anthony, Supervising Property Agent

I:\Young\Tactical Air-Ltr-Assignment



THE CITY OF SAN DIEGO

July 28, 2006

Mr. Buzz Fink
Air Adventures Skydiving, Inc.
600 Margarita Avenue
Coronado, CA 92118

Reference: Flat Rate Lease between the City of San Diego ("City") and Air Adventures Skydiving, Inc. ("AASI") filed on September 18, 2000, as Document No. RR-293833 ("Lease")

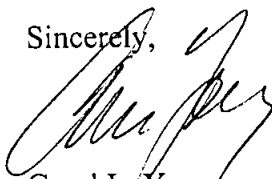
Dear Mr. Fink:

This letter is written in response to your July 17, 2006, request to exercise AASI's options to extend the above-referenced Lease. After a review of Section 2.2 of the Lease, it was determined that the City will at this time approve one five-year option to extend the term of the Lease. Accordingly, the termination date of the Lease is now September 30, 2015.

Also pursuant to Section 2.2, the rent will be adjusted on September 30, 2010, to reflect any increase in the fair market value of the leased premises. Annual adjustments based on increases in the Consumer Price Index will continue throughout the term of the Lease.

If you have any questions, please call me at (619) 236-6081.

Sincerely,



Carol L. Young
Property Agent

cc: James P. Anthony, Supervising Property Agent

LAYoung/AIR ADVENTURES-Ltr-Option-1



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

COPY

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THE CITY OF SAN DIEGO

AIR ADVENTURES SKYDIVING, INC.

Flat Rate Lease

RR
DOCUMENT NO. 293833
FILED SEP 18 2000
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AIR ADVENTURES SKYDIVING, INC., a California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Section 10.1 attached hereto, consisting of approximately 24.1 acres, and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." This lease includes the right to use the water underneath the premises for the purposes of the lease only, subject to Section 8.5, Water Rights, herein.

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of conducting skydiving and ultralight aviation activities, and for such other related or incidental purposes as may be first approved in writing by the City Manager 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 the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, 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 leased premises.

1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term 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 lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

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, together with the right to store and recapture water from the soils beneath the surface of 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. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

Any injury that may result from the percolation, storage and/or recapture of water from the soil beneath the surface of the premises shall not be considered unreasonable or substantial interference, provided, however, that the City will reimburse LESSEE for physical damages or operational damages, if any, to the permanent improvements 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 or operational damage as determined by CITY, provided, however, that rent reimbursement shall not constitute LESSEE'S sole legal remedy. CITY will pay the costs for maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a skydiving and ultralight aviation business as defined in Section 1.2 Uses and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Option to Extend. Provided that LESSEE is not in default of this lease, LESSEE has the option, subject to the approval of CITY, to extend this Lease three (3) times for an additional term of five (5) years. Any approved extension shall be subject to all of the original agreements, considerations, covenants, and conditions of this lease, including CPI adjustments, except that rent shall be adjusted to reflect any increase in the fair market value of the leased premises. Whether any of the three additional five-year terms is approved shall be in the sole discretion of CITY.

In order to avail itself of the option to extend pursuant to this Section 2.2, LESSEE must submit a written request to CITY in accordance with Section 7.1, Notices, at least six (6) months prior to the expiration of the lease or any approved lease extension.

- 2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.4 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

- 2.5 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 the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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.

- a. Rent Amount. The initial rent is Sixteen Thousand Eight Hundred Dollars (\$16,800.00) annual or One Thousand Four Hundred Dollars (\$1,400.00) paid monthly. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. At the end of the first year following the effective date of the lease and at the end of every twelve (12)-month period thereafter the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Anaheim/Riverside, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index

from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish

said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

- c. Market Value Adjustments. At the beginning of each five-year option period following the initial ten (10)-year term of this lease, the rent shall be adjusted by CITY determining the market value of the land subject to the CIP Adjustments and adjustment shall be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. IN NO EVENT SHALL THE ADJUSTED RENT, AS ESTABLISHED HEREIN, BE LESS THAN THE RENT IN EXISTENCE IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the requirement for the appraisal process for any specific adjustment period.

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, ten percent (10%) 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 fifteen percent (15%)], 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).

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.
- 3.5 Payment for Water. As provided in Section 1.1, Premises, hereof, it is understood and agreed by CITY and LESSEE that the LESSEE shall have the right to use, for on-site purposes only, water pumped from any wells on the property, subject to Section 8.5, Water Rights, hereof. The water rate charged to LESSEE by CITY shall be in accordance with water rates and charges as established by the CITY from time to time and applicable to the leased premises. However, the parties acknowledge that, at the present time, no water rate has been adopted by the CITY which is applicable to the leased premises, and, that it is expected that CITY will adopt said rates and charges. Until such time as the CITY adopts the water rates and charges, the payment for water shall be calculated based on the rate charged by the San Diego County Water Authority for untreated water, less LESSEE'S actual pumping costs as adjusted annually to reflect changed circumstances. Pumping costs shall be limited to the LESSEE's actual energy costs associated with the extraction of water. CITY shall bill LESSEE according to its standard billing practices.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of 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 Control by Specified Individuals or Entities. The corporation named herein as LESSEE shall remain owned and controlled by Bruce Young and/or Alan Fink, at least to the extent of fifty-one percent (51%) of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that either of the above-named persons shall become incapacitated, then the other shall continue in such active administration and supervision. In the event both parties are incapacitated, then the stockholders shall select an experienced

manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in said corporation by the above-named persons in excess of five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.3, Assignment and Subletting hereof; provided, however, that the stock of any stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 4.3 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, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent 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 the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership 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.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community. LESSEE shall be required to pay an administrative fee to CITY for the processing of any assignment request.

- 4.4 Additional Consideration to CITY. LESSEE and CITY agree that in the event of an assignment; or in the event of a subletting of the majority portion of the leasehold, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, or two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold. The amount upon which the two percent (2%)

shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee or sublessee, as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment or a sublease. Any assignment or subletting in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

- 4.5 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may 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, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises which must receive the prior approval of CITY. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with a Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may

be used to reduce LESSEE'S equity. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide current lease provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.6 Defaults and Remedies.

a. Default. In the event that:

- (1) 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
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession

thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.6a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- 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 the City Manager in order to constitute a valid and binding waiver. CITY 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 the City Manager or CITY staff 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 City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.7 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 or LESSEE, 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 or LESSEE, 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 of LESSEE. 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 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, 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, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than Five Million Dollars (\$5,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.5, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 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 ten (10) days 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 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, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual 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 wastes.
- 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 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.5 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 Manager. 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 Manager 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.

6.6 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

6.7 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, or repairs 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.

6.8 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.

6.9 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.

6.10 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 one hundred eighty (180) 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.
 - e. 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.
 - 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.
- 6.11 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.
- 6.12 Hazardous/Toxic Waste. LESSEE will not allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of

hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such

that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 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 Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

LESSEE:
A.A.S.I., Inc.
1595 Continental Street
Brown Field Airport
San Diego, CA

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party. Notice shall be effective on personal service or two (2) days after deposit in the United States mail.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

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 the City Manager or his authorized representative 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 City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 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.

- 7.6 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.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 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.
- 7.9 Captions. The Lease Outline, 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.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, 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.

- 7.11 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.

7.12 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.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall 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 shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

- 7.14 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 7.15 Planting Strips. LESSEE shall, at its sole cost, landscape and maintain a five foot strip along the southern edge of the runway as shown on the attached Exhibit A aerial.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.17 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 23rd day of February, 1982, with San Diego Air Sports, Document R255886, and assigned to Air Adventures Skydiving, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8. : SPECIAL PROVISIONS

- 8.1 Resource Management Plan. LESSEE agrees to develop and to comply with all provisions of a Resources Management Plan ("RMP"). The RMP shall establish conservation and management practices that will ensure that the premises are maintained in a condition which protects water quality in a manner that is consistent with the ongoing water quality objectives established by the CITY, including but not limited to, any groundwater management plan. The execution of this Lease is subject to, and contingent upon, the acceptance by the CITY of a

RMP to be provided by the LESSEE. The CITY shall have the sole discretion to determine the necessary elements of the RMP. LESSEE agrees to update the RMP if so requested by the CITY to meet changed circumstances.

8.2 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.

8.3 No Warranty. CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.

INITIAL _____

8.4 Hold Harmless, Flood Damage and Other Acts of God. LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or any part of its water distribution system or otherwise change its operations or release water from reservoirs or otherwise change any part of its water distribution system or operations in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes. Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this lease.

8.5 Water Rights. There is hereby reserved to CITY, and LESSEE herein expressly agrees that in addition to the reservations made in Section 1.5, Easements and Reservations, hereof, CITY shall have the right throughout said term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flows over, under or across the leased premises, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the leased premises. Nothing in this Agreement shall result in the transfer of the CITY'S rights, title or interest in the water on the leased premises to any other person or entity.

a. LESSEE has been advised and acknowledges that:

- (1) the leased premises are located within the Otay Lakes groundwater basin ("Otay Lakes Basin"),

- (2) the CITY is the lawful owner and has at all times asserted its pueblo, overlying and appropriative water rights in the Otay Lakes Basin,
 - (3) the CITY intends to take any and all steps necessary to fully protect its water rights in the Otay Lakes Basin, including but not limited to, the possible adoption of a groundwater management plan and groundwater management ordinance,
 - (4) protection of the CITY'S water rights in the Otay Lakes Basin is an essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for CITY residents,
 - (5) another essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for CITY residents is the increased production and distribution of recycled water for non-potable uses such as those which are the subject of this lease,
 - (6) in order for the CITY to accomplish its long term objectives, it is planned that the Otay Lakes Basin will be utilized, in part, for the storage of imported or non-potable water, and, that such storage will necessitate certain activities by CITY employees and consultants on the leased premises, and,
 - (7) any injury that results from the percolation, storage and recapture of water from the soil beneath the surface of the premises shall not be considered unreasonable or substantial interference with the LESSEE'S use of the leasehold premises, nor otherwise entitle LESSEE to damages or other legal recourse against CITY, except as otherwise provided in Section 1.5.
- b. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased premises the amount of water necessary to carry out the purpose of this lease, as follows:
- (1) As to any existing well, LESSEE shall have the right to operate the well and use the water on the leased premises, including the right of ingress and egress to the well area. LESSEE shall install, at LESSEE'S sole cost, a metering device on all well(s) (including open wells) satisfactory to and approved by the Water Utilities Department to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering device(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.

- (2) LESSEE may only construct new wells with the express written approval of CITY and according to CITY specifications. Upon completion of construction of any such new well(s), to be at LESSEE'S sole cost, the well shall be dedicated to and operated by the CITY, provided, however, that the CITY may, in its sole discretion agree to some other plan of operation.
- c. LESSEE agrees that upon termination of this agreement, it will leave any wells developed or used on the leased premises during the term of this lease in good order and condition and that the casing shall be left in place.
- d. CITY shall at all times have the right to reasonable access to the leased property to protect its water rights and water quality; for monitoring the level and quality of natural surface and groundwaters over and under the leased premises; and, for purposes necessary to the implementation of any groundwater management plan that may be adopted by CITY. Should monitoring indicate surface and/or groundwater degradation, the CITY shall in its sole discretion have the right to require alteration of any irrigation or other practices by LESSEE which may cause such water quality degradation as determined by the CITY.
- e. CITY shall have the right in its sole discretion to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises. At such time as the City has constructed adequate facilities to provide water service to LESSEE, the CITY shall have the right to require LESSEE to connect, or to reconnect, to such CITY constructed water facilities. In that event, LESSEE shall be subject to the rules and regulations applicable to all other water customers receiving similar class and/or quality service from the CITY, including, but not limited to payment of customary service charge and water rates. CITY shall be under no duty whatsoever to provide potable or non-potable water to the leased premises. After receiving notice from the CITY that the CITY will be providing water service to LESSEE, LESSEE shall have the right to cancel this agreement upon 30 days written notice to the CITY. In the event LESSEE elects to cancel this agreement, no compensation for permanent improvements of any kind installed or existing on the premises shall be due LESSEE by the CITY. Any and all permanent improvements existing, installed or constructed on the premises shall be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property.

8.6 Additional Environmental Conditions.

- a. Leasehold Boundaries and Aerial Limit of Activity. All ultralight aircraft and skydiving operations and related activities shall be confined to the leasehold boundaries as described in Exhibits 10.1 and 10.2 of this Lease.

The leasehold encompasses the biological "disturbed" area as identified by the City of San Diego Multi-Habitat Planning Area (MHPA) mapping program.

b. Termination and Cleanup of the Borderland Paint Ball Sublease Area.

- (1) LESSEE shall terminate the Borderland Paint Ball Sublease on or before the date this Lease becomes effective.
- (2) LESSEE shall completely cleanup, or cause to be completely cleaned, the Borderland Paint Ball Sublease area within three (3) months of the date that the City Council approves this lease. Cleaning must include the removal and disposal of paintballs and all other debris, and must be completed to the satisfaction of the City of San Diego Environmental Review Manager.

c. Notification of Wildlife Agencies. The City of San Diego Planning and Development Review Department, Multiple Species Conservation Plan (MSCP) staff intends to inform the U.S. Fish and Wildlife Service and the California Department of Fish and Game about the status of the approval of this Lease and the termination of the Borderland Paintball Park Sublease.

SECTION 9: SIGNATURES

9.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

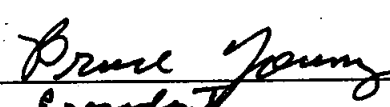
Date SEP 18 2000

THE CITY OF SAN DIEGO

By 
Real Estate Assets Director

LESSEE: AIR ADVENTURES SKYDIVING,
INC., a California corporation

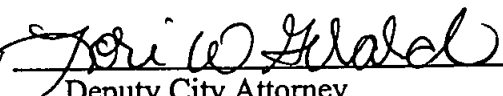
Date 7/25/00

By 
President

By _____

APPROVED as to form and legality this 29th day of September, 2000.

CASEY GWINN, CITY ATTORNEY

By 
Deputy City Attorney

JAB:csn
07/24/00

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SEP 18 2000

R-293833

SECTION 10: EXHIBITS

10.1 Survey.

A survey of the leasehold and a Thomas Guide map showing the leasehold location are attached.



DGB SURVEY & MAPPING

23 1/2 Naples Street, Chula Vista, CA. 91911
Tele. (619)422-7269 FAX (619)422-8547

June 30, 2000

AIR ADVENTURES SKYDIVING, INC.
1590 Continental Street
San Diego, CA 92173

Attn.: Buzz Fink

Re: 13531 Otay Lakes Road

Subject: Parcel Area

Dear Buzz

On June 28th, 2000, we performed a field survey, per your request, to determine the area of the land for lease purposes.

The area was determined to be 24.1 acres, plus or minus.

Sincerely,

Donald G. Baker, P.L.S.

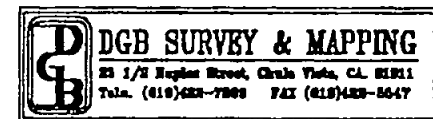
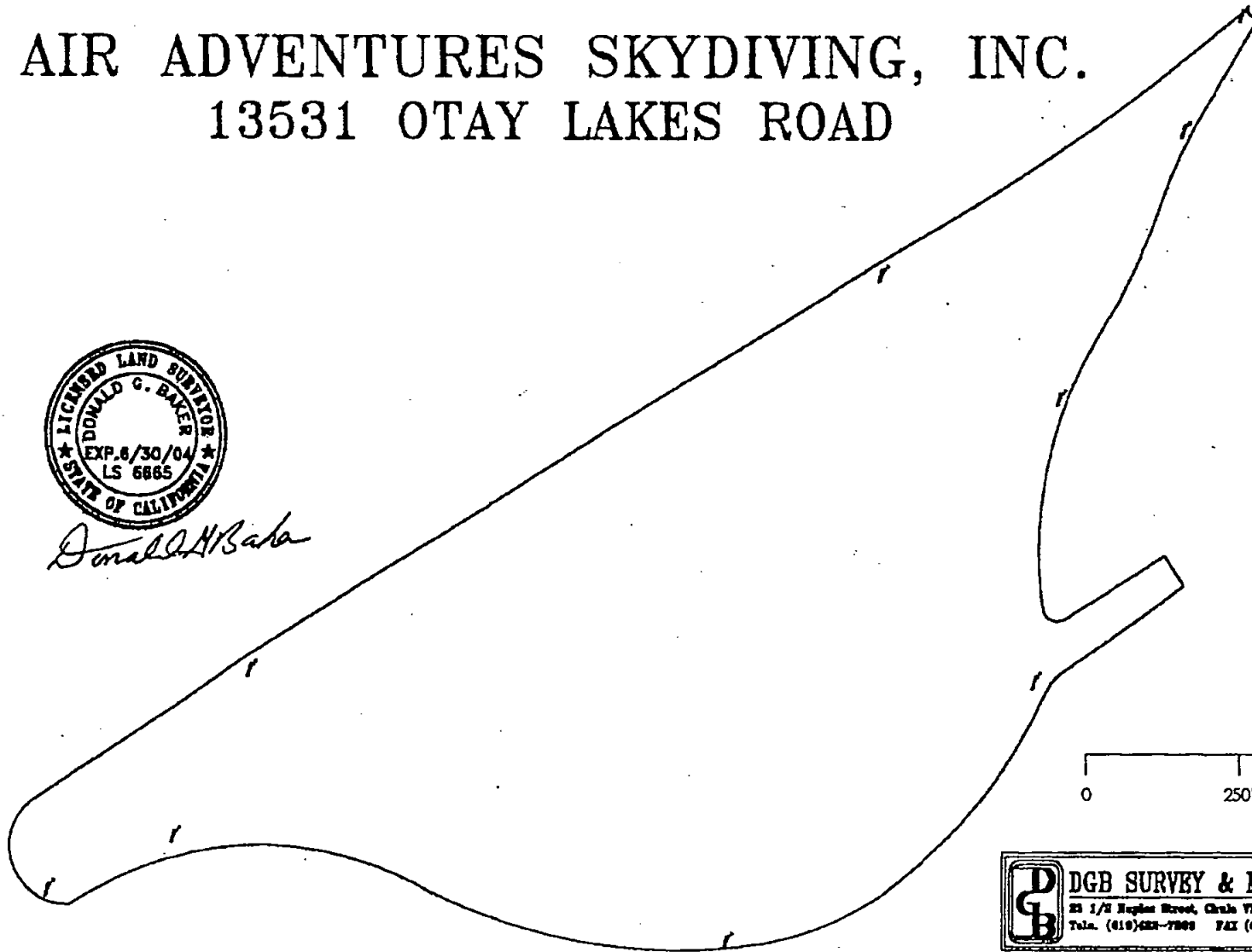


10.1

AIR ADVENTURES SKYDIVING, INC.
13531 OTAY LAKES ROAD



Donald G. Baker



10.1

1293

SEE 1272 MAP

COPYRIGHT 1999 *Thomson Data Maps*

SEE 1291 MAP

SEE 1311 MAP

SEE 1332 MAP

91978

SEE MAP 1292

91935

CHULA VISTA

91914

1312

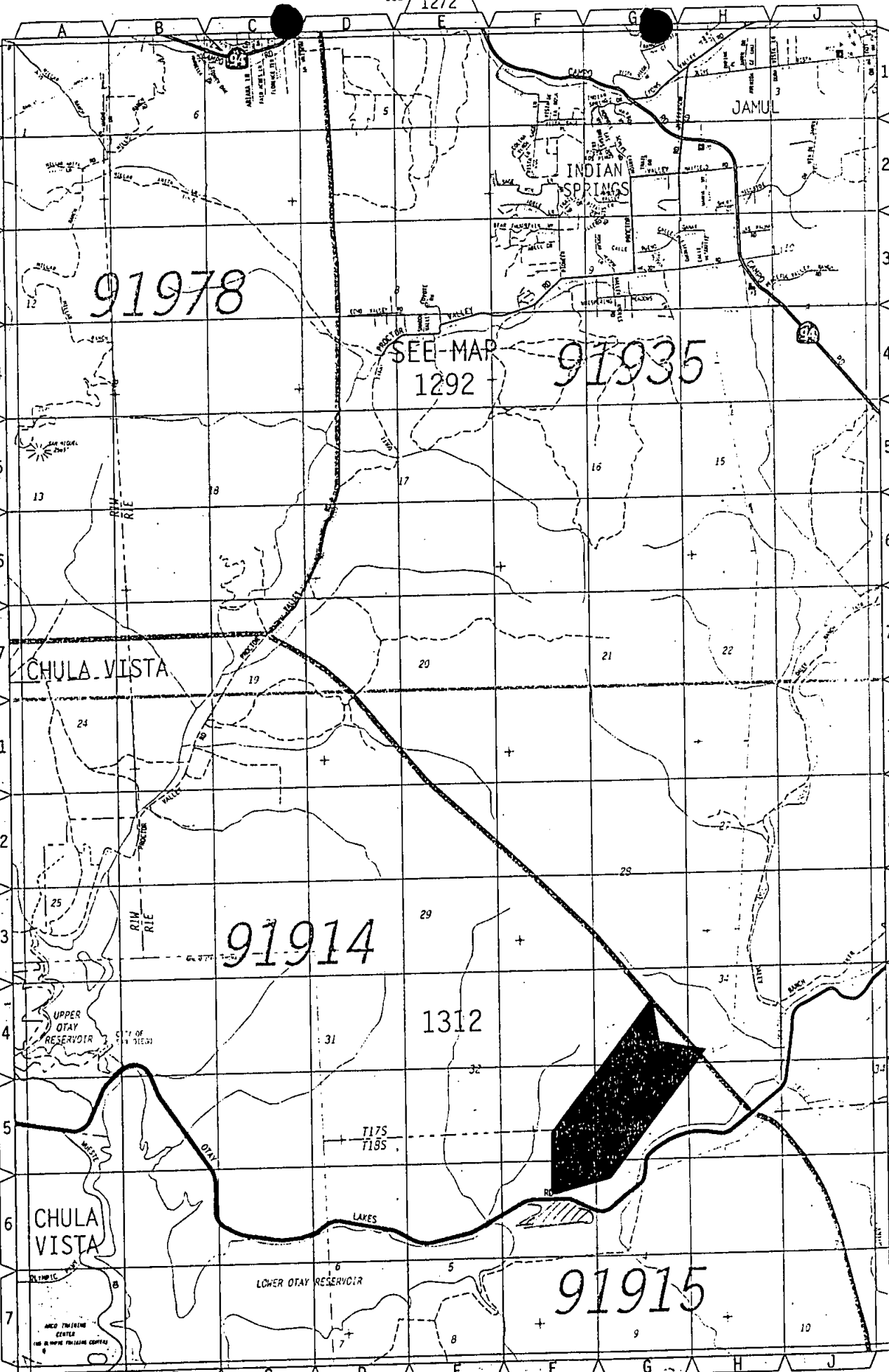
CHULA VISTA

91915

10.1

177

MAP



10.2 Parcel Map and Exhibit A Aerial.

A San Diego County Assessors map is attached.

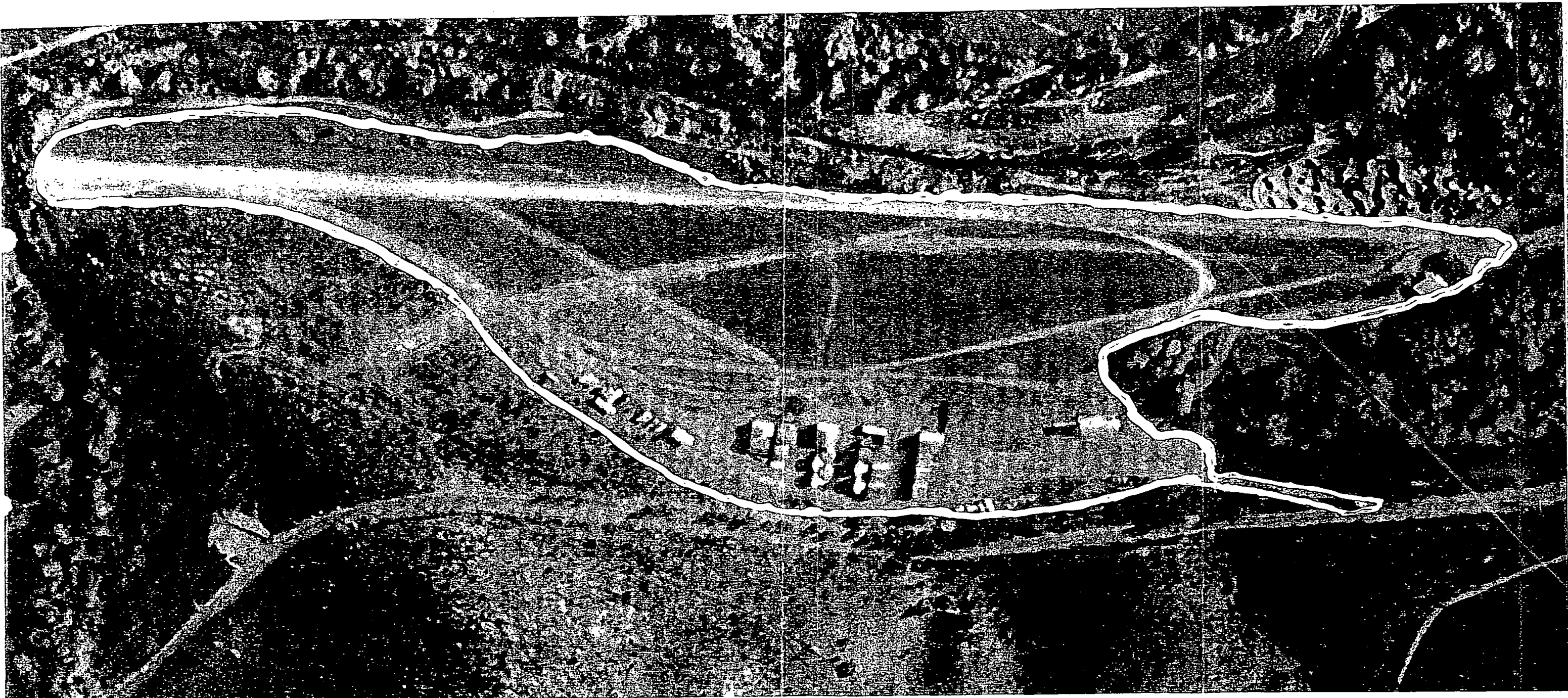


EXHIBIT "A"
MAY 23, 2000

10.3 Corporate Name.

Air Adventures Skydiving Inc.
CORPORATE NAME

I, Donna Young, certify that I am the
Corporate Secretary of the corporation named in the attached
agreement; that Bruce Young, who signed this agreement on behalf of the
corporation, was then President of said corporation; that said agreement
was duly signed for and on behalf of said corporation by authority of its governing body,
pursuant to a resolution duly adopted by its Board of Directors on July 25,
2000, and is within the scope of its corporate powers; and that set out below are the names of the
officers and directors of said corporation.

By Donna Young

CORPORATE SEAL

Name Bruce Young
Title President

Name _____
Title _____

Name _____
Title _____

Name _____
Title _____

REA Braun
51A

RESOLUTION NUMBER R-293833 (R-2001-336)
SEP 18 2000

ADOPTED ON _____

WHEREAS, on November 3, 1999, the Natural Resources and Culture Committee approved exclusive negotiations for the renewal of a lease with Air Adventures Skydiving, Inc.[Air Adventures], for the purpose of conducting skydiving and ultralight aviation activities; and

WHEREAS, the market value of the property to be leased, consisting of approximately 24.1 acres and located at 13531 Otay Lakes Drive, Jamul, California, is estimated to be \$202,440; and

WHEREAS, the City and Air Adventures have negotiated a ten-year Flat Rate Lease, which includes three five-year options to extend at the City's discretion, at the initial rental rate of \$16,800 per year, the fair market rate as determined by City valuation staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City, a ten-year Flat Rate Lease with Air Adventures under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR-_____.

APPROVED: CASEY GWINN, City Attorney

By Lori W. Girard
Lori W. Girard
Deputy City Attorney

LWG:cdk
08/28/00
Or.Dept:REA
Aud.Cert:N/A
R-2001-336
Form=leaser.frm

Revised version to include input from Jeanne Crouch

RESOURCE MANAGEMENT PLAN

9/13/00

FOR AIR ADVENTURES SKYDIVING, INC. (AASI)

OTAY LAKES SITE

13531 Otay Lakes Road

Jamul, CA 91935

619.661.6671

PURPOSE

The purpose of this plan is to document the plan of action for safeguarding the land involved. It will address several areas of concern including hazardous materials, waste, security power and management.

LOCATION

The location of the leased are is at 13531 Otay Lakes Road in Jamul, California. A map is attached.

HAZARDOUS MATERIALS

The only hazardous materials to be used on site are Jet-A Aviation Fuel.

JET-A FUEL

using fuel truck

Jet-A fuel is used to power the aircraft used in skydiving operations. It is stored in approved storage containers. Any fuel tank storage systems (Fuel Farm) shall not exceed 5,000 gallons capacity. The location of any fuel farm shall be outside the DRINKING WATER ASSESSMENT AND PROTECTION ZONES. This fuel farm will meet all applicable laws and regulations (including but not limited to fire, environmental and Federal Aviation Administration) including a concrete spill containment system capable of holding up to 100% of the capacity of the tank. AASI will ensure an authorized Hazardous Material Disposal Contractor disposes of any spilled fuel. Personnel involved in fueling aircraft will be properly trained on proper fueling practices and accident avoidance.

RIPARIAN ZONE

While the leased area does not include any Riparian Zone, AASI will ensure any and all of AASI participants and activities do not extend into the Riparian Zone. AASI will install signage, to the satisfaction of the Environmental Review Manager, identifying the Riparian zone and stating entrance into the Riparian zone is strictly prohibited.

DRINKING WATER ASSESSMENT AND PROTECTION ZONES (DWSAP Protection Zones)

AASI will ensure that there will be no contaminating activities taking place within the DWSAP Protection Zones. Contaminating activities include Fuel Storage and operations, storage of hazardous material, locating toilets or trash containers, vehicle or aircraft parking, and significant new grading (i.e. removing all vegetation to bare soil, or road building).

VEGETATION

It is widely understood that for the purpose of enhancing the quality of runoff, land area that is vegetated is best, area clear of vegetation (i.e. graded to bare dirt) is less good and area that is hard surfaced is least good. AASI will do it's best to ensure the maximum amount of vegetated space, to encourage vigorous growth of vegetation, and to keep the amount of cleared ground and hard surfaces be kept to a minimum. AASI will develop and implement a plan, to the best of its ability, to control the erosion of land due to the creek located South of the runway. Types of erosion control can

creek

include riprap, swale with natural/native vegetation or other methods approved by the Environmental Review Manager

WASTE

Portable restrooms (porta potties) will be provided on site for use by all personnel. These porta-potties will be pumped out and properly disposed of off site on at least a weekly basis. Additionally, they porta potties will be thoroughly cleaned weekly. Their location will be central so that personnel will have easy access. There will also be dumpsters for trash. These too will be emptied off site weekly. There will be absolutely no onsite disposal of waste of any kind.

SECURITY

AASI will ensure their patrons stay out of the Riparian Forrest and where fencing may be required to do this, split rail fencing or other approved fencing shall be used. Chain link fencing shall not be used for this purpose.

POWER

There is presently no electrical power service to the area other than portable generators. Until such time as power is readily and cost effectively available, portable generators will continue to be used.

LIGHTING

Any lighting installed shall be installed in such a way as to direct the light away from the Riparian area.

CLEANUP OF PAINTBALL AREA

AASI will ensure the area previously used for Paintball activities is cleaned up to the satisfaction of the Environmental Review Manager.

MANAGEMENT

Competent management will manage the leased area. The airport manager is Alan "Buzz" Fink. Mr. Fink has 20+ years of management experience. He is currently and will continue to be the airport manager at this site. He is also the Chairman of the San Diego Airports Advisory Committee, which advises the City Manager on aviation issues.

POINT OF CONTACT

The point of contact for this lease is Alan "Buzz" Fink. He can be reached at (619) 661-6671 or his cell phone number is (619) 517-5951.

COMPATABILITY OF PAINTBALL OPERATION WITH SKYDIVING OPERATIONS ON NICHOLS FIELD, EAST OF OTAY LAKES

Air Adventures Skydiving, Inc. operates a skydiving school on Nichols Field, east of the Otay Lake Reservoir. The site includes a 2,500 ft runway. There is also paintball operation that operates on the site as a sublessee.

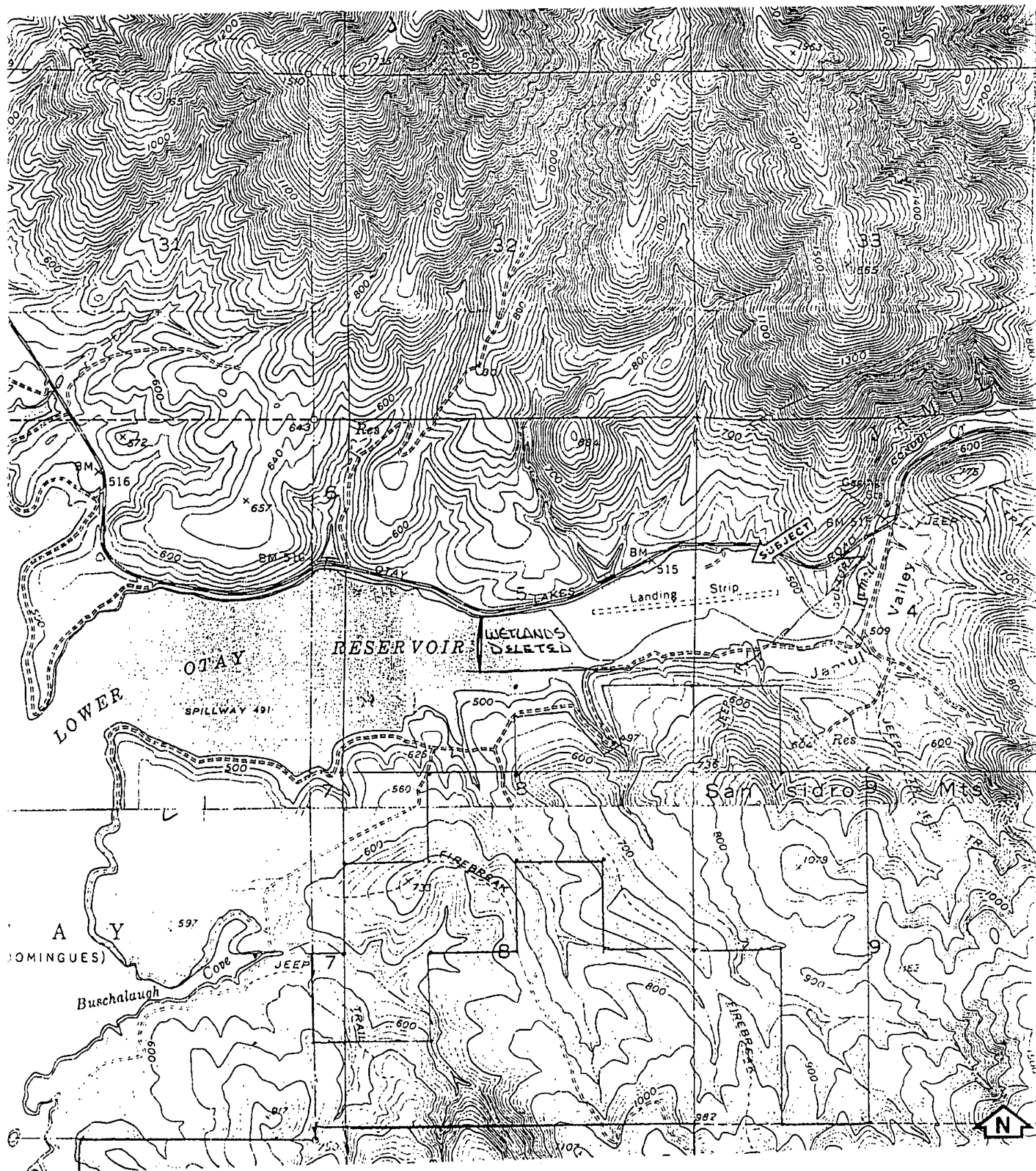
The paintball operation has operated in its current location for over 12 years. It is located on the westerly most property of the airport, in both open area and in the under story of the trees. About two thirds of the area is located under the trees and the other one third is located in the open areas surrounding the western portion of the runway.

In the over 12+ years the Paintball operation has operated, there has never been a conflict between the two activities, skydiving and paintball. This is due in large part to the fact that only the eastern 1,000 feet to 1,200 feet of the 2,500-foot runway is used by aircraft and the Paintball operation is located to the West of the runway. No paintball patrons are allowed on or near the runway as rope fencing restricts access to the runway.

Upon approval of the new sublease, the paintball operation will be cut by two thirds. That is, it will no longer occupy any areas under the trees. It will continue its operation in the remaining area. Additional new fencing will also be installed to ensure paintball patrons do not have access to the runway.

In summary, as has been the case for the last 12 years, the Paintball operation is compatible with the skydiving operations.

TOPOGRAPHIC MAP



647-0108020

$$\frac{(RIW)}{(RIE)}$$
$$\frac{643}{4}$$

598
13

598
14

ORIGINAL:

647-02

1" = 800'

2-3-39 VK

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4-5-77

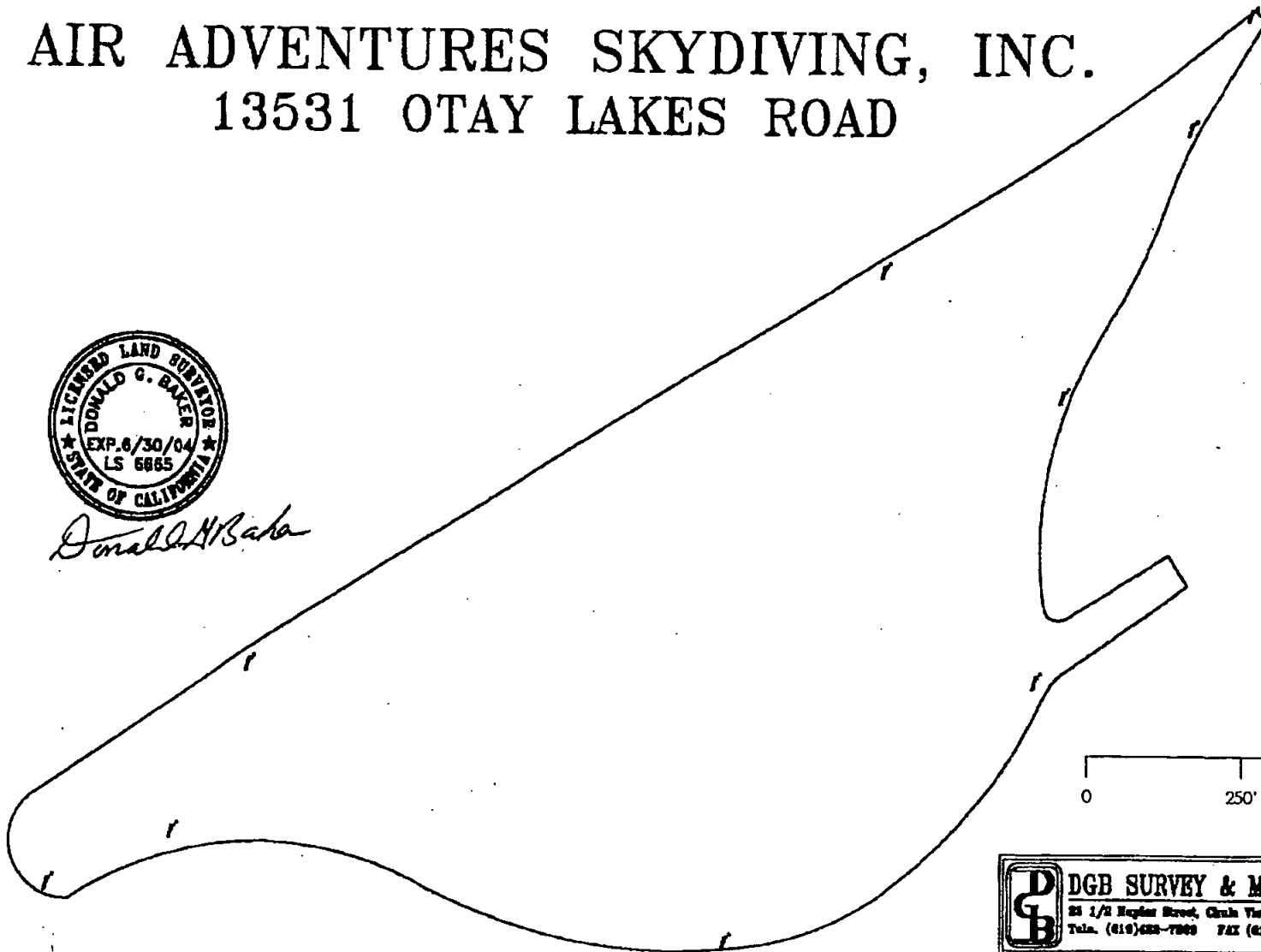
SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 847, PAGE 02 MAPPED FOR ASSESSMENT PURPOSES ONLY

MAP 989 - RHO JANAL LOWER OTAY RESERVOIR
SEC 5 - T18S-RIE
SEC 6 - T18S-RIE

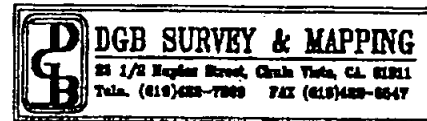
AIR ADVENTURES SKYDIVING, INC.
13531 OTAY LAKES ROAD



Donald G. Baker



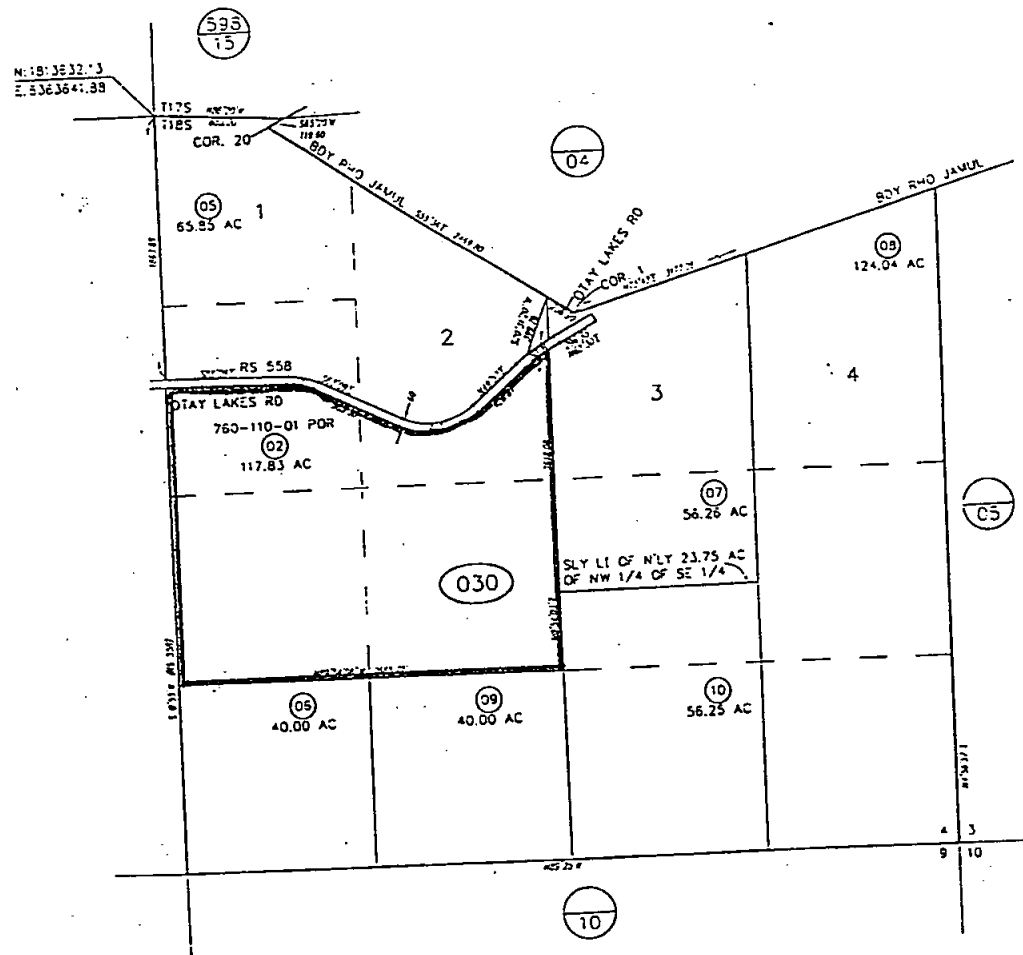
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Page 01/03/1997-98 Page 612-28

CHANGES					
DATE	PERSON	AMOUNT	RECEIVED BY	DATE	PERSON
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12-2	DR	12.50	DR	12-2	SP
12-3	DR	12.50	DR	12-3	SP
12-4	DR	12.50	DR	12-4	SP
12-5	DR	12.50	DR	12-5	SP
12-6	DR	12.50	DR	12-6	SP
12-7	DR	12.50	DR	12-7	SP
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12-11	DR	12.50	DR	12-11	SP
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12-29	DR	12.50	DR	12-29	SP
12-30	DR	12.50	DR	12-30	SP

102



SEC 4 - T18S-R1E
ROS 13657

17 10 11. 44 1997.

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IS MAP WAS EMPLOYED FOR ASSESSMENT PURPOSES ONLY. NO CLAIM

1293

SEE 1272 MAP

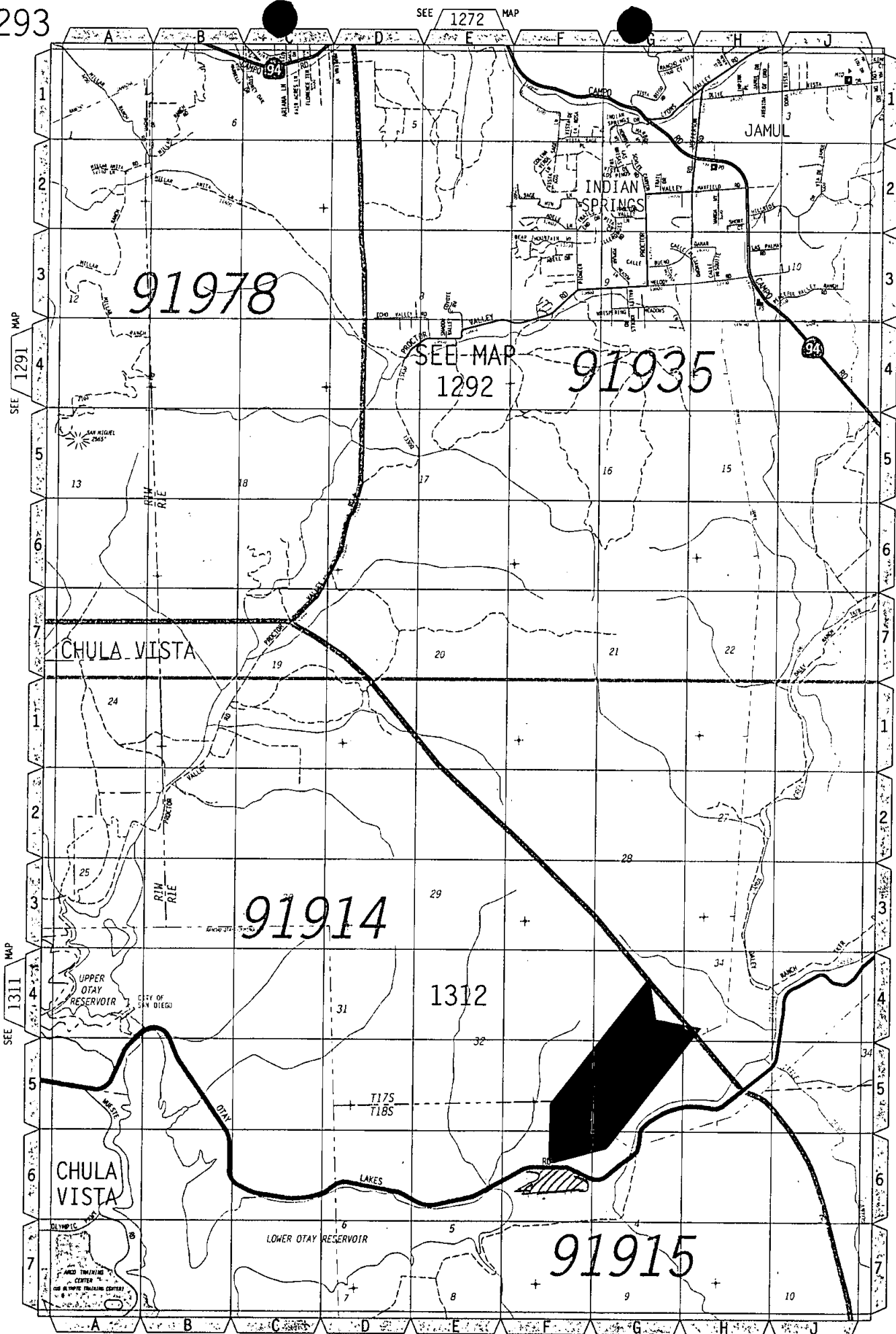
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SAN DIEGO, CO

ZIP

SEE 1291 MAP

SEE 1311 MAP



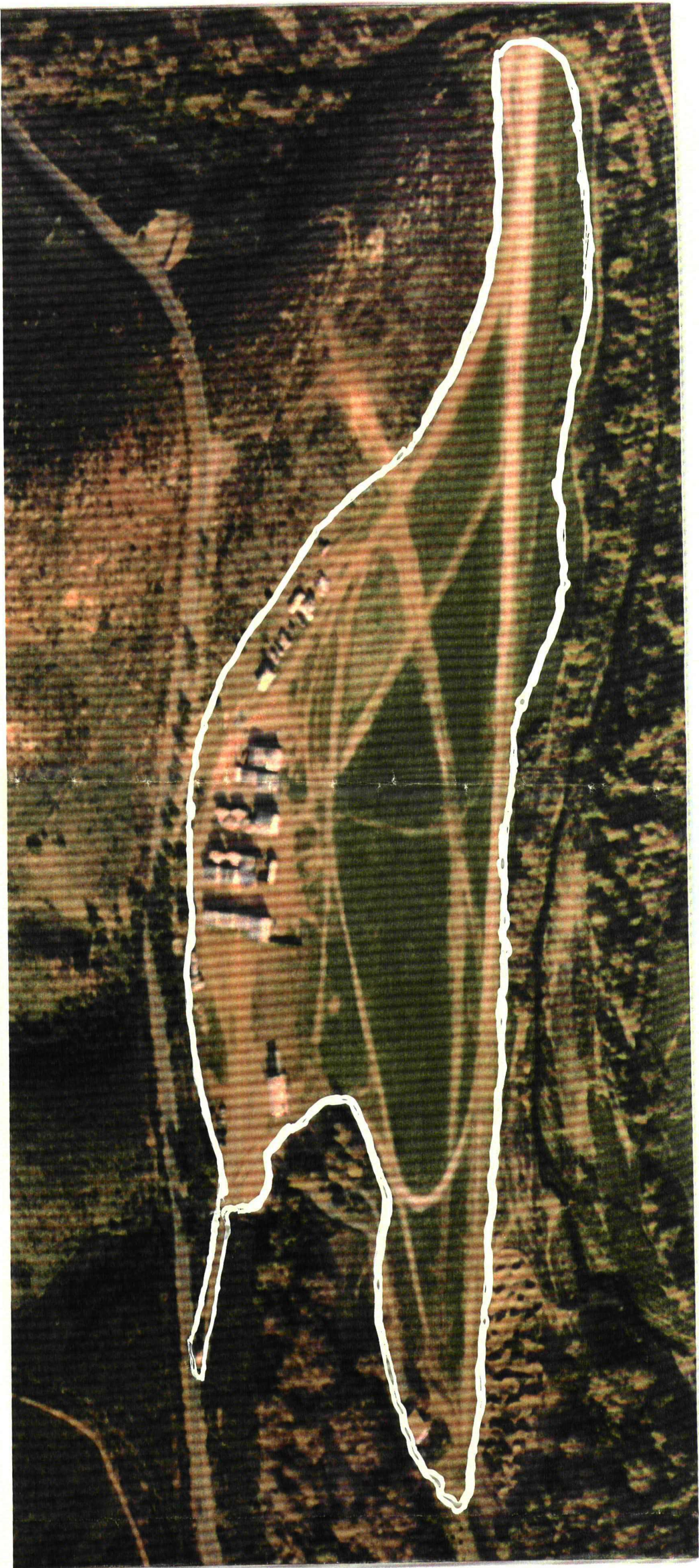
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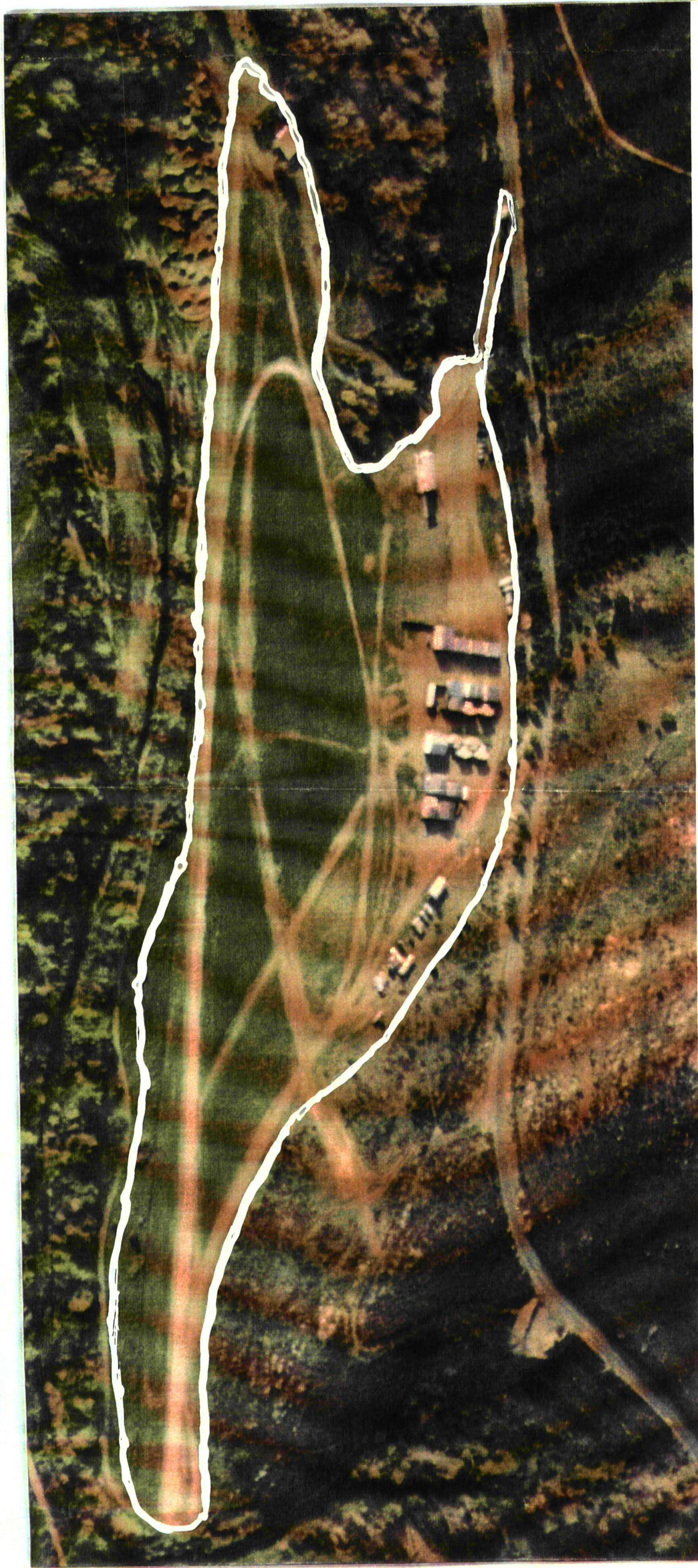
SEE 1332 MAP

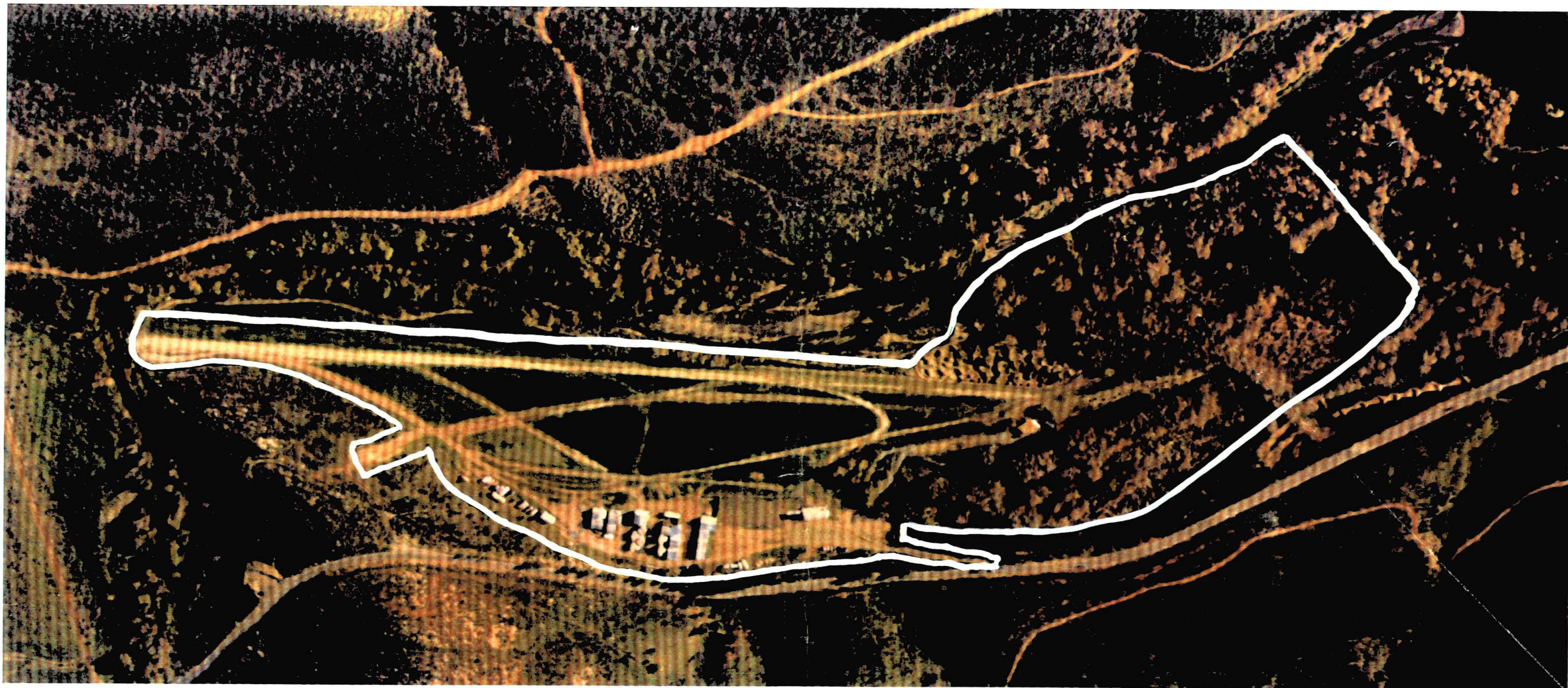


Proposed New Paintball Lease Area









AIR ADVENTURES SKYDIVING, INC.
13531 OTAY LAKES ROAD

