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MAR 15 2016

PART 16 DOCKETS

David M. Shaby II (CA SBN# 97871)
David M. Shaby II & Associates, APC.
11949 Jefferson Blvd. Ste. 104
Culver City, CA. 90230
(310) 827-7171 tel
(310) 822-8529 fax

March 14, 2016

Attorney for Justice Aviation, Inc.

Office of the Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Ave. S.W.
Washington D.C. 20591

Re: Part 16 Complaint

**Justice Aviation, Inc., a California Corporation v.
City of Santa Monica, California**

Dear Sir or Madam:

Pursuant to 14 C.F.R. § 16.23, Justice Aviation, Inc. ("Justice Aviation" or "Complainant") brings this complaint against the City of Santa Monica, California (the "City"), which is the owner, operator and sponsor of Santa Monica Municipal Airport ("SMO" or the "Airport").

This complaint is based on the City's denial of access to Complainant, in violation of its federal obligations, including grant assurances 22 and 23 and a 1948 Instrument of Transfer.

RECEIVED
SANTA MONICA
CITY ATTORNEY'S OFFICE
2016 MAR 17 PM 3:45
SANTA MONICA, CA 90401

Subject of the Complaint

1. The Airport is a public-use reliever facility, owned and operated by the City, at which approximately 300 general aviation aircraft are based and approximately 85,000 operations are conducted each year.

2. The City is a recipient of Airport Improvement Program ("AIP") grant funds by and through the Federal Aviation Administration ("FAA"), including \$9.7 million that was disbursed through 2003, and remains obligated under the terms and covenants that have accompanied those grants pursuant to a December 4, 2015, Director's Determination in Docket No. 16-14-04.

3. The City is also a party to an Instrument of Transfer ("IOT"), dated August 10, 1948, by which SMO was transferred to the City by the United States War Assets Administration, and is obligated under the terms and covenants of that IOT.

4. The names and addresses of the responsible persons at the City are: Rick Cole, City Manager, 1685 Main Street, Room 209, Santa Monica, CA 90401; Marsha Jones Moutrie Esq., City Attorney, 1685 Main Street, Room 310, Santa Monica, CA 90401; Martin Pastucha, Director of Public Works, 1685 Main Street, Room 116, Santa Monica, CA 90401; Nelson Hernandez, Senior Advisor to the City Manager on Airport Affairs, Airport Administration Building, 3223 Donald Douglas Loop South, Santa Monica, CA 90405, and Stelios Makrides, Airport Manager, Airport Administration Building, 3223 Donald Douglas Loop South, Santa Monica, CA 90405.

COMPLAINANT

5. Justice Aviation, a California Corporation, is a full service flight school and aircraft rental facility located on the south side of SMO. Justice has been an Airport tenant for in excess of 25 years. As such, it is the oldest and largest of several flight schools at Santa Monica Airport. It is located at 3011 Airport Ave. Santa Monica, CA. and occupies approximately 6,720 sq. ft. of hangar space, 2109 sq. ft. of office, meeting and conference space and 15 exclusive use aircraft tie-down spaces.

In addition to its principal shareholder, Joseph Justice, as of February 2016, Justice Aviation employed eight flight instructors and maintains between nine and eleven instruction and rental aircraft and a full motion flight simulator. As of February 2016, Justice Aviation had 28 flight students and more than 200 active aircraft renters.

VIOLATIONS

The Facts

6. The City has for years sought to close SMO and to convert its land to non-aeronautical uses. Short of closure, the City has sought to reduce aeronautical activity at the Airport, and in particular to reduce or eliminate flight schools, which necessarily engage in frequent training operations.

7. As President of Justice Aviation, Joseph Justice has long zealously advocated legal and political positions adverse to the City with regard to its operation of, and actions against, the Airport. Joseph Justice has several times been interviewed for newspaper articles regarding the City and the Airport; Justice Aviation is a complainant in two prior Part 16 actions challenging City compliance with its federal obligations (FAA Docket Nos. 16-14-04 filed on July 2, 2014 and 16-16-02, filed February 4, 2016); and is a class representative in a state class action lawsuit (*Justice Aviation, Inc. et. al. v. The City of Santa Monica, et. al.*, Los Angeles Superior Court Case No. BC603327) challenging the legality of Airport landing fees.

8. Prior to June 30, 2015, Justice Aviation was a long-term lessee. Justice Aviation's last lease commenced on August 1, 2008 and expired on June 30, 2015 (83 mos. , or 6 yrs. 11 mos.), as did all of the aeronautical tenant leases at the Airport. Before and since the expiration of its lease, Justice Aviation has requested that the City give it a new lease. Despite its repeated requests, the City refused to, and continues to refuse to, offer, negotiate or execute any new leases with aeronautical tenants, including Justice Aviation, despite offering leases to non-aeronautical tenants. Accordingly, Justice

Aviation has, since July 1, 2015, been a month-to-month holdover tenant. It has timely paid monthly rent during that time.

9. On January 6, 2016, without prior notice, the City served Justice Aviation with a 30-day Notice to Vacate, signed by City Manager Frederick Cole. A copy of this notice is attached as **Exhibit 1**. When Justice Aviation attempted to tender its February, 2016 rent on February 1, 2016, the City refused to accept it.

10. On or about February 1, 2016, Nelson Hernandez, Senior Advisor to the City Manager for Airport Affairs requested a meeting with Justice Aviation. At the meeting, held on February 3, 2016, Mr. Hernandez' only question of Justice Aviation was when it was leaving. When asked by Justice Aviation's attorney, David Shaby II, the reason for the termination of Justice's tenancy, Mr. Hernandez stated that the City was simply exercising its proprietary rights as a landlord to a tenant who is in possession on a month to month basis. Attached as **Exhibit 2** is a declaration of David M. Shaby II.

11. Justice did not vacate its premises, and on February 11, 2016, the City filed an unlawful detainer (eviction) action in Los Angeles Superior Court against it. Attached as **Exhibit 3** is the Unlawful Detainer action that was filed by the City against Justice Aviation, Inc.

12. In defense of the unlawful detainer action, Justice Aviation took the deposition of Mr. Cole, the City Manager. Excerpts from this deposition are attached as **Exhibit 4**. During the deposition Mr. Cole was asked why Justice Aviation's tenancy was being terminated. His response was that no cause was needed and that he did not have to identify any reason or cause. (Ex.4 69:9-25, 70:1) He acknowledged that at the time that the unlawful detainer action was filed, no payments that were due to the City from Justice Aviation (Ex. 4, 71:2-6). He further admitted that a non-aviation tenant (Typhoon restaurant) at the Airport had been given a multi-year lease since June 30, 2015 (Ex. 4, 26:4-21), but that no aviation tenants have been offered leases since then (Ex.4, 27:1-14), and that the City does have any plans or proposals in effect to offer aviation tenants leases (Ex.4, 27:15-25, 28:1-18). The trial on the unlawful detainer is currently scheduled

for April 4, 2016. On March 8, 2016 the City manager materially changed his deposition testimony. The changes are included with Exhibit 4.¹

The Specific Violations

13. It is a well-established principal that under grant assurance 22, an airport sponsor must provide aeronautical users with access to its airport on reasonable terms and without unjust discrimination. *Skydance Helicopters v. Sedona Oak Creek Airport Authority and Yavapai County, Arizona*, No. 16-02-02, at 32 (Director's Determination Mar. 7, 2003); *Roger Leonard Cardinals' Pilot Shop v. Chesapeake Airport Authority*, No. 16-01-06, at 36 (Director's Determination Oct. 22, 2002); *R/T-182 v. Portage County Airport Authority*, No. 16-05-14, at 8 (Final Agency Decision Mar. 29, 2007). The same requirement is part of a sponsor's obligations under an IOT. *In the Matter of Compliance with Federal Obligations by the City of Santa Monica, California*, No. 16-02-08, at 51 (Director's Determination May 27, 2008). And the non-discrimination provision of grant assurance 22 is mirrored in grant assurance 23's ban on the grant of exclusive rights, which prohibits the exclusion of an aeronautical user from the same or similar rights enjoyed by other such users. FAA Order 5190.6b, Chapter 8.2.

14. While the FAA accords substantial deference to an airport sponsor's management decisions, termination of an aeronautical tenant – and hence denial of airport access – without cause is a violation of a sponsor's federal obligations. *Ashton v. City of Concord, NC*, FAA Docket No. 16-00-01 (Final Decision April 17, 2001); *Centennial Express Airlines v. Arapahoe County Public Airport Authority*, FAA Docket No. 16-98-05 (Director's Determination August 21, 1998) (“A sponsor is not free, once Federal funds have been used to support its infrastructure needs, under the grant assurances, to bar service at the airport just because local preferences change.” At 24).

¹ After reviewing his deposition transcript, Mr. Cole apparently recognized (or was advised) that denial of access to Justice Aviation without any cause, as he repeatedly testified, would be a grant assurance violation, and amended his testimony to add a ground for the Justice Aviation non-renewal. [cite]. This is so obviously a re-writing of history and fact, and so contrary to Mr. Cole's testimony under oath, that it should be disregarded.

15. In singling out Justice Aviation for eviction without cause, the City is plainly denying access to one aeronautical user afforded other aeronautical users, both of its type (flight school) and generally.

16. The harm caused to Justice Aviation, both now and in the future, by the City's actions and non-compliance with its federal obligation is self-evident. After operating its flight school at the Airport for more than 25 years, Justice is now losing instructors and students, and does not have the resources to re-locate to another facility; simply put, if the City is successful, it will be out of business altogether. The City's illegal actions are also extremely harmful to the Airport's other tenants; to the extent that the City is allowed to remove – and thus deny access – to one tenant without any cause, it can do so to others, such as an operator of jet aircraft or a frequent Airport user, in furtherance of its goal of limiting, and eventually ending, Airport operations.

PRE-COMPLAINT RESOLUTION EFFORTS

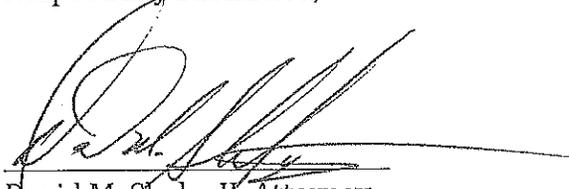
17. As alleged in Paragraph 10, *supra*, Justice Aviation met with the City on February 3, 2016, but was given neither explanation of the City's decision nor an opportunity to contest that decision. Moreover, the City's action filed immediately thereafter creates a limited, 30-day window (now extended to April 4, 2015), in which to challenge respond to the unlawful detainer action. In a Part 16 proceeding, a complainant is not required to engage in one-sided efforts to resolve a dispute with a sponsor who has "for all practical purposes" made it clear that it will not comply with its grant obligations. *Bombardier Aerospace Corp. and Dassault Falcon Jet Corp. v. City of Santa Monica*, FAA Docket No. 16-03-11, at 23 (January 3, 2004). While Justice Aviation remains willing to negotiate a new lease with the City on reasonable terms, it is evident that the City will not do so unless required by this proceeding.

CONCLUSION

18. For the reasons set forth above, Justice Aviation requests that the FAA find that the City has unreasonably and discriminatorily denied it access, in violation of

its federal obligations, and that it issue an order requiring appropriate corrective action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Shaby II", with a long horizontal flourish extending to the right.

David M. Shaby II, Attorney
for Justice Aviation, Inc.

EXHIBIT 1



Rick Cole
City Manager

Office of the City Manager
1685 Main Street
PO Box 2200
Santa Monica, CA 90407-2200

January 6, 2016

Mr. Joe Justice, President
Justice Aviation, Inc.
3011 Airport Avenue
Santa Monica, California 90405

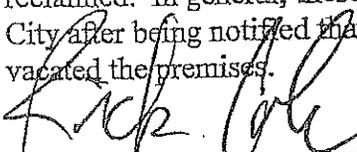
Re: 30-Day Notice of Termination of Tenancy & 30-Day Notice to Vacate the Premises pursuant to California Civil Code §1946. (Santa Monica Airport Lease No. 8945)

Dear Mr. Justice,

Justice Aviation, Inc. is the Tenant currently in possession of the leased premises at the Santa Monica Municipal Airport and located at 3011 Airport Avenue, Santa Monica, California 90405. Tenant Justice Aviation occupies the premises under its lease with the City of Santa Monica. The Lease, known as Santa Monica Airport Lease Agreement No. 8945, was entered into by Tenant Justice Aviation and Landlord City of Santa Monica on or around July 11, 2008. The Lease expired by its own terms on June 30, 2015 and Justice Aviation has remained in possession of the premises with the City's consent on a month-to-month basis.

PLEASE TAKE NOTICE that pursuant to California Civil Code § 1946, **Tenant Justice Aviation must vacate and surrender possession of the above identified premises to Landlord City of Santa Monica within 30 days after service of this notice.** Justice Aviation's failure to vacate the premises within 30 days will cause the City to initiate legal proceedings against Justice Aviation to recover possession of the premises and to seek a money judgment for damages for each day of occupancy after the expiration date of this notice. Such a judgment against Justice Aviation may include attorney fees and court costs as allowed by law or contract, and an additional punitive damages award of six hundred dollars (\$600) in accordance with California law. This Notice is intended as a 30-Day notice terminating Justice Aviation's month-to-month tenancy with the City. Prorated rent of \$992.71 for the first week of February, 2016, is due and payable through and including the date of termination of the tenancy under this Notice.

Please take further notice that California law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. Justice Aviation may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner Justice Aviation is able to contact the City after being notified that property belonging to it was left behind after Justice Aviation vacated the premises.


CITY OF SANTA MONICA, Landlord

1/6/16
DATE

EXHIBIT 2

Declaration of David M. Shaby II in Support of Part 16 Action by Justice Aviation, Inc. v. City of Santa Monica, California

David M. Shaby II declares:

1. I am an attorney duly licensed to practice before all of the courts of the state of California and am admitted in all of the Federal Courts located in this state. I have personal knowledge of the facts set forth herein and if sworn as a witness can competently testify thereto.
2. I was retained to represent Justice Aviation action with regard to landlord - tenant matters with regards to its tenancy at the Santa Monica airport.
3. On February 3, 2016 I attended a meeting at the place of business of Justice Aviation, Inc. between Nelson Hernandez of the City of Santa Monica and Joseph Justice of Justice Aviation, Inc.
4. After the initial pleasantries were exchanged Mr. Nelson immediately came out and said to Joseph Justice "Ok, I want to know when you intend to leave"?
5. I then inquired of Mr. Nelson why the City was seeking to terminate the tenancy of Justice Aviation, Inc. I understood Mr. Nelson to answer that the City was simply exercising its rights as a landlord. I then pressed Mr. Nelson for a more detailed response and inquired whether the City was relying on any specific reason or cause to evict Justice Aviation. Mr. Nelson was unable to identify anything more specific.
6. I then pointed out to Mr. Hernandez that Justice Aviation had an extensive history of advocating for the airport. I reminded him that Justice Aviation was a Plaintiff in a Part 16 action that was decided against the City, that it was a representative Plaintiff in a class action lawsuit that was recently filed against the City, and that it was a Plaintiff in a new Part 16 action that the City was aware of (subsequently filed on February 5, 2016). I stated that it really appeared as though the City was discriminating or retaliating against Justice Aviation. I then asked Mr.

Nelson how he would respond if a Judge asked him if Justice Aviation was being evicted in retaliation. His response was that the City would deal with that at that time.

7. I then explained the hardship that would be caused to Justice Aviation, Inc. and others if Justice Aviation were required to vacate the premises.

8. On February 5, 2016 I sent Mr. Hernandez a letter documenting the substance of our conversation. I asked him to respond immediately in writing if anything contained in my letter was inaccurate in any way. Attached to this declaration is a true and correct copy of my letter of February 5, 2016. To date I have received no response from him to that letter.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on March 14, 2016 in Los Angeles, California.


David M. Shaby II

LAW OFFICES
A PROFESSIONAL CORPORATION

DAVID M. SHABY II
& ASSOCIATES
ATTORNEYS AT LAW

11949 Jefferson Blvd. Ste. 104
Culver City, CA 90230
Telephone (310) 827-7171
Facsimile (310) 822-8529
david@ds4law.com

February 5, 2016

Nelson Hernandez
City of Santa Monica
3223 Donald Douglas Loop South
Santa Monica, CA. 90405

Re: Justice Aviation

Dear Mr. Hernandez,

Please let this letter confirm certain aspects of our conversation during our meeting of February 3, 2016 that was conducted at your request at the office of Justice Aviation. Our meeting dealt with whether the City intended to proceed with the enforcement of a 30 Day Notice to Quit that was served on Justice Aviation. You unequivocally stated that the City of Santa Monica absolutely intended to enforce its right to evict Justice Aviation and the purpose of the meeting was to determine if he would leave voluntarily.

I asked you directly why the City was seeking Justice Aviation's eviction. Your response was that the City was simply exercising its rights as a landlord. I then pressed you for a more detailed rationale for seeking Justice Aviation's eviction. You were unable to provide any other explanation. I pointed out that in an Unlawful Detainer action Justice Aviation would assert as an affirmative defense the defense of retaliatory eviction on the part of the City. I reminded you that Justice Aviation was a Plaintiff in the Part 16 action that went against the City; that it was a representative Plaintiff in a class action lawsuit that was recently filed against the City and the fact that it was a Plaintiff in a new Part 16 action that the City was aware of that will be filed shortly. I said that it really looks like the City is evicting Justice Aviation as retaliation for his involvement in the prior litigations. You did not respond. I then asked you what your response will be when a Judge asks you in Court if you are evicting Justice Aviation as retaliation. Your response was that the City will deal with that at that time.

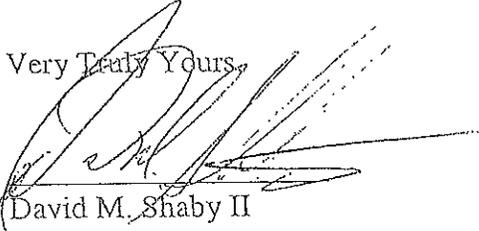
As you may be aware Justice Aviation had a long term lease at one time. That lease expired and despite his request for a multi year lease, he was only permitted to stay on a month to month basis. It has been a tenant on that basis for an extended period. During our meeting I said to you that there was legal authority to the effect that a tenant who has been permitted to remain on a month to month tenancy for an extended period has a reasonable expectation that the tenancy will continue absent some justifiable cause (eg. non-payment of rent, creation of a nuisance, etc.). Implicit in every contract is a duty to deal in good faith and fair dealing. In

accordance with that duty a contract cannot be terminated in bad faith or without a legitimate basis or cause. The City of Santa Monica has yet to identify any legitimate basis or cause for Justice Aviation's eviction.

As was pointed out during our meeting Justice Aviation has been at Santa Monica airport since 1991. It employs multiple flight instructors and support personnel. It has 25-30 active students and over 200 active aircraft renters. The eviction of Justice Aviation will cause the loss of the flight school business and will result in multiple people losing their livelihoods.

Please keep the foregoing in mind in deciding how the City will go forward. If any part of our conversation is inaccurate in any way, please respond to me immediately in writing to correct any inaccuracies.

Very Truly Yours,



David M. Shaby II

EXHIBIT 3

SUMMONS
(CITACION JUDICIAL)
UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Justice Aviation, Inc.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
City of Santa Monica

FOR COURT USE ONLY
Case Preparation Fee
Court Administration
Superior Court of California
County of Los Angeles
FEB 11 2016
Sherri R. Carter, Executive Officer/Clerk
By: N. Valles, Deputy
N. Valles

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

CASE NUMBER:
(Número del caso): **16R00754**

1. The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court
West Judicial District - Santa Monica
1725 Main Street
Santa Monica, CA 90401

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Marsha Jones Moutrie, City Attorney T: (310) 458-8336
Ivan O. Campbell, Deputy City Attorney F: (310) 395-6727
1685 Main Street, Room 310
Santa Monica, CA 90401

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415) did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date: **FEB 11 2016** Clerk, by N. Valles, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

4. NOTICE TO THE PERSON SERVED: You are served
a. as an individual defendant.
b. as the person sued under the fictitious name of (specify):
c. as an occupant
d. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 CCP 415.46 (occupant) other (specify):

5. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MARSHA JONES MOUTRIE, City Attorney IVAN O. CAMPBELL, Deputy City Attorney (SBN 216049) City Attorney's Office 1685 Main Street, Room 310 Santa Monica, California 90401 TELEPHONE NO.: (310) 458-8336 FAX NO. (Optional): (310) 395-6727 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): City of Santa Monica		FOR COURT USE ONLY CONFORMED COPY CONFORMED COPY Superior Court of California County of Los Angeles FEB 17 2018 Sherril K. Garret, Executive Officer/Clerk By: <i>[Signature]</i> , Deputy N. Valles
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 1725 Main Street MAILING ADDRESS: 1725 Main Street CITY AND ZIP CODE: Santa Monica, CA 90401 BRANCH NAME: West Judicial District - Santa Monica		
PLAINTIFF: City of Santa Monica DEFENDANT: Justice Aviation, Inc.		
<input checked="" type="checkbox"/> DOES 1 TO 10		
COMPLAINT — UNLAWFUL DETAINER* <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number):		CASE NUMBER: 16R00754
Jurisdiction (check all that apply): <input checked="" type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input checked="" type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited		

1. PLAINTIFF (name each): City of Santa Monica

alleges causes of action against DEFENDANT (name each): Justice Aviation, Inc.

2. a. Plaintiff is (1) an individual over the age of 18 years. (4) a partnership.
 (2) a public agency. (5) a corporation.
 (3) other (specify):

b. Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):

3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):
3011 Airport Avenue, Santa Monica, CA 90405, Los Angeles County

4. Plaintiff's interest in the premises is as owner other (specify):

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): July 11, 2008 defendant (name each): Justice Aviation, Inc.

- (1) agreed to rent the premises as a month-to-month tenancy other tenancy (specify): Fixed term from:
 (2) agreed to pay rent of \$ 5,757.72 payable monthly other (specify frequency): 8/1/08 - 6/30/15
 (3) agreed to pay rent on the first of the month other day (specify):

b. This written oral agreement was made with

- (1) plaintiff. (3) plaintiff's predecessor in interest.
 (2) plaintiff's agent. (4) other (specify):

*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

PLAINTIFF (Name): City of Santa Monica DEFENDANT (Name): Justice Aviation, Inc.	CASE NUMBER:
--	--------------

6. c. The defendants not named in item 6a are:
- (1) subtenants.
 - (2) assignees.
 - (3) other (specify): Unknown occupants
- d. The agreement was later changed as follows (specify): The lease agreement expired by its own terms on June 30, 2015, after which Defendant's tenancy became month to month by operation of law.
- e. A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)
- f. (For residential property) A copy of the written agreement is not attached because (specify reason):
- (1) the written agreement is not in the possession of the landlord or the landlord's employees or agents.
 - (2) this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).

7. a. Defendant (name each): Justice Aviation, Inc.

was served the following notice on the same date and in the same manner:

- (1) 3-day notice to pay rent or quit
 - (2) 30-day notice to quit
 - (3) 60-day notice to quit
 - (4) 3-day notice to perform covenants or quit
 - (5) 3-day notice to quit
 - (6) Other (specify):
- b. (1) On (date): February 5, 2016 the period stated in the notice expired at the end of the day.
 (2) Defendants failed to comply with the requirements of the notice by that date.
- c. All facts stated in the notice are true.
- d. The notice included an election of forfeiture.
- e. A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)
- f. One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)

8. a. The notice in item 7a was served on the defendant named in item 7a as follows:

- (1) by personally handing a copy to defendant on (date):
- (2) by leaving a copy with (name or description): _____ at defendant's _____ residence business AND mailing a copy to defendant at defendant's place of residence on (date): _____ because defendant cannot be found at defendant's residence or usual place of business.
- (3) by posting a copy on the premises on (date): 1/6/16 AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date): _____
 - (a) because defendant's residence and usual place of business cannot be ascertained OR
 - (b) because no person of suitable age or discretion can be found there.
- (4) (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date): January 6, 2016.
- (5) (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.

b. (Name):

was served on behalf of all defendants who signed a joint written rental agreement.

c. Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.

d. Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

PLAINTIFF (Name): City of Santa Monica	CASE NUMBER:
DEFENDANT (Name): Justice Aviation, Inc.	

- 9. Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
- 10. At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$
- 11. The fair rental value of the premises is \$ 191.92 per day.
- 12. Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
- 13. A written agreement between the parties provides for attorney fees.
- 14. Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

Plaintiff has met all applicable requirements of the ordinances.

- 15. Other allegations are stated in Attachment 15.
- 16. Plaintiff accepts the jurisdictional limit, if any, of the court.

17. PLAINTIFF REQUESTS

- a. possession of the premises.
- b. costs incurred in this proceeding:
- c. past-due rent of \$
- d. reasonable attorney fees.
- e. forfeiture of the agreement.
- f. damages at the rate stated in item 11 from (date): February 6, 2016 for each day that defendants remain in possession through entry of judgment.
- g. statutory damages up to \$600 for the conduct alleged in item 12.
- h. other (specify):

18. Number of pages attached (specify): 45

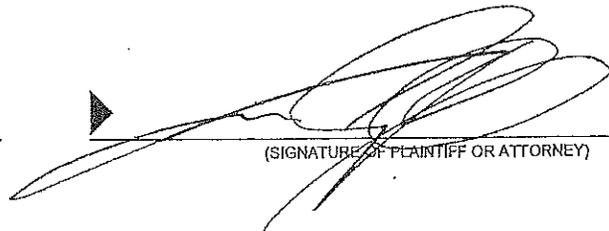
UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400-6415)

19. (Complete in all cases.) An unlawful detainer assistant did not did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- b. Street address, city, and zip code:
- c. Telephone No.:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

Date: February 10, 2016

Ivan O. Campbell, Deputy City Attorney
(TYPE OR PRINT NAME)


(SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I have read the foregoing Complaint - Unlawful Detainer

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner an employee of the City of Santa Monica.

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on February 10, 2016, at Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Martin Pastucha, Airport Director

Type or Print Name

Handwritten signature of Martin Pastucha

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, at, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co Plus

ATTACHMENT 15

1
2 15.1. Plaintiff City of Santa Monica (the "City") is the legal owner, operator, and
3 lessor of real property commonly known and referred to as the Santa Monica Municipal
4 Airport ("the Airport"), which is principally located in the City of Santa Monica, County of
5 Los Angeles, California. Plaintiff City is also the legal owner and lessor of the premises that
6 is the subject of this action and which is located at the Airport at 3011 Airport Avenue, Santa
7 Monica, California, 90405 ("Premises").

8 15.2. Defendant Justice Aviation, Inc. is currently in possession of, and occupies, the
9 Premises that is the subject of this action.

10 15.3. On or about July 11, 2008, Defendant executed a written agreement to rent the
11 Premises (the "Lease Agreement") for a fixed term, commencing on August 1, 2008 and
12 terminating on June 30, 2015, at a rental rate of \$5,757.72 per month, due on the first day of
13 each month. A copy of the Lease Agreement is attached hereto as Exhibit 1 and
14 incorporated herein by reference.

15 15.4. The Lease Agreement at Section 2.3, page 2, provides that its term expired and
16 terminated on June 30, 2015. Defendant Justice Aviation entered into possession of the
17 Premises under the terms and conditions of the Lease Agreement. After the expiration of the
18 Lease Agreement, Defendant remained in possession of the Premises on a month-to-month
19 basis by operation of law and continues to occupy the Premises on a month-to-month basis.
20 After the expiration of the Lease Agreement, Plaintiff has not entered into any new
21 agreement with Defendant, neither express nor implied, for Defendant's continued
22 occupancy of the Premises.

23 15.5. The City has performed all covenants and conditions required of it under the
24 Lease Agreement with Defendant.

25 15.6. On January 6, 2016, Plaintiff City caused to be served on Defendant a "30-Day
26 Notice to Termination of Tenancy and 30-Day Notice to Vacate the Premises" under
27 California Civil Code §1946. A copy of that notice is attached hereto as Exhibit 2 and is
28 incorporated herein by this reference. A copy of the Proof of Service of Plaintiff's 30-Day

1 Notice on Defendant Justice Aviation is attached hereto as Exhibit 3 and is incorporated
2 herein by this reference and reflects that Defendant was served by posting a copy of the
3 Notice in a conspicuous place at the Premises on January 6, 2016 and mailing a copy by first
4 class US mail to Defendant on that same day.

5 15.7. The thirty day period stated in the notice expired on February 5, 2016 and
6 Defendant Justice Aviation, Inc. failed to vacate and return possession of the Premises to
7 Plaintiff City. The City is entitled to immediate possession of the Premises.

8 15.8. Following the expiration of the thirty day notice period on February 5, 2016,
9 Plaintiff City has accepted no payments for rent or otherwise from Defendant. Plaintiff has
10 not waived its notice to Defendant and has not accepted rent from Defendant for February,
11 2016. Plaintiff will continue to not accept rent from Defendant for as long as Defendant
12 continues to unlawfully detain the Premises.

13 15.9. Defendant continues in possession of the Premises without the City's
14 permission or consent and contrary to the terms of the expired Lease Agreement. Plaintiff
15 City is informed and believes and thereupon alleges that the reasonable rental value of the
16 Premises is the sum of \$191.92 per day, and damages to City caused by Defendant's
17 unlawful detention of the Premises have accrued at said rate since February 6, 2016, and will
18 continue to accrue at said rate so long as Defendant remains in possession of the Premises.

19 15.10. Despite the expiration of the Lease Agreement, Defendant's obligations to
20 Plaintiff under the Agreement survive. The Lease Agreement, at Section 21.7, page 32,
21 provides that in the event that either party to the Agreement were compelled to commence
22 and maintain litigation against the other party, the prevailing party is entitled to recover all
23 costs and expenses, including reasonable attorneys' fees as determined by the court. Plaintiff
24 City has been compelled to commence litigation for the recovery of the Premises due to
25 Defendant's unlawful detention of the Premises.

8945
(Agreement No. 8547)

LEASE AGREEMENT

by and between

THE CITY OF SANTA MONICA.

and

**JUSTICE AVIATION, INC.,
a California Corporation**

move - in
10.16.08

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EXHIBITS

Exhibit A – Premises, Site Plan and Existing Improvements

Exhibit B – Facility Improvement Plan

LEASE AGREEMENT NO. 8945 (CCS)

This Lease Agreement Number _____ (CCS) ("Agreement") is entered into this 11th day of July 2008, ("Execution Date") by and between the CITY OF SANTA MONICA, a municipal corporation (hereinafter "City" or "Lessor"), and JUSTICE AVIATION, INC., a California Corporation, (hereinafter "Justice" or "Lessee"), with respect to the following:

RECITALS:

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. Lessee is a California corporation, validly existing, and in good standing under the laws of the State of California, Lessee represents and warrants that it is experienced in the operation and management of aviation-related business operations.

C. The City owns real property commonly known as the Santa Monica Airport, including a hangar and office building located at 3011 Airport Avenue, Santa Monica, California 90405, more specifically described in Section I of this Agreement.

D. The City and Lessee desire to enter into this Agreement for the rental of the Premises to allow use of the Premises for the purpose of commercial aviation business activities as more particularly described in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1. PREMISES.

The City leases to Lessee, and Lessee leases from the City, the certain Airport real property and improvements located at 3011 Airport Avenue, Santa Monica, California, consisting of the following: (i) approximately 6,720 square feet of hangar space; (ii) 2,109 square feet of office, meeting and conference room space; and (iii) fifteen (15) exclusive use aircraft tie-down spaces located on the common ramp adjacent to the hangar space, all as depicted in the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Premises"). The Premises contain existing buildings and other improvements ("Existing Improvements") as shown in Exhibit A. Lessee hereby accepts the Premises in "as-is" condition, and subject to all applicable

zoning, municipal county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises, including specifically, the Santa Monica Municipal Code and any covenants or restrictions of record, and accepts this Agreement subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business.

SECTION 2. TERM.

2.1. Commencement Date and Term. This Agreement shall be deemed to commence on August 1, 2008 ("Commencement Date"), and shall continue until June 30, 2015

2.3. Expiration Date. Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall expire and terminate on June 30, 2015 ("Termination Date"), without the necessity of any notice from either City or Lessee to terminate this Agreement. Lessee hereby waives notice to vacate or quit the Premises and agrees that City shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Premises from a tenant holding over to the same extent as if statutory notice had been given. Lessee further agrees that if it fails to surrender the Premises at the expiration or termination of this Agreement in good condition, reasonable wear and tear excepted, Lessee shall be liable to City for any and all damages which City may suffer by reason thereof, and Lessee will indemnify, defend and hold harmless City against all claims and demands made by any succeeding tenants against City.

2.4. No Hold Over Tenancies. If Lessee shall be in possession of the Premises after the expiration of the Term, without the express or implied consent of City, then the tenancy under this Agreement shall terminate and City shall be entitled to the benefit of all provisions of law respecting the summary recovery of possession of the Premises from a tenant holding over. The acceptance by City of monthly rent from Lessee after such expiration or earlier termination of the Agreement shall not result in a renewal of this Agreement or an extension of the Term of this Agreement.

The City expressly reserves the right to require Lessee to surrender possession of the Premises upon the expiration of the Term, or upon the earlier termination hereof, to reenter the Premises, and to assert any remedy at law or in equity to evict Lessee and/or collect damages in connection with such holding over.

2.5. Surrender. Upon the expiration or any earlier termination of this Agreement, Lessee, at its sole cost and expense, shall surrender up and deliver possession of the Premises to City, in a clean condition, and in the same good operating condition

and repair as it exists on the Execution Date, reasonable wear and tear excepted, and subject to all requirements of Section 7.4 of this Agreement, including, without limitation, Lessee's obligations to perform environmental remediation of the Premises:

Lessee acknowledges and agrees that any and all improvements constructed or installed on the Premises shall be the property of Lessor, free and clear of all liens and encumbrances.

Lessee agrees that if it fails to surrender the Premises at the expiration or termination of the Agreement in good operating condition, reasonable wear and tear excepted, or if Lessee fails to satisfy its environmental remediation obligations set forth in Section 8.3 of this Agreement, Lessee shall be liable to City for any and all damages which City shall suffer by reason thereof and Lessee will indemnify City against all costs and expenses to restore the Premises to good operating condition, reasonable wear and tear excepted and to perform Lessee's environmental remediation obligations under this Agreement.

2.6. **Survival.** The provisions of this Section 2 shall survive the expiration or earlier termination of this Agreement.

SECTION 3. USE OF THE PREMISES.

Lessee agrees that the Premises shall be used only for the required activities and services identified in Section 3.1, or the permitted activities and services identified in Section 3.2. Lessee shall not use or permit the Premises to be used for any other purpose without the City's prior written consent, which may be granted or withheld in the City's sole and complete discretion.

3.1. **Required Activities and Services.** During the Term of this Agreement, Lessee shall conduct the following activities and provide the following services on the Premises to the public consistent with the provisions of applicable federal, state and local laws and regulations, including, but not limited to, the Santa Monica Municipal Code:

- (a) Flight and Simulator Training
- (b) Aircraft Rental and Service
- (c) Transient Pilot Services
- (d) Operations Office

3.2. **Permitted Activities and Services.** In addition to the above required activities and services, Lessee may conduct the following activities and provide the

following services on the Premises consistent with the provisions of the Santa Monica Municipal Code:

- (a) Aircraft Sales and Leasing
- (b) Aircraft Equipment Sales
- (c) Aircraft Storage Rental
- (d) Office Rental
- (e) Aircraft Maintenance and Repair
- (f) Aircraft Washing, Waxing and Detailing
- (g) Ground School and Aviation Seminars
- (h) Such uses that are approved in writing by the Airport Director

3.3. Prohibited Activities and Services. Other than the activities and services set forth in Sections 3.1 and 3.2, above, Lessee is expressly prohibited from conducting any other activity or providing any other services at the Premises. Lessee is specifically prohibited from the following:

- (a) Engaging in the storage of motor vehicles, trailers, boats or other recreational vehicles.
- (b) Engaging in any operation which uses the leasehold as a base for the substantial use of helicopters, or any operation involving the repetitive, frequent or continuous use of helicopters.
- (c) Engaging in any type of helicopter flight training or helicopter pattern flying. Helicopter simulator training is excluded from this prohibition and permitted pursuant to Section 3.2 (b) above.
- (d) Engaging in any activity or providing any service likely to violate the night-time curfew on aircraft take-offs.
- (e) Engaging in any activity or providing any service likely to violate the Santa Monica or Los Angeles municipal noise ordinances.
- (f) Salvage yard activities.
- (g) Any type of residential use, overnight camping or occupation at the

Premises.

- (h) Storage, parking or idling of aircraft in excess of 12,500 pounds without the prior written approval of the Airport Director.
- (i) Aircraft stripping or painting.
- (j) Scheduled passenger or airfreight services under FAR part 121 or Part 135.
- (k) Engaging in aircraft fueling at the Premises.
- (l) Non-aviation uses not specifically permitted, including, but not limited to personal and public storage, band practices, parties or entertainment events, medical offices and laboratories, vehicles storage, non-aviation retail or wholesale activities, production or post-production operations and manufacturing.
- (m) Any activity inconsistent or in contravention of the requirements of any applicable federal, state or local law or regulation.

3.4 Hours of Operation. Lessee's business operations and activities shall be limited to the following hours:

Weekends (Monday through Friday): 7:00 a.m. to 11:00 p.m.
Weekends (Saturday & Sunday): 8:00 a.m. to 11:00 p.m.

3.5 High Levels of Service. Lessee shall endeavor to provide high levels of service consistent with industry standards for the type of service being provided to the public at the Airport. Lessee or its sublessees shall keep and maintain an adequate staff and an appropriate stock of merchandise to service and supply the usual and ordinary demands and requirements of its customers. Lessee shall provide the services in accordance with all federal, state and local laws, rules and regulations.

SECTION 4. RENT.

4.1 Monthly Base Rent During Initial Term and Option Period. Lessee and Lessor agree that the Monthly Base Rent during the Initial Term of this Agreement and the Option Period (if exercised), shall be **FOUR THOUSAND EIGHT HUNDRED AND TWENTY-TWO DOLLARS AND NO CENTS (\$4,822.00)**, for each month, without set off or deduction, (hereinafter "Monthly Base Rent") subject to the partial deferral of rent described in subsection 4.1 A. below and beginning with the lease

anniversary month in 2009 an annual CPI adjustment described in Section 4.3 of this Agreement

4.2. Leasehold Improvement Rent Credits. Monthly amount due payments maybe reduced by leasehold improvement rent credits as specified in section 6.4 of this agreement.

4.3. Annual CPI Adjustments. The Monthly Base Rent during the Initial Term and the Option Period Monthly Base Rent shall be subject to annual consumer price index adjustments ("CPI" as defined below). The first CPI adjustment will occur on August 1, 2009 ("First Adjustment Date"). Additional CPI adjustments will occur on August 1st of each year. The adjustments to the Monthly Base Rent and Option Period Monthly Base Rent shall be calculated as follows:

4.3.1. CPI Adjustments. For the First Adjustment Date, the Monthly Base Rent shall be adjusted on August 1, 2009 to an amount calculated by multiplying the Monthly Base Rent for June 2009 by a fraction in which the numerator shall be equal to the CPI published for June 2010 and the denominator of which shall be equal to the CPI for June 2008. The same format shall be applied in each and every subsequent year of the lease on the first of the adjustment with the numerator equal to the CPI published for that year's month and denominator appropriately revised to reflect the previous year's same month's rate including that years CPI adjustment.

City shall, as promptly as practicable after the beginning of each Rental Year give notice to Lessee of the resulting CPI adjustment, if any, in the Monthly Base Rent or Option Period Monthly Base Rent as determined by City. City's computation thereof shall be conclusive and binding (except for mathematical error), but shall not preclude any further adjustment which may be required in the event of a published amendment of the CPI. Until receipt of City's notice, Lessee shall pay monthly installments of Monthly Base Rent or Option Period Monthly Base Rent, as applicable, at the rate applicable to the immediately preceding Rental Year in which the Adjustment Date occurs. If at the time of City's notice the total of the monthly installments of Monthly Base Rent actually paid by Lessee with respect to the elapsed portion of the current Rental Year is less than the amount of Monthly Base Rent required to be paid for such period as indicated in City's notice, Lessee shall immediately pay to City the amount of the deficiency.

4.3.2. Definitions: For purposes of this section, the following definitions shall apply:

- A. The term "Rental Year" shall mean that fiscal year of 12 consecutive months commencing on July 1st and continuing through the next June 30th; provided, however, that in no event shall a Rental Year be shorter than 12 full calendar months.

- B. The term "CPI" shall mean the percentage increase in the cost of living index as measured by the "Consumer Price Index for All Urban Consumers" published by the Bureau of Labor Statistics of the United States Department of Labor for Los Angeles-Riverside-Orange County, California (1982-84=100). In the event the CPI shall hereafter be converted to a different standard reference base or otherwise revised, such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics shall be used, or if the Bureau of Labor Statistics shall not publish the same, then such conversion factor, formula or table selected by City as may be published by any other nationally recognized publisher of similar statistical information shall be used. In the event the CPI shall cease to be published, then there shall be substituted for the CPI such other index of similar nature as is then generally recognized and accepted for like determinations of purchasing power, as City shall select.

4.3.3. Minimum and Maximum Adjustments. The CPI adjustments shall be subject to a minimum increase adjustment of 3% per year and a maximum increase adjustment of 6% per year.

4.3.4. No Waiver. In the event that the CPI is unavailable as of the Adjustment Date, Lessee shall continue to make payments for the Monthly Base Rent based on the monthly installments at the then current amount until notified by the City of the CPI increase. Any delay or failure of City in computing or billing Lessee for the escalation of Monthly Base Rent based upon a CPI increase shall not constitute a waiver of or in any way impair the continuing obligation of Lessee to pay such CPI increase. Lessee shall provide a retroactive payment to City of the CPI increase from the Adjustment Date to the date of notification of such increase.

4.4. Late Charges as Additional Rent. Lessee acknowledges that late payments by the Lessee of its monetary obligations to the City, including Monthly Base Rent, will cause the City to incur costs not contemplated by this Agreement. The exact amount of these costs will be extremely difficult to ascertain. Therefore, if Lessee fails to pay any of its monetary obligations to the City, including Monthly Base Rent, within ten (10) calendar days from the date the payment is due, late charges in the amount of 10 percent (10%) per month of the unpaid amount shall be paid by the Lessee as Additional Rent. Lessee shall pay this amount for each calendar month in which all or any part of any payment to the City remains delinquent for more than ten (10) calendar days after the due date. The parties agree that late charges represent a fair and reasonable estimate of the costs the City will incur for late payment of any monetary obligations. Acceptance of the late charges by the City shall not constitute a waiver of the Lessee's default with respect to the overdue amount or prevent the City from exercising any of its rights and

remedies pursuant to this Agreement. Lessee shall pay the late charge as Additional Rent with the next installment of Monthly Base Rent.

4.5. Payments to the City. Payment shall be made by check or money order made payable to the City of Santa Monica and shall be mailed or delivered to the following address:

City of Santa Monica
Airport Administration Building
3223 Donald Douglas Loop South, Suite 3
Santa Monica, California 90405
Attention: Airport Director

4.6. Application of Payment. All payments received by the City from Lessee shall be applied to the oldest payment obligation owed by Lessee to City. No designation by Lessee, either in a separate writing or on a check or money order, shall modify this Agreement or have any force or effect.

4.7. Security Deposit; Increase During Option Period. Upon execution of this Agreement, Lessee shall apply the security deposit (in the amount of \$1,232.53) held by Lessor under the existing lease of property located at 3163 Donald Douglas Loop South as the deposit for this lease, as the security deposit for the performance of its obligations pursuant to this Agreement. If Lessee defaults on any provision of this Agreement, City may, without prejudice to any other remedy it has, apply all or part of the security deposit to: (a) any Monthly Base Rent or other sum in default; (b) any amount that the City may spend to repair damage caused by Lessee or its sublessee; or (c) any expense, loss, or damage that City may suffer because of Lessee's default. If the City applies all or part of the security deposit, and if the City does not elect to terminate the Agreement, the Lessee shall provide the City with sufficient funds to restore the full amount of the security deposit within ten (10) days after demand by the City.

4.8. Documents and Records. Lessee agrees to keep and maintain at the Premises a full, permanent and accurate set of books and records of all sales of merchandise and revenue derived from its conduct of business in, at or from the Premises.

All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

Lessee further agrees that it will keep, retain, and preserve for at least three (3) years all records, books, bankbooks, or duplicate deposit books.

City shall have the right, upon reasonable written notice and at City's expense, to inspect and audit Lessee's books and records strictly pertaining to this Agreement and to

make copies of any such books and records. City may make such audit at any time during normal business hours upon reasonable notice.

SECTION 5. COMPLIANCE WITH LAW.

5.1. Compliance With All Laws. During the term of this Agreement, Lessee shall comply with all applicable federal, state and local laws, ordinances, codes and regulations including, but not limited to, Chapter 10.04 of the Santa Monica Municipal Code ("Airport Code") and all FAA regulations applicable to fixed based operations.

5.2. Specialty Fixed Based Operations Shall Be In Full Compliance with the Airport Code. Lessee understands the importance of the City's airport noise abatement program, and shall operate its specialty fixed based operations in a manner, which will be in full compliance with the Airport Code, the noise abatement program, and all rules, regulations and procedures. Lessee agrees to inform its employees, customers and invitees of all noise abatement programs, rules, procedures, and any regulations relating thereto.

5.3. Cooperation in Enforcement of Airport Code. Lessee shall cooperate fully with the City in the enforcement of the provisions of Chapter 10.04, "Municipal Airport" of the Santa Monica Municipal Code and regulations of the Noise Abatement Program implemented by the City. If Lessee's employees or agents become aware of any circumstance which could constitute a violation of the Airport Code, regulations, or Noise Abatement Program by any of its customers or invitees, Lessee shall inform the Airport Director or his or her designee immediately.

5.4. No Services To Excluded Pilots, Aircraft or Owners of Aircraft. Lessee shall be prohibited from providing any services to any pilot, aircraft or owner of an aircraft excluded from the Santa Monica Airport pursuant to Chapter 10.04, "Municipal Airport" of the Santa Monica Municipal Code, provided lessee has been directly informed of excluded status. Lessee shall also be prohibited from providing services to any pilot, aircraft or owner of aircraft for which Lessee does not have adequate facilities, services or personnel. Lessee shall also not permit any outside vendors from performing services from or at the Premises without full compliance with all applicable laws and regulations, including, but not limited to, obtaining all applicable permits and licenses.

5.5. Permits and Licenses. Lessee shall obtain and maintain during the term of this Agreement, at Lessee's sole expense, all licenses, permits and certificates that may be required in connection with the operation of the facility and for the provision of services set forth in this Agreement, including, but not limited to, all FAA and City of Santa Monica licenses, permits and certificates. Lessee is required to obtain and maintain a Santa Monica Commercial Operations permit for all business operations on the Premises.

5.6. Federal Requirements. Pursuant to the requirements of the FAA, the parties agree as follows:

5.6.1. Compliance with Federal Requirements. Lessee agrees to comply with all federal requirements, including but not limited to, statutes, regulations, Executive Orders, agency regulations, orders or advisory circulars.

5.6.2. Nondiscrimination. Lessee agrees that it will not discriminate against any person on the account of disability, sexual orientation, condition of having AIDS, race, color, creed, religion, sex, age, marital status, national origin or ancestry with respect to (i) the use, occupancy and possession of the Premises, and (ii) the operations, activities or services of the Lessee.

5.6.3. Right to Improve Landing Area. The City, as the airport owner, reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of the Lessee and the Lessee shall not interfere or hinder such development or improvement.

5.6.4. Maintenance and Repair of Landing Area and Public Facilities. The City, as the Airport owner, reserves the right, but shall not be obligated to the Lessee to maintain and to keep in repair the landing area of the airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the Lessee in this regard.

5.6.5. Subordination of this Agreement. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation and maintenance of the Airport.

5.6.6. Right of Flight Easement. There is reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from or operating on the Airport premises at the Santa Monica Municipal Airport. Notwithstanding the foregoing, this reservation of a right of flight easement shall not operate to deprive the Lessee, its officers, agents, invitees or employees of any rights they may have against any operator of aircraft or other third parties responsible for negligence or careless operation of aircraft.

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

premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.

5.6.8. Height Restrictions. The Lessee, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree, or landscaping in contravention of Part 77 of the Federal Aviation Regulations.

5.6.9. Prohibition on Interference with Landings and Take-Offs. The Lessee, by accepting this Agreement, expressly agrees for itself, its successors and assigns, that it will not make any use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right, but not the obligation, to enter upon the leased premises and cause the abatement of such interference at the expense of the Lessee.

5.6.10. No Exclusive Right Granted. It is understood and agreed that nothing herein contained shall be construed to grant or to authorize the granting of an exclusive right within the meaning of 49 U.S.C §40103(e) and §47107(a) (4), as may be amended from time to time.

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

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

SECTION 6. MAINTENANCE AND REPAIR OF THE PREMISES AND LEASEHOLD IMPROVEMENTS; CONSTRUCTION OF REQUIRED LESSEE IMPROVEMENTS.

6.1 Maintenance and Repair of Premises. Except as stated in Section 6.5 of this Agreement, Lessee expressly agrees to maintain and to keep, at its sole cost and expense, the Premises and all Leasehold Improvements thereon in a safe, clean and sanitary condition. For purposes of this Agreement, Leasehold Improvements ("Leasehold Improvements") shall include all Existing Improvements, Required Lessee Improvements as described below, and any additional improvements made to the

Premises during the Term hereof. Lessee hereby consents to periodic inspections by City for the purpose of determining maintenance violations upon reasonable notice, except in an emergency, in which case no notice will be required. Lessee further agrees to promptly correct each and every violation. Lessee shall not allow refuse, garbage or trash to accumulate on or adjacent to the Premises, except on the date of scheduled pick-up service, and then only in appropriate receptacles located in areas designated for such purposes.

6.2. Repairs To Be In Compliance With Law. Lessee shall make all necessary repairs to maintain the Premises and all Leasehold Improvements thereon, including the repairs or replacement of equipment, structures, or other physical improvements on the Premises, as well as painting, cleaning, and other upgrades. Repairs shall maintain the Premises in its current operational condition or the operational condition that exists following the completion of the Required Lessee Improvements under Section 6.4 hereof, less normal wear and tear. All repairs shall comply with any and all applicable regulations, laws or ordinances of the United States, State of California, County of Los Angeles, City of Santa Monica or other governmental body including, but not limited to, the Federal Aviation Administration.

6.3. Alterations, Additions or Changes to the Premises Require Prior Written Approval By City. Lessee shall obtain prior written City approval for any alterations, additions, or changes to the Premises and improvements thereon, including the required Lessee improvements ("Required Lessee Improvements") described in Section 6.4 below. The City may withhold its consent to any alterations, additions or changes in City's sole and complete discretion.

6.4 Lessee Improvement Rent Credits.

Lessee may be entitled up to a maximum of Seventy Five Thousand Dollars (\$75,000.00) in leasehold improvement rent credits for the proposed leasehold improvements (the "Proposed Lessee Improvements") described in Exhibit "B", attached hereto and incorporated herein by reference. The Proposed Lessee Improvements set forth in Exhibit "B" must be submitted and approved by the Airport Director, or his or her designee, in writing prior to the commencement of any work on the leasehold premises. Qualifying credits must for work that complies and is consistent with the above Proposed Lessee Improvements set forth in Exhibit B. Requests for Lessee Improvement rent credits must also be fully documented with appropriate receipts and payment records and must be reviewed and approved by the Airport Director or his/her designee. Said approved rent credit requests shall not exceed Seventy Five Thousand Dollars (\$75,000.00) and any submissions beyond that amount are not qualified for rent credits.

Rent credits shall be applied to the monthly based rent over the course of the agreement but in no case may it be credited in any single month to amount greater than 75% of the

monthly rent due. Lessee may choose to accelerate rent credits so that they are all awarded in the first three (3) years of the Lease Agreement.

6.4.1 Facility Improvement Plan and Schedule. No later than sixty (60) days after execution of this Agreement, Lessee shall prepare and submit, or cause to be prepared and submitted to the Airport Director or his or her designee, for approval in writing, and incorporation into this Agreement as Exhibit "B", a facility improvement plan ("Facility Improvement Plan") which shall include all of the following: (i) a detailed layout plan which reflects locations and detailed descriptions of all proposed Lessee improvements; (ii) a plot plan; (iii) preliminary plans and specifications for the construction of the Required Lessee Improvements; (iv) and a project schedule;

6.4.2 Building Permit and Required Approvals; Commencement of Construction. Lessee shall obtain all necessary approvals to construct the Required Lessee Improvements, and obtain the issuance of any required building permits. Lessee shall commence construction of the Required Lessee Improvements on the earlier of the date which is fifteen (15) days from the date Lessee has obtained all necessary building and other permits required for the Lessee Improvements.

6.4.3 Completion Dates for Required Lessee Improvements. Lessee shall diligently proceed and carry out construction of the Required Lessee Improvements and shall substantially complete the Required Lessee Improvements, as set forth in Exhibit B.

6.5. City's Maintenance and Repair Obligations. Except as stated herein, City has no obligation, in any manner whatsoever, to repair or to maintain the Premises or any Leasehold Improvements located thereon, or the equipment thereon, whether structural or nonstructural, all of which are intended to be the obligation of the Lessee as set forth above in Section 6.1. City shall be responsible for the maintenance and repair of the roof, exterior surfaces and common structural elements of the Specialty FBO building, and the Airport common areas, except that Lessee shall be obligated to maintain and repair any damages caused to the roof, exterior surfaces or common structural elements of the Specialty FBO building and Airport Common Areas caused by Lessee, its officers, agents, employees, contractors and invitees.

Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at or on the Premises at Lessee's expense and to offset such expenses from rent otherwise due to Lessor. Notwithstanding the above, the City has the option to enter the Premises and remedy any condition or conditions that are the responsibility of Lessee and charge the cost to the Lessee without any liability for any resulting business loss or damage if Lessee fails to start to correct any unsafe, unclean or unsanitary condition within forty-eight (48) hours after being notified in writing to do so. In the event of an emergency, City may enter the Premises

without advance notice to remedy an unsafe, unclean or unsanitary condition and charge the cost associated therewith to the Lessee. City shall notify the Lessee of any emergency and the cost of repair as soon as reasonably possible. Nothing contained herein shall be deemed to waive any immunities of the City under any applicable law.

SECTION 7. OWNERSHIP OF IMPROVEMENTS AND EQUIPMENT.

7.1. Ownership of Leasehold Improvements During Term. All Existing Improvements and all subsequent improvements, alterations, additions, construction, or betterments, constructed on the Premises by Lessee as permitted or required by this Agreement shall be and remain the property of Lessor and Lessee shall not waste, destroy, demolish or remove any Leasehold Improvements except as expressly provided in this Agreement; and provided, further, that Lessee's rights and powers with respect to the Leasehold Improvements are subject to the terms and limitations of this Agreement.

7.2. Removal and Demolition. During the term of this Agreement, Lessee shall not remove or demolish in whole or in part, any Existing Improvements or any other Leasehold Improvements located on the Premises without the prior written consent of Lessor who may, in its reasonable discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement or improvements specified in such consent.

7.3. Lessee's Obligations Upon Expiration or Earlier Termination of the Agreement; Environmental Remediation. All Leasehold Improvements, buildings and other improvements placed or constructed on the Premises, as well as any and all other improvements, alterations, betterments, structures, construction, additions, and fixtures, except moveable personal property, equipment and trade fixtures, made or placed in or on the Premises by Lessee or any other person, shall be considered part of the Premises. Upon termination or expiration of this Agreement, Lessee shall be obligated to surrender and deliver possession of the Premises and: (i) leave in place, in good condition and repair, (normal wear and tear excepted) all of the Leasehold Improvements which shall revert to and become the property of City upon termination or expiration of this Agreement, free and clear of any liens or encumbrances whatsoever, and without the payment of any consideration, and (ii) clean up and remove all debris and other materials on the Premises at Lessee's sole expense. Lessee shall also be obligated to perform and complete environmental remediation of the Premises as described herein.

SECTION 8. LIABILITY AND INSURANCE.

Prior to the commencement of the term of this Agreement, Lessee shall procure and maintain at the Lessee's own cost and expense for the duration of this Agreement the following insurance against claims for injuries or death to persons or damages to property that may arise from or in connection with the possession, occupancy, operations and use

of the Premises by the Lessee, its officers, agents, representatives, employees, contractors, sublessees, licensees, guests, invitees and customers.

8.1. Minimum Limits of Insurance. Lessee shall obtain and maintain insurance of the types and in the amounts described below:

- A. **Commercial General Liability Insurance**
Lessee shall maintain commercial general liability (CGL) with a limit not less than \$3,000,000 each occurrence combined single limits.
- B. **Business Automobile Liability Insurance**
Lessee shall maintain automobile liability insurance with a limit not less than \$1,000,000 each accident for each motor vehicle used for conducting Lessee's operations on the Premises.
- C. **Hangarkeepers' Liability Insurance**
Lessee or its subtenants shall maintain a policy of hangarkeepers' liability insurance in the amount of \$500,000 per occurrence. The per aircraft limit shall not be less than \$500,000 for each aircraft in Lessee's care, custody and control at any one time. The City of Santa Monica shall be named as an additional insured under each hangarkeepers' insurance policy. If at any time Lessee acquires or stores any aircraft with a value greater than \$500,000, Lessee shall immediately notify City of each such aircraft and its value, and obtain increased hangarkeeper's liability insurance coverage to meet the increased value of such aircraft.
- D. **Aircraft Liability Insurance**
Lessee shall maintain an aircraft liability insurance policy with a limit of not less than \$1,000,000 each accident with per passenger sublimits of not less than \$200,000. The City of Santa Monica shall be named as an additional insured under each such aircraft liability insurance policy.
- E. **Workers' Compensation and Employer's Liability Insurance**
If Lessee has employees at any time during the term of this Agreement, then Lessee shall maintain workers' compensation insurance as required by the State of California and Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

- G. **Property Insurance.** Lessee shall maintain property insurance covering the contents and any tenant improvements or betterments on an "All Risk" or "Special Causes Loss" basis in the amount equal to 100% replacement value.

8.2. **Minimum Scope of Insurance.**

- A. Comprehensive General Liability insurance on a form reasonably acceptable to the City, specifically including; Airport Premises Liability, Aviation Products & Completed Operations Liability, Ground Hangarkeepers Liability, on Airport Automobile Liability and Premises Medical Payments, with limits of not less than:
1. Premises, Products, Contractual & On Airport Auto Liabilities:
\$3,000,000 Combined Single Limit per Occurrence
\$3,000,000 Aggregate
 2. Ground Hangarkeepers Liability:
\$500,000 per Aircraft
\$500,000 per Occurrence
Subject to increase upon acquisition or storage of each aircraft of greater value.
 3. Personal Injury Liability:
\$1,000,000 per Occurrence
\$1,000,000 Aggregate
 4. Premises Medical:
\$5,000 per Person
\$25,000 per Occurrence
- B. Business Automobile Liability Insurance shall cover liability arising out of any automobile (including owned, hired and non-owned autos). Coverage shall be written on Insurance Services Offices form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- C. Aircraft liability insurance shall include coverage for owned, non-owned or hired aircraft.

- D. Property insurance policies shall contain a no co-insurance penalty provision. The Property policy or policies shall be endorsed to provide Business Interruption coverage to provide for the payment of twelve (12) months of Monthly Base Rent due City at the time of the loss.

8.3. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions in excess of \$10,000 must be declared to and approved by the City. Lessee shall provide a bond or other financial guarantee in a form reasonably acceptable to the City, guaranteeing payment of any deductible or self insured amounts in excess of \$25,000.

8.4. Other Insurance Provisions.

The commercial general liability, business automobile liability, hangarkeepers' liability, aircraft liability and environmental impairment liability policies shall contain or be endorsed to contain the following provisions:

- A. City of Santa Monica, each member of its City Council, Board and Commission, its officers, officials, employees, and volunteers ("Insured City Parties") are to be covered as additional insureds with respect to liability arising out of automobiles or aircraft owned, hired, or non-owned by Lessee; liability arising out of work or operations performed by Lessee or on behalf of Lessee; or aircraft under Lessee's care, custody, and control. under the CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 11 or a substitute providing equivalent coverage. City and other additional insureds mentioned in this paragraph shall not, by reason of their inclusion as additional insureds, become liable for any payment of premiums to carriers for such coverage.
- B. For any claims related to this Agreement, Lessee's insurance coverage shall be primary as respects the Insured City Parties. Any insurance or self-insurance maintained by the Insured City Parties shall be excess of Lessee's insurance and shall not contribute with it.
- C. If any of the liability policies are written on a claims made basis, it shall be maintained continuously for a period of not less than three (3) years after the termination of this Lease. The "Retro Date" must be shown, and must be before the date of the Lease or commencement date of the Lease.

8.5. Property Insurance.

The policy or policies shall be endorsed to provide that the Insured City Parties be named as additional insureds as their interests may appear.

8.6. Waiver of Subrogation.

The Insurer (for property and workers' compensation only) shall agree to waive all rights of subrogation against the Insured City Parties for losses arising from activities and operations of Lessee under this Agreement.

8.7. All Coverages.

- A. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested and given to the attention of the City's Airport Director or his or her designee at the address listed in Section 18 of this Agreement.
- B. The minimum amounts of insurance may be increased in accordance with increases, if any, reasonably determined by the City to be necessary to maintain policy limits from time to time in amounts customary and usual for premises comparable to the Premises, and such increases, if any, are to be made on a yearly basis on or about the commencement of each Rental Year.
- C. If Lessee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed to be a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from said breach. Alternatively, City may purchase such coverage (but has no special obligation to do so), and the cost of same, including any interest on insurance premiums paid by City shall be deemed Additional Rent and shall be payable upon City's demand.

8.8. Acceptability of Insurers.

Insurance is to be placed with insurance with a current A.M. Best's rating of no less than A:6 unless otherwise approved by the City's Risk Manager.

8.9. Verification of Coverage.

Lessee shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Section. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on forms provided by the City, or on other than the City's forms, provided these forms and endorsements conform to the City's requirements. All certificates and endorsements are to be received and approved by the City before occupancy occurs. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications at any time.

8.10. Lessee's Contractor's Insurance.

All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein, except that any contractor must maintain a Commercial General Liability policy with limits of not less than \$1,000,000 per occurrence (for contractors performing capital improvements and \$1,000,000 per occurrence for contractors performing maintenance and routine repairs). Each contractor shall provide a "Builders' Risk" insurance policy written on an "All Risk" or "Special Causes of Loss" basis in the amount equal to the completed value of the project with no co-insurance penalty provisions. The insurance shall be on a replacement cost basis and be provided on a completed value form.

8.11. Sublessees and Licensees.

Lessee shall include all sublessees and licensees using the Premises, and all consignors and bailors giving custody and control of personal property to Lessee, as additional insureds under its policies or shall furnish separate certificates and endorsements for each sublessee, licensee, consignor and bailor. All coverages for sublessees, licensees, consignors and bailors shall be subject to all of the requirements stated herein as required or modified by the City.

8.12. Modification of Insurance Requirements.

The City's Risk Manager is authorized to review and modify on an annual basis, beginning on July 1, 2008, the provisions of this Section 8 if he or she, in his or her sole discretion, determines that (1) the insurance market is able to provide greater coverage for a cost comparable to Lessee's current insurance coverage; or (2) Lessee's operation or use of the Premises has changed the level of risk associated with the operation or use of the Premises.

SECTION 9. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS.

Lessee agrees to indemnify, defend, and hold harmless the Insured City Parties from any and all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees, and judgments arising directly or indirectly from or in any manner related to Lessee's possession, occupancy or use of the Premises or arising from or in any manner connected to Lessee's business, activities, operations, service or work conducted in or about the Premises, regardless of the active or passive negligence of the City, except as otherwise stated herein.

Lessee shall indemnify, defend and hold the Insured City Parties harmless from and against any and all claims, demands, actions, losses, damages, expenses, costs and the like, including but not limited to City's attorneys' fees and costs or the value of all legal services supplied to City, suffered or incurred by City by reason of Lessee's failure to timely surrender and vacate the Premises upon the expiration or earlier termination of this Agreement without the written consent of the City.

Lessee shall also indemnify, defend, and hold harmless the Insured City Parties from and against any and all loss, damage, costs, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the furnishing or supplying of any work, services, materials, equipment or supplies by any persons, firms, corporations or other entities under the control or supervision of or invited by Lessee in, on or about the Premises.

Notwithstanding the foregoing, Lessee shall have no obligation to indemnify, defend or hold harmless Insured City Parties where the claim arises from or relates to willful and wanton misconduct or inaction that is directly attributable to one or more of the Insured City Parties.

The Lessee shall pay the City for any costs incurred in enforcing this Section. The provisions of this Section shall survive the termination of this Agreement with respect to any loss occurring prior to termination.

SECTION 10. CITY'S RIGHTS.

10.1. Ingress and Egress . The City reserves the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Agreement and all applicable law and to employ experts and/or consultants in connection therewith and/or to advise Lessor with respect to Lessee's activities, including, but not limited to, the operation, use, monitoring, or maintenance, or removal of any Hazardous Material or storage tank on or from the Premises. For purposes of this Lease, "Hazardous Material or Materials" shall mean: (i) "hazardous substance" or "toxic

substances," as defined by CERCLA; (ii) "hazardous waste," as defined by RCRA; (iii) "Hazardous Waste," "Extremely Hazardous Waste" or "Restricted Hazardous Waste," as those terms are defined by Sections 25115, 25117, or 25122-7 of the California Health and Safety Code, Division 20, Chapter 6.5, as amended or hereafter amended; (iv) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other environmental laws; (v) more than 100 gallons of crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (vi) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. §2011 et seq., as amended or hereafter amended; and/or (vii) asbestos or PCBs in any form or condition.

10.2. Access for Environmental Tests or Work : The City reserves the right to access the Premises to perform any environmental tests and any other environmental work on the Premises. The City will provide the Lessee with prior notice of the date and location of any environmental tests or work to be performed on the Premises. Prior to the commencement of any environmental tests or work on the Premises, Lessee and Lessor will agree on a work plan that ensures continued operations during the period of such tests and work and, if necessary, the feasibility of an alternative location during such period of testing or work.

10.3. Right To Access. In addition to the rights set forth in Sections 10.1 and 10.2, above, the City shall have the right on 24 hours prior notice, to enter the Premises to: (a) inspect the Premises and all Leasehold Improvements; (b) show the Premises to prospective tenants; (c) serve, post and keep posted notices required by law or that the City considers necessary; (d) make repairs, replacements, alterations, or improvements to the Premises or Leasehold Improvements that the City considers necessary or desirable (without any obligation to do so); (e) take possession in the manner set forth in this Agreement; or (f) perform any covenants of Lessee that Lessee fails to perform. Notwithstanding the above, in the case of an emergency, as determined by the City, the City will have the immediate right to enter upon the Premises and undertake any necessary inspection or other actions without prior notice to Lessee.

10.4. Right to Regulate Access. In addition to the right to access, the City, in its sole and complete discretion, may at any time control and limit access to, in, or about the Santa Monica Municipal Airport for the public health, safety, welfare, or for any other municipal or public purpose. The City reserves the right to regulate the hours and location of deliveries and restrict the activities of the Lessee with regard to all deliveries, loading, unloading and servicing of the Premises, and Lessee agrees to abide by the regulations of the City. The City also reserves the right to restrict and control access routes to the Santa Monica Municipal Airport and the Premises during the days and hours which the Santa Monica Municipal Airport is closed or operations are at minimum levels.

SECTION 11. RESTRICTIONS ON ASSIGNMENTS OR SUBLEASES.

11.1. Assignment and Subletting Require Prior Written Consent from City.

Lessee has been selected to lease the Premises in reliance upon its financial strength, business experience, reputation and stated and unique expertise of the owner of Lessee. Except as provided herein, Lessee shall not assign, hypothecate or transfer this Agreement or any interest herein or sublet the Premises or any portion thereof, by operation of law or otherwise, (generally, a "Transfer") to any person or entity ("Transferee") without the prior written consent of the City, which may be withheld in accordance with this Agreement. Any attempt to Transfer without complying with the foregoing shall be null and void, and any assignee, sublessees, lienholder or transferee shall acquire no right or interest by reason of such attempted Transfer. Any attempt by the Lessee to make a Transfer of its interest without the prior written consent and approval of the City shall be deemed a material breach of this Agreement.

11.2. Prohibition on Transfers for Performance of Required Services.

Notwithstanding the provisions of this Section 11 allowing Lessee to seek Lessor's consent to transfers of this Agreement or any interest therein, the parties understand and agree that Lessee may not seek approval of the right to assign or transfer any interest in the Agreement or the Premises which would allow another party to perform any of the Required Services and Activities set forth in Section 3.1 of this Agreement, and any such transfer is hereby expressly prohibited.

11.3. Transfer of Corporate Shares. Any sale or transfer of all or substantially all of the stock, assets or other equitable interests of the Lessee that has the effect of a material change in the control of Lessee shall constitute a Transfer of this Agreement requiring the City's prior written approval pursuant to this Section.

11.4. Lessee's Application for Consent. If Lessee desires to make a Transfer, Lessee must submit in writing to City the name of the proposed Transferee, the proposed Transferee's business to be conducted in the Premises, the terms and provisions of the proposed Transfer, information of the proposed Transferee pertaining to the requirements set forth in this Section, or other information as City may request. No request for a Transfer shall be considered by the City until receipt of the above information.

11.5. Grounds for Denying Consent . Since the City would not enter into this Agreement but for the financial strength, business experience, reputation and expertise of Mr. ALI SAFAI and SM Aviation any proposed Transferee shall not be approved unless the City has determined, as minimum requirements, that such proposed Transferee has (a) adequate business experience in operating similar types of establishments to fulfill Lessee's obligations set forth in this Agreement; (b) a credit quality reasonably satisfactory to fulfill Lessee's obligations under this Agreement and verified by the City; (c) the personal character, reputation and integrity of the proposed Transferee and its

principals and operational officers and owners are of the at least the same caliber as the Transferor, and (d) the proposed Transferee agrees to expressly assume all of Lessee's obligations under this Agreement and all liability arising from the condition of the Premises during Lessee's occupancy and use of the Premises, such assumption of obligations including, without limitation, all monetary obligations and required environmental remediation under this Agreement. City may establish other reasonable requirements of the proposed Transferee, and subsections (a), (b) (c) and (d) of this Section are not to the exclusion of any other reasonable requirements which the City may establish.

11.6 Conditions to Consent. Prior to any request for City's consent to any Transfer, all of the following conditions shall be met:

- A. Subject to the requirement for an express written assumption of obligations by the Transferee, as described in Section 11.4 above, the original named Lessee shall not be relieved of its obligation to pay Monthly Base Rent which accrues on and after the date of City's written approval of the Transfer, and to perform all other obligations to be performed by Lessee hereunder provided that any such approved Transfer is evidenced on City approved forms.
- B. Lessee shall reimburse City for City's attorneys' fees incurred or the value of attorneys' services received in connection with the review, processing and documentation of such Transfer request.
- C. Lessee shall inform City of any and all compensation it receives in connection with any Transfer. City shall have the right to request and receive from Lessee any additional information reasonably related thereto.
- D. The Transferee shall agree that in the event that City gives notice to any sublessee that the Transferee Lessee is in monetary default under this Agreement, sublessee shall thereafter make any sublease payments directly to the City. These payments shall be received by the City without any liability pursuant to the sublease, and sublessee shall agree to attorn to the City should this Agreement be terminated for any reason, except that in no event shall the City be obligated to accept an attornment.
- E. Any such consent shall be effected on forms approved by City.
- F. Lessee shall not be in default hereunder in any respect, nor shall any event have then occurred which, with the giving of notice or passage

of time or both, would constitute a default under this Agreement which has not been cured or waived.

- G. Any such Transferee must agree to assume, be bound by and perform all of the terms, covenants and conditions of this Agreement, subject to the condition that City shall not be bound to any provision of any agreements pertaining to such Transfer to the extent such agreement grants rights not possessed by Lessee against City.
- H. One executed copy of any and all written instruments evidencing or relating to any such Transfer shall be delivered to City. City agrees not to disclose any confidential information which may be contained therein, except as otherwise required by applicable law.
- I. All sublessees must obtain and maintain a Santa Monica Commercial Operations Permit, as well as all other applicable permits and licenses, during the entire term of the sublease.

11.7 Allowable Percentage of Subleasing. The lessee may sublease up to one third (33%) of the hangar and office space.

11.8. Acceptance of Rent from Transferee. The acceptance by City of the payment of Rent following any assignment or other transfer prohibited by this Section shall not be deemed to be a waiver of any right or remedy of City hereunder.

SECTION 12. COVENANT AGAINST LIENS.

Lessee shall not be the cause or object of any liens or allow any liens to exist, attach to, or be placed on, or encumber City's interest in the Premises by operation of law or otherwise. Lessee shall keep the Premises free and clear of any mechanic's liens, and other liens, and liens for labor, services, supplies, equipment, or material furnished or claimed to have been furnished to the Lessee or the Premises. If any lien is attached or Lessee receives notice of any lien, Lessee shall cause the lien to be released and removed from the record or provide documentation of adequate surety for payment of the lien amount within five (5) business days from receipt of notice of lien, and shall notify the City of the existence of the lien. Despite any other provision of this Agreement, if the lien is not released and removed by Lessee, or if Lessee fails to demonstrate adequate surety for payment of the lien amount, the City may take all action necessary to release and remove the lien. Any surety obtained to secure payment of any lien hereunder shall be in a form and of a duration approved by the City. All expenses, including reasonable attorneys' fees, incurred by City in connection with the lien shall be considered

Additional Rent by the City under this Agreement and shall be immediately due and payable by the Lessee.

SECTION 13. TAXES AND ASSESSMENTS.

13.1 Lessee's Obligation to Pay Taxes . The term "Tax Year" shall mean and refer to each twelve (12) month period (deemed, for the purpose of this Section, to have 365 days) established as the real estate tax year by the taxing authorities having lawful jurisdiction over the Premises. Lessee shall pay in each Tax Year during the Term, directly to the appropriate taxing authorities, all real estate taxes, bonds, levies or charges, ad valorem taxes and assessments, general and special assessments, taxes on the Premises, or any other tax imposed upon or levied against real estate or upon owners of real estate, including taxes upon Leasehold Improvements payable with respect to or allocable to the Premises, all land and all buildings and improvement situated thereon, whether assessed to the Premises or to City. Any taxes to be paid by Lessee under this Section shall be paid directly to the proper taxing authorities at least ten (10) days before due.

13.2. Personal Property Taxes. This Agreement may create a possessory interest in public property which is subject to taxation. In the event possessory interest is created, Lessee shall pay any and all taxes levied on such interest. In addition, Lessee shall pay to the appropriate agency not less than 10 days prior to delinquency, any and all sales, excise, and other taxes and license fees or other charges levied, imposed or assessed by any taxing or levying authority including the State of California and County of Los Angeles whether on its goods sold or on its Leasehold Improvements, equipment, furniture, or personal property in or about the Premises (collectively, "Personal Property Taxes"). In the event any or all of Lessee's Leasehold Improvements (as herein defined), equipment, furniture, fixtures or personal property shall be assessed with the real property or as Taxes charged to City, Lessee shall pay to City all such Personal Property Taxes within 10 days after delivery to Lessee by City of a statement in writing setting forth the amount of such Personal Property Taxes applicable to Lessee's property.

13.3 Reservation of Rights. Lessee reserves the right to contest any federal, state or local tax assessment of any kind provided that Lessee agrees to indemnify, defend and hold harmless the City against any damages arising from such contest.

SECTION 14. UTILITIES.

14.1 Utilities Costs. Utilities will be separately metered and Lessee shall pay all charges for all heat, water, gas, electricity, light, power, telephone and sewer or other services used by it and supplied by City, a public utility or public authority, or any other person, firm or corporation.

14.2 Discontinuances and Interruptions of Utility Services. City shall not be liable to Lessee in damages or otherwise (a) if any utility shall become unavailable from any public utility company, public authority or any other person or entity (including City) supplying or distributing such utility, or (b) for any interruption in any utility service (including, without limitation, any heating, ventilation or air-conditioning) caused by failure to pay such utility services, the making of any necessary repairs or improvements or by any cause beyond City's reasonable control, and the same shall not constitute a termination of this Agreement or an eviction of Lessee.

SECTION 15. SIGNS, LIGHTS AND ADVERTISEMENT.

Lessee must submit plans for all signs, outside lighting and advertisement to the Airport Director, or his or her designee, for prior approval. All signs, outside lighting and advertisement shall be in compliance with the requirements, regulations and ordinances of the City of Santa Monica. Additionally, Lessee shall comply with all regulations of the Federal Aviation Administration pertaining to signage and lighting of the Premises. Lessee shall maintain adequate lighting and illumination of the Premises.

SECTION 16. DAMAGE OR DESTRUCTION TO THE PREMISES OR IMPROVEMENTS.

16.1. Damage to the Premises or Improvements. Lessee agrees to notify the City immediately of any damage to the Premises or Improvements resulting from fire, earthquake, or any other identifiable event of a sudden, unexpected or unusual nature (hereinafter "Casualty"). In the event the Premises or Improvements are damaged by a Casualty, the Lessee shall, at its own expense, repair the damage necessary for the Lessee pursuant to the monetary limits set forth in Section 8.1 in order to provide the required activities and services set forth in Section 3.1, if required by the City. The repairs shall be made as soon as reasonably possible. Lessee shall repair the damage to a substantially equivalent leasable square footage as existed prior to occurrence of the damage, and shall be of substantially the same or better quality construction.

16.2. Destruction of the Premises or Improvements. If the Premises or Improvements are destroyed during the term of this Agreement due to a Casualty, Lessee shall rebuild and reconstruct the destroyed Premises or Improvements within a reasonable time period, at Lessee's sole expense, pursuant to the monetary limits set forth in Section 9.1, if required by the City. Any reconstruction shall be equal to or better than the pre-existing Premises or Improvements and shall be subject to City's review and approval.

16.3. Damage or Destruction in an Amount Equal to Fifty Percent or More of Insured Value or Replacement Cost. In the event that the Common Areas of the Santa Monica Airport are damaged or destroyed by fire or any other cause, to the extent of fifty percent (50%) of the total insured value or replacement cost of all such Common Areas, the City shall have the right to either (i) terminate this Agreement by giving written notice to the Lessee, or (ii) repair the damage as soon as reasonably possible in which event this Agreement shall continue in full force and effect.

16.4. Lessee's Remedies. Lessee shall have no claim against City, its City Council, boards and commissions, officers, agents, and employees for any damage, loss of business or good will, alterations, improvements, fixtures, furnishing, equipment, buildings, structures, vehicles and inventory suffered by reason of any damage, destruction, repair or restoration of the Premises or the Common Areas of the Santa Monica Airport.

16.5. Insurance Proceeds. Except as otherwise specifically provided herein, all insurance proceeds payable with respect to the Premises (excluding proceeds payable to Lessee for Lessee's personal property, including Lessee's trade fixtures, furnishings and equipment) shall be payable to City, subject to Lessee's right to use any such insurance proceeds to satisfy its repair and restoration obligations hereunder.

16.6. Waiver. City and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Agreement to the extent of any conflict between said statutes and this Agreement.

SECTION 17. CONDEMNATION.

17.1. Effect of Taking. If the Premises or any portion thereof is taken under the power of eminent domain by other than the City or one of its constituent parts, this Agreement shall terminate as to the part so taken on the date Lessee is required to yield possession thereof to the condemning authority. In the event that only a portion of the Premises is subject to condemnation, and the conduct of Lessee's business on the remaining portion of the Premises would not be commercially feasible in the reasonable judgment of Lessee, then Lessee shall have the option to terminate this Agreement on written notice to City. Lessee's option to terminate hereunder is only valid if exercised within thirty (30) days of the date when Lessee is required to yield possession.

If any notice of termination is given pursuant to this Section, this Agreement and the rights and obligations of the parties hereunder shall cease as of the date of such notice and Monthly Base Rent (other than any Additional Rental due City by reason of Lessee's failure to perform any of its obligations hereunder) shall be adjusted as of the date of such termination.

17.2. Condemnation Awards

All compensation awarded for any taking of the Premises (except for the portion attributable to the lost business and lost goodwill of Lessee which shall belong to Lessee) shall belong to and be the property of City, and Lessee hereby assigns to City all rights with respect thereto; provided, however, nothing contained herein shall prevent Lessee from applying for reimbursement from the condemning authority (if permitted by Law) for moving expenses, the expense of removal of Lessee's trade fixtures, loss of the Leasehold Improvements paid for by Lessee or any other loss incurred by Lessee, but if and only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by City for improvements paid for by City. Notwithstanding the foregoing, if the City is the condemning authority, any compensation for the remaining leasehold value of the Premises will belong to Lessee.

SECTION 18. NOTICES

All notices required to be given pursuant to this Agreement shall be in writing and either served personally or sent by United States mail to the address listed below, or to another address as may be provided by written notice. Notice shall be deemed given within forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

All notices, demands, requests, or approvals from Lessee to City shall be addressed to City at:

Airport Director or Airport Manager
City of Santa Monica
3223 Donald Douglas Loop South, Suite 3
Santa Monica, California 90405

with a copy to:

City Attorney
1685 Main Street, Third Floor
Santa Monica, California 90401

All notices, demands, requests or approvals from City to Lessee shall be addressed to Lessee at:

Justice Aviation,
3163 Donald Douglas Loop South
Santa Monica, California 90405
Attention: Mr. Joe Justice

This Section shall replace rather than supplement any equivalent or similar statutory notice including, but not limited to, any notices required by California Code of Civil Procedure Sections 1161 and 1162. When a statute requires service of a notice in a particular manner, service of such notice in the manner set forth in this Section shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Sections 1161 and 1162.

SECTION 19. DEFAULTS AND REMEDIES FOR DEFAULTS.

19.1. Events Constituting Material Default by Lessee. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Lessee:

- A. Lessee's failure to make any payment of Monthly Base Rent, Additional Rent or any other payment to the City as required under this Agreement, as and when due, where the failure shall continue for a period of three (3) business days after notice from City to Lessee. In the event that City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable unlawful detainer statutes, the Notice to Pay Rent or Quit shall also constitute the notice required by this subsection.
- B. Lessee's engaging in any prohibited activity as defined in Section 3.3 or any other activity or service not approved in writing by the Airport Director or his or her designee.
- C. Lessee's failure to timely prepare and submit the Facility Improvement Plan pursuant Section 6.4 and to complete the Required Lessee Improvements in a manner reasonably satisfactory to City.
- D. Lessee's failure to perform any non-monetary obligation under this Agreement including, but not limited to, the failure to provide any of the "Required Services and Activities" identified in Section 3.1, above, if the failure continues for fourteen (14) business days after written notice of the failure from the City to Lessee. Notwithstanding the above, if the nature of Lessee's default requires more than fourteen (14) business days for its cure; then the Lessee

will not be deemed to be in default if Lessee commences to cure the default within ten (10) days and thereafter diligently prosecutes the cure to completion to the satisfaction of the City.

- E. Lessee's abandonment of the Premises, including the absence of Lessee's employees from the Premises for three (3) consecutive days.
- F. Lessee's making any general arrangement or assignment of its interests to the Premises or Improvements under this Agreement for the benefit of creditors without the written approval of the City.
- G. The filing by or against the Lessee of any proceeding under federal bankruptcy law, unless the proceeding is dismissed within ninety (90) days.
- H. The appointment of a trustee or receiver to take possession of all or substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Agreement, unless possession is unconditionally restored to Lessee and the trusteeship or receivership is dissolved.
- I. The attachment, execution or the judicial seizure of substantially all of Lessee's assets located on the Premises or of Lessee's interest in this Agreement, unless that seizure is discharged within thirty (30) days.
- J. The discovery by City that any financial statement given to City by Lessee was materially false.
- K. Lessee's failure to discharge and remove any lien or encumbrance filed against the Premises or to provide adequate surety to secure payment thereof.
- L. Any assignment of this Agreement or any portion thereof in violation of Section 11 hereof.

19.2. **Remedies for Default.** In the event of any occurrence of material default or breach of this Agreement by the Lessee, the City will notify the Lessee of the existence of the breach and, if applicable, the time for cure as specified above. In the event the Lessee fails or refuses to cure, or if the material default is not subject to cure, the City may:

- A. Terminate Lessee's right to possession of the Premises by any lawful means pursuant to Section 20, below. In the event of termination, Lessee shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, and reasonable attorneys' fees.
- B. Maintain Lessee's right to possession, in which case this Agreement shall continue in effect. In that event, City shall be entitled to enforce all of City's rights and remedies under this Agreement.
- D. Pursue any other remedy now or hereafter available to City under the laws and judicial decisions of the State of California. Unpaid installments of Monthly Base Rent, Additional Rent and other unpaid monetary obligations of Lessee under the terms of this Agreement shall bear interest from the date due at the maximum rate then allowable by law.

SECTION 20. TERMINATION.

20.1. Termination By City for Lessee's Breach. In the event the Lessee fails or refuses to perform any of the covenants or requirements of this Agreement in the time and manner required, the City may terminate this Agreement by giving to the Lessee written notice of termination. Upon termination, all rights, powers, privileges and authority granted to the Lessee under this Agreement shall cease, and Lessee shall immediately thereupon vacate the fixed based operations. The City's right to terminate this Agreement under this Section is not its exclusive remedy, but is in addition to all other remedies provided to it by law or the provisions of this Agreement.

20.2. Duties Upon Termination. Upon termination of this Agreement, the Lessee shall pay all Monthly Base Rent, Additional Rent, and any other payments due to the City under the terms of this Agreement. Lessee further agrees to do all other things reasonably necessary to cause an orderly transition and to surrender the Premises and operations thereon.

SECTION 21. GENERAL PROVISIONS.

21.1. Authority. Both parties have full power and authority to enter into this Agreement.

21.2. Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto with respect to the Premises and this Agreement. All preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof.

21.3. Governing Law. Lessee and City agree that the laws governing this Agreement shall be that of the State of California.

21.4. Time is of the Essence. Time is of the essence as to each provision of this Agreement.

21.5. City's Proprietary Capacity. Lessee understands that the City is entering into this Agreement in its proprietary capacity. Nothing contained in this Agreement shall be deemed directly or indirectly to restrict or to impair the City's governmental powers or rights with the respect to the leasehold, or with respect to the Lessee's use, occupancy and operation of the Premises pursuant to this Agreement. It is intended that Lessee shall be obligated to fulfill and comply with all requirements which may be imposed by any governmental agency or authority of the City having jurisdiction over the Premises in the City's governmental capacity.

21.6. Nonwaiver. No waiver of any provision of this Agreement shall be implied by the failure of any party to enforce any remedy pursuant to this Agreement. Any waiver by the parties of any provision of this Agreement must be in writing. The waiver shall affect only the provision specified and only for the time and in the manner stated in the writing.

21.7. Attorneys' Fees and Costs. If either party hereto brings an action or proceeding against any other party by reason of a default under this Agreement, or otherwise arising out of this Agreement, the prevailing party in the action or proceeding shall be entitled to receive from the losing party all costs and expenses and such an amount as the court may adjudge to be reasonable attorneys' fees and costs. Attorneys' fees shall be paid whether or not the action is prosecuted to judgment. The prevailing party shall be entitled to attorneys' fees equal to the fair market value of legal services provided by attorneys (authorized to provide such services) employed by it as well as any attorneys' fees actually paid by it to third parties in connection with the action.

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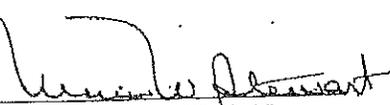
21.8. Counterparts. This Agreement may be signed in counterparts, and each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

CITY OF SANTA MONICA,
a municipal corporation

By: 
P. LAMONT EWELL
City Manager

ATTEST:


MARIA STEWART
City Clerk

APPROVED AS TO FORM:


MARSHA JONES MOUTRIE
City Attorney

LESSEE:

JUSTICE AVIATION, INC., a
California corporation

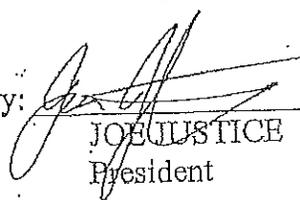
By: 
JOE JUSTICE
President

EXHIBIT A

JUSTICE AVIATION, INC.

PREMISES, SITE PLAN AND EXISTING IMPROVEMENTS

EXHIBIT B
JUSTICE AVIATION, INC.

FACILITY IMPROVEMENT PLAN

Lessee shall be responsible for the following improvements (the "Required Lessee Improvements"):

Office

1. The office at the front (south) of the hangar has exposed cinder block cement bricks. A stucco finish will be applied to the exterior of this building.
2. Create a new hallway connection to the men's bathroom in the newly formed back classroom. Add a door into the new classroom from the main office hallway to the hangar area. Install a door in the existing doorway for the men's room. Patch and paint the entire office area, bathrooms and new drywall.
3. Remove shower area in bathrooms to provide more function restrooms.
4. The main office is currently an open space from the door at the NE to the back wall at the SW. A wall will be constructed at the SW end of this room to create a larger classroom adjacent to two small offices that currently exist.
5. A lobby will be created near the entrance. The floor in this area will be tiled as well as the new bathroom areas. The office space and classrooms will be carpeted.

Hangar

1. Paint interior and exterior of metal hangar.
2. Repair roof leaks; replace 24 plastic panels with clear ones.
3. Install epoxy paint covering on floor of hangar.
4. Remove the concrete footing under the sliding hangar doors as needed, remove doors as necessary, pour new concrete and replace metal track. Repair doors as needed.



Rick Cole
City Manager

Office of the City Manager
1685 Main Street
PO Box 2200
Santa Monica, CA 90407-2200

January 6, 2016

Mr. Joe Justice, President
Justice Aviation, Inc.
3011 Airport Avenue
Santa Monica, California 90405

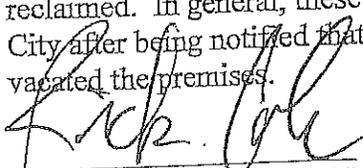
Re: **30-Day Notice of Termination of Tenancy & 30-Day Notice to Vacate the Premises pursuant to California Civil Code §1946. (Santa Monica Airport Lease No. 8945)**

Dear Mr. Justice,

Justice Aviation, Inc. is the Tenant currently in possession of the leased premises at the Santa Monica Municipal Airport and located at 3011 Airport Avenue, Santa Monica, California 90405. Tenant Justice Aviation occupies the premises under its lease with the City of Santa Monica. The Lease, known as Santa Monica Airport Lease Agreement No. 8945, was entered into by Tenant Justice Aviation and Landlord City of Santa Monica on or around July 11, 2008. The Lease expired by its own terms on June 30, 2015 and Justice Aviation has remained in possession of the premises with the City's consent on a month-to-month basis.

PLEASE TAKE NOTICE that pursuant to California Civil Code § 1946, **Tenant Justice Aviation must vacate and surrender possession of the above identified premises to Landlord City of Santa Monica within 30 days after service of this notice.** Justice Aviation's failure to vacate the premises within 30 days will cause the City to initiate legal proceedings against Justice Aviation to recover possession of the premises and to seek a money judgment for damages for each day of occupancy after the expiration date of this notice. Such a judgment against Justice Aviation may include attorney fees and court costs as allowed by law or contract, and an additional punitive damages award of six hundred dollars (\$600) in accordance with California law. This Notice is intended as a 30-Day notice terminating Justice Aviation's month-to-month tenancy with the City. Prorated rent of \$992.71 for the first week of February, 2016, is due and payable through and including the date of termination of the tenancy under this Notice.

Please take further notice that California law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. Justice Aviation may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner Justice Aviation is able to contact the City after being notified that property belonging to it was left behind after Justice Aviation vacated the premises.


CITY OF SANTA MONICA, Landlord

1/6/16
DATE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) CITY OF SANTA MONICA IVAN O. CAMPBELL, 216049 1685 MAIN STREET, ROOM 310 SANTA MONICA, CA 904010000		TELEPHONE (310) 458	FOR COURT USE ONLY		
ATTORNEY FOR (Name):		Ref. No. or File No.			
Insert name of court, judicial district or branch court, if any:					
PLAINTIFF:					
DEFENDANT:					
PROOF OF SERVICE		DATE:	TIME:	DEPT/DIV:	CASE NUMBER:

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

Three (3) Day Notice to Cure or Quit; Thirty (30) Day Notice of Termination of Tenancy and Notice to Vacate the Premises

PERSON/ENTITY SERVED: JUSTICE AVIATION c/o Joe Justive

DATE OF POSTING: 1/6/2016
 TIME OF POSTING: 3:38 PM

DATE OF MAILING: January 06, 2016
 PLACE OF MAILING: SANTA MONICA, CA

ADDRESS OF PROPERTY:
 3011 Airport Avenue
 Santa Monica, CA 90405
 (BUSINESS)

MANNER OF SERVICE:

By posting in a conspicuous place on the property therein described. I made a due and diligent attempt to personally serve the above referenced documents on the Tenant, but finding no person of suitable age or discretion to be found at any known place of residence or business of said tenants; and mailing a copy by first class mail, postage pre-paid, and depositing said copies in the United States Mail, in a sealed envelope, addressed as stated above. [CCP §1162(3)]

Fee for Service: 95.00



County: Los Angeles
 Registration No.: 2971
 Janney & Janney Attorney Service, Inc.
 1545 Wilshire Blvd., Suite 311
 Los Angeles, CA 90017.
 (213) 628-6338

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on: January 08, 2016.

Signature: _____
 John Gonzalez

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JUSTICE AVIATION, INC.
 JOE JUSTICE
 3011 AIRPORT AVENUE
 SANTA MONICA, CA.
 90405

2. Article Number (Transfer from service label)

7003

PS Form 3811, February 2004

Domestic Return Receipt

102695-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

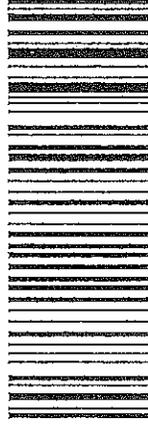
D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

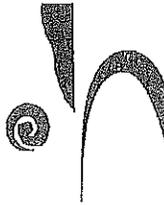
4. Restricted Delivery? (Extra Fee) Yes

7003 0500 0005 0558 7595

CERTIFIED MAIL™



7003 0500 0005 0558 7595



City of Santa Monica®

Office of the City Attorney
 1685 Main Street
 PO Box 2200
 Santa Monica, CA 90407-2200

JUSTICE AVIATION, INC.
 JOE JUSTICE
 3011 AIRPORT AVENUE
 SANTA MONICA, CA 90405

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JUSTICE AVIATION, Inc
 JOE JUSTICE
 3011 AIRPORT AVENUE
 SANTA MONICA, CA.
 90405

2. Article Number
(Transfer from service label)

7003 0500 0005 0558 7595

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service type:

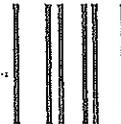
- Certified Mail
- Express Mail
- Registered
- Return Receipt for Merchandise
- Insured Mail
- C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE

CA 900

08 JAN '16



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

° Sender: Please print your name, address, and ZIP+4 in this box °

SANTA MONICA CITY ATTORNEY
 1685 MAIN STREET, RM# 310
 SANTA MONICA, CA 90401

EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CITY OF SANTA MONICA,)
)
Plaintiff,)
)
vs.)
)
JUSTICE AVIATION, INC.,)
)
Defendants.)
)

CASE NO. 16R00754

DEPOSITION OF RICK COLE

Culver City, California

Monday, February 22, 2016

Reported By:
Mary Ann Mahaffie
C.S.R. No. 8959
Job No. 599568

1 BY MR. SHABY:

2 * Q Do you have any opinion as to whether
3 the City is in compliance with the Instrument of
4 Transfer when it singled out Justice Aviation for
5 eviction?

6 MR. GAMS: Same objections. I'm instructing
7 him not to answer.

8 BY MR. SHABY:

9 Q Is Justice Aviation being evicted for
10 cause?

11 MR. GAMS: Objection; vague as to "cause."
12 It's also a legal term, and it may depend on the
13 document or legal interpretation of that. It's also
14 vague.

15 BY MR. SHABY:

16 Q Do you understand the question?

17 A I do.

18 Q Answer it, please.

19 A We don't have to decide that question
20 and we did not.

21 * Q Is it your belief or understanding that
22 no cause is necessary to evict Justice Aviation?

23 MR. GAMS: Objection; calls for speculation,
24 lacks foundation, calls for a legal opinion and legal
25 interpretation of the lease documents and other

1 controlling documents. I'll instruct him not to answer.

2 MR. SHABY: We will see you in court on that
3 one.

4 MR. GAMS: All right.

5 BY MR. SHABY:

6 Q Mr. Cole, are you aware that in addition
7 to being the oldest flight school in Santa Monica that
8 Justice Aviation grosses in excess of \$1.2 million a
9 year?

10 A I'm not familiar with their gross.

11 Q Are you aware that it has approximately
12 28 active flight students?

13 A I am not aware of how many flight
14 students it has.

15 Q Are you aware that it provides a place
16 for employment for multiple flight instructors and
17 office staff?

18 A I'm aware it hasn't paid all of its
19 bills.

20 Q What bills hasn't it paid?

21 MR. GAMS: I don't think that was his
22 question. Do you want him to read --

23 BY MR. SHABY:

24 Q Let me ask you this: What bills hasn't
25 it paid as of the date that the lawsuit was filed?

1 A I should have said it in past tense.

2 Q Let me ask you the question again.

3 What bills had it not paid at the time
4 that the lawsuit was filed in this case?

5 A It had not paid any -- the answer is
6 there were no unpaid bills at the time of the filing.

7 Q So why did you bring the action then?

8 A It's been asked and answered. I
9 apologize if my earlier comment appeared facetious or
10 disrespectful, because it's obviously raised your ire.

11 I answered the question that I don't
12 know -- I relied on legal advice as to the question of
13 cause or not cause. We're the landlord. It's my
14 understanding we have the right to evict Justice
15 Aviation, and that's why I signed the notice to evict
16 them. We have that right. We are the landlord. They
17 do not have a lease and they had been in violation of
18 the terms of the expired lease. For all those reasons I
19 signed the notice to evict, and we believe it should be
20 effectuated in a court of law.

21 Q All right. Are you aware that Justice
22 Aviation has in excess of 20 aircraft for rent?

23 MR. GAMS: I couldn't hear that.

24 BY MR. SHABY:

25 Q Are you aware that Justice Aviation has

1 THE WITNESS: The City is establishing new
2 leasing policies and those are not financed.

3 BY MR. SHABY:

4 Q Has any tenant at Santa Monica Airport,
5 aeronautical or otherwise, been offered a new lease
6 since July 1, 2015?

7 A Yes.

8 Q Who is that?

9 A I couldn't list them off individually.

10 Q Can you list any?

11 A I know the restaurant. I think it's
12 called -- I forget the name of the restaurant.

13 Q There's two restaurants on the field.

14 A Right. I think it's called Tsunami,
15 something like that.

16 MR. JUSTICE: Typhoon.

17 THE WITNESS: Typhoon, yes.

18 BY MR. SHABY:

19 Q So is it your testimony that Typhoon
20 restaurant has been offered a lease since July 1, 2015?

21 A That's correct.

22 Q Okay. Do you know if they've executed a
23 lease?

24 A I may, in fact, have signed one. But
25 since I sign so many things, I can't say for certain.

1 Q Has any aeronautical tenant been offered
2 a lease since July 1, 2015? And I'm referring to an
3 aeronautical tenant at Santa Monica Airport, obviously.

4 A The potential for doing so was brought
5 to the City Council on more than one occasion.

6 Q That doesn't answer my question though.
7 Has any aeronautical tenant at Santa
8 Monica Airport been offered a lease after July 1, 2015,
9 up to the present?

10 A I don't have authority to do so.

11 MR. GAMS: No. The question is, has any
12 business -- aviation business been offered one
13 regardless of who has the authority.

14 THE WITNESS: Okay. No.

15 BY MR. SHABY:

16 Q Does the City of Santa Monica have a
17 leasing policy with regard to tenants at Santa Monica
18 Airport?

19 A I believe I've already answered that
20 we're developing one.

21 Q So the answer is no, there is no current
22 leasing policy?

23 A There's no leasing -- we don't have a
24 satisfactory leasing policy. There may have been
25 documents or understandings or practices that might

1 arguably be called a policy, but that is under active
2 review at this time.

3 Q Let me ask you this. Does the City of
4 Santa Monica have a leasing policy with tenants at Santa
5 Monica Airport that was adopted by the City Council as
6 of present?

7 A Not a comprehensive leasing policy, no.

8 Q Okay. To your knowledge, are there any
9 plans or proposals to offer aeronautical tenants leases
10 at this time?

11 MR. GAMS: Objection; calls for speculation.

12 If you know.

13 THE WITNESS: Is there what?

14 BY MR. SHABY:

15 Q Are there any plans or proposals
16 currently in effect to offer aeronautical tenants at
17 Santa Monica Airport leases?

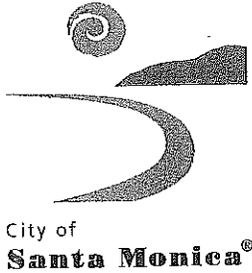
18 A No.

19 MR. GAMS: Same objections.

20 BY MR. SHABY:

21 Q Based on that then, I assume -- and
22 please correct me if my assumption is wrong -- that no
23 leases have been signed with aeronautical tenants
24 between July 1, 2015, and the present, correct?

25 A Not pending decision making by the City



Office of the City Attorney
1685 Main Street
PO Box 2200
Santa Monica, California 90407-2200

March 8, 2016

VIA U.S. MAIL & E-MAIL

David M. Shaby II, Esq.
David M. Shaby II & Associates
11949 Jefferson Blvd., Ste. 104
Culver City, CA 90230

Re: City of Santa Monica v. Justice Aviation, Inc.
LASC Case No. 16R00754

Dear Mr. Shaby:

Please be advised that Rick Cole read and signed his deposition transcript under penalty of perjury on March 7, 2016 with the following corrections:

Page 5, line 18: "Fredrick, F-r-e-d-r-i-c-k" should be "Frederick, F-r-e-d-e-r-i-c-k."

Page 6, line 20: "1949" should be "1947"

Page 7, line 1: "principle" should be "principal"

Page 9, line 8, after "That title doesn't exist" add "as a separate job classification."

Page 24, line 11: delete "restriction." and insert "Administration and the 1984 Agreement."

Page 26, line 2: delete "financed." and insert "finished."

Page 26, lines 24 to 25: delete "I may, in fact, have signed one. But since I sign so many things"

Page 30, line 2: "enumerable" should be "innumerable"

Page 34, line 4: after the word "so" insert "in combination with prior rental payments delays and issues"

March 8, 2016
Page 2

Page 43, line 17: delete the word "Agency"

Page 47, line 11: "patency" should be "pendency"

Page 56, lines 19 to 21: after the word "Yes" delete "at least the cover letter. I believe it's 800 pages, 700 something pages with exhibits."

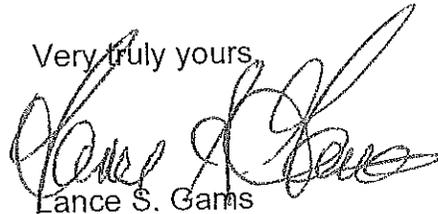
Page 69, lines 19 to 20: delete entire response and insert "I can't say as to the legal definition of 'cause', but I believed we had valid reasons and the authority to do so."

Page 74, line 5: delete entire response and insert "No, and he's been vocal about his dissatisfaction in that regard."

Page 76, line 16: "wasn't" should be "was"

Thank you.

Very truly yours,



Lance S. Gams
Chief Deputy City Attorney

LSG/jj
Encls.

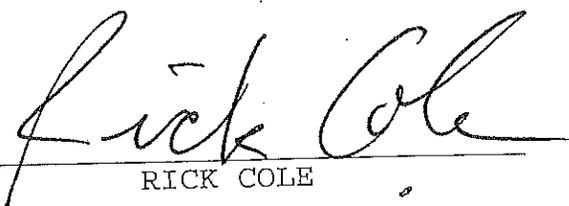
Rick Cole

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I declare under penalty of perjury,
under the laws of the State of California, that the
foregoing is true and correct.

Executed on the 7th day of March,

2016


RICK COLE

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PROOF OF SERVICE
1013(a)(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

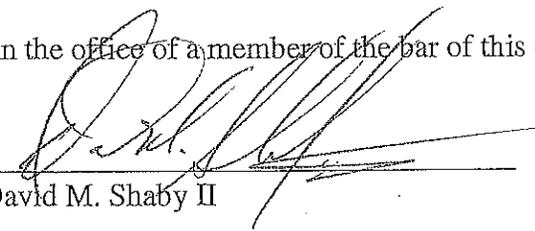
I hereby certify that I have this day served the foregoing Part 16 Complaint in the matter Justice Aviation, Inc. v. City of Santa Monica on the following persons at the following addresses by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

(X) **BY MAIL** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing affidavit.

Executed on March 14, 2016, at Los Angeles, California.

(X) **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



David M. Shaby II

SERVICE LIST:

Rick Cole, City Manager
1685 Main St. Room 209
Santa Monica, CA. 90401

Marsha Jones Moutrie, Esq.
City Attorney
1685 Main St. Room 310
Santa Monica, CA. 90401

Martin Pastucha, Director of
Public Works
1685 Main St. Room 116
Santa Monica, CA. 90401

Nelson Hernandez, Senior
Advisor to the City Manager
on Airport Affairs, Admin. Building
3223 Donald Douglas Loop South
Santa Monica, CA. 90405

Stelios Makrides, Airport Manager
Airport Admin. Building
3223 Donald Douglas Loop South
Santa Monica, CA. 90405