

MONTGOMERY-GIBBS EXECUTIVE AIRPORT

MONTH-TO-MONTH AIRPLANE PARKING LEASE

Between

THE CITY OF SAN DIEGO

And

COLIN BEACH SMITH

CITY OF SAN DIEGO
MONTGOMERY-GIBBS EXECUTIVE AIRPORT
MONTH-TO-MONTH FLAT RATE AIRCRAFT HANGAR LEASE

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

RECITALS

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

WHEREAS, CITY has certain Aircraft hangars available for use by the owners and operators of general aviation Aircraft at the Airport;

WHEREAS, CITY desires to lease Aircraft hangar spaces located on the area commonly known as Flattop West 5B Aircraft parking spaces at Montgomery-Gibbs Executive Airport, located at 3750 John J. Montgomery Drive, San Diego, CA 92123;

WHEREAS, LESSEE has occupied the Leased Premises (as defined below in section 1.1) since November 1, 2023 (the "Possession Date") but has not paid CITY any rent for such occupancy; and

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

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

LESSEE's Name: **Colin Beach Smith**

Street Address: 810 Cornish Drive, San Diego, CA 92107

Telephone Number(s): (619) 992-3952 Email: colinbeachsmith@gmail.com

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

LESSEE's Aircraft: BEARHAWK MODEL B

Type: Fixed Wing Single-Engine

Tail Number: N519TT

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

SECTION B. DEFINITIONS

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

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

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

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

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

Debbie Shauger, Property Agent (858) 573-1448

If the above-designated CITY Contact is unavailable, the following person shall be

CITY's alternative CITY Contact:

Thurman Hodges, Supervising Property Agent (858) 573-1426

(e) "Deputy Director" means the Deputy Director of the Department of Real Estate and Airport Management's Division of CITY and his/her authorized designee(s).

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

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

(h) "Leased Hangar" shall mean the hangar used by LESSEE for its Aircraft, as set forth in section 1.1, below.

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

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

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

SECTION 1: LEASED PREMISES AND USES

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY the CITY-owned property identified as Flattop East Lot 5B Hangar No. 3J and the Leased Hangar upon it (the "Premises" or "Leased Premises"), as further identified on **Exhibit A: Leased Premises** attached hereto and by this reference made part of this Lease. The Premises is approximately 787 sq. ft. and is located at 3750 John J. Montgomery Drive, San Diego, CA 92123 within Montgomery Gibbs Executive Airport.

1.2 Uses.

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

The use of the Premises for any unauthorized purpose, as well as not continually being in compliance with the pre-execution warning, shall constitute a substantial default of the Lease and shall subject this Lease to termination at the sole option of the Deputy Director.

LESSEE covenants and agrees to use the Premises for the above-specified purpose and to diligently pursue said purpose throughout the Term hereof.

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

a. The Premises may not be utilized in any manner which, in the opinion of the Deputy Director creates a nuisance.

b. LESSEE may not make any improvements, changes, or alterations to LESSEE's Premises without the written authorization of the Deputy Director.

c. The Premises are made available to the LESSEE solely for the purpose of storing of the LESSEE's Aircraft, and not for the operation of any commercial enterprise. The conduct of any commercial activity from the Premises, such as (but not limited to) Aircraft charter, rental, repair, or instructional service is prohibited.

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

e. Routine Aircraft maintenance performed on the Leased Premises will be limited to "Non-commercial Maintenance" performed by the LESSEE of the Aircraft assigned to the Premises under this Lease as set

forth in Federal Aviation Administration Circular No. 43-12A and FAR Part 43, Appendix A, paragraph (c), City of San Diego Airports Division Operations Policies and Procedures, Article 11, Hangar Use and Occupancy. 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.

f. Fueling of <u>any type</u> of Aircraft while located in a hangar is prohibited. Fueling of any Aircraft at the Airport shall <u>only</u> be performed by a party qualified to fuel Aircraft at the Airport.

g. The temporary parking of Motor Vehicles will be permitted only within the confines of the Leased Premises; as used in this sentence, "temporary parking" shall mean the allowance of parking for pick-up/drop-offs and/or during the time LESSEE is tending to or flying his/her Aircraft. In addition and incidental to Aircraft Storage, other "Motor-Vehicles" may be stored in Premises, so long as the primary use of the Premises is for the storage of Aircraft. The Premises shall not be used solely for the purpose of storing Motor Vehicles. Short term parking is authorized while the LESSEE is personally using his/her Aircraft. Parking in Aircraft taxi lanes is prohibited. All operators of motor vehicles shall yield to all Operations of Aircraft.

h. LESSEE shall be solely responsible for properly securing his or her Aircraft on the Premises.

i. The non-commercial construction of Amateur-built or Kit-built Aircraft on the Premises shall show substantial and continual progress during said construction in order for LESSEE to be authorized to continue leasing the Premises. The progress of said construction shall be subject to the reasonable satisfaction of the Deputy Director. LESSEE shall be required to submit a ninety (90) day progress plan upon a written notice from CITY for the completion of any Aircraft construction that is not to the Deputy Director's reasonable satisfaction.

1.3 Related Council Actions.

By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. 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 Leased Premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Term (defined below) peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Term, or if during the Term, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting there from, but there shall be determined and stated in writing by CITY a proportionate reduction of the Rent (defined below) for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises caused solely by CITY.

1.5 Easements and Reservations.

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

b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

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

However, CITY shall not unreasonably or substantially interfere with LESSEE's use of the Premises and will reimburse LESSEE for physical damages caused by CITY, if any, to LESSEE's personal property located on the Leased Premises, resulting from CITY exercising the rights reserved in this

section. Such reimbursement may include a reduction in the Rent proportionate to the amount of physical damage, as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Political Activities.

The Leased Premises shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events, subject to LESSEE's compliance with all applicable laws.

SECTION 2: TERM

2.1 This Lease shall be month-to-month, starting on the Effective Date ("Term"). Notwithstanding the foregoing, in no event shall the term of this Lease extend beyond a final termination date of October 31, 2026. This Lease may be terminated by either party, without the necessity of cause, by one party providing the other party with a prior 30-day written notice, sent by U.S. First Class Mail.

SECTION 3: RENT & SECURITY DEPOSIT

3.1 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks shall be made payable to the City Treasurer and mailed to:

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

or hand-delivered to:

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

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

3.2 Rent.

a. Rent Amount. The monthly rate for Lease Premises will be in accordance with the Airport's Division Fee Schedule in effect at the time of signing this Lease ("Rent"). The Fee Schedule is reviewed annually and is subject to change after thirty (30) days written notice to those affected by the change.

The current monthly Rent is: **$126.00**

b. Annual Adjustments. Each year, prior to the anniversary date, CITY shall review the monthly Rent and shall have the right to increase the monthly rent after providing thirty (30) days written notice to LESSEE.

3.3 Delinquent Rent.

If LESSEE fails to pay the Rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the Rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of Rent be less than Twenty-five Dollars ($25).

In the event that the CITY audit, if applicable, discloses that the Rent for the audited period has been underpaid in excess of five percent (5%) of the total required Rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss

of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

3.4 Security Deposit.

A security deposit shall be paid to the CITY by LESSEE in the sum $252.00 before the Effective Date of this Lease. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for correcting any default or breach of this Lease by LESSEE, LESSEE's successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE's failure to faithfully perform all terms, covenants, and conditions of this Lease.

The security deposit, and all increases thereto, shall take one of the forms set out below:

a. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

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

LESSEE will maintain the required security deposit throughout the Term. Failure to do so shall be considered a default and is grounds for immediate termination of this Lease.

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

The security deposit or any balance thereof will be returned to LESSEE in compliance with applicable law following expiration or earlier termination of this Lease.

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

3.5 Payment for LESSEE's use of the Leased Premises between the Possession Date and the Effective Date.

a. Before the Effective Date of this Lease, LESSEE shall pay CITY the sum of $2,268.00. CITY agrees that this payment, along with the release provided for in section 3.5.b. below, reflects the fair value of LESSEE's use and occupancy of the Leased Premised from the Possession Date to the Effective Date.

b. LESSEE's Release. LESSEE discharges and releases CITY and its elected officials, officers, employees, representatives, and agents from any actions, causes of action, claims and demands, costs, loss of services, and expenses and compensation related in any way to all known and unknown injuries resulting, now or later, from the Lease and LESSEE's use, possession, and occupancy of the Leased Hangar and Premises under the Lease or otherwise. LESSEE represents and warrants that they have not sold, assigned, or otherwise transferred any of the claims released by this Lease. LESSEE agrees that all rights under California Civil Code, section 1542 and under any other applicable, similar law are expressly waived. California Civil Code, section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

LESSEE represents and warrants to CITY that LESSEE has read and understood the Lease with the releases and indemnification provisions and that LESSEE has had the legal effect of this Agreement explained by competent legal counsel of LESSEE's own choice and LESSEE is executing this Lease of LESSEE's own free will.

SECTION 4: ASSIGNMENT

4.1 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 guests of LESSEE, to use or occupy the Premises or any part thereof. This Lease shall not, nor shall any interest therein, be assigned as to the interest of LESSEE by operation of law.

"Assignment" for the purposes of this clause shall include 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, to any other person or entity.

4.2 Encumbrance.

LESSEE may not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE.

4.3 Defaults and Remedies.

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

1) LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for five (5) calendar days past due following written notice of the failure by CITY; or

2) Other than the payment of Rent, LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or

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

4) LESSEE shall be adjudicated a bankrupt; or

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

6) LESSEE uses the Premises for any unauthorized purpose.

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

b. 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 failures 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:

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

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

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

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

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

6) upon termination of the Lease, LESSEE shall be obligated to pay fees computed at the then current daily rates for comparable

transient spaces until LESSEE has removed all Aircraft, personal property, improvements and/or trash and debris from the assigned space(s) and Airport.

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

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

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

SECTION 5:

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

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

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

c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum Rent shall be equitably reduced to reflect the portion of the Premises taken if the portion taken directly affects LESSEE's allowed operations, which determination shall be made by CITY in its reasonable discretion.

d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in the Premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

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

SECTION 6: INSURANCE RISKS/SECURITY

6.1 Indemnification & Hold Harmless. LESSEE will protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents 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 officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any

manner directly or indirectly connected with this Lease or Lessee's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that Lessee's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY elects 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 will pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.

6.2 Insurance.

As of the Effective Date, Lessee shall be a date after which LESSEE has: (a) obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies as required in Section 6.2.3 of the Lease; and (c) confirmed that all policies contain the specific provisions required in Section 6.2.4 of the Lease. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under the Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Lease may be treated as a material breach of contract by CITY.

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

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

6.2.1.1 Comprehensive General Liability**.** General Liability (GL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover

liability arising from any and all personal injury or property damage in the amount of One Million Dollars ($1,000,000) per occurrence including One Hundred Thousand Dollars ($100,000) for bodily injury to any person. There shall be no endorsement or modification of the GL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

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

6.2.1.3 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 related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Department of Real Estate and Airport Management.

6.2.2 Deductibles**.**

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

6.2.3 Acceptability of Insurers**.**

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

6.2.3.2 CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

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

6.2.4.1 Comprehensive General Liability Insurance Endorsements

ADDITIONAL INSURED**.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured CITY of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

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

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

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

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

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

and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

6.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Premises within forty eight (48) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Leased Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 6.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of the occurrence of the damage, and the required repairs, restoration, or replacement shall be completed no later than ninety (90) days. CITY may, in its sole discretion, determine an equitable deduction in the monthly rent requirement for such period or periods that said Premises are untenantable by reason of such damage if such damage is not directly or indirectly caused by LESSEE or LESSEE's operations on the Premises.

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

7.1 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 acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and

assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined this Lease. LESSEE acknowledges and agrees that unless set forth in this Lease, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on, or after the Effective Date.

7.2 Entry and Inspection.

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

7.3 Maintenance.

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

7.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the CITY. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the CITY, and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair, restoration and/or replacement of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

7.5 Utilities.

LESSEE agrees to pay for all electrical utilities and service charges in connection with the development and operation of the Leased Premises.

7.6 Liens.

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

If improvements, alterations, 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.

7.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Leased Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease

may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

7.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within 24 hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE's cost.

7.9 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE are CITY's property free of all liens and claims, except as otherwise provided in this Lease.

b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, and installations, CITY shall so notify LESSEE thirty (30) days prior to Lease termination or expiration, and LESSEE shall remove all such improvements, and installations as directed by CITY at LESSEE's sole cost on or before Lease expiration or earlier termination. If LESSEE fails to remove any improvements, structures, and installations as directed by CITY, LESSEE agrees to pay CITY the full cost of any removal.

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

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

e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay

rent to CITY at the rate in effect immediately prior to said expiration or termination.

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

7.10 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

7.11 Hazardous Substance.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

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

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

c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.

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

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

f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate

regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

7.12 Asbestos Disclosure.

CITY discloses to LESSEE that portions of the Leased Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Leased Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Leased Premises.

7.13 Disabled Access Compliance.

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

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

7.14 Relocation Payments.

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

7.15 Lease Subject to FAA Regulations.

LESSEE acknowledges and agrees, in addition to the foregoing terms and conditions of this Lease, that LESSEE shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **EXHIBIT B**, which by this reference are made a part of this Lease. Failure to strictly adhere to the FAA Regulations shall subject this Lease to immediate termination with no liability to CITY.

SECTION 8: AIRCRAFT REMOVAL

8.1 Aircraft Removal.

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

SECTION 9. LIENS & LOCK DOWN OF AIRCRAFT

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

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

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

SECTION 10: SAFETY MANAGEMENT SYSTEMS

10.1 Safety Management Systems Compliance. Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term of this Lease that the FAA will mandate SMS compliance for general aviation airports, which would include the

Airport. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in Aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (1) CITY's requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Leased 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 Leased 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.

SECTION 11: GENERAL PROVISIONS

11.1 Notices and Consent.

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

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

And to:
Director of Economic Development
Civic Center Plaza
1200 Third Avenue, 17 Floor
San Diego, California 92101

To LESSEE:
Colin Beach Smith
810 Cornish Drive
San Diego, CA 92107

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

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

11.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the 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 CITY or other appropriate authority, under the authority of any such law, statute, ordinance, or regulation.

11.3 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor, or his designee, unless otherwise specified, without need for further resolution by the City Council.

11.4 Nondiscrimination.

This Lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that LESSEE or any person claiming under or through LESSEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

11.5 Accessibility Compliance.

LESSEE will, as applicable to the Premises and LESSEE's possession, use, and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance will include without limitation the following:

Where required by law, all improvements, fixtures, structures, or installations on the Premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at LESSEE's sole expense.

LESSEE's failure to comply with the accessibility requirements of this section 11.5, or submitting false information in response to these accessibility requirements, or both, will be a default of this Lease.

11.6 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).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the LESSEE or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the LESSEE or tenant, if requested by the LESSEE or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

11.7 Water Quality – Best Management Practices.

City and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

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

11.8 Equal Benefits.

LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits will be a default of this Lease.

11.9 Equal Pay Ordinance

Unless an exception applies, LESSEE will 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.

11.10 Survival.

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

11.11 Joint and Several Liability.

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

11.12 Partial Invalidity.

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

11.13 Number and Gender.

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

11.14 Captions.

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

11.15 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEE's 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.

11.16 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of

which shall be deemed an original and all of which together shall be considered one and the same instrument, it being understood that all parties need not sign the same counterpart.

11.17 Electronic Signatures.

The parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that electronic signatures shall be binding as originals upon the party so signing and delivering.

11.18 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Leased Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

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SIGNATURES FOLLOW ON NEXT PAGE***

SIGNATURE PAGE
TO
MONTGOMERY-GIBBS EXECUTIVE AIRPORT
MONTH-TO-MONTH AIRPLANE PARKING LEASE

LESEE and CITY sign and enter into this Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

Jorge Rubio (Apr 1, 2025 16:08 PDT)

By:_____
Jorge Rubio, Deputy Director, Airports
Economic Development Department

LESSEE:

Colin Beach Smith

Colin smith (Apr 1, 2025 13:54 PDT)

_____

Approved as to form on
_____:

HEATHER FERBERT
City Attorney

Andrew J. Alfonso (Apr 2, 2025 11:17 PDT)

By: _____
Andrew J. Alfonso
Deputy City Attorney

EXHIBIT A

Identification of Leased Premises



EXHIBIT B

Federal Aviation Administration Lease and Use Agreement Provisions

TRANSPORTATION (Lessee) shall adhere to the following terms and conditions during the entirety of the time period covered by this MOU. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the MOU, the terms and conditions contained in the main body of the MOU shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted at DREAM, include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal

duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on-airport aeronautical activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.

b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

1. The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. The following clauses will be included in lease or license entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to lease, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

3. The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the City of San Diego pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to the lease, in the event of breach of any of the above

nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI)

Article I. The airport sponsor shall insert the paragraph above in all airport contracts, leases, subcontracts, subleases and other agreements at all tiers.

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_provisions/.)

4. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the Lessee and without interference or hindrance.

5. The airport owner/sponsor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard.

6. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of the Lessee or any occupant to comply with the requirements of any existing or future agreement between the lessor and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Lessee's rights hereunder.

7. There is reserved to the airport owner/sponsor, 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 leased premises. 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 said airspace or landing at, taking off from, or operating on the airport premises.

8. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for

the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.

9. The Lessee by accepting this lease agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Lessee.

10. The Lessee by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Lessee.

11. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).

12. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

13. The Lessee will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

14. The Lessee will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.