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ELECTRONICALLY FILED
Superior Court of California,
County of Orange
10/31/2017 at 08:00:00 AM
Clerk of the Superior Court
By Isia Vazquez, Deputy Clerk

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COURT OF ORANGE COUNTY**

12 AIR COMBAT USA, INC.,

13 Plaintiff,

14 v.

15 Brendan O'Reilly,
16 CITY OF FULLERTON, and DOES 1-10,

17 Defendants.

CASE NO. 30-2017-00952643-CU-CO-CJC

Assigned to Judge Walter Schwarm

**COMPLAINT FOR DAMAGES AND
SPECIFIC PERFORMANCE**

1. INTENTIONAL
MISREPRESENTATION
2. BREACH OF CONTRACT
3. NEGLIGENCE
4. SPECIFIC PERFORMANCE

DEMAND FOR JURY TRIAL

26 Plaintiff Air Combat USA, Inc. ("ACUSA") complains of the Defendants, and each of them,
27 and allege as follows:
28

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 **PLAINTIFF:**

3 1. Plaintiff ACUSA is the original civilian aerial combat fantasy camp where anyone can
4 become a ***“Fighter Pilot For a Day”***, established in 1986 and incorporated in 1990 in Fullerton,
5 California. With over 30 years of experience and having flown over 50,000 guest pilots, Air
6 Combat USA is the largest, safest, and most recognized civilian air combat school in the world.
7 ACUSA has been featured on hundreds of television shows including most recently, **The**
8 **Apprentice**, **Top Gear UK**, & **Hell’s Kitchen**, and flew this year alongside the Navy’s Blue
9 Angels at the 2017 Huntington Beach Air Show where a record crowd of 1 million gathered at the
10 beach to embrace aviation. As the industry leader, ACUSA works hand-in hand with the Federal
11 Aviation Administration (FAA) monthly and with other governing agencies, such and SoCal Tracon
12 and others to define the parameters and to establish safety guidelines used to regulate the air combat
13 industry as a whole. Simply stated, Air Combat USA, invented this industry.

14 2. Michael J. Blackstone (“Michael”) became the President of ACUSA per Court’s order, on
15 June 16, 2016 after his father and former President of ACUSA passed away on August 19, 2015.

16 3. ACUSA, and Michael Blackstone have operated continuously and have leased hangars
17 and business facilities owned and controlled by the City of Fullerton since 1981, over 36 years.
18 The latest 5-year hangar lease, located at 3815 W. Commonwealth Ave was from signed and dated
19 June 1, 2011 – October 1, 2016. This lease was to be renewed prior to October 1, 2016 for a term
20 of up to 30 additional years. ACUSA and Michael had no reason to believe that this lease would
21 not be extended for another 30 years of bringing the magic of aviation to the public for the
22 remainder of his life, and to continue his father’s amazing legacy. Michael Blackstone contacted
23 Brendan O’Reilly, the Airport Manager of City of Fullerton, multiple times in multiple ways, but
24 the requests to renew lease were repeatedly and deliberately ignored and/or denied in writing as
25 well as in official face-to-face meetings with Brendan O’Reilly and his boss, Don Hoppe, before the
26 lease expires on October 1, 2016. Due to City of Fullerton, via its agent Brendan O’Reilly’s
27 wrongful termination and denial ACUSA’s right to renew the lease, ACUSA suffered damages in
28 an amount of fifty million dollars.

1 **DEFENDANTS:**

2 4. Brendan O'Reilly ("Brendan") is the airport manager at City of Fullerton, who supervises
3 the airport, manages tenants and is empowered to act on behalf of the City of Fullerton, sign hangar
4 and tie down leases with current and new tenants, as well as to terminate and renegotiate existing
5 leases at the Fullerton Airport for the City of Fullerton on their behalf.

6 5. City of Fullerton is a Municipal Corporation with an airport hangar facility located at
7 3815 W. Commonwealth Ave, Fullerton, CA 92833 in North Orange County, California, United
8 States of America.

9 **JURISDICTION AND VENUE**

10 6. Jurisdiction is proper as the amount in controversy is in excess of the statutory
11 requirements of this Court, i.e. \$25,000.

12 7. Venue in this Court is appropriate as all the injuries to the Plaintiff occurred in Orange
13 County.

14 **STATUTE OF LIMITATIONS**

15 8. Plaintiff's complaint is timely filed, as all Plaintiff's injuries and damages were caused by
16 Defendant Brendan, on behalf of City of Fullerton, who wrongfully denied ACUSA's contractual
17 right to renew the hangar lease, before the lease expires on October 1, 2016, where the State of
18 California has four-years statute of limitations on breaching of a written contract. (CCP § 335-
19 349.4)

20 **CLAIMS AGAINST MUNICIPAL CORPORATION**

21 9. The appropriate claims procedure against Municipal Corporation is followed, as
22 Defendant City of Fullerton, via its Director of Human Resources, Gretchen R. Beatty, granted a
23 "right to sue" in writing on May 4, 2017, where the "right to sue" expires on November 4, 2017.

24 **THE HANGAR CONTRACT**

25 10. Plaintiff ACUSA and Defendant City of Fullerton entered a valid 5-year contract (the
26 "contract") on 6/1/2011, where ACUSA has a right to renew on or before the lease expires. The
27 signed hangar contract is integrated by reference as a part of the complaint in **Exhibit A**.

28 11. Due to a late move-in, the actual expiration of the contract is on 10/1/2016.

1 12. The lease contract well defines the monthly payment rate with a formula.

2 13. Plaintiff's prior President (Michael J. Blackstone's father), signed the contract on
3 6/1/2011, but passed away subsequently on 8/19/2015.

4 14. Michael J. Blackstone ("Michael") became the ACUSA President, per Court's order on
5 6/16/2016.

6 **THE MISREPRESENTATION**

7 15. Under American Freedom of Information Act, the Plaintiff obtained documentary
8 evidence from the City of Fullerton that Defendant Brendan knew the lease contract would expire
9 on 10/1/2016, as of 3/25/2016, when Brendan received confirmation from the City Attorney, Ivy
10 Tsai, and relayed his knowledge of this fact to ex-ACUSA employee Denise Jennings via email.

11 16. On 5/11/2016, when Michael met with Brendan at the Airport Office, seeking lease
12 renew, Brendan turned down ACUSA's request to renew stating that he "*wanted to see how the*
13 *court ruled on who would be the new president of ACUSA*" and would be willing to extend our lease
14 as long as it took and not to worry, "*We would always have a home here at the Fullerton Airport.*"

15 17. On 6/3/2016, when Michael made another visit to Brendan to renew the lease, Defendant
16 Brendan replied, "*Let's hold on until the dust settles.*" and again stated that he was waiting to find
17 out how the court ruled on the ownership of Air Combat USA.

18 18. On 6/10/2016, the City sent out a Notice of Rent Increase, effective on July 1, 2016,
19 which is integrated by reference as a part of the complaint in **Exhibit B**. This notice proves the
20 lease expires on "October 1, 2016" and not on "June 1, 2016", as the City only sends out rent
21 adjustment within the lease, per lease terms. (*Exhibit A, The Lease, Pg. 4-5, Rent Adjustment*)

22 19. On 6/24/2016, when asked about the City of Fullerton's Notice of Rent Increase,
23 Defendant Brenden knowingly misrepresented again, stated the false expiration date and replied in
24 writing, "*Someone missed the fact that the lease is up in June 2016*", which is integrated by
25 reference as a part of the complaint in **Exhibit C**.

26 20. On 6/30/2016, when Michael met with Brendan at Brendan's Office to renew the lease,
27 Brendan denied ACUSA's request to renew the lease again, and knowingly and falsely reassured
28

1 ACUSA that ACUSA would always have a home at Fullerton Airport, while Brendan began
2 negotiations with Rob Sims to consider a third-party "Hangar 2" to take Air Combat USA hangars.

3 21. On 7/30/2016, when Michael texted Brendan to request renewing the lease again,
4 ACUSA was further denied.

5 22. Defendant Brendan denied all ACUSA's attempt to renew the lease, in the name that the
6 lease had already expired on "June 1, 2016", before the lease actually expires on October 1, 2016.

7 **UNFAIR PRACTICE**

8 23. In order to increase the rent on the lease, Defendant Brendan presented a Valuation
9 Report of 8/3/2016, where it unfairly compares the 3815 W. Commonwealth Ave hangar facility at
10 Fullerton Airport to that of Van Nuys, Ventura County, Santa Barbara and Lompoc Airports, which
11 are much larger and more desirable airports, capable of taking corporate jets and regional airline
12 flights, with rate of \$6,340/month (500% valuation of the current \$1,256/month rate of July 2016).

13 24. On 9/19/2016, ACUSA met with Brendan and his supervisor Don Hoppe to discuss
14 renewing the lease, but was again swiftly denied, citing the lease was expired and the property
15 would be subject to a public Request For Proposal ("RFP") process, when the lease was not expired.

16 25. On 10/10/2016, ACUSA submitted another lease renew proposal tailored to City's new
17 valuation report, but was again promptly denied by Brendan.

18 26. On 10/27/2016, Michael of ACUSA sent Defendant Brendan another email, requesting
19 renew the lease, but received no reply.

20 **COLLUSION**

21 27. After the prior President of ACUSA, Michael E. Blackstone passed away on 8/19/2015,
22 several ex-employees of ACUSA contested the written Trust and to have Michael J Blackstone
23 removed as Executor Trustee for his father's estate and for the succeeding President position.

24 28. On 6/16/2016, the OC Superior Court ordered Michael J. Blackstone be the President of
25 ACUSA and to take over day to day operations.

26 29. Afterwards, some ex-ACUSA employees secretly continued to interfere with ACUSA
27 efforts to renew the lease, hoping to drive ACUSA out of business and off the Fullerton Airport.
28

30. On 10/27/2016, after receiving ACUSA's RFP proposal, Defendant Brendan helped ex-ACUSA employee Denise Jennings draft a competing RFP bid for the ACUSA hangar space. With the insider info and help from Brendan, Denise and others did make a bid to drive ACUSA out of their building.

31. Defendant Brendan also helped another RFP bidder “Hanger-21”, for the same RFP process, using inside info received from former ACUSA employee and 25% Trust Beneficiary Denise Jennings.

32. On 4/5/2017, Michael of ACUSA met with Bruce Whitaker, the Mayor of Fullerton and informed him about Brendan's engaging in collusion, conspiratorial and unethical business practices as a public officer and showed the Mayor documentary evidence including email communications among former ACUSA employees. In addition, Michael of ACUSA again requested to renew the lease with the Mayors help, and asked him to set up a meeting of all interested parties to come together to discuss what the best plan of action would be for the airport community. Nothing was ever scheduled or considered.

33. On 5/4/2017, Michael of ACUSA filed a Request for Information with City of Fullerton and demanded related information to the RFP process under The Freedom of Information Act (FOIA), among Brendan, Denise and all parties associated with the RFP process. Many weeks later only fragmented bits of information were retrieved.

34. On 6/23/2017, ACUSA received a formal Termination Notice from Defendant Brendan on behalf of the City of Fullerton.

35. On 9/1/2017, ACUSA was forced to move out of their home at the Fullerton Airport in the City of Fullerton, and, as a result, suffered significant financial losses.

DAMAGES

36. Plaintiff ACUSA suffered significant losses in bargained for benefits, when City of Fullerton breaches ACUSA contractual right to renew. ACUSA suffered loss in bargained for benefit at about \$5K/month, or about two million dollars for the next 30-years.

37. Plaintiff ACUSA suffered incidental losses due to moving and relocation to 3 other local airports, in excess of thirty thousand dollars.

1 38. Plaintiff ACUSA suffered consequential damages including loss of revenue and sales,
2 after moving out of City of Fullerton, about forty-five million dollars over next 30 years.

3 39. Plaintiff ACUSA entitles to specific performance to renew the lease, since the Airport
4 Hangar, 3815 W. Commonwealth Ave, in the City of Fullerton is a piece of real estate and
5 monetary compensation is insufficient.

6 40. Plaintiff ACUSA further entitles to punitive damage, as the behavior of Airport Manager
7 Brendan is intentionally deceptive, a gross misrepresentation of the facts for the benefit of himself
8 and others, unfair and abusive bully tactics and is grossly negligent behavior on behalf of the City
9 of Fullerton, with malice and fore thought. The City of Fullerton is not only fully aware of
10 Brendan's unethical and illegal activity, but also have rectified and accepted it. Defendant City of
11 Fullerton is vicariously liable for punitive damage, as the City is imputed by Defendant Brendan's
12 illegal act, intentionally damaging an ongoing iconic aviation business known by many to "have put
13 Fullerton Airport on the map". Plaintiff seeks four hundred and fifty million dollars as punitive
14 damage.

15 **FIRST CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**

16 (Against all Defendants and DOES 1 to 10)

17 41. Plaintiff repeats and re-alleges each and every allegation contained in all preceding
18 paragraphs of this Complaint and incorporates same by this reference as though set forth at length
19 herein.

20 42. According to California Judicial Council of California Civil Jury Instructions (CACI)
21 Series 1900, to establish Plaintiff's claim of Intentional Misrepresentation, Plaintiff must prove all
22 of the following: (1) That Defendant falsely represented a material fact; (2) That Defendant's
23 representation was false; (3) That Defendant knew that the representation was false when they made
24 it; (4) That Defendant intended that Plaintiff rely on the representation; (5) That Plaintiff reasonably
25 relied on Defendant representation; (6) That Plaintiff was harmed; and (7) That Plaintiff's reliance
26 on Defendant's representation was a substantial factor in causing Plaintiff's damages.

27 43. Defendant Brendan falsely represented a material fact of the expiration date of the lease
28 to be June 1, 2016, instead of October 1, 2016.

1 44. Defendant Brendan's representation was false because due to late move-in, the 5-year
2 lease contract expires on October 1, 2016.

3 45. Defendant Brendan knew that the representation was false when he made it, because
4 Brendan received a confirmation of expiration date of 10/1/2016 from City Attorney, Ivy Tsai on
5 3/25/2016.

6 46. Defendant Brendan intended that ACUSA rely on his representation of the wrong
7 expiration date and takes no action before the lease expires, because Brendan was colluding with
8 some ex-ACUSA employees and Rob Sims of Hangar 21.

9 47. Plaintiff ACUSA relied on Brendan's representation of a false lease expiration date.

10 48. Plaintiff ACUSA was harmed when Brendan failed to provide a renewal notice to the
11 City of Fullerton, because Defendant Brendan told ACUSA that "the lease was already expired".

12 49. Plaintiff ACUSA reliance on Brendan's misrepresentation was the substantial fact in
13 failure to provide a Written Notice from the City of Fullerton that the Hangar lease was coming up
14 for renewal and to ask ACUSA if they planned to renew the lease, before its expiration on
15 10/1/2016. No notice was ever received. Plaintiff ACUSA will suffer damages of over \$45M
16 USD in lost revenue and sales over the next 30 years as a result of Brendan O'Reilly's failure to
17 follow proper procedures and his intentional wrongful act on the City of Fullerton's behalf.

18 50. Under California Civil Code § 3294, in an action for the breach of an obligation not
19 arising from contract, where it is proven by clear and convincing evidence that the defendant has
20 been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may
21 recover damages (aka. Punitive Damage) for the sake of example and by way of punishing the
22 defendant. Here, Brendan's intentional act was not arising from contract, as he has no contractual
23 duty to ACUSA. His intentional misrepresentation and collusion constitutes malice. Brendan's
24 representation of lease expiration date was fraudulent. Plaintiff ACUSA is entitled to recover
25 actual damages as well as punitive damages.

26 51. Because Brendan acts as an employee for City of Fullerton, his intentional
27 misrepresentation and malice is within the scope of employment. In addition, because the City is
28 fully aware of Brendan's act, as Michael of ACUSA has informed the City official multiple times,

1 and because the City has rectified and accepted Brendan's wrongful acts, City of Fullerton is
2 vicariously liable for all Defendant Brendan's liabilities, including punitive damage.

3 **SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT**

4 (Against Defendant City of Fullerton)

5 52. Plaintiff repeats and re-alleges each and every allegation contained in all preceding
6 paragraphs of this Complaint and incorporates same by this reference as though set forth at length
7 herein.

8 53. According to California Judicial Council of California Civil Jury Instructions (CACI)
9 Series 303, to establish Plaintiff's claim of Breach of Contract, Plaintiff must prove all the
10 following: (1) Plaintiff and Defendants entered into a contract; (2) Plaintiff did all duties contract
11 required; (3) all condition required by the contract for Plaintiff's performance has occurred; (4)
12 Defendant failed to perform; (5) Plaintiff was harmed by Defendant's act.

13 54. Plaintiff ACUSA and Defendant City of Fullerton entered into a valid lease contract on
14 6/1/2011, where ACUSA has right to renew before the contract expires on 10/1/2016.

15 55. Plaintiff ACUSA did all duties contract required including making payments of rent.

16 56. All condition required by the contract for ACUSA has occurred

17 57. Defendant City of Fullerton failed to allow ACUSA to renew, due to Defendant
18 Brendan's intentional misrepresentation of the expiration date and Brendan's wrongful denial of
19 ACUSA multiple requests to renew the lease before the lease actually expires on 10/1/2016.

20 58. Plaintiff ACUSA was harmed by Defendants' fraudulent and intentional act, and
21 suffered significant damages due to unable to renew the hangar lease. Plaintiff ACUSA is entitled
22 to all damages related to breach of contract. In addition, because Defendants act of fraud and
23 intentional misrepresentation is a substantial fact contributing to breach of contract, fraud and tort
24 overlaps with contract law in this case. As such, Plaintiff entitles to punitive damage against all
25 defendants, even under this breach of contract claim.

26 **THIRD CAUSE OF ACTION FOR NEGLIGENCE**

27 (Against all Defendants and DOES 1 to 10)

1 59. Plaintiff repeats and re-alleges each and every allegation contained in all preceding
2 paragraphs of this Complaint and incorporates same by this reference as though set forth at length
3 herein.

4 60. According to California Judicial Council of California Civil Jury Instructions (CACI)
5 Series 400, to establish Plaintiff's claim of Negligence, Plaintiff must prove all the following: (1)
6 That the Defendant was negligent; (2) That the Plaintiff was harmed; and (3) That Defendant's
7 negligence was a substantial factor in causing Plaintiff's harm.

8 61. Defendant Brendan was negligent in at least four ways.

9 (1) Brendan failed his duty to inform ACUSA about the expiration of lease, while as
10 an Airport Manager who supervise leases, Brendan has a duty to do so. Air Combat USA
11 and its sister companies SkyThrills and Blackstone Airways have been major contributors
12 and supporters of the City of Fullerton for over 60 years and have made their home at
13 Fullerton. If a notice of expiration was provided, ACUSA would have definitely taken
14 action to renew the lease at least 60 days prior to the expiration;

15 (2) Brendan failed his duty to act fair and impartial, when Brendan helped both
16 Denise and Hangar-21 in RFP process competing against ACUSA for the hangar space;

17 (3) Brendan failed his duty to follow FAA Regulations for airports in receipt funding
18 in the form of Federal Grants under Grant Assurances 22, AIP that the Fullerton airport shall
19 "promote and encourage existing aeronautical businesses stay, encourage new aeronautical
20 businesses to be attracted to the Fullerton Airport and to perform aviation services.
21 Aviation activities are to remain a top priority, while Brendan favors nonaviation activities
22 such as the Denise's "learning center" or the "social event business" Hangar 21 engages in.
23 Brendan helped both write and submit their RFP proposals in competing bids against
24 ACUSA who was targeted and attacked.

25 (4) Brendan failed his duty to follow FAA Regulations that airport hangar leases
26 shall not be profit driven only, but mainly to promote aviation activities and services and to
27 encourage the airport to grow a community of pilots and aviation related businesses to North
28 Orange County. Because Defendant Brendan's breach of his duty was the actual and

1 proximate causes of Plaintiff ACUSA suffered damages, Defendant Brendan is liable under
2 Negligence.

3 62. Defendant City of Fullerton was negligent in at least three ways.

4 (1) City of Fullerton failed its duty to supervise Airport Manager properly to correct
5 Brendan's material misrepresentation, while the City has a duty to do so;

6 (2) City Attorney Ivy Tsai confirmed Brendan on 3/25/2016 about the expiration
7 date of 10/1/2016, but the City failed its duty to inform the tenant ACUSA, while the City as
8 landlord has a duty to do so;

9 (3) Upon Michael of ACUSA complains against Brendan about his collusion and
10 unethical behavior, City of Fullerton failed its duty to correct Brendan's illegal and unethical
11 activity. Because Defendant City of Fullerton's breach of its duty was actual and
12 proximate causes of Plaintiff ACUSA suffered damages, Defendant City of Fullerton is
13 liable under Negligence.

14 63. Plaintiff ACUSA was harmed substantially. As a direct, legal, and proximate result of
15 all Defendants' conduct as alleged above, Plaintiff ACUSA is entitled to general and special
16 damages according to proof.

17 **FOURTH CAUSE OF ACTION FOR SPECIFIC PERFORMANCE**

18 (Against City of Fullerton)

19 64. Plaintiff repeats and re-alleges each and every allegation contained in all preceding
20 paragraphs of this Complaint and incorporates same by this reference as though set forth at length
21 herein.

22 65. Specific performance is an "equitable" remedy that compels the breaching party to live
23 up to his obligations to the non-breaching party.

24 66. The lease agreement is about Airport Hangar at City of Fullerton, which is a real estate
25 lease and unique. Consequently, monetary remedy is insufficient. As such, Plaintiff ACUSA is
26 entitled equity remedy of specific performance against City of Fullerton to enforce the lease
27 agreement with Plaintiff Air Combat USA.

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment against all Defendants as follows:

3 ***On the first cause of action:***

- 4 1. For all damages related to Intentional Misrepresentation in the sum of Fifty Million Dollars,
5 or according to proof at trial;
6 2. For punitive damages in an amount of Four Hundred and Fifty Million dollars,
7 or according to proof at trial

8 ***On the second cause of action:***

- 9 3. For compensatory damages in the sum of Fifty Million Dollars,
10 or according to proof at trial;
11 4. For punitive damages in an amount of Four Hundred and Fifty Million dollars,
12 or according to proof at trial

13 ***On the third cause of action:***

- 14 5. For all damages related to Negligence in the sum of Fifty Million Dollars,
15 or according to proof at trial;

16 ***On the fourth cause of action:***

- 17 6. For Specific Performance against City of Fullerton to enforce the lease;

18 ***On the all causes of action:***

- 19 7. For Attorney fees according to the terms of the lease (***Exhibit A, The Lease, Pg. 37***);
20 8. All costs of suit incurred herein; and
21 9. Any and all such other and further relief as the Court may deem just and proper.
22

23 Dated: October 31, 2017

LAW OFFICES OF JACK W. CHAO

24 

25
26 By: /s/ Jack W Chao
27 Jack W. Chao
28 Attorney for Plaintiff
AIR COMBAT USA, INC.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby respectfully demands a jury trial.

3
4 Dated: OCTOBER 31, 2017

LAW OFFICES OF JACK W. CHAO

6 

7 By:

/s/ Jack W Chao

8 Jack W. Chao

9 Attorney for Plaintiff

AIR COMBAT USA, INC

10
11
12
13
14 **VERIFICATION**

15 I, Michael J. Blackstone, hereby declare as follows:

16 I am the President of AIR COMBAT USA, INC in the above-entitled action. I have read
17 the foregoing Complaint and know its contents. The same is true of my own knowledge. I
18 declare under penalty of perjury under the laws of the State of California that the foregoing is true
19 and correct.

20 Executed on October 31, 2017 in Fullerton, California.

21 

22 By: _____

23
24 MICHAEL J. BLACKSTONE

EXHIBIT A



CITY OF FULLERTON

**LEASE AGREEMENT
FOR**

**AIR COMBAT USA
3815 W. COMMONWEALTH AVENUE,
FULLERTON, CA 92833**

 COPY

JUNE 2011

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Fullerton Municipal Airport FBO Lease

THIS LEASE ("Lease" or "Agreement") is made this 1st day of June, 2011, (the "Effective Date") by and between the City of Fullerton, a Municipal Corporation, ("Lessor" or "City"), and the following parties: Air Combat U.S.A., Inc., a California Corporation; ACUSA Maintenance, Inc., a California Corporation doing business as ACUSA Maintenance and Air Combat Maintenance; and SkyCoasters LLC, a Delaware Corporation doing business as SkyCoasters and SkyThrills, (All parties, specifically excluding Lessor, being hereinafter individually and collectively referred to as the "Tenant").

Each of the abovementioned Tenants shall be jointly and severally responsible to perform and comply with all of the duties, obligations and responsibilities set forth in this Lease. The Tenants shall be jointly and severally liable to Lessor for any liability or damage that may occur as the result of any action or omission by another Tenant covered by this Lease, and shall be responsible for performing any duty, obligation or responsibility another Tenant has failed to perform. Each Tenant shall indemnify, defend and hold Lessor harmless, against any and all claims, liabilities or damages caused by the willful, negligent, intentional or unintentional acts or omissions of any other Tenant covered by this Lease.

1. DEFINITIONS

For the purposes of the Agreement, the following words and phrases shall be construed to have the meanings set forth below, unless otherwise specifically stated to the contrary or it is apparent from the context that a different meaning is intended:

- A. "Airport" means Fullerton Municipal Airport, located at 4011 West Commonwealth Avenue, Fullerton, California.
- B. "Airport Manager" means the Manager of the Fullerton Municipal Airport or his designee.
- C. "City" means the City of Fullerton, a California municipal corporation.
- D. "City Council" means the City Council of the City of Fullerton.
- E. "FAA" means the Federal Aviation Administration.
- F. "Tenant" shall refer both individually and collectively to Combat U.S.A., Inc., a California Corporation; ACUSA Maintenance, Inc., a California Corporation doing business as ACUSA Maintenance and Air Combat

Maintenance; and SkyCoasters LLC, a Delaware Corporation doing business as SkyCoasters and SkyThrills.

2. LEASED PREMISES

Lessor hereby agrees to lease to Tenant certain property at the Fullerton Municipal Airport, located at 3815 W. Commonwealth Avenue, Fullerton, California, and more particularly described in "Exhibit A" and shown on "Exhibit B," which exhibits are attached hereto and incorporated herein by this reference (the entire area covered by this Lease Agreement shall hereinafter be referred to as the "Leased Premises").

3. TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this Lease shall terminate and supersede any prior leases or agreements between the parties hereto covering all or any portion of the Leased Premises.

4. PERMITTED SERVICES AND USES

Tenant's use of the Leased Premises shall be that of a Limited Fixed Based Operator ("FBO") engaged in the commercial activities as specified below, and in accordance with the requirements and limitations of the Fullerton Municipal Code, including but not limited to Chapter 18.

A. Authorized Services and Uses of the Lessor Premises

During the term of this Agreement, Tenant shall be allowed to use the Leased Premises for the following permitted activities within or from the Leased Premises:

1. Commercial (for hire) aerial demonstrations and flight instruction.
2. Maintenance, repair, overhaul, and modification of general aviation aircraft, aircraft engines, and airframes subject to obtaining and maintaining appropriate levels of insurance as approved by the City of Fullerton's Risk Manager.
3. Sale and installation of aircraft parts and accessories (retail and wholesale).
4. Line service of general aviation aircraft for the purpose of checking engine oil, tire pressures, and use of auxiliary power units for starting and/or on-the-ground utility service on the leased premises or in the public transient areas.

5. Aircraft washing and waxing service subject to approval of the equipment and operations by the Airport Manager.
6. Towing of disabled aircraft.
7. Maintaining offices, which shall be used for aviation related uses only (subject to the approval of the Airport Manager).
8. Rental of hangars and tiedowns. Tenant shall not rent a hangar or tiedown rental space for less than the currently established rate for City owned hangars and tiedown rental spaces, which rate is established and modified from time to time by Resolution of the Fullerton City Council.
9. Such other uses as may be approved in writing by the Airport Manager, and which uses are permitted under federal, state and local law.

B. Non-Permitted Uses of Lease Premises

Tenant agrees not to use or otherwise permit the Leased Premises to be used for any unauthorized or illegal purpose in conflict with the terms of this Lease or in conflict with federal, state or local law. Tenant shall not permit any other unpermitted activity within or from the Leased Premises. Tenant agrees that it shall only be entitled to use the Leased Premises for the uses and activities outlined in paragraph 4A. Any additional uses not specified above shall only be authorized if they are approved in writing, in advance, by the Airport Manager. Moreover, Tenant agrees not to conduct or permit to be conducted any public or private nuisance in, on or from the Leased Premises.

TERM

- A. Initial Term. The initial term of this Lease shall begin on the Commencement Date, and continue for a period of five (5) years (the "Initial Term"). The Initial Term shall not commence until the Leased Premises is first vacated by the current tenant, the Orange County Fire Authority ("OCFA"). The Initial Term shall officially begin on the first day of the next month, three (3) months after OCFA vacates the Leased Premises (the "Lease Commencement Date").

Optional Extension. At the expiration of the Initial Term, Tenant shall have an option to extend the term of this Lease for an additional thirty (30) years. This option must be exercised in writing, at least sixty (60) days prior to the end of the Initial Term.

The Initial Term together with any extensions authorized under this Agreement shall be hereinafter collectively referred to as the "Term."

5. RENT, FEES AND CHARGES

A. Base Rent

Upon the Rent Commencement Date as defined below, Tenant agrees to pay as base rent for the Leased Premises the sum of One Thousand Eighty Four Dollars per month ("Base Rent"), payable monthly in advance on the first day of each month, and shall be considered late if not paid by that date. In addition to the Base Rent, Tenant shall be required to pay late fees in accordance with section 10 of this Agreement if the full amount of the Base Rent together with any other sum due by Tenant to Lessor is not paid by the 10th day of each month (the "Delinquent Date"). Tenant shall also be required to pay any other amounts required to be paid by Tenant under the terms of this Lease. In the event an obligation to pay rent or fees terminates on some date other than the last day of the month, the last month's rent or fees shall be prorated, based on a thirty (30) day month to reflect the actual period of tenancy. The Base Rent, together with any other amounts owed under this Agreement, shall be hereinafter referred to as the "Rent."

B. Rent Commencement Date

Tenant shall pay the Rent for the Leased Premises starting on the Commencement Date, and shall continue to make payments on the first day of the month each month thereafter for the entire Term of this Agreement.

6. RENT ADJUSTMENT

A. Base Rent

Each year during the Term of this Agreement the Base Rent shall be subject to an automatic annual adjustment in proportion to the percentage change in the Consumer Price Index ("CPI"), All Items, for All Urban Consumers in the Los Angeles-Anaheim-Riverside Area for the preceding year, promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. In no event shall the increase in Base Rent each year be less than a three percent (3%) increase or more than a 5% increase in any adjustment period.

The automatic adjustment shall occur on the first anniversary of the Commencement Date, and every year thereafter for the duration of this Lease, and shall be calculated by means of the following formula:

$$A = B \times (C + D)$$

A = Adjusted Rent.

B = Base Rent as originally set forth in Paragraph 5 entitled "RENT, FEES AND CHARGES."

C = Monthly index for the third month prior to the month in which each rental rate adjustment is to become effective.

D = Monthly index for the month of the Effective Date of this Lease.

In the event the CPI is not issued or published for the period for which such minimum annual rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized and authoritative shall be agreed upon by Lessor and Tenant.

7. REAPPRAISAL OF RENT

It is the intent of Tenant and Lessor that the rents payable hereunder shall represent fair rental value of the Leased Premises, excluding improvements, throughout the term of this Lease. Recognizing that the rent and rental adjustments provided for in this Lease may be inadequate for this purpose, Lessor and Tenant further agree that on any "Rent Appraisal Date" (as that term is defined below) the monthly Base Rent shall be subject to adjustment by reappraisal to fair rental value subject to the provisions set forth herein.

The Rent Appraisal Dates for the purposes of this Lease shall be as follows:

- A. The date of any assignment, transfer or sublease of the leasehold estate under this Lease by Tenant, but only where the consent or approval of Lessor is required to such assignment, transfer or sublease under the section of this Lease entitled "ASSIGNMENT, SUBLETTING AND ENCUMBERING." If rent has been appraised within the previous 24-month period, reappraisal will not be required as a condition of assignment, transfer or sublease.
- B. The date of each hypothecation of the leasehold estate under this Lease (or of a subleasehold estate of all or substantially all of the Leased Premises) under a trust deed or mortgage for the benefit of a lender, other than: 1) the first such hypothecation to obtain construction funds for the initial construction of improvements on the Leased Premises (the "First Construction loan"); 2) the first refinancing of such first construction loan, provided such first refinancing occurs within two (2) years of the recordation of the first construction loan; and 3) hypothecation of the leasehold estate to refinance the balances of existing loans, which were previously approved by Lessor.

On a Rent Reappraisal Date, the monthly Base Rent shall be adjusted to an amount equal to one-twelfth (1/12) of the product of 10 percent (10%) of the reappraised value of the Leased Premises, but such reappraised rent shall in no event be less than the rent payable immediately prior to the subject Rent Reappraisal Date. As used herein "reappraised value" shall mean the fair market value of the Leased Premises appraised for the existing uses then being made of the Leased Premises.

Not earlier than four (4) months prior to the Rent Reappraisal Date, either party desiring to establish the reappraised value of the Leased Premises shall give written notice to the other party and they shall attempt to mutually agree, each with the other, as to said reappraised value of the Leased Premises. In the event the parties fail to reach such agreement within thirty (30) days after the commencement of such negotiations (which shall be deemed to be the date on which the written notice described above is delivered to the other party), then Lessor and Tenant shall, within thirty (30) days, each employ a qualified real estate appraiser. The term "qualified real estate appraiser," as used herein, shall mean a licensed appraiser who is qualified for, and experienced in, appraising property similar to the Leased premises.

In the event either party should fail to employ a qualified real estate appraiser within said thirty (30) day period, then the qualified real estate appraiser employed by the other party shall be solely responsible for appraising the current fair market value as provided herein. Each appraiser employed by Lessor and Tenant shall prepare a fully documented written report, which shall contain an opinion of the current fair market value for the Leased Premises and the monthly fair market rental rate, which shall be one-twelfth (1/12) of ten percent (10%) of the fair market value. Each appraiser shall, within thirty (30) days after employment, deliver a copy of a completed appraisal report to both Lessor and Tenant. In the event only one appraiser delivers a completed appraisal report to both Lessor and Tenant within the time required, then the delivered report shall be binding upon the parties hereto. Each party shall bear its own costs for said appraisal and any applicable appraiser's fee.

In the event both appraisal reports are timely submitted, Lessor and Tenant shall review both appraisal reports and shall attempt to negotiate an agreement on revision of the Base Rent. If agreement cannot be reached within thirty (30) days after receipt of the appraisal reports, the revision of the rental rate shall be determined by arbitration under Part 3, Title 9, of the California Code of Civil Procedure. Payment of expenses for arbitration shall be as provided by Section 1284.2 of said Part 3, Title 9 of said Code.

In the event that the said reappraised rent for the Leased Premises has not been established on or before the subject Rent Reappraisal Date, Tenant shall continue to pay Lessor the same amount of monthly rent as Tenant has paid during the

preceding lease year. It is understood and agreed, however, that upon establishment of a reappraised monthly rental, Tenant shall pay to Lessor, within ten (10) days of such establishment, an amount equal to the difference between the amount actually paid subsequent to the subject Rent Reappraisal Date and the amount which would have been paid had the reappraised monthly rent been established prior to the subject Rent Reappraisal Date, together with interest thereon at the rate of ten percent (10%) per annum from the subject Rent Reappraisal Date.

In the event that rental value is reappraised for a proposed assignment or hypothecation and Tenant fails or elects not to complete the proposed assignment or hypothecation within four (4) months of the determination of a reappraised value then:

- A. Tenant shall reimburse Lessor, upon demand, for all out-of-pocket costs incurred by Lessor in connection with the determination of the value of the Leased Premises, including without limitation, appraisal and attorneys' fees and arbitration costs, together with an amount equal to fifteen percent (15%) of such costs to reimburse Lessor for its overhead and administrative expenses, and;
- B. Said reappraised value shall no longer be of any force or effect and, if the proposed assignment or hypothecation is subsequently completed, the reappraised value will be recomputed pursuant to this Paragraph.

In the event that a reappraised value of the Leased Premises is required due to hypothecation of the Lease, Lessor may elect to accept as the reappraised value that value provided by Tenant to Lessor as the appraised value of the Leased Premises pursuant to the Paragraph of the Lease entitled "ASSIGNMENT, SUBLETTING AND EN-CUMBERING."

8. RENT PAYMENT PROCEDURE

Rent payments and statements required by the Paragraph in this Lease entitled "RECORDS AND ACCOUNTS" shall be delivered to and shall be filed with the City of Fullerton, City Treasurer, 303 West Commonwealth Avenue, Fullerton, California, 92832.

The designated place of payment and filing may be changed at any time by Lessor, upon fifteen (15) days written notice to Tenant. Rent payments may be made by check payable to the City of Fullerton. Tenant assumes all risk of loss if payments are made by mail.

All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand.

No payment by Tenant or receipt by Lessor of a lesser amount than the payment due, nor any endorsement or statement on any check of any letter accompanying any check or payment, shall be deemed an accord and satisfaction, and Lessor shall accept such check or payment without prejudice to Lessor's right to recover the balance of the amount due or pursue any other remedy, to which Lessor is legally entitled.

9. CHARGE FOR LATE PAYMENT

Tenant hereby acknowledges that the late payment of rent or any other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent as specified in the Paragraph in this Lease entitled "RENT, FEES AND CHARGES" or any other sum due Lessor, is not received by Lessor by the Delinquent Date, a late charge of six percent (6%) of the payment due and unpaid shall be added to the payment, and the total sum shall become immediately due and payable to Lessor. An additional charge of six percent (6%) of said payment, excluding late charges, shall be added for each additional month or portion thereof that said payment remains unpaid.

Tenant and Lessor hereby agree that such late charges represent a fair and reasonable estimate of the costs that Lessor will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by Lessor shall in no event constitute a waiver of Tenant's default with respect to such overdue payment, or prevent Lessor from exercising any of the other rights and remedies granted hereunder or to which Lessor is legally entitled.

10. RECORDS AND ACCOUNTS

A. Records

Tenant, shall keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. A failure by Tenant to abide by the terms of this paragraph shall constitute a default of this Agreement.

B. The Accounting Year

The accounting year shall be twelve full calendar months. The accounting year may be established by Tenant.

In the event Tenant fails to establish an accounting year of choice, regardless of the cause, the accounting year for purposes of this Agreement shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued throughout the term of the Lease unless Tenant specifically notifies Lessor in writing of a different accounting year at least sixty (60) days in advance of said change.

C. Financial Statements

Within one hundred twenty (120) days after the end of each accounting year, Tenant shall, at Tenant's sole cost and expense, submit to the City's Administrative Services Director, a statement compiled by a certified public accountant, who is a member of AICPA or the California Society of CPAs, which accounts for the business transacted on or from the Leased Premises for the previous accounting year. Tenant must attest under penalty of perjury that the statement prepared is an accurate representation of Tenant's records. Failure by Tenant to provide the statement within the required time frame shall be considered a default of this Agreement.

D. Audit

All Tenant's books of accounts and records and supporting source documents from the Leased Premises shall be kept and made available at one location within the limits of the County of Orange. Tenant shall keep and cause to be kept all said records for a minimum of three (3) years.

Lessor shall, through its duly authorized agents or representatives, have the right to examine and audit Tenant's books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, or for any other purpose. The parties understand and agree that Lessor shall be entitled to perform audits for any reason or for no reason, without having to provide Tenant with a justification for its request. Failure to submit to an audit when requested shall be considered a default under this Agreement.

The City's Administrative Services Director, or his designee, upon request of Tenant, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided Tenant shall agree to pay all expenses

including but not limited to transportation, food, and lodging necessary for the City's Finance Director to send a representative to audit said books and records.

The right to perform an audit shall not be exercised by the City's Administrative Services Director more than once each accounting year, unless the previous audit revealed sufficient grounds for a default.

The full cost of said audit, as determined by City's Administrative Services Director, shall be borne by Tenant if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the amounts reported and paid by Tenant and the amounts actually due as determined by said audit;
2. Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Paragraph 10A "Records" above.

Otherwise, Lessor shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon request of City's Administrative Services Director, Tenant shall promptly provide, at Tenant's expense, necessary data to enable Lessor to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to Tenant's use of the Leased Premises.

11. SECURITY DEPOSIT

Prior to beginning its occupancy of the Leased Premises, Tenant shall provide Lessor with a security deposit in the amount of \$1,084 ("Security Deposit"), which amount shall be maintained by Lessor throughout the term of this Lease.

The Security Deposit shall take one of the forms set out below and shall guarantee Tenant's full and faithful performance of all the terms, covenants, and conditions of this Lease:

- A. Delivery of the full amount of the Security Deposit in cash to Lessor.
- B. The assignment to Lessor of a savings deposit held in a financial institution in Orange County. At a minimum, such assignment shall be evidenced by the delivery to Airport Manager of an original passbook reflecting said

savings deposit and a written assignment of said deposit to the Lessor, in a form approved by the Airport Manager.

- C. Time Certificate of Deposit from financial institution in Orange County wherein the principal sum is made payable to the Lessor, or order, in a form approved by the Airport Manager.
- D. An instrument or instruments of credit, in a form approved by the Airport Manager, from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing Tenant's performance and that all or any part shall be paid to the Lessor, or order, upon demand by the Lessor.
- E. A Faithful Performance Bond executed by a surety company, and issued in a form, reasonably approved by Lessor's City Attorney. Under the bond, the surety company shall guarantee to Lessor full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the Tenant, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the Tenant throughout the entire term of this lease. Said surety shall give the Airport Manager at least thirty (30) days prior written notice of cancellation or material change in said bond.

Airport Manager reserves the right to adjust the amount of Security Deposit to reflect changes in operations or changes in rents and fees established by Lessor. Within thirty (30) days after notification of any change in required Security Deposit amount from Airport Manager, Tenant shall submit to the Airport Manager any additional Security Deposit as may be required.

Regardless of the form in which Tenant elects to make said Security Deposit, all or any portion of the principal sum shall be available unconditionally to Airport Manager for repairing damage to the Leased Premises, correcting any default or breach of this Lease by Tenant, its successors or assigns, or for payment of expenses incurred by Lessor as a result of the failure of Tenant, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Whether Tenant elects to assign a savings deposit, provide a Time Certificate of Deposit, provide an instrument of credit or a Faithful Performance Bond to fulfill the Security Deposit requirements of this Lease, said assignment, certificate, bond or instrument shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to City or order upon demand by Airport Manager. The agreement entered into by Tenant with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above may allow the payment to Tenant of

interest accruing on account of said deposit. Absent any such agreement, all interest accruing on any Security Deposit account shall belong to Lessor.

In the event Airport Manager withdraws any or all of the Security Deposit as provided herein, Tenant shall, within ten (10) days of any withdrawal by Airport Manager, replenish the Security Deposit to maintain it at the amounts herein required. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

Tenant shall not be allowed to close any Security Deposit account, withdraw any Security Deposit funds, or to otherwise interfere with Lessor's rights to access the Security Deposit for the purposes described in this section, without first obtaining the prior written consent of the Lessor. Failure to abide by the terms of this paragraph shall be deemed a default and shall be grounds for immediate termination of this Lease.

The Security Deposit shall be rebated, reassigned, released, or endorsed by Airport Manager to Tenant or order, as applicable following termination of the Lease provided Tenant has fully and faithfully performed each and every term, covenant and condition of this Lease.

The authorized refund of any Security Deposit by the Administrative Services Director, made upon the direction of the Airport Manager, after deduction of all amounts due Lessor under this Lease shall be made sixty (60) days after the effective date of said Lease termination.

12. CONSTRUCTION AND/OR ALTERATION BY TENANT

A. Lessor's Consent

No structures, improvements, or facilities shall be constructed, erected, altered, or made on or within the Leased Premises without prior written consent of Airport Manager. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the Airport Manager as a condition to granting such consent, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by Tenant, provided their use is permitted under the Lease.

B. Strict Compliance with Plans and Specifications

All improvements constructed by Tenant within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by Airport Manager and City staff.

13. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities, or any phase thereof, within the Leased Premises by Tenant, Tenant shall furnish to Lessor evidence that assures Lessor that sufficient monies will be available to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to Lessor as obligee.
- B. Irrevocable letter of credit issued to Lessor from a financial institution to be in effect until Lessor acknowledges satisfactory completion of construction.
- C. Cash.
- D. Any combination or alternative of the above, subject to the City Attorney's approval.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Airport Manager. All bonds and letters of credit shall be in a form acceptable to Airport Manager and shall ensure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Leased Premises.

14. MECHANICS LIENS OR STOP-NOTICES

Tenant shall at all times indemnify and save Lessor harmless from all claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities, within the Leased Premises, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a lien or stop-notice is imposed upon the Leased Premises or the Tenant's leasehold estate as a result of such construction, repair, alteration, or installation, Tenant shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should Tenant fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

15. "AS-BUILT" PLANS AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any substantial improvement within the Leased Premises, Tenant shall furnish Airport Manager a complete set of reproducibles and two sets of prints of "As-Built" plans. In addition, Tenant shall furnish Airport Manager an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by Tenant or his responsible agent under penalty of perjury. Tenant must obtain Airport Manager's approval of "As-Built" plans, and the form and content of the itemized statement.

16. OWNERSHIP OF IMPROVEMENTS

All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by Tenant must, upon completion, be free and clear of all liens, claims or liability for labor or material, and at Lessor's option shall be the property of Lessor at the expiration of this Lease. Lessor retains the right to require Tenant, at Tenant's sole cost, to remove all Tenant improvements located on the Leased Premises at the expiration of this Lease. Said removal shall include leveling the Leased Premises, the removal of any underground obstructions and the compaction of filled excavations to ninety percent (90%) compaction.

17. UTILITIES

Tenant shall be responsible for and pay, prior to the Delinquent Date each month, all charges for utilities supplied to the Leased Premises.

18. MAINTANANCE

A. Lessor's Obligation

Lessor shall maintain or cause to be maintained, including repair and replacement as necessary, the public parking lots, roadways, and other public facilities within the Airport. Lessor shall not be required to maintain, repair, or replace any equipment, improvements, facilities, structures, and/or non-public parking lots and roadways, on the Leased Premises.

B. Tenant's Obligation

Tenant, at its expense, shall keep and maintain the Leased Premises and any structure contained thereon. Tenant's obligation to keep and maintain

shall include but not be limited to all, interior surfaces, roofs, exterior walls, windows, heating and air conditioning systems, sewer lines, utility lines, pavement, asphalt, parking areas, non-public roadways, tiedown spaces, and all improvements of any kind, which may be erected, installed or made thereon, in good condition and in substantial repair. It shall be Tenant's sole responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

C. Lessor's Right to Repair

If Tenant fails to maintain or make repairs or replacements as required herein, the Airport Manager may notify Tenant in writing of said failure and establish a reasonable period of time within which Tenant must make the repairs or replacements. If Tenant fails to correct the situation within the stated period Lessor may make the necessary repairs or replacements itself, and Tenant agrees to allow and not to interfere with such work. In such case the cost of performing the repairs or replacements incurred by Lessor, including but not limited to the cost of labor, materials, equipment and a reasonable administration overhead charge, shall be paid by Tenant within ten (10) days of receipt of a statement of said cost from Lessor. Lessor may, at its option, choose other remedies available herein, or by law. As used in this paragraph, the determination of what constitutes a reasonable period of time will be made by the Airport Manager in his sole discretion, and will depend on the circumstances involved. Problems potentially or actually affecting the public health or safety must be immediately addressed by Tenant, or may be corrected by Lessor if, in Lessor's sole discretion, circumstances indicate an immediate response by Lessor is necessary.

19. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

In the event of damage to or destruction of Tenant-constructed buildings, facilities, or improvements located within the Leased Premises, or in the event Tenant-constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by any public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease.

Repair, replacement, or reconstruction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Manager. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify Tenant's obligation under this paragraph. With respect

to damage or destruction to be repaired by Lessor or which Lessor elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

20. INSURANCE

- A. Tenant shall procure and maintain throughout the duration of the Lease Term, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operations and occupation and use of the Leased Premises. Tenant shall provide current evidence of the required insurance in a form acceptable to the Lessor and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clause contained in this Lease, or the extent to which Tenant may be held responsible for payments of damages to persons or property.

Notwithstanding the following, Lessor reserves the right to modify or amend the following provisions at the direction of the City of Fullerton's Risk Manager as dictated by prevailing conditions.

- B. Minimum Scope and Limits of Insurance. For the duration of the Term of this Lease Tenant shall be required to maintain the following levels of insurance coverage:

1. **Airport Liability Insurance.** Tenant shall maintain airport liability insurance with a minimum limit of \$1,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. Such insurance shall include coverage for products and completed operations, contractual liability and personal injury.
2. **Aircraft Liability Insurance.** Tenant shall maintain aircraft liability insurance with a limit of not less than \$1,000,000 each accident with no per passenger sublimits. Upon approval by Lessor and annual submission of certification by a qualified aviation insurance broker that such limits are not available to Tenant, Tenant may comply with this provision by maintaining this coverage with limits of not less than \$1,000,000 each accident and per passenger sublimits of not less than \$100,000. Such insurance shall include coverage for owned and non-owned aircraft.
3. **Hangarkeeper's Liability Insurance.** Tenant shall maintain hangarkeeper's liability insurance with a minimum per occurrence limit equal to the approximate value of all aircraft in Tenant's care, custody or

control at any one time. If such insurance contains a general aggregate limit it shall apply separately to the Agreement or shall be twice the required occurrence limit. Such insurance shall have a deductible of no more than \$1000.

4. **Business Automobile Liability Insurance.** Tenant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.
5. **Workers' Compensation and Employers' Liability Insurance.** Tenant shall maintain workers' compensation insurance as required by the State of California, and employers' liability insurance with limits of not less than \$1,000,000 each accident.
6. **All Risk Property Insurance.** Tenant shall maintain all risk property insurance including coverage for existing structures and tenant improvements or betterments with a minimum limit equal to full replacement cost as approved by Lessor of the Leased Premises and with no coinsurance penalty provision.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved in advance by Lessor.

D. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

1. **Airport Liability, Aircraft Liability, Hangarkeeper's Liability, and Business Automobile Liability policies:**

The City of Fullerton, its elected and appointed officials, officers, employees, agents and volunteers are to be covered as insureds with respect to liability arising out of Lessee's operations or the ownership, occupancy, maintenance or use of the Leased Premises; or with respect to liability arising out of aircraft, automobiles, vehicles or equipment owned, leased, hired or borrowed by or on behalf of the LESSEE. The coverage shall contain no special limitations on the scope of its protection afforded to the City of Fullerton, its officials, officers, employees, agents and volunteers.

2. **Airport, Aircraft, Hangarkeeper's Liability, and Business Automobile Liability**

This insurance shall be primary insurance as respects Lessor, its officials, officers, employees, agents and volunteers and shall apply

separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by Lessor, its officials, officers, employees, agents and volunteers shall be excess of this insurance and shall not contribute with it.

3. All Risk Property.

Lessor shall be named as a loss payee.

4. Workers' Compensation and Employers' Liability Insurance and All Risk Property Insurance.

Insurer shall waive their right of subrogation against Lessor, its officials, officers, employees, agents and volunteers.

5. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, or substantially reduced in coverage or limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Lessor.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to Lessor with current BEST'S ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of Lessor, insurance provided by non-admitted or surplus carriers with a minimum BEST'S rating of no less than A- Class X may be accepted if Lessee evidences the requisite need to the sole satisfaction of Lessor.

E. Verification of Coverage

Lessee shall furnish Lessor with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Lessee shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Lessor before Lessee occupies premises. Lessor reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

21. ASSIGNING, SUBLETTING, AND ENCUMBERING

A. General

(1) Definitions:

- a. "Encumbrance" means any mortgage, pledge, hypothecation, encumbrance, transfer, merger, sublease, or Assignment of Tenant's interest in the Leased Premises, or any part or portion thereof.
- b. "Entity" refers to any corporation, limited liability company, partnership, sole proprietorship, limited partnership, trust, unincorporated association, or other similar entity.
- c. "Ownership Interest" shall refer to the ownership interest held by one person or Entity in another Entity, including but not limited to the holding of common or preferred stock of a corporation, a membership interest in a limited liability company, a general or limited interest in a limited partnership, ownership of a sole proprietorship, or any other similar ownership interest in an Entity.
- d. "Assignment" shall refer to any actual or proposed assignment, sublease or transfer of all or a portion of Tenant's interest in the Lease or in the Leased Premises to another person or Entity.
- e. "Proposed Assignee" shall mean any person or Entity to whom Tenant may seek to make an Assignment of all or any portion of Tenant's interest in the Lease or in the Leased Premises, or any other person or Entity which might otherwise seek to establish rights to enter, control or encumber all or any portion of the Leased Premises by reason of an agreement made with Tenant.

(2) General Rule Concerning Encumbrances. Every Encumbrance (as that term is defined above) of Tenant's interest in the Leased Premises, or any part or portion thereof, must first be approved in writing by Lessor, unless specifically authorized in this section to the contrary. Failure to obtain Lessor's prior written consent will render the Encumbrance void and shall also constitute a breach of this Lease.

(3) All subleases shall be between Tenant and subtenant only; the entry into sub-subleases is prohibited and shall constitute a breach of the Lease.

(4) Where the Tenant is an Entity, the Encumbrance or transfer of an Ownership Interest which in the aggregate exceeds twenty five percent (25%) of the Ownership Interest of that Entity shall be deemed to be an Assignment requiring the prior written approval of Lessor to be valid.

(5) Should Lessor consent to any Encumbrance such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as Lessor's consent to any further Encumbrances. Such terms, covenant, or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, merge, hypothecate, encumber, transfer, sublet, or assign the Leased Premises or any part thereof shall not be inconsistent with the provisions of this Lease, and in the event of any such inconsistency, the provision of this Lease shall control.

B. Conditions of Lessor's Approval

1. Minor Encumbrances.

- a. This section shall cover subleases covering a period of one year or less (hereinafter referred to as "short-term subleases"), Assignments of a sublease with a remaining term of one year or less, and the Assignment or transfer of twenty five percent (25%) or less of the Ownership Interest in Tenant (hereinafter collectively referred to as a "Minor Encumbrance."
- b. Minor Encumbrances shall not be subject to the requirement of prior approval by Lessor. Tenant shall not, however, be precluded from requesting such prior approval.
- c. Notwithstanding the above, Tenant shall still be required to notify Lessor of all Minor Encumbrances by providing Airport Manager with the following information and documents:
 - (1) a copy of all documents relating to the Minor Encumbrance transaction;
 - (2) a statement outlining of all terms and conditions of the transaction, specifically including but not limited to a description of all rights to be transferred to the Proposed Assignee and any consideration paid therefore;
 - (3) a description of the Proposed Assignee's business and its operations, including but not limited to the number of employees and all uses and activities proposed to take place on the Leased Premises;
 - (4) financial statements for the Proposed Assignee's business, covering the two most recent fiscal years;

(5) a signed statement from the Proposed Assignee, affirming that the Proposed Assignee has read and understands the Lease and agrees to be bound by all of the terms and conditions contained therein.

(6) any other information or documents that may be reasonably be requested by the Airport Manager in order to conduct its review of the Proposed Assignee.

d. Should Tenant choose not to obtain Lessor's approval of a Minor Encumbrance, Lessor, in its sole and absolute discretion, reserves the right to disallow the Minor Encumbrance if any of the following conditions prevail:

(1) Tenant, its successors or assigns, are in default in the terms of this Lease at the time of execution of the Minor Encumbrance whether a notice of default has been given to Tenant or not.

(2) The Proposed Assignee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

(3) The Proposed Assignee's use is in conflict with the terms of this Lease.

(4) All of the information and documents required in paragraph B1c above have not been provided.

(5) Additions to or alteration of existing structures, or construction of new structures by subtenant or that are required of Tenant as a result of a short-term sublease, have not been approved by Lessor and/or are not in compliance with all government regulations and ordinances.

Airport Manager shall notify Tenant in writing of the disallowance of the Minor Encumbrance for any of the above reasons. Tenant shall immediately proceed to remove any persons or Entities from the Leased Premises that were indicated by said notice. Tenant's or Proposed Assignee's failure to comply within a reasonable time shall constitute a breach of this Lease.

2. **Major Encumbrances.** This section shall apply to all other Encumbrances and Assignments, specifically including but certainly not limited to: any assignment of this Lease; subleases of more than one (1) year; assignment of subleases with a remaining term greater than one (1) year; assignment of more than 25 percent (25%) of the Ownership

Interest in Tenant or in any subtenant; any transfer, merger, hypothecation, mortgage or other Encumbrance involving Tenant, the Lease or the Leased Premises (hereinafter collectively referred to as a "Major Encumbrance.")

a. Prior to Tenant completing any Major Encumbrance transaction and prior to any Proposed Assignee taking possession or control of all or any portion of the Leased Premises, Tenant must first provide Lessor with at least thirty (30) days prior written notice of all Major Encumbrances. Such notification shall include, but shall not necessarily be limited to, providing the Airport Manager with the following information and documents:

(1) a copy of all documents relating to the Major Encumbrance transaction, including appraisals if any;

(2) A statement outlining of all terms and conditions of the transaction, specifically including but not limited to a description of all rights to be transferred and any consideration paid therefore;

(3) a description of any Proposed Assignee's business and its operations, including but not limited to the number of employees and all uses and activities proposed to take place on the Leased Premises;

(4) audited financial statements of any Proposed Assignee's business, prepared by a certified public accountant and covering the two most recent fiscal years;

(5) a signed statement from the Proposed Assignee, affirming that the Proposed Assignee has read and understands the Lease and agrees to be bound by all of the terms and conditions contained therein.

(6) any other information or documents that may be reasonably be requested by the Airport Manager in order to conduct its review of the Proposed Assignee or Encumbrancer.

b. Lessor agrees that it will not arbitrarily withhold consent to any Major Encumbrance, but Lessor may withhold consent if any of the following conditions exist:

(1) Tenant, its successors or assigns, are in default in the terms of this Lease at the time of execution of the Minor Encumbrance whether a notice of default has been given to Tenant or not.

(2) The Proposed Assignee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

(3) The Proposed Assignee's use is in conflict with the terms of this Lease.

(4) All of the information and documents required in paragraph B2a above have not been provided.

(5) Additions to or alteration of existing structures, or construction of new structures by subtenant or that are required of Tenant as a result of a short-term sublease, have not been approved by Lessor and/or are not in compliance with all government regulations and ordinances.

(6) Tenant has not provided Airport Manager with a copy of all documents relating to the Major Encumbrance transaction, including appraisals if any.

(7) Any construction required of Tenant as a condition of this Lease has not been completed to the satisfaction of Lessor.

(8) Tenant attempts to hypothecate the Leasehold for an amount greater than the value of existing improvements plus the cost of improvements to be constructed on the Leased Premises. Hypothecation of the Leasehold shall not be permitted for any reason other than to obtain loan proceeds necessary to finance improvements on the Leased Premises.

(9) The processing fee required by Lessor and set out below has not been paid to Lessor by delivery of said fee to Lessor.

(a) A fee of \$500 shall be paid to Lessor for processing each consent to mortgage, pledge, hypothecation, or encumbrance submitted to Lessor as required by this Lease. This processing fee shall be deemed earned by Lessor when paid and shall not be refundable.

(b) A fee of \$750 shall be paid to Lessor for processing each consent to Assignment, transfer, or sublease submitted to Lessor required by this Lease. This processing fee shall be deemed earned by Lessor when paid and shall not be refundable. If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged.

C. Trust Deeds.

1. If requested by Tenant, Lessor agrees to execute its written consent to an assignment of this Lease to a trustee under a trust deed for the benefit of a lender (herein called "Beneficiary"), provided that Tenant has complied with all other provisions of this Paragraph, upon and subject to the following covenants and conditions:

a. Said trust deed and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and all rights and interests of Lessor hereunder, except as specifically provided herein to the contrary.

b. In the event of any conflict between the provisions of this Lease and the provisions of any such trust deed, loan agreement, promissory note or other documents related to the Encumbrance, the provisions of this Lease shall control. The trust deed, the loan agreement, the promissory note and all other documents related to the Encumbrance must include a statement affirming this fact.

c. Upon and immediately after the recording of a trust deed affecting the Leased Premises, Tenant at the Tenant's expense shall cause to be recorded in the office of the Recorder, County of Orange, California, a written request, executed and acknowledged by Lessor, for a copy of any notice of default and of any notice of sale under the trust deed provided by the statutes of the State of California relating thereto.

d. At the time of requesting consent to a trust deed, Tenant shall furnish to the City a complete copy of the Trust Deed and note to be secured thereby, together with the name and address of the holder thereof.

e. Lessor agrees that it will not terminate this Lease because of a default or breach on the part of Tenant if the Beneficiary under any trust deed to which Lessor has given its consent, within sixty (60) days after service of written notice on the Beneficiary by Lessor of its intention to terminate this Lease for such default or breach, shall:

1) Cure such default or breach if the same can be cured by the payment or expenditure of money required to be paid under the term of this Lease; or if such default or breach is not curable, cause trustee under the trust deed to commence and thereafter diligently pursue to completion steps and proceedings for the exercise of the power of sale under and pursuant to the trust deed in the manner provided by law; and

2) Keep and perform all of the covenants and conditions of this Lease requiring the payment or expenditure of money by Tenant until

such time as the leasehold shall be sold upon foreclosure pursuant to the trust deed or shall be released or reconveyed thereunder.

Notwithstanding the foregoing, if the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section 21C, then thereupon Lessor shall be released from the covenant of forbearance.

f. The prior written consent of Lessor shall not be required:

1) To a transfer of the leasehold at foreclosure sale pursuant to a trust deed, by judicial foreclosure or by assignment in lieu of foreclosure; or

2) To any subsequent transfer by the Beneficiary if the Beneficiary is an established bank, savings and loan association, insurance company, retirement trust fund, or other organization that has been approved by Lessor, and such Beneficiary is the purchaser at such foreclosure sale;

Notwithstanding the above, Lessor's prior written consent shall be required in any situation, unless the Beneficiary forthwith gives notice to Lessor in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer, and the express agreement of the transferee assuming and agreeing to all of the obligations under this Lease, and also submits to Airport Manager a copy of the document by which such transfer was made.

g. The amount of the principal indebtedness to be secured by the proposed trust deed encumbering Tenant's leasehold estate shall not exceed an amount equal to the remaining principal balances secured by the underlying trust deeds covering Tenant's improvements, which Lessor has previously approved.

22. HAZARDOUS MATERIALS

A. Contamination Subsequent to the Effective Date

As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including without limitation, Lessor acting in its governmental capacity, the State of California or the United States Government.

Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Leased Premises. If Tenant breaches the obligations stated herein, or if contamination of the Leased Premises by

Hazardous Materials otherwise occurs during the Term of this Lease, then Tenant shall indemnify, defend and hold the City of Fullerton, its officers, officials, employees, agents and volunteers, harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including but not limited to, diminution in value of the Leased Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Leased Premises, damages arising from any adverse impact on marketing of space in the Leased Premises or portion of any building of which the Leased Premises is a part, and sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees) which arise during or after the lease term as a result of such contamination.

This indemnification includes without limitation, costs incurred by Lessor in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, local or other governmental entity because of Hazardous Material being present in the soil or ground water or on or under the Leased Premises. Tenant shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Leased Premises to its condition prior to the introduction of such Hazardous Material, provided Tenant shall first have obtained Lessor's approval and the approval of any necessary governmental entities prior to taking any remedial action.

Tenant acknowledges that Lessor may become legally liable for the costs of complying with laws relating to Hazardous Material which are not the responsibility of Lessor hereunder, including the following:

1. Hazardous Material present in the soil or ground water on the Leased Premises of which Lessor has no knowledge or means of ascertaining the existence of as of the Effective Date;
2. A change in laws, statutes, ordinances and other governmental regulations which relate to Hazardous Material which could cause any material now or hereinafter located on the Leased Premises to be deemed hazardous, whether known or unknown to Lessor, or a violation of any such laws;
3. Hazardous Material present on or under the Leased Premises because of any discharge, dumping or spilling (whether accidental or otherwise) on the Leased Premises by Tenants or their agents, employees, contractors or invitees, or by others.

In light of the above, Lessor and Tenant agree that the cost of complying with such laws, statutes, ordinances or governmental regulations relating to such matters for which the Lessor is or may become legally liable shall be paid by Tenant to Lessor, within ten (10) days following the receipt by

Tenant of a written demand from Lessor to do so. In the event Lessor subsequently recovers or is reimbursed from a third party for all or any portion of the sums paid by Tenant, Lessor shall reimburse Tenant to the extent of any such recovery or reimbursement.

B. Pre-Existing Contamination

Tenant shall not be held liable, nor shall Tenant be required to indemnify Lessor for any loss or damage sustained as a result of pre-existing Hazardous Material located on or near the Leased Premises.

Therefore, Lessor hereby agrees to indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, known or unknown, arising from any pre-existing soil contamination or other pre-existence of any Hazardous Material on the Leased Premises prior to the Effective Date of this Lease, including but not limited to any sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees which arise during or after the lease term and arising solely from such pre-existing contamination, if any.

23. CONDEMNATION

A. Total Taking

If the entire Leased Premises are taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, the Lease shall terminate as of the date that possession of the Leased Premises is taken by the public authority or Tenant is deprived of its practical use of the Leased Premises, whichever date is earlier. The net proceeds of the award shall be distributed in the following order of priority:

1. Lessor shall first receive that portion of the award which shall constitute compensation for the value of its fee interest in the Leased Premises as encumbered by this Lease; and
2. Tenant shall then be compensated for its interest in the Leased Premises, including the value of any fixtures and equipment taken and the loss of the economic benefit of Tenant's leasehold estate.
3. The remainder of the award shall be paid to Lessor.

B. Partial Taking

If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase does not, in Tenant's reasonable judgment, substantially impair the fixed based operation on the Leased Premises, then:

1. The Lease shall continue in full force and effect, except that the Base Rent shall be reduced in the same proportion as the land area of the Leased Premises taken bears to the total area of the Leased Premises immediately prior to such taking; and
2. The net proceeds of the award shall be allocated in the following order of priority:
 - a. To payment of the costs of restoring the Improvements located on the Leased Premises to substantially the same character and condition as prior to such taking, to the extent physically possible;
 - b. Compensation to Lessor for the value of its fee interest in the portion of the Leased Premises taken as encumbered by this Lease;
 - c. Compensation to Tenant for its interest in the portion of the Leased Premises taken, including the value of removal and reinstallation of any fixtures and equipment taken and the loss of the economic benefit of the portion of Tenant's leasehold estate taken; and
 - d. The remainder of the award shall be paid to Lessor.

C. If any portion of the Leased Premises is taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the taking or purchase, in Tenant's reasonable judgment, renders it impractical to operate the remainder of the Leased Premises, or substantially impairs the operation of Tenant's business thereon, Tenant shall have the option of terminating the Lease without further liability hereunder.

If Tenant so elects to terminate, it shall do so by written notice to Lessor no later than sixty (60) days after the date when possession of (a portion of) the Leased Premises shall be taken by the condemnor or Tenant is deprived of its practical use thereof, which notice shall specify the effective date of such termination (which shall not be earlier than sixty (60) days after the date of said notice). If Tenant elects to so terminate, the division of the award shall be made on the basis set forth in Paragraph B2a. If Tenant does not timely elect to terminate the Lease, it shall conclusively be deemed to have waived its right to terminate this Lease for such cause, and the provisions of this Paragraph shall govern.

24. USE OF PUBLIC AIRPORT FACILITIES

Tenant is granted the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, aprons, navigation aids, and facilities relating thereto for purposes of landings, takeoffs, and taxiing of Tenant's and Tenant's Tenant aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation, airports and air navigation, and in accordance with all applicable rules, regulations and ordinances of the City of Fullerton now in force or hereafter prescribed or promulgated by ordinance or by law.

Lessor agrees, during the term of this Lease, to operate and maintain the Airport and its public airport facilities as a public airport consistent with, and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.

25. RULES AND REGULATIONS

Tenant agrees to comply with all rules and regulations adopted or as may be amended by Lessor. Tenant shall be fully responsible to Lessor for the observance and compliance with, any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, country, or city, lawfully exercising authority over Airport or activities thereon, including compliance with FAA and Airport security rules, regulations and plans. Tenant shall be fully liable to indemnify, defend and hold Lessor harmless for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon Lessor, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicles onto Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the Tenant, its employees, agents, customers, visitors, suppliers, or invitees.

Lessor shall not be liable to Tenant for any diminution or deprivation of possession or of its rights hereunder, on account of the exercise of such right or authority as provided in this paragraph, nor shall Tenant be entitled to terminate the whole or any portion of the leasehold estate herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with Tenant's use and occupancy of the leasehold estate herein created so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

26. AIRPORT PROMOTIONAL ACTIVITIES

Tenant agrees to participate in Airport sponsored events such as "Airport Day," fly-ins, and to cooperate with the Lessor in the promotion thereof.

27. NOTICES

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested to the following addresses indicated below:

If to Lessor: Fullerton Municipal Airport
 Attn: Airport Manager
 4011 West Commonwealth Avenue
 Fullerton, CA 92833

With a copy to: City of Fullerton
 Attn: City Clerk
 303 W. Commonwealth Avenue
 Fullerton, CA 92832

If to Tenant: Air Combat OR
 Attn: Larry Blackstone P.O. Box 2726
 230 North Dale Place Fullerton, CA 92837
 Fullerton, CA 92833

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

Either party may change its address by giving notice in writing to the other party.

28. REPRESENTATIVES

The Airport Manager or his designee shall be the representative of Lessor for purposes of this Lease and may issue all consents, approvals, directives and agreements on behalf of the Lessor, called for by this Lease, except as otherwise expressly provided in this Lease.

Larry Blackstone shall be the representative of Tenant for purposes of this Lease and may issue all consents, approvals, directives and agreements on behalf of Tenant, called for by this Lease, except as otherwise expressly provided in this Lease.

29. TIME

Time is of the essence of this Lease.

30. SIGNS

Tenant agrees not to construct, maintain, or allow any sign upon the Leased Premises except as approved by the Airport Manager. Unapproved signs, banners, flags, etc. shall be removed by Tenant upon written notice by Airport Manager.

31. PERMITS AND LICENSES

Tenant shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operations of the Leased Premises as set out herein. No permit approval or consent given hereunder by Lessor in its governmental capacity shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by Lessor, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

32. CONTROL OF HOURS AND PROCEDURES

Tenant shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation it conducts on or from the Leased Premises or from the Airport. Tenant shall furnish Airport Manager a copy of said schedules and procedures. Tenant agrees that it will operate and manage the services and facilities offered in accordance with such scheduled and procedures and in a competent and efficient manner.

Tenant shall require its employees to be properly dressed, clean, courteous, efficient, and neat in appearance. Tenant shall not employ any person(s) in or about the Airport who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

33. HEADINGS

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

34. AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter, and any modification to this Lease must be in writing and properly executed by both parties to be effective.

35. UNLAWFUL USE

Tenant agrees no improvements shall be erected, placed upon, operated, nor maintained within the Leased Premises, nor any business conducted or carried on therein or therefrom, in violation of or contrary to the terms of this Lease, or of any federal, state or local law, regulation, order, statute, bylaw, or ordinance.

36. LESSOR'S RIGHT TO ENTER LEASED PREMISES

Lessor or its authorized representative shall have the right at all reasonable times to enter upon the Leased Premises for the purpose of: inspecting the Leased Premises to verify compliance with the terms of this Lease and under federal, state or local law; to provide Tenant with notice under this Lease; to speak with Tenant concerning issues related to this Lease, Tenant's operations, or the operations of a subtenant or customer/invitee of Tenant; to make necessary repairs and improvements; hazardous waste inspection and remediation; to protect the public health, safety or welfare; or for any other proper purpose.

37. HOLD HARMLESS

Tenant hereby waives all claims and recourse against Lessor including the right of contribution for loss or damage of persons or property rising from, growing out of or in any way connected with or related to this Lease except claims arising from the concurrent, active or sole negligence of Lessor, its officers, agents, and employees.

Tenant hereby agrees to indemnify, hold harmless and defend Lessor, its officer, agents, employees and volunteers, from any and all loss, liability, damage, cost, and expense, including attorney fees and court costs, arising out of any liability, or claim of liability, for personal injury, bodily injury to persons, contractual liability, or damage to property sustained or claimed to have been sustained by, arising out of, or in connection with Tenant's activities and operations and those of Tenant's subtenants, vendors, contractors, agents and employees as described herein, whether such activity or operation is authorized by the Lease or not. Further, Tenant shall pay for any and all damage to the Leased Premises or to the property of the Lessor arising from said operation or activities and shall waive all rights of subrogation against the Lessor. The provisions of this Lease do not apply to any damage or loss caused solely by the negligence of the Lessor, or any of its agents or employees.

The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Tenant, its employees, agents, subtenants, customers, invitees or subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Tenant, its employees, agents, subtenants, customers, invitees and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, or its officers, officials,

agents or employees, based upon Tenant's activities or operations at the Airport, whether or not the Tenant, its employees, agents, subtenants, customers, invitees and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Tenant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

38. TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Leased Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of the Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

39. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

40. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Paragraph shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant, except as may be expressly provided elsewhere in this Lease.

41. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

42. WAIVER OF RIGHTS

The failure of Lessor or Tenant to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that Lessor or Tenant may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of the Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

43. DEFAULT, TERMINATION AND REMEDIES

A. The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

- 1) The abandonment or vacation of the Leased Premises by Tenant.**
- 2) The failure by Tenant to make any payment of rent or any other sum payable hereunder by Tenant, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Tenant; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure Section 1161 et seq.**
- 3) The failure or inability by Tenant to observe or perform any of the provisions of this Lease, other than those specified in subparagraphs A and B above, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Lessor to Tenant; provided, however, that any such notice shall be in lieu of; and not in addition to, any notice required under the unlawful detainer statutes, California Code of Civil Procedure Section 1161 et seq; provided, further, that if the nature of such failure is such that it can be cured by Tenant but that more than fifteen (15) days are reasonably required for its cure (for any reason other than financial inability), then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said fifteen (15) days, and thereafter diligently prosecutes such cure to completion.**
- 4) In case of anticipation of bankruptcy, insolvency or financial difficulties:**
 - a) Tenant or any guarantor of Tenant's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefits of creditors;**
 - b) A case is commenced by or against Tenant under Chapter 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against Tenant, the same is not dismissed within sixty (60) days.**

- c) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or
- d) Tenant's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts.

In the event of any such default, neither this Lease nor any interests of Tenant in and to the Leased Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the Lessor hereunder or by law; provided, it shall be lawful for the Lessor to declare the term hereof ended and to re-enter the Leased Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than Lessor) shall have no further claim thereon or hereunder.

B. In the event of any default by Tenant, in addition to any other remedies available to Lessor at law or in equity, Lessor may exercise the following remedies:

- 1) Lessor may terminate this Lease and all rights of Tenant hereunder by giving written notice of such termination to Tenant. In the event that Lessor shall so elect to terminate this Lease, then Lessor may recover from Tenant:
 - a) The worth, at the time of award, of the unpaid rent and other charges which had been earned as of the date of the termination hereof;
 - b) The worth, at the time of award, of the amount by which the unpaid rent and other charges, which would have been earned after the date of the termination hereof until the time of award, exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - c) The worth, at the time of award, of the amount by which the unpaid rent and other charges, for the balance of the term hereof after the time of award, exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - d) Any other amount necessary to compensate Lessor for all of the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things

would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Leased Premises, expenses of re-letting, including necessary repair, renovation and alteration of the Leased Premises, reasonable attorney's fees, expert witness costs, and any other reasonable costs; and

e) Any other amount, which Lessor may by law, be permitted to recover from Tenant to compensate Lessor for the detriment caused by Tenant's default.

The term "rent" as used herein shall be deemed to mean the current Base Rent together with all permitted adjustments, and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 12-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 12-month period has occurred, then on the basis of the average monthly amount during such shorter period.

As used in subparagraphs B.1(a) and B.1(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph B.1(c) above, the "worth at time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of ten percent (10%) per annum.

- 2) Continue this Lease in effect without terminating Tenant's right to possession even though Tenant has breached this Lease and abandoned the Leased Premises and to enforce all of Lessor's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided however, that Lessor may at anytime thereafter elect to terminate this Lease for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Leased Premises has been terminated.

- C. Nothing in this Section shall be deemed to affect Tenant's duty to indemnify Lessor for liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under this indemnification clause or clauses contained in this Lease.

No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of such right or remedy of any default by Tenant hereunder. The acceptance by Lessor of rent or any other sums hereunder shall not be:

1. A waiver of any proceeding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of Lessor's knowledge of such proceeding breach or default at the time of acceptance of such rent or sum, or
 2. A waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default. No act or thing done by Lessor or Lessor's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept surrender shall be valid unless in writing and signed by Lessor.
- D. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, Lessor may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or may provide any such insurance on Tenant's behalf, however, Lessor's actions, if any, hereunder, shall not give rise to any responsibility of Lessor to continue making the same or similar payments or performing the same or similar acts. All costs, expenses and other sums incurred or paid by Lessor in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by Lessor shall be deemed to be additional rent hereunder and shall be paid by Tenant with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

44. ATTORNEYS' FEES

In the event of a dispute between Lessor and Tenant concerning claims arising out of this Lease, the prevailing party in said dispute shall be entitled to recover attorneys' fees and costs from the opposing party in an amount as may be fixed by the Court or the arbitrator.

45. RESERVATION TO LESSOR/RIGHT OF ENTRY

The Leased Premises are accepted as is and, thereby, Tenant is subject to any and all existing easements and encumbrances. Lessor further reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water, sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and

appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under, and along the Leased Premises or any part thereof, and to enter the Leased Premises for any and all such purposes. Lessor also reserves the right to grant franchises, easements, rights-of-way, and permits in, over, upon, through, across, under, and along any and all portions of the Leased Premises. In addition to the above, Lessor reserves the right to enter upon the Leased Premises at any reasonable hour for the purpose of inspecting any part of the Leased Premises to ensure compliance with the terms of this Lease, to ensure compliance with any applicable federal, state, or local law, rule, regulation or policy (whether related to public health or safety or otherwise), to make necessary repairs or improvements, to serve notice or upon Tenant, subtenants, occupants and/or visitors to the Leased Premises, or to discuss issues related to Tenant's occupancy and/or use of the Leased Premises, or for any other lawful purpose. Tenant understands and agrees that under no circumstances shall Lessor's entry onto any part of the Leased Premises held open to the general public, and/or any part of the Leased Premises located outside of an enclosed building, hangar or other structure, constitute a trespass. Notwithstanding the above, no right reserved by Lessor in the Paragraph shall be so exercised as to interfere unreasonably with Tenant's operations hereunder or impair the security of any secured creditor of Tenant. In the case of inspections, Lessor shall endeavor to provide Tenant with reasonable notice of the inspection before it takes place, unless the Airport Manager determines such notice may create a risk to the public safety or welfare, or unless an inspection without notice is permitted under applicable federal, state or local law.

Lessor agrees that rights granted to third parties by reason of this Paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. Lessor further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by Tenant, the rental rate shall be reduced in proportion to the interference with Tenant's use of the Leased Premises.

46. HOLDING OVER

In the event Tenant shall continue in possession of the Leases Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease, but a tenancy from month to month, and shall be governed by the conditions and covenants contained in this Lease or provided by law.

47. CONDITION OF LEASED PREMISES UPON TERMINATION

Upon termination of this Lease Tenant shall re-deliver possession of said Leased Premises to Lessor in substantially the same condition that existed immediately prior to Tenant's entry thereon, reasonable wear and tear, flood, earthquakes, war,

and any act of war, excepted. References to the termination of the Lease herein shall include termination by reason of the expiration of the Lease term.

48. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If Tenant abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Tenant and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of such property without liability therefore to Tenant or to any person claiming under Tenant, and shall have no need to account therefore.

49. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including, but not limited to, termination by default, Tenant shall execute, acknowledge, and deliver to Lessor, within thirty (30) days after receipt of a notice of termination, a quitclaim deed of Tenant's interest in and to the Leased Premises. Lessor may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of the Lease and of all right of Tenant or those claiming under Tenant in and to the Leased Premises.

50. LESSOR'S RIGHT TO RE-ENTER

Tenant agrees to yield and peaceably deliver possession of the Leased Premises to Lessor on the date of termination of this Lease, whatsoever the reason for such termination. Upon giving written notice of termination to Tenant, Lessor shall have the right to re-enter and take possession of the Leased Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Leased Premises by Lessor shall in no way alter or diminish any obligation of Tenant under the Lease terms and shall not constitute an acceptance or surrender.

Tenant waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event Lessor re-enters and takes possession of the Leased Premises in a lawful manner.

51. AUTHORITY OF TENANT

If Tenant is a corporation, limited liability company, limited partnership, trust, sole proprietorship, partnership, or other similar entity, each individual executing this Lease on behalf of the entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its governing documents, and that this Lease is binding upon said entity.

52. PUBLIC RECORDS

Any and all written information submitted to and/or obtained by Lessor from Tenant or any other person or entity having to do with or related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, at the option of Lessor, may be treated as a public record which will made open to the public for inspection or copying pursuant to the California Public Records Act (Government Code Section 6250, etc.) as now in force or hereafter amended, or any Act in substitution thereof. Tenant hereby waives, for itself, its agents, employees, subtenants and any person claiming by, through or under Tenant, any right or claim that such information is not a public record or that the same is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

53. RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of Lessor and Tenant, and it is expressly understood and agreed that Lessor is not, and shall not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business. This Lease and any related documents shall under no circumstances constitute a joint venture or partnership between Lessor and Tenant. The provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

54. TENANT's RATES

For the purpose of helping to ensure the Airport remains self supporting, from time to time Lessor may establish various minimum or maximum rates to be charged for services provided at the Airport. This shall include, but shall not be limited to, setting minimum monthly rates that tenants can charge their customers for aircraft tiedown spaces. Tenant agrees to abide by any such rates established by the Fullerton City Council. Upon reasonable notice to Tenant, Lessor shall be entitled to examine Tenant's books to ensure compliance with this section.

55. ATTACHMENTS TO LEASE

This Lease includes the following, which are attached hereto and made a part hereof:

- I. FAA GRANT AGREEMENT ASSURANCES**
- II. EXHIBIT A – LEGAL DESCRIPTION OF LEASED PREMISES**
- III. EXHIBIT B – MAP SHOWING LEASED PREMISES**

IN WITNESS WHEREOF, the parties have executed this license the day and year first above written.

LESSOR:

CITY OF FULLERTON


Joe Felz, City Manager

TENANT:

AIR COMBAT, USA, INC.

By: 

Title: PRESIDENT

ACUSA MAINTENANCE, INC.

(dba: ACUSA Maintenance and Air
Combat Maintenance)

By: 

Title: PRESIDENT

SKYCOASTERS LLC

(dba: SkyCoasters and SkyThrills)

By: 

Title: PRESIDENT

APPROVED AS TO FORM:


Richard D. Jones, City Attorney

APPROVED AS TO CONTENT:


Rod Propst, AAE, Airport Manager

ATTEST:

A handwritten signature in black ink, appearing to read 'L. Williams', is written over a horizontal line.

Lucinda M. Williams, City Clerk

EXHIBIT A

(LEGAL DESCRIPTIONS FOR AIRPORT LEASE)

All those portions of the Northeast Quarter of the Northeast Quarter of Section 36, Township 3 South, Range 11 West, San Bernardino Meridian, in the City of Fullerton, County of Orange, State of California, as shown on a map filed in Book 18, Page 44, of Records of Survey, in the office of the County Recorder of said County, described as follows:

PARCEL A

Beginning at the centerline intersection of Magnolia and Commonwealth Avenues; thence West along the centerline of Commonwealth Avenue, 230.87 feet; thence N 00° 00' 00" W, 140.91 feet to the TRUE Point of Beginning; thence N 00° 00' 35" W, 42.51 feet; thence N 89° 59' 25" E, 140.26 feet; thence S 00° 00' 35" E, 42.51 feet; thence S 89° 59' 25" W, 140.26 feet to the TRUE Point of Beginning.

Said Parcel A contains an area of 5,962.45 Square Feet.

PARCEL B

Beginning at the centerline intersection of Magnolia and Commonwealth Avenues; thence West along the centerline of Commonwealth Avenue, 90.63 feet; thence N 00° 00' 00" W, 114.63 feet to the TRUE Point of Beginning; thence N 00° 00' 35" W, 68.42 feet; thence N 89° 59' 25" E, 49.67 feet; thence S 00° 07' 21" E, 60.26 feet; thence N 89° 44' 22" W, 14.92 feet; thence South 8.00 feet; thence S 89° 48' 14" W, 34.84 feet to the TRUE Point of Beginning.

Said Parcel B contains an area of 3,278.73 Square Feet.

PARCEL C

Beginning at the centerline intersection of Magnolia and Commonwealth Avenues; thence West along the centerline of Commonwealth Avenue, 40.93 feet; thence N 00° 00' 00" W, 215.45 feet to the TRUE Point of Beginning; thence N 00° 03' 59" W, 168.00 feet; thence S 89° 56' 01" W, 30.00 feet; thence S 00° 03' 59" E, 168.00 feet; thence N 89° 56' 01" E, 30.00 feet to the TRUE Point of Beginning.

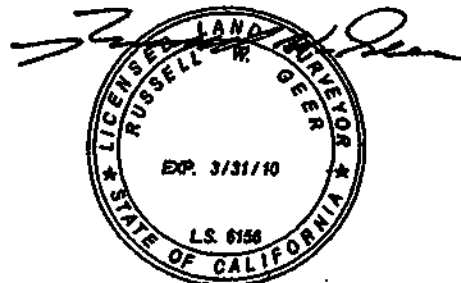
Said Parcel C contains an area of 5,040.00 Square Feet.

PARCEL D

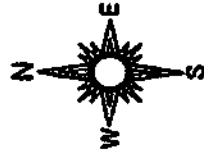
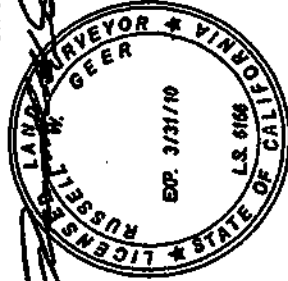
Beginning at the centerline intersection of Magnolia and Commonwealth Avenues; thence West along the centerline of Commonwealth Avenue, 230.87 feet; thence N 00° 00' 00" W, 140.91 feet; thence N 00° 00' 35" W, 106.51 feet; thence S 89° 52' 12" E, 55.87 feet to the TRUE Point of Beginning; thence N 00° 03' 59" W, 136.00 feet; thence N 89° 56' 01" E, 40.00 feet; thence S 00° 03' 59" E, 136.00 feet; thence S 89° 56' 01" W, 40.00 feet to the TRUE Point of Beginning.

Said Parcel D contains an area of 5,440.00 Square Feet.

THIS LEGAL DESCRIPTION WAS PREPARED BY
ME AND UNDER MY DIRECTION ON 4-08-09.

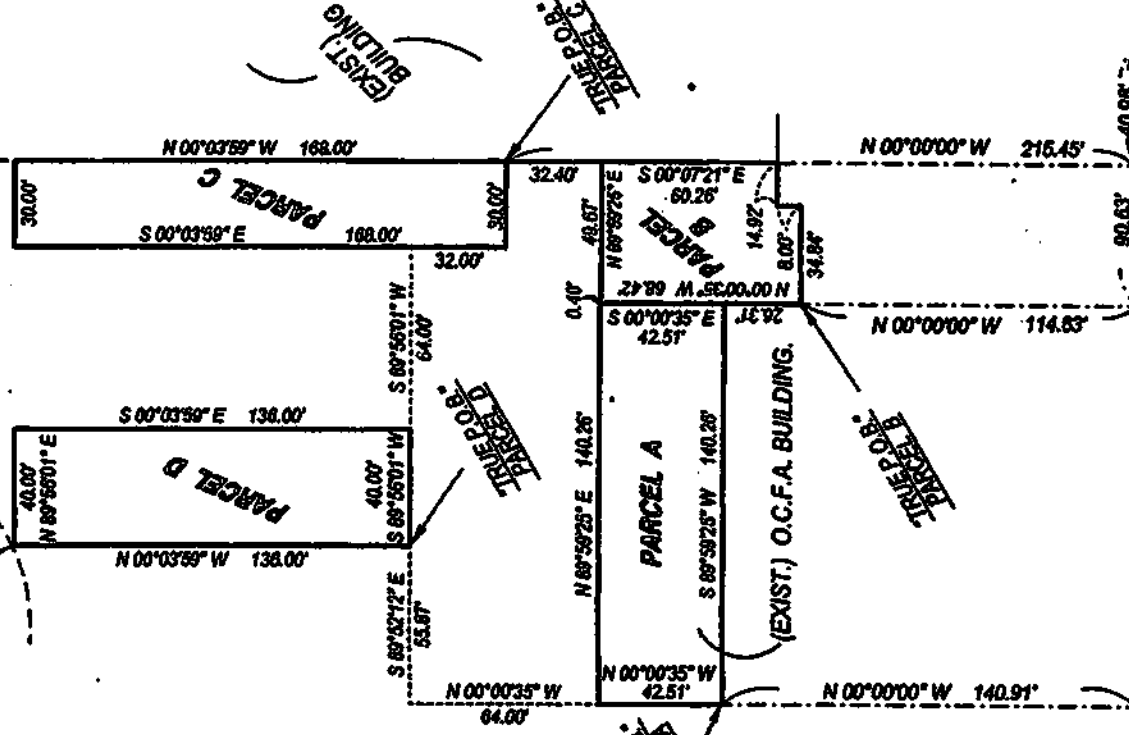


THIS SURVEY PLAT WAS PREPARED BY
ME AND UNDER MY DIRECTION ON 4-08-09.



SCALE: 1" = 60'

(64.00' MINIMUM
CLEARANCE)



CL COMMONWEALTH AVE.

CL WALDO AVE.

S 89°00'00" W
(WEST)

CL MAGNOLIA AVE.

EXHIBIT B **SURVEY PLAT**

FOR

AIR COMBAT USA
FULLERTON MUNICIPAL AIRPORT
FULLERTON, CA

RUSSELL W. GEER, L.S.

Land Survey Engineer

2547 N. Canal Street, Orange, CA 92665-3004
Ph: (714) 998-7536 Fax: (714) 998-7436

SHEET 1

OF 1 SHEETS

DATE: 4-08-09

DRAWN BY: RWG

JOB NO.: 09-548

EXHIBIT B



CITY OF FULLERTON

Administrative Services Department

B
Administration (714) 738-65
Fiscal Services (714) 738-68
Information Technology (714) 738-65
Purchasing (714) 738-65

June 10, 2016

Larry Blackstone
AIR COMBAT USA INC.
P.O. Box 2726
Fullerton, CA 92833

Dear Mr. Blackstone:

This letter is to advise you of the annual Consumer Price Index (CPI) adjustment as per the terms of your lease agreement. Effective July 1st, 2016 your rent will Adjust to \$1,256.66 based on a 3.0% CPI change. This will increase your rent by \$36.60 per month. There are no changes to the \$0.11 fuel flow rate in 2016.

To insure a proper and timely posting to your account for the monthly payments, Please send all rent checks to the address below:

City of Fullerton
Accounts Receivable
303 W. Commonwealth Ave.
Fullerton, CA 92832-1775

The City wishes you continued success at the Fullerton Airport. If we can be of any Assistance, please contact me at 714/738-3133 or Cheri Davis at 714/738-3103.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kriste Saldana", written over a light blue horizontal line.

Kriste Saldana
Fiscal Services Manager

cd

EXHIBIT C

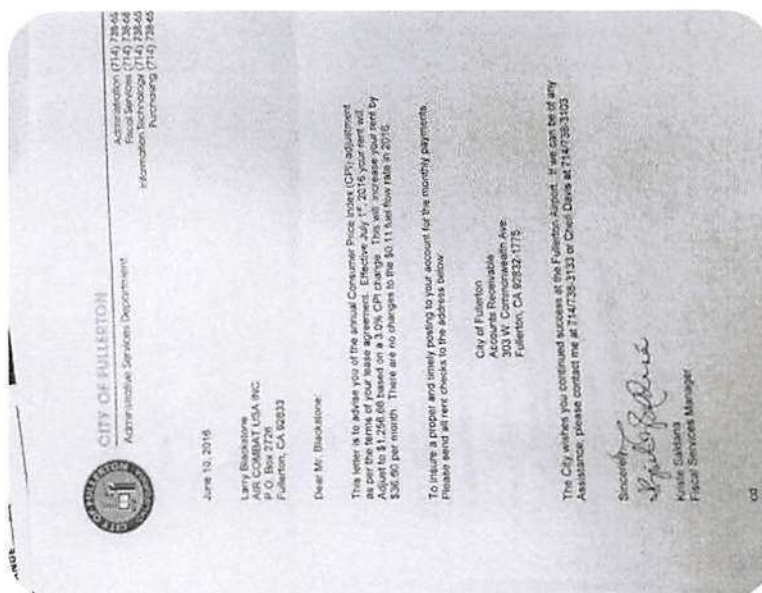


BM

Brendan M



Jun 24, 2016, 18:35



Hey Brandon just came across this on my desk... Please explain.

Brendan*

On another note everything is out of hanger 102... So you can go ahead and put the eviction notice on the door. Thanks Brendan! Have a nice weekend!

Disregard that letter. Someone missed the fact that the lease is up in June. We will be going to city council with the extension we discussed



iMessage

