CITY COUNCIL AGENDA TRANSMITTAL
DEPARTMENT OF AIRPORTS

COUNCIL MEETING DATE: 06/26/07

1. **TITLE OF REPORT:** APPROVE THREE YEAR OFFICE LEASE AT FRESNO CHANDLER EXECUTIVE AIRPORT TO JOHN TOMAINO (DBA AMERICAN HELICOPTER)

2. **AGENDA PLACEMENT:**

_____ Time Schedule Hearings and Matters
____ Schedule Time for Public Notice: _____
____ Schedule Time for Citizen Convenience: _____
X General Consent Calendar (1A)
_____ Consent Calendar - Bills for Introduction
_____ Consent Calendar - Bills for Adoption (1C)
_____ General Administration (3)
_____ City Council (5)
_____ City/County Intergovernmental Relations (6)
_____ Executive Session (7)

3. **CONTACT PERSON FOR QUESTIONS:** Brendan Carmody Ext. 4634
Ext.

4. **SPECIAL CONDITIONS:**

____ Critical that item be placed on agenda this date.
____ Controversial item - may have persons appearing to discuss with Council.
____ Item requires special interdepartmental coordination.
____ Requires more than quorum majority for passage.

5. **APPROVAL REQUIRED AND/OR BACKUP MATERIAL SECURED BY:**

____ City Attorney's Office
____ Ordinance ____ Resolution ____ Contract ____ Agreement X Lease
Submitted for approval on _____
_____ Budget and Management Studies Division
_____ Human Resources Division

6. ***NOTES TO CITY MANAGER***

7. ***NOTES FROM CITY MANAGER***

☐ **ITEM SUBJECT TO MAYOR VETO OR RECONSIDERATION**

City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	
COUNCIL MEETING	06/26/2007
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

June 26, 2007

FROM: RUSSELL C. WIDMAR, AAE
Director of Aviation

SUBJECT: APPROVE THREE YEAR OFFICE LEASE AT FRESNO CHANDLER EXECUTIVE AIRPORT TO JOHN TOMAINO (DBA AMERICAN HELICOPTER)

KEY RESULT AREA
One Fresno

RECOMMENDATION

That the City Council approve a three year lease with John Tomaino (dba American Helicopter) covering office space in the historic Fresno Chandler Executive Airport (Chandler) terminal building, and three helicopter tie-down spaces on the ramp.

EXECUTIVE SUMMARY
John Tomaino (dba American Helicopter) has been in the helicopter instruction, rental and charter business at the Fresno Chandler Executive Airport since September 2004, starting as a subtenant of another Chandler based business. They moved into two offices in the historic Chandler Terminal in June 2006 under a Temporary Use Permit, pending agreement on a longer-term lease. The lease, which is effective as of December 1, 2006, calls for the rental of the two offices that American Helicopter occupies and three tie-down spots for American's helicopters on the terminal ramp. In exchange, American Helicopter will pay a rent of three hundred twenty dollars ($320.00) per month initially, subject to potential upward annual adjustments annually based on the movement of two indices published by the United States Bureau of Labor Statistics. The tenant is responsible for payment of insurance and relevant property taxes.

Since the Airports Department is operated as a self-supporting enterprise, there would be no impact to the General Fund from this action.

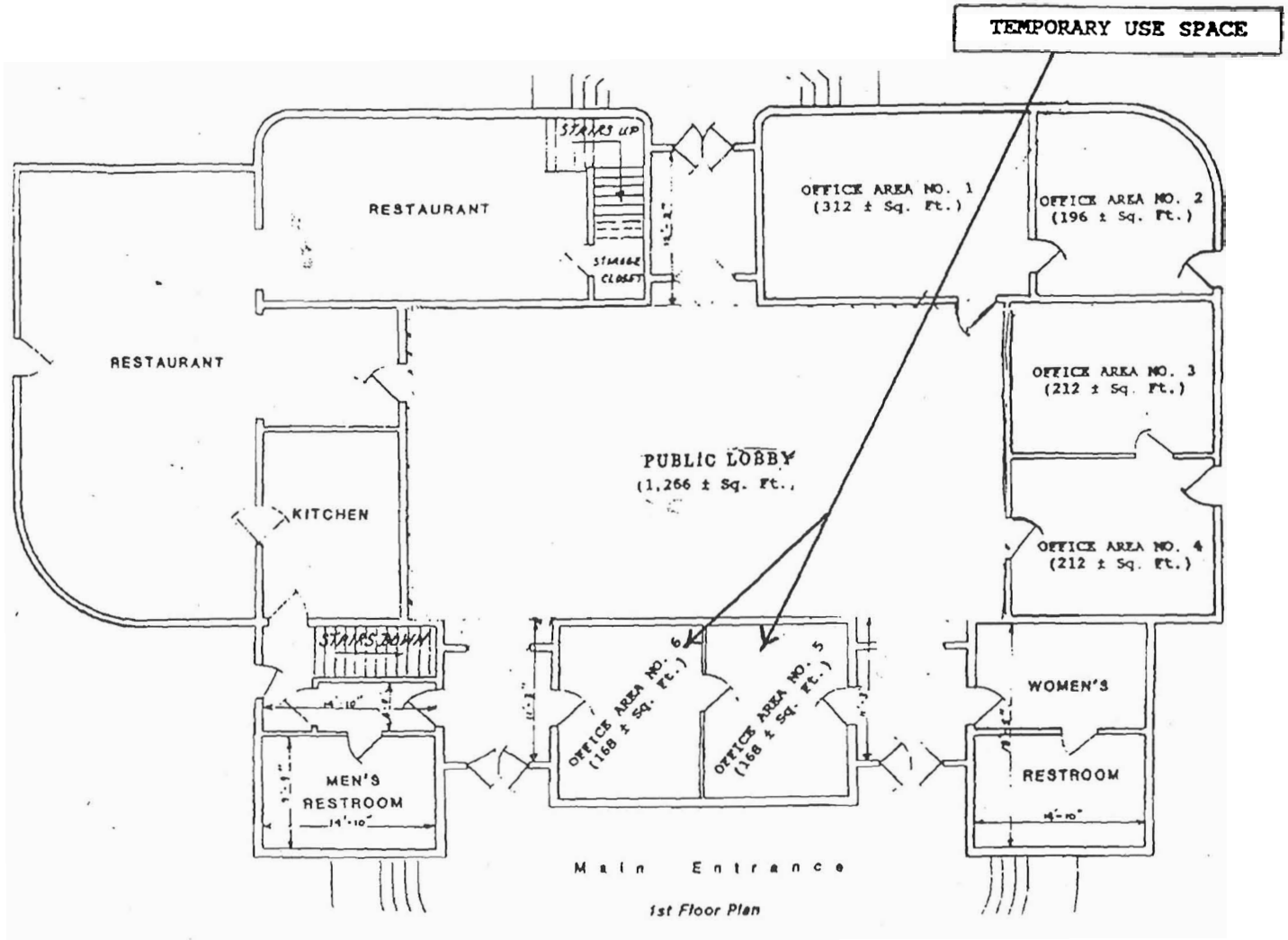
BACKGROUND
American Helicopter has been operating continuously at Chandler since September 2004. American offers charters and scenic tours, as well as helicopter pilot training up to the commercial rating. American is one of two helicopter training schools in the Fresno area.

KEY OBJECTIVE BALANCE
Having helicopter training and charter service available on the airport is a customer convenience (Customer Satisfaction); it promotes local economic activity (Financial Management), and that activity creates and protects local jobs (Employee Satisfaction).

FISCAL IMPACT
There would be no impact to the General Fund from this action. Annual revenue from this lease will be $3,840, with the potential for an increase in subsequent years.

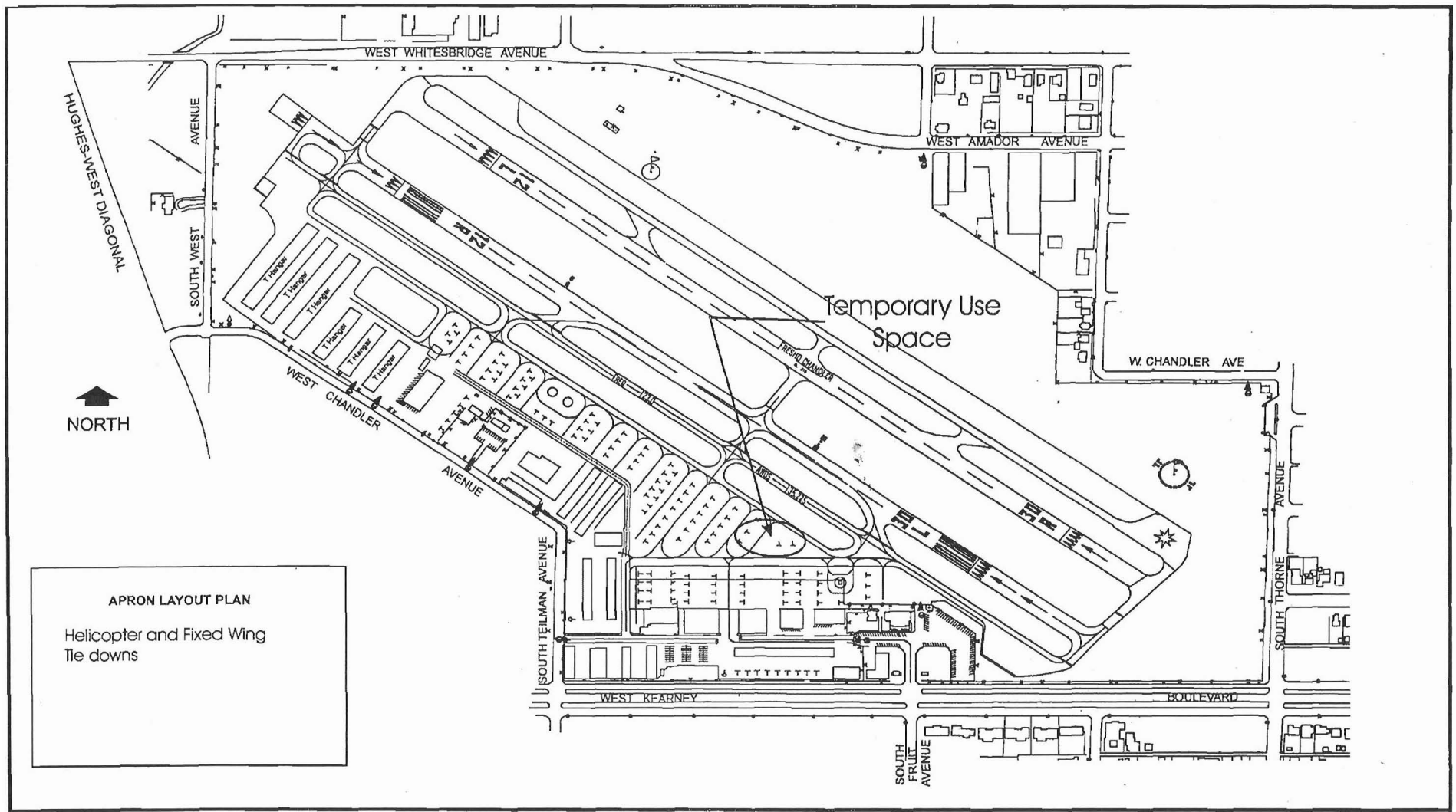
FRESNO-CHANDLER DOWNTOWN AIRPORT
ADMINISTRATION/TERMINAL BUILDING

MAILING ADDRESS: 510 W. KEARNEY BLVD.
FRESNO, CA 93706



1st Floor Plan

EXHIBIT "A"



FRESNO-CHANDLER DOWNTOWN AIRPORT

EXHIBIT "B"

J:\Chandler\Chandler Base Drawing 2004.CDR
12/29/2003

ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION
(August 1984 Edition)

SECTION A

PURPOSE, CLASSES OF ACTIVITIES, APPLICABILITY OF ASSURANCES AND DEFINITION OF TERMS

1. **PURPOSE**:

The City of Fresno, California, an airport owner subject to both Federal Grant Agreement obligations and terms, covenants and conditions of Surplus Property Instruments of Disposal at the Fresno Air Terminal (FAT) and Federal Grant Agreement obligations at Fresno-Chandler Downtown Airport (FCH), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said City and any and all entities who use or perform work or conduct activities on City-owned airport premises for aeronautical or non-aeronautical purposes; therefore, the purpose of this Exhibit is to appropriately incorporate within the "Agreement", to which it is attached and made a part of by reference therein, the sixteen (16) numbered provisions contained within Section "B", "ASSURANCES", below.

2. **CLASSES OF ACTIVITIES**:

The applicability of each of the sixteen (16) numbered provisions contained within Section "B", "ASSURANCES", below, to that certain "Agreement" to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Lessee, Permittee, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized thereunder; therefore, the following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. **Direct and Supportive Aeronautical**: The following activities, commonly conducted on airports, are **AERONAUTICAL ACTIVITIES**:

(1) Air Carrier
(2) Charter Operations
(3) Pilot Training
(4) Aircraft rental and sightseeing
(5) Aerial Photography
(6) Crop dusting
(7) Aerial Advertising and Surveying
(8) Aircraft Sales and Services
(9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
(10) Repair and Maintenance of Aircraft
(11) Sale of Aircraft Parts
(12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an "**aeronautical activity**".

b. **Complementary Aeronautical**: The following activities, when conducted on airports, are **COMPLEMENTARY AERONAUTICAL ACTIVITIES**:

(1) Ground Transportation (taxis, car rentals, limousines)
(2) Restaurants
(3) Barber Shops
(4) Auto Parking Lots
(5) Recreational Facilities
(6) Any other commodities, services or accommodations made available to the general public.

c. **Non-Aeronautical**: The following activities, when conducted on airports, being neither "Direct and Supportive Aeronautical" nor "Complementary Aeronautical", as defined above, are **NON-AERONAUTICAL ACTIVITIES.**

(1) Manufacturing
(2) Agriculture
(3) Any other activity not appropriately falling within the abovesaid "Direct and Supportive Aeronautical" and/or "Complementary Aeronautical" classifications.

3. **APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION "B", "ASSURANCES", BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE**:

The applicability of the numbered provisions within Section "B", "Assurances", below, to the respective classes of activities specified within subparagraphs 2a, b, and c, of this Section "A", above, is as follows:

ACTIVITY CLASS	NUMBERED PROVISIONS APPLICABLE TO CLASS	
	FAT AGREEMENTS	FCH AGREEMENTS
Direct and Supportive Aeronautical	1 thru 16	1 thru 15
Complementary Aeronautical	1 thru 14 & 16	1 thru 14
Non-Aeronautical	1 thru 14 & 16	1 thru 14

4. **DEFINITION OF TERMS USED WITHIN SECTION "B", "ASSURANCES", BELOW**

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section "A", this Exhibit is designed to be attached to and made a part of all City of Fresno Airport's "Agreements", including, without limitation, leases, licenses, permits, contracts, etc.; therefore, in the event the "Agreement" to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than "Lessor" and "Lessee", then, where the terms "LESSOR", "LESSEE", and "LEASE" appear, as shown, within the sixteen (16) numbered "ASSURANCES" listed within Section "B", below, said terms shall be deemed to mean "CITY OF FRESNO, CALIFORNIA", "THE OTHER PARTY TO THE PARTICULAR AGREEMENT" (e.g., Licensee, Permittee, Concessionaire, Operator, etc.), and the "AGREEMENT" itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively; and where the terms "LAND LEASED" and "LEASED PREMISES" (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the "Agreement" as being that/those to which leasehold interests are expressly granted and/or those in, upon, to and/or from which tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, Permittee, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term "AIRPORT" appears, as shown, it shall be deemed to

mean the particular airport(s) (i.e., either the Fresno Air Terminal or the Fresno-Chandler Downtown Airport, or both) as identified within the "Agreement" between the parties as being the Airport(s) to which the "Agreement" pertains.

SECTION B

ASSURANCES

1. The "LESSEE", for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the "Agreement" to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this "LEASE" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The "LESSEE", for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services there on, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "premises" in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the CITY OF FRESNO, CALIFORNIA ("LESSOR") shall have the right to terminate this "LEASE" and the estate hereby created without liability therefor or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3 and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED".

7. The "LESSEE" assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Sub-part E.

The "LESSEE" assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE" to maintain and 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.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement between the "LESSOR" and the United States, relative to the development, operation or maintenance of the "Airport".

11. There is hereby reserved to the "LESSOR", 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 "premises" herein "LEASED". 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 the said airspace or landing at, taking off from or operation on the "Airport".

12. "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".

13. The "LESSEE", by accepting this "LEASE", 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 on the "land leased" hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, "LESSOR" (the owner) reserves the right to enter upon the "land leased" hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the "LESSEE".

14. The "LESSEE", by accepting this "LEASE", agrees for itself, its successors and assigns, that it will not make use of the "LEASED PREMISES" in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the "AIRPORT" (Either the Fresno Air Terminal or the Fresno-Chandler Downtown Airport, or both, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the "LESSOR" (owner) reserves the right to enter upon the "premises hereby leased" and cause the abatement of such interference at the expense of the "LESSEE".

15. 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 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This "LEASE" and all 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 non-exclusive use of the "AIRPORT" by the United States during the time of war or national emergency.

ILLUSTRATION OF ANNUAL RENTAL RATE ADJUSTMENT COMPUTATION

ILLUSTRATION OF ANNUAL RENTAL RATE ADJUSTMENT COMPUTATION BASED UPON STATISTICAL INDEXES PUBLISHED BY UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS

PART I: ASSUMPTIONS

FOR THE PURPOSES OF THIS ILLUSTRATION, THE FOLLOWING ASSUMPTIONS SHALL APPLY:

1. By Lease dated April 15, 1981, PARCEL I (consisting of 70,000 sq. ft. of land on which Building T-1 [10,000 sq. ft.] is located) is leased by the City of Fresno (as Lessor) to JOHN DOE'S ALUMINUM DOORS, INC., (As lessee) for a three (3) year term commencing MAY 1, 1981 and ending APRIL 30, 1984:

2. The INITIAL/BASE rate specified within abovesaid lease was $1.50 per square foot per year ($15,000 annual rental) for the building and $0.06 per square foot per year ($3,600 annual rent) for the land (Excluding the square footage of Building T-1) (TOTAL RENT $18,000 per year. PAYABLE IN EQUAL MONTHLY INSTALLMENTS OF $1,550 EACH, IN ADVANCE):

3. The abovesaid Lease established 1980 as the BASE YEAR for U.S. Bureau of Labor Statistical data to be used to compute rental adjustments and specified that FOR CALENDAR YEAR 1980. THE U.S.B.L.S.. PRODUCER PRICE INDEX (PPI) (ALL COMMODITIES) (1967 – 100%) IS 268.6 AND THE INDEX FOR THE AVERAGE HOURLY EARNINGS (AHE) FOR EMPLOYEES IN THE MANUFACTURING DIVISION (AHE) IS 7.27:

4. Pursuant to a specific rental adjustment limitation set forth within the abovesaid Lease, the rental adjustment computation for the twelve (12) month period which began on May 1, 1982, resulted in no change in the rental rates because the "PERCENT CHANGE – NEW VS. EXISTING RATES" was less than ten percent (10%): and

5. The rental adjustment computed in the following illustration is to be effective May 1, 1983.

BASED ON THE ABOVE ASSUMPTIONS, THE RENTAL ADJUSTMENT TO BE EFFECTIVE MAY 1, 1983, WOULD BE COMPUTED, AS SHOWN WITHIN PART II OF THIS EXHIBIT. IN CONFORMITY WITH BOTH THE RENTAL ADJUSTMENT PROVISIONS OF THE LEASE AND THE "FOOTNOTES/GUIDELINES" PROVIDED IN PART III OF THIS EXHIBIT.

PART II: ILLUSTRATION OF RENTAL ADJUSTMENT COMPUTATION

ANNUAL RENTAL ADJUSTMENT COMPUTATION FOR THE PERIOD: MAY 1, 1983 THRU APR 30, 1984	
NAME OF LESSEE: John Doe's Aluminum Doors, Inc.	REFERENCE: Lease dated April 15, 1981
AIRPORT CONCERNED: Fresno Chandler Executive Airport	PREMISES CONCERNED: Bldg. T-1 & Parcel I

United States Department Of Labor, Bureau Of Labor Statistics Data Used In The Computation

INDEX	BASE YEAR 3/ (1980)	LAST ADJ YEAR 4/ (--)	CURRENT ADJ YR 5/ (1982)	DIFFERENCE BETWEEN BASE AND CURRENT ADJ YR INDEX	PERCENT INC/DEC BASE VS CURR ADJ YR INDEX
1/ PPI	268.6	----------	299.3	30.7	+ 11.4296 %
2/ AHE	7.27	----------	8.50	1.23	+ 16.9188 %
	Total (PPI Percent Increase/Decrease +/- AHE Percent Increase/Decrease)				+ 28.3484 %
	Average Percentage Increase/Decrease (i.e., ½ of above "Total"):				+ 14.1742 %

	PER SQUARE FOOT RATES				Computed Annual Rental Amt	
	BASE 6/ RATE	EXISTING 7/ RATE	NEW 8/ RATE	% Change Between New & Existing Sq. Ft. Rate 9/	Based On The New Per Sq. Ft. Rate Shown	Based On The Existing Per Sq. Ft. Rate Shown
Effective Dates:	May 1, 1981	May 1, 1981	May 1, 1983			
Premises	Sq. Feet					
Bldg T-1	10,000	$ 1.500000	$ 1.500000	14.17 %	$17,126.13	$15,000
Parcel I	60,000	$ 0.060000	$ 0.060000	14.17 %	$ 4,110.24	$ 3,600

Effective Date	Monthly Rental	Annual Rental 10/	Note
May 1, 1983	$ 1,769.70	$ 21,236.40	Rental Changes

PART III: FOOTNOTES/GUIDELINES TO BE FOLLOWED

1/

Producer Price Index (PPI) (All Commodities). Source: "PRODUCER PRICE INDEXES AND PERCENT CHANGES FOR COMMODITY GROUPINGS AND INDIVIDUAL ITEMS", as published in U.S. Department of Labor, Bureau of Labor, Statistics (USDLBLS) by the U.S. Government Printing Office. The indexes for the calendar years used in the computation shall be determined by dividing the sum of the year's January through December monthly indexes immediately available (as defined in footnote 3, below) to Lessor by 12.

NOTE

This illustrative computation is based on a PPI with 1967 as the reference base (i.e., 1967 = 100%). In 1971, the USDLBLS converted from a 1957-1959 = 100% reference base and established a new reference base as 1967 = 100%. Conversion of figures incorporated within leases dated prior to 1971 is obtained by multiplying the 1957-1959 = 100% Index by a factor of .9425071 to obtain the 1967 = 100% Index value. Effective January 1, 1988, the USDLBLS converted from a 1967 = 100% PPI reference base and established the new PPI reference base as 1982 = 100%. Conversion of PPIs in leases dated prior to January 1988 is obtained by multiplying the 1967 = 100% PPI by a factor of .334112 (100 [1982 = 100% value for CY 1982] / 299.3 [1967 = 100% PPI value for CY 1982] = .334112 [Conversion Factor]). Rebasing an index does not significantly affect the calculation of percent changes over time, except for possible rounding differences, so long as all calculations are performed with indexes expressed on the same base. If and when the USDLBLS continuous series on a 1982 = 100% base shall be rebased to a new 100% base year, the 1982 = 100% figures incorporated within leases dated prior to the effective date of such rebasing shall be converted to their new continuous series value(s) when computing rental adjustments.

2/

Annual Average Hourly Earnings (AHE) of Production of Non-Supervisory Workers (on private non-agricultural payrolls) in MANUFACTURING. Source: "ESTABLISHMENT DATA, HISTORICAL HOURS AND EARNINGS, AVERAGE HOURS AND EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS ON PRIVATE NONAGRICULTURAL PAYROLLS BY MAJOR INDUSTRY DIVISION", as published in U.S. Department of Labor, Bureau of Labor, Statistics (USDLBLS), by the U.S. Government Printing Office.

3/

The "BASE YEAR" and the PPI and AHE indexes therefore shall be that certain calendar year and those certain indexes set forth within the Lease to which this EXHIBIT is attached and made a part and identified within said lease as the basis for all rental adjustment computations. The "BASE YEAR" PPI and AHE indexes inserted by Lessor within any Lease shall be the indexes for the LAST FULL CALENDAR YEAR for which the published USDLBLS, PPI, and AHE statistical data is readily available to Lessor at the time of Lease preparation. In order to facilitate ease of completion of rental adjustment computations in the manner set forth within the Lease and this Exhibit, Lessor subscribes to EMPLOYMENT AND EARNINGS (U.S. Department of Labor Statistics) and PRODUCER PRICE INDEXES (U.S. Department Labor Statistics), published by the U.S. Government Printing Office, Washington D.C. Both the PPI and AHE data for the last month of any given full calendar year has historically been received by Lessor's Airports Department on or before March 15 of the following year; thus, for the purposes of both the Lease to which this EXHIBIT is attached and this illustration, "READILY AVAILABLE" SHALL MEAN THE LATEST PUBLISHED PPI AND AHE USDLBLS DATA RECEIVED FROM THE U.S. GOVERNMENT PRINTING OFFICE (OR OTHERWISE OBTAINED) BY AND ON FILE WITHIN THE CITY OF FRESNO AIRPORTS DEPARTMENT, WHETHER OR NOT ALL OR ANY PORTION(S) OF SUCH DATA SHALL BE IDENTIFIED WITHIN ANY SOURCE DOCUMENT AS BEING "PRELIMINARY" DATA.

PART III: FOOTNOTES/GUIDELINES TO BE FOLLOWED (CONT'D)

4/

The "LAST ADJUSTMENT YEAR" and the PPI and AHE indexes listed therefore shall be the calendar year and indexes which, when compared to the Base Year indexes, resulted in the last PREVIOUS rental adjustment, if any.

5/

All annual rental adjustment computations by Lessor shall normally be completed during the ninety (90) day period immediately preceding the anniversary date of the term of the Lease and the "CURRENT ADJUSTMENT (ADJ) Year" and the PPI and AHE indexes listed hereunder on any rental adjustment computation form shall be the calendar year and indexes therefore which, when compared to the Base Year indexes, shall determine whether or not a rental adjustment shall be necessary pursuant to the rental adjustment provisions of the Lease. The "CURRENT ADJUSTMENT (ADJ) YEAR, PPI, and AHE indexes to be used by Lessor when completing any rental adjustment computations (whether such computations shall be completed by Lessor during the ninety (90) day period immediately preceding the anniversary date of the term of the Lease, or (in the event any such computation shall, for any reason, be delayed) subsequent to said anniversary date shall be the PPI and AHE indexes for the LAST FULL CALENDAR YEAR for which the published USDLBLS, PPI, and AHE statistical data is/was readily available (as defined within footnote 3, above) to Lessor during the ninety (90) day period immediately preceding the anniversary date of the term of the Lease for which the new rental rate(s) is/are being determined.

6/

The "PER-SQUARE-FOOT EXISTING RATE" shall be the "INITIAL/BASE PER-SQUARE-FOOT RATE" set forth within the lease for the respective portions of the leased premises

7/

The "PER-SQUARE-FOOT EXISTING RATE" shall be the "INITIAL/BASE PER-SQUARE-FOOT RATE" set forth within the lease for the respective portions of the leased premises Unless and Until and annual rental adjustment computation shall result in a change in such rate(s), in which event, subsequent rental adjustment computations shall reflect the effective date of the last such change and the rate(s) in effect as of that date.

8/

Subject to the limitation specified within the Lease and Footnote/Guideline 9 below, the "PER-SQUARE-FOOT NEW RATE" shall be the "PER-SQUARE-FOOT NEW RATE" to be paid as of the effective date thereof by the Lessee for the respective portions of the leased premises as a result of the annual rental adjustment computation completed by Lessor for the anniversary date of the term of the Lease for which such new rate(s) shall be determined.

9/

When the "PERCENT (%) CHANGE – NEW VS. EXISTING RATES" is LESS THAN TEN PERCENT (10%), the "PER-SQUARE-FOOT EXISTING RATE" shall stay in effect during the twelve (12) month period for which the "PER-SQUARE-FOOT NEW RATE" shall have been determined. When the "PERCENT (%) CHANGE – NEW VS. EXISTING RATES" is TEN PERCENT (10%) OR GREATER, the "PER-SQUARE-FOOT NEW RATE" shall be the rate to e paid by lessee effective on the anniversary date of the commencement of the term of the Lease for the ensuing twelve (12) months and, if the computation for any reason shall be delayed, THE RENTAL SHALL BE ADJUSTED AND PAID RETROACTIVELY.

10/

The amount of "Annual Rental" to be paid will be determined by dividing the "Total 'Computed' Annual Rental" shown on the Rental Adjustment Form by 12 (carrying the quotient to four or more decimal places and rounding off to two decimal places). The "rounded off" quotient thus obtained shall be the new "Monthly Rental" to be paid and the new "Annual Rental" to be paid shall be the new "Monthly Rental" amount multiplied by 12.