DUPLICATE

FLAT RATE PARCEL GROUND LEASE
BETWEEN
THE CITY OF SAN DIEGO AND AIR CENTER MYF, LLC

THIS FLAT RATE PARCEL GROUND LEASE ("Lease") is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("City"), as lessor, and AIR CENTER MYF, LLC, a California limited liability company, ("Lessee"), as lessee, to be effective as of the date the Lease is signed by the parties and approved by the San Diego City Attorney (the "Effective Date"). City and Lessee are herein sometimes referred to as a "Party" or "Parties," all with reference to the following:

RECITALS

A. City owns that certain real property consisting of approximately 9.87 acres of unimproved land (the "Property") located at 3750 John J Montgomery Dr., San Diego, CA 92123, and commonly known as Montgomery-Gibbs Executive Airport (the "Airport"), as more particularly depicted and described on the attached **Exhibit A: Depiction and Legal Descriptions of the "Property".**

B. The Property consists of four (4) parcels identified as: 1) a 4.63-acre lot ("Parcel 1"); 2) a 1.61-acre lot ("Parcel 2"); 3) a 1.38-acre lot ("Parcel 3"); and 4) a 2.24-acre lot (the "Additional Parcel"), and as are more particularly depicted and described on the attached Exhibit **A-1: "Parcel 1," Exhibit A-2: "Parcel 2," Exhibit A-3: "Parcel, 3" and Exhibit A-4: "Additional Parcel."**

C. City desires to lease Parcel 1 to Lessee and provide Lessee with the option to add Parcel 2 and/or Parcel 3 to the leasehold within seven (7) years of the Commencement Date, as defined herein.

D. At this time the City does not currently contemplate the development of the Additional Parcel. However, should the City desire to allow the development of the Additional Parcel within ten (10) years of the Commencement Date, City shall grant Lessee a first right of refusal to add the Additional Parcel to the leasehold pursuant to the terms and conditions of this Lease.

E. By this reference, the above Recitals are hereby incorporated into, and made a part of this entire Lease.

NOW FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

Document No. RR-311540
Filed FEB 13 2018
Office of the City Clerk
San Diego, California

FLAT RATE PARCEL GROUND LEASE

SECTION 1. PREMISES AND USES

1.1. Premises. Effective as of the Commencement Date (as defined in Section 2.1),

City hereby leases to Lessee and Lessee hereby leases from City Parcel 1 (the "Premises"). Lessee and Lessor accept all "approximations" set forth in this Lease as being accurate and agree not to use any future recalculations (however determined) of the Premises to attempt to adjust or otherwise affect the rents or other obligations contained in this Lease.

1.2. Option to Lease Parcel 2 and Parcel 3. During the first seven (7) years from the Commencement Date, as defined herein, of this Lease, and provided Lessee is not in default of any of the terms and conditions of this Lease, Lessee shall have the option to add Parcel 2 and/or Parcel 3 to the Premises ("Option"), pursuant to an amendment to this Lease, without need for further resolution by City Council, under the terms and conditions contained in this Section 1.2. The amendment to this Lease for the Option shall include only the addition of Parcel 2 and/or Parcel 3 to the Premises, the increased rental rate for the parcels added to the Premises and any then current City lease requirements that became effective after the Effective Date. Lessee's rental obligation pursuant to the Option shall commence immediately upon Lessee taking possession of the parcel(s) added pursuant to the Option, but no later than two (2) years from the Option Notice, as defined herein.

1.2.1. Lessee shall provide City with written notice of its intent to exercise the Option ("Option Notice") no later than the last day of the 7th Lease Year, as defined herein.

1.2.2. Upon City's receipt of the Option Notice, City and Lessee shall designate an appraiser satisfactory to both City and Lessee to conduct an appraisal of the parcel or parcels to be added to the Premises to determine the market rental value of the parcel or parcels. City and Lessee shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of the parties from a list of City-approved appraisers ("Appraiser List"); the selection shall be made within ten (10) business days after Lessee's receipt of the Appraiser List. If the parties do not mutually agree on an appraiser within the 10-day period, then City and Lessee shall each select a qualified appraiser from the Appraiser List who in turn shall select a third qualified appraiser from the Appraiser List to perform the appraisal. The appraiser's determination of the market rental value shall be binding on the City and Lessee. In determining the market rental value of parcel or parcels, City and Lessee agree that the appraiser will be directed to establish these values as vacant land used for aeronautical-related purposes using general aviation airports land as comparables. This appraisal shall be completed no later than ninety (90) days from the date of the Option Notice.

1.2.3. Together with the Option Notice, Lessee shall, at its sole cost and expense, submit an amendment to the General Development Plan (set forth in Section 10.1) if necessary to reflect any changes or updates relating to the parcel or parcels to be added to the Premises for the review and approval by the City. This amended General Development Plan shall contain, at a minimum, the following:

1.2.3.1. A site and floor plan showing the general location of all of the proposed capital improvements and/or major equipment on the parcel or parcels, including the schedule of all work, a description of any demolition proposed,

narrative description, plot plan, and compatibility of the improvements with the entire Airport layout plans.

1.2.3.2. Detailed construction drawings that show the types, dimensions and locations of all proposed improvements and facilities.

1.2.3.3. Detailed construction costs for all improvements planned on the parcel or parcels.

1.2.3.4. Detailed construction schedule for all improvements planned on the parcel or parcels.

1.2.3.5. A proposed operating plan for the parcel or parcels, which shall include at a minimum the following: proposed uses; hours of operation; fees and charges, if any; proposed services; and/or, from Lessee's perspective, benefit to the community including a description of how the Lessee will operate, the community need that will be met, and the estimated number of clients that will be served.

1.2.3.6. Pro-forma financial statements to include balance sheets, income statements and cash flow statements and should be based on one (1), five (5) and ten (10) year periods for the operation of Parcel 2 and/or Parcel 3.

1.2.4. Together with the Option Notice, Lessee must submit either: (a) financial statements for the preceding three (3) years that were audited or prepared by a certified public accountant; or (b) tax returns for the preceding three (3) years. Lessee shall submit a full and detailed statement of their true financial condition as of January 1 of the year preceding the date of the Option Notice, or as recent as possible if that date is not available. The statement shall include the Lessee's assets, liabilities and net worth, including the availability of and operation capital and its source. If the Lessee plans to use borrowed capital, then the amount of borrowed capital proposed for the redevelopment, rehabilitation, and development of the parcel or parcels, improvements and operation, and its source and terms of repayment must be included in the financial statement.

1.2.5. Notwithstanding the above, the Option shall expire on the last day of the 7th Lease Year from the Commencement Date.

1.2.6. Notwithstanding the above, prior to Lessee's exercise of the Option, City reserves the right to use the Parcel 2 and/or Parcel 3, or allow a third-party use of Parcel 2 and/or Parcel 3, for an interim use (for example: parking, storage, special short-term events, etc.), provided City agrees not to use Parcel 2 or Parcel 3 for any use that would unreasonably interfere with the Lessee's use of the Premises or Lessee's development of Parcel 2 or Parcel 3 as currently provided in **Exhibit "B"** General Development Plan, attached hereto, nor enter into any lease or interim use that cannot be terminated within sixty (60) days from the City's receipt of the Option

Notice.

1.3. First Right of Refusal - Additional Parcel. If during the first ten (10) years of the Term, as defined herein, City desires, in its sole discretion, to lease the Additional Parcel then, provided Lessee is not in default of any of the terms or conditions of this Lease, City shall notify and offer Lessee, in writing, the exclusive right to negotiate an amendment to the Lease to add the Additional Parcel to the Premises pursuant to the terms of this Section 1.3 ("First Right of Refusal") and without need for further resolution by City Council. An amendment to this Lease pursuant to this First Right of Refusal shall include only the addition of the Additional Parcel to the Premises, the increased rental rate for the addition of the Additional Parcel to the Premises and any then current City lease requirements. Lessee's rental obligation pursuant to the addition of the Additional Parcel to the Premises shall commence immediately upon Lessee taking possession of the Additional Parcel, but no later than two (2) years from the First Right of Refusal Notice, as defined herein.

1.3.1. If City notifies the Lessee of its intent to offer Lessee the First Right of Refusal, Lessee shall have thirty (30) business days to notify City, in writing, that it intends to exercise its First Right of Refusal ("First Right of Refusal Notice").

1.3.2. Upon City's receipt of the First Right of Refusal Notice, City and Lessee shall designate an appraiser satisfactory to both City and Lessee to conduct an appraisal of the Additional Parcel to determine the market rental value. City and Lessee shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of the parties from a list of City-approved appraisers ("Appraiser List"); the selection shall be made within ten (10) business days after Lessee's receipt of the Appraiser List. If the parties do not mutually select an appraiser within the 10-day period, then City and Lessee shall each select a qualified appraiser from the Appraiser List who in turn shall select a third qualified appraiser from the Appraiser List to perform the appraisal. The appraiser's determination of the market rental value shall be binding on the City and Lessee. In determining the market rental value of the Additional Parcel, City and Lessee agree that the appraiser will be directed to establish these values as vacant land used for aeronautical-related purposes using general aviation airports land as comparables. This appraisal shall be completed no later than ninety (90) days from the date of the First Right of Refusal Notice.

1.3.3. The parties shall have 120 calendar days from City receipt of the First Right of Refusal Notice to negotiate the terms of the amendment to the Lease pursuant to the First Right of Refusal, hereafter referred to as "Exclusive Right to Negotiate Period" or "ERN".

1.3.4. During the ERN, Lessee shall, at its sole cost and expense, prepare an amended General Development Plan to include the Additional Parcel for the review and approval by the City. This amended General Development Plan shall contain, at a minimum, the following:

1.3.4.1. A site and floor plan showing the general location of all of the proposed capital improvements and/or major equipment on the Additional Parcel including the schedule of all work, a description of any demolition proposed, narrative description, plot plan, and compatibility of the improvements with the entire Airport layout plan.

1.3.4.2. Detailed construction drawings that will be submitted to the City for construction permits that show the types, dimensions and locations of all proposed improvements and facilities.

1.3.4.3. Detailed construction costs for all improvements planned on the Additional Parcel.

1.3.4.4. Detailed construction schedule for all improvements planned on the Additional Parcel.

1.3.4.5. A proposed operating plan for the Additional Parcel, which shall include at a minimum the following: proposed uses; hours of operation; fees and charges, if any; proposed services; and/or, from Lessee's perspective, benefit the community including a description of how the Lessee will operate, the community need that will be met, and the estimated number of clients that will be served.

1.3.4.6. Pro-forma financial statements to include balance sheets, income statements and cash flow statements and should be based on one (1), five (5) and ten (10) year periods for the operation of the Additional Parcel.

1.3.4.7. Together with the First Right of Refusal Notice, Lessee must submit either: (a) financial statements for the preceding three (3) years that were audited or prepared by a certified public accountant; or (b) tax returns for the preceding three (3) years. Lessee shall submit a full and detailed statement of their true financial condition as of January 1 of the year preceding the date of the ERN, or as recent as possible if that date is not available. The statement shall include the Lessee's assets, liabilities and net worth, including the availability of and operation capital and its source. If the Lessee plans to use borrowed capital to improve the Additional Parcel, then the amount of borrowed capital proposed for the redevelopment, rehabilitation, and development of the Additional Parcel, improvements and operation, and its source and terms of repayment must be included in the financial statement.

1.3.5. If Lessee fails to notify City of its intent to exercise its First Right of Refusal within the thirty (30) business day period after the City gives notice of its intent to offer the First Right of Refusal or if the parties fail to reach an agreement during the ERN, then Lessee shall forfeit its First Right of Refusal; provided, however, if Lessee and the City are diligently working toward finalizing the amendment, or if any material delays occur during the ERN solely as a result of

action by the City, the City may, in its sole discretion, agree to negotiate a reasonable extension of the ERN to finalize the amendment.

1.3.6. Notwithstanding the above, Lessee's First Right of Refusal shall expire on the last day of the 10th Lease Year from the Commencement Date.

1.3.7. Notwithstanding the above, City reserves the right to use the Additional Parcel or allow a third-party use of the Additional Parcel for an interim use (for example: parking, storage, special short-term events, etc.) prior to offering the Lessee the First Right of Refusal, provided City agrees not to use the Additional Parcel for any use that would unreasonably interfere with the Lessee's use of the Premises or Lessee's development of Parcel 2 or Parcel 3 as currently provided in **Exhibit "B"** General Development Plan, attached hereto.

1.4. Uses. It is expressly agreed that the Premises are leased to Lessee solely and exclusively for the following allowed uses ("Allowed Uses"): aircraft operations; aircraft engine and airframe build, aircraft repairs and maintenance, avionics installation and repair, aircraft painting, aircraft sales and rentals; aviation parts and accessories sales and rentals; selling aircraft parts, products, pilot supplies; aerial photography and video; flight instruction services; aircraft tours, sale of gift shop souvenirs, aircraft hangar and tie-down sales; rental, lease and management of hangars; the operation of aircraft charter and associated flight services; crew ready room, food concessions for aviation customers, food/beverage vending machines; conducting commuter or on demand operations; sale of aviation fuel and oil and related services including, without limitation, providing Fixed Based Operator ("FBO") industry-recognized "into" plane services; car rental, aviation insurance business; conference room and office building for use by Lessee and its aviation subtenants, aero-space engineering, wash rack(s), paid auto parking, all other uses associated with or incidental to general aviation operations, including operations of industry-recognized line service operations; special events ("Lessee Special Events") subject, in each instance, to prior written approval from the Airport Deputy Director for the specific Lessee Special Event, not to be unreasonably withheld, and to Lessee having secured all applicable local, state and federal approvals and permits (now existing or established in the future), including, but not limited to, a Special Event Permit from the City's Special Events Department, if applicable, and all required signoffs/permits from the City's Fire Department and/or other regulatory departments/agencies; and such other uses as may be first approved in writing by the City. Any use of the Premises by Lessee other than as permitted pursuant to this Section 1.4 shall constitute a default, and if such default is not cured by Lessee pursuant to Section 5 of this Lease, this Lease shall be subject to termination at the sole option of the City. Lessee further covenants and agrees to use the Premises continuously throughout the Term as permitted pursuant to this Section 1.4.

1.5. Future Allowed Use. At any time during the Term and provided Lessee is not in default of any of the terms and conditions of this Lease, Lessee shall have the option to add a restaurant ("Restaurant") with food and beverages services including on-sale general type 47 or on-sale general type 41 liquor to the Allowed Uses ("Restaurant Option") subject prior written approval of the City. The Restaurant Option shall be memorialized in an amendment to this Lease, without need for further resolution by City Council, under the terms and conditions contained in this Section 1.5. The amendment pursuant to this Restaurant Option shall include

only the addition of the Restaurant to the Allowed Uses, the increased rental rate for the operation of the Restaurant (which shall include an increase to Rent and the addition of a percentage rental rate structure), and any then current City lease requirements. Lessee's rental obligation pursuant to the addition of the Restaurant to the Allowed Uses shall commence immediately upon Lessee operating the Restaurant, but no later than two (2) years from the City's approval of the Restaurant Option.

In order to exercise the Restaurant Option, Lessee must first submit the following for City review and approval, in the City's sole discretion: 1) all applicable local, state and federal approvals and permits (now existing or established in the future), including, all required signoffs/permits from the City's Fire Department and/or other regulatory departments/agencies; 2) a written statement of the proposed Restaurant use along with payment for the City's standard processing fee and one half of the cost of the appraisal for the addition of the Restaurant to the Allowed Uses required under this Section 1.5; and 3) an amended General Development Plan, prepared by Lessee at its sole cost and expense, to include the improvements to be added pursuant to the Restaurant Option. This amended General Development Plan shall contain, at a minimum, the following:

1.5.1. A site and floor plan showing the general location of the Restaurant and all of the proposed capital improvements and/or major equipment on the Premises, including the schedule of all work, a description of any demolition proposed, narrative description, plot plan, and compatibility of the improvements with the entire Airport layout plan.

1.5.2. Detailed construction drawings that will be submitted to the City for construction permits that show the types, dimensions and locations of all proposed improvements and facilities needed for the Restaurant.

1.5.3. Detailed construction costs for all improvements planned on the Premises pursuant to the Restaurant Option.

1.5.4. Detailed construction schedule for all improvements planned pursuant to the Restaurant Option.

1.5.5. A proposed operating plan for the Restaurant, which shall include at a minimum the following: proposed uses; hours of operation; fees and charges, if any; proposed services; and/or, from Lessee's perspective, benefit to the community including a description of how the Lessee will operate, the community need that will be met, and the estimated number of clients that will be served.

1.5.6. Pro-forma financial statements to include balance sheets, income statements and cash flow statements and should be based on one (1), five (5) and ten (10) year periods for the operation of the Restaurant.

Upon City's receipt of the above-described documents, City and Lessee shall designate an appraiser satisfactory to both City and Lessee to conduct an appraisal of the addition of the

Restaurant to the Allowed Uses to determine the market rental value. City and Lessee shall equally share the cost of the appraisal. The appraisal shall be performed by a qualified appraiser selected by mutual agreement of the parties from a list of City-approved appraisers ("Appraiser List"); the selection shall be made within ten (10) business days after Lessee's receipt of the Appraiser List. If the parties do not mutually select an appraiser within the 10-day period, then City and Lessee shall each select a qualified appraiser from the Appraiser List who in turn shall select a third qualified appraiser from the Appraiser List to perform the appraisal. The appraiser's determination of the market rental value shall be binding on the City and Lessee. In determining the market rental value of adding the Restaurant to the Allowed Uses, to include both a base rent and a percentage rent structure, City and Lessee agree that the appraiser will be directed to establish these values based on a restaurant using similar general aviation airport restaurant sites as comparables. This appraisal shall be completed no later than ninety (90) days from the date of the appraiser was selected by the parties under this Section.

1.6. Duties and Prohibited Conduct. The Allowed Uses and the facilities and services provided for under this Lease are to serve the general public. Lessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the reasonable opinion of the City, to other airport operations of similar type. For the purposes of this subsection, "competent and efficient manner" shall mean demonstrated ability in the management and operation of an FBO aviation business and such other Allowed Uses conducted on the Premises from time to time during the Term (as defined in Section 2.1, below), consistent with industry standards and best management practices. Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination from the City that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination, City will respond to Lessee's request for written determination within sixty (60) days from Lessee's written request. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises for any use which Lessee does not have confirmation that said use is an Allowed Use; or to use the Premises, even for an Allowed Use, if that use will create waste or a nuisance. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods or services which, in the sole discretion of City, are inconsistent with the Allowed Uses of the Premises pursuant to this Lease. Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the Allowed Uses specified above, and shall comply with all local, State and Federal laws and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee and Lessee's employees, agents, sublessors, permittees, contractors and invitees ("Lessee's Parties"), only within receptacles provided by Lessee and located in the areas designated by City.

1.7. Compliance with Laws. Lessee, at Lessee's sole expense, shall procure, maintain and hold available for City's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business and any of the Allowed Uses. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the County of San Diego, of the City, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations,

orders, covenants and restrictions of record, and requirements regulating the use of the Premises in effect during the Term. The final judgment of any court of competent jurisdiction (subject to Lessee's right to appeal such decision), or the admission of Lessee or of any of Lessee's parties in any action or proceeding against them or any of them, whether or not the City is a party to such action or proceeding, that Lessee, or any of such Lessee's parties, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between City and Lessee for purposes of this Lease.

Lessee's duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use thereof ("Land Use Regulations"). City's execution of this Lease shall in no way be deemed to constitute a determination by City that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it imply any such conclusion by City, even if City is the agency which enacts or implements the Land Use Regulations applicable to the Premises.

1.8. Related Council Actions. The City's grant and execution of this Lease shall not be deemed to obligate either City or the City Council to authorize, agree with, or undertake any other governmental agency, board, or commission's discretionary action with regard to development and operation of the Premises. The term "discretionary action" includes but is not limited to re-zonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises. Lessee shall be solely responsible for processing all land use, development, and construction approvals required for the use, occupancy and development pursuant to the General Development Plan, set forth in Section 10.1 below, of the Premises. This Lease shall not be interpreted by any decision-maker on any City-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

1.9. Quiet Possession. By paying the Rent, as defined below, and performing the covenants and agreements herein, Lessee shall at all times during the Term peaceably and quietly have, hold, and enjoy the Premises. If for any reason during the Term, Lessee is permanently or temporarily dispossessed through action or claim of a title superior to City's, this Lease shall not be voidable, nor shall City be liable to Lessee for any loss or damage resulting therefrom, but Lessee shall: a) be entitled to a, in writing, proportionate reduction of the Rent otherwise payable for the period or periods during which Lessee is prevented from enjoying quiet and peaceable possession of all or a portion of the Premises; and b) Lessee may terminate the Lease for that portion of the Premises that Lessee is prevented from enjoying quiet and peaceable possession for a period of ninety (90) consecutive days or more.

1.10. Easements and Reservations. City hereby reserves all right, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises, together with the right to store and recapture water from the soils beneath the surface of the Premises

City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for such utilities, thoroughfares, or access as it deems

advisable for the public good. Provided however, no right reserved by City in this Section 1.10 shall be so exercised by City as to unreasonably interfere (i.e., Lessee is completely prevented from using the area affected) with Lessee's operations hereunder. City agrees that should the exercise of any of the rights reserved by City in this Section 1.10 unreasonably interfere with the use of any or all of the Premises by Lessee, the Rent shall be reduced as follows; for every full day of such unreasonable interference, City shall credit Lessee one (1) day of Rent in proportion to the area affected.

City has the right to enter the Premises for the purpose of making repairs to, or developing, municipal resources and services.

Any injury that may result from the percolation, storage and/or recapture of water from the soil beneath the surface of the Premises shall not be considered unreasonable interference, provided, however, that the City will reimburse Lessee for physical damages or operational damages, if any, to the improvements located on the Premises resulting from City exercising the rights reserved in this Section 1.10 provided Lessee took all reasonable measures to protect against such physical damages and operational damages. Such reimbursement may include a reduction in the Rent proportionate to the amount of physical damage or operational damage as determined by City. City will pay the costs for maintenance and repair of all City installations made pursuant to these reserved rights.

1.11. Operation of Facilities. A regular schedule of days and hours of operation for the facilities on the Premises shall be established by Lessee to best serve the public, as set forth in The City of San Diego Airports Division Minimum Operating Standards on file with the Airports Division's Operations Office, as may be amended from time to time

1.12. Rates and Charges. All charges for merchandise and services or facilities on the Premises shall be comparable to amounts charged by other vendors for similar services in San Diego County; provided, however, Lessee shall not be required to sell merchandise or provide services and facilities at a loss.

1.13. Political Activities. The Premises shall be used exclusively for the Allowed Uses. 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.

1.14. Parking. Lessee shall provide automobile parking for its employees, customers and sublessees within the Premises. Lessee shall not knowingly allow said parking on non-Premises Airport property without the prior written approval of City.

1.15. No Warranty. City does not warrant that the Premises are suitable for the purposes for which they are leased as stated herein.

1.16. Signage and Flag Rights. Lessee at Lessee's sole cost and expense shall have the right to (i) erect a monument sign at the entrance to Parcel 1 subject to City's prior written

approval and (ii) to erect a flag pole and fly an American Flag at a safe location along the parking lot side of the proposed hangar entrance to Parcel 1, the location of which shall be approved by City in its reasonable discretion.

SECTION 2. TERM

2.1. Term. The term of this Lease shall commence on the first date of occupancy by Lessee of the Premises ("Commencement Date"), and shall continue for fifty (50) years (the "Term"). Notwithstanding the foregoing the Commencement Date shall be no later than two (2) years from the Effective Date of this Lease. The Commencement Date shall be memorialized by City pursuant to the "Notice of Commencement Date" as attached hereto as **Exhibit C**. "Lease Year" as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12 month period thereafter during the Term

2.2. Option to Terminate the Lease. Lessee shall have the option, at Lessee's sole discretion, to terminate this Lease at any time after the last day of the 30th Lease Year ("Lease Termination Option"), conditioned upon Lessee providing City written notice of its intent to terminate the Lease no later than 18 months prior to the Lessee's proposed termination date.

2.3. Holdover. Any holding over by Lessee after expiration of the Term shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration of the Term constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect; provided, however, City shall have the right to make a Market Value Adjustment to the Rent (as defined in Section 3, below) and to terminate the holdover tenancy by providing Lessee with thirty (30) days prior written notice of City's intent to terminate (such that Lessee may effectively surrender the Premises to City as required by the terms of this Lease).

2.4. Quitclaim and Surrender of Lessee's Interest. On or before the Effective Date, Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises ("Premises Quitclaim Deed"). City may record the Premises Quitclaim Deed only on the expiration of the Term or earlier termination of this Lease. Upon an amendment to this Lease to add Parcel 2, Parcel 3, or the Additional Parcel, or in the event that City requires any other subsequent quitclaim deed for any addition to the Premises, Lessee or its successor in interest shall deliver the same within five (5) business days after receipt of written demand therefor.

At the expiration of the Term, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances. In the event of termination of this Lease by City prior to the end of the Term, any liens and encumbrances then existing against the Premises must be approved in writing by the City in order to be allowed to remain against the Premises. If such liens and encumbrances are not approved to remain against the Premises, Lessee shall be solely responsible for ensuring that all such liens and encumbrances are removed from the Premises within a reasonable time period not to exceed six (6) months. Upon either the expiration or earlier termination of the Term, Lessee shall surrender the Premises in good order, in a safe,

healthy, and sanitary condition and state of repair, ordinary wear and tear excepted, subject to the terms of Sections 9 and 10 below.

SECTION 3. RENT

3.1. Time and Place of Payments. Beginning on the Commencement Date, Rent, as defined herein, is due monthly in advance on or before the first day of each calendar month. All Rent payments shall be made payable to "City Treasurer" and mailed to:

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

or hand-delivered to:

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

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

3.2. Rent Amount. The initial monthly rent ("Rent") for the Premises shall be Eight Thousand Eight Hundred Four Dollars ($8,804.00). The Rent is subject to adjustment (pursuant to the CPI Index Adjustment Dates set forth in Section 3.2.1 below) based on the increases, if any, in the CPI (as defined in Section 3.2.1) or Market Value Adjustments (established as described in Section 3.3), of the Premises. All references to "acreage" are best-effort approximations and shall not be used to affect the rental structure or rental amounts set forth in this Lease or to be utilized in the future.

3.2.1. CPI Adjustments. On the sixth (6^{th}) anniversary of the Commencement Date and every ten (10) years thereafter (the "CPI Adjustment Dates"), Rent shall be adjusted upward, and only upward, if applicable, to reflect any increases in the Consumer Price Index (the "CPI"). The index used will be the CPI for "All Urban Consumers" for Los Angeles, Riverside, Orange County (1982-84 = 100) of the U.S. Department of Labor, Bureau of Labor Statistics. If the CPI is no longer published, the index for adjustment will be the U.S. Department of the Labor's "Comprehensive Official Index" most comparable to the aforesaid index. In the event that such indices are no longer published, then another comparable index or source of such information generally recognized as authoritative will be substituted in the City's discretion. Regardless of the index publication dates, the effective dates of Rent adjustments shall be as specified in this Section.

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

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

3.2.2.2. The "current index" shall be an average of CPI index figures for the months of _____, _____ and _____ immediately preceding the adjustment date.

3.2.2.3. The "base figure" for the first such adjustment shall be an average of the CPI index figures for the months of , _____, and _____.

3.2.2.4. The "base figure" for each successive adjustment shall be an average of the CPI index figures for the months of_____ and _____ immediately preceding each of the CPI Adjustment Dates or each of the Market Value Adjustment Dates, as City may determine in accordance with Section 3.3 Market Value Adjustments.

3.3. Market Value Adjustments. In addition to the Rent adjustment set forth in Section 3.2, on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter (the "Market Value Adjustment Date(s)"), City shall adjust the Rent in accordance with a "Market Value Adjustment" (as defined and calculated as follows):

3.3.1. Commencing one hundred eighty (180) days prior to the applicable Market Value Adjustment Date, City and Lessee shall agree upon the Market Value Adjustment for the Premises. If the Parties are unable to agree upon the Market Value Adjustment within one hundred twenty (120) days after the applicable Market Value Adjustment Date, then the Market Value Adjustment shall be established by a qualified appraiser selected by mutual agreement of the parties from a list of City-approved appraisers ("Appraiser List"); the selection shall be made within ten (10) business days after Lessee's receipt of such list. If the parties do not mutually select an appraiser within the 10-day period, then City and Lessee shall each select a qualified appraiser from the Appraiser List who in turn shall select, within ten (10) business days a third qualified appraiser from the Appraiser List to perform the appraisal. The appraiser's determination of the market rental value shall be binding on the City and Lessee. In determining the market value of the parcels and the market rental value of parcel and/or parcels, City and Lessee agree that the appraiser will be directed to establish these values as vacant land used for aeronautical-related purposes using general aviation airports land as comparables.

Notwithstanding the foregoing, in no event shall the adjusted Rent, established by

periodic appraisals as provided for herein, be less than the Rent in existence immediately prior to any Market Value Adjustment Date.

3.4. Security Deposit. A security deposit shall be paid to the City by Lessee in the sum of Twenty-Six Thousand Four Hundred Twelve Dollars & 00/100 ($26,412.00) (the "Security Deposit") before the Effective Date of this Lease. All or any portion of the Security Deposit shall be available unconditionally to City for correcting any default or breach of this Lease by Lessee or Lessee's successor's 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. Upon completion of the required Parcel 1 improvements described in **Exhibit "B"** General Development Plan, and provided there are no liens recorded related to those Phase I improvements, the City shall return to Lessee the Security Deposit. There will be no further requirement of a Security Deposit unless Lessee has failed to pay Rent in a timely manner after notice from the City and ability to cure in which case City can require a security deposit equal to three (3) month's rent be deposited with the City. The Security Deposit shall take one of the forms set out below:

3.4.1. Cash. All cash shall be deposited in a City fund, and City shall not be liable to Lessee for any interest thereon. Provided further, any interest earned by City from such deposit or redeposit shall be and remain the property of City.

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

Lessee will maintain the Security Deposit at all times required by this Lease. Failure to do so shall be considered a default and is grounds for immediate termination of this Lease, provided that the City may not terminate this Lease without providing Lessee with a 30-day notice and cure period to remedy any such failure to maintain the Security Deposit.

In the event City utilizes all or any portion of the Security Deposit as a result of Lessee's default, Lessee shall redeposit the Security Deposit with the City within ten (10) days of notice from City to bring the Security Deposit up to the full specified amount.

The Security Deposit or any balance thereof will be returned to Lessee in compliance with California law following expiration or earlier termination of this Lease and/or as provided for above in this Section 3.4, provided Lessee has faithfully complied with all terms, covenants, and conditions hereof or has cured any default under this Lease.

The Security Deposit may be increased by City proportionate to any increased performance or rental liability of Lessee upon sixty (60) days prior written notice from City of such required increase.

3.5. City's Right to Inspect and Audit. Lessee shall keep all of its books of account, records and supporting documentation needed to confirm the accuracy of any payments made or due to the City stemming from or related directly or indirectly to this Lease including documentation related to the number of gallons of fuel purchased for the calculation of flowage fees throughout the Term plus five (5) years; provided, however, City shall have no right to inspect Lessee's books of account, records and supporting documentation with respect to other aspects of Lessee's business not related directly or indirectly to this Lease. Lessee shall make the books, records and documentation required pursuant to the immediately preceding sentence available for inspection and audit by City in one location within the County of San Diego. Lessee shall maintain separate books and records related to Lessee's possession, use and/or occupancy of the Premises. Upon reasonable prior notice, City may inspect and audit the operation of Lessee's business in connection with its possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with Lessee's possession, use and/or occupancy of the Premises as City may deem necessary, in its sole discretion, to protect City's rights under this Lease. If required by competent governmental authority, Lessee shall promptly deliver to City, at City's reasonable request and at Lessee's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to Lessee's possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with Lessee's possession, use and/or occupancy of the Premises. City's right to audit Lessee's books and records shall terminate for each Lease Year on the date five (5) years after the end of that Lease Year.

3.5.1. Audit Cost. The full cost of each City audit shall be borne by City, unless one or both of the following conditions exists, in which case Lessee shall reimburse City for all costs of the audit:

3.5.1.1. If an audit reveals an underpayment of Rent of more than five percent (5%) in any audited Lease Year, calculated as the difference between the Rent reported as payable by Lessee and the Rent payable as determined by the audit;

3.5.1.2. If Lessee has failed to maintain true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

3.5.2. Rent Deficiency and Overpayment. Any deficiency in the payment of Rent and any other monies owing under this Lease, as determined by the audit shall be subject to all penalties and remedies provided to City under this Lease. City shall credit any overpayment determined by the audit, without interest, against future Rent payable under this Lease. If no future Rent is then due under this Lease, City shall refund to Lessee any overpayment determined by the audit, without interest, within sixty (60) days after City's certification of the audit.

3.6. Delinquent Rent. If Lessee fails to make any payment of Rent and any other monies owing under this Lease when due, Lessee shall pay to City, in addition to the unpaid amount, a late charge of five percent (5%) of the unpaid amount, which shall be deemed additional rent ("Additional Rent"). If any of such payment remains unpaid after fifteen (15)

days of its due date, Lessee shall pay to City an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be Additional Rent. Notwithstanding the foregoing, in no event shall the charge for late payment of Rent be less than Twenty-Five Dollars ($25). After thirty (30) days past due, unpaid amounts due City under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. Lessee shall pay to City any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by City shall neither constitute a waiver of Lessee's breach or default with respect to the late payment nor prevent City from exercising any other rights and remedies available at law or in equity. As required by law, Lessee is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due City are not paid when due, subject to City providing Lessee with fifteen (15) days' prior written notice of a negative credit report being submitted to a credit reporting agency.

3.7. Unauthorized Use Charge. Lessee shall pay to City one hundred percent (100%) of the net receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged Lessee by competent governmental authorities. Such unauthorized use charge shall be payable to City within thirty (30) days after Lessee receives the gross receipts. No unauthorized use charges shall satisfy or be a credit against any other Rent obligation of Lessee's under this Lease. The unauthorized use charge shall otherwise be considered "Rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and City's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of City's rights under this Lease. If Lessee makes any use of the Premises that is not allowed by this Lease, such use shall constitute a default under this Lease.

SECTION 4. ASSIGNMENT AND SUBLEASING

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

4.2. Assignment and Subletting. Lessee shall not assign this Lease or any interest therein, 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 in each instance, not to be unreasonably withheld, conditioned or delayed. A consent to assignment, subletting, occupation, or use by any 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 prior written consent of the City. "Assignment" for the purposes of this Lease shall include, without limitation, any transfer of any interest in this Lease by Lessee or by any partners, principals, or stockholders, as the case may

be, from the original Lessee, its general partners or principals or controlling shareholders.

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 Lease which are applicable to the rights acquired. The City shall require, as a condition to approval of any sublease of the majority portion of the leasehold, or any assignment, that Lessee pay additional consideration to City, as set forth in Section 4.3, Equity Sharing, hereof, payable as of the effective date of such proposed sublease of the majority portion of the leasehold, or any assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with then current City lease requirements. Pursuant to City Charter Section 225, the City, must review and approve every person or entity which will have an interest in this Lease.

Prior to the Effective Date of this Lease, Lessee shall provide City with all applicable information therefor, and pay all City fees, for all subleases for which Lessee seeks City's consent. Any unconsented to sublessees occupying space on the Premises after the Effective Date shall subject Lessee to a default under this Lease and shall subject this Lease to termination.

4.3. Equity Sharing. Lessee agrees that as additional consideration for this Lease, and in addition to all other Rents payable to City, City shall be entitled to participate in any "equity" received by Lessee during the Term. For purposes of this paragraph, "equity" shall mean any amount paid to Lessee as consideration for an assignment of this Lease or Major Sublease of the Premises; provided, however, equity shall not include any base rents or additional rents payable to Lessee by its subtenants. "Major Sublease" shall mean any sublease or series of subleases entered into by Lessee that constitute a single related transaction which individually or cumulatively involves twenty-five (25%) percent or more of the total acreage of the Premises, except for Permitted Transactions, as defined in this Section 4.3. In addition, equity shall include any proceeds of a loan secured by Lessee's leasehold interest in the Premises which are not expended for permanent leasehold improvements or to refinance any existing loan used for permanent leasehold improvements. In the event of any action resulting in "equity" as described above, Lessee agrees that City shall be entitled to a payment equal to two percent (2%) of any such equity. For purposes of calculating such payment, equity shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. Lessee also agrees that City shall be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings, hangars or other structures, or any portion thereof on the Premises upon the Effective Date of this Lease. City shall also be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings, hangars or other structures, or any portion thereof built on the Premises pursuant to **Exhibit "B"** General Development Plan, Prior to City's consent to any assignment, Major Sublease 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 a written acknowledgment of accuracy of Lessee's written statement from the proposed assignee, sublessee or lender of the amount due City. The sum due City shall be payable in full to City concurrent with the closing of the transaction, whether it be an assignment, a sublease or a refinancing. In the case of a Major Sublease which provides for periodic payment of rent, City shall be entitled to ten percent (10%) of the difference between the Rent paid by Lessee to City and the rent paid by the sublessee to Lessee, which amounts shall be added to the Rent paid to City. 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 the following "Permitted Transactions":

(a) an assignment or transfer of a beneficial interest in Lessee's leasehold estate resulting from a devise, bequest, or intestate succession for the benefit of Lessee's principal owner or chief executive officer (if Lessee is other than an individual);

(b) such other assignment or transfer due to a reorganization or other activity of Lessee which the City reasonably determines that a substantial change has not occurred with respect to the direct or indirect legal and equitable ownership interests in Lessee, in the legal or fictitious name of the Lessee, as there is no material change in the equity, in beneficial use of or legal title to the leasehold as an asset or the income produced thereby; or

(c) such other assignment if the total consideration paid to Lessee is used exclusively for the construction of any of the City-approved improvements built on the Premises pursuant to **Exhibit "B"** General Development Plan, as may be amended.

(d) a one-time Major Sublease, as defined in this Section 4.3, to Shier Aviation Corporation, a California Corporation, as that entity is owned and organized as of the Effective Date of this Lease.

4.4. Encumbrance. Subject to receipt of the City's prior written consent, which shall not be unreasonably withheld, Lessee may encumber its leasehold estate, and those permanent improvements that Lessee has constructed on the Premises during the Term of this Lease, by a deed of trust, mortgage, chattel mortgage, or other security instrument to secure 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 Premises in accordance with **Exhibit "B"** General Development Plan. However, no more than fifteen percent (15%) of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: Soft Costs, as defined herein, related to off-site improvements for service of the Premises, Soft Costs related to 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 commonly referred to in the construction industry as "soft costs" ("Soft Costs"). For clarification purposes the above-referenced fifteen percent (15%) encumbrance restriction does not apply to on-site and/or off-site construction costs and improvements approved by the City as provided herein.

All encumbrances of the Premises or of any permanent improvements thereon must first be approved in writing by the City, and shall also be for the exclusive purpose of development of the Premises. In the event any such approved deed of trust or mortgage or other security agreement should at any time be in default and be foreclosed or transferred in lieu of foreclosure, City will accept the City-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, in the reasonable opinion of City, the nominee is a reputable, qualified, and financially responsible person or entity. Any deed of trust, mortgage, or other security agreement 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.

4.5. Charter Section 225. Pursuant to City Charter Section 225, Lessee and each of its assignees and majority subtenants shall make a full and complete disclosure of the name and identity of all persons and/or entities directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Each and every person and/or entity proposed to have an interest in this Lease shall be subject to City's review and approval, in City's sole discretion.

SECTION 5. DEFAULT AND REMEDIES

5.1. Default. Lessee shall be in default of this Lease if any of the following occurs:

5.1.1. Lessee fails to make any payment required under this Lease within five (5) days of when such payment is due;

5.1.2. Lessee breaches any of its obligations under this Lease, other than those requiring payment to City, and fails to cure the breach within thirty (30) days following written notice thereof from City, or if such breach is not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

5.1.3. Lessee voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

5.1.4. Lessee is adjudicated a bankrupt; or

5.1.5. Lessee makes a general assignment for the benefit of creditors.

5.2. Remedies. Upon Lessee's default, City may, at its option, give Lessee, or any person claiming rights through Lessee, (1) a written "Three Day Notice to Pay or Quit," for failure to make required payments, or (2) a "Notice of Termination" for defaults not requiring payment to City, in order that City may seek to terminate the Lease and all rights of Lessee, and all persons claiming rights through Lessee, to the Premises or to possession of the Premises.

Upon termination, City may enter and take possession of the Premises, and may recover from Lessee the sum of:

5.2.1. the worth at the time of award any unpaid rent that was due at the time of termination;

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

5.2.3. the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that Lessee affirmatively proves could be reasonably avoided;

5.2.4. any other amount necessary to compensate City for all the detriment proximately caused by Lessee's breach and default; and

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

As used in clauses 5.2.1 and 5.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 5.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include Rent and any other amounts payable by Lessee under this Lease.

5.3. Default if Leasehold is Encumbered. If there is a City-approved encumbrance on Lessee's leasehold interest, City shall give the mortgagee or beneficiary written notice of Lessee's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. City may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then City may exercise any of the following options:

5.3.1. City may correct the default and charge the costs to the account of Lessee, which charge shall be due and payable on the date that Rent is next due after City's notice of such costs to Lessee, and mortgagee or beneficiary;

5.3.2. City may correct the default and pay the costs 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 or to pay the costs of correction performed by or at the direction of City; and,

5.3.3. 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 shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by City. City may, as an alternative, substitute the terminated Lessee with a new lessee reasonably satisfactory to the mortgagee or beneficiary. Lessee shall pay to City all reasonable costs incurred by City in re-leasing to a new lessee.

If the default is non-curable by Lessee, then any lender holding a beneficial interest in the Premises, 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 the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving City's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, City 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 the curing of the default, if possible, by mortgagee or beneficiary. In that event, Lessee shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

5.4. Abandonment by Lessee. If Lessee abandons the Premises, this Lease shall continue in effect as long as City does not terminate this Lease, and City may enforce all of its rights and remedies under this Lease, including without limitation the right to recover Rent as it becomes due, plus damages.

5.5. Waiver. Any waiver by City of a breach or default by Lessee shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by City. City's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. City's acceptance of any rents shall not be a waiver of any default preceding such payment. Lessee acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by City to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but City shall at all times, have the legal right to require the cure of any breach or default. City's acceptance of a partial payment of Rent shall not constitute a waiver of the balance of the Rent payment due.

SECTION 6. EMINENT DOMAIN

6.1. Eminent Domain. If all or part of the Premises is 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:

6.1.1. In the event the entire Premises are taken, this Lease shall terminate on the date of

the transfer of title or possession to the condemning authority, whichever first occurs.

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

6.1.3. In the event of a partial taking, if, in the opinion of City, the remaining part of the Premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. Rent shall be equitably reduced to reflect the portion of the Premises taken.

6.1.4. 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 owned by Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

6.1.5. 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.

6.1.6. The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

SECTION 7. INDEMNIFICATION AND INSURANCE

7.1. Indemnity. Lessee agrees to defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Lessee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the use, occupancy, management, development and/or operation of the Premises or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that Lessee's duty to indemnify and hold harmless City hereunder shall not include any claims or liability arising from the sole negligence or willful misconduct of the City, its agents, officers, or employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Lessee shall pay all of the reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

7.2. Insurance.

7.2.1. Lessee shall deliver to City a current certificate of insurance and relevant endorsements for:

(a) Commercial General Liability Insurance, providing coverage for the damages due to bodily injury, including death, personal injury, and property damage with limits of at least Ten Million Dollars ($10,000,000) per occurrence, subject to an annual aggregate of at least Twenty Million Dollars ($20,000,000), products and completed operations and if applicable, use of unlicensed vehicles that in any way arise from the use of the Premises and operations of activities of the entity. Non-licensed vehicles operated on the movement area will require coverage in an amount not less than Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. Hangar Keeper's Insurance, sufficient to cover replacement cost and aircraft hangared for others, but no less than Ten Million Dollars ($10,000,000).

(b) Fire, extended coverage, and vandalism insurance policy on all City owned insurable property on the Premises, in an amount to cover one hundred percent (100%) of the replacement. 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. Lessee shall submit to the City recommendations and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.4, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to City has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

(c) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars ($1,000,000) per occurrence or Two Million Dollars ($2,000,000) per occurrence for automobiles operated on airside. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.

(d) Workers' Compensation Insurance, as required by the laws of the State of California for all of Lessee's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars ($1,000,000).

(e) Aircraft Liability Insurance, in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence with respects to turbine powered aircraft and One Million Dollars ($1,000,000) per occurrence with respects to piston powered aircraft.

(f) Environmental Liability Insurance, providing coverage for gradual, sudden and accidental discharge or spill of pollutants including first party clean up and remediation of the Premises; wrongful delivery or misdelivery of fuel; loading and unloading of fuel to and from the Aboveground Storage Tank (AST) or Mobile Storage Tank (MST).

7.2.2. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

7.2.3. Primary and Non-Contributory. Insurance policies shall be endorsed such that that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the Term and any extended use.

7.2.4. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

7.2.5. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Lessee and must be disclosed and acceptable to City at the time evidence of insurance is provided.

7.2.6. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, Lessee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.

7.2.7. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Lessee thirty (30) days prior written notice. Lessee shall also obtain any additional insurance required by City for new improvements, changed circumstances, or City's reasonable re-evaluation of risk levels related to Lessee's use of the Premises.

7.2.8. Accident Reports. Lessee shall immediately report to City any accident causing property damage or injury to persons on the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

7.2.9. Causes of Loss - Special Form Property Insurance. Lessee shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of Lessee's insurable property on the Premises, excepting wells, irrigation piping, and plant material, in an amount to cover one hundred percent (100%) of the

replacement cost. Lessee shall deliver to City a certificate of such insurance.

SECTION 8. WASTE, DAMAGE OR DESTRUCTION

8.1. Waste, Damage or Destruction. Lessee agrees to give notice to City of any fire or other damage that may occur on the Premises within twenty-four (24) hours of the occurrence of such fire or damage. Lessee agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage,

Unless an individual situation calls for the immediate repair and/or restoration of the Premises (to be determined by City in its sole discretion), 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.

SECTION 9. IMPROVEMENTS, ALTERATIONS, MAINTENANCE AND REPAIRS

9.1. Acceptance of Premises. By signing this Lease, Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that the Premises are in the condition called for by this Lease, that City has performed all work with respect to the Premises, and that Lessee does not hold City responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.

9.2. Entry and Inspection. City reserves and shall always have the right, but not the obligation, to enter said Premises, following reasonable prior notice to Lessee (except in the case of an emergency), for the purpose of viewing and ascertaining the condition of the same, to protect its interests in the Premises, to inspect the operations conducted thereon or to perform any work thereon (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) the City may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from City, and (c) the City may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any City-constructed or owned facilities on or off of the Premises or at the Airport; provided that Lessee may require any person(s) entering the Premises in accordance with this Section 9.2 to comply with any health and safety regulations which exist

in connection with the operations at the Premises. No exercise by City of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from City for any injury or inconvenience occasioned thereby. If such entry or inspection by City discloses that the 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.

9.3. Maintenance. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following, as applicable: all roofs; all heating, ventilation and air conditioning systems; all mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locking and closing devices; all interior window sashes, casements and frames; doors and door frames; floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to prior written approval by the City. Upon surrender of the Premises, Lessee shall deliver the Premises to City in good order, condition and state or repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall be responsible for completing all work, at its sole cost and expense, or reimbursing City (including all costs and expenses, including attorney fees, incurred to ensure the completion of the work) for all work, necessary to bring the Premises back to good order, safe, healthy, and sanitary condition and state of repair (excepting ordinary wear and tear) upon the surrender of the Premises to City. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly and first-class condition.

9.4. Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to City, City shall have the right, upon giving Lessee ten (10) days written notice of its election to do so, to make such repairs or replacements or to perform such maintenance on behalf of and for the account of Lessee. If City makes or causes any such maintenance, repairs or replacements to be made or performed, as provided for herein, Lessee shall pay the cost thereof to City, as additional Rent, promptly upon receipt of an invoice therefor.

9.5. Annual Leasehold Compliance Surveys. In addition to City's right to enter the Premises pursuant to Section 9.2 Entry and Inspection, above, Lessee acknowledges and accepts City's right and intent to conduct periodic, but not more frequently than annual (unless

reasonable circumstances, to be determined by City in its sole discretion, determine the need for more than annual inspections), Leasehold Compliance Surveys ("Surveys"). The Surveys shall be scheduled at a mutually convenient time for City and Lessee, following written notice by City of its intent to conduct a Survey. The Survey will focus on, but not be limited to, the condition of all improvements on the Premises and proper maintenance thereof, building code compliance, compliance with all other laws, a verification of aircraft locations, and a verification of all subleases on the Premises. Lessee agrees to cooperate with City, or its authorized representative, during the Survey process and provide access to all areas on the Premises, both interior and exterior, including all aircraft storage hangars. In the event City, or its authorized agent, is not able to access all areas of the Premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow up Survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate City for the personnel cost of the follow up Survey at the rate of $50 for each hour of such follow up Survey. Refusal by Lessee to provide access to all areas of the Premises, and/or unreasonably delaying access to all areas of the Premises, shall be considered material breaches of this Lease and grounds for termination.

9.6. Building Inspections. City may, at City's sole cost and expense, cause all buildings and structures on the Premises to be inspected not less than every ten (10) years during the Term, beginning on the tenth (10th) Lease Year. Inspections shall be conducted by a licensed California civil or structural engineer selected by City. As required by Section 9.3, Maintenance, above, Lessee shall cause to be done such repair and maintenance work identified in the judgment of the inspector as being reasonably required, at Lessee's sole cost and expense. Any repair and maintenance work shall not be subject to rent credit to Lessee. Lessee shall submit copies of the inspection reports to the City not later than ten (10) calendar days after Lessee's receipt of same and shall seek City's prior written approval for all non-routine maintenance and/or capital repairs identified by the inspector(s).

9.7. Improvements. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without the prior written approval of the City, which shall not be unreasonably withheld. Further, Lessee agrees that structural or architectural design alterations to approved improvements, structures or installations may not be made on the Premises without the prior written approval of the City and such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in good order, safe, healthy, and sanitary condition and state or repair, including structural repair, restoration and replacement of damaged or worn improvements, or parts thereof, except as may be set forth in this Lease. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

9.8. Ownership of Improvements and Personal Property.

9.8.1. Any and all permanent improvements, in ground plant or tree material, in-ground irrigation and water wells, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee shall at expiration or earlier termination of this Lease 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

may otherwise be provided in this Lease.

9.8.2. If City elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, structures, and installations, City shall so notify Lessee a minimum of one (1) year prior to expiration of the Term (except in the case of an early termination due to default or other early termination event allowed pursuant to this Lease, in which case reasonable notice shall be given), and Lessee shall either: 1) quitclaim its interest in any or all improvements , in-ground plant or tree material, in-ground irrigation and water wells, structures, and installations to the Premises to a third party selected by City; or 2) remove all such improvements, in-ground plant or tree material, in-ground irrigation and water wells, structures and installations, as directed by City at Lessee's sole cost on or before lease expiration or earlier termination. If Lessee fails to remove any improvements, in-ground plant or tree material, in-ground irrigation and water wells, structures, and installations as directed, Lessee agrees to reimburse City for all costs and fees, including attorneys' fees, incurred by City involved with said removal and collecting reimbursement for said removal.

9.8.3. Lessee-owned machines, appliances, equipment, trade fixtures, and other items of personal property shall be removed by Lessee by the date of the expiration or earlier termination of this Lease. Any of said items which Lessee fails to remove will be removed and/or stored by City subject to California law, and Lessee agrees to reimburse City for all costs and fees, including attorneys' fees, incurred by City involved with said removal and/or storage and collecting reimbursement for said removal and/or storage.

9.8.4. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee agrees to reasonably repair all such damage or Lessee agrees to reimburse City for all costs and fees, including attorneys' fees, incurred by City involved with said repairs and collecting reimbursement for said repairs.

9.8.5. Any necessary removal by either City or Lessee which takes place beyond the expiration or earlier termination hereof shall require Lessee to pay rent to City at the Rent rate in effect immediately prior to said expiration or earlier termination. Said Rent rate will double for each 30-day period, or part thereof, that Lessee remains working at the Premises beyond the first sixty (60) days from the expiration or earlier termination date of this Lease.

9.8.6. Notwithstanding any of the foregoing, in the event Lessee desires to dispose of any of its personal property used in the operation of said Premises upon expiration or earlier termination of this Lease, then City shall have the first right to acquire or purchase said personal property.

9.9. Noxious Weeds, Pests, and Erosion. Lessee shall take all commercially reasonable corrective actions, to the satisfaction of City, to prevent the infestation of noxious

weeds, pests, and erosion throughout the entire Premises.

SECTION 10. GENERAL DEVELOPMENT PLAN AND IMPROVEMENTS

10.1. General Development Plan. Notwithstanding anything to the contrary contained herein, Lessee shall make those certain improvements to the Premises, within the required completion dates, as set forth in **Exhibit "B"** General Development Plan ("General Development Plan") and depicted on **Exhibit "B-1"** Master Leasehold Map attached hereto and made a part hereof. City and Lessee understand, acknowledge and agree that reasonable modifications of the General Development Plan may be necessary in connection with the processing of building permits and other approvals from the City of San Diego acting in its regulatory capacity, and any such modifications shall be subject to the prior written approval of City as Lessor under this Lease. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City, with the operation and maintenance of the transient ramp, with the monitoring and sampling of groundwater, or other monitoring components, and the public and other persons and organizations entitled to use of the same. Lessee shall secure City's prior written approval to commence work on the improvements set forth in **Exhibit "B"** General Development Plan and depicted on **Exhibit "B-1"** Master Leasehold Map.

10.1.1. Parcel 1 Permits and Approvals. Prior to commencing any work on the Parcel 1, in accordance with the General Development Plan, Lessee shall (1) submit development plans and all documents required by the applicable City departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work set forth in the General Development Plan, including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives or mitigation measures for purposes of CEQA. If Lessee fails to secure all required permits and approvals from the competent governmental authorities to commence work on Parcel 1 in accordance with the General Development Plan within five (5) years from the Effective Date, the parties shall terminate this Lease pursuant to a lease termination agreement in a form approved by the San Diego City Attorney, without the need for further City Council resolution.

10.1.2. Option(s) and First Right of Refusal Permits and Approvals. If Lessee exercises its Option for Parcel 2 and/or Parcel 3, or exercises the First Right of Refusal, then prior to commencing any work pursuant to the Option(s) or First Right of Refusal, in accordance with the General Development Plan, as may be amended, Lessee shall (1) submit development plans and all documents required by the applicable City departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work set forth in the General Development Plan applicable to the Option(s) or First Right of Refusal, including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of the Option(s) or First Right of Refusal does not foreclose all options, alternatives or mitigation measures for

purposes of CEQA. If Lessee fails to secure all required permits and approvals from the competent governmental authorities to commence work, pursuant to a successfully exercised Option(s) or the First Right of Refusal, within five (5) years from the effective date of each amendment pursuant to an Option(s) or the First Right of Refusal, the parties agree that the amendment for that Option(s) or First Right of Refusal shall be deemed void, without the need for further City Council resolution.

10.2. Liquidated Damages. The Parties agree that the damages to City resulting from Lessee's failure to complete the improvements identified in the General Development Plan by the scheduled completion dates would be extremely difficult to determine. Therefore, the Parties agree that if Lessee fails to complete the General Development Plan as required by this Lease by the scheduled completion dates for Parcel 1, and for Parcel 2 and/or Parcel 3 if Lessee exercises its Option for Parcel 2 and/or Parcel 3, as set forth in **Exhibit "B"** - General Development Plan, as may be amended, Lessee shall pay to City the amount of Two Hundred Dollars ($200.00) as liquidated damages, and not as a penalty, for each day after the applicable scheduled completion date until completion of the improvement. Such liquidated damages shall be deemed additional Rent due and payable upon City's demand therefor.

10.3. Minimum Improvement Costs. Lessee agrees to spend, at a minimum, the minimum improvement costs on Parcel 1, as set forth in **Exhibit "B"** - General Development Plan. If Lessee successfully exercises its Option to add Parcel 2 and/or Parcel 3, then Lessee agrees to spend the minimum improvement costs for Parcel 2 and/or Parcel 3, as set forth in **Exhibit "B"** - General Development Plan, as may be amended.

10.4. City's Costs; Indemnity. In addition to all fees, costs, etc., required to be paid by Lessee for the processing of its construction plans through the City of San Diego's Development Services Department, or any other regulatory agency, Lessee shall reimburse City for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by City in approving or disapproving Lessee's plans for any improvements. Lessee shall be liable for and shall indemnify and defend City from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from Lessee's construction or installation of any improvements permitted under this Lease.

10.5. Onsite and Offsite Utilities. City shall assist in determining location of existing utilities by providing Lessee with any surveys on file with the City. Nothing set forth above in this Section 10.5 shall affect the provisions of Section 12.23 Water Quality –Best Management Practices below. All utilities will be installed underground, at Lessee's sole cost and expense, upon prior written approval by City of the utility installation and location thereof.

SECTION 11. SECURITY OF PREMISES REQUIREMENTS

11.1. Security of Premises. Lessee shall be responsible for, and shall provide for, all the security of the Premises; City shall have no responsibility therefor. Lessee shall construct and maintain fences, gates, walls and/or barriers along the portions of the Premises that border a street or can be accessed by the general public in a manner designed to prevent all unauthorized

access to the taxiways, runways, and Lessee's ramp and hangar areas; the designs therefor and materials used, are all subject to the prior written approval of City. Unless otherwise approved in writing by City, Lessee shall construct and maintain fences and/or walls no less than six feet in height along the boundaries of the Premises, in locations specified and approved by City. Such fences and/or walls shall be constructed of materials and in such a manner as to reasonably prevent access to the Premises. Ingress and egress through gates and access points in the fences or walls shall be controlled by Lessee at all times. Unless otherwise approved in writing by the City, such control must be by the use of automated gate controls utilizing keycard technology. All plans for security fencing and/or walls and access gates must be submitted to and approved by the City prior to construction. Lessee shall provide lighting adequate, in the judgment of the City, to prevent unobserved entry onto the Premises during the hours of darkness. All construction required by this Section shall be completed no later 30 days after the first certificate of occupancy for any structure.

SECTION 12. GENERAL PROVISIONS

12.1. Notices.

12.1.1. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to Lessee at the Premises or at such other address designated in writing by Lessee, including the address below, and to City as follows:

City: City of San Diego
Attn: Deputy Director
3750 John J. Montgomery Drive
San Diego, CA 92123

Lessee: Air Center MYF, LLC
Attn: Deann J. Shier
3753 John J. Montgomery Dr. Suite 2
San Diego, CA 92123

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

12.1.2. 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 upon thirty (30) days prior written notice.

12.2. 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 under the authority of any such law, statute, ordinance or regulation. Upon City's request, Lessee shall promptly deliver to City copies of all documentary evidence of such compliance received by or

otherwise available to Lessee (e.g., validation of periodic inspections, permits or licenses if any).

12.3. City's Consent, Discretion. The approval or consent of City wherever required in this Lease shall mean the written approval or consent of the Mayor, or his or her designee, without need for further resolution by the City Council, unless otherwise specified. City's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

12.4. Construction Requirements. All improvements required to be made to the Premises by this Lease, or otherwise approved by City to be constructed by Lessee, shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with any present or future Airport Layout Plan ("ALP") and any development standards which are or may be adopted by City and the Federal Aviation Administration ("FAA") including any construction requirements, rules, regulations or ordinances for Commercial Aeronautical Services and Non-Commercial Flying Club Activities at Montgomery-Gibbs Executive Airport adopted by the San Diego City Council, and as it may be amended from time to time. Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the planned improvements, for City's approval, prior to commencing any approved work. All work with respect to any improvements must be done in a good and workmanlike manner, commenced within ninety (90) days following receipt of approval therefore from the City, and diligently prosecuted to completion to the end. Upon completion of such work, Lessee shall have recorded in the office of the San Diego County Recorder a Notice of Completion, in a form as required or permitted by law. Lessee shall deliver to City, within ten (10) days receipt of the same, a copy of the Notice of Occupancy and the building permit with respect thereto. Within sixty (60) days following completion of any improvement, Lessee shall provide the City with three (3) complete sets of "as-built" plans of such improvement. Any such improvements shall be constructed strictly in accordance with the laws and ordinances relating thereto.

12.5. Signs, Antennas and Lighting. Lessee shall not construct nor permit the erection or display of any antennas or signs, including banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Premises without the prior written approval of the City, which approval shall be within the City's reasonable discretion. Lessee shall submit sketches of proposed antennas and signs to the City for approval showing size, materials, colors and location. Such antennas and signs must conform to all City requirements, as well as applicable standards, laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must also conform to all City requirements, as well as all applicable standards, laws or ordinances of governmental agencies having jurisdiction over the Premises. Any such antenna, sign or lighting installed without the prior written consent of City shall be subject to removal without notice at any time, at Lessee's expense; Lessee agrees to reimburse City for all costs and fees, including attorney fees, incurred by City involved with said removal.

12.6. 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, construction, improvements, alterations, repairs or replacements on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

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

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

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

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

12.8. Unavoidable Delay. If the performance of any act required of City or Lessee is prevented or delayed for reason of strikes, lockouts, or labor disputes; acts of God such as fires, floods and epidemics; freight embargoes; or other causes beyond the reasonable control of the Party required to perform an act, said Party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay Rent as required pursuant to this Lease. In the event Lessee or City claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of such fact within ten (10) days after the beginning of any such claimed delay and provide reasonable documentation sufficient to support said claim.

12.9. Construction and Payment Bonds. If Lessee constructs improvements on the Premises, City may at any time require Lessee to deposit with City a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security reasonably satisfactory to City. The bond shall insure that the work commenced by Lessee will be completed in accordance with the plans approved by City or, at the option of City that the uncompleted work will be removed and the Premises restored to a condition satisfactory to City. The bond or cash shall be held in trust by City for the purpose specified above, or at City's option may be placed in an escrow approved by City.

Prior to the commencement of any work on the Premises, Lessee shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with

California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. Lessee shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, Lessee shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

12.10. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that Lessee or any person claiming under or through Lessee shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status, or physical disability in the 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.

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

12.12. Compliance with City's Equal Opportunity Contracting Program.

12.12.1. Equal Opportunity Contracting. Lessee shall submit to City statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each sub consultant/subcontractor/vendor/service provider listed in the report.

12.12.2. Equal Employment Opportunity. Lessee will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Lessee will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City, Lessee will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that Lessee will take to achieve the City's goal for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

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

12.12.3. Local Business and Employment. Lessee acknowledges that the City of San Diego seeks to promote employment and business opportunities for local

residents and firms on 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 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 and debarment from participating in City contracts for a period of not less than one (1) year.

12.13. 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.

12.14. 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 context requires.

12.15. Captions. All 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 unintentional and shall have no effect on the enforceability of this Lease.

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

12.17. 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:

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

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

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

(b) The Lessee's policy of maintaining a drug-free workplace.

(c) Any available drug counseling rehabilitation and employees assistance programs; and

(d) The penalties that may be imposed upon employees' for drug abuse.

12.17.3. Lessee shall include in each contract related to this Lease language obligating each sub-licensee, contractor or sublessee to comply with the provisions of this section to maintain a drug-free workplace. Lessee and each of its sub-licensees, contractors and sublessees shall be individually responsible for their own drug-free workplace programs.

12.18. Americans With Disabilities Act. Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations ("Title 24") and California Civil Code §54.1 as they may apply to the Premises. Lessee's obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("Title III") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee's intended use of the Premises, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 uses§§ 12131- 12165).

12.19. Disabled Access Compliance. Lessee shall, at its sole cost and expense and as applicable to the Premises and Lessee's possession, use and occupancy thereof, 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 all other applicable laws, rules, regulations and directives of competent governmental authorities 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 sublessee shall be individually responsible for their own ADA employment programs.

Lessee agrees to indemnify and hold City harmless from any and all claims and judgments made against City, and for all costs and damages, including reasonable attorney fees and costs, incurred by City has a result of Lessee failing to comply with all the requirements of this Section. Lessee further 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.

12.20. Standard of Employees. Lessee and its employees shall at all times conduct themselves and the operations on the Premises in a commercially reasonable manner.

12.21. Relocation Payments. Lessee understands and agrees that it shall not be entitled to any relocation payment from City whatsoever upon termination of this Lease.

12.22. Supersedure. It is mutually agreed that as of the Commencement Date this Lease supersedes any previous lease(s) that City and Lessee were Parties to for the lease of the Premises, and that said former lease shall be of no effect between the Parties except as to any rents and other monies that may have accrued and are still owing and as to all other rights, obligations remedies, etc., which were intended to survive the expiration or earlier termination of that lease (including, but not limited to, indemnifications, insurance coverage).

12.23. Water Quality –Best Management Practices. City and Lessee are committed to the implementation of controls ("best management practices" or "BMPs") contained in the Montgomery-Gibbs Executive Airport Storm Water Pollution Prevention Plan (MYF SWPPP) to manage activities on the Premises in a manner which aids in the protection of the City's precious water resources. It is the Lessee's responsibility to identify and implement an effective combination of BMPs so as not to cause non-storm water discharges and pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312) or the MYF SWPPP.

Therefore, Lessee shall, at a minimum, implement and comply, as applicable, with both the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a) and the MYF SWPPP. In addition, Lessee shall become a Co-Permittee to the MYF SWPPP.

Federal Environmental Protection Agency (EPA) rules for above ground tank systems (ASTs) and oil pollution prevention require that each facility that owns or operates above ground

tank systems (including refueler trucks) that contain an aggregate storage capacity of 1,320 gallons or higher must prepare a Spill Prevention Control and Countermeasures (SPCC Plan) Program, pursuant to 40 C.F.R. Part 112. The plan includes requirements for secondary containment, loading/unloading of fuel and oil, discharge of accumulated rainwater, inspections, training, updates to the plan, and other miscellaneous items. Lessee shall prepare a site specific SPCC Plan and provide a copy to the City.

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

12.24. Reporting Requirements. Lessee agrees to provide to the City's Water Department reports about all activities conducted on the Premises. These reports will detail the usage of water, and all agricultural practices including but not limited to use of pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the RMP. Failure to provide the information requested under this section shall constitute a default under the terms of this Lease.

12.25. Hold Harmless, Flood Damage and Other Acts of God. Lessee understands and agrees that the Premises is subject to flood damage and that other damages may result to the Premises from other circumstances, including weather conditions and such causes as fire and earthquakes and Lessee assumes all risk therefor. Lessee agrees that all damages resulting from flooding and other weather-related causes, whether directly or indirectly resulting therefrom, shall not result in any liability on the part of City, and Lessee specifically agrees to assume the defense of, indemnify, and hold City harmless from all such damages incurred by Lessee or anyone claiming through Lessee therefor other than damages specifically caused by the sole negligence of the City. Lessee further specifically agrees that City shall have no obligation whatsoever to construct or maintain channels, or to construct, maintain, or operate reservoirs, or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the Premises. Upon receiving prior written approval by City, Lessee shall be allowed to minimize potential flood damage through improved drainage and other flood control improvements installed and/or constructed on the Premises.

Were it not for Lessee's agreement to the requirements of this Section, City would not enter into this Lease.

12.26. Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term that the FAA will mandate SMS compliance for general aviation airports, which would include the Airport. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, Lessee agrees that Lessee will timely comply with, and respond to: (1) City's requirement that Lessee conduct regular (and other as-needed) SMS-related inspections of the Premises and that Lessee will compile and report said information in a form acceptable to the FAA and City; (2) all City

requests for SMS-related data; (3) the City's right to conduct SMS-related inspections of the Premises; (4) all other SMS-related requests made by City in its effort to implement a system-wide SMS and maintain an SMS Manual for the City's airport system or a part thereof; and (5) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by Lessee shall be verified by Lessee to be accurate and shall be provided without cost to City.

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

12.27.1. Lessee and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to Lessee. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

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

SECTION 13. FAA REQUIREMENTS

Whether or not it is specifically stated within each of the following sections, Lessee shall be responsible for ensuring that Lessee, its officers, employees, contractors, agents, sublessees, and all others operating through Lessee, shall conform to the following covenants and reservations of rights.

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

13.2. Lessee's Noninterference with Aircraft. Lessee and Lessee's successors and assigns agree not to in any manner interfere with any aircraft landing or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, City reserves the right to abate or eliminate the interference at the expense of Lessee and Lessee agrees to reimburse City for all costs and fees, including attorney's fees, incurred by City involved with said abatement or elimination.

13.3. Agreement Subordinate to City/United States Agreements. This Lease shall be subordinate to the terms of any existing or future agreements and/or deeds between City and the United States, and to all legal requirements of the United States relative to the development,

operation or maintenance of the Airport, and City shall not be liable for any claims, losses, or damages, of any type, that Lessee, or anyone claiming through Lessee, may incur or suffer as a result of any such subordination.

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

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

13.6. Airport Development. City reserves the right to further develop, change or improve the Airport, including its routes and landing areas, as City sees fit, without the Lessee's interference or hindrance and regardless of Lessee's views and desires. City shall have the right to perform any and all such actions referred to in this Section 13.6 including the right to shut down parts or all of the Airport – at no liability to City, regardless of any damages or losses Lessee, or anyone claiming through Lessee, may suffer from said actions.

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

13.8. Landing Area Maintenance. City reserves the right, but not the obligation, to maintain and repair the Airport landing areas and all other public facilities. City also has the right to direct and control all of Lessee's activities affecting the maintenance and repair of the Airport landing areas and all other public facilities.

13.9. FAA Nondiscrimination Covenant. Lessee, on behalf of itself and its representatives, successors, sublessees and assigns, as part of the consideration for this Lease, agrees to the following covenants ("Nondiscrimination Covenants"):

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

13.9.2. No person shall be denied benefits, excluded from participation in or subject to

discrimination in the construction of any improvements or the furnishing of any services on the Premises, based on race, color, sex or national origin.

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

In the event of the breach of any of the above FAA Nondiscrimination Covenants, City shall have the right to terminate this Lease and to reenter and repossess said Premises and facilities thereon, and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, the City's rights to reenter and repossess do not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

13.10. Equal Opportunity. Lessee and its successors and assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

13.11. City to Mitigate Impacts of Subordination. If subordination agreements between City and United States of America result in Lessee's inability to conduct activities contemplated by this Lease on the Premises or if Lessee's activities are materially affected during a period of subordination: (1) City agrees to make a reasonable time extension or adjustment if determined to be appropriate by City in its sole discretion; or (2) upon written request from the Lessee, City will terminate this Lease. Lessee agrees that the only remedy available from City for any damages claimed during this subordination period will be limited to the remedies set forth in this Section.

13.12. Employee Conduct. Lessee shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and Airport if any such employee, contractor, agent, invitee or guest is on the Premises or other Airport property during any period of employment, or in connection with the construction and development of any improvements, or otherwise on the Premises or other Airport property in connection with Lessee's operation and management of the Premises.

13.13. Minority Business Policy. Lessee agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. 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.

13.14. Right of Flight. There is hereby reserved to City, its successors and assigns, for

the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or land at, taking off from or operation on the Airport.

13.15. No Interference with Aircraft. Lessee, by entering into this Lease, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference and/or hazard at the expense of Lessee and Lessee agrees to reimburse City for all costs and fees, including attorney's fees, incurred by City involved with said abatement.

13.16. Provisions to be Included in All Pertinent Documents. Lessee agrees that it shall insert all of the FAA Requirements provisions set forth in this Section 13 in all subleases, contracts or agreements by which Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

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

[SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, this Lease is executed by City, acting by and through its Mayor or his designee, and by Lessee, acting by and through its lawfully authorized officer(s).

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: 3/16/18

By:
Name: CYNTHIA PETERSON
Title: DIRECTOR, REAL ESTATE ASSETS

AIR CENTER MYF, LLC,
a California limited liability company

Date:

By:
Name: Deann J. Shier
Title: Chief Executive Officer
1/29/18

Approved as to form this 8th
day of March, *2018.*

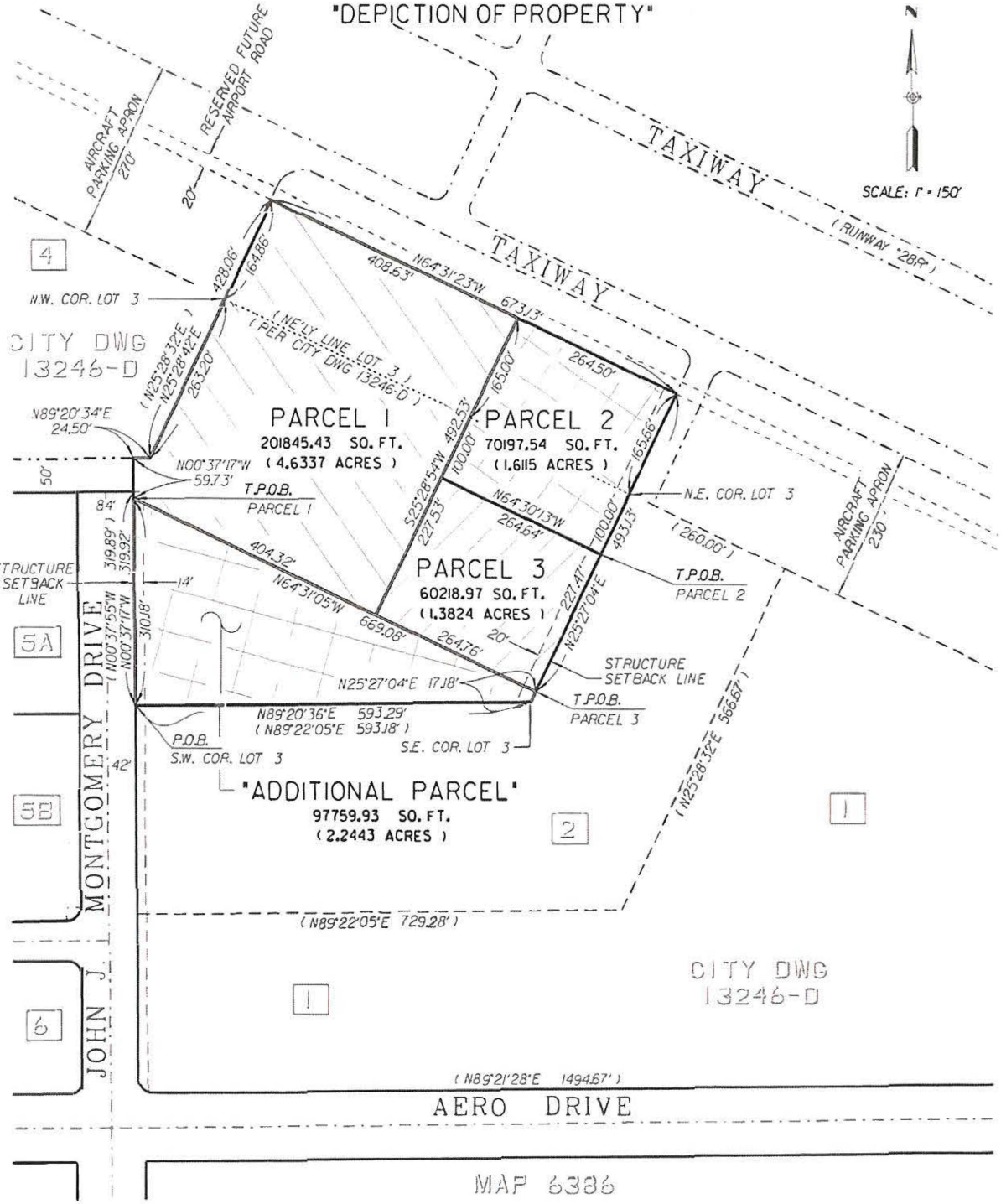
MARA W. ELLIOTT, City Attorney

By:
Name: David Powell
Title: Deputy City Attorney

RR-311540

EXHIBIT "A"

"DEPICTION OF PROPERTY"



LEGEND

- LEASE PARCEL 1
  AREA = 201845.43 SQ. FT. (4.6337 ACRES)
- LEASE PARCEL 2
  AREA = 70197.54 SQ. FT. (1.6115 ACRES)
- LEASE PARCEL 3
  AREA = 60218.97 SQ. FT. (1.3824 ACRES)
- LEASE PARCEL "ADDITIONAL PARCEL"
  AREA = 97,759.93 SQ. FT. (2.2443 ACRE)
- XX — MONTGOMERY FIELD - LEASE LOTS PER CITY DWG 13246-2-D

P.O.B. INDICATES POINT OF BEGINNING

T.P.O.B. INDICATES TRUE POINT OF BEGINNING

( ) INDICATES RECORD DATA PER CITY DWG 13246-D

PREPARED BY:

CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION,
UNDER THE DIRECTION OF
RICHARD T. McCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

Richard T. McCormick 11-20-2017

RICHARD T. McCORMICK, LS 7450

PROFESSIONAL LAND SURVEYOR ☆ RICHARD T. McCORMICK ☆ NO. 7450 STATE OF CALIFORNIA

MONTGOMERY - GIBBS EXECUTIVE AIRPORT
LEASE PARCELS OVER LEASE LOT 3
PER CITY OF SAN DIEGO DWG NO. 13246-2-D

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

Beginning at the southwest corner of said Lease Lot 3 as shown on said Drawing No. 13246-2-D; Thence northerly along a line common to the westerly line of said Lease Lot 3 and the easterly line of John J. Montgomery Drive per said Drawing No. 12346-D, North 00°37'17" West (record North 00°37'55" West per said Drawing No. 13246-D) 310.18 feet to the **True Point of Beginning**; Thence continuing along a northerly prolongation of said westerly line of said Lease Lot 3 North 00°37'17" West 59.73 feet; Thence leaving said prolongated line North 89°20'34" East 24.50 feet to a point on the northwesterly line of said Lease Lot 3; Thence along said northwesterly line North 25°28'42" East 263.20 feet to the northwesterly corner of said Lease Lot 3; Thence along a northerly prolongation of said northwesterly line North 25°28'42" East 164.86 feet; Thence South 64°31'23" East 408.63 feet; Thence South 25°28'54" West 492.53 feet; Thence North 64°31'05" West 404.32 feet to the **True Point of Beginning**.

The above described parcel containing 201845.43 Sq. Feet (4.6337 Acre).

PARCEL 2

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

Beginning at the southwest corner of said Lease Lot 3 as shown on said Drawing No. 13246-2-D; Thence easterly along the southerly line of said Lease Lot 3 South 89°20'36" West 593.29 feet (record South 89°22'05" East 593.18 feet per said Drawing No. 13246-2-D) to the southeasterly corner of said Lease Lot 3; Thence northerly along the southeasterly line of said Lease Lot 3 North 25°27'04" East 17.18 feet; Thence continuing along said southeasterly line North 25°27'04" East 227.47 feet to the **True Point of Beginning;** Thence continuing along said southeasterly line 100.00 feet to the northeasterly corner of said Lease Lot 3; Thence along a northerly prolongation of said southeasterly line North 25°27'04" East 165.66 feet; Thence North 64°31'23" West 264.50 feet; Thence South 25°28'54" West 165.00 feet to a point on the northeasterly line of said Lease Lot 3; Thence continuing South 25°28'54" West 100.00 feet; Thence South 64°30'13" East 264.64 feet to the **True Point of Beginning.**

The above described parcel containing 70197.54 Sq. Feet (1.6115 Acre).

PARCEL 3

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

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The above described parcel containing 60218.97 Sq. Feet (1.3824 Acre).

"ADDITIONAL PARCEL"

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

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The above described parcel containing 97759.93 Sq. Feet (2.2443 Acre).

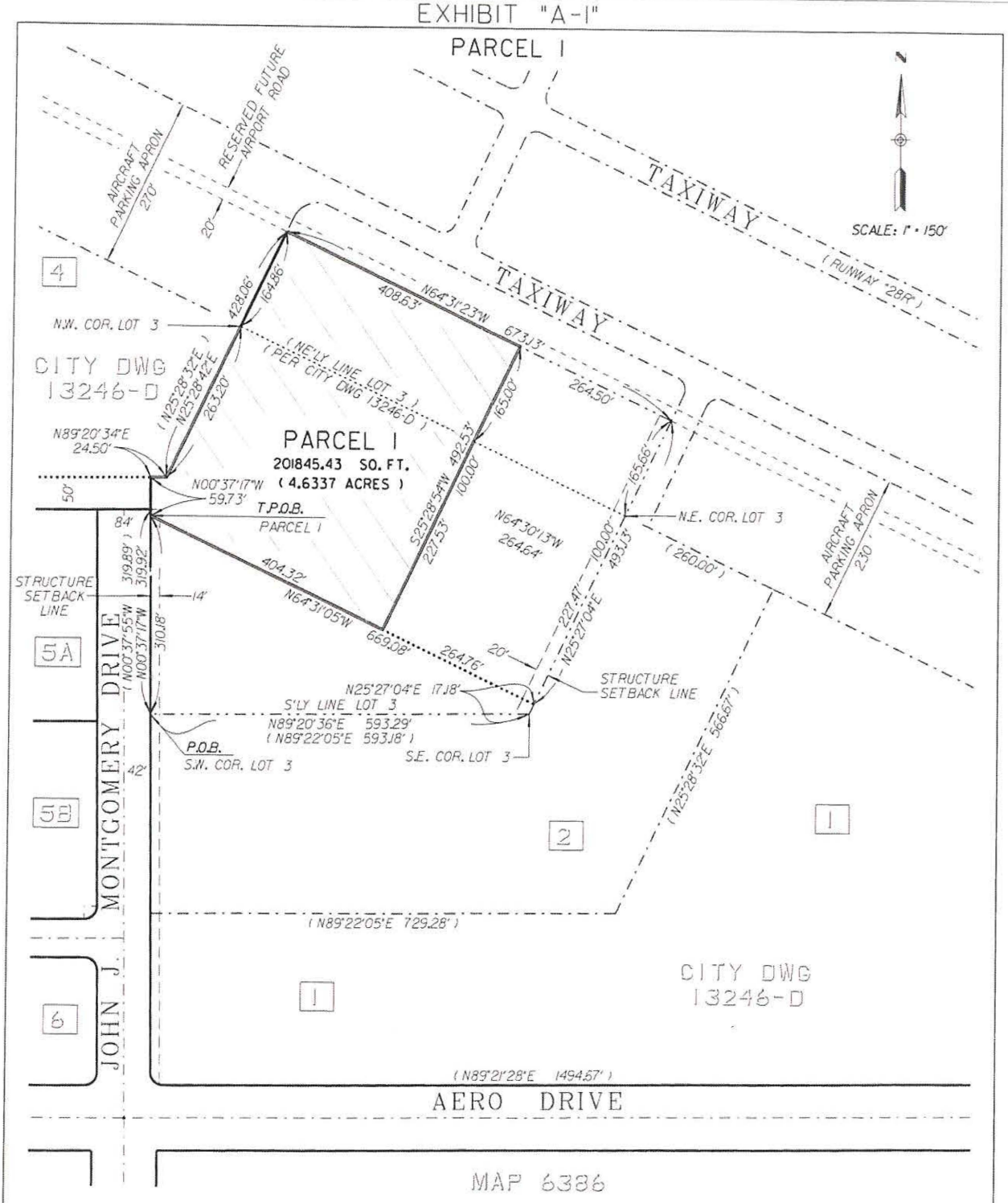
Exhibit "B", attached and by this reference is made a part hereto.



Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
City of San Diego

File: 21003181-ROW_EXHB-A_Lease-Lot-3.docx
IO21003181–September 2017

EXHIBIT "A-1"



LEGEND

▨	LEASE PARCEL PARCEL 1 AREA = 201845.43 SQ. FT. (4.6337 ACRES)
XX	MONTGOMERY FIELD - LEASE LOTS PER CITY DWG 13246-2-D
P.O.B.	INDICATES POINT OF BEGINNING
T.P.O.B.	INDICATES TRUE POINT OF BEGINNING
( )	INDICATES RECORD DATA PER CITY DWG 13246-D

PREPARED BY:
CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION,
UNDER THE DIRECTION OF
RICHARD T. McCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

Richard T. McCormick 11-20-2017
RICHARD T. McCORMICK, LS 7450

PROFESSIONAL LAND SURVEYOR ☆ RICHARD T. McCORMICK ☆ NO. 7450 STATE OF CALIFORNIA

MONTGOMERY - GIBBS EXECUTIVE AIRPORT
LEASE PARCELS OVER LEASE LOT 3
PER CITY OF SAN DIEGO DWG NO. 13246-2-D

EXHIBIT "A-1"

PARCEL 1

PARCEL 1

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

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The above described parcel containing 201845.43 Sq. Feet (4.6337 Acre).

Exhibit "B", attached and by this reference is made a part hereto.

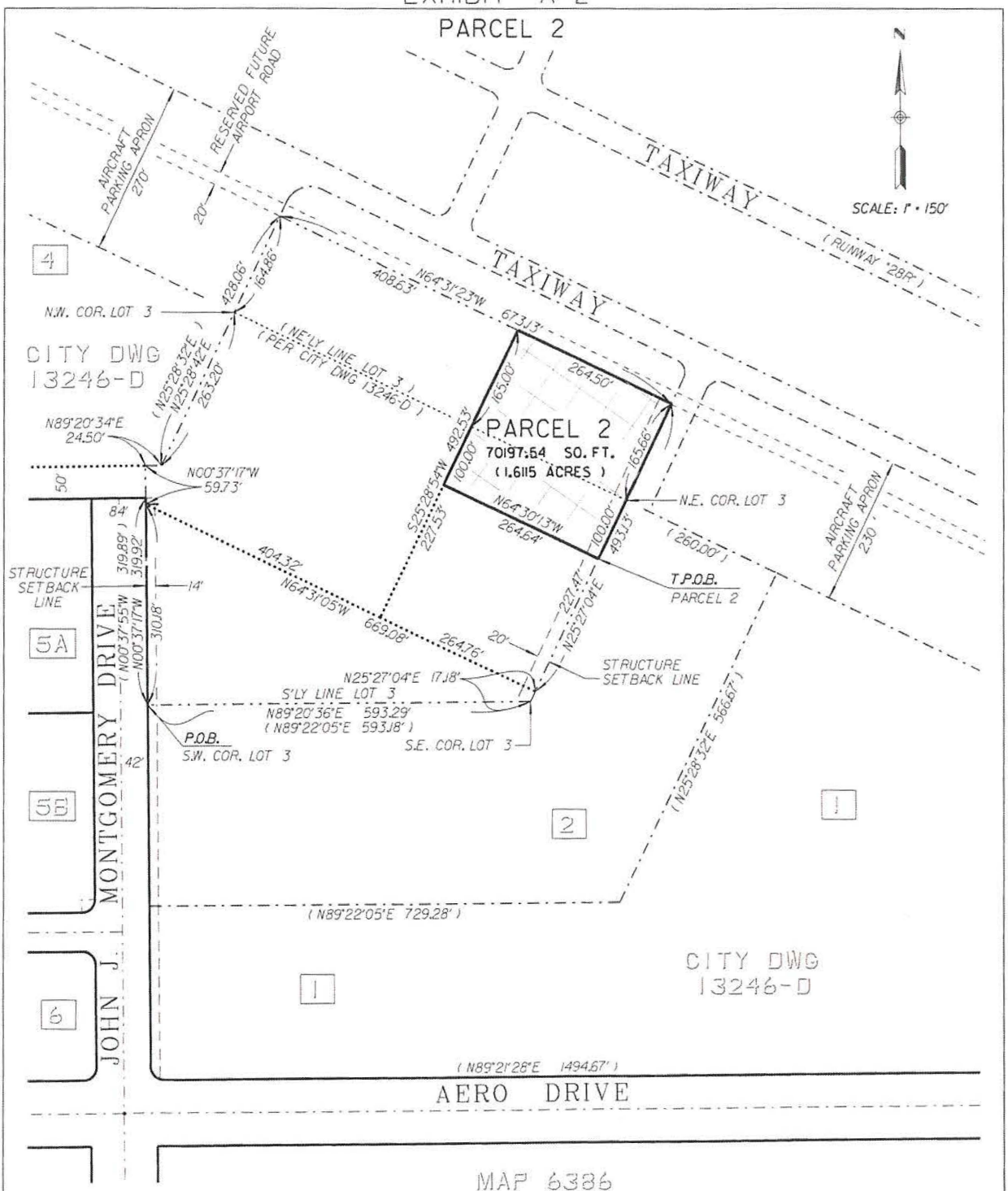
Richard T. McCormick 11-20-2017

Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
City of San Diego



File: 21003181-ROW_EXHB-A-1_Lease-Lot-3.docx
IO21003181–September 2017

EXHIBIT "A-2"



LEGEND

	LEASE PARCEL 2 AREA = 70197.54 SQ. FT. (1.6115 ACRES)
XX	MONTGOMERY FIELD - LEASE LOTS PER CITY DWG 13246-2-D
P.O.B.	INDICATES POINT OF BEGINNING
T.P.O.B.	INDICATES TRUE POINT OF BEGINNING
( )	INDICATES RECORD DATA PER CITY DWG 13246-D

PREPARED BY:

CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION.
UNDER THE DIRECTION OF
RICHARD T. McCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

Richard T. McCormick 11-20-2017

RICHARD T. McCORMICK, LS 7450

PROFESSIONAL LAND SURVEYOR
RICHARD T. McCORMICK
NO. 7450
STATE OF CALIFORNIA

MONTGOMERY - GIBBS EXECUTIVE AIRPORT
LEASE PARCELS OVER LEASE LOT 3
PER CITY OF SAN DIEGO DWG NO. 13246-2-D

EXHIBIT "A-2"

PARCEL 2

PARCEL 2

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

Beginning at the southwest corner of said Lease Lot 3 as shown on said Drawing No. 13246-2-D; Thence easterly along the southerly line of said Lease Lot 3 South 89°20'36" West 593.29 feet (record South 89°22'05" East 593.18 feet per said Drawing No. 13246-2-D) to the southeasterly corner of said Lease Lot 3; Thence northerly along the southeasterly line of said Lease Lot 3 North 25°27'04" East 17.18 feet; Thence continuing along said southeasterly line North 25°27'04" East 227.47 feet to the **True Point of Beginning**; Thence continuing along said southeasterly line 100.00 feet to the northeasterly corner of said Lease Lot 3; Thence along a northerly prolongation of said southeasterly line North 25°27'04" East 165.66 feet; Thence North 64°31'23" West 264.50 feet; Thence South 25°28'54" West 165.00 feet to a point on the northeasterly line of said Lease Lot 3; Thence continuing South 25°28'54" West 100.00 feet; Thence South 64°30'13" East 264.64 feet to the **True Point of Beginning.**

The above described parcel containing 70197.54 Sq. Feet (1.6115 Acre).

Exhibit "B", attached and by this reference is made a part hereto.

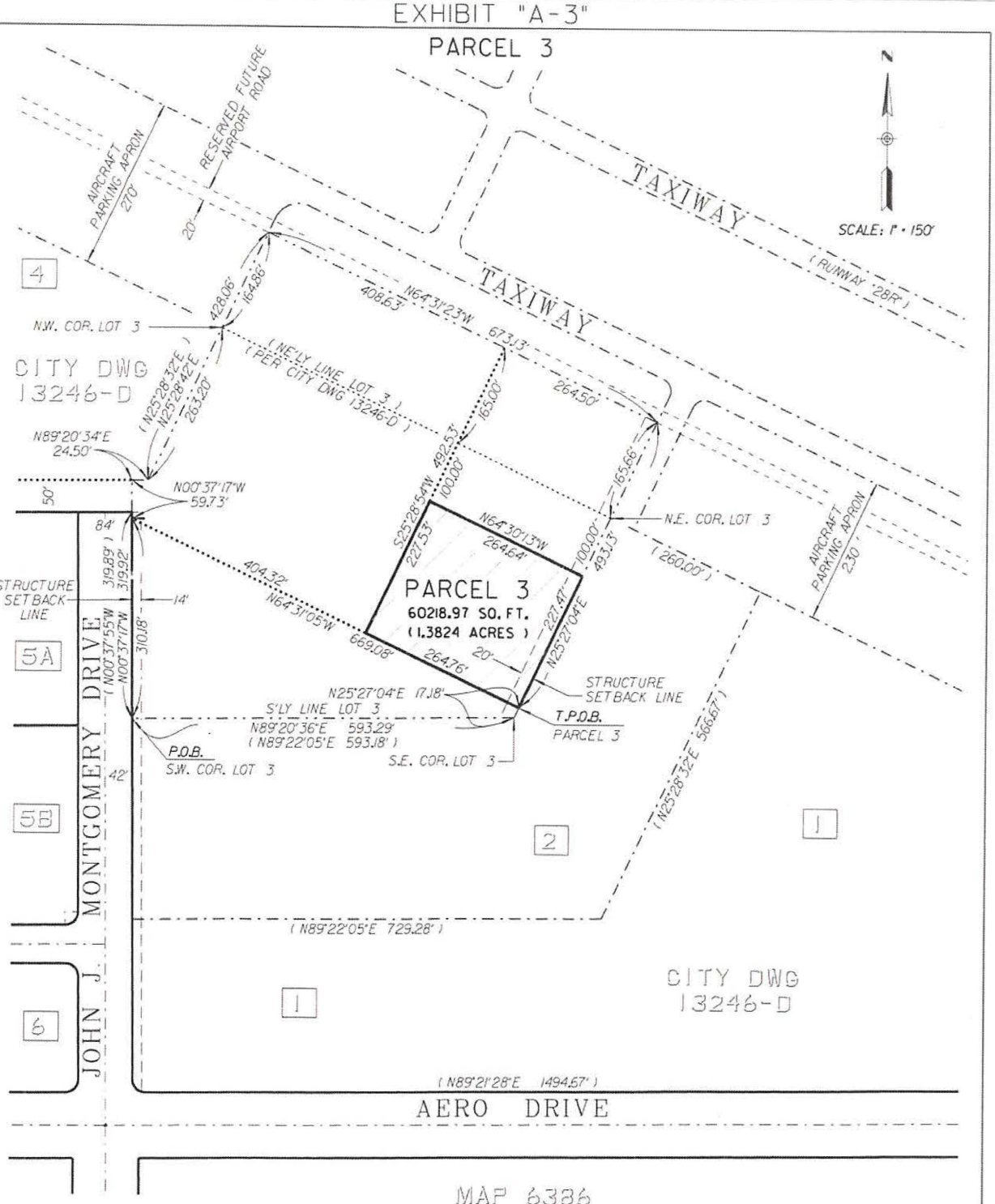


Richard T. McCormick 11-20-2017

Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
City of San Diego

File: 21003181-ROW_EXHB-A-2_Lease-Lot-3.docx
IO21003181–September 2017

EXHIBIT "A-3"



LEGEND

▨	LEASE PARCEL 3 AREA = 60218.97 SQ. FT. (1.3824 ACRES)
XX	MONTGOMERY FIELD - LEASE LOTS PER CITY DWG 13246-2-D
P.O.B.	INDICATES POINT OF BEGINNING
T.P.O.B.	INDICATES TRUE POINT OF BEGINNING
( )	INDICATES RECORD DATA PER CITY DWG 13246-D

PREPARED BY:

CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION,
UNDER THE DIRECTION OF
RICHARD T. McCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

Richard T. McCormick 11-20-2017

RICHARD T. McCORMICK, LS 7450

PROFESSIONAL LAND SURVEYOR ☆ RICHARD T. McCORMICK ☆ NO. 7450 STATE OF CALIFORNIA

MONTGOMERY - GIBBS EXECUTIVE AIRPORT
LEASE PARCELS OVER LEASE LOT 3
PER CITY OF SAN DIEGO DWG NO. 13246-2-D

EXHIBIT "A-3"

PARCEL 3

PARCEL 3

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

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The above described parcel containing 60218.97 Sq. Feet (1.3824 Acre).

Exhibit "B", attached and by this reference is made a part hereto.



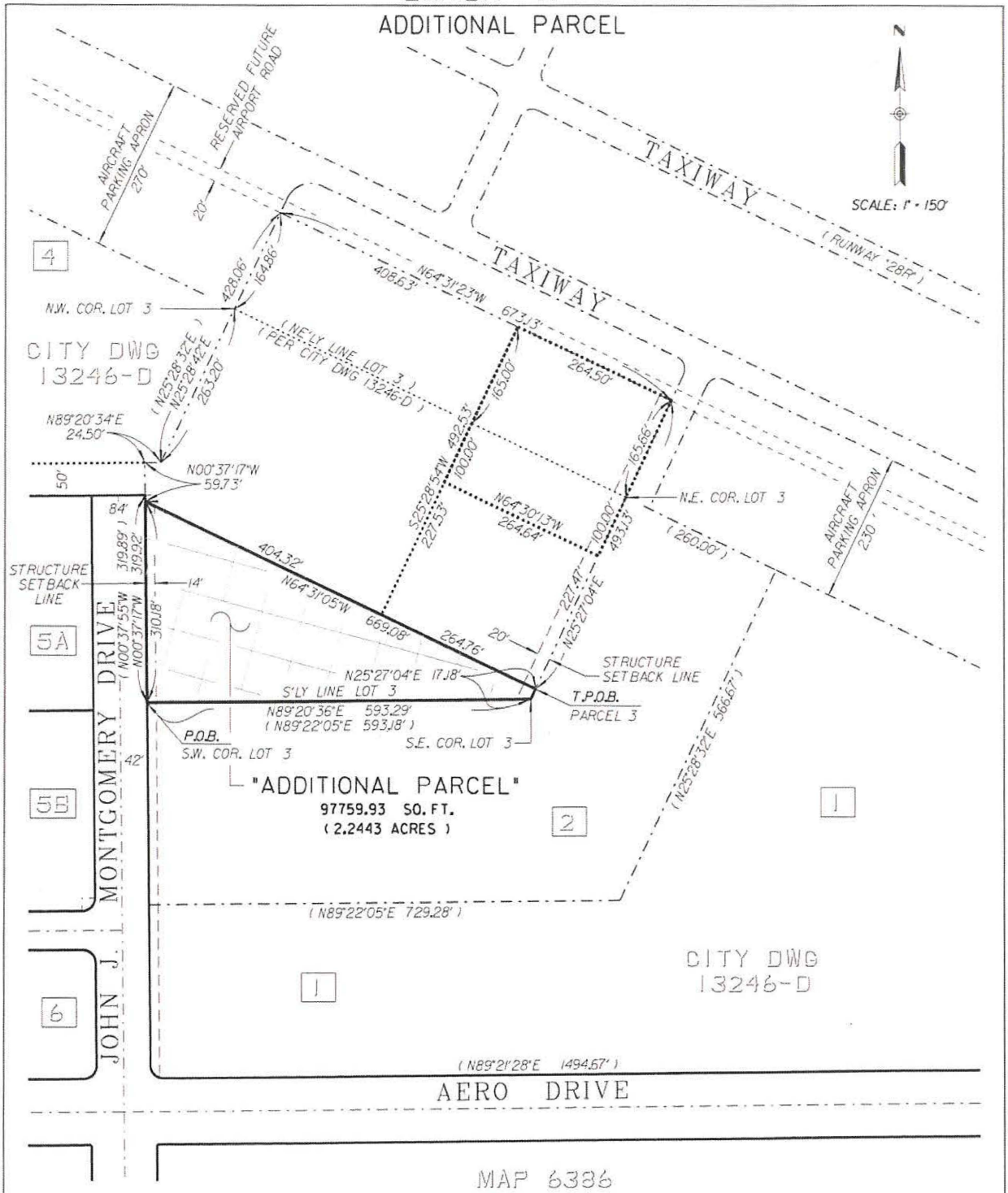
Richard D. McCormick 11-20-2017

Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
City of San Diego

File: 21003181-ROW_EXHB-A-3_Lease-Lot-3.docx
IO21003181–September 2017

EXHIBIT "A-4"

ADDITIONAL PARCEL



LEGEND

	LEASE PARCEL "ADDITIONAL PARCEL" AREA = 97,759.93 SQ. FT. (2.2443 ACRE)
XX	MONTGOMERY FIELD -- LEASE LOTS PER CITY DWG 13246-2-D
P.O.B.	INDICATES POINT OF BEGINNING
T.P.O.B.	INDICATES TRUE POINT OF BEGINNING
( )	INDICATES RECORD DATA PER CITY DWG 13246-D

PREPARED BY:

CITY OF SAN DIEGO PUBLIC WORKS DEPT.,
FIELD DIVISION - SURVEY SECTION,
UNDER THE DIRECTION OF
RICHARD T. McCORMICK, LS 7450,
SENIOR LAND SURVEYOR.

Richard T. McCormick 11-20-2017

RICHARD T. McCORMICK, LS 7450

PROFESSIONAL LAND SURVEYOR ☆ RICHARD T. McCORMICK ☆ NO. 7450 STATE OF CALIFORNIA

MONTGOMERY - GIBBS EXECUTIVE AIRPORT
LEASE PARCELS OVER LEASE LOT 3
PER CITY OF SAN DIEGO DWG NO. 13246-2-D

EXHIBIT "A-4"
ADDITIONAL PARCEL

"ADDITIONAL PARCEL"

APN: 421-290-11

That portion of Lease Lot 3 of Montgomery-Gibbs Executive Airport in the City of San Diego, County of San Diego, State of California, according to City of San Diego Drawing thereof No. 13246-2-D as approved by the Federal Aviation Administration (FAA) and filed with the San Diego City Clerk on December 22, 1978 as Document No. 765235, being more particularly described as follows:

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The above described parcel containing 97759.93 Sq. Feet (2.2443 Acre).

Exhibit "B", attached and by this reference is made a part hereto.

Richard D. McCormick 11-20-2017

Richard T. McCormick LS 7450 Date
Senior Land Surveyor, Field Engineering
City of San Diego



File: 21003181-ROW_EXHB-A-4_Lease-Lot-3.docx
IO21003181–September 2017

EXHIBIT B

GENERAL DEVELOPMENT PLAN
Air Center MYF, LLC

		Estimated Commencement Date	Minimum Improvement Costs
Parcel 1	**To be completed no later than March 1, 2023***		**$5,000,000**
	City Lease Signed - Effective Date Estimated - March 1, 2018		
	Final Architectural		
	All Final Permits Required to Build Improvements Granted		
	Take possession- commence paying rent	March 1, 2020	
	Construction Staging		
	Sitework		
	Ramp Construction ~113,000 SF		
	Construction of ~30,000 SF of Hangars		
	Optional ~10,000 SF of Hangars		
	Marshall & Swift - Class C Construction		
	Parking Lot Construction ~34,000 SF		
	Tenant Improvements ~6,000 SF		
	Completion/ Inspection/ Move In		
Parcel 2	**To be completed no later than March 1, 2032***		**$840,000**
	If Option Notice Provided by Lessee to City - Exercise Option Parcel 2 by -	February 28, 2027	
	All Final Permits Required to Build Improvements Granted		
	Take possession - commence paying rent	March 1, 2029	
	Construction Staging		
	Sitework		
	Ramp Construction and Misc ~70,000 SF		
Parcel 3	**To be completed no later than March 1, 2032***		**$3,160,000**
	If Option Notice Provided by Lessee to City - Exercise Option Parcel 3 by -	February 28, 2027	
	All Final Permits Required to Build Improvements Granted		
	Take possession - commence paying rent	March 1, 2029	
	Construction Staging		
	Sitework		
	Construct Hangars ~25,000 SF		
	Marshall & Swift - Class C Construction		
	Construct Hangar ~4,900 SF (on Parcel 1)		
	Ramp ~30,000 SF		
	Parking and Misc ~8,000 SF (on Parcel 1)		
	Total		**$9,000,000**

* Subject to any extensions as a result of an Unavoidable Delay as provided for in Section 12.8 of the Lease

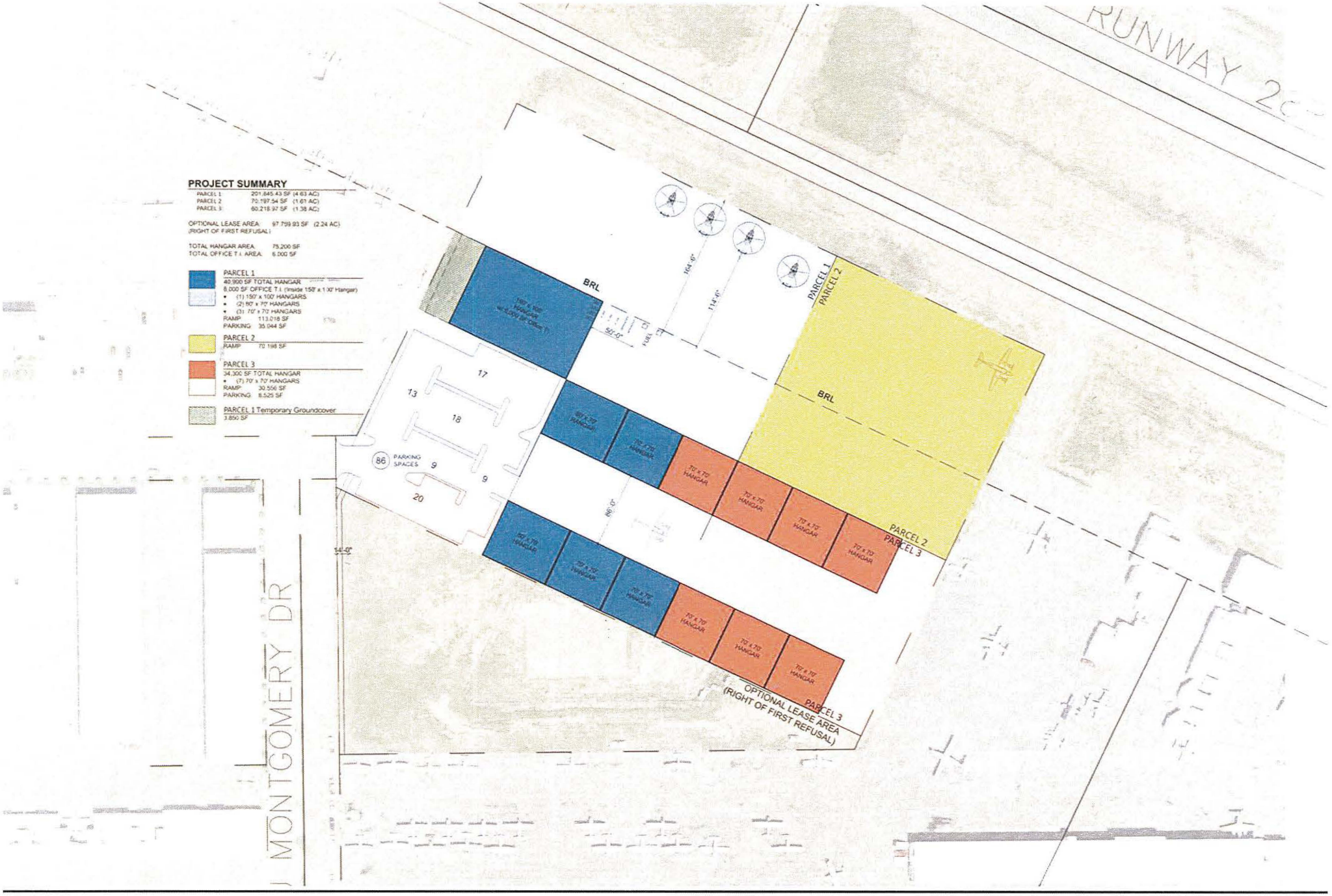


EXHIBIT B-1
MASTER LEASEHOLD MAP
AIR CENTER MYF, LLC.

EXHIBIT C

Date

Air Center MYF, LLC
Attn: Deann J. Shier
3753 John J. Montgomery Dr. Suite 2
San Diego, CA 92123

Reference: Notice of Commencement Date

Dear Ms. Shier:

Pursuant to Section 2.1 of that certain Flat Rate Lease ("Lease") entered into between the City of San Diego (City), as a lessor, and Air Center MYF, LLC, as lessee, filed with the City Clerk as Document No. RR-_____, City is required to execute a Notice of Commencement Date to memorialize the Commencement Date of the Lease. Unless otherwise stated all defined terms shall have the same meaning as provided in the Lease.

City hereby provides this Notice of Commencement Date providing that the Commencement Date of the Lease is _____.

If Air Center MYF, LLC agrees with the terms and conditions of this correspondence, please have an authorized officer of Air Center MYF, LLC sign below and return this letter to Thurman Hodges for the City's record.

Regards,

Rodney Propst, A.A.E
Deputy Director Airports

THE UNDERSIGNED AGREES TO AND ACCEPTS THE TERMS AND CONDITIONS OF THIS LETTER:

AIR CENTER MYF, LLC

BY: _____
NAME: _____
TITLE: _____
DATE: _____

THE CITY OF SAN DIEGO
AND
AIR CENTER MYF, LLC,
a California limited liability company

Montgomery-Gibbs Executive Airport Flat Rate Lease

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item 100A 2-13-18

(R-2018-309)

RESOLUTION NUMBER R- 311540

DATE OF FINAL PASSAGE FEB 14 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A FIFTY YEAR FLAT RATE PARCEL GROUND LEASE AGREEMENT WITH AIR CENTER MYF, LLC FOR UP TO 9.87 ACRES OF UNIMPROVED LAND LOCATED AT THE REAL PROPERTY COMMONLY KNOWN AS MONTGOMERY-GIBBS EXECUTIVE AIRPORT.

WHEREAS, the City of San Diego (City) owns that certain parcel of real property consisting of approximately 9.87 acres of unimproved land (Property) located at 3750 John J. Montgomery Drive, San Diego, California 92123, and commonly known as Montgomery-Gibbs Executive Airport (Airport); and

WHEREAS, Air Center MYF, LLC (Air Center) has requested a fifty-year flat rate parcel ground lease for the Property (Lease). The Lease provides for the initial use and development of 4.63-acres of the Property (Parcel 1); and

WHEREAS, during the first seven years of the Lease term, Lessee has options to amend the Lease to add up to three additional contiguous parcels, for a total possible leasehold of up to 9.87 acres (Options); each amendment shall also include the increased rent for the additional leasehold area(s), as determined by an appraisal at fair market value and any then-current City lease requirements; and

WHEREAS, the Lease requires Air Center operate full service Fixed Base Operator (FBO) services including charters, tours, flight training, aircraft hangar rentals, helicopter sales and maintenance, full line-service, full-service avionics, utility services, fuel sales, and aerial filming and photography; and

WHEREAS, the Lease requires that Air Center construct City-approved improvements on Parcel 1 at an expense to Air Center of at least $5 million dollars; and

WHEREAS, the Options require Air Center to pay additional fair market rent on any leasehold area(s) added to the Lease and to install City-approved improvements of up to $4 million dollars on those added leasehold area(s); and

WHEREAS, Air Center's operations under the Lease will improve safety operations between helicopters and fixed winged aircraft at the Airport, provide a world-class helicopter aviation facility that will continue to service helicopters and other general aviation aircraft, attract business, and generate economic activity for the region; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the Property is $2,437,000; and

WHEREAS, the rent payable to the City shall be $105,648 a year during the first five years of the Lease, subject to adjustments thereafter as described in the Lease; and

WHEREAS, pursuant to Council Policy 700-10 "Leasing of City-Owned Real Property" section C "Lessee Selection for New Leases," the City entered into exclusive negotiations with Air Center for the Lease because Air Center's business case provided the City with sufficient justification as to how Air Center is capable of optimizing the use of the Property and the return to the City, thereby negating the need for a competitive process; and

WHEREAS, City Council Policy 700-10 "Leasing of City-Owned Real Property" section M "Leasehold Financing" requires that City staff take appropriate steps to review the proposed financing and ensure that the loan proceeds be invested in the leasehold and limits the maximum loan proceeds to seventy-five percent of the value of the leasehold improvements; and

WHEREAS, Air Center has proposed a ninety percent loan-to-value ratio for financing of the leasehold improvements in order to enable Air Center to construct the improvements on Parcel 1 required under the Lease; and

WHEREAS, Shier Aviation Corporation (Shier), a current tenant at the Airport, has agreed to be a guarantor for Air Center under the Lease until Air Center has completed construction of the $5 million improvements on Parcel 1; and

WHEREAS, City staff has reviewed and approved the financial condition of both Air Center and Shier and has determined they have the financial capability, expertise, and experience to develop and operate the leasehold proposed by this Lease, and therefore recommends the City Council of the City of San Diego waive City Council Policy 700-10 "Leasing of City-Owned Real Property" section M "Leasehold Financing;" NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain Flat Rate Parcel Ground Lease between the City of San Diego and Air Center MYF, LLC, as more fully set forth in Document No. RR-311540 on file with the City Clerk.

BE IT FURTHER RESOLVED, that the City Council hereby waives that portion of City Council Policy 700-10 "Leasing of City-Owned Real Property," section M, "Leasehold Financing" with respect to Air Center's financing of improvements on Parcel 1.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
David L. Powell
Deputy City Attorney

DLP:jdf:sc
01/26/18
Or.Dept: READ
Doc. No.: 1658182

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 2/13/2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 2/14/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on FEB 13 2018, by the following vote:

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

Date of final passage FEB 14 2018.

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

AUTHENTICATED BY:

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

(Seal)

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

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311546

Passed by the Council of The City of San Diego on February 13, 2018, by the following vote:

YEAS:	**ZAPF, KERSEY, CATE, SHERMAN, GOMEZ.**
NAYS:	**BRY, WARD, COLE.**
NOT PRESENT:	**ALVAREZ.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Stacy D. Ready**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-311540**, approved on **February 13, 2018**. The date of final passage is **February 14, 2018**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: _____, Deputy