

New file

16

LEASE AND CONCESSION AGREEMENT
FIXED BASE OPERATOR - JOHN J. MONTGOMERY FIELD

THIS AGREEMENT AND LEASE made and entered into this _____ day of DEC 11 1961, 1961, by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California, hereinafter referred to as "County," and JESSE R. REID, hereinafter referred to as "Lessee."

W I T N E S S E S :

WHEREAS, the Board of Supervisors of the County of Santa Clara has found that the public interest and welfare will be served and the facilities of that County airport known as John J. Montgomery Field will be materially enhanced by the granting of a lease and concession for incidental airport purposes;

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, the parties hereto and each of them do agree as follows:

1. DESCRIPTION OF PREMISES

The County hereby leases to the Lessee, and the Lessee takes and leases from the County, those certain premises in the County of Santa Clara known as John J. Montgomery Field, and more specifically described in Exhibit A, attached hereto and by this reference incorporated herein as fully as if set forth here in detail.

2. TERM OF LEASE

The term of this lease shall be for a period of three (3) years commencing on the date Western Title Insurance Company Escrow Account No. 349794 is closed, unless sooner terminated as hereinafter provided.

3. USE OF PREMISES

Except as otherwise provided in this paragraph, Lessee agrees to use the demised premises only for the purposes of

Date DEC 11 1961
APPROVED BY 777
REPRESENTING COUNTY OF SANTA CLARA
COUNTY CLERK

Cy 3-2430

Bernice Ebbs

Escrow closed 12/28/61 per info received from Western Title to telephone 12/28/61

providing to the members of the general public:

- a. Hangar and tiedown storage facilities and rental thereof.
- b. Aviation fuel service - Lessee to store and sell at least two (2) grades of aviation fuel, lubricants, greases and similar petroleum products as are necessary and convenient to users.
- c. Airport runway and taxiway.

It is understood and agreed by the parties hereto that the above-mentioned activities, including other activities necessarily incidental thereto, to the extent such facilities and services are now available, are mandatory requirements upon the Lessee and that failure to properly perform or supply any of those activities after thirty (30) days' written notice by County shall constitute grounds for the cancellation of this lease by the County, and such failure shall further constitute a material breach of this agreement. Lessee shall maintain and operate these services for the general public seven (7) days a week from 8:00 A.M. to sunset.

The Lessee will be privileged to supply certain other products and services incidental to the general operation of an airport including

- a. Aircraft student instruction.
- b. Pilot supplies sales.
- c. Air charter service.
- d. Maintenance of aircraft and components.
- e. New and used aircraft sales.
- f. Aircraft rental service.
- g. Crop dusting.
- h. Restaurant.

It is agreed that Lessee shall not provide additional services on the premises or use the premises for any purpose

not herein specified without prior approval of the Board of Supervisors of County.

4. USE OF AIRFIELD FACILITIES

The Lessee shall have the nonexclusive right to the use of runways and taxiways of the airfield.

5. HOLDOVER

In the event Lessee holds over beyond the expiration of the term herein or beyond the date of any sooner termination, such holding over shall be from month-to-month only, subject to all of the terms and conditions of this agreement, but shall not be a renewal hereof nor a waiver of any breach of condition or covenant, and the rent to be paid therefor shall be at the rate then prevailing under the terms of this agreement.

6. RENTAL

A. Lessee agrees to pay to County, in advance, the sum of One Thousand Dollars (\$1,000.00) per month, as rent and compensation for the rights and privileges granted to Lessee by this agreement. The rental shall be payable on the first day of each calendar month during the term hereof. If the effective date of this lease is other than the first day of the beginning month, the minimum rental for said first month shall be pro-rated to the end of the month, and be due and payable in advance on the said effective date of this lease.

B. In addition to the monthly rental hereinabove agreed to be paid by Lessee, Lessee shall and will pay to County, at the times and in the manner hereinafter specified, an additional rental in an amount equal to five (5) percent of the amount of Lessee's gross income made during each leasehold year of the term hereof, in, upon, or from the demised premises in excess of Ninety-Five Thousand Dollars (\$95,000.00).

On or before the 15th day of the next succeeding month following the end of each leasehold year, Lessee shall

render to County an accounting of any and all gross income. At the time of rendering said account, Lessee shall pay to County any and all additional rental so indicated.

Lessee shall keep full, complete and proper books, records and accounts of the gross income of each separate source of income derived by Lessee from the demised premises; said books, records and accounts shall at all reasonable times be open to the inspection of County, County's auditor, or other authorized representative or agent.

If the effective date of this lease is other than the first day of the beginning month, for the purposes of determining the leasehold year under this paragraph B, the leasehold year shall be deemed to commence as of the first day of the next succeeding month following the effective date of this lease.

7. MAINTENANCE AND REPAIRS

All maintenance in and upon and about the area occupied by Lessee, including all improvements, shall be maintained and repaired by Lessee at Lessee's expense except as otherwise provided for herein. All mechanical maintenance, replacement, and repairs of installed equipment shall be by and at the expense of Lessee, including repair of the existing well pump. County will assume the expense of replacement of the well pump, if necessary, for an adequate supply of water from the well or shall assume the expense of providing an alternative water supply. Lessee agrees to maintain at his expense the landing lights now installed on the runways and be responsible for their proper operation.

Upon the failure of Lessee to properly maintain the premises, Lessee agrees to allow County to enter and make such repairs as may be necessary for the proper preservation and maintenance of the premises, but such rights shall not be construed as constituting a duty upon the County to make such

repairs, and the cost of any repairs or maintenance so made shall be due and payable by Lessee to County on the rental day next succeeding the completion of such repair work.

Lessee may place on the leased premises temporary, portable structures, which as between the parties shall be considered personal property. County will maintain and keep in repair the landing area of the airport. Lessee shall have the duty to inform the County Director of Public Works of any dangerous condition of the landing area or the need for maintenance of such area.

8. INDEMNITY AND HOLD HARMLESS

Lessee hereby agrees to indemnify, save, keep, bear and hold County and all of the officers and agents of same, free and harmless from any and all claims, costs, liability, damage or expense, in law or equity (including costs of suit and expense for legal services) by reason of injury or damage to persons or property, arising, claimed or sustained as a proximate result of the acts or omissions of the Lessee, his sub-lessees, successors, or assigns, his agents, servants, employees or invitees, nominees or subcontractors, arising out of any condition of said property, or in Lessee's operations hereunder, or in the operation of his business upon, above or about the said premises, or from the alteration, improvement, use, misuse, or neglect of said premises.

9. INSURANCE

Lessee further agrees to procure and keep in full force and effect at all times during the terms of this agreement at Lessee's sole expense the following insurance:

- a. Airport liability insurance with combined single limit of \$2,000,000.
- b. Premises and Products Insurance.
- c. Airport Alteration Insurance.

- d. Hangar Keepers Liability including taxiing in an amount of \$50,000 limit per airplane and a total limit of \$350,000.

It is further required that the above policies be satisfactory to the County, that the County shall be named co-assured, and that said policies of insurance shall be furnished to the County in duplicate and shall be cancelled only upon a notice in writing to the Clerk of the Board of Supervisors of the County 30 days prior to the date of cancellation.

Lessee further agrees to secure Workmen's Compensation Insurance to cover all persons who may be employed upon the said premises.

10. PERMITS, RULES AND REGULATIONS

Lessee agrees to obtain at Lessee's expense all necessary licenses and permits for the construction and operation of the demised premises and further agrees to observe, obey and abide by all applicable laws, field rules and other regulations for the common and joint use of airport facilities and for the maintenance and conduct of all its operations which are now or may hereafter be imposed or promulgated by County, the Federal Aviation Agency, or any other governmental agency having jurisdiction over the subject matter.

11. QUALITY, SERVICES AND PRICES

The quality of products and services sold or rendered must be maintained at all times at a level comparable with recognized and established products and services of a like or similar nature. Prices charged shall be reasonable considering all the facts and circumstances.

As of the date of this lease, the following rentals are in effect at Hillview Airport:

- a. Tiedown - \$9.00 per plane per month.
- b. Hangar - \$25.00 per plane per month.

These existing tiedown and hangar rental charges shall not be increased above these amounts unless the San Jose Municipal Airport increases its rates for similar service, in which event Lessee may increase its rentals proportionately by the same dollar amount. Except for the foregoing, Lessee shall not increase tiedown or hangar rental charges or charge or collect a landing fee without the prior approval of the Board of Supervisors.

12. ACCESS OF COUNTY

Lessee agrees that the County or any of its proper representatives shall at all times have access in and to the demised premises.

13. ACCEPTANCE OF PREMISES

Lessee accepts the premises in the condition received and agrees that County shall not be responsible for any injury or damage resulting from any condition of the demised land or defect in the construction of any improvement upon the said demised land.

14. POLICING OF AREA

a. Lessee agrees that he will not allow any disorderly person about the premises and that he will not permit rubbish or other refuse to collect on the premises and that he will provide for the periodic and regular collection of rubbish and other refuse and that proper containers shall be furnished and maintained in a clean and sanitary condition, and all at Lessee's sole expense.

b. Lessee agrees to conduct and operate said premises and concession in an orderly, lawful and businesslike manner satisfactory to the County. Lessee further agrees not to install or operate or allow to be installed or operated any unlawful devices, and to use all reasonable efforts to police the premises and to enforce the laws, rules or regulations and fire prevention code of County and such other public agencies as are applicable to the operation, construction, maintenance and

fire protection of the property and to observe the same.

15. PUBLIC USE

Lessee agrees to operate the airport for the use and benefit of the public; to make available all airport facilities and services to the public, without unjust discrimination; and to refrain from imposing or levying excessive, discriminatory, or otherwise unreasonable charges or fees for any use of the airport or its facilities or for any airport service. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 303 of the Civil Aeronautics Act of 1938, as amended.

16. LANDING AREA

The County 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 without interference or hindrance. County reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the County would limit the usefulness of the airport or constitute a hazard to aircraft. During time of war or national emergency, the County shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

17. COUNTY DEVELOPMENT OF AIRPORT

County has applied to the United States for federal funds for airport development. This lease shall be subordinate

to the provisions of any existing or future agreement between the County and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.

18. ACTIONS THAT IMPAIR LESSEE'S BUSINESS

A. If the United States Government, as a result of war or national emergency, closes the airport, or otherwise substantially impairs Lessee's business, Lessee shall have the right to terminate this lease upon 30 days' written notice to County.

B. If the County, as a result of construction work on the property, substantially impairs Lessee's business, Lessee shall have the right to terminate this lease upon 30 days' written notice to County or, at Lessee's option, Lessee and County shall renegotiate the rental under this lease.

C. In the event of partial destruction of the hangar building, machine shop or restaurant during the said term, from any cause, County shall forthwith repair the same, provided such repairs can be made within 60 days under the laws and regulations of State, Federal, County and municipal authorities, but such partial destruction shall in nowise annul or avoid this lease, except that Lessee shall be entitled to a proportionate deduction of rent while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in the said premises. If such repairs cannot be made in 60 days, County may at its option make same within a reasonable time, this lease continuing in full force and effect and the rent to be proportionately rebated as aforesaid in this paragraph provided. In the event that County does not so elect to make such repairs which cannot be made in 60 days, or such repairs

cannot be made under such laws and regulations, this lease may be terminated at the option of either party.

A total destruction of the hangar, machine shop or restaurant shall not void this lease except that Lessee shall be entitled to a proportionate deduction of rent to be based upon the extent the destruction interferes with the business carried on by Lessee in said premises. The provisions of Section 1932, Subdivision 2, and of Section 1933, Subdivision 4, of the Civil Code of the State of California are waived by Lessee.

19. UTILITIES

All water, gas, electricity and all other utilities and services, including trash collection, shall be furnished by and at the expense of the Lessee.

20. WASTE

The Lessee shall not permit waste or damage to the leased premises or any of the property thereon situated except such as shall actually result from wear and tear and damage by the elements.

21. ASSIGNMENT OF LEASE AGREEMENT--SUBLEASING

Lessee shall not assign this lease, or any interest therein, either voluntary or involuntary, without the prior written consent of the County.

Lessee shall not sublease any portion of the said premises necessary to be used by Lessee to perform the mandatory services and facilities imposed on Lessee under Article 3 of this lease without the prior written consent of the County.

Lessee may sublease or grant concessions or permit other persons to occupy or use the premises to supply the services and products listed in the third paragraph of Article 3 without the prior written consent of the County. Lessee shall, however, notify in writing the County Director of Public Works within 15 days after Lessee subleases or grants concessions or permits to the persons to occupy or use the premises for business purposes stating the name of such person and the business purpose.

22. TERMINATION

The County shall have the right to terminate this agreement in its entirety immediately upon the happening of any of the following events:

- a. Filing of a petition, voluntarily or involuntarily, for the adjudication of the Lessee as a bankrupt;
- b. The making by Lessee of any general assignment for the benefit of creditors;
- c. The occurrence of any act by Lessee which operates to deprive the Lessee permanently of the ability to perform its duties under the lease agreement;
- d. The abandonment and discontinuance of operations at the leased premises by the Lessee;
- e. The failure by Lessee to perform, keep and observe any or all of the terms, covenants, and conditions on the part of the Lessee to be performed, kept or observed after the expiration of thirty (30) days from the date written notice has been given to Lessee by the County to correct such default or breach; and
- f. Assignment of the Lessee's rights under the lease agreement, or part thereof, or entering into other subleases, agreements, or arrangements by the Lessee in violation of Article 21 of this lease.

In the event of such termination, the County shall have the right at once and without further notice to the Lessee to enter and take full possession of the space occupied by the Lessee under this agreement, by force or otherwise, and with or without legal process to expel, oust and remove any and all parties who may occupy any portion of the leased premises and

any and all goods and chattels not belonging to the County that may be found within or upon the same, and without being liable to prosecution or to any claim for damages therefor.

Upon such termination by the County, all rights, powers and privileges of the Lessee thereunder shall cease and the Lessee shall immediately vacate any space occupied by it under the lease agreement and, except as herein otherwise provided, shall make no claim of any kind whatsoever against the County, its agents or representatives, by reason of such termination or any act incident thereto.

23. CANCELLATION

A. The County shall have the right to terminate this agreement in its entirety provided it has first given Lessee at least six (6) months' notice of termination in writing.

If County exercises its right to terminate under this article, Lessee may submit to County prior to the termination date an itemized list of capital improvements that Lessee has constructed on the leased premises during the term of this lease for which Lessee believes he should be reimbursed by County, and provided that such capital improvements were approved by the County prior to their construction by Lessee. Lessee shall furnish County the cost of the improvement and such other information as County requests. The County agrees to reimburse Lessee for such capital improvements taking into account the expense of such improvements, the time Lessee has received the benefits of such improvements, and the estimated life expectancy of the improvements.

B. Lessee shall have the right to terminate this agreement in its entirety provided he has first given County at least six (6) months' notice of termination in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Lease and Concession Agreement to be executed by their respective

officers duly authorized: By COUNTY this _____ day of DEC 11 1961,
1961, and by CECIL R. REID this 7th day of Dec, 1961.

COUNTY OF SANTA CLARA

By Ed B. Lavin
Chairman of the Board of Supervisors

ATTEST: JEAN PULLAN, Clerk of
the Board of Supervisors

Jean Pullan

"COUNTY"

Cecil R. Reid
CECIL R. REID

"LESSEE"

Approved as to form:

SPENCER M. WILLIAMS, County Counsel

By William M. Siegel
WILLIAM M. SIEGEL, Assistant County Counsel