

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into and is effective as of JUN 27, 2007 (the "Effective Date"), by and between Coastal Law Enforcement Action Network, a project of the International Humanities Center, a California Charitable Trust ("CLEAN"), and the City of San Diego ("City"). CLEAN and the City are collectively referred to herein as the "Parties" and sometimes separately referred to herein as the "Party." The Parties intend by this Agreement to conclude the matters between them in the Complaint in the matter entitled *Coastal Law Enforcement Action Network v. City of San Diego et al.*, San Diego County Superior Court Case No. GIC 861914 ("CLEAN litigation").

RECITALS

1. City owns the property located at 2800 Torrey Pines Scenic Drive, City of San Diego, California, commonly known as the "Torrey Pines Gliderport" (the "Property") (City of San Diego Assessor's Parcel No. 342-010-36) in the Torrey Pines City Park.
2. City leased the Property to Air California Adventure, LLC effective September 17, 1998 for gliderport concession, the use of non-powered aircraft, and by the general public. David Jebb was the president of Air California Adventure, LLC, and Maya Jebb was the secretary/treasurer of Air California Adventure, LLC. Air California Adventure, LLC assigned its interest in the lease to Air California Adventure, Inc. on March 20, 2000. David Jebb and Maya Jebb are the sole officers of Air California Adventure, Inc. Air California Adventure, LLC, Air California Adventure, Inc., David Jebb, and Maya Jebb are hereafter collectively referred to as "Lessees".
3. On June 7, 2004, the City issued a Notice of Violation to its Lessees, citing the violation of various laws and regulations.
4. On February 15, 2006, in response to the Notice of Violation, Lessees filed an after-the-fact permit application with the City's Development Services Department [DSD].
5. On February 27, 2006, CLEAN filed a "Complaint For Civil Penalties, Restitution, and Injunctive Relief," alleging, among other things, violations of the California Coastal Act, California Public Resources Code §§ 30000 *et seq.* ("Coastal Act") with respect to the use of the Property.
6. On May 5, 2006, DSD had completed review of the application and requested additional information from Lessees which it needed in order to continue processing the after-the-fact permit application.
7. To date, Lessees have not provided the necessary information to the City.
8. On August 30, 2006, the City Attorney's Office sent a letter, attached to this Agreement as Exhibit A and incorporated herein by reference, to Lessees requiring compliance with the lease terms ("letter").

9. On January 31, 2007, the City filed a Cross-Complaint against Lessees for breaching the lease agreement and for indemnity.

10. The Parties, conditioned upon compliance with the terms and conditions set forth herein, intend by this Agreement to fully and completely resolve, waive, and perpetually extinguish all claims within the scope of the litigation as they relate to each other.

AGREEMENT

THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Actions by the City. The City shall:
 - a. Enforce all of the requirements set forth in the August 30, 2006 letter from the City to Lessees, including any restoration of native vegetation required by the California Coastal Commission. In the event Lessees fail to comply with the terms and conditions of the August 30, 2006 letter, City agrees to terminate the lease with Lessees, turn off all irrigation on the Property, cap all run-off pipes on the Property, and obtain and comply with permits for all unpermitted structures or their removal from the Property, consistent with the requirements of the Coastal Act;
 - b. Prepare a General Development Plan, a comprehensive City plan for the development and management of the Torrey Pines City Park in collaboration with appropriate City departments, federal, state, and regional agencies, and representatives from the public, within three years of the effective date of this Agreement, absent good cause for delay, and in no event longer than within five years, and taking into consideration the historic value of the property;
 - c. Establish a Torrey Pines City Park Advisory Board whose members shall be appointed within 120 days of the effective date of this Agreement, absent good cause for delay, and in no event longer than within six months, and who shall include representatives of the following Gliderport user groups: (1) paragliders, (2) hanggliders, (3) sailplane gliders, and (4) radio-controlled model sailplane gliders as well as at least two representatives from non-profit environmental groups.
2. Payment to CLEAN. Within thirty (30) days of the mutual execution of this Settlement Agreement by the Parties, City shall pay CLEAN twenty thousand dollars (\$20,000).

3. Confidentiality and Publicity. Following the mutual execution of this Agreement by the Parties, CLEAN will, in a press release or announcement concerning this Agreement, promote the benefits of the actions taken by the Parties under this Agreement.

4. Releases. The parties acknowledge that there is a risk that, subsequent to the execution of this Agreement, the parties may incur injury, loss, damage, costs, attorneys' fees, or expenses, which are in some way caused by or connected with the persons, entities, matters, and/or issues referred to herein, or which are unknown and unanticipated at the time this Agreement is executed, or which are not presently capable of being ascertained. The parties further acknowledge that there is a risk that such damages as are presently known may hereafter become more serious than the parties now anticipate. Nevertheless, the parties acknowledge that this Agreement has been negotiated and agreed upon in light of that realization. Both parties have had the benefit and advice of counsel. To the extent the above releases are effective, the parties each waive their rights under California Civil Code section 1542. Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

5. Dismissal of Litigation. CLEAN agrees to dismiss the lawsuit with prejudice within 10 days of the execution of this Agreement.

6. Continuing Jurisdiction of the Court. The parties agree that the Court retains jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

7. Costs and Expenses. With the exception of payment to CLEAN as detailed in paragraph 2, the Parties shall bear their own costs, expenses and attorneys' fees in connection with the current CLEAN litigation, and the negotiations, drafting, and consummation of this Agreement. In the event any action or proceeding is brought to enforce this Agreement, the prevailing party shall be entitled to the reasonable fees, out-of-pocket expenses, and costs of attorneys and experts against the non-prevailing parties, in addition to all other relief to which that party or those parties may be entitled.

8. Agreement to be Bound by Mediation. The parties agree to submit any dispute regarding the interpretation or enforcement of this Agreement to a mutually acceptable mediator. The parties agree to be bound by the decision of the mediator.

9. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and shall not be modified except by a writing executed by the Party to be bound thereby. This Agreement supersedes any written or oral agreement(s) or representations(s) that preceded or may have preceded execution of this Agreement. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts. This Agreement is not intended to bind or benefit any person other than the parties hereto and their successors and assigns.

11. Interpretation and Representation by Counsel. The terms of this Agreement are the product of arms-length negotiations between the Parties and their counsel, and no provision shall be construed against the drafter thereof. All Parties mutually warrant and represent that they have been represented by counsel of their own choosing in the negotiation and drafting of this Agreement, and that they understand fully and voluntarily consent to all of the provisions herein.

12. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in San Diego County, California.

13. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Agreement may also be delivered by facsimile transmission and in such event all facsimile signatures shall be deemed complete for all purposes hereof.

14. Captions. Any captions to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not are part of this Agreement, and shall not be used for the interpretation of or determination of the validity of this Agreement or any provision hereof.

15. Authorization. Each person signing this Agreement represents and warrants to the Parties and to each other that he or she is fully authorized to sign the Agreement on behalf of the Party for whom/which he or she is signing, and thereby to bind such Party to each and all of the terms of this Agreement.

16. Cooperation. The parties agree to cooperate with each other to execute such documents as reasonably necessary and to take all steps as may be reasonably necessary to accomplish the purpose of this Agreement.

17. Compromise of Disputed Claims. This Agreement is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any person or entity, nor shall the furnishing of any consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the parties hereto or any other person.

18. Integration. The undersigned, and each of them, acknowledge and represent that no promise or inducement not expressed in this Agreement has been made in connection with this Agreement. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

19. Waiver and Amendment. No provision of this Agreement, or breach of any provision, can be waived except in writing. Any waiver by the City must be formally approved by the City Council. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision. This Agreement may be amended, modified or rescinded only in writing signed by all parties to this Agreement.

20. Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element.

21. Additional Documents. The parties each agree to sign any additional documents which are reasonably necessary to carry out this Agreement or to accomplish its intent.

22. No Assignment. Each party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

23. No Reliance On Other Party. The undersigned and each of them acknowledge and represent that they are effecting this compromise and settlement and are executing this Agreement (i) after they and their respective legal counsel had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on representation made by the other party or the other party's attorney.

24. Severability. Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid in effect unless a party's consideration materially fails as a result of the invalidity.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

The Parties:

Coastal Law Enforcement Action Network
A project of the International Humanities
Center, a California Charitable Trust

City of San Diego

By: Marcia Hanscom
Name: Marcia Hanscom
Its: Managing Director

By: Jay M. Goldstone
Name: Jay M. Goldstone
Its: _____

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

Michael J. Aguirre, City Attorney

David J. Weinsoff
Attorney for Plaintiff
Coastal Law Enforcement Action Network

By: Malinda R. Dickenson
Malinda R. Dickenson
Attorneys for Defendant
City of San Diego

R- 302749

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

The Parties:

Coastal Law Enforcement Action Network
A project of the International Humanities
Center, a California Charitable Trust

City of San Diego

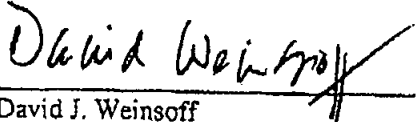
By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

Law Offices of David J. Weinsoff

Michael J. Aguirre, City Attorney



David J. Weinsoff
Attorney for Plaintiff
Coastal Law Enforcement Action Network

By: _____
Malinda R. Dickenson
Attorneys for Defendant
City of San Diego

R- 302749

RESOLUTION NUMBER R- 302749

DATE OF FINAL PASSAGE JUN 27 2007

WHEREAS, the City of San Diego entered into a settlement agreement with the Plaintiffs in San Diego County Superior Court Case Number GIC861914, entitled *Coastal Law Enforcement Action Network v. City of San Diego, et al.*; and


WHEREAS, the settlement agreement requires the City to

- (1) Pay the Plaintiffs \$20,000; and
- (2) Enforce the lease agreement for the Torrey Pines Gliderport, including any restoration of native vegetation required by the California Coastal Commission; and in the event City's lessee fails to comply, terminate the lease and turn off all irrigation on the property, cap all run-off pipes on the property, and obtain and comply with permits for all unpermitted structures or their removal, consistent with the requirements of the Coastal Act; and
- (3) Prepare a General Development Plan for the Torrey Pines City Park, taking into consideration the historic value of the property; and
- (4) Establish a Torrey Pines City Park Advisory Board whose members shall be appointed within 120 days of the date of the agreement and who shall include representatives of the following Gliderport user groups: (1) paragliders, (2) hanggliders, (3) sailplane gliders, and (4) radio-controlled model sailplane

gliders as well as at least two representatives from non-profit environmental groups.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and empowered to execute, for and on behalf of the City of San Diego, as referenced in the Settlement Agreement adopted by the City Council on JUN 19, 2007.

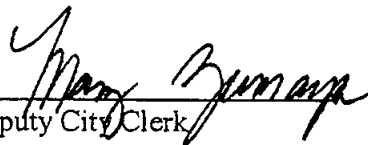
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Malinda D. Dickenson
Deputy City Attorney

MRD:ms
Aud: Cert. AC2700764
05/15/07
Or.Dept: READ
R-2007-1099

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 19 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 6.27.07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on June 19, 2007, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,
FRYE, & HUESO.

NAYS: NONE.

NOT PRESENT: MADAFFER.

RECUSED: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-302749, approved by the Mayor of The City of San Diego,
California on June 27, 2007.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

AC2700764

TO:
City Attorney

2. FROM (ORIGINATING DEPARTMENT):
City Attorney

3. DATE:
May 29, 2007

4. SUBJECT:

COASTAL LAW ENFORCEMENT ACTION NETWORK V. CITY OF SAN DIEGO, ET AL.

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

Malinda R. Dickenson (619) 235-5884 MS 59

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED ☐

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	81140				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	81140				
ORGANIZATION	3423				
OBJECT ACCOUNT	4824				
JOB ORDER	081141				
C.I.P. NUMBER					
AMOUNT	\$20,000				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Malinda R. Dickenson</i>	6/4/07	8	DEPUTY CHIEF	<i>Patricia K. Lee</i>	5/31/07
2	RISK MANAGEMENT	<i>Gregory</i>	5/29/07	9	COO	<i>Mark R. Kipp</i>	5/31/07
3	PARK & REC	<i>Patricia K. Lee</i>	5/29/07	10	CITY ATTORNEY	<i>W. K. Kipp</i>	
4	READ	<i>Patricia K. Lee</i>	5/29/07	11			
5	C&LS				DOCKET COORD:	<i>Patricia K. Lee</i>	COUNCIL LIAISON: <i>Patricia K. Lee</i>
6	FM	<i>Malinda R. Dickenson</i>	5/31/07		COUNCIL PRESIDENT	<i>W. K. Kipp</i>	
7	AUDITORS	<i>Tom Hall</i>	5/31/07				

11. PREPARATION OF:

☒ RESOLUTIONS

☐ ORDINANCE(S)

☐ AGREEMENT(S)

☐ DEED(S)

The City Council voted in closed session to enter into a Settlement Agreement with the Plaintiff. Subsequent to the vote and in response to concerns raised by staff the Plaintiff agreed to amend the time-frames in the Agreement. The Agreement requires the City to (1) pay the Plaintiff \$20,000; and (2) enforce the lease agreement for the Torrey Pines Gliderport, and in the event City's lessee fails to comply, City will terminate the lease and turn off all irrigation on the property, cap all run-off pipes on the property, and obtain and comply with permits for all unpermitted structures or their removal, consistent with the requirements of the Coastal Act; and (3) prepare a General Development Plan for the Torrey Pines City Park; and (4) establish a Torrey Pines City Park Advisory Board.

11A. STAFF RECOMMENDATIONS: Adopt the Resolution.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): TORREY PINES CITY PARK

ENVIRONMENTAL IMPACT: THIS SETTLEMENT AGREEMENT REQUIRES LONG RANGE PLANNING FOR THE TORREY PINES CITY PARK AND THAT PERMITS BE OBTAINED FOR EXISTING CONDITIONS. BOTH PROCESSES WILL INCLUDE THE REQUISITE ENVIRONMENTAL ANALYSIS.

HOUSING IMPACT:

OTHER ISSUES:

Contact Malinda Dickenson for pickup.

(R-99-175)

RESOLUTION NUMBER R-290676

ADOPTED ON SEPTEMBER 8, 1998

WHEREAS, the Torrey Pines Gliderport is a City of San Diego Historical Site that has been used for non-powered flight since the early 1930's; and

WHEREAS, the City Council desires to ensure this valuable historic use continues on this property to serve the general public; and

WHEREAS, the value of the property to be leased is nominal due to the special purpose use; and

WHEREAS, the proposed use carries high liability costs; and

WHEREAS, it is in the public interest to maintain the facility; and

WHEREAS, the Lessee is willing to maintain the property for a gliderport concession, the use of non-powered aircraft and the general public and will provide a full-time Flight Director, maintain and clean up property immediately adjacent to the leased premises, including a City-owned parking lot, and provide other benefits to the general public; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego (as Lessor), a five-year lease agreement, with a five-year option to renew, with Air California Adventures, LLC, (as Lessee) for the Torrey Pines Gliderport, under the terms and conditions set forth in that lease agreement

on file in the office of the City Clerk as Document No. RR-290676.

APPROVED: CASEY GWINN, City Attorney

By _____
Prescilla Dugard
Deputy City Attorney

PD:cdk
07/28/98
Or.Dept:REA
Job:222651
R-99-175
Form=leaser.frm

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT OF LEASE AGREEMENT

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

AIR CALIFORNIA ADVENTURE, LLC

(LESSEE), dated September 8, 1998 and filed in the Office of the City Clerk as Document RR-290676 hereby consents to the Assignment of that Lease Agreement to

AIR CALIFORNIA ADVENTURE, INC.

(ASSIGNEE) in accordance with the terms and conditions set out in the attached Assignment of Lease Agreement entered into by Lessee and said Assignee, dated February 17, 2000 and in accordance with additional conditions as follows:

NONE

THE CITY OF SAN DIEGO

Dated: March 20, 2000

By: Jane E. Vukobratovic
City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated: March 24, 2000

By: Geri W. Starch
Deputy City Attorney

CPA/jmj

2/28/00

I:\WPO\2000\Anderson\ASSIGNMENT-AIR CALIFORNIA.wpd

**REQUEST FOR ASSIGNMENT OF LEASE
Torrey Pines Gliderport**

RECEIVED
CITY OF SAN DIEGO
00 MAR 16 PM 3:04
REAL ESTATE ASSESSMENT DEPT


The City of San Diego, a municipal corporation, as Landlord, ("City") owns the real property commonly known as the Torrey Pines Gliderport located at the Torrey Pines City Park ("Gliderport"). On September 8, 1998, the City signed and filed a lease of the Gliderport with the office of the City Clerk of the City of San Diego, Document No. 290676 ("Lease") leasing the Gliderport to Air California Adventure, LLC ("Lessee") for five (5) years commencing August 1, 1998.

The Lease, at paragraph 4.2, prohibits Lessee from assigning the Lease without prior written consent of the City Manager. Lessee would like to assign all its right, title and interest in the Lease to Air California Adventure, Inc.

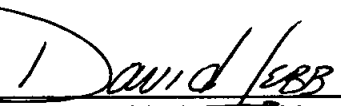
Lessee therefore requests the City consent to Lessee assigning all Lessee's right, title and interest in the subject lease to Air California Adventure, Inc. Air California Adventure, Inc., agrees to be bound by each and every term of the Lease.

Dated: 2/17/2000

AIR CALIFORNIA ADVENTURE, LLC


By: David Jebb, Its President

AIR CALIFORNIA ADVENTURE, INC.


By: David Jebb, Its President

REQUEST FOR ASSIGNMENT OF LEASE Torrey Pines Gliderport

The City of San Diego, a municipal corporation, as Landlord, ("City") owns the real property commonly known as the Torrey Pines Gliderport located at the Torrey Pines City Park ("Gliderport"). On September 8, 1998, the City signed and filed a lease of the Gliderport with the office of the City Clerk of the City of San Diego, Document No. 290876 ("Lease") leasing the Gliderport to Air California Adventure, LLC ("Lessee") for five (5) years commencing August 1, 1998.

The Lease, at paragraph 4.2, prohibits Lessee from assigning the Lease without prior written consent of the City Manager. Lessee would like to assign all its right, title and interest in the Lease to Air California Adventure, Inc.

Lessee therefore requests the City consent to Lessee assigning all Lessee's right, title and interest in the subject lease to Air California Adventure, Inc. Air California Adventure, Inc., agrees to be bound by each and every term of the Lease.

Dated: 2/17/00

AIR CALIFORNIA ADVENTURE, LLC

David Jebb

By: David Jebb, Its President

AIR CALIFORNIA ADVENTURE, INC.

David Jebb

By: David Jebb, Its President

State of California

2041893



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 04 1999



Bill Jones

Secretary of State

2041693
ENDORSED
FILED

In the office of the Secretary of State
of the State of California

JAN 01 1999

Bill Jones
BILL JONES, Secretary of State

ARTICLE OF INCORPORATION
OF
Air California Adventure, Inc.

I.

The name of this corporation is Air California Adventure, Inc.

II.

The purpose of this corporation is to engage in any lawful act of activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Henry Ho
7435 University Avenue, Suite 201
La Mesa, CA 91941

IV.

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is one million.

Dated: 1/1/99

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Henry Ho

Henry Ho,
Incorporator





State of California

Bill Jones
Secretary of State

P.O. Box 944230
Sacramento, CA 94244-2300
Phone: (916) 657-3537

STATEMENT BY DOMESTIC STOCK CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 1502, CORPORATIONS CODE)

A \$10 FILING FEE MUST ACCOMPANY THIS STATEMENT

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER RIBBON OR BLACK INK

IMPORTANT—Please Read Instructions On Back Of Form

1. DUE DATE: APRIL 1, 1999

2041693

AIR CALIFORNIA ADVENTURE, INC.

DO NOT ALTER PREPRINTED NAME. IF ITEM NO. 1 IS BLANK, PLEASE ENTER CORPORATE NAME

DO NOT WRITE IN THIS SPACE

THE CALIFORNIA CORPORATION NAMED HEREIN, MAKES THE FOLLOWING STATEMENT

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 2800 TORREY PINES SCENIC DR.	ROOM NO.	2A. CITY AND STATE LA JOLLA CA	2B. ZIP CODE 92037
3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA (IF ANY)	ROOM NO.	3A. CITY CA	3B. ZIP CODE
4. MAILING ADDRESS 2800 TORREY PINES SCENIC DR.	ROOM NO.	4A. CITY AND STATE LA JOLLA CA	4B. ZIP CODE 92037

THE NAMES OF THE FOLLOWING OFFICERS ARE:

Must have these three officers (Sec. 312, Corporations Code). An officer may hold more than one office.

5. CHIEF EXECUTIVE OFFICER DAVID JEBB	5A. STREET ADDRESS (SEE REVERSE SIDE) 2800 TORREY PINES SCENIC DR.	5B. CITY AND STATE LA JOLLA, CA	5C. ZIP CODE 92037
6. SECRETARY MAYA JEBB	6A. STREET ADDRESS (SEE REVERSE SIDE) 2800 TORREY PINES SCENIC DR.	6B. CITY AND STATE LA JOLLA, CA	6C. ZIP CODE 92037
7. CHIEF FINANCIAL OFFICER MAYA JEBB	7A. STREET ADDRESS (SEE REVERSE SIDE) 2800 TORREY PINES SCENIC DR.	7B. CITY AND STATE LA JOLLA, CA	7C. ZIP CODE 92037

DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (Attach supplementary list if necessary)

Must have one or more directors (Chap. 3, Sec. 301a, Corporations Code). Statements not listing directors will be rejected.

8. NAME DAVID JEBB	8A. STREET ADDRESS (SEE REVERSE SIDE) 2800 TORREY PINES SCENIC DR.	8B. CITY AND STATE LA JOLLA, CA	8C. ZIP CODE 92037
9. NAME MAYA JEBB	9A. STREET ADDRESS (SEE REVERSE SIDE) 2800 TORREY PINES SCENIC DR.	9B. CITY AND STATE LA JOLLA, CA	9C. ZIP CODE 92037
10. NAME	10A. STREET ADDRESS (SEE REVERSE SIDE)	10B. CITY AND STATE	10C. ZIP CODE

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY: _____

DESIGNATED AGENT FOR SERVICE OF PROCESS (Only one agent may be named and must reside in California.)

12. NAME DAVID JEBB
13. CALIFORNIA STREET ADDRESS IF AGENT IS AN INDIVIDUAL. (DO NOT USE P.O. BOX) DO NOT INCLUDE ADDRESS IF AGENT IS A CORPORATION. 2800 TORREY PINES SCENIC DRIVE, LA JOLLA, CA 92037

DESCRIBE TYPE OF BUSINESS OF THE CORPORATION NAMED IN ITEM 1.

14. TYPE OF BUSINESS PARAGLIDERS SALES			
15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE. DAVID JEBB X PRESIDENT X			
TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT	SIGNATURE	TITLE	DATE

(Department of Corporations Use Only)
Fee Paid \$ _____
Receipt No. _____

Department of Corporations File No., if any

(Insert File Number(s) of Previous Filings
Before the Department, if any)

FEE: \$25.00 \$35.00 \$50.00 \$150.00 \$300.00
(Circle the appropriate amount of fee.
See Corp. Code Section 25608(c))

COMMISSIONER OF CORPORATIONS
STATE OF CALIFORNIA

NOTICE OF TRANSACTION PURSUANT TO CORPORATIONS CODE SECTION 25102(f)

A. Check one: Transaction under ☒ Section 25102(f) () Rule 260.103.

1. Name of Issuer: Air California Adventure, Inc.
2. Address of Issuer: 2800 Torrey Pines Scenic Drive, La Jolla, CA 92037
Street City State ZIP

Mailing Address: _____
Street City State ZIP

3. Area Code and Telephone Number: (619) 452-9858
4. Issuer's state (or other jurisdiction) of incorporation or organization: California
5. Title of class or classes of securities sold in transaction: Common Stock
6. The value of the securities sold or proposed to be sold in the transaction,
determined in accordance with Corp. Code Sec. 25608(g) in connection with the fee
required upon filing this notice, is (fee based on amount shown in line (iii)
under "Total Offering"):

	<u>California</u>	<u>Total Offering</u>
(a) (i) in money	<u>\$ 10,000</u>	<u>\$ 10,000</u>
(ii) in consideration other than money	<u>\$</u>	<u>\$</u>
(iii) total of (i) and (ii)	<u>\$ 10,000</u>	<u>\$ 10,000</u>

(b) () Change in rights, preferences, privileges or restrictions of or
on outstanding securities. (\$25.00 fee) (See Rule 260.103)

7. Type of filing under Securities Act of 1933, if applicable: None

8. Date of Notice: 7/1/99

Air California Adventure, Inc.
Issuer

() Check if issuer already has a
consent to service of process
on file with the Commissioner.

David Jess
Authorized Signature on behalf of issuer

Maya Jebb, Secretary
Print name and title of signatory

Name, Address and Phone number of contact person:

Maya Jebb, Secretary
Air California Adventure, Inc.
2800 Torrey Pines Scenic Drive
La Jolla, CA 92037
(619) 452-9858

Instruction: Each issuer (other than a California corporation) filing a notice under
Section 25102(f) must file a consent to service of process (Form 260.165), unless it
already has a consent to service on file with the Commissioner.

DUPLICATE

THE CITY OF SAN DIEGO

Flat Rate Lease

with

AIR CALIFORNIA ADVENTURE, LLC

FOR TORREY PINES GLIDERPORT

LOCATED AT THE

TORREY PINES CITY PARK

DOCUMENT NO. RR-290676

FILED SEP 08 1998

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AIR CALIFORNIA ADVENTURE, LLC, a California limited liability company hereinafter called "Flight Director/LESSEE."

RECITALS

WHEREAS, The Torrey Pines Gliderport is a San Diego City Historical site and is on the National Register of Historic Places, the State Register of Historic Sites and dedicated a National Soaring Landmark, and;

WHEREAS, CITY and Flight Director/LESSEE desire to maintain Torrey Pines Gliderport as a historical non-powered flight park, and;

WHEREAS, Flight Director/LESSEE will maintain rules and regulations governing flight and personal conduct at Torrey Pines Gliderport, and;

WHEREAS, Flight Director/LESSEE will consult with the Torrey Pines Soaring Council, which represents all soaring user groups, in forming the above mentioned rules and regulations.

NOW, Therefore, in consideration of the mutual covenants and recitals, the parties agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to Flight Director/LESSEE and Flight Director/LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described

in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

- 1.2 Uses. It is expressly agreed that the premises are leased to Flight Director/LESSEE solely and exclusively for the purposes of the operation and maintenance of the premises and buildings for a gliderport concession, the use of non-powered aircraft and the general public. The sale of hangliding and paragliding parts and accessories; radio controlled models; sailplane equipment and parts and the sale of merchandise including but not limited to apparel and food and beverage shall be limited to the existing building in its present location or for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

Flight Director/LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. Flight Director/LESSEE, performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to Flight Director/LESSEE at the commencement of the term, or if during the lease term Flight Director/LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to Flight Director/LESSEE for any loss or damage resulting therefrom.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with Flight Director/LESSEE'S use of the premises and will reimburse Flight Director/LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, Flight Director/LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of flight direction and gliderport concession services and related activities in a fiscally responsible manner. Flight Director/LESSEE shall institute rules and regulations governing flight and personal conduct so as to create a safe and enjoyable flight park, provided they are consistent with the rights of the general public and are designed to allow Flight Director/LESSEE to use the premises for the purposes specified herein. Rules and regulations shall be posted in plain view.

- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by Flight Director/LESSEE to best serve the public as set forth in Section 10.4, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. Flight Director/LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

- 1.8 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where Flight Director/LESSEE has

scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and Flight Director/LESSEE shall not be required to incur any additional costs by reason of CITY use.

- 1.9 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that Flight Director/LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. Flight Director/LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow Flight Director/LESSEE to use the premises for the purposes specified herein. Flight Director/LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.

Flight Director/LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by Flight Director/LESSEE at a location agreeable to CITY.

SECTION 2. : TERM

- 2.1 Commencement. The term of this agreement shall be five (5) years commencing on the 1st day of August, 1998. "Lease year" as used in this lease shall mean the 12-month period commencing on the 1st day of August, 1998.
- 2.2 Option to Extend. At CITY's sole option, Flight Director/LESSEE may extend this lease for one additional term of five (5) years subject to all original agreements, considerations, covenants and conditions. In order for extension to be considered by CITY, Flight Director/LESSEE must notify CITY in writing of Flight Director/LESSEE's desire to extend at least six (6) months (180 days) prior to the date on which this lease is first set to expire.
- 2.3 Holdover. Any holding over by Flight Director/LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this

agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

- 2.4 Quitclaim and Surrender of Flight Director/LESSEE'S Interest. On execution of this lease, Flight Director/LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, Flight Director/LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

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

- 2.5 Surrender of Premises. At termination of this lease for any reason, Flight Director/LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If Flight Director/LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting Flight Director/LESSEE'S failure to execute this lease provision, and the notice will be conclusive evidence of the termination of this lease and all Flight Director/LESSEE'S rights to the premises.

SECTION 3: RENT

- 3.1 Consideration. The Flight Director/LESSEE shall not remit any monetary consideration to the City. The Flight Director/LESSEE will be responsible for providing a full-time Flight Director that is easily identifiable, the maintenance and clean-up of all immediate adjacent property including but not limited to

the City-owned parking lot and providing and maintaining four (4) portable toilets for service to the public at no cost to the City.

- 3.2 Inspection of Records. Flight Director/LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine Flight Director/LESSEE'S compliance with this lease. These records and accounts will be made available by Flight Director/LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. Flight Director/LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. Flight Director/LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. Flight Director/LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of Flight Director/LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of Flight Director/LESSEE by operation of law, without the written consent of the City Manager.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired.

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

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) Flight Director/LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by Flight Director/LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and Flight Director/LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) Flight Director/LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) Flight Director/LESSEE shall be adjudicated a bankrupt; or
- (4) Flight Director/LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon Flight Director/LESSEE or upon any person claiming rights through Flight Director/LESSEE, immediately terminate this lease and all rights of Flight Director/LESSEE and of all persons claiming rights through Flight Director/LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to Flight Director/LESSEE, CITY shall not terminate this lease pursuant to the default if Flight Director/LESSEE immediately

commences to cure the default and diligently pursues such cure to completion.

- b. Abandonment by Flight Director/LESSEE. Even though Flight Director/LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages, if applicable.
- c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and Flight Director/LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and Flight Director/LESSEE (or beneficiary or mortgagee) will be as follows:

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

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Flight Director/LESSEE shall be entitled to any award attributable to the taking of, or damages to Flight Director/LESSEE'S then remaining leasehold interest in installations or improvements of Flight Director/LESSEE. CITY shall have no liability to Flight Director/LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Flight Director/LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.6 Control by Specified Individuals or Entities. The corporation named herein as Flight Director/LESSEE shall remain owned and controlled by David Jebb, at least to the extent of fifty-one percent (51%) of the issued stock of said corporation, and they shall, as co-executives, actively administer and supervise the business enterprise operated on the premises. Provided, however, in the event that any of the above-named persons shall become incapacitated, then the other(s) shall continue in such active administration and supervision. In the event all parties are incapacitated, then the stockholders shall select an experienced manager acceptable to CITY to so administer and supervise the lease operations. Sale or transfer of stock or divestment of any interest in said corporation by the above-named persons in excess of five percent (5%) shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 4.2, Assignment and Subletting, provided, however, that the stock of any

stockholder may be assigned to his or her spouse or direct lineal heirs upon notification in writing to CITY. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease as an assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. Flight Director/LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Flight Director/LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that Flight Director/LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

a. Flight Director/LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form, and One Million Dollars (\$1,000,000) in third person liability covering flight operations. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or Flight Director/LESSEE or by authorized representatives of CITY or Flight Director/LESSEE on or in connection with the use or operation of the premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and Flight Director/LESSEE. The proceeds shall be placed in a trust fund

to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. Flight Director/LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Insurance from all Flight Clubs. Flight Director/LESSEE shall require that all clubs using the flight park facility for airborne operations provide a certificate of insurance and the required waiver for each user as provided for in Section 8.5, to Flight Director/LESSEE and CITY, naming Flight Director/LESSEE and CITY as additional insured. Also, no pilot shall use the facility without showing proof of liability insurance.
- (2) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, Flight Director/LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (3) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving Flight Director/LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. Flight Director/LESSEE also agrees to obtain

any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

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

Notwithstanding the preceding provisions of this Subsection (4), if Flight Director/LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to Flight Director/LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. Flight Director/LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. Flight Director/LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, Flight Director/LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, Flight Director/LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in

accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

Flight Director/LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by Flight Director/LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

- 5.4 Security Deposit. A security deposit shall be paid to the CITY by Flight Director/LESSEE in the sum of five thousand dollars (\$5,000.00) on or before the commencement date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by Flight Director/LESSEE, Flight Director/LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of Flight Director/LESSEE'S failure to faithfully perform all terms, covenants, and conditions of this lease.

The security deposit shall take one of the forms set out below:

- a. Cash. Cash deposits shall be deposited with CITY, and CITY shall not be liable to Flight Director/LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.
- b. Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved by CITY.

Flight Director/LESSEE will maintain the required security deposit throughout the lease term and for ninety (90) days thereafter unless previously released by CITY. Failure to do so shall be considered a default and is grounds for immediate termination of this lease.

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

The security deposit or any balance thereof will be returned to Flight Director/LESSEE within ninety (90) days following expiration or termination of this lease, provided Flight Director/LESSEE has faithfully complied with all terms, covenants, and conditions hereof.

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, Flight Director/LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. Flight Director/LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. Flight Director/LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that Flight Director/LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Maintenance. Except as hereinafter provided, Flight Director/LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. Flight Director/LESSEE will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY.
- 6.3 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by Flight Director/LESSEE without prior written approval by the City Manager. Further, Flight Director/LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Flight Director/LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of

damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.4 Utilities. Flight Director/LESSEE agrees to order, obtain, and pay for all utilities' and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.5 Construction Bond. Whenever there is any construction to be performed on the premises, Flight Director/LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by Flight Director/LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.6 Liens. Flight Director/LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

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

- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.7 Taxes. Flight Director/LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Flight Director/LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Flight Director/LESSEE or levied by reason of the business or other Flight Director/LESSEE activities

related to the leased premises, including any licenses or permits. Flight Director/LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that Flight Director/LESSEE may be subject to the payment of taxes levied on such interest, and that Flight Director/LESSEE shall pay all such possessory interest taxes. Flight Director/LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

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

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by Flight Director/LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify Flight Director/LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and Flight Director/LESSEE shall remove all such improvements, structures and installations as directed by CITY at Flight Director/LESSEE'S sole cost on or before lease expiration or termination. If Flight Director/LESSEE fails to remove any improvements, structures, and installations as directed, Flight Director/LESSEE agrees to pay CITY the full cost of any removal.
- c. Flight Director/LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by Flight Director/LESSEE by the date of the expiration or termination of this lease. Any said items which Flight Director/LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at Flight Director/LESSEE'S expense.

- d. If any removal of such personal property by Flight Director/LESSEE results in damage to the remaining improvements on the premises, Flight Director/LESSEE agrees to repair all such damage.
- e. Notwithstanding any of the foregoing, in the event Flight Director/LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- f. It is understood that the "trailers" placed on the site which are used for office and retail outlet are the property of the Flight Director/LESSEE. The "trailers" may be removed by the Flight Director/LESSEE at the termination of this lease.

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

6.11 Hazardous/Toxic Waste. Flight Director/LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, Flight Director/LESSEE shall be responsible for all costs of remediation and

removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

Flight Director/LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Flight Director/LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If Flight Director/LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, Flight Director/LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if Flight Director/LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Flight Director/LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. Flight Director/LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, Flight Director/LESSEE and Flight Director/LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease and with reasonable cause, Flight Director/LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of Flight Director/LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. Flight Director/LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that

compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

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

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

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

- 7.2 **Compliance with Law.** Flight Director/LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at Flight Director/LESSEE'S sole cost and expense. In addition, Flight Director/LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 **CITY Approval.** The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.4 **Nondiscrimination.** Flight Director/LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Flight Director/LESSEE'S use of the premises,

including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. Flight Director/LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Flight Director/LESSEE and all of its subcontractors are individually responsible to abide by its contents.

Flight Director/LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Flight Director/LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Flight Director/LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Flight Director/LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

Flight Director/LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. Flight Director/LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. Flight Director/LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. Flight Director/LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. Flight

Director/LESSEE agrees to hire qualified local residents and firms whenever feasible.

Flight Director/LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. Flight Director/LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or

alteration of this lease will be valid unless it is in writing and signed by all parties.

7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or Flight Director/LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or Flight Director/LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or Flight Director/LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. Flight Director/LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The Flight Director/LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. Flight Director/LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. Flight Director/LESSEE and

sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. Flight Director/LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Flight Director/LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. Flight Director/LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Flight Director/LESSEE.
- c. Flight Director/LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, Flight Director/LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of Flight Director/LESSEE.
- e. Flight Director/LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. Flight Director/LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

7.14 Schedule of Prices. All prices of merchandise, equipment, and services of Flight Director/LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment, and services offered in the San Diego area. All fees for flight shall be in accordance with the schedule set forth in Section

10.3, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by City Manager or his authorized representative.

- 7.15 Standard of Employees. Flight Director/LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Supersedure. It is mutually agreed that this lease, upon commencement, supersedes and annuls that certain lease executed on the 1st day of August, 1993, with UP International, Document 282448, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.17 Additional Consideration to City. Flight Director/LESSEE acknowledges that CITY expends considerable sums for maintenance of Torrey Pines City Park areas adjacent to the leasehold. Flight Director/LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. Flight Director/LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, Flight Director/LESSEE and CITY agree that in the event of an assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, Flight Director/LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid Flight Director/LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances regarding claims and judgements. Prior to CITY's consent to any assignment majority subletting or refinancing, Flight Director/LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from Flight Director/LESSEE pursuant to the provisions of this paragraph together with an acknowledgment from the proposed assignee, sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction

be it an assignment, a sublease or a refinancing. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of Flight Director/LESSEE (if an individual) or (ii) of Flight Director/LESSEE's principal owner or chief executive officer (if Flight Director/LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of the Flight Director/LESSEE without any other change in the equity in beneficial use of, or legal title to the leasehold as an asset, or the income produced thereby.

7.18 Plastic Food Containers.

- a. Flight Director/LESSEE shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packing, nor shall Flight Director/LESSEE obtain or keep any polystyrene foam food packing of a type, design and condition suited for providing prepared food to its customers for consumption off the leased premises.
- b. Flight Director/LESSEE's food packaging for prepared food to be consumed on the premises or for takeout food shall be degradable, and Flight Director/LESSEE shall provide upon demand evidence in the form of paid invoices to indicate the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. Flight Director/LESSEE's food packaging for prepared food to be consumed off the premises shall be biodegradable unless Flight Director/LESSEE demonstrates to the satisfaction of CITY that biodegradable food packaging materials are not available for purchase in the quantities required by Flight Director/LESSEE. In the event that biodegradable food packaging materials are not available for purchase in the quantities required by Flight Director/LESSEE, Flight Director/LESSEE may limit its use of such packaging to the amount actually available.

c. For purposes of this lease, the following definitions are applicable:

- (1) "Prepared food" means foods or beverages which are prepared on the leased premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
- (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, on or in which any foods or beverages are placed or packaged on the leased premises.
- (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the leased premises.

SECTION 8: SPECIAL PROVISIONS

- 8.1 Flight Rules and Regulations. Flight Director/LESSEE or his representative will serve, act and be designated as an on-scene Flight Director during all times the flight operations are taking place. Flight Director/LESSEE or his representative shall enforce and administer all the Rules and Regulations posted onsite.
- 8.2 Equipment. Flight Director/LESSEE shall, and does hereby agree to furnish all equipment necessary for the operation of said concession, and agrees to properly maintain such equipment.
- 8.3 Supervision. Flight Director/LESSEE shall have qualified on-site personnel to operate the concession at all times when the premises are open to the public. Flight Director/LESSEE and its employees will at all times conduct themselves in the operations of the premises in a creditable and polite manner.
- 8.4 Maintenance of Adjacent Area. Flight Director/LESSEE shall keep the areas adjacent to the concession operations clean and clear of refuse, weeds and obstructions. Flight Director/LESSEE shall provide portable toilet facilities for its customers, employees and general public. CITY shall provide adequate trash receptacles, and shall dispose of all garbage, trash and rubbish. CITY agrees to be responsible for all landscaping of the grounds outside said adjacent areas.

- 8.5 Permit Form. Flight Director/LESSEE shall use waiver and indemnification forms intended to be used at the Flight Park that are acceptable to the CITY. Flight Director/LESSEE, on behalf of its members, hereby affirms that individual users will be required to execute a waiver and indemnification agreement as a condition of being permitted to use the Torrey Pines Flight Park. Also, all pilots must sign a statement certifying that they have read and understand the Rules and Regulations of flight.
- 8.6 Control and Administration of Agreement. Control and administration of this agreement is under the jurisdiction of the City Manager of CITY as to CITY's interest herein and any communication to the terms or conditions or any changes thereto or any notice or notices provided for by this agreement or by law to be given or served upon CITY may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention: Property Director, City Administration Building, Community Concourse, San Diego, CA 92101-4155. Any notice or notices provided for by this agreement or by law to be given or served upon Flight Director/LESSEE may be given or served by deposit in the United States mails, postage prepaid, a letter addressed to said Flight Director/LESSEE at the address stated at the commencement hereof, or may be personally served upon said Flight Director/LESSEE (or any one of them), or any person hereafter authorized by Flight Director/LESSEE to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.
- 8.7 Merger. The voluntary or other surrender of this agreement by Flight Director/LESSEE, or a mutual cancellation thereof, shall not work a merger, and shall at the option of CITY, terminate all or any existing subconcessions or subtenancies, or may, at the option of CITY, operate as an assignment to it of any or all such subconcessions or subtenancies.

SECTION 9: SIGNATURES

9.1 Signature Page.

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

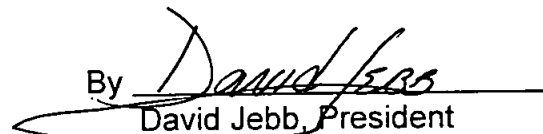
Date SEP 08 1998

THE CITY OF SAN DIEGO

By 

FLIGHT DIRECTOR/LESSEE:
AIR CALIFORNIA ADVENTURE


Date JULY 9, 1998

By 
David Jebb, President

By _____

APPROVED as to form and legality this 17th day of Sept., 1998.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

CPA:jmj-n
5/21/98

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EXHIBIT "A"

Leasehold boundary



10.3 Schedule of Rates and Charges

- User rate is \$5.00 per day.
- Torrey Pines Gulls member rate is \$3.00 per day.
- Quarterly rate is \$35.00 for 90 days.
- Semi Annual rate is \$60.00 for 180 days.
- Annual rate is \$100.00 for 365 days.
- Outside Tandem Fee is \$25.00 per day per person, plus the daily \$5.00 use fee.
- Tandem Fee with a Torrey Pines instructor is \$125.00.
- Instructional Fee is \$125.00 per day.

10.4 Schedule of Days and Hours of Operation

- Summer hours of operation are from 9:00 a.m. to 7:00 p.m.
- Winter hours of operation are from 9:00 a.m. to 5:00 p.m.

Hours of operation may be temporarily adjusted due to weather conditions.

RESOLUTION NUMBER R- **290676**

ADOPTED ON **SEP 08 1998**

WHEREAS, the Torrey Pines Gliderport is a City of San Diego Historical Site that has been used for non-powered flight since the early 1930's; and

WHEREAS, the City Council desires to ensure this valuable historic use continues on this property to serve the general public; and

WHEREAS, the value of the property to be leased is nominal due to the special purpose use; and

WHEREAS, the proposed use carries high liability costs; and

WHEREAS, it is in the public interest to maintain the facility; and

WHEREAS, the Lessee is willing to maintain the property for a gliderport concession, the use of non-powered aircraft and the general public and will provide a full-time Flight Director, maintain and clean up property immediately adjacent to the leased premises, including a City-owned parking lot, and provide other benefits to the general public; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego (as Lessor), a five-year lease agreement, with a five-year option to renew, with Air California Adventures, LLC, (as Lessee) for the Torrey Pines Gliderport, under the terms and conditions set forth in that lease agreement

on file in the office of the City Clerk as Document No. RR- 290676

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard
Prescilla Dugard
Deputy City Attorney

PD:cdk
07/28/98
Or.Dept:REA
Job:222651
R-99-175
Form=leaser.frm

Passed and adopted by the Council of The City of San Diego on SEP 08 1998 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS, MCCARTY, VARGAS,

AND MAYOR GOLDING

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Myrna Skelley, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- **290676**, passed and adopted by the Council of The City of San Diego, California
on SEP 08 1998.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Myrna Skelley, Deputy