


# MONTGOMERY-GIBBS EXECUTIVE AIRPORT

# FLAT RATE GROUND LEASE FOR GROUND SPACE WITHIN THE AREA REFERRED TO AS FLATTOP EAST

**Between**

**THE CITY OF SAN DIEGO**

**And**

**GARY DREAN**

**CITY OF SAN DIEGO**
**MONTGOMERY-GIBBS EXECUTIVE AIRPORT**
**FLAT RATE GROUND LEASE FOR GROUND SPACE WITHIN THE AREA REFERRED TO AS FLATTOP EAST**

THIS LEASE AGREEMENT ("Lease") is hereby executed between THE CITY OF SAN DIEGO, a California municipal corporation, hereinafter called "CITY," and GARY DREAN, hereinafter called "LESSEE", to be effective May 1, 2018 (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney.

## RECITALS

**WHEREAS**, general aviation has been an important aspect of the Montgomery-Gibbs Executive Airport ("Airport") since its inception; and

**WHEREAS**, CITY has certain ground spaces available for use by the owners and operators of general aviation Aircraft at the Airport.

**NOW THEREFORE**, for valuable consideration, the sufficiency of which is acknowledged, LESSEE agrees that LESSEE's use of an Aircraft Ground Space is subject to the following terms and conditions, as well as all applicable provisions of the San Diego Municipal Code and state and federal laws, rules and regulations, all of which will be strictly enforced, and agrees to the following:

## SECTION A. SUMMARY OF LESSEE INFORMATION AND PRE-EXECUTION WARNING

LESSEE's Name: Gary Drean

Street Address: PO Box 776

City: Rancho Santa Fe State: CA Zip Code: 92067

Telephone Number(s): (858) 756-7901/(858) 243-4795 Email: gdrean@affinitydev.com and Suedrean@sbcglobal.net

**Execution of this Lease, and continued use of the Leased Aircraft Ground Space (defined below), is contingent upon the LESSEE's continued ownership of the Aircraft listed below. Additionally, the below-listed Aircraft must be registered in LESSEE's name, or that of a Legal Entity for which LESSEE can provide proof of ownership, and said Aircraft must be home-based at the Airport, in the assigned Leased Aircraft Ground Space.**

LESSEE's Aircraft: Cessna

Type: 206

Tail Number: N9470G

**This Lease is only applicable to the above-listed Aircraft. If LESSEE should acquire a new/different Aircraft, CITY must be given written notice of LESSEE's request to have this Lease amended so as to apply to the new/different Aircraft, and such written notice must be given to CITY within thirty (30) calendar days of the acquisition of said new/different Aircraft. Application of this Lease to said new/different Aircraft shall be subject to CITY's consent, which consent shall not be unreasonably withheld, and which, if granted, shall be set forth as a written amendment to this Lease.**

## SECTION B. DEFINITIONS

For purposes of this Lease, the following terms shall have the meanings set forth next to them, below:

(a) "Aircraft" means any device that is used or intended to be used for flight in the air.

(b) "Airport" means the entire area of the Montgomery-Gibbs Executive Airport owned and operated by the City of San Diego.

(c) "Amateur-built Aircraft" or "Kit-built Aircraft" means an Aircraft "the major portion of which has been fabricated and/or assembled by person(s) who undertook the construction project solely for their own education or recreation."

(d) "CITY Contact" shall mean the CITY's Airports Division or designee. For purposes of this Lease, the CITY Contact, and said CITY Contact's contact information, is:

Debbie Shauger, Property Agent (858) 573-1448

If the above-designated CITY Contact is unavailable, the following person shall be CITY's alternative CITY Contact:

Thurman Hodges, Property Agent (858) 573-1426

(e) "Director" means the Deputy Director of the Airports Division of CITY and his/her authorized designee(s).

(f) "Field Area" means that area within the boundaries of the Airport not open to the general public, including, but not limited to, passenger ramp gates, Aircraft parking areas, Aircraft operating areas, storage areas, certain sidewalks and buildings, and any other area designated as being not open to the general public by the Director.

(g) "Landing Area" means any portion of the Airport which is used or intended to be used for the landing and takeoff of Aircraft.

(h) "Leased Aircraft Ground Space" shall mean the specific space used by LESSEE for its Aircraft, as set forth in section 1.1, below.

(i) "Motor Vehicle" means any self–propelled vehicle.

(j) "Operation of Aircraft" includes taxiing, flying and sitting at the controls of an Aircraft while the engine is running or while the Aircraft is moving or being moved.

(k) "Public Area" means any areas of the Airport so designated by the Director with unobstructed access to the public. All Field Areas and Landing Areas, as defined herein, are not Public Areas.

## SECTION 1: LEASED AIRCRAFT GROUND SPACE AND USES

1.1 Leased Aircraft Ground Space.

CITY hereby leases to LESSEE, and LESSEE leases from CITY space 3N, which is positioned in parcel 5B of Flattop East, located on the Airport ("Leased Aircraft Ground Space"). The Leased Aircraft Ground Space is approximately One Thousand-Twenty square feet (1,020 SF) as depicted on **Exhibit A,** attached hereto, and by this reference made part of this Lease. Regardless of whether or not a hangar (see also Section 2.2) is located on the Leased Aircraft Ground Space, the hangar

and/or Airport land shall collectively hereinafter be referred to as the "Leased Aircraft Ground Space".

1.2 Uses.

The Leased Aircraft Ground Space is leased to LESSEE **solely for the purposes of storage of active, operational, licensed and flyable Aircraft and Amateur-built or Kit-built Aircraft, and/or the non-commercial construction of Amateur-built or Kit-built Aircraft, owned by LESSEE ("Allowed Uses")**, and for no other purpose whatsoever.

The use of the Leased Aircraft Ground Space for any unauthorized purpose, as well as not continually being in compliance with the Pre-Execution Warning, shall constitute substantial defaults of this Lease and shall subject this Lease to termination at the sole discretion of the Director.

LESSEE covenants and agrees to use the Leased Aircraft Ground Space for the above-specified purpose and to diligently pursue said purpose throughout the Term hereof.

1.2.1 Further Conditions of Use – Violations of any one or more of the following conditions shall be cause for CITY to terminate this Lease:

(a) The Leased Aircraft Ground Space may not be utilized in any manner which, in the sole opinion of the Director, creates a nuisance.

(b) LESSEE may not make any improvements, changes, or alterations to the Leased Aircraft Ground Space without the prior written authorization of the Director.

(c) The Leased Aircraft Ground Space is made available to LESSEE solely for the Allowed Uses. The conduct of any commercial activity from the Leased Aircraft Ground Space, such as (but not limited to) Aircraft charter, rental, repair, or instructional service, is prohibited.

(d) LESSEE shall not install any utilities such as gas, electricity, water/sewer, telephone/telegraph, etc., without the prior written approval of the Director, and without having first obtained all required permits, or any other required action/document, from the applicable CITY department(s) or outside agency(ies).

(e) Routine Aircraft maintenance performed at the Leased Aircraft Ground Space will be limited to "Non-Commercial Maintenance" performed by LESSEE as set forth in Federal Aviation Administration Circular No. 43-12 and FAR Part 43, Appendix A, paragraph (c), City of San Diego Airports Division Operations Policies and Procedures, Article 11, Hangar Use and Occupancy and attached FAA Policy on the Non-Aeronautical Use of Airport Hangars, hereby referenced as Exhibit C. Any use, storage, or disposal of materials which would be considered hazardous to the environment must be used, stored, or disposed of in accordance with relevant State, County, and local regulations. The Leased Aircraft Ground Space is subject to unannounced inspections by County Health Services, the San Diego Fire Department, and/or Airport staff to ensure that these requirements are met.

(f) Fueling of <u>any type</u> of Aircraft while it is located at the Leased Aircraft Ground Space is prohibited. Fueling of any Aircraft at the Airport shall <u>only</u> be performed by a party qualified to fuel Aircraft at the Airport. Certificated Pilots are qualified to fuel aircraft.

(g) The temporary parking of Motor Vehicles will be permitted only within the confines of LESSEE's Leased Aircraft Ground Space; as used in this sentence, "temporary parking" shall mean the allowance of parking for pick-up/drop-offs and/or during the time LESSEE is tending to or flying his/her Aircraft. In addition and incidental to Aircraft storage, other "motor-vehicles" may be stored in hangars, so long as the primary use of the hangar is for the storage of Aircraft. Parking of Motor Vehicles in Aircraft taxi lanes is at all times prohibited. All operators of Motor Vehicles shall yield to all Operations of Aircraft.

(h) LESSEE shall be solely responsible for properly securing all Aircraft on the Leased Aircraft Ground Space.

(i) The non-commercial construction of Amateur-built or Kit-built Aircraft on a Leased Aircraft Ground Space shall show substantial and continual progress during said construction in order for LESSEE to be authorized to continue leasing the Leased Aircraft Ground Space. The progress of said construction shall be subject to the reasonable satisfaction of the Director. LESSEE shall be required to submit a ninety (90) day progress plan upon a

written notice from CITY for the completion of any Aircraft construction that is not to the Director's reasonable satisfaction.

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 Leased Aircraft Ground Space. 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 Aircraft Ground Space.

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 Leased Aircraft Ground Space for the Allowed Use. If CITY for any reason cannot deliver possession of the Leased Aircraft Ground Space 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. In the case of CITY being unable to deliver possession of the Lease Aircraft Ground Space at the commencement of the Term, there shall be determined, and stated in writing by CITY, a proportionate reduction of the rent for the period during which LESSEE is prevented from having the quiet possession of the Leased Aircraft Ground Space if caused solely by CITY.

1.5 Easements and Reservations.

a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Leased Aircraft Ground Space.

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 Aircraft Ground Space for utilities, thoroughfares, or access as it deems advisable for the public good.

c. CITY has the right to enter the Leased Aircraft Ground Space for the purpose of making repairs to or developing municipal resources and services.

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

1.6 Political Activities.

The Leased Aircraft Ground Space shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The Leased Aircraft Ground Space 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 Length of Term/Commencement Date/Final Termination Date.

The Term of this Lease shall be for 14 years, 2 months, commencing on May 1, 2018, the "Commencement Date". Notwithstanding the foregoing, in no event shall this Lease extend beyond a final termination date of June 30, 2032.

2.2 Surrender of Leased Aircraft Ground Space.

It is acknowledged that LESSEE owns the hangar, if any, located on the Leased Aircraft Ground Space and LESSEE may remove any such hangar at any time up to the expiration or earlier termination of this Lease; if the hangar is not timely removed from the Leased Aircraft Ground Space, at CITY's sole discretion, the hangar may become the property of the CITY, subject to the provisions of Section 7.9. At termination of this Lease for any reason, LESSEE shall deliver the Leased Aircraft Ground Space to CITY free and clear of all liens, encumbrances, and

personal property (with the possible exception of the hangar), and in a decent, safe, and sanitary condition. LESSEE shall also execute, acknowledge, and deliver to, CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Leased Aircraft Ground Space. If LESSEE fails or refuses to deliver the required quitclaim 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 of LESSEE's rights in and to the Leased Aircraft Ground Space.

2.3 Early Termination by LESSEE.

Notwithstanding the Term, this Lease may be terminated by LESSEE, without the necessity of cause, by LESSEE serving CITY with a prior sixty (60) day written notice. Said notice must be sent to CITY via U.S. First Class Mail or may be hand delivered to the address for Notices under Section 11.1 between the hours of 8:00 AM to 5 PM Monday through Friday.

## SECTION 3: RENT & SECURITY DEPOSIT

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 Amount

The initial monthly flat-rate rent starting on the Effective Date of this Lease is One Hundred Twelve and 20/100 Dollars ($112.20). The rent is subject to annual adjustments, pursuant to the CPI Adjustments set forth in Section 3.2.1, based on the increases, if any, in the CPI , or pursuant to Market Value Adjustments, as set forth in Section 3.2.2.

3.2.1 CPI Adjustments.

On the annual anniversary date of each Effective Date, excepting those anniversary dates where Market Value Adjustments shall be made (Lease Years 5 and 10), the rent shall be adjusted upward, and only upward, if applicable, to reflect any increases in the Consumer Price Index (the "CPI ").

The index used will be the CPI for "All Urban Consumers" for Los Angeles, Riverside, Orange County (1982-84 = 100) of the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is no longer published, the index for adjustment will be the U.S. Department of the Labor's "Comprehensive Official Index" most comparable to the aforesaid index. In the event that such indices are no longer published, then another comparable index or source of such information generally recognized as authoritative will be substituted in the CITY's discretion. Regardless of the index publication dates, the effective dates of rent adjustments shall be as specified in this Section.

3.2.1.1 Index Adjustment Computation

The rent for each monthly rental period following the CPI Adjustment Dates, until the next CPI Adjustment Date, shall be determined prior to the CPI Adjustment Date by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

(a) The "adjustment figure" shall be established by dividing the "current index" by the "base figure," as defined herein.

(b) The "current index" shall be an average of CPI index figures for the fourth, fifth and sixth months immediately preceding the adjustment date.

(c) The "base figure" for the first such adjustment shall be an average of the CPI index figures for the fourth, fifth, and sixth months immediately preceding the Commencement Date

(d) The "base figure" for each successive adjustment shall be an average of the CPI index figures for the one year period ending on the fourth, fifth and sixth months immediately preceding the Commencement Date immediately preceding each of the CPI Adjustment Dates or each of the Market Value Adjustment Dates, as CITY may determine in accordance with Section 3.2.2 Market Value Adjustments.

3.2.2 Market Value Adjustments.

In addition to CPI Index Adjustments, anniversary date for Lease Years 5 and 10 (the "Market Value Adjustment Dates"), CITY shall adjust the rent in accordance with a "Market Value Adjustment" (as defined and calculated as follows).

3.2.2.1 Commencing one hundred eighty (180) days prior to the applicable Market Value Adjustment Date, CITY shall cause a Market Value Adjustment be made for the Leased Aircraft Ground Space. The market value of the Leased Aircraft Ground Space shall be determined by qualified City staff, as determined by CITY in its sole discretion.

3.2.2.2 In determining the Market Value Adjustment, the appraiser or qualified City staff shall use the Rental Comparison Approach or similar methodology that compares similar airport land leases within 100 miles from the Leased Aircraft Ground Space to determine the monthly amount which the Leased Aircraft Ground Space could be expected to return to the CITY if offered for lease on the open market under normal circumstances. After the Market Value Adjustment has been determined, the LESSEE shall be notified in writing of the new rental rate.

Notwithstanding the foregoing, in no event shall the adjusted rent, established by current Market Values as provided for herein, be less than the rent in existence immediately prior to any Market Value Adjustment Date.

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 shall be paid to CITY by LESSEE in the sum of Two Hundred Twenty-Four and 40/100 Dollars ($224.40) 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:

a. 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.

b. 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 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, EQUITY SHARING, ENCUMBRANCES & DEFAULT

4.1 Time is of Essence; Provisions Binding on Successors and Assigns. 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 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest therein, or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except guests of LESSEE, to use or occupy the Leased Aircraft Ground Space or any part thereof, without the prior written consent of the CITY. A consent to assignment, or use by any other person, shall not be deemed to be a consent to any subsequent assignment, or use by another person. Any such assignment without such CITY consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not,

nor shall any interest therein, be assigned as to the interest of LESSEE by operation of law, without the prior written consent of the CITY.

Approval of any assignment shall be conditioned upon the assignee agreeing in writing that it will assume the rights and obligations thereby assigned and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.

**LESSEE shall not be allowed to sublet the Leased Aircraft Ground Space, or any part thereof, or any right or privilege appurtenant thereto.**

4.3 Equity Sharing.

LESSEE agrees that as additional consideration for this Lease, and in addition to all other rents payable to CITY, CITY shall be entitled to participate in any "equity" received by LESSEE during the Term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment of the Leased Aircraft Ground Space. In the event of any action resulting in "equity" as described above, LESSEE agrees that CITY shall be entitled to a payment equal to two percent (2%) of any such equity. For purposes of calculating such payment, equity shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration. LESSEE also agrees that CITY shall be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for hangar(s) on the Leased Aircraft Ground Space upon the assignment of this Lease. Prior to CITY's consent to any assignment, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this Section, together with a written acknowledgment of accuracy of LESSEE's written statement from the proposed assignee of the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the closing of the transaction, whether it be an assignment or sale of the hangar. Any assignment or sale of the hangar in violation of the terms and conditions of this paragraph shall be void.

The provisions of this Section shall not apply to an assignment or transfer of a beneficial interest in LESSEE's leasehold estate resulting from a devise, bequest, or intestate succession.

4.4 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.

4.5 Defaults and Remedies.

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

(1) LESSEE's failure to make any payment required under this Lease when due; or

(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; or

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

(4) LESSEE shall be adjudicated a bankrupt; or

(5) LESSEE shall make a general assignment for the benefit of creditors;

(6) LESSEE uses the Leased Aircraft Ground Space for any unauthorized purpose.

(7) LESSEE fails to show signs of measurable progress in the construction of their Amateur-built Aircraft or Kit-built Aircraft within (30) days written notice from CITY.

b. Remedies. Upon LESSEE's default, CITY may, 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; and/or (2) a "30-Day Notice of Termination", for defaults not requiring payment to CITY. Should LESSEE not make the required payment within the stated three days, or should LESSEE fail to cure said default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure

the default(s) within said thirty-day period and diligently pursue such cure to completion - - then CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Leased Aircraft Ground Space or to possession of the Leased Aircraft Ground Space. Upon termination, CITY may enter and take possession of the Leased Aircraft Ground Space, and may recover from LESSEE the sum of:

(1) the worth at the time of any unpaid rent that was due at the time of termination;

(2) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;

(3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;

(4) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and

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

(6) upon termination of the Lease, LESSEE shall be obligated to pay fees computed at the then current daily rates for comparable transient spaces until LESSEE has removed all Aircraft, personal property, improvements and/or trash and debris from the assigned space(s) and Airport.

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

c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Leased Aircraft Ground Space, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by CITY in order to constitute a valid and binding waiver. CITY's delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY's acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Leased Aircraft Ground Space is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

## SECTION 5: EMINENT DOMAIN

5.1 Eminent Domain.

If all or part of the Leased Aircraft Ground Space 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:

a. In the event the entire Leased Aircraft Ground Space are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Leased Aircraft Ground Space is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Leased Aircraft Ground Space 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 Leased Aircraft Ground Space taken if the portion taken directly affects LESSEE's allowed operations, which determination shall be made by CITY in its reasonable discretion.

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 the Leased Aircraft Ground Space or LESSEE's personal property. 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 Leased Aircraft Ground Space in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

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 6: INSURANCE RISKS/SECURITY

6.1 Insurance.

The Commencement Date shall be a date after which LESSEE has: (a) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies as required in Section 6.1.3 of the Lease; and (c) confirmed that all policies contain the specific provisions required in Section 6.1.4 of the Lease. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under the Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to

non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Lease.

6.1.1 Types of Insurance. At all times during the term of the Lease, the LESSEE shall maintain insurance coverage as follows:

6.1.1.1 Comprehensive General Liability. General Liability (GL) 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 One Million Dollars ($1,000,000) per occurrence including One Hundred Thousand Dollars ($100,000) for bodily injury to any person. There shall be no endorsement or modification of the GL 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.

6.1.1.2 Aircraft Liability Insurance. Combined Single Limit (CSL) Aircraft Liability Insurance, General Aircraft Operation Liability, in an amount not less than One Million Dollars ($1,000,000) combined, sub-limited to One Hundred Thousand Dollars ($100,000) for bodily injury to any passenger.

6.1.2 Deductibles.

All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

6.1.3 Acceptability of Insurers.

6.1.3.1 All insurance required by the Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

6.1.3.2 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.

6.1.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Lease.

6.1.4.1 Comprehensive General Liability Insurance Endorsements

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 Additional Insured CITY of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Comprehensive General Liability policy or policies is primary to any insurance or self-insurance of CITY of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

6.1.5 Reservation of Rights. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY.

6.1.6 Additional Insurance. LESSEE may obtain additional insurance not required by the Lease.

6.1.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

6.1.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

6.2 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Aircraft Ground Space 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 Leased Aircraft Ground Space 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 Aircraft Ground Space shall be damaged by any cause which puts the Leased Aircraft Ground Space into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees, subject to the prior written approval of CITY, to make or cause to be made full repair of said damage and to restore the Leased Aircraft Ground Space to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Leased Aircraft Ground Space all debris resulting from said damage.

LESSEE's responsibility to pay rent shall not be abated during said repairs, restoration or replacement. Notwithstanding the foregoing, CITY may, in its sole discretion, determine an equitable deduction in the monthly rent requirement for such period or periods that said Leased Aircraft Ground Space are untenantable by reason of such damage if such damage is not directly or indirectly caused by LESSEE or LESSEE's operations on the Leased Aircraft Ground Space.

## SECTION 7: ACCEPTANCE, ENTRY, IMPROVEMENTS, HAZARDOUS SUBSTANCES & OTHER SPECIAL PROVISIONS

7.1 Acceptance of Leased Aircraft Ground Space.

By signing this Lease, LESSEE represents and warrants that LESSEE will at all times keep the Leased Aircraft Ground Space in good condition. LESSEE further acknowledges that the Leased Aircraft Ground Space are in the condition called for by this Lease, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Leased Aircraft Ground Space, including the presence of any Hazardous Substances.

7.2 Entry and Inspection.

The CITY reserves and shall always have the right, but not the obligation, to enter LESSEE's Leased Aircraft Ground Space and/or hangar for the purpose of viewing and ascertaining the condition of the same, Leased Aircraft Ground Space or to protect its interests in the Leased Aircraft Ground Space or to inspect any uses being made of the premises. The CITY's right of entry will normally be performed with the LESSEE's authorization and presence, but the CITY also reserves and shall have the right, without notice, to enter upon the Leased Aircraft Ground Space or hangar in an emergency. In the event that such entry or inspection by CITY discloses that said Leased Aircraft Ground Space are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE (except in the case of an emergency, determined by the Director in his sole discretion, in which case CITY may act immediately), 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 Leased Aircraft Ground Space in a decent, safe, healthy, and sanitary condition.

7.3 Maintenance.

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

7.4 Improvements/Alterations.

No improvements, structures, or installations (including the installation of any hangar) shall be constructed or installed on the Leased Aircraft Ground Space, and the Leased Aircraft Ground Space may not be altered by LESSEE, without the prior written approval of CITY. Further, LESSEE agrees that structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Leased Aircraft Ground Space without the prior written approval of CITY. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Leased Aircraft Ground Space 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.

7.5 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 Leased Aircraft Ground Space. All utilities will be installed underground. If CITY approval is granted, LESSEE will be responsible to provide proof of utility installation being completed to code and that all required permits have been granted to LESSEE.

7.6 Liens.

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

If improvements, alterations, repairs or replacements are made to the Leased Aircraft Ground Space by LESSEE or by any party other than CITY, and a lien or notice of lien is filed against CITY and/or its property, 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.

7.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Leased Aircraft Ground Space, 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 Aircraft Ground Space, 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 and that the payment of such possessory interest taxes is not CITY's responsibility. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

7.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising. If any such unauthorized item is found on the Leased Aircraft Ground Space, LESSEE agrees to remove the item at its expense within four (4) hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE's cost.

7.9 Ownership of Improvements and Personal Property.

a. Subject to the provisions of Section 2.2, any and all improvements, trade fixtures, structures, and installations or additions to the Leased Aircraft Ground Space now existing or constructed on the Leased Aircraft Ground Space by LESSEE shall at Lease expiration or termination be deemed to be part of the Leased Aircraft Ground Space and may become, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this Lease.

b. Subject to the provisions of Section 2.2, 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 earlier 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.

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 earlier 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 and dispose of said items at LESSEE's sole cost and expense.

d. If any removal of LESSEE's property results in damage to the remaining improvements on the Leased Aircraft Ground Space, LESSEE agrees to repair all such damage at LESSEE's sole cost and expense.

e. Any necessary removal of LESSEE's property, by either CITY or LESSEE, which takes place beyond the expiration or termination date of this Lease, shall require LESSEE to pay Rent (pro rata for every day beyond the expiration/termination date) to CITY at a rate that is equivalent to two (2) times the rate which was in effect immediately prior to said expiration or termination date.

7.10 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.

7.11 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 Leased Aircraft Ground Space. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Leased Aircraft Ground Space without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies,

including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

a. Release. For purposes of this Lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

b. Hazardous Substances. For purposes of this Lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Leased Aircraft Ground Space 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 Leased Aircraft Ground Space, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.

d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Leased Aircraft Ground Space, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Leased Aircraft Ground Space immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Leased Aircraft Ground Space and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Leased Aircraft Ground Space. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

e. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Leased Aircraft Ground Space, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Leased Aircraft Ground Space, 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 Leased Aircraft Ground Space.

g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, maintenance or restoration of the Leased Aircraft Ground Space ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Leased Aircraft Ground Space, 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 Leased Aircraft Ground Space, 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 Leased Aircraft Ground Space, 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 Leased Aircraft Ground Space and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

7.12 Disabled Access Compliance.

LESSEE shall, as applicable to the Leased Aircraft Ground Space and LESSEE's possession, use and occupancy thereof, comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 (ADA); and all other applicable local, state and federal laws and regulations enacted, or hereafter enacted, protecting the rights of people with disabilities. Where required by law, any improvements made to the Leased Aircraft Ground Space by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Leased Aircraft Ground Space which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

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.

7.13 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

7.14 Lease Subject to 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 8. AIRCRAFT REMOVAL

8.1 Aircraft Removal.

Upon expiration or earlier termination of this Lease, LESSEE shall be required to remove all Aircraft stored on the Leased Aircraft Ground Space on or before said expiration or termination date. If any Aircraft is left on the Leased Aircraft Ground Space after the expiration or earlier termination of this Lease, LESSEE agrees that CITY is authorized to remove and/or dispose of the Aircraft according to law and as determined by CITY staff. LESSEE further agrees that all costs incurred by CITY to remove and store LESSEE's Aircraft in a public or private warehouse, or to remove and store LESSEE's Aircraft on another portion of the Airport (to be determined by the Director at his sole discretion), shall be at LESSEE's sole cost and expense, and all costs and expenses shall be reimbursed to CITY within ten (10) days' receipt of a CITY invoice therefor.

## SECTION 9. LIENS & LOCK DOWN OF AIRCRAFT

9.1 LESSEE hereby acknowledges and agrees that: (1) CITY may seek to impose a lien upon the LESSEE's Aircraft, and other personal property placed on the Leased Aircraft Ground Space for the repayment of all delinquent rent, fees, storage, and other charges; (2) CITY may remove said Aircraft and/or other personal property from the Leased Aircraft Ground Space and relocate all such personal property to another location with the intent of ensuring its continued availability for lien purposes and/or take all other available legal actions to ensure reimbursement of all sums owed to CITY pursuant to the terms of this Lease.

LESSEE further covenants and agrees to hold CITY harmless for CITY's actions in or concerning the removal, lock-down, and/or storage of any Aircraft and all personal property moved in accordance with this Section.

LESSEE further acknowledges and agrees that CITY, or its agents, are legally authorized to, and may, dispose of any Aircraft and other personal property left on the Leased Aircraft Ground Space when acting in accordance with California Civil Code, Sections 1980, *et seq.*, and 1951.3 *et seq.*.

## SECTION 10: SAFETY MANAGEMENT SYSTEMS

10.1 Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term of this Lease that the FAA will mandate SMS compliance for general aviation Airports, which would include the Airport. Because the use of SMS at Airports can contribute to helping Airports detect and correct safety problems before they result in Aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (1) CITY's requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Leased Aircraft Ground Space and that LESSEE will compile and report said information in a form acceptable to the FAA and CITY; (2) all CITY requests for SMS-related data; (3) the CITY's right to conduct SMS-related inspections of the Leased Aircraft Ground Space; (4) all other SMS-related requests made by CITY in its effort to implement a system-wide SMS and maintain an SMS Manual for the CITY's Airport system or a part thereof; and (5) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by LESSEE shall be verified by LESSEE to be accurate and shall be provided without cost to CITY.

## SECTION 11: GENERAL PROVISIONS

11.1 Notices and Consent.

a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE or CITY at the addresses designated below:

CITY:
Airports Deputy Director
Montgomery-Gibbs Executive Airport
3750 John J Montgomery Dr. MS 14
San Diego, CA 92123

LESSEE:
Gary Drean
PO Box 776
Rancho Santa Fe, CA 92067

b. Any party entitled or required to receive notice under this Lease may designate a different address to which notices shall be sent, by giving the other party a prior thirty (30) day notice thereof.

c. 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.

11.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Leased Aircraft Ground Space comply with all applicable laws, statutes, ordinances, and regulations of the City of San Diego, or other 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 of San Diego or other appropriate authority, under the authority of any such law, statute, ordinance, or regulation.

11.3 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.

11.4 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status or disability in LESSEE's use of the Leased Aircraft Ground Space.

11.5 Accessibility Assessment.

In accordance with California Civil Code section 1938, CITY hereby states that the Leased Aircraft Ground Space has not been inspected by a Certified Access Specialist (CAS).

11.6 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 Leased Aircraft Ground Space in a manner which aids in the protection of the CITY's precious water resources. It is the 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 shall, 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).

11.7 Survival.

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

11.8 Joint and Several Liability.

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

11.9 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.

11.10 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.

11.11 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 sections, paragraphs, and/or 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.

11.12 CITY Employee Participation Policy.

It is the policy of the City of San Diego that all City of San Diego 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 the City of San Diego, be unilaterally and immediately terminated by the City of San Diego if the contractor, lessee, or other agreement party employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a City of San Diego 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, lessee or other agreement party. It is not the intent of this policy that these provisions apply to members of the City Council.

11.13 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 Aircraft Ground Space. Each party has relied on its own examination of the Leased Aircraft Ground Space, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties to 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 Leased Aircraft Ground Space, and/or 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.

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

**THE CITY OF SAN DIEGO**, a California municipal corporation

Date 4/18/18

By _____
Cybele Thompson
Director, Real Estate Assets Department

**LESSEE**

Date 4-16-18

By _____
Gary Drean

*Environmental Analysis Section Environmental Clearance:*

This lease is Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 [Existing Facilities] and Section 15302 [Replacement or Reconstruction].

Date: 4/18/18

By: _____
Alyssa Muto
Deputy Director, Planning Department

Approved as to form this 27th day

of April, 2018.

MARA W. ELLIOTT, City Attorney

By _____

Name: David Powell

Title: Deputy City Attorney

EXHIBIT A

LOT 5B

FLATTOP EAST

Leased Aircraft Ground Space



## EXHIBIT B

FAA Requirements and Reservations of Rights

LESSEE and its officers, employees, contractors, agents, and all others operating through LESSEE shall conform to the following FAA covenants and reservations of rights as applicable.

B-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 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.

B-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 Site and the 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 Site and the Airport.

B-3. LESSEE's Noninterference with Aircraft.

LESSEE and LESSEE's successors and assigns, agree not to use the Leased Aircraft Ground Space in any manner which 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 abate or eliminate the interference at the expense of the LESSEE.

B-4. Agreement Subordinate to CITY/United States Agreements.

This Lease shall be subordinate to the terms of any existing or future agreements between CITY and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the Airport. LESSEE acknowledges and agrees that should any existing or future agreement between CITY and the United States, or any United States legal requirement, cause this

Lease to terminate or otherwise be affected, LESSEE shall have no right to seek damages of any type therefor from CITY.

B-5. Height Limitation.

LESSEE and the LESSEE's successors and assigns agree not to erect or lease any structure unless it complies with all FAA and Airport Land Use Compatibility Plan ("ALUCP") height limitations. If this covenant is breached in any way, CITY reserves the right to remove the structure or object at the expense of the LESSEE.

B-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 Leased Aircraft Ground Space, 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.

B-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 United States Government right, 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 States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the lease to the Government shall be suspended. CITY shall not be liable for any loss or damages alleged by the Lease as a result of this action. However, nothing in this Lease shall prevent the LESSEE from pursuing any rights it may have for reimbursement from the United States Government.

B-8. Airport Development.

CITY reserves the right to further develop, change or improve the Airport, terminal, offices, including its routes and landing areas, as CITY sees fit, without LESSEE's 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 – including the right to shut down parts or all of the Airport – at no liability to the CITY, regardless of any damages or losses LESSEE may suffer from said actions.

B-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).

B-10. Landing Area Maintenance.

CITY reserves the right, but not the obligation, to maintain and repair the Airport landing area and all other public facilities with no liability to CITY. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of the Airport landing areas and all other Public facilities.

B-11. FAA Nondiscrimination Covenant.

(a) LESSEE agrees and LESSEE's representatives, successors, and assigns agree, as part of the consideration for this Lease, that:

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

(3) LESSEE shall conduct all activities contemplated by this Lease 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 provisions are breached, CITY may terminate this Lease and reenter and repossess the Leased Aircraft Ground Space as if this Lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed 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 may judicially enforce this entire covenant.

(d) LESSEE agrees to include this entire covenant in any sublease or other agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the Leased Aircraft Ground Space.

B-12. Equal Opportunity.

The LESSEE, the LESSEE's successors and assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure 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.

B-13. CITY to Mitigate Impacts of Subordination.

If subordination agreements between CITY and United States of America result in LESSEE's inability to operate as a business on the Leased Aircraft Ground Space, or if the operations permitted under this Lease are materially affected during a period of subordination, CITY agrees to make a reasonable adjustment to the terms and conditions of the Lease, as determined by CITY, in its sole discretion. 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.

B-14. CITY to Mitigate Impacts of Subordination by Termination or Extension.

If subordination agreements between CITY and the United States of America result in LESSEE's inability to operate as authorized on the Leased Aircraft Ground Space, or if LESSEE's operations authorized under this Lease are materially affected during a period of subordination, CITY, upon written request from LESSEE, 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.

B-15. Hangar Keeper's Insurance.

If so instructed by CITY, LESSEE agrees to maintain Hangar Keeper's Insurance sufficient to cover any Aircraft hangared for others. Failure to provide or maintain Hangar Keeper's Insurance is subject to the same requirements, restrictions and penalties, as detailed under the insurance provision of this Permit.

B-16. Licenses and Certifications.

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

B-17. Employee Conduct.

LESSEE shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Leased Aircraft Ground Space and 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.

B-18. Aircraft Parking.

LESSEE shall require that all Aircraft under its control be parked within the boundaries of the Leased Aircraft Ground Space. At no time shall any Aircraft, vehicle or other object, including refuse, under LESSEE's control, be allowed to parked within the Runway Protection Zone (RPZ) or obstruct any designated taxiways.

B-19. Minority Business Policy.

LESSEE agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The LESSEE and the 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.

B-20. Provisions to be Included in All Pertinent Documents.

LESSEE agrees that it shall insert all of the FAA Requirements provisions set forth in this Exhibit B in all contracts or agreements by which LESSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Leased Aircraft Ground Space.

**EXHIBIT C**

**Federal Register/Vol. 81, No. 115/Wednesday, June 15, 2016/ Rules & Regulation**

**ATTACHED**

EXHIBIT C



in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(m) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0255, dated November 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7524.

**(n) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 20, 2016.

(i) Saab Service Bulletin 2000–38–011, dated October 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 9, 2014 (79 FR 45337, August 5, 2014).

(i) Saab Service Bulletin 2000–38–010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(5) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–13740 Filed 6–14–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Chapter I

**[Docket No. FAA 2014–0463]**

## Policy on the Non-Aeronautical Use of Airport Hangars

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of final policy.

**SUMMARY:** This action clarifies the FAA's policy regarding storage of non-aeronautical items in airport facilities designated for aeronautical use. Under Federal law, airport operators that have accepted federal grants and/or those that have obligations contained in property deeds for property transferred under various Federal laws such as the Surplus Property Act generally may use airport property only for aviation-related purposes unless otherwise approved by the FAA. In some cases, airports have allowed non-aeronautical storage or uses in some hangars intended for aeronautical use, which the FAA has found to interfere with or entirely displace aeronautical use of the hangar. At the same time, the FAA recognizes that storage of some items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. This action also amends the definition of aeronautical use to include construction of amateur-built aircraft and provides additional guidance on permissible non-aeronautical use of a hangar."

**DATES:** The policy described herein is effective July 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Kevin C. Willis, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–4629.

**ADDRESSES:** You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.faa.gov/regulations/search*);

(2) Visiting FAA's Regulations and Policies Web page at (*http://www.faa.gov/regulations_policies*); or

(3) Accessing the Government Printing Office's Web page at (*http://www.gpoaccess.gov/index.html*).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

**SUPPLEMENTARY INFORMATION:**

*Authority for the Policy:* This document is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

### Background

*Airport Sponsor Obligations*

In July 2014, the FAA issued a proposed statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport managers, airport tenants, state aviation officials, and FAA compliance staff. (79 Federal Register (FR) 42483, July 22, 2014).

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97–248), as amended and recodified at 49 United States Codes (U.S.C.) 47107(a)(1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make the airport available on reasonable terms without unjust discrimination for aeronautical activities, including aviation services. Grant Assurance 19, *Operation and Maintenance*, prohibits an airport sponsor from causing or permitting any activity that would interfere with use of airport property for airport purposes. In some cases, sponsors who have received property transfers through surplus property and nonsurplus property agreements have similar federal obligations.

The sponsor may designate some areas of the airport for non-aviation use,[1] with FAA approval, but aeronautical facilities of the airport must be dedicated to use for aviation purposes. Limiting use of aeronautical facilities to aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft owners should not be displaced by non-

[1] The terms "non-aviation" and "non-aeronautical" are used interchangeably in this Notice.

aviation commercial uses that could be conducted off airport property.

It is the longstanding policy of the FAA that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA. Use of a designated aeronautical facility for a non-aeronautical purpose, even on a temporary basis, requires FAA approval. *See* FAA Order 5190.6B, *Airport Compliance Manual,* paragraph 22.6, September 30, 2009. The identification of non-aeronautical use of aeronautical areas receives special attention in FAA airport land use compliance inspections. *See* Order 5190.6B, paragraphs 21.6(f)(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAIA, at 49 U.S.C. 47107(a)(16), requires that AIP grant agreements include an assurance by the sponsor to maintain an ALP in a manner prescribed by the FAA. Sponsor assurance 29, *Airport Layout Plan,* implements § 47107(a)(16) and provides that an ALP must designate non-aviation areas of the airport. The sponsor may not allow an alteration of the airport in a manner inconsistent with the ALP unless approved by the FAA. See Order 5190.6B, paragraph 7.18, and Advisory Circular 150/5070–6B, *Airport Master Plans,* Chapter 10.

Clearly identifying non-aeronautical facilities not only keeps aeronautical facilities available for aviation use, but also assures that the airport sponsor receives at least Fair Market Value (FMV) revenue from non-aviation uses of the airport. The AAIA requires that airport revenues be used for airport purposes, and that the airport maintain a fee structure that makes the airport as self-sustaining as possible. 49 U.S.C. 47107(a)(13)(A) and (b)(1). The FAA and the Department of Transportation Office of the Inspector General have interpreted these statutory provisions to require that non-aviation activities on an airport be charged a fair market rate for use of airport facilities rather than the aeronautical rate. See *FAA Policies and Procedures Concerning the Use of Airport Revenue,* (64 FR 7696, 7721, February 16, 1999) (FAA Revenue Use Policy).

If an airport tenant pays an aeronautical rate for a hangar and then uses the hangar for a non-aeronautical purpose, the tenant may be paying a below-market rate in violation of the sponsor's obligation for a self-sustaining rate structure and FAA's Revenue Use Policy. Confining non-aeronautical activity to designated non-aviation areas of the airport helps to ensure that the non-aeronautical use of airport property is monitored and allows the airport sponsor to clearly identify non-aeronautical fair market value lease rates, in order to meet their federal obligations. Identifying non-aeronautical uses and charging appropriate rates for these uses prevents the sponsor from subsidizing non-aviation activities with aviation revenues.

*FAA Oversight*

A sponsor's Grant Assurance obligations require that its aeronautical facilities be used or be available for use for aeronautical activities. If the presence of non-aeronautical items in a hangar does not interfere with these obligations, then the FAA will generally not consider the presence of those items to constitute a violation of the sponsor's obligations. When an airport has unused hangars and low aviation demand, a sponsor can request the FAA approval for interim non-aeronautical use of a hangars, until demand exists for those hangars for an aeronautical purpose. Aeronautical use must take priority and be accommodated over non-aeronautical use, even if the rental rate would be higher for the non-aeronautical use. The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes. (64 FR 7721).

The FAA conducts land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. *See* Order 5190.6B, paragraph 21.1. The inspection includes consideration of whether the airport sponsor is using designated aeronautical areas of the airport exclusively for aeronautical purposes, unless otherwise approved by the FAA. *See* Order 5190.6B, paragraph 21.6.

*The Notice of Proposed Policy*

In July 2014, the FAA issued a notice of proposed policy on use of hangars and related facilities at federally obligated airports, to provide a clear and standardized guide for airport sponsors and FAA compliance staff. (79 FR 42483, July 22, 2014). The FAA received more than 2,400 comments on the proposed policy statement, the majority from persons who have built or are in the process of building an amateur-built aircraft. The FAA also received comments from aircraft owners, tenants and owners of hangars, and airport operators. The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) also provided comments on behalf of their membership. Most of the comments objected to some aspect the proposed policy statement. Comments objecting to the proposal tended to fall into two general categories:

- The FAA should not regulate the use of hangars at all, especially if the hangar is privately owned.
- While the FAA should have a policy limiting use of hangars on federally obligated airports to aviation uses, the proposed policy is too restrictive in defining what activities should be allowed.

**Discussion of Comments and Final Policy**

The following summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice. The FAA discusses revisions to the policy based on comments received. In addition, the FAA will post frequently asked Questions and Answers regarding the Hangar Use Policy on *www.faa.gov/airport compliance.* These Questions and Answers will be periodically updated until FAA Order 5190.6B is revised to reflect the changes in this notice.

1. *Comment: Commenters stated that the FAA should defer to local government and leave all regulation of hangar use to the airport operator.*

*Response:* The FAA has a contract with the sponsor of an obligated airport, either through AIP grant agreements or a surplus property deed, to limit the use of airport property to certain aviation purposes. Each sponsor of an obligated airport has agreed to these terms. The FAA relies on each airport sponsor to comply with its obligations under this contract. To maintain a standardized national airport system and standardized practices in each of the FAA's nine regional offices, the agency issues guidance on its interpretation of the requirements of the AIP and surplus property agreements. It falls to the local airport sponsor to implement these requirements. The FAA allows airport sponsors some flexibility to adapt compliance to local conditions at each airport.

However, some airport sponsors have adopted hangar use practices that led to airport users to complain to the FAA. Some airport users have complained that sponsors are too restrictive, and fail to allow reasonable aviation-related uses of airport hangars. More commonly, aircraft owners have complained that hangar facilities are not available for aircraft storage because airport sponsors have allowed the use of hangars for purposes that are unrelated to aviation,

such as operating a non-aviation business or storing multiple vehicles. By issuing the July 2014 notice, the FAA intended to resolve both kinds of complaints by providing guidance on appropriate management of hangar use. The agency continues to believe that FAA policy guidance is appropriate and necessary to preserve reasonable access to aeronautical facilities on federally obligated airports. However, the final policy has been revised in response to comments received on the proposal.

2. *Comment: Commenters, including AOPA, stated that the FAA lacks the authority to regulate the use of privately owned hangars.*

*Response:* The FAA has a statutory obligation to assure that facilities on aeronautically designated land at federally obligated airports are reasonably available for aviation use. Designated aeronautical land on a federally obligated airport is a necessary part of a national system of aviation facilities. Land designated for aeronautical use offers access to the local airfield taxiway and runway system. Land designated for aeronautical use is also subject to certain conditions, including FAA policies concerning rates and charges (including rental rates) which were designed to preserve access for aeronautical users and to support aeronautical uses. A person who leases aeronautical land on the airport to build a hangar accepts conditions that come with that land in return for the special benefits of the location. The fact that the tenant pays the sponsor for use of the hangar or the land does not affect the agreement between the FAA and the sponsor that the land be used for aeronautical purposes. (In fact, most hangar owners do not have fee ownership of the property; typically airport structures revert to ownership of the airport sponsor upon expiration of the lease term). An airport sponsor may choose to apply different rules to hangars owned by the sponsor than it does to privately constructed hangars, but the obligations of the sponsor Grant Assurances and therefore the basic policies on aeronautical use stated in this notice, will apply to both.

3. *Comment: Commenters believe that a policy applying the same rules to all kinds of aeronautical structures, and to privately owned hangars as well as sponsor-owned hangars, is too general. The policy should acknowledge the differences between categories of airport facilities.*

*Response:* A number of commenters thought that rules for use of privately constructed and owned hangars should be less restrictive than rules for hangars leased from the airport sponsor. The Leesburg Airport Commission commented that there are different kinds of structures on the airport, with variations in rental and ownership interests, and that the FAA's policy should reflect those differences. The FAA acknowledges that ownership or lease rights and the uses made of various aeronautical facilities at airports will vary. The agency expects that airport sponsors' agreements with tenants would reflect those differences. The form of property interest, be it a leasehold or ownership of a hangar, does not affect the obligations of the airport sponsor under the Grant Assurances. All facilities on designated aeronautical land on an obligated airport are subject to the requirement that the facilities be available for aeronautical use.

4. *Comment: Commenters agree that hangars should be used to store aircraft and not for non-aviation uses, but, they argue the proposed policy is too restrictive on the storage of non-aviation related items in a hangar along with an aircraft. A hangar with an aircraft in it still has a large amount of room for storage and other incidental uses, and that space can be used with no adverse effect on the use and storage of the aircraft.*

*Response:* In response to the comments, the final policy deletes the criteria of "incidental" or "de minimis" use and simply requires that non-aviation storage in a hangar not interfere with movement of aircraft in or out of the hangar, or impede access to other aeronautical contents of the hangar. The policy lists specific conditions that would be considered to interfere with aeronautical use. Stored non-aeronautical items would be considered to interfere with aviation use if they:

- Impede the movement of the aircraft in and out of the hangar;
- Displace the aeronautical contents of the hangar. (A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft);
- Impede access to aircraft or other aeronautical contents of the hangar;
- Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory); or
- Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

Note: Storage of equipment associated with an aeronautical activity (*e.g.*, skydiving, ballooning, gliding) would be considered an aeronautical use of a hangar.

5. *Comment: Commenters stated the policy should apply different rules to situations where there is no aviation demand for hangars, especially when hangars are vacant and producing no income for the sponsor.*

*Response:* At some airports, at some times, there will be more hangar capacity than needed to meet aeronautical demand, and as a result there will be vacant hangars. The FAA agrees that in such cases it is preferable to make use of the hangars to generate revenue for the airport, as long as the hangar capacity can be recovered on relatively short notice for aeronautical use when needed. *See* Order 5190.6B, paragraph 22.6. The final policy adopts a provision modeled on a leasing policy of the Los Angeles County Airport Commission, which allows month-to-month leases of vacant hangars for any purpose until a request for aeronautical use is received. The final policy requires that a sponsor request FAA approval before implementing a similar leasing plan:

- The airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.
- The plan may be implemented only when there is no current aviation demand for the vacant hangars.
- Leases must require the non-aeronautical tenant to vacate the hangar on 30 days' notice, to allow aeronautical use when a request is received.
- Once the plan is approved, the sponsor may lease vacant hangars on a 30 days' notice without further FAA approval.

The agency believes this will allow airports to obtain some financial benefit from vacant hangars no, while allowing the hangars to be quickly returned to aeronautical use when needed. FAA pre-approval of a month-to-month leasing plan will minimize the burden on airport sponsors and FAA staff since it is consistent with existing interim use guidance.

6. *Comment: Commenter indicates that the terms "incidental use" and "insignificant amount of space" are too vague and restrictive.*

*Response:* The FAA has not used these terms in the final policy. Instead, the policy lists specific prohibited conditions that would be considered to interfere with aeronautical use of a hangar.

7. *Comment: Commenter states Glider operations require storage of items at the airport other than aircraft, such as tow vehicles and towing equipment. This should be an approved use of hangars.*

*Response:* Tow bars and glider tow equipment have been added to the list of examples of aeronautical equipment. Whether a vehicle is dedicated to use for glider towing is a particular fact that can be determined by the airport sponsor in each case. Otherwise the general rules for parking a vehicle in a hangar would apply.

8. *Comment: Commenter states it should be clear that it is acceptable to park a vehicle in the hangar while the aircraft is out of the hangar being used.*

*Response:* The final policy states that a vehicle parked in the hangar, while the vehicle owner is using the aircraft will not be considered to displace the aircraft, and therefore is not prohibited.

9. *Comment: Commenters, including Experimental Aircraft Association (EAA), stated that aviation museums and non-profit organizations that promote aviation should not be excluded from hangars.*

*Response:* Aviation museums and other non-profit aviation-related organizations may have access to airport property at less than fair market rent, under section VII.E of the FAA Policy and Procedures Concerning the Use of Airport Revenue. (64 FR 7710, February 16, 1999). However, there is no special reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the activity itself involves use and storage of aircraft. Accordingly, aviation museums and non-profit organizations will continue to have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use, that is, when there is no aviation demand (aircraft storage) for those hangars and subject to the discretion of the airport operator.

10. *Comment: Commenters suggest that the policy should allow a 'grace period' for maintaining possession of an empty hangar for a reasonable time from the sale of an aircraft to the purchase or lease of a new aircraft to be stored in the hangar.*

*Response:* The FAA assumes that airport lease terms would include reasonable accommodation for this purpose and other reasons a hangar might be empty for some period of time, including the aircraft being in use or at another location for maintenance. The reasons for temporary hangar vacancy and appropriate "grace periods" for various events depend on local needs and lease policies, and the FAA has not included any special provision for grace periods in the final policy.

11. *Comment: Commenters believe that the policy should allow some leisure spaces in a hangar, such as a lounge or seating area and kitchen, in recognition of the time many aircraft owners spend at the airport, and the benefits of an airport community.*

*Response:* The final policy does not include any special provision for lounge areas or kitchens, either specifically permitting or prohibiting these areas. The policy requires only that any non-aviation related items in a hangar not interfere in any way with the primary use of the hangar for aircraft storage and movement. The airport sponsor is expected to have lease provisions and regulations in place to assure that items located in hangars do not interfere with this primary purpose.

12. *Comment: Commenters, including EAA, stated that all construction of an aircraft should be considered aeronautical for the purpose of hangar use, because building an aircraft is an inherently aeronautical activity. The policy should at least allow for use of a hangar at a much earlier stage of construction than final assembly.*

*Response:* The FAA has consistently held that the need for an airport hangar in manufacturing or building aircraft arises at the time the components of the aircraft are assembled into a completed aircraft. Prior to that stage, components can be assembled off-airport in smaller spaces. This determination has been applied to both commercial aircraft manufacturing as well as homebuilding of experimental aircraft.

A large majority of the more than 2,400 public comments received on the notice argued that aircraft construction at any stage is an aeronautical activity. The FAA recognizes that the construction of amateur-built aircraft differs from large-scale, commercial aircraft manufacturing. It may be more difficult for those constructing amateur-built or kit-built aircraft to find alternative space for construction or a means to ultimately transport completed large aircraft components to the airport for final assembly, and ultimately for access to taxiways for operation.

Commenters stated that in many cases an airport hangar may be the only viable location for amateur-built or kit-built aircraft construction. Also, as noted in the July 2014 notice, many airports have vacant hangars where a lease for construction of an aircraft, even for several years, would not prevent owners of operating aircraft from having access to hangar storage.

Accordingly, the FAA will consider the construction of amateur-built or kit-built aircraft as an aeronautical activity. Airport sponsors must provide reasonable access to this class of users, subject to local ordinances and building codes. Reasonable access applies to currently available facilities; there is no requirement for sponsors to construct special facilities or to upgrade existing facilities for aircraft construction use.

Airport sponsors are urged to consider the appropriate safety measures to accommodate aircraft construction. Airport sponsors leasing a vacant hangar for aircraft construction also are urged to incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time. The FAA's policy with respect to commercial aircraft manufacturing remains unchanged.

13. *Comment: Commenter suggests that the time that an inoperable aircraft can be stored in a hangar should be clarified, because repairs can sometimes involve periods of inactivity.*

*Response:* The term "operational aircraft" in the final policy does not necessarily mean an aircraft fueled and ready to fly. All operating aircraft experience downtime for maintenance and repair, and for other routine and exceptional reasons. The final policy does not include an arbitrary time period beyond which an aircraft is no longer considered operational. An airport operator should be able to determine whether a particular aircraft is likely to become operational in a reasonable time or not, and incorporate provisions in the hangar lease to provide for either possibility.

14. *Comment: Commenter suggests that the FAA should limit use of hangars on an obligated airport as proposed in the July 2014 notice. Airport sponsors frequently allow non-aeronautical use of hangars now, denying the availability of hangar space to aircraft owners.*

*Response:* Some commenters supported the relatively strict policies in the July 2014 notice, citing their experience with being denied access to hangars that were being used for non-aviation purposes. The FAA believes that the final policy adopted will allow hangar tenants greater flexibility than the proposed policy in the use of their hangars, but only to the extent that there is no impact on the primary purpose of the hangar. The intent of the final policy is to minimize the regulatory burden on hangar tenants and to simplify enforcement responsibilities for airport sponsors and the FAA, but only as is consistent with the statutory requirements for use of federally obligated airport property.

## Final Policy

In accordance with the above, the FAA is adopting the following policy statement on use of hangars at federally obligated airports:

**Use of Aeronautical Land and Facilities**

*Applicability*

This policy applies to all aircraft storage areas or facilities on a federally obligated airport unless designated for non-aeronautical use on an approved Airport Layout Plan or otherwise approved for non-aviation use by the FAA. This policy generally refers to the use of hangars since they are the type of aeronautical facility most often involved in issues of non-aviation use, but the policy also applies to other structures on areas of an airport designated for aeronautical use. This policy applies to all users of aircraft hangars, including airport sponsors, municipalities, and other public entities, regardless of whether a user is an owner or lessee of the hangar.

**I. General**

The intent of this policy is to ensure that the federal investment in federally obligated airports is protected by making aeronautical facilities available to aeronautical users, and by ensuring that airport sponsors receive fair market value for use of airport property for non-aeronautical purposes. The policy implements several Grant Assurances, including Grant Assurance 5, *Preserving Rights and Powers;* Grant Assurance 22, *Economic Nondiscrimination;* Grant Assurance 24, *Fee and Rental Structure;* and Grant Assurance 25, *Airport Revenues.*

**II. Standards for Aeronautical Use of Hangars**

a. Hangars located on airport property must be used for an aeronautical purpose, or be available for use for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports as described in Section III.

b. Aeronautical uses for hangars include:

1. Storage of active aircraft.

2. Final assembly of aircraft under construction.

3. Non-commercial construction of amateur-built or kit-built aircraft.

4. Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.

5. Storage of aircraft handling equipment, *e.g.*, towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

c. Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit non-aeronautical items to be stored in hangars provided the items do not interfere with the aeronautical use of the hangar.

d. While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.

2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.

3. Impede access to aircraft or other aeronautical contents of the hangar.

4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).

5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

e. Hangars may not be used as a residence, with a limited exception for sponsors providing an on-airport residence for a full-time airport manager, watchman, or airport operations staff for remotely located airports. The FAA differentiates between a typical pilot resting facility or aircrew quarters versus a hangar residence or hangar home. The former are designed to be used for overnight and/or resting periods for aircrew, and not as a permanent or even temporary residence. *See* FAA Order 5190.6B paragraph 20.5(b)

f. This policy applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

**III. Approval for Non-Aeronautical Use of Hangars**

A sponsor will be considered to have FAA approval for non-aeronautical use of a hangar in each of the following cases:

a. FAA advance approval of an *interim use:* Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA Office of Airports approve an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years. The FAA will review the request in accordance with Order 5190.6B paragraph 22.6. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. Approved interim or concurrent revenue-production uses must not interfere with safe and efficient airport operations and sponsors should only agree to lease terms that allow the hangars to be recovered on a 30 days' notice for aeronautical purposes. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

b. FAA approval of a *month-to-month leasing plan:* An airport sponsor may obtain advance written approval month-to-month leasing plan for non-aeronautical use of vacant facilities from the local FAA Office of Airports. When there is no current aviation demand for vacant hangars, the airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. The plan must provide for leases that include an enforceable provision that the tenant will vacate the hangar on a 30-day notice. Once the plan is approved, the sponsor may lease vacant hangars on a 30-day notice basis without further FAA approval. If the airport sponsor receives a request for aeronautical use of the hangar and no other suitable hangar space is available, the sponsor will notify the month-to-month tenant that it must vacate.

A sponsor's request for approval of an interim use or a month-to-month leasing plan should include or provide for (1) an inventory of aeronautical and non-aeronautical land/uses, (2) information on vacancy rates; (3) the sponsor's procedures for accepting new requests for aeronautical use; and (4) assurance that facilities can be returned to aeronautical use when there is renewed aeronautical demand for hangar space. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

c. *Other cases:* Advance written release by the FAA for all other non-aeronautical uses of designated aeronautical facilities. Any other non-aeronautical use of a designated aeronautical facility or parcel of airport land requires advance written approval from the FAA Office of Airports in accordance with Order 5190.6B chapter 22.

### IV. Use of Hangars for Construction of an Aircraft

Non-commercial construction of amateur-built or kit-built aircraft is considered an aeronautical activity. As with any aeronautical activity, an airport sponsor may lease or approve the lease of hangar space for this activity without FAA approval. Airport sponsors are not required to construct special facilities or upgrade existing facilities for construction activities. Airport sponsors are urged to consider the appropriate safety measures to accommodate these users.

Airport sponsors also should consider incorporating construction progress targets in the lease to ensure that the hangar will be used for final assembly and storage of an operational aircraft within a reasonable term after project start.

### V. No Right to Non-Aeronautical Use

In the context of enforcement of the Grant Assurances, this policy allows some incidental storage of non-aeronautical items in hangars that do not interfere with aeronautical use. However, the policy neither creates nor constitutes a right to store non-aeronautical items in hangars. Airport sponsors may restrict or prohibit storage of non-aeronautical items. Sponsors should consider factors such as emergency access, fire codes, security, insurance, and the impact of vehicular traffic on their surface areas when enacting rules regarding hangar storage. In some cases, permitting certain incidental non-aeronautical items in hangars could inhibit the sponsor's ability to meet obligations associated with Grant Assurance 19, *Operations and Maintenance*. To avoid claims of discrimination, sponsors should impose consistent rules for incidental storage in all similar facilities at the airport. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

### VI. Sponsor Compliance Actions

a. It is expected that aeronautical facilities on an airport will be available and used for aeronautical purposes in the normal course of airport business, and that non-aeronautical uses will be the exception.

b. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars.

c. Sponsors should ensure that length of time on a waiting list of those in need of a hangar for aircraft storage is minimized.

d. Sponsors should also consider including a provision in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incidental non-aeronautical use of the leased facilities. In other words, if a tenant uses a hangar for a non-aeronautical purpose in violation of this policy, the rental payments due to the sponsor would automatically increase to a FMV level.

e. FAA personnel conducting a land use or compliance inspection of an airport may request a copy of the sponsor's hangar use program and evidence that the sponsor has limited hangars to aeronautical use.

The FAA may disapprove an AIP grant for hangar construction if there are existing hangars at the airport being used for non-aeronautical purposes.

Issued in Washington, DC, on the 9th of June 2016.

Robin K. Hunt,

*Acting Director, Office of Airport Compliance and Management Analysis.*

[FR Doc. 2016-14133 Filed 6-14-16; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 660, 801, and 809

[Docket No. FDA-2013-N-0125]

RIN 0910-AG74

## Use of Symbols in Labeling

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is issuing this final rule revising its medical device and certain biological product labeling regulations to explicitly allow for the optional inclusion of graphical representations of information, or symbols, in labeling (including labels) without adjacent explanatory text (referred to in this document as "stand-alone symbols") if certain requirements are met. The final rule also specifies that the use of symbols, accompanied by adjacent explanatory text continues to be permitted. FDA is also revising its prescription device labeling regulations to allow the use of the symbol statement "Rx only" or "℞ only" in the labeling for prescription devices.

**DATES:** This rule is effective September 13, 2016.

**FOR FURTHER INFORMATION CONTACT:** *For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH):* Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5424, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-6119, email: *Tosia.Hazlett@fda.hhs.gov.*

*For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research:* Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Purpose of the Regulatory Action*

The final rule explicitly permits the use of symbols in medical device labeling without adjacent explanatory text if certain requirements are met. The medical device industry has requested the ability to use stand-alone symbols on domestic device labeling, consistent with their current use on devices manufactured for European and other foreign markets. The final rule seeks to harmonize the U.S. device labeling requirements for symbols with international regulatory requirements, such as the Medical Device Directive 93/42/EEC of the European Union (EU) (the European Medical Device Directive) and global adoption of International Electrotechnical Commission (IEC) standard IEC 60417 and International Organization for Standardization (ISO) standard ISO 7000-DB that govern the use of device symbols in numerous foreign markets.

*Summary of the Major Provisions of the Regulatory Action in Question*

FDA has generally interpreted existing regulations not to allow the use of symbols in medical device labeling, except with adjacent English-language explanatory text and/or on in vitro diagnostic (IVD) devices intended for professional use. Under the final rule, symbols established in a standard developed by a standards development organization (SDO) may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(c)) and the symbol is used according to the specifications for use of the symbol set

Date of Notice: June 14, 2017

# NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

## PLANNING DEPARTMENT

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**PROJECT NAME/NUMBER:** 15 Year Flat-Rate Ground Leases for Flattop-Marigold Tenants at Montgomery-Gibbs Executive Airport.

**COMMUNITY PLAN AREA:** Kearny Mesa
**COUNCIL DISTRICT:** 6
**LOCATION:** Montgomery-Gibbs Executive Airport within the Flattop and Marigold areas

**PROJECT DESCRIPTION:** Authorize Mayor or designee to enter into 15-year flat-rate ground leases with up to ninety-nine(99) month-to-month tiedown tenants at Montgomery-Gibbs Executive Airport within the Flattop Marigold area. Tenants are single tenant users who own their own hangars and are existing on site and the tenants are leasing a small parcel of land. The only allowed use is for storage of their aircraft and no businesses are allowed. Minor improvements will be allowed for squaring off the hangar or to level the floor.

**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 [Existing Facilities] and Section 15302 [Replacement or Reconstruction].

**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 and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; Section 15302 (Replacement or Reconstruction) which allows replacement or reconstruction of existing structure and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; and the project does not trigger any of the exceptions to the exemptions listed in CEQA Guidelines §15300.2.

| | |
|---|---|
| CITY CONTACT: | Debbie S. Shauger |
| MAILING ADDRESS: | 3750 John J. Montgomery Drive<br>San Diego, CA 92123 |
| PHONE NUMBER: | (858) 573-1448 |

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On June 14, 2017, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal CEQA determination to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (June 28, 2017). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

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

POSTED IN THE OFFICE OF DSD

POSTED: 06/14/2017

REMOVED: 6/29/2017

POSTED: M. Herrmann

5-23-2017
Item 100
(R-2017-556)

RESOLUTION NUMBER R- 311118

DATE OF FINAL PASSAGE JUN 06 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO UTILIZE THAT CERTAIN AUTHORIZED FLAT RATE GROUND LEASE TEMPLATE WHEN ENTERING INTO LEASES BETWEEN THE CITY OF SAN DIEGO AND UP TO NINETY-NINE (99) CURRENT TIE-DOWN AND HANGAR TENANTS LOCATED WITHIN THE FLATTOP-MARIGOLD AREAS OF THE MONTGOMERY-GIBBS EXECUTIVE AIRPORT.

WHEREAS, the City of San Diego (City) operates two general aviation airports, Montgomery-Gibbs Executive Airport and Brown Field Airport (Airports), as a user-funded enterprise system, receiving no General Fund subsidy; and

WHEREAS, Federal Aviation Administration (FAA) Grant Assurances obligate the City to maintain a fair and reasonable fee and rental structure for the facilities and services at the Airports and require that all revenue generated by the Airports be used for operating the Airports in order to make the Airports as self-sustaining as possible; and

WHEREAS, within Montgomery-Gibbs Executive Airport, the City operates: (1) the Flattop East and Flattop West tie-down and hangar areas consisting of approximately 4.45 acres of land (collectively "Flattop"); and (2) the Marigold tie-down and hangar area consisting of approximately 2.22 acres of land (Marigold); and

WHEREAS, Airports staff desires to provide all current users of Flattop and Marigold the opportunity to enter into a lease with the same terms and conditions, and to appropriately provide for the contractual protection of the City when allowing tenants to utilize space at the Airports. To efficiently effectuate the foregoing, staff recommends the use of a certain lease template

(Lease Template) which will provide the necessary contractual assurances to both the City and the tenants of the tie-down and hangar spaces at Flattop and Marigold; and

WHEREAS, staff is requesting that the City Council approve that certain Lease Template which would then be used when entering into leases with the up to ninety-nine (99) current tenants that occupy airplane tie-down and hangars spaces at Flattop and Marigold; and

WHEREAS, the Lease Template provides that no lease shall have a lease term that exceeds the time period which is 15 years from June 30, 2017. Accordingly, all such leases, regardless of when they are entered into, shall have a lease term that terminates no later than June 30, 2032; and

WHEREAS, the initial rent under each lease which is commenced in 2017, will be $.11 per square foot; all rents will be subject to periodic rental rate increases throughout the term of each lease; and

WHEREAS, the market value of the real estate subject to the Lease Template, as appraised by City staff, is $842,000; and

WHEREAS, staff is requesting that the portions of Council Policy 700-10 referring to the selection of lessees for new leases, and referring to minimum capital investment, be waived, so as to allow the City, utilizing the Lease Template, to enter into leases with the current tenants that occupy airplane tie-down and hangar spaces at Flattop and Marigold and, because, in lieu of the tenants providing any capital investment, the City will be entitled to 2% of any "equity" received by the tenants upon the assignment of any lease spaces or the sale of any hangars; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized to utilize that certain Lease Template, the terms of which are more fully

set forth therein, and which is on file in the Office of the City Clerk as Document No. RR-311118, to enter into leases between the City of San Diego and up to ninety-nine (99) current tenants who occupy airplane tie-down and hangar spaces within the areas known as Flattop and Marigold, located at Montgomery-Gibbs Executive Airport.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
David L. Powell
Deputy City Attorney

DLP:slo
April 24, 2017
Or.Dept: READ
Doc. No.: 1496410

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 23 2017.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 6/5/17 _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 23 2017, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---|---|---|---|---|
| Barbara Bry | ☒ | ☐ | ☐ | ☐ |
| Lorie Zapf | ☐ | ☐ | ☒ | ☐ |
| Chris Ward | ☒ | ☐ | ☐ | ☐ |
| Myrtle Cole | ☒ | ☐ | ☐ | ☐ |
| Mark Kersey | ☒ | ☐ | ☐ | ☐ |
| Chris Cate | ☒ | ☐ | ☐ | ☐ |
| Scott Sherman | ☒ | ☐ | ☐ | ☐ |
| David Alvarez | ☒ | ☐ | ☐ | ☐ |
| Georgette Gomez | ☒ | ☐ | ☐ | ☐ |

Date of final passage JUN 06 2017.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311118