CITY OF SAN DIEGO
Real Estate Assets Department/Airports Division
MONTGOMERY FIELD AIRPORT

MONTHLY AIRCRAFT PARKING RENTAL AGREEMENT

WHEREAS, General Aviation has been an important aspect of the Montgomery Field Airport ("AIRPORT") since its inception; and

WHEREAS, the City of San Diego ("CITY"), a Municipal corporation has available for use by the owners and operators of General Aviation aircraft certain tiedown spaces at the AIRPORT; and

WHEREAS, pursuant to the authorization of Sections 68.0100 - 68.0222 of the San Diego Municipal Code and other authority vested in the City manager, or his/her designee ("DIRECTOR"), DIRECTOR meaning Director of the Airports Department of the City and his/her authorized assistants, deputies, employees and representatives, on behalf of the CITY, is authorized to enter into a Rental Agreement ("AGREEMENT"), for basing General Aviation aircraft at the AIRPORT;

NOTICES: 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 rented premise or at such other address designated in writing by lessee, indicated below, and to the CITY as indicated:

Address for Correspondence: City of San Diego
Airports Division
ATTN: Airport Manager, Montgomery Field Airport
3750 John J. Montgomery Drive
San Diego, CA 92123

By this AGREEMENT, the CITY hereby rents space(s) to:

TENANT's Name: **STEVEN J. BYERS**
Address of record for official notices or correspondence.

Street Address: **1560 Froude Street**

City: **San Diego** State: **CA** Zip Code: **92107**

******

Telephone Numbers: **(H) 619-224-6084** **(B) 619-282-7060**

Other Numbers:

The TENANT is subject to the following terms, conditions, and provisions:

ADVISORY STATEMENT: Read the conditions of this agreement carefully before you sign. TENANT's signature and the subsequent approval of the DIRECTOR, will permit you to rent an aircraft tiedown space at the AIRPORT from the CITY. TENANT's use of an aircraft tiedown space is subject to the terms of the AGREEMENT and the provisions of The San Diego Municipal Code. The conditions of this AGREEMENT and the appropriate section(s) of the San Diego Municipal Code will be strictly enforced.

CONDITIONS

1. Term - Aircraft tiedown spaces are rented on a month-to-month basis. This AGREEMENT may be terminated by you or by the DIRECTOR, or his/her designee, upon 30 days written notice. Upon the termination of this AGREEMENT, TENANT must restore TENANT's tiedown space to its original state and remove any hangar or other authorized improvements. Restoration of the rented space(s) is subject to the reasonable satisfaction of the DIRECTOR, or his/her designee, and shall be at no cost to the CITY.

   Your Assigned Space Location and Number: **5B/1I**

2. Assignment - **Assignment of the AGREEMENT and continued use of an aircraft tiedown space is contingent upon the TENANT's ownership of the aircraft registered and occupying the assigned tiedown space.** TENANT shall not assign or sublet this AGREEMENT or any interest therein or premises of any part thereof to any other person without the consent of the DIRECTOR. Approval of any assignment shall not be interpreted as an approval for future assignments. Approvals will be on a short term, case-by-case basis. Any such subletting or assignment without consent shall be grounds for termination of the AGREEMENT, at the option of the DIRECTOR.

   Your Aircraft: Type: **Helio Courier** Tail Number: **N295HC**

   Any changes to the above aircraft or its tail number will be given to the Airport Manager within 30 days by written notice.

3. Allocation of Spaces - Aircraft tie-own spaces will be assigned on a first-come, first-served basis from the Airports Division waiting list. Preference for a specific tiedown space will be considered, however, the DIRECTOR reserves the right to designate the tiedown space.

4. Rental Rates - The monthly rate for aircraft tiedown spaces will be in accordance with the Airports Division Fee Schedule in effect at the time of signing this AGREEMENT. The Fee Schedule is reviewed annually and is subject to change after 30 days written notice to those affected by the change.

   Your current monthly rental fee is: **$115.50**

   An account will be established with the City Treasurer's office for an automatic billing in the TENANT's name. You have the option of paying your rent Monthly / Quarterly / Semi-Annually / Annually (Circle one).

★ Note - changes to this billing cycle must be made by the Airport Manager, not the City Treasurer's office.

5. Security Deposit - TENANT shall submit and maintain a refundable deposit, equal to two months rent, with the CITY during the term of this AGREEMENT. The CITY may deduct any delinquent fees, costs, or charges (including late payment fees) resulting from the use of the assigned space on the AIRPORT. At no time will the Security Deposit be less than two months rent . Should the monthly fee be adjusted, the amount of the deposit will be adjusted accordingly. Additional Security Deposit sums required as a result of a fee adjustment, or resulting from deductions as a result of a late payment, shall be deposited by the TENANT within thirty (30) days after receiving written notice of the adjustment. Failure to timely deposit any additional Security Deposit required shall be shall be grounds for termination of this AGREEMENT. Any portion of the security deposit remaining after termination of the AGREEMENT, shall be returned to the TENANT without interest.
   Your current Security Deposit amount is: **$ 231.00** Trust Fund Acct# **140232**

   Trust Fund BP# **900000248** Trust Fund Acct# **500000000877**

   Paid $693.00 (for 3 spaces, each $231.00) 5/14/08

6. Payment - Rent begins upon the commencement date of this AGREEMENT. Rent is due and payable on that date, and will be prorated to cover TENANT's tiedown rent up to the 1st of the month. Subsequent monthly rental fees may be paid monthly, quarterly, semi-annually, or annually in advance. Automatic billing will start on the 1st day of the billing cycle selected through the City Treasurer office. Rent payments are due within 30 days from the date of billing. Rents not paid within 30 days will be considered overdue. Administrative collection fees will be added to process and collect overdue accounts. Returned checks are subject to an additional $10.00 fee.

7. Conditions of Use - Violations of these conditions may lead to termination of this AGREEMENT:

   a. TENANT's aircraft and/or hangar must fit within the assigned tiedown space. Exceptions will be authorized in writing provided infringement into an adjacent area does not diminish the usability of another aircraft tiedown space, constitute a safety hazard, intrude into an entryway or taxiway, or otherwise block the public right-of-way. Regardless of infringements, authorized or not, all hangar space built outside the assigned tiedown space will be assessed an additional monthly tiedown fee based on the Airports Division Schedule of Fees and Charges approved the City Manager.

   b. Tiedown spaces may not be utilized in any manner which, in the opinion of the DIRECTOR or his/her designee, creates a nuisance.

   c. TENANT may not make any improvements, changes, or alterations to TENANT's tiedown space without the written authorization of the DIRECTOR, or his/her designee.

d. The assigned space(s) are made available to the TENANT solely for the purpose of tiedown and storing of the TENANT's aircraft, and not for the operation of any commercial enterprise. The conduct of any commercial activity from the assigned space, such as (but not limited to) aircraft charter, rental, repair, or instructional service is prohibited. This exclusion shall not prohibit the incidental use of the aircraft for providing transportation in the course of TENANT's business, or profession or other commercial activity.

e. TENANT shall not install any utilities such as gas, electricity, water/sewer, telephone/telegraph, without receiving prior, written approval of the DIRECTOR and obtaining all required permits from the CITY.

f. Routine aircraft maintenance performed on aircraft tiedown spaces will be limited to "Preventive Maintenance" performed by the owner of the aircraft assigned to that tiedown space as set forth in Federal Aviation Administration Circular No. 43-12 and FAR Part 43, Appendix A, paragraph (c). Any use, storage, or disposal of materials which would be considered hazardous to the environment must be used, stored, or disposed of in accordance with relevant State, County, and local regulations. Hangars are subject to unannounced inspections by County Health Services, the San Diego Fire Department, and/or AIRPORT Operations officials to ensure that these requirements are met.

g. Fueling an aircraft while it is in a hangar is prohibited. Fueling of TENANT's aircraft must be performed solely by an authorized lessee on the AIRPORT.

h. Parking of motor vehicles will be permitted only within the confines of allotted aircraft tiedown spaces. Any periods over 72 hours the TENANT will inform the Airport Manager of the vehicle parked in the TENANT tiedown space. Violators will be charged a daily vehicle parking fee and/or towed at owner's expense. Authorized motor vehicles will be permitted in aircraft tiedown areas for pick-up/drop-offs and/or during the time an owner is tending to his/her aircraft. The TENANT tiedown space will not be used solely for the purpose of storing vehicles. Short term parking is authorized while the TENANT is personally using his/her plane. **Parking in aircraft taxi lanes is prohibited**. All operators of motor vehicles shall yield to all moving aircraft.

i. Only TENANT may utilize the aircraft tiedown space. The DIRECTOR may approve short-term guest parking of aircraft on a case-by-case basis. Approval must be obtained in advance of guest occupation.

j. The installation/replacement of aircraft tiedown chains is the responsibility of the CITY. Repair/replacement of worn or damaged chain will be made at no expense to the TENANT, unless neglect is involved. In case of neglect, a charge to cover replacement costs will be made to the TENANT.

k. TENANT shall be solely responsible for properly securing his or her aircraft and hangar.

l. TENANT shall keep his or her tiedown space clear of any debris, obstructions, health, fire, or other safety hazards. No person shall keep or store, or cause to be kept or stored, in any manner on the airport any materials which, in the opinion of the Fire Marshal, constitute a fire hazard. At no time will the TENANT knowingly release pollutants, or any other prohibited discharges, which might enter into the Storm Water Conveyance System. If a fuel, oil, or other hazardous material spill occurs, TENANT will immediately take all reasonable action to contain and cleanup the release.

TENANT is solely and fully responsible and liable in the event TENANT's hazardous material(s) storage, usage, or activity under this agreement causes or permits hazardous material(s) to be released on the airport. If any hazardous material release occurs as a result of the TENANT's hazardous material storage or usage, the TENANT shall bear the entire cost to immediately remove such hazardous material release, in accordance with applicable government regulations. In addition to all other rights and remedies of the CITY, if the TENANT does not immediately cleanup and remove any such hazardous material release, the CITY may pay to have same removed, and the TENANT shall reimburse the CITY of any cost incurred by the CITY, together with interest at the maximum rate allowed by law.

TENANT shall indemnify and hold CITY harmless against all loss, damage, liability, and expense which CITY may sustain as a result of the presence or cleanup of the hazardous material(s) on the assigned space or airport, which may have been caused directly or indirectly by the TENANT's hazardous material(s) storage, usage, or activities on the airport.

TENANT shall notify the Airport Operations office, as soon as possible, to evaluate the extent of the spill and determine if it is a State Mandated reportable spill situation. Violations of these provisions and requirements are violations of the San Diego Municipal Code, and may be prosecuted as misdemeanors subject to penalties provided in the code.

TENANT's obligations under this section for cleanup and removal of hazardous material(s) releases, which occurred as a result of the TENANT's storage, usage, or activities on the airport, shall survive the expiration or termination of this AGREEMENT.

m. At no time shall a minor under the age of eighteen (18) years of age be allowed to loiter, idle, wander, stroll, or play in or upon the airport premises without a parent, guardian, or other adult person having the care and custody of the minor(s). **Bicycling, skateboarding, roller skating/blading, and other similar activities are prohibited on the airport.**

8. Liability - By signing and entering into this AGREEMENT with CITY, TENANT is acknowledging and agreeing that CITY has granted its permission for use of the assigned space(s) only for the purposes listed in, and in accordance with, the provisions of the AGREEMENT. By entering into this AGREEMENT, CITY is not agreeing in any manner to accept obligations or responsibility for the safekeeping of the aircraft, hangar, or other property of the TENANT, TENANT's agents, contractors, officers, employees, or guests. TENANT is responsible for the security of the TENANT's aircraft and/or hangar. The CITY accepts no

responsibility for damage to the TENANT's aircraft and/or hangar and its contents. All risks, sole costs, and expenses in connection with TENANT's use of the tiedown space and any hangar which may be permitted are the TENANT's . All aircraft owners must maintain adequate liability insurance to cover possible damages or losses to any property while using the airport.

The privilege of using the airport and its facilities shall be conditioned upon the assumption of full responsibility and risk by the user thereof. CITY, its agents and/or employees shall not be liable for loss, damage, or injury to persons or property arising out of any accident, incident, or mishap of any nature whatsoever and/or from any cause whatsoever to any individual, aircraft, or property occurring on the airport or in the use of any facilities.

Any person who is authorized by CITY to utilize and operated an aircraft shelter, T-hangar, or outdoor tiedown spaces for the tiedown of general aviation aircraft at the airport shall keep in full force and effect at all times the following ***minimum insurance coverage*** and requirements:

a. Minimum Insurance Coverage and Limits. TENANT, at its sole cost and expense, shall maintain at all times, when TENANT is in possession of the premises, a comprehensive policy of general liability and property damage (Premises) insurance in which the CITY, its officials employees, agents, contractors, and volunteers are named as additional insured parties with respect to operation of the named insured at, or from, the Montgomery Field Airport or assigned space occupied and used by the named insured pursuant to the agreement issued by the CITY, for any and all claims arising during the Lease term for damages or injuries to goods, wares, merchandise, and property and/or for any personal injury or loss of life in, upon, or about the Premises in a combined single limit amount of not less than $1 million, per occurrence, including $500,000 for bodily injury to any person.

   ★ A copy of this Insurance coverage will be attached to this document.

b. Deductible and Self-insured Retention. Any deductible or self-insured retention must be declared to and approved by the DIRECTOR and the CITY's Risk Management office.

c. Other Insurance Provisions.

   1) The named insured's insurance coverage shall be primary insurance with respect to CITY, its officers, employees, agents, contractors and/or volunteers liability arising out of the named insured operations. Any insurance of approved self-insurance maintained by the CITY, its officials, employees, agents, contractors or volunteers shall be excess of the named insured's insurance and shall not contribute with it.

   2) Coverage shall state that the TENANT's insurance shall apply separately to each insured against who a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

   3) This insurance shall not be suspended, voided, canceled, reduced in coverage or in limits, without thirty (30) days prior written notice by certified mail to CITY. Cancellation of

coverage for non-payment of premium will require ten (10) days written notice to the CITY.

4) The above thirty (30) day written notice is not required if the AGREEMENT is terminated and the aircraft is immediately removed from the AIRPORT, or if the aircraft is sold and immediately removed from the airport.

d. Acceptability of Insurers. All insurance required by this AGREEMENT shall be placed with a carrier acceptable to the CITY's Risk Management office.

e. Verification of Coverage. TENANT shall furnish CITY with certificates of insurance necessary to satisfy the DIRECTOR that the insurance requirements of this AGREEMENT have been met. Proof of or changes in insurance shall be mailed to the following address:

City of San Diego
Airports Division
ATTN: Airport Manager, Montgomery Field Airport
3750 John J. Montgomery Drive
San Diego, CA 92123

f. Cancellation. Failure to maintain the required insurance coverage and/or provide verification of coverage will result in immediate cancellation of this AGREEMENT.

9. Hold Harmless - TENANT agrees to indemnify and hold CITY and its agents and employees harmless from any and all liability, claims, damages, or injuries to any person, including injury to TENANT, or any of TENANT's employees, representatives, agents, guests, licensees, invitee, patrons, or any other person whomsoever, and all expenses of investigating and defending against same:

a. arising from, or alleged to have arisen from or connected with, the use of or operations of the rented aircraft tiedown space; or

b. Caused or claimed to be caused by the independent acts of TENANT, TENANT's agents or employees, or the concurrent acts with CITY, or CITY's agents or employees.

10. Hangars - A hangar will be permitted on a rented aircraft tiedown space under certain specified conditions. Written authorization for a hangar may be included in this AGREEMENT, if the following conditions are met:

a. The hangar can be located on the TENANT's tiedown space without infringing on an adjacent area, or a waiver of this condition is granted. Any storm water diversion will be made away from any adjacent tiedown space(s).

b. The installation of a hangar may affect the tiedown fee for that space. Fees will be calculated based on the total square footage the TENANT has sole intended use of. This area maybe

within or adjacent to the tiedown space and the fees will be set forth in the Airports Division Schedule of Fees and Charges. The TENANT will provide the Airport Manager an accurate and up-to-date diagram of the hangar layout for the purpose of determining an accurate square footage of the tiedown fee.

★ This diagram will be attached to this document.

c. TENANT must comply with all CITY and COUNTY laws and ordinances, and obtain all required permits. This includes the installation of a proper size and properly maintained fire extinguisher appropriate for aircraft fires.

d. Hangars must be installed in accordance with the manufacturer's specifications and in accordance with a plan approved by the DIRECTOR. The TENANT will be responsible for removing any improvements to the tiedown space, to include any improvements by previous hangars owner(s) pass on during a sale of a hangar on that tiedown space to the new owner.

e. The initial appearance/condition of the hangar must be acceptable to the DIRECTOR. Hangars must be maintained in good condition, as determined solely by the DIRECTOR.

f. Hangars will be utilized only **for the purpose of storage of aircraft, and not for the operation of any commercial enterprise or storage of personal property.**

g. Hangars not meeting all of the conditions stated above will be evaluated on their individual merits. TENANTS must have prior written approval of the DIRECTOR and must obtain all required permits from the CITY.

h. Posting of a bond or a cash deposit sufficient to ensure removal of the hangar will be required upon execution of the aircraft tiedown space AGREEMENT.

11. Right of Entry - The CITY reserves the right to enter TENANT's aircraft tiedown space and/or hangar for the purpose of viewing and ascertaining the condition of the premises or to protest its interests in the premises or to inspect any uses being made of the premises. This right of entry will normally be performed with the TENANT's authorization and presence, but the CITY also reserves and shall have the right, without notice to enter upon the assigned space or hangar in an emergency at all times.

12. Description of Hangar - **Open Space Tiedown**

13. Unairworthy Aircraft - Storage of unairworthy aircraft in assigned aircraft tiedown spaces for a period greater than one hundred and eighty (180) consecutive days is prohibited, unless the owner demonstrates, to the DIRECTOR's reasonable satisfaction, that the owner is actively engaged in an effort to bring such aircraft into airworthy condition, and obtains the express written consent of the DIRECTOR to continue storage of such aircraft for an additional specified period of time in order to bring the aircraft into airworthy condition. The DIRECTOR may after

180 days without further notice cause or authorize the tow away, removal, or storage of any unairworthy aircraft or components thereof not complying with this condition, at the owner's sole cost and expense.

14. Assignment, Transfer, or Sale - The AGREEMENT shall not constitute a deed, lease, or grant of an easement by CITY. This AGREEMENT is personal to the TENANT, and is not transferable or assignable unless approved in advance, and in writing, as provided in this section, Section 2, or subsection "a" or "b" below of this AGREEMENT.

    a. Partnership or Joint Venture. If the AGREEMENT is a partnership or joint venture, all partners or joint ventures in the new entity must be a signatory on this AGREEMENT. Signatories of this AGREEMENT for the assigned space must be described in the Agreement Summary for a minimum of three (3) years prior to the request for reassignment or transfer of this AGREEMENT. Only under these conditions will the DIRECTOR consent to a transfer or reassignment of this AGREEMENT to such a new entity within the partnership or joint venture.

    b. Corporation. If the TENANT is a corporation, and such corporation has based aircraft in the assigned space described in the Agreement Summary for a minimum of three (3) years prior to the request for reassignment or transfer of this Agreement, the DIRECTOR will consent to a transfer or reassignment of this AGREEMENT to such new corporation.

    In the event that the TENANT is a corporation, which has as its only substantial assets one or more aircraft and at least one shareholder, partner, or joint venture and the new entity has been a signatory on the AGREEMENT for the assigned space as described in the Agreement Summary for three (3) years prior to the request for reassignment or transfer of this AGREEMENT, the DIRECTOR will consent to a transfer or reassignment of the AGREEMENT to such new entity.

15. Default - The occurrence of any of the following events shall constitute a Default thereunder by the TENANT:

    a. Failure to timely pay any fees, charges, or deposits required to be paid to the CITY, as specified in this AGREEMENT.

    b. Failure to maintain in full force and effect the minimum insurance coverage, as specified in this AGREEMENT.

    c. Failure to conform to, or the violation of, any of the terms, conditions, or provisions contained in this AGREEMENT.

16. Termination of AGREEMENT . This AGREEMENT may be terminated under the following circumstances:

1. Default by the TENANT. In the event of any default by the TENANT, in addition to any other remedies available as law or equity, the DIRECTOR may, on behalf of CITY, after giving thirty (30) days advance written notice to the TENANT, revoke and terminate this AGREEMENT. The TENANT may, during the thirty (30) days following the notice, conform to or abide by the requirements of this AGREEMENT, in which case this AGREEMENT shall continue in effect.

2. Termination Without Cause. This AGREEMENT is revocable, and the DIRECTOR may, at any time upon thirty (30) days advance written notice to the TENANT, terminate this AGREEMENT without cause. If any AGREEMENT is terminated under this section, the TENANT shall be given priority on the Montgomery Field Airport tiedown waiting list for comparable assigned space parking.

3. Cancellation by the TENANT. The TENANT may, at any time upon fifteen (15) days advance written notice to the DIRECTOR, cancel this AGREEMENT. TENANT shall be responsible for all fees and charges owed to date of cancellation, and shall promptly remove all aircraft and equipment from the assigned space on or before the date of cancellation.

17. Aircraft Removal - If this AGREEMENT is terminated, TENANT shall be required to remove the aircraft and all other property stored in the assigned space within the time set forth in the advance written notice of termination. The CITY will take necessary action to remove or dispose of the aircraft and any other property which may be located therein, place such aircraft on any portion of the airport, and store such other property at the TENANT's sole cost and expense in a public or private warehouse. Such termination and removal shall in no way release the TENANT from any obligations accrued thereunder to the date of such termination.

    When such aircraft is so placed on some portion of the airport, the TENANT shall become obligated to the CITY, with respect to such aircraft and all tiedown fees applicable at the airport, including all reasonable charges imposed and expenses incurred by the CITY or Airport to remove the contents of the assigned space.

18. Lien: Lock-Down of Aircraft - TENANT hereby acknowledges that the CITY may seek to impose a lien upon the TENANT's aircraft, and all other property placed on the assigned space(s) for delinquent fees, storage, and other charges. The CITY may remove said aircraft and/or property assigned hereby, and subsequently relocate for non-payment, and exclude the TENANT from use or possession of said aircraft and/or property, if fees due under this AGREEMENT are not paid by the TENANT by the fifteenth (15^{th}) day following written notice of such delinquency.

    TENANT further covenants and agrees to hold CITY harmless for the removal, lock-down, and storage of any aircraft and all property moved in accordance with this section.

TENANT further covenants and agrees to permit CITY or its agents to dispose of any aircraft and all property remaining on the assigned space after abandonment of the same, in accordance with California Civil Code, Section 1980, et seq. This section shall also apply where this AGREEMENT has been terminated by breach or cancellation by either of the parties hereto. It is acknowledged that the CITY may also notify TENANT of abandonment in accordance with Section 1951.3 et seq. of the California Civil Code.

a. Daily Rate - Upon termination of the AGREEMENT, TENANT shall be obligated to pay fees computed at the then current daily rates for comparable transient spaces until TENANT has removed all aircraft, personal property, improvements and/or trash and debris from the assigned space(s) and Airport.

b. Waiver - No waiver of default by either party of any of the terms, conditions, and provisions of the AGREEMENT shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, conditions, or provisions contained herein, to be kept and observed by the other party. The consent or approval by one party to the other party shall not be deemed to waive or render unnecessary the need for consent or approval of any subsequent, similar act.

c. Consent/Notices - Whenever in this AGREEMENT the approval or consent of a party is required, such approval or consent shall be in advance, in writing, and shall be executed by a person having the express authority to grant such approval or consent. All written notices given in conjunction with this AGREEMENT shall be effective when personally delivered or after three (3) working days upon deposit in the U. S. Mail, certified or registered, postage prepaid, to the address of record as set forth in the AGREEMENT SUMMARY, or to such other address as either party shall designate in writing.

I understand and agree to abide to the terms, conditions, restrictions, and obligations of this agreement.

TENANT: **STEVEN J. BYERS**
(Please Print Name)

Signature: _____

Date: 4/19/10 Business Partner # 9000000128

Contract Account# 900000000039

By: _____ Date: 4/19/10
Ernest E. Gesell, III, C.M., Airport Manager
Montgomery Field Airport

Hangar Authorization:

By: _____ Date: 4/19/10
Ernest E. Gesell, III, C.M., Airport Manager
Montgomery Field Airport