

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT OF LEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement entered into with Frank W. Schossow, Jr., dba Spider's Aircraft Service, Inc.

(LESSEE), dated Aug. 19, 1985 and filed in the Office of the City Clerk as Document ~~RR-263902~~ hereby consents to the Assignment of that Lease Agreement to Richard D. Corona, Randall Humphreys, Ronald P. Brady and Robert W. Brady (ASSIGNEE) in accordance with the terms and conditions set out in the attached Assignment of Lease Agreement entered into be Lessee and said Assignee, dated Nov. 25, 1985 and in accordance with additional conditions as follows:
(If none, write "None.") None

THE CITY OF SAN DIEGO

Dated:

12-30-85

By:

[Signature]
Deputy City Manager

APPROVED AS TO FORM:

JOHN W. WITT, CITY ATTORNEY

Dated:

12/19/85

By:

[Signature]
Deputy

WJP:sn(1)D3
1-11-84

DOCUMENT NO. 769293
FILED JAN 03 1986
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

When recorded mail to:

This Agreement is made this 25th day of November, 1985,
by and between Frank W. Schossow, Jr., d.b.a. Spider's Aircraft
Service, Inc. a California Corporation, hereinafter called
"Assignor", and Richard D. Corona, Randall Humphreys, Ronald P.
Brady and Robert W. Brady, hereinafter called "Assignees."

1. The City of San Diego, as Lessor, and Assignor as Lessee, executed a lease on May 23, 1985, and subsequently recorded the lease on August 19, 1985 in the office of the County Recorder of San Diego County, California, as document number RR263902. By the terms of the lease, a copy of which is attached hereto, the property described therein was leased to Assignor as Lessee for a term of three (3) years, commencing on May 1, 1985.

2. Assignor now desires to assign the lease to Assignees,
and Assignees desire to accept the assignment thereof.

THEREFORE, Assignor and Assignees agree as follows:

Assignment

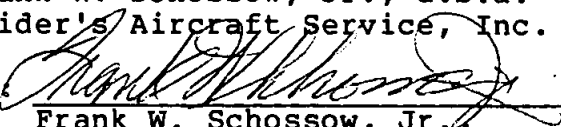
For value received, receipt of which is hereby acknowledged, Assignor hereby assigns and transfers to Assignees all of his right, title, and interest in and to the lease hereinbefore described, and Assignees hereby agree to and do accept the assignment, and Assignees expressly assume and agree to keep, perform, and fulfill all the terms, covenants, conditions, and obligations, required to be kept, performed, and fulfilled by Assignor as Lessee thereunder, including the making of all payments due to or payable on behalf of Lessor under said lease when due and payable.

Executed at San Diego, California, on the day and year first above written.

Dated: 11-26-85

ASSIGNOR

Frank W. Schossow, Jr., d.b.a.
Spider's Aircraft Service, Inc.

by: 

Frank W. Schossow, Jr.,
President

ASSIGNEES

Dated: 11-26-85


Richard D. Corona

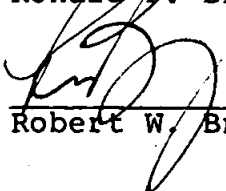
Dated: 11-26-85


Randall Humphreys

Dated: 11-26-85


Ronald P. Brady

Dated: 11/27/85


Robert W. Brady

FOOPY

Frank W. Schossow, Jr., d.b.a.
Spider's Aircraft Service, Inc.

THE CITY OF SAN DIEGO

Percentage Leases

RR
DOCUMENT NO. 263902
FILED AUG 19 1985
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO

PERCENTAGE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and FRANK W. SCHOSSOW, JR., d.b.a. SPIDER'S AIRCRAFT SERVICE, INC., hereinafter called "LESSEE."

SECTION 1. USES.

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated on Montgomery Field Airport in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."

1.02 Permitted Use. Said premises are leased to LESSEE only for the purpose of engaging in the business of aircraft engine and airframe repairs, sales and renting of aircraft, aircraft parts and accessories, flight instruction, renting aircraft storage and tiedown space, operating an aircraft charter and flight service, sale of aviation petroleum products to the general public and for such other related or incidental purposes as may first be approved in writing by City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above specified purposes and to diligently conduct the business thereon to produce the most gross income that can be reasonably expected. Failure to continuously use the premises for said purposes, or the use of the premises for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither the 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, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

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

1.05 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 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, if any, to the permanent improvements located on the leased premises resulting from CITY'S 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 the CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this lease agreement LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management of an airport fixed base operation in a fiscally responsible manner and expertise in all related business operations.

SECTION 2: TERM

- 2.01 Commencement and Termination. The term of this agreement shall be three (3) years commencing on May 1, 1985. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of May 1985. Either party may terminate this lease upon 180 days' written notice to the other party. LESSEE waives all claims for damages by reason of the termination of this agreement.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, the LESSEE shall deliver to the CITY a quitclaim deed in recordable form quitclaiming all its rights in the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event the CITY requires any subsequent quitclaim deed, the LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition, and in the case of termination of this lease by CITY prior to the end of the specified lease term any liens and encumbrances approved in writing by the City Manager during the lease term.

SECTION 3: RENT

- 3.01 Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed or delivered to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California, 92112-4165.

The place 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. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

3.02 Rent.

- a. Minimum Rent. Beginning the effective date of this lease and continuing until adjusted under the provisions of Paragraph 3.02.b. hereof, the annual minimum rent shall be Twelve Thousand Fifty Dollars (\$12,050). If the total amount of percentage rent based on gross income as set out in Paragraph c. hereof, paid to CITY by LESSEE, in any one year ending upon the day prior to the anniversary date of the commencement of this agreement (lease year) is less than the sum of \$12,050, then LESSEE shall pay the CITY within 60 days of said anniversary date a sum of money equal to the difference between the amount actually paid to CITY and minimum rent.
- b. Minimum Rent Adjustment. Effective at the beginning of the first day of the 19th month following the effective date of this lease, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the 6-month period preceding the adjustment date. ^{xv} It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying minimum rents at the prior rate. In no event shall any such minimum rent adjustment result in a decrease in the minimum rent requirement in effect immediately prior to the adjustment date.
- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:
- | | |
|-------------------------|---|
| ONE HALF PERCENT (1/2%) | of the gross income derived from the sale of new or used aircraft that were owned and sold by LESSEE. |
| FIVE PERCENT (5%) | of the gross profit or commission on aircraft not owned by LESSEE, which were sold on a commission basis. |
| SEVEN PERCENT (7%) | of gross income derived from the rental of aircraft tiedown facilities. |
| FIVE PERCENT (5%) | of gross income derived from the rental of aircraft storage hangars. |

FOUR PERCENT (4%)

of gross income derived from the sale of aviation fuel and oil sold to the general public.

THREE PERCENT (3%)

of gross income derived from aircraft rental, aircraft repair, sales of aircraft parts and accessories, flight instruction, aircraft charter and flight service and all other aircraft activities not hereinabove defined.

TEN PERCENT (10%)

All other activities.

TWENTY-FIVE PERCENT (25%)

Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game or service machines or devices on the premises, including telephones, or 10% of the gross income of any such coin-operated machines or devices owned, rented or leased by LESSEE or sublessees for use on the premises.

The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.07, UNAUTHORIZED USE CHARGE, hereof.

3.03 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE will provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be more than one business operation.

- b. The percentage rental due the CITY, computed and totaled.
- c. The accumulated total of all rents previously paid for the current lease year.
- d. The total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by the CITY as required by this lease, and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.04 Gross Income. "Gross income or receipts" as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee or their agents and all gross income received by any sublessee, permittee, licensee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.05 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activity conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.

- Account
to be
in
order*
- c. Petroleum Products. Not later than the thirteenth day of each month, LESSEE shall render to CITY a statement of all aviation fuel and aviation oil bought or distributed by or delivered to LESSEE on the airport during the preceding month. Such statement shall also show the source of all purchases by LESSEE.

- d. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under a. Records will be kept for at least five years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

On CITY'S request, LESSEE will promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

e. Audit Cost. The full cost of the CITY'S audits will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit.

- (1) The audit reveals an underpayment of more than five percent (5%), or more than \$10,000 whichever is less between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit; or
- (2) LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with the Inspection of Records section.

LESSEE shall pay any deficiency determined by the audit plus interest on such amount as defined in the Delinquent Rent provision of this lease within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit findings.

f. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

3.06 Delinquent Rent and Audit Fees. If the LESSEE fails to pay the rent when due, the 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, the 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.

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. In the event the CITY audit discloses that the unpaid rent is less than five percent of the total rent, then in the event LESSEE fails to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts 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.

- 3.07 Unauthorized Use Charge. LESSEE will pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for rental payments, and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. Subject to prior CITY approval in each instance, LESSEE may assign this lease and any interest herein and may sublease any portion hereof to an assignee or sublessee who has, in the opinion and in the sole and absolute discretion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased portion of the premises in a manner at least comparable to the operations of LESSEE. This lease and any interest herein shall not be assignable by operation of law without the written consent of the CITY.

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

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

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

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval, in writing, of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said development plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then current rents and provisions.

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

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to and approved by CITY. Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

- (1) 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
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Paragraph a. (1) of this section is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within 30 days, to commence to cure the default(s) and diligently pursue such cure to completion. The 30-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:

- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable cost incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold whose qualifications as an assignee have been approved by CITY shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, the CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, 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 the City Manager 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. The CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is City-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or the City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel but the CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.
- 4.05 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of the 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 the CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession of the condemning authority, whichever occurs first, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

- d. Award. All monies awarded in any such taking shall belong to CITY whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer the CITY'S interests in the premises, in lieu of condemnation, to any authority entitled to exercise the power of eminent domain. If a transfer occurs, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

- a. Any unsafe or defective condition in or on the premises of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,
- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

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

- a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. This policy shall cover all injury or damage, including death, suffered by any party or parties, from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE, on or in connection with the use or operation of the premises.
- b. Fire, extended coverage and vandalism insurance policy on all insurable property on the premises, in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days prior written notice to the CITY. All insurance companies must be satisfactory to the CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

- e. Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report should contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the 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 the 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 the 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 5.02, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations and observations in making this lease. LESSEE further acknowledges that premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days' written notice to LESSEE, to have any necessary maintenance work done for and 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 the 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 the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.03 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of said premises throughout the term hereof including, without limitations, the maintenance, replacement and repair of any doors, heating and air-conditioning system, plumbing, sewer pipes, electrical wiring and conduits without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises, and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Sections 1941 and 1942 of the California Civil Code.

- 6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the City Manager and such approval shall not be unreasonably withheld. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith, except as CITY herein expressly agrees to provide. CITY agrees to furnish reasonable amounts of water to the lease premises. The City Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE will, at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the premises, and the costs of defending against such claims, including reasonable attorney's fees.

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

- a. Take all actions necessary to record a valid release of lien, or
- b. File with CITY a bond, cash, or other security acceptable to CITY, sufficient to pay in full all claims of all persons seeking relief under the lien.

6.08 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 the 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 the CITY.

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

6.10 Ownership of Improvements and Personal Property.

- a. All and any improvements, trade fixtures, structures and installations or additions to the premises now existing or constructed on the premises by LESSEE, shall at lease expiration or termination, be deemed to be part of the premises and shall become at CITY'S option the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If the CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE 30 days prior to termination or 180 days prior to expiration and the LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures) and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become the 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 rental by LESSEE to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claim the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.01 Notices.

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

City Manager, Attention Property Director
City Administration Building
202 C Street, M.S. 9B
San Diego, CA 92101-4155

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

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

- 7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.03 CITY Approval. The approval or consent of the CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
- 7.05 Partial Invalidity. If any term, covenant, condition or provision of this lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.06 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.07 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.08 Captions. The lease Table of Contents, section headings and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.09 Entire Understanding. This lease contains the entire understanding of the parties. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in respect to the lease premises. Each party has relied on its own examination of the premises, advice from its own attorneys and the warranties, representations and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent or attorney of any other party has made any promise, representation or warranty whatsoever, which is not contained in this lease.

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

- 7.10 CITY Option to Purchase. In the event LESSEE desires to dispose of its interest in this lease together with any of its interest in improvements, trade fixtures and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.
- 7.11 CITY Employee Participation Policy. It is the policy of the CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Standard of Employees. The LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.13 Noxious Weeds, Pests and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire lease premises.
- 7.14 LESSEE Use to Conform with Law and Other Rules. LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under the LESSEE'S or his sublessee's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and the City of San Diego in regard to their aviation and air navigation authority.

SECTION 7. AIRPORT PROVISIONS

- 7.15 Supersedure. It is mutually agreed that this lease, upon commencement, supersedes and annuls that certain lease executed on the 12th day of January 1977, with CITY OF SAN DIEGO and FRANK W. SCHOSSOW, JR., d.b.a. SPIDER'S AIRCRAFT SERVICE, INC., Document No. 757944, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.16 LESSEE Use and Construction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the premises. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure, on the premises.
- 7.17 LESSEE'S Noninterference with Aircraft. LESSEE and LESSEE'S successors, assigns and sublessees agree not to use the premises in any manner or act in any manner that might interfere with any aircraft landing or taking off from Montgomery Field Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the premises and abate or eliminate the interference at the expense of the LESSEE.
- 7.18 Lease Subordinate to City-United States Agreements. This lease shall be subordinate to the terms of any existing or future agreements between the City and the United States, or to any United States legal requirement, relative to the development, operation or maintenance of the airport.
- 7.19 Right of Flight Easement. CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the premises, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near Montgomery Field Airport.
- 7.20 War or National Emergency. In the event of war or national emergency, this lease and all of its provisions will be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, taking over, exclusive or nonexclusive use of Montgomery Field Airport.
- 7.21 Airport Development. CITY reserves the right to further develop, change or improve the airport and its routes and landing area as CITY sees fit, without LESSEE interference or hindrance and regardless of LESSEE'S views and desires.

- d. LESSEE agrees to include the entire covenant in any sublease or lease agreement by which the LESSEE grants any right or privileges to any firm, corporation or person providing services or accommodations to the public on the lease premises.
- 7.25 Affirmative Action. LESSEE, LESSEE'S successors, assigns, sublessees, and any suborganizations, agree to undertake an affirmative action program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.
- 7.26 CITY to Mitigate Impacts of Subordination. If subordination agreements between the CITY and United States results in LESSEE'S inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY agrees to make a reasonable rental reduction or adjustment, as determined by CITY. LESSEE agrees that any damages claimed during this subordination period will be limited to this rental relief.
- 7.27 CITY to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between the CITY and the United States of America results in LESSEE'S inability to operate as a business on the premises, or if the business operations permitted under this agreement are materially affected during a period of subordination, CITY, upon written request from LESSEE, will terminate this lease or extend the term of this lease for the period of time LESSEE'S operation is affected, and no rent shall accrue during any period of inoperation.
- 7.28 Hangar Keepers Insurance. LESSEE agrees to maintain the following insurance at its sole expense, during the term of this lease: Hangar Keepers Insurance sufficient to cover any aircraft hangared for others.
- This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this lease.
- 7.29 Height Limitation. LESSEE and LESSEE'S successors, sublessees and assigns agree not to erect or permit any structure or tree on the premises to reach a mean sea level elevation of 480 feet. If this covenant is breached in any way, CITY reserves the right to enter the premises and remove the structure, object or tree, at the expense of the LESSEE.
- 7.30 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

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

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

7.24 FAA Nondiscrimination Covenant.

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

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

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

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

b. If any of the above provisions are breached, CITY may terminate the above lease, reenter and repossess the premises as if this lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed including expiration of appeal rights.

c. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If the LESSEE does not comply with this provision, CITY has the right to terminate this lease agreement, without liability, or either the CITY or the United States may judicially enforce this entire covenant.

- 7.31 Licenses and Certifications. LESSEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and the CITY has the right to terminate the lease without liability.
- 7.32 Competent Management. LESSEE agrees to maintain competent management of the leased premises throughout the term of this agreement, to the satisfaction of the City Manager.
- 7.33 Employee Conduct. LESSEE shall be responsible for the conduct of any employee on the entire property, if that employee is on airport property during any period of employment.
- 7.34 Aircraft Parking. LESSEE shall require that all aircraft under its control be parked only on the leased premises, except as otherwise provided by the direction of the City Manager. At no time shall any aircraft, vehicle or other object, including refuse, under LESSEE'S control, be allowed to obstruct any designated taxiways.
- 7.35 Minority Business Policy. If the LESSEE receives any Federal funds governed by Title 49, Code of Federal Regulations, Part 23, LESSEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. LESSEE and LESSEE'S contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

SECTION 8: SIGNATURES

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date AUG 19 1985

By *Raymond G. Smith*
ASSISTANT TO THE City Manager.

LESSEE: FRANK W. SCHOSSOW, JR., d.b.a.
SPIDER'S AIRCRAFT SERVICE, INC.

Date 5-23-85

By *Frank W. Schossow, Jr.*

By _____

APPROVED as to form and legality this 2 day of September, 1985

By *V. Stulch*
Deputy City Attorney

DD:jw(4)D1
5-22-85
Job 252007

R- 263902

Strike 14
(R-86-222)

RESOLUTION NUMBER R- **263902**

ADOPTED ON **AUG 19 1985**

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a three (3) year lease agreement with FRANK W. SCHOSSOW, JR. dba SPIDER'S AIRCRAFT SERVICE, INC., for the purpose of operating a fixed base, general aviation facility on a portion of Lot 16, and Buildings 114 and 119, Montgomery Field Airport, at a minimum annual rent of \$12,050, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **263902**.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
08/06/85
Or.Dept:Prop.
Job:252007
R-86-222
Form=r.none

9-11-85 Copies sent by Phil

9600

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

8/19/85
N/A
Rev. # 263902

TO: CITY ATTORNEY
2. FROM: (ORIGINATOR) Property Dept., Airports Leasing
3. DATE July 1, 1985

4. SUBJECT: Lease - Frank Schossow - Portion of Lot 16, Building 114 and 119, Montgomery Field Airport

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

Authorizing the City Manager to execute for and on behalf of the City of San Diego, a 3-year lease agreement with Frank Schossow dba Spider Aircraft for the purpose of operating a fixed base, general aviation facility on the subject premises.

Council District 5 Community Area: Serra Mesa

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)

Action Requested By: Property Director

Descriptive Location: A portion of Lot 16 (97,200 sq. ft.) and Building 114 and 119, Montgomery Field Airport

Documents Submitted: Original and seven (7) copies of the agreement

Terms: Three-year percentage lease at a minimum annual rent of \$12,050.00

Environmental Assessment: This action is exempt per CEQA Section 15301, Class 1, Existing Facilities, of the State of California Guidelines.

Handling: DO NOT RECORD. Deliver documents to Airports Leasing, Attention: Diana Drake, M.S. #14, for further handling.

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.) Diana Drake 14
8. TELEPHONE NO. 6496
9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☒

10. COMPLETE FOR ACCOUNTING PURPOSES:			11. ROUTING AND APPROVALS			
FUND/DEPT.	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
ORGANIZATION			✓	DEPARTMENT DIRECTOR	<i>J. L. Ford</i>	7/18/85
OBJECT ACCOUNT				CLEARING AUTH.	<i>Diana Drake</i>	7/22/85
JOB ORDER			X	EQD-mm		
WORK ORDER NO.				CLEARING AUTH.	<i>Tommy H. Jr.</i>	7/24/85
C.I.P. NO.				GS/AIRPORTS	<i>Clemens</i>	7-26-85
FACILITY				DEPUTY CITY MANAGER	<i>Lane Bradley</i>	7/31/85
AMOUNT			X	AUDITOR		
			✓	CITY ATTORNEY		
			✓	ORIGINATING DEPARTMENT	<i>W. Brown</i>	8-6-85
			X	MGR. DOCKET CLERK		
			✓	RULES COMMITTEE		

12. ESTIMATED COST:

Docket **X**

REDI Book Page 352

cc: Fire Dept.
Co. Assessor

JOB: 252007

☐ CONSENT ☐ ADOPTION
☐ REFER TO _____ DATE _____

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

July 1, 1985

SUBJECT:

Lease - Frank Schossow - Portion of Lot 16, Building 114 and 119,
Montgomery Field Airport

BACKGROUND: (DOUBLE SPACE)

Frank Schossow, dba Spider's Aircraft, has leased a portion of Lot 16, Montgomery Field Airport since 1955 for the purpose of operating a fixed-base general aviation facility.

On January 1, 1982, this lease was placed on a holdover status pending approval of the Montgomery Field Master Plan, which occurred during 1984. Subsequent developments indicate that this area will not be redeveloped within the next three years. Therefore, an interim 3-year lease effective May 1, 1985 has been negotiated with Mr. Schossow, which includes a provision for 180-day cancellation by either party.

Percentage rents on aircraft repairs, parts, accessories, rentals, flight instruction, charter and flight service have been increased from 2½% to 3%. All other percentage rents remain the same.

The proposed minimum annual rent is \$12,050 which represents an increase of 25%. The minimum rent is based on 9% return on the current market value of \$133,888.

FISCAL IMPACT: A minimum of \$12,050 will be deposited to the Airports enterprise Fund 41100, Account 75511.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

FWLER/SPOTTS/DD

SIGNATURES:

ORIGINATING DEPT. HEAD

CITY MANAGER
(FOR MANAGERIAL DEPARTMENTS ONLY)

CITY of SAN DIEGO
MEMORANDUM

Close of Escrow
1-2-86

Effective date of
Assignment 12-30-85

FILE NO.: JOB: 252052
DATE : December 3, 1985
TO : Deputy City Manager John P. Fowler via 1) Deputy Director/Airports;
2) EQD; 3) City Attorney, Attn: H. Valderhaug
FROM : Property Department
SUBJECT: Consent to Assignment of Lease Agreement - Frank W. Schossow, Jr.,
dba Spider's Aircraft Service, Inc. to Corona, Humphreys, Brady and
Brady

ASSIGNOR: Frank W. Schossow, Jr., dba Spider's Aircraft Service, Inc.

ASSIGNEES: Richard D. Corona, Randall Humphreys, Ronald P. Brady and
Robert W. Brady

PREMISES: A portion of Lot 16 and Bldgs 114 & 119 at Montgomery Field
Airport

Lease Term Assignment in full. 3 years commencing May 1, 1985,
& Assignment: with 180 day cancellation by either party.

Use: General aviation fixed base operation.

Analysis of Assignment:

Frank Schossow, Jr., dba: Spider's Aircraft, has leased a portion of Lot 16 at Montgomery Field since 1955 for the purpose of operating a fixed base general aviation facility. On August 19, 1985, the City Council approved a new 3-year interim lease with Frank Schossow on the subject premises pending implementation of the Montgomery Field Master Plan.

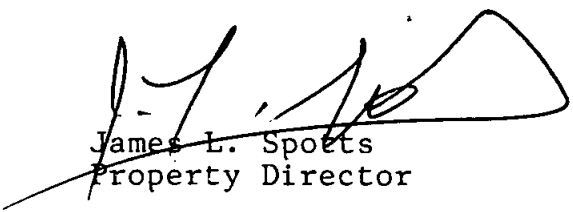
In September 1985, Mr. Schossow entered into a sales contract with Messers: Corona, Humphreys, Brady and Brady for the sale of Spider's Aircraft Services, Inc.. As a part of the contract, Mr. Schossow will remain active in the business in an advisory capacity for the next year. Mike Mc Carthy will be director of maintenance. Mr. McCarthy was formerly in that capacity for 6 yrs. for Lancer Aircraft, and holds the designations of A & P, A & I, and A E. Bruce Brown will be the General Manager. Mr. Brown was the Chief Pilot and Director of Operations for Lancer Aviation for 4 years. All assignees have submitted satisfactory Credit Reports and Financial Statements. It is their intent to paint the buildings and make other improvements to the premises. They will also relocate Spider's Aircraft engine repair facility from its current location off Montgomery Field Airport to the leased premises, which will increase revenue to the City.

REVENUE: Minimum annual rent is \$12,050

ENVIRONMENTAL
IMPACT: This action is exempt per CEQA Section 15301,
Class 1, existing facilities of the State of
California Guidelines.

ACTION
RECOMMENDED: That the Deputy City Manager execute the
original and duplicate of the attached
Consent to Assignment of Lease Agreement.
Council action is not required.

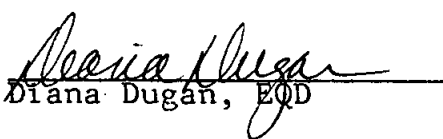
HANDLING: Please return the executed copies of the
Consent to Assignment to Airports Division,
Attn: Diana Drake, telephone 6496.



James L. Spotts
Property Director

cc: Deputy Director/Airports
EQD
County Assessor
City Auditor, Attn: Roy Quon
Airport Supervisor, SDM
Buildings Div., Tom Delane

EXEMPTION VERIFIED:



Diana Dugan, EQD

CITY of SAN DIEGO
MEMORANDUM

FILE NO.: JOB: 252052
DATE : December 3, 1985
TO : Honorable Mayor and Members of the City Council
FROM : Property Department
SUBJECT: Consent to Assignment of Lease Agreement - Frank W. Schossow, Jr., dba Spider's Aircraft Service, Inc. to Corona, Humphreys, Brady and Brady

Pursuant to 700.10, Section D.7, Leasehold Assignments, the City Manager may authorize assignments which do not require an Amendment of the Master Lease provisions.

A Consent to Assignment of Lease Agreement will be executed on the date indicated below on City premises consisting of a portion of Lot 16 and Buildings 114 & 119 at Montgomery Field Airport (Site Code N508GA/104).

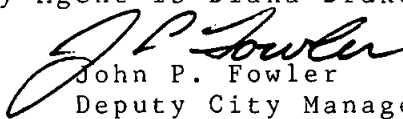
1. Agreement Type: A Consent to Assignment of Lease
2. Purpose: General Aviation Fixed Base Operator.
3. Term: Remainder of 3 year lease that commenced May 1, 1985, with 180 day cancellation by either party.
4. Rent: Minimum annual rent is \$12,050

REMARKS:

Frank Schossow, Jr., dba Spider's Aircraft, has leased a portion of Lot 16 at Montgomery Field since 1955 for the purpose of operating a fixed base general aviation facility. On August 19, 1985, the City Council approved a new 3-year interim lease with Frank Schossow on the subject premises pending implementation of the Montgomery Field Master Plan.

In September 1985, Mr. Schossow entered into a sales contract with Messers: Corona, Humphreys, Brady and Brady for the sale of Spider's Aircraft Services, Inc. As a part of the contract, Mr. Schossow will remain active in the business in an advisory capacity for the next year. Mike Mc Carthy will be Director of Maintenance. Mr. Mc Carthy was formerly in that capacity for 6 yrs. for Lancer Aircraft, and holds the designations of A & P, A & I, and A & E. Bruce Brown will be the General Manager. Mr. Brown was the Chief Pilot and Director of for Lancer Aviation for 4 years. All assignees have submitted satisfactory Credit Reports and Financial Statements. It is their intent to paint the buildings and make other improvements to the premises. They will also relocate Spider's Aircraft engine repair facility from it's current location off Montgomery Field Airport to the leased premises, which will increase revenue to the City.

The assigned Property Agent is Diana Drake, telephone 6496.


John P. Fowler
Deputy City Manager

12/30/85
Date of Execution