



Real Estate Assets Department
SDC003

W003WW-004-800

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

TACTICAL AIR OPERATIONS, INC.

(LESSEE) and filed in the Office of the City Clerk as Document RR-293833, dated September 18, 2000, hereby consents to that certain Rental Agreement (Sublease), dated September 19, 2003, attached hereto, between the above LESSEE (SUBLESSOR) and

SAN DIEGO ULTRALIGHT – ASSN., INC.

(SUBLESSEE). The Sublease shall be subordinate to the Master Lease in all respects. CITY is merely approving SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

1. ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the Sublease or sublet the subleased premises or any part of the subleased premises without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the Sublease.
2. HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify, and hold harmless CITY, its elected officials, officers, employees, agents, and representatives from all claims, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the subleased premises, the condition of the subleased premises, or from any act or omission of SUBLESSEE, its agents and invitees; provided, however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.
3. INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the subleased premises. Minimum coverage shall be two million dollars (\$2,000,000) combined single limit liability per occurrence. A copy of the policy of insurance shall be filed with CITY and shall, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds. The policy shall specify that the policy may not be terminated, altered, or canceled without thirty (30) days prior written notice to CITY by the insurance company.

4. LEGAL PROCEEDINGS: Should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this consent, the Master Lease, or the Sublease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
5. ASSUMPTION: SUBLESSEE agrees to assume the rights and obligations of the Master Lease and to keep and perform all covenants, conditions, and provisions of the Master Lease which are applicable to the rights acquired.

THE CITY OF SAN DIEGO, a municipal corporation

Date 3/21/08

By David A. Sandoval
David A. Sandoval, Deputy Director
Real Estate Assets Department

TACTICAL AIR OPERATIONS, INC., a California corporation

Date 3-22-08

By Allen Fink
Allen Fink, President

SAN DIEGO ULTRALIGHT ASSN., INC., a California corporation

Date 3-22-08

By Kirk Boughner
~~Gerald Hambalko~~ President
KIRK BOUGHNER

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Date 6-25-08

By John Lewis
Deputy City Attorney

PDP/nb

10/17/07

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REAL PROPERTY SUB-LEASE

This Sub-lease is entered into between *Air Adventures Skydiving, Inc.*, from now on referred to as "**Air Adventures**" and the *San Diego Ultralight Assn., EAA Ultralight Chapter 114, Inc.* from now on referred to as the "**Association**".

RECITALS

- A. **Air Adventures** is the Lessee of real property commonly known as Nichols Field pursuant to a lease with the City of San Diego filed in the Office of the City Clerk of San Diego, California, on September 18, 2000 (the "Master Lease").
- B. **The Association** desires to sub-lease a portion of Nichols Field for ultralight, and sport aircraft hangars as well as operate ultralight, sport aircraft on the taxiways, runways and common areas of the airfield.

IT IS THEREFORE AGREED:

1. **Premises**. Air Adventures sub-leases to the Association that portion of Nichols Field from its northern boundary south to the south end of the Ultralight Clubhouse, west to include the westernmost row of existing hangar spaces nos. 1, 2 and, 3, and east along the northern boundary of Nichols Field to hangar space no. 45 near the main taxiway, as more particularly depicted in the Map attached "hereto as **Exhibit A** (the "Premises"). In addition to the exclusive use of the sub-leased, Premises, the Association has the shared use of the runways, taxiways and common areas of Nichols Field with Air Adventures.
2. **Use**. The Association will use the Premises, the runways, taxiways and common areas of Nichols Field, for ultralight, sport aircraft purposes as authorized and restricted by the Master Lease. The Association's use of the runways, taxiways and other common areas is also subject to reasonable rules and regulations **Exhibit C** approved in writing by the Association's membership and Air Adventures. It is further agreed that any dispute regarding the adoption of reasonable rules and regulations or the operation of the runways, taxiways and common areas of Nichols Field will be decided by the Real Estate Assets Director for the City of San Diego, or his or her designated representative. Should the Real Estate Assets Director for the City of San Diego decline to decide the dispute, the matter will be brought before the San Diego Airports Advisory Committee for resolution or the matter will be submitted for arbitration before a mutually agreeable arbitrator.
3. **Annual Fly-In Event**. The Association may hold an Ultralight Fly-In Event on a mutually agreed date with Air Adventures. During such event the Association will coordinate the use of runways, taxiways and common areas of Nichols Field with Air Adventures to operate on a non-interference basis. It is agreed by both parties that Skydiving Operations have priority over Ultralight operations.

4. **Term.** The term of this Sub-Lease is from the date of City approval of the sub-lease agreement until September 18, 2010, a term that corresponds with the initial term of Air Adventures' Master Lease

5. **Rent.** The Association will pay Air Adventures \$1,600 per month as rent and is due and payable in advance no later than the 10th of each month. The rent charged to the Association by Air Adventures can only be increased by the same percentage increase charged to Air Adventures by the City of San Diego as defined in 3.2-B of the Air Adventures Master Lease with the City of San Diego. If the Association fails to pay the rent when due, late fees will be assessed in the same percentage as is charged to Air Adventures by the City of San Diego for late payments.

6. **Default.** The failure of the Association to pay rent when due and to correct such failure within 20 days after notice by Air Adventure; of such default or the failure to perform any non monetary obligation of the Lease and the Association's failure to take action to correct and remedy such breach within 45 days after Air Adventures provides notice constitutes default by the Association of its obligations under this lease. Any notice required of this lease, must be hand delivered to the President of the Association.

7. **Insurance.** The Association shall maintain Premise Liability Insurance that is not less than the maximum available, but not more than three million dollars. The policy shall include the City of San Diego and Air Adventures Skydiving, Inc. as additional insurers. The insurance policy shall state that the insurance is primary without any right of contribution from any other policy that may be in effect. Air Adventures agrees not to require any additional insurance above that is required by the City of San Diego.

8. **Taxes.** Air Adventures will pay all real property taxes for Nichols Field, if any is required to be paid for the Premises.

9. **Non-Liability.** The Association waives all claims for damages against Air Adventures arising out of the use or operation of any ultralight or sport aircraft except those damages that may arise as a result of Air Adventures intentional conduct or gross negligence.

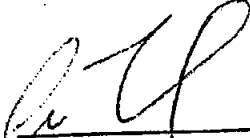
10. **Condition of Premises.** The Association acknowledges that the Premises are in good order and repair. The Association is required to maintain the exterior of the structures, as well as a firebreak on the North side, as required by the Fire Department, including general weed control on the leased premises.

11. **Governing Laws.** California law governs this Sub-lease. Jurisdiction and venue of any dispute regarding the lease is to take place in the in the San Diego Superior Court for the County of San Diego, Downtown Judicial District.

12. **Attorneys Fees.** In any action or proceeding, by either party to enforce this Sub-lease, the prevailing party is entitled to recover reasonable attorney's fees and court costs.

This lease will only become valid when approved in writing by the City of San Diego in accordance with the Master Lease between Air Adventures Skydiving, Inc. and the City of San Diego, filed in the Office of the City Clerk of San Diego, California, on September 18, 2000.

Air Adventures Skydiving, Inc.

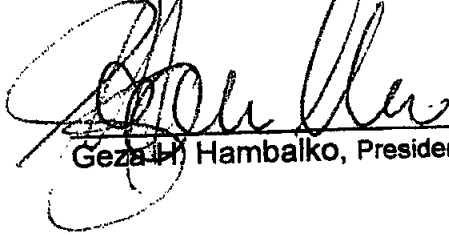


Allen Fink, President

9-19-03

Date

San Diego Ultralight Assn, Inc.



Geza H. Hambalko, President

9-19-03

Date

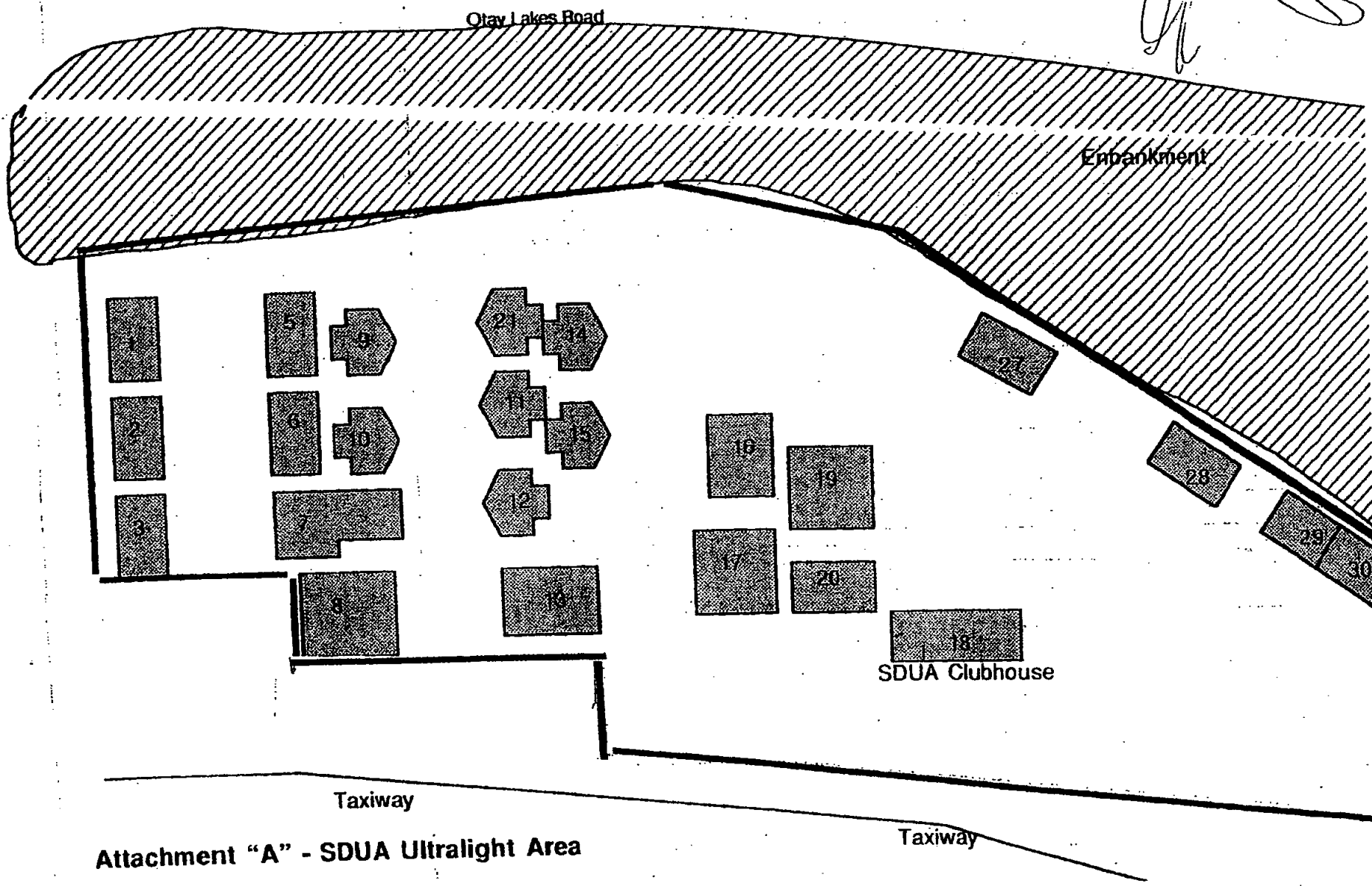


EXHIBIT C

San Diego Ultralight Assn., EAA Ultralight Chapter 114, Inc.

RULES & REGULATIONS

For Pilots and Tenants Using Nichols Field Ultralight Airpark

The following rules and regulations govern pilots and tenants (hereafter known as "Pilot") and their operation of ultralight and sport aircraft at Nichols Field located at 13531 Otay Lakes Road, Jamul, California 91935. Violation of any of these rules will be addressed by the San Diego Ultralight Assn., EAA Ultralight Chapter 114, Inc. (hereafter known as "Association").

1. Pilots must hold a valid certification from a FAA approved certifying agency. Pilot will be required to sign a liability **RELEASE AGREEMENT** (herein attached) and show proof of certification prior to flying.
2. Pilot is responsible for the maintenance and upkeep of his/her aircraft to include all aircraft directives issued by the manufacturer.
3. Airband communication is required at Nichols Field. The Common Traffic Advisory Frequency (CTAF) is 121.95 and is used to get airport information or make blind broadcasts of your position or intentions. Departures and arrivals must be announced and the Pilot must be aware of any skydiving activity as well as the jump plane status. Do not depart after announcement has been made that skydiving activity is in progress. Do not enter the pattern to land after the "two minute warning" has been announced by the jump plane. Do not depart or land while jump plane is on the runway. Remember, parachutes always have the right-of-way.. Look for parachutes prior to taxi and again prior to takeoff. Do not take off or land when parachutists are under canopy at any altitude.
4. Runways are designated 25 (right hand traffic) and 27 (left hand traffic). Pattern altitude for both runways is 800 feet MSL. Field elevation is 480 feet MSL. On departing 25, do not cross over 27 or overfly Air Adventures jump school buildings. See diagram of RUNWAYS (herein attached). Runway 25 and taxiways are unimproved surfaces. Each Pilot is responsible for inspecting taxi and takeoff surfaces prior to each use. Pilot assumes full responsibility for any damage resulting to his/her aircraft due to runway or taxiway condition.
5. No flying within 500 feet vertically and horizontally of structures in and around the airpark. Avoid flying low over fishermen, duck hunters, roads and livestock. No aerobatics are allowed over Nichols Field.
6. Pilot's personal vehicle or his/her friends, family, guests, and pets are not allowed to enter the parachute drop zone, which includes taxiways, runways, jump plane fueling and parking area, and the open field beyond the taxiway.
7. Blocking hangars and taxiways is prohibited.
8. Hangar spaces, tiedowns, and trailer spaces are assigned by the Association. All new hangar construction plans must be approved by the Association. Temporary tiedown spaces are available

EXHIBIT C

Version 1, dated 1Aug2003

for visiting Pilots who wish to trailer their ultralight into Nichols Field for short-term use. A **HANGAR/TIEDOWN AGREEMENT**, if applicable, (herein attached) and liability **RELEASE AGREEMENT** (herein attached) must be signed by all Pilots prior to using Nichols Field.

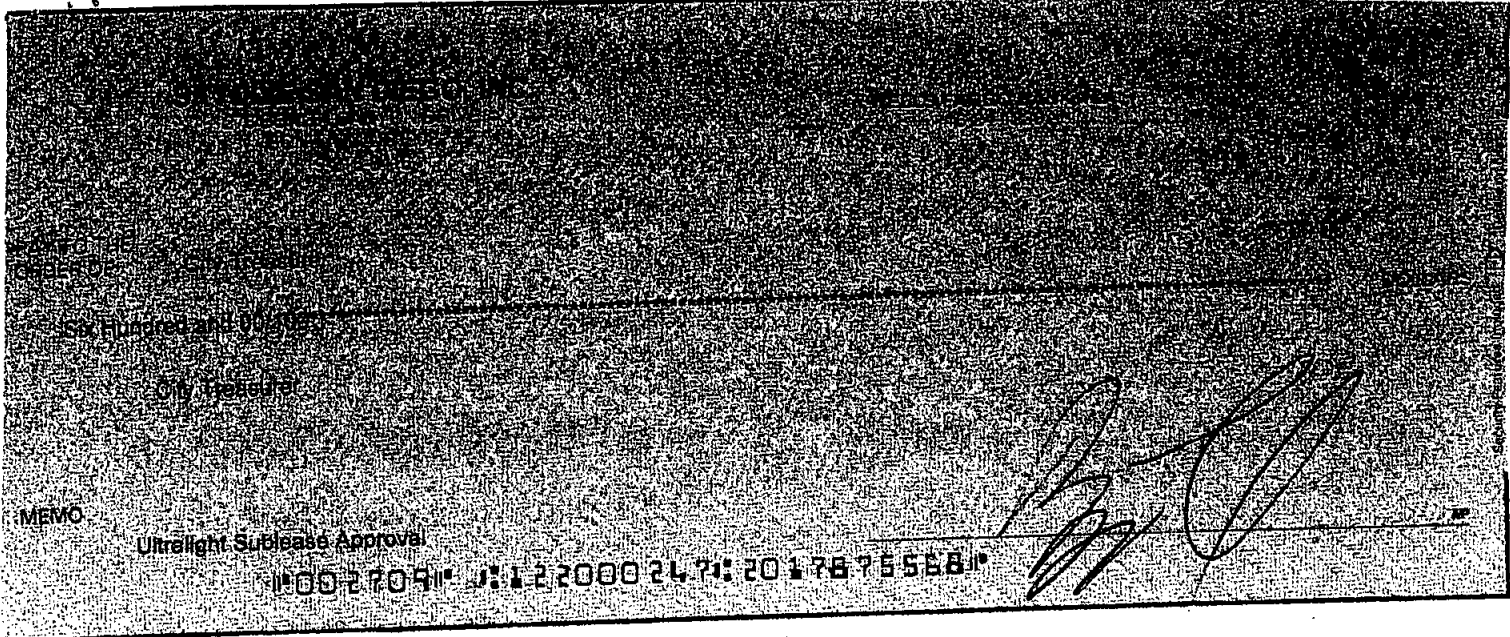
9. No open fires are allowed at Nichols Field. Fires in common areas away from structures and airplanes are allowed within approved metal receptacles only. Fuel will not be stored within hangars unless stored in approved containers. Vehicle parking is not permitted on taxiways and between hangar rows.

10. Pilot will abide by all applicable Federal Aviation Administration regulations as well as all applicable state, city, and local laws.

11. Failure to follow the above rules and regulations will result in a termination process executed by the Association and may result in termination of the Pilots tiedown agreement, loss of rights to use facilities, and/or removal from Nichols Field.

12. These rules and regulations may be changed at any time by vote at a regular meeting of the Association.

*



SKYDIVE SAN DIEGO, INC.

9/17/2003

2709

City Treasurer
4950 · Licenses and Fees

600.00

Checking

Ultralight Sublease Approval

600.00