COPY

CITY OF SAN DIEGO

THIRD AMENDED AND RESTATED

FLAT RATE LEASE

with

BROWN FIELD AVIATION VENTURES

Effective Date _____

DOCUMENT NO. RR-301059
FILED NOV 21 2005
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO

THIRD AMENDED AND RESTATED

FLAT RATE LEASE

THIS THIRD AMENDED AND RESTATED FLAT RATE LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation ("CITY"), and BROWN FIELD AVIATION VENTURES ("LESSEE"), based upon the following facts:

A. In 1996, CITY and LESSEE entered into a long-term, flat rate lease for approximately fifteen acres at the Brown Field Airport in the Otay Mesa community of the City of San Diego. The leased property included 15,733 square feet of office space. The City Council approved the lease by Ordinance No. O-18361, adopted November 12, 1996.

B. CITY and LESSEE executed the First Amendment to Lease Agreement on or about March 10, 1997, adding 2.2 acres ("Area H") to the leased property.

C. CITY and LESSEE executed the Second Amendment to Lease Agreement on or about May 23, 1997, adding 1.78 acres of land and 3,424 square feet of office space ("Area G"). The leased property now totaled 18.98 acres.

D. CITY and LESSEE executed a Consent to Assignment Agreement on or about April 8, 1999, assigning 2.94 acres and 3,424 square feet of office space ("Area B") to a third party.

E. CITY and LESSEE executed a Consent to Sublease Agreement on or about April 2, 2001, authorizing LESSEE to sublease the leased premises to Lancair Corporation ("LANCAIR").

F. On or about September 8, 2003, LESSEE and LANCAIR filed an action against CITY and its Airports Director alleging eleven causes of action, including claims for breach of contract, breach of implied covenant, fraud, intentional interference with prospective economic advantage, violation of FAA Grant Assurances, unfair business practices, common counts, unjust enrichment, federal civil rights violations, inverse condemnation and declaratory relief. (San Diego Sup. Ct. Case No. GIC 817232, "the Civil Action.")

G. CITY, LESSEE, and LANCAIR have executed a Settlement and Release Agreement finally and forever settling all claims between the parties, including those stated in the Civil Action. As part of the consideration for that Settlement and Release Agreement, CITY and LESSEE amend and restate the existing lease to: (1) add to and delete from the property being leased (§1.1); (2) clarify the use of the office building at 1590 Continental (§§ 1.2.b.); (3) cap the scheduled 2006 market rate rent adjustment at 20% (§ 3.2.a.); (4) waive fees for assignment of the

lease to LANCAIR (§ 4.2); (5) provide terms for extension of the lease term (§ 2.1); (6) provide for a right of first refusal upon expiration of the lease (§ 2.4); and (7) update the parties' development obligations (§ 11.4); all as set forth herein.

NOW THEREFORE, the parties agree as follows:

SECTION 1. USES

1.1. Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property containing approximately 20.29 acres, all situated in the City of San Diego, County of San Diego, State of California, as set forth in the legal description attached as Exhibit A-1, and as shown on the map attached as Exhibit A-2, both made part of this agreement by this reference (the "premises" or "leased premises"). The leased premises include approximately 30,657 square feet of hangar and office space, including 10,234 square feet of office space in the office building located at 1590 Continental Street. The leased premises also include all improvements located thereon.

1.2. Uses.

a. Aviation Related Uses Required. Except as set forth in Section 1.2.b., below, it is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of sales, rentals, servicing and repairs of aircraft; construction, sales and rentals of hangar(s) for aviation, aviation parking and tiedowns for aviation; aviation cargo handling; sale of aviation accessories and components, aviation fuel sales; aviation passenger facilities and related offices; operation of aviation flight schools, skydiving activities and related training; car rentals, catering and limo services incidental to aeronautical use ; all in accordance with Section 11.4, and for such other related or incidental aeronautical uses may be first approved in writing by the City Manager and for no other purpose whatsoever. For purposes herin, "aeronautical" shall mean any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to, or is required for the safety of such operations at an airport. LESSEE shall not deny access to other users of the ramp from the Curran Street entrance. Except as set forth in Section 1.2.b., use of City-owned buildings on the lease shall be for aeronautical related activities only and in addition to the use limitations of this Lease, unauthorized uses shall include non-aeronautical uses that have not been approved by the FAA.

b. 1590 Continental Office Building. The office building located at 1590 Continental Street may be used for general office use at fair market rent, pursuant to the following terms and conditions:

(1) Priority for Aviation Uses. LESSEE shall give aviation-related tenants first priority over non-aviation tenants to lease available space in the 1590 Building. All subleases with non-aviation tenants shall be on a month-to-month basis in order to provide flexibility to obtain aviation related tenants. LESSEE shall provide an annual report to CITY setting forth all of the tenants in the 1590 Building and identifying the business of the

respective tenants as aviation or non-aviation. Such report shall include copies of all leases and state the efforts LESSEE has made to give first priority to aviation related tenants in the 1590 Building.

(2) Waiver or Reduction of Approval Fee. City shall waive the administrative fee for approval of aviation-related subleases for space in the 1590 Building. The administrative fee for approval of non-aviation related subleases for space in the 1590 Building shall be $200 per sublease.

(3) Automotive Sales. With respect to automotive sales tenants, (a) all automotive sales subleases shall require off-site storage, forbid test driving and storage on airport property, and shall forbid auto-related banners, streamers, signs or other "car lot" style advertising, (b) the sublease may provide for two-parking spaces for the automotive sales subtenant, subject to the above terms, and (c) the City will execute the required DMV certificates provided consent has been given to the sublease. Plaintiffs shall indemnify and hold harmless the City from any and all actions brought by any federal, state or local agency or any entity or individual bringing any action against the City for alleged zoning violations arising from, connected to or associated with the issuance of DMV certificates at 1590 Continental Street.

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

d. Default for Unauthorized Use. The use of the premises for any unauthorized purpose shall, after reasonable notice and opportunity to cure, constitute a substantial default and subject this lease to termination at the sole option of the CITY.

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

1.4. Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum

or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises. If, for any reason, the airport is closed for more than fifteen days, the CITY shall grant proportionate rent credits or discounts for LESSEE'S loss of use.

1.5. Easements and Reservations.

(1) CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.

(2) CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.

(3) CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services upon reasonable notice to LESSEE.

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

1.6. Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of aviation-related businesses.

1.7. Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

1.8. Parking. Parking shall be restricted to the leased premises.

SECTION 2. TERM

2.1. Commencement. The term of this agreement shall be thirty-five years beginning on December 1, 1996 (the first day of the month following execution of the original agreement by the City Manager) and ending November 30, 2031 ("Term"). "Lease year" as used in this lease shall mean the 12-month period following commencement.

The Term shall be extended for a period of ten years (December 1, 2031 to November 30, 2041, the "Additional Term") upon the written approval by the City Manager of a new

development plan submitted by LESSEE for the Premises ("New Development Plan") requiring that LESSEE make significant capital improvements to the Premises at a cost of not less than $1,000,000 and including construction of not less than 20,000 square feet of new hangar space, all to be completed within ten years after the effective date of this Third Amended and Restated Lease. For this provision to take effect, LESSEE must submit the New Development Plan within 180 days of the City's execution of this Third Amended and Restated Lease and obtain the City Manager's written approval of it.

LESSEE shall have the option to extend the Term for an additional ten years (the "Option Term") beyond the expiration of the Additional Term by giving City written notice of its election to exercise its option not later than 180 days prior to the expiration of the Additional Term, i.e., before May 31, 2041, provided, however, that LESSEE's right to exercise the option shall be contingent upon LESSEE having completed the improvements required by the Development Plan and being in compliance with the Third Amended and Restated Lease, including any subsequent amendments. The rent for the Additional Term and the Option Term shall be calculated pursuant to Section 3, Rent.

2.2. Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

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

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

2.4. Right of First Refusal. The CITY does not grant a right to the LESSEE to negotiate exclusively for a new lease. The CITY reserves the right to solicit and/or receive a bona fide offers from third parties to lease the Premises after the end of Lessee's tenancy on terms and conditions acceptable to the CITY. If CITY receives a bona fide offer from a third party to lease the Premises after the end of LESSEE's tenancy on terms and conditions acceptable to CITY (having obtained the necessary approval from the City Council) and provided that LESSEE is in compliance with this Third Amended and Restated Lease and any subsequent amendments, CITY shall provide LESSEE a written notice of such offer ("Notice of Right of First Refusal") and LESSEE shall have the right to lease the Premises on the same terms and conditions set forth in such offer. LESSEE shall have the right for thirty days after receipt of the Notice of Right of First Refusal to accept the terms set forth in the Notice. If LESSEE accepts the terms, LESSEE and CITY shall execute a new lease setting forth such terms.

SECTION 3. RENT

3.1. Time and Place of Payment. Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, California.

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

3.2. Rent

a. Rent Amount. The rent is $8,635.51 per month (comprised of 20.2933 acres at $350/acre = $7,102.66, plus 3,424 square feet of office space at 6851 Curran (Bldg. 2006 in Area G) at $0.05 = $171.20, plus 11,500 square feet of hangar space at 7060 Curran (Area P) at $0.05 = $575.00, plus 2,075 square feet of office space at 1424 Continental (Bldg 2002 in Area E) at $0.05 = $103.75, plus 10,234 square feet of office space at 1590 Continental (Bldg 1221 in Area F) at $0.05 = $511.70, plus 3,424 square feet of office space at 7060 Curran (Area P) at $0.05 = $171.20).

b. Rent shall be renegotiated at the end of the tenth (2006), twentieth (2016) and thirtieth (2026), (and fortieth (2036) and fiftieth (2046) provided the lease term is extended) years to reflect market conditions, subject to arbitration as hereinafter provided. The 2006 market rate adjustment shall not exceed twenty percent (20%) of the existing rental rate.

Said rent is also subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) as hereinafter provided.

c. (1) CPI Adjustments. At the end of the fifth (2001), fifteenth (2011), and twenty-fifth (2021), (and thirty-fifth (2031) and forty-fifth (2041) provided the lease term is extended) year following the effective date of the lease, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange Counties, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will

first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

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

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

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

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

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

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

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

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

Example 1: Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2: Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now S1,000 per month, after the first adjustment it will be $1,100 per month ($1,000 x 1.10). In the second adjustment it will be $1,254 per month ($1,100 x 1.14).

d. Market Value Adjustments. In addition to said CPI adjustments, at the end of the tenth, twentieth and thirtieth (and fortieth and fiftieth if the lease term is extended) year following the effective date of this agreement, subject to the aforesaid CPI adjustments, the rent for the ensuing five years shall be determined by multiplying the capitalization rate of ten percent by the fair market value of the leased premises as of the adjustment date.

The fair market value shall be determined by an appraisal made by a professional real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser, which third appraiser will be employed to make the appraisal of fair market value of the premises and which value shall be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the

adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. In no event shall the adjusted rent, as established by periodic appraisals as provided for herein, be less than the rent in existence immediately prior to the 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 ten percent (10%) [being a total of fifteen percent (15%) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.

3.4. Inspection of Records. LESSEE agrees to make available to CITY for inspection at all reasonable times copies of any leases or other documents so that CITY can determine LESSEE'S compliance with this Lease. Such records will be made available by LESSEE at the leased premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this Lease. LESSEE shall maintain all such records for a minimum period of five (5) years.

SECTION 4. ASSIGNMENT

4.1. Time is of Essence: Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.2. Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market

rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

CITY hereby waives the administrative fee for approval of a sublease of office space at 1590 Continental Street for aviation-related uses, as defined in Section 1.2.a. and as set forth in Section 1.2.b.

CITY hereby waives the payment of fees for and consents to the assignment of this Third Amended and Restated Lease, in its entirety and on a single occasion, to Lancair Corp., a Nevada corporation, as that corporation is owned and organized as of the date of City's execution of this Third Amended and Restated Lease.

4.3. Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.14, Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.4, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposal, subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

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

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity and willing and able to operate an aviation business pursuant to the uses

allowed hereunder in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4. Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that except as otherwise provided in this agreement, in the event of an assignment, in the event of subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the Development Plan as described in Section 6.14 hereof; LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, one percent (1%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the then existing balance(s) of the existing encumbrance(s). The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgement from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);

b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.5. Defaults and Remedies. On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or equity. These remedies are cumulative, not exclusive.

a. Defaults. Each of the following shall constitute an event of default under this lease:

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

(2) LESSEE defaults in the performance of any covenant or condition required by this Lease, including, without limitation, any use of the premises for any unauthorized purpose, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY; or if any default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty (30) day period and diligently pursue cure to completion; or

(3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or

(4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed within ninety (90) days of filing; or

(5) LESSEE is adjudicated a bankrupt; or

(6) LESSEE makes a general assignment for the benefit of creditors.

b. Remedies.

(1) For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.5.a.(1) above, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit or CITY may terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession of the premises and CITY may enter and take possession of the premises and may recover the sum set forth below.

(2) For Any Other Default. Upon default by LESSEE based upon Section 4.5.a.(2)-(7) above, CITY may, at its option, terminate the Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession of the premises, and may recover from LESSEE the sums set forth below. However, in the event that any default described in Section 4.5.a.(2)-(7) is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to

the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

(3) In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

(a) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

(b) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by the CITY.

(c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents

to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

(4) Upon termination of this lease due to default, CITY may recover the sum of:

(a) the worth at the time of award of any unpaid rent that had been due at the time of termination;

(b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of rent lost, if any, and that LESSEE affirmatively proves could have been reasonably avoided;

(c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the term after the time of the award minus (ii) the amount of rental lost, if any, and that LESSEE affirmatively proves could be reasonably avoided;

(d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE's failure to perform LESSEE's obligations 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 by California law. As used in clauses (a) and (b) of this section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this section, 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 base rent, percentage rent, if any, and any other payments required of LESSEE.

b. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the premises, 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 under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages. Any personal property left at the premises thirty days after the expiration or earlier termination of this Lease shall be considered abandoned and LESSEE forfeits all ownership to the abandoned personal property. CITY may dispose of the abandoned personal property as it deems appropriate, without further liability to LESSEE or any person claiming an interest in the personal property. CITY may, at its option, remove or dispose of

the abandoned personal property at LESSEE's expense. LESSEE shall hold CITY harmless and shall defend CITY against all claims asserted by third persons claiming an interest in the personal property.

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

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

a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

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

c. In the event of a partial taking, if in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in

installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5. INSURANCE RISKS/SECURITY

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

5.2. Insurance.

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

(1) Airport general liability insurance with limits of not less than Five Million Dollars ($5,000,000) per occurrence/Five Million Dollars ($5,000,000) aggregate. This policy shall cover all claims for personal or bodily injury, including death, or property damage suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises. This coverage must be primary and non-contributory with respect to any coverage of self-insurance maintained by CITY.

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

(3) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.

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

(1) Additional Insured. All insurance policies will name CITY, its officials, representatives, agents, officers and employees, as additional insureds, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. A copy of the additional insured endorsement must be provided to CITY at the time evidence of insurance is required.

(2) Requirements. All insurance required by express provision of this Lease shall be carried only by insurers rated "A-, VI" or better by the current AM Best Rating Guide, which are licensed to do business in the State of California and approved by CITY. All policies will be in effect, and a copy submitted to CITY, on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. Any deductibles or self-insured retentions shall be disclosed to and approved by CITY at time evidence of insurance is provided. A copy of the insurance policy(ies) will remain on file with CITY during the entire term of the Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.

(3) Modification. CITY, at its discretion. may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements in order to meet the requirements of this Lease.

(4) Accident Reports. LESSEE shall report to CITY any accident causing serious injury to person(s) on the premises and any accident causing more than FIVE THOUSAND DOLLARS ($5,000) worth of property damage on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.

(5) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the

premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

5.3. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse or obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and in scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof. LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs. restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable reduction in the fixed annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

5.4. Security Deposit. A security deposit shall be paid to CITY by LESSEE in the sum of $3,000 (Three Thousand Dollars) on or before the commencement date of this lease. All or any portion of the principal sum 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 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 to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

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

The security or any balance thereof will be returned to LESSEE within ninety (90) days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

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

SECTION 6. IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1. Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises. and that LESSEE does not hold CITY responsible for any defects in the premises.

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

6.3. Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. All applicable codes and standards of CITY, state and federal-agencies shall be observed in all maintenance, repairs and replacements on the premises.

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

6.5. Utilities. Except as hereinafter provided, LESSEE agrees to order, obtain and pay for all utilities necessary for operation of the premises. All utilities will be installed underground. CITY shall provide reasonable amounts of water for use on the leased premises for the first five years. The City Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.

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

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

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

b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

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

6.8. Signs. LESSEE shall comply with the approved Signage Program for Brown Field. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9. Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.

b. If CITY elects not to assume ownership of all or any improvements. trade fixtures, structures and installations, CITY shall so notify LESSEE One-Hundred-Eighty (180) days prior to expiration: and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.

d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

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

f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10. Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the

prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.11. Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704. Notwithstanding the above, LESSEE shall not be responsible for the introduction of any hazardous substances which occurred prior to LESSEE'S occupancy of the premises.

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

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

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

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE at the CITY'S sole option shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in or under the premises, and in what quantities. If any hazardous substances exist in

quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred for hazardous substances found to have been introduced by LESSEE.

6.12. Maintenance of Fuel Tanks.

a. LESSEE shall be fully responsible for the maintenance, repair or replacement of all storage tanks, including piping and equipment located on the premises.

b. Lessee shall remove all storage tanks and all fueling equipment at LESSEE'S sole expense upon termination of this lease, or post a bond to cover the costs thereof; LESSEE shall also restore the ground to a clean, safe condition upon removal of the tanks. LESSEE shall not be responsible for any underground storage tanks located on the premises at the start of the lease. or rented from the City by LESSEE.

6.13. Development Plan. LESSEE has completed performance of its original General Development Plan, as detailed in Section 11.4. LESSEE may submit a New Development Plan as set forth in Section 2.1. Any New Development Plan shall be subject to the approval of the City Manager. Upon its approval, LESSEE agrees to develop the leased premises in accordance with the New Development Plan. The City Manager or his designee shall have the authority to authorize changes to the Plan. Failure by LESSEE to comply with the approved Development Plan shall constitute a major default and subject this lease to termination by CITY pursuant to the Section 4.5, Default and Remedies, of this lease.

6.14. Failure to Meet Development Schedule. Should LESSEE fail to complete construction in accordance with the schedule of development for its New Development Plan, LESSEE shall not be entitled to an extension of the lease term and it is specifically agreed by LESSEE and CITY that CITY will be entitled to damages in the amount of Fifty Dollars ($50) for every day of failure to meet said schedule of development until completion of development, said amount representing liquidated damages therefor. In the event that construction is not completed within twelve (12) months following the date specified for completion in the Development Plan, CITY may, at its option, terminate this lease.

SECTION 7. GENERAL PROVISIONS

7.1. Notices.

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

Deputy Director of Airports
City of San Diego, Brown Field Airport
1424 Continental Street, Suite A
San Diego, CA 92154

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

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

7.2. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

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

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

7.5. Compliance with CITY'S Equal Opportunity Contracting Program.

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

LESSEE will comply Title VII of the Civil Rights Act of 1964, as amended: Executive Orders 11246, 11375, and 120S6; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereinafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Work Force Report or a current Equal Employment Opportunity (EEO)Plan as required by Section 22.2705 of the San Diego

Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor.

b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

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

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

7.7. Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

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

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

7.10. Entire Understanding. This lease and the Settlement and Mutual Release Agreement dated _____, 2005 constitute the entire understanding of the parties. LESSEE, by signing this agreement, agrees that, except for the Settlement and Release Agreement dated _____, 2005, there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations. and covenants of the lease itself. Each of the parties in this lease agrees that no other party,

agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

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

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

a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace.

(2) LESSEE'S policy of maintaining a drug-free workplace.

(3) Any available drug counseling, rehabilitation, and employees assistance programs.

(4) The penalties that may be imposed upon employees for drug abuse violations.

c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13. Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title

V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

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

d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

SECTION 8. SPECIAL PROVISIONS

8.1. Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls certain leases as follows: Bearden Aviation, executed on the 26 day of July, 1993, document # RR-282398; Flying J Aviation, executed on 26 day of July, 1993, document # RR282398; and Air Ventures Skydiving, Inc., executed on December 1, 1994; which are hereafter void and of no effect as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreements. In addition, this Third Amended and Restated Flat Rate Lease supercedes the preceding Lease, First Amendment to Lease, and Second Amendment to Lease.

8.2. Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms and that LESSEE

is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.

8.3. Maintenance Landscaping and Entrance Road. LESSEE shall, at its sole cost, remove brush and weeds from the leased premises. and maintain the entrance to the leased premises.

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

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

8.6. Trash and Refuse. LESSEE shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated using LESSEE'S facilities. Refuse containers shall be located so as to be conveniently used, and shall be of sufficient size and number to contain the refuse generated using LESSEE'S facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE'S direction at authorized landfills or other garbage reception areas as provided under law applicable at the time of collection.

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

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

8.9. Cutting of Trees. No growing or mature trees are to be destroyed or removed without prior written consent of the City Manager.

SECTION 9. AIRPORT PROVISIONS

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

9.2. LESSEE Use and Constriction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. 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 stricture on the premises.

9.3. LESSEE's Noninterference with Aircraft. LESSEE and LESSEE'S successors, assigns and sublessees agree not to use the premises in any manner, or act in any manner that might interfere with any aircraft landing or taking off from Brown Field Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of LESSEE.

9.4. Lease 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.

9.5. Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean sea level elevation of more than fifty (50) feet above ground level. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object, or tree, at the expense of LESSEE.

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

9.7. 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 Brown Field Airport.

9.8. Airport Development. CITY reserves the right, but not the obligation, to further develop, change or improve the airport and its routes and landing areas as CITY sees fit, without LESSEE interference or hindrance and regardless of LESSEE'S views and desires. CITY's plans or lack of plans to develop, change or improve the airport shall not create any right or benefit in LESSEE, its sublessees or assigns.

9.9. 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 49 USC 40103(e).

9.10. Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the airport landing area and all other public facilities. CITY also has the right to direct and control all LESSEE activities affecting the maintenance and repair of these facilities.

9.11. FAA Nondiscrimination Covenant.

a. LESSEE and LESSEE'S representatives, successors, sublessees and assigns agree, as part of the consideration that:

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

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

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

b. If any of the provisions are breached, CITY may terminate the lease and reenter and repossess the premises as if this lease had never been made. This provision is not effective until the procedures of 49 CFR Pan 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 agreement, without liability. or either CITY or the United States may judicially enforce this entire covenant.

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

9.12. Equal Opportunity. LESSEE, LESSEE'S successors, assigns, sublessees, and any suborganizations 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.

9.13. 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 premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY agrees to make a reasonable rental

reduction or adjustment, as determined by CITY. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.

9.14. 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 a business on the premises, or if the business operations permitted under this agreement 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 inoperation.

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

9.16. Employee Conduct. LESSEE shall be responsible for the conduct of any employee on the entire property, if that employee is on airport property during any period of employment.

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

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

9.19. Noise Abatement. CITY airports are severely impacted by noise; therefore, LESSEE shall comply at all times with all airport noise abatement rules and regulations ("Noise Abatement Program") as may be applicable to LESSEE'S use of CITY-owned airports and this lease. Current information on the Noise Abatement Program for CITY airports may be obtained at CITY'S Airport Noise Abatement Office.

It is CITY'S intent to take whatever action is necessary to enforce its Noise Abatement Program. This may include fining violators and/or terminating their use of the airport. LESSEE shall fully cooperate with CITY in its enforcement of its Noise Abatement Program with users of the leased premises, including providing CITY with any information it has in its records that would assist the CITY in identifying and locating those that violate the Airport's Noise Abatement Program. Any actions by the City under this Section 9.19 shall be in accordance with the provisions of the grant assurances and, if applicable, 14 Code of Federal Regulations Part 150 and 161.

9.20. Minority Business Policy

a. If LESSEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE'S contractors agree not

to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation assisted contracts.

b. Developer will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practice Act, and any other applicable federal and state laws and regulations hereinafter enacted. Developer will not discriminate based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth against any employee, applicant for employment, or firm seeking to conduct business with developer.

Further, developer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

9.21. Asbestos Disclosure. (Buildings Built Prior to 1979) CITY discloses to LESSEE that portions of the structural component of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 10. SIGNATURES

10.1. Signature Page.

IN WITNESS WHEREOF, this Third Amended and Restated Lease Agreement is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. R-301059, adopted 11-21, 2005, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 12/16/05

By _____
Director, General Services Department

Date 12/5/05

By _____
Director, Real Estate Assets Department

BROWN FIELD AVIATION VENTURES, INC.

Date 10/26/05

By _____
Bruce Young, President

APPROVED as to form and legality this 28th day of Dec, 2005:

MICHAEL J. AGUIRRE, City Attorney

By _____
Chief Deputy City Attorney

This activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section §15060(c)(2).

REVIEWED AND APPROVED this 23rd day of December, 2005:

By _____
Environmental Analysis Planner

SECTION 11. EXHIBITS

11.1 Property Description. The legal description for the leasehold is set forth on Exhibit A-1, attached.

11.2 Site Plan. Exhibit A-2 on the following page shows the lease boundaries consisting of five areas labeled C/H, D, E, F, G, P generally consisting of the following:

Area C/H: 4.3393 acres south of Curran Street, on the west end of the runway, that portion south of the First Flight leasehold;

Area D: 2.1909 acres north of Curran Street, including 24,000 square feet of aircraft storage space.

Area E/F: 5.9323 acres consisting of the "Bearden Area," on the east end of the runway including 2,075 square foot of office space and the "BFAV Area," located south of Curran Street and bordered by Continental Street, including the 1590 Continental Building with 10,234 square feet of office space.

Area G: 1.7112 acres and 3,424 square feet of office space added by the Second Amendment to the Lease.

Area P: 6.1196 acres west of and adjacent to Area E, north of Curran Street, and formerly part of the Paladin leasehold, including Building 2005.

The following areas shown on Exhibit A-2 are not part of the leasehold:

Area A: .85 acres extending 125 feet west of the west-end of the runway;

Area B: 2.94 acres and 3,424 square feet of office space east of Area A, currently leased by First Flight, Inc., and formerly known as the "Flying J Area";

Area J: South of Curran Street, that portion formerly part of Area C/H that is adjacent to and south of Areas G and D;

For the purposes of anticipated realignment of airport streets and taxiways, the lease boundaries may be modified by mutual agreement in the future, but in no case shall the area be less than 20.29 acres.

11.1

Lease parcel "C/H+G+D" located on Brown Field property in the City of San Diego, County of San Diego, State of California, within Sections 28 and 27 Township 18 South Range 1West San Bernardino Base and Meridian, as follows:

Commencing at the City of San Diego horizontal Control Station GPS 1398 "GAS", having a coordinate value of North 1790280.53 East 6325646.40 base on the North American Datum of 1983(NAD 83), as shown on Record of Survey No. 14492, filed in the office of the County Recorder of above said San Diego County on 3/31/1994; Thence North 63°31'29"West 6597.69 feet to City of San Diego horizontal Control Station GPS 189, said control station being the Section Corner common to Sections 28 29 32 & 33, Township 18 South Range 1West San Bernardino Base and Meridian having a coordinate value of North 1787339.20 East 6331552.17 as shown on above said Record of Survey No. 14492; Thence North 0°36' 05' East 711.79 feet along the west section line of Section 28 being 30 feet east of west line Heritage Road to the intersection of centerline of Sikorsky Street as shown City of San Diego drawing 22718-1-D; Thence along said centerline of Sikorsky Street South 88° 42'12" East 649.69 feet to the beginning a tangent curve concave Southwesterly having a radius of 500.00 feet; Thence Southeasterly along said curve 113.65 feet through a central angle of 13°01'25"; Thence North 14°19'10"East 46.00 feet to the North line of Sikorsky Street; Thence South 75°45'19" East 96.24 feet along said North line to the **True Point of Beginning;** Thence leaving said North line, North 14°19'07" East 300.43 feet; Thence South 75°40'53" East 428.67 feet; Thence North 14°19'07" East 313.43 feet to the southerly line of the Object Free Area; Thence S 84°20'57.18" E 392.45 feet to the beginning of a tangent curve concave Southerly, having a radius of 265.03 feet; Thence Easterly 117.95 feet along said curve through a central angle of 25°29'58.50"; Thence South 14°19'07.00" W 383.35 feet; Thence N 75°40'53.00" W 283.84 feet; Thence S 14°14'40.50" W 293.43 feet to the North line of Sikorsky Street ; Thence N 75°40'53" W 377.94 feet along said line; Thence North 73°09'43"West 250.24 Feet along said line; Thence North 75°40'53" West 22.00 feet along said north line to the **True Point of Beginning;**

Excepting any portion of Curran St(1st Street) lying within this lease description.

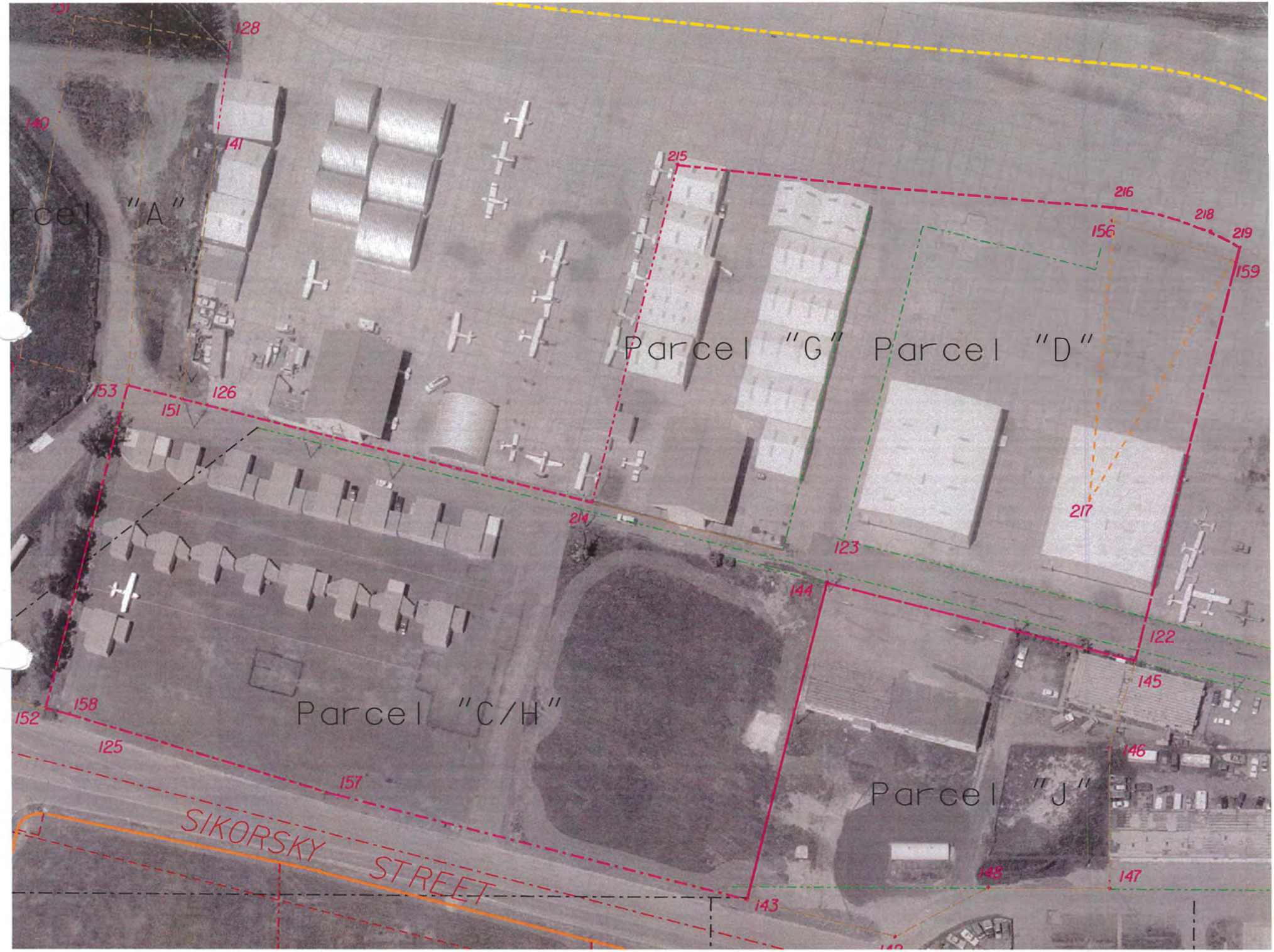
Reserving access for ingress and egress to maintain, repair, replace any utility within the lease described above.

Above described lease parcel of land contains (382501.150 Square Feet) 8.7810 Acres.

Exhibit attached and by this reference made a part hereof.



Ronald J. Dodds, LS No. 5771
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 06/30/2006


128
140
141
Parcel "A"
215
216
218
219
156
159
Parcel "G"
Parcel "D"
153
126
151
214
217
123
144
122
145
158
152
125
Parcel "C/H"
157
Parcel "J"
146
SIKORSKY STREET
148
147
143

Lease parcel "E+F +P" located on Brown Field property in the City of San Diego, County of San Diego, State of California, within Sections 28 and 27 Township 18 South Range 1West San Bernardino Base and Meridian, as follows

Commencing at the City of San Diego horizontal Control Station GPS 1398 "GAS", having a coordinate value of North 1790280.53 East 6325646.40 base on the North American Datum of 1983(NAD 83), as shown on Record of Survey No. 14492, filed in the office of the County Recorder of above said San Diego County on 3/31/1994; Thence North 63°31'29"West 6597.69 feet to City of San Diego horizontal Control Station GPS Lease parcel "E/F & P" located on Brown Field property in the City of San Diego, 189, said control station being the Section Corner common to Sections 28 29 32 & 33, Township 18 South Range 1West San Bernardino Base and Meridian, having a coordinate value of North 1787339.20 East 6331552.17 as shown on above said Record of Survey No. 14492; Thence North 0°36' 39' East 711.79 feet along the west section line of Section 28 being 30 feet east of west line Heritage Road to the intersection of centerline of Sikorsky Street as shown City of San Diego drawing 22718-1-D; Thence along said centerline of Sikorsky Street South 88° 42'12" East 649.69 feet to the beginning a tangent curve concave Southwesterly have a radius of 500.00 feet; Thence 113.65 feet along said curve thought a central angle of 13°01'25"; Thence North 14°19'10"East 46.00 feet to the North line of Sikorsky Street, Thence along said line South 75°45'19" East 96.24 feet; Thence South 75°40'53" East 22.00 feet; Thence South 73°09'43" East 250.24 feet; Thence South 75°40'53" East 377.94 feet; Thence North 14°14'40" East 293.43 feet; Thence South 75°40'53" East 283.84 feet; Thence North 14°44'42" East 40.73 feet; Thence South 75°42'15" East 689.87 to the **True Point of Beginning;** Thence N 14°26'36.80" E 371.81 feet to the southerly line of the Object Free Area; Thence S 83°33'00.33" E 1033.32 feet along said line; Thence leaving said line S 14°32'58.26" W 208.33 feet; Thence N 77°32'25.80" W 30.23 feet; Thence S 13°47'42.09" W 85.30 feet; Thence N 76°20'40.58" W 10.07 feet, Thence S 14°32'45.29" W 19.55 feet; Thence N 75°27'14.71" W 12.00 feet; Thence S 14°32'45.29" W 6.00 feet; Thence N 75°27'14.71" W 4.00 feet; Thence S 14°32'45.29" W 16.00 feet; Thence S 75°27'14.71" E 25.43 feet; Thence S 14°16'25.32" W 103.74 feet; Thence N 74°24'29.50"W 32.53 feet; Thence S 39°38'55.18W 106.70 feet; N 75°40'53.00" W 26.53 feet; Thence S 52°23'13.52" W 564.24 feet along the west line of Continental Drive; Thence N 0°35'19.11" E 248.79 feet; Thence N 14°18'49.35" E 71.77 feet; Thence S 88°26'17.69" E 51.22 feet to the beginning of a tangent curve concave Northeasterly with a radius of 300 feet; Thence Southeasterly 84.33 feet along said curve through a central angle of 16°06'23"; Thence South 64°29'23" East 62.70 feet to the beginning of a tangent curve concave Northerly with a radius of 300.00 feet; Thence Southeasterly 23.34 feet along said curve through a central angle of 4°27'27"; Thence North 4°40'23.71" East 165.30 feet to the North line of Curran Street; Thence N 75°40'53.00" W 372.00 feet along said North line to an angle point on Curran Street; Thence N 14°19'07.00" E 23.00 feet along East line of Curran Street; Thence N 75°46'37.30" W 295.91 feet along North line of Curran Street; to the POINT OF BEGINNING;

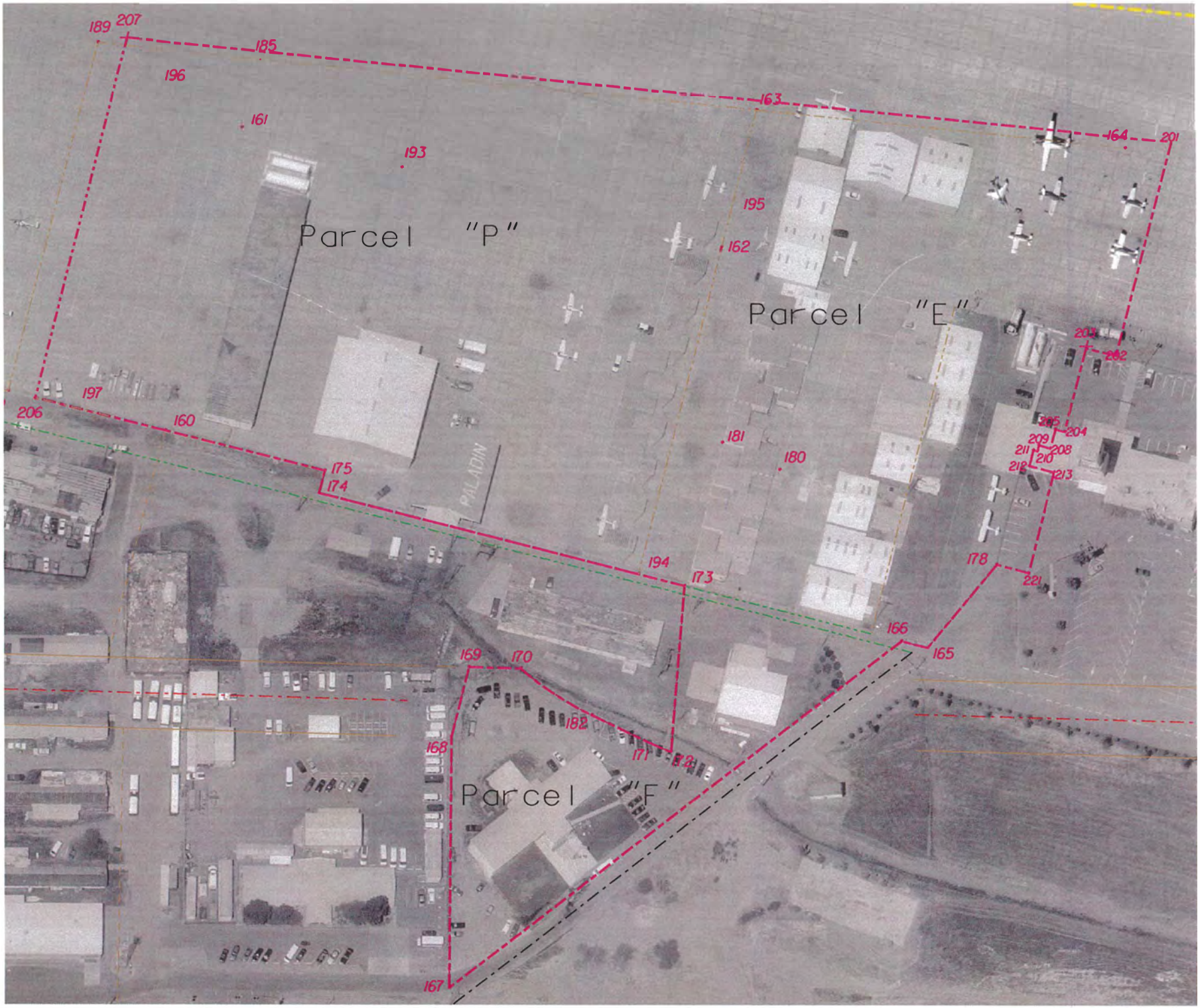
Containing (521693.080 square feet), 11.9764 acres
Excepting any portion of Curran St(1st Street) and Continental Drive lying within this lease description

Reserving access for ingress and egress to maintain, repair, replace any utility within the lease described above.

Exhibit attached and by this reference made a part hereof.



Ronald J. Dodds, LS No. 5771
Associate Land Surveyor, Field Engineering
City of San Diego
My Registration Expires 06/30/2006


Parcel "P"
Parcel "E"
Parcel "F"
PALADIN
189
207
185
196
161
193
163
164
201
195
162
197
206
160
175
174
181
180
194
173
178
221
166
165
169
170
182
168
171
167
203
202
205
204
209
211
208
210
212
213

11.4 Development Plan. LESSEE, itself or through the efforts of its sublessee LANCAIR, has completed the following Development Plan requirements as set forth in the original Lease and the Second Amendment to the Lease:

Lease	Completed Requirement	Area of Leasehold
Original, §11.4	Renovations to exterior	Bldg. 1221/1330 Continental
Original, §11.4	Landscaping/irrigation	Bldg. 1221/1330 Continental
Original, §11.4	Refurbish Flying J nose-dock hangar	Bldg. 2005/6710 Curran
Original, §11.4	Refurbish Bearden office	Bldg. 2002/1424 Continental
Original, §11.4	Begin construction of 2 exec. hangars	
Original, §11.4	Install new, automated fuel farm	
Original, §11.4	Begin relocation of T-hangars	
Original, §11.4	Construct 5,000 sq. ft. repair hangar	
Original, §11.4	Construct 4 executive hangars	
Original, §11.4	Build executive pilot waiting lounge	

LESSEE may submit a New Development Plan for the premises, as set forth in Section 2.1. Any New Development Plan shall be subject to the approval of CITY as provided in Section 6.13.

11.2

11.3 Corporate Name.

BROWN FIELD AVIATION VENTURES, INC.

I, DONNA YOUNG, certify that I am the SECRETARY of the corporation named in the attached agreement; that BRUCE YOUNG, who signed this agreement on behalf of the corporation is the PRESIDENT of the corporation; that the attached agreement was duly signed for and on behalf of the corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on OCTOBER 26, 2005, and is within the scope of its corporate powers; and that set out below are the names of the officers and directors of the corporation.

By _____
~~Bruce~~ Young
DONNA dy

CORPORATE SEAL

Name NA
Title

Name _____
Title

Name _____
Title

Name _____
Title

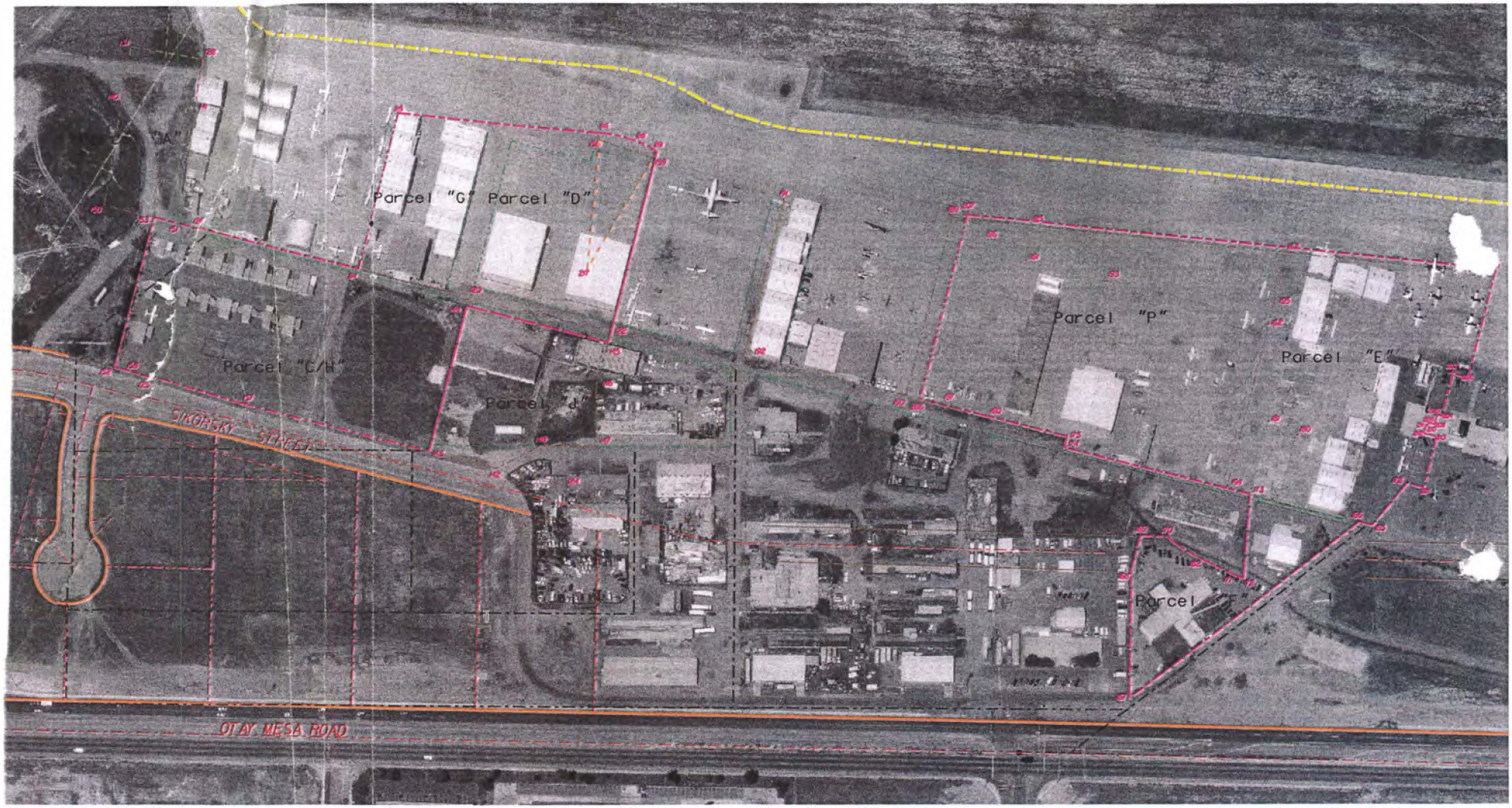

Parcel "A"
Parcel "C"
Parcel "D"
Parcel "C/H"
Parcel "J"
Parcel "P"
Parcel "E"
Parcel "F"
SIKORSKY STREET
OTAY MESA ROAD

EXHIBIT A-2