

1985

Interwest Aviation, Executive Air Services,
Thompson Beechcraft, Intermountain Piper, Inc. v.
County Board of Equalization of Salt Lake County,
State of Utah : Brief of Appellant

Utah Supreme Court

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Recommended Citation

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1985 20797

IN THE SUPREME COURT

STATE OF UTAH

INTERWEST AVIATION, EXECUTIVE
AIR SERVICES, THOMPSON BEECH-
CRAFT, INTERMOUNTAIN PIPER,
INC.,

Appellants,

vs.

COUNTY BOARD OF EQUALIZATION
OF SALT LAKE COUNTY, STATE OF
UTAH,

Appellee.

No. 20797

APPELLANT'S BRIEF

APPEAL FROM THE ORDER OF THE TAX COMMISSION
OF THE STATE OF UTAH

Mark Buchi, Tax Commission Chairman

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STATEMENT OF ISSUE FOR REVIEW

Are Improvements Constructed by Concessionaires
on Tax Exempt Ground at the Salt Lake International
Airport Subject to Taxation?

DETERMINATIVE STATUTES

Utah Code Ann. §59-13-73 (1953 as amended)

states as follows:

There is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation, when such property is used in connection with a business conducted for profit, except where the use is by way of a concession in or relative to the use of a public airport, park, fairground, or similar property which is available as a matter of right to the use of the general public, or where the possessor or user is a religious, educational or charitable organization or the proceeds of such use or possession inure to the benefit of such religious, educational or charitable organization and not to the benefit of any other individual association or corporation.

Utah Code Ann., §§59-1-1 (1953 as amended) states as follows:

All tangible property in this state, not exempt under the laws of the United States or under the Constitution of this state, shall be taxed in proportion to its value as hereinafter provided . . .

STATEMENT OF THE CASE

Interwest Aviation, Executive Air Services, Salt
Lake Beechcraft, (aka Thompson Beechcraft), and

Intermountain Piper, appellants, are fixed base operators on the east side of the Salt Lake International Airport. Each one of them has entered into a lease with Salt Lake City to rent various real property at the airport. Pursuant to their leases, each has been required to, and each has constructed, an office building and other improvements on their individual leased properties.

In 1982, for the first time, the Salt Lake County Board of Equalization, respondent, had these improvements assessed, and imposed a tax upon them based upon their current market value. All four appellants objected to the imposition of this tax, and filed individual appeals to the Utah State Tax Commission. An informal hearing was held on June 7, 1983. The Commission ruled that all the appellants were concessionaires, as required by U.C.A. §59-13-73, and thus their operations were exempt from taxation. However, it also decided that the improvements were privately owned by the concessionaires and thus were subject to ad valorem property taxation under U.C.A. §§59-1-1 and 59-5-4. On February 29, 1984, a formal hearing was held. Evidence and memoranda of law were presented to State Tax Commission Chairman Mark Buchi. On June 21, 1985, the Tax Commission entered a decision affirming its prior rulings that the four appellants were all concessionaires, were all located on the Salt Lake International Airport, and that the office buildings were subject to taxation. An amended decision, changing the tax numbers, was entered on June 22, 1985.

On July 22, 1985, appellants filed a Writ of Certiorari to this Court. Appellants seek a reversal of the State Tax Commission ruling, and a finding by this Court that the improvements they constructed at the Salt Lake International Airport are exempt from taxation.

STATEMENT OF FACTS

Interwest Aviation, Executive Air Services, and Thompson Beechcraft, now known as Salt Lake Beechcraft, are all fixed based operators (FBO's) on the east side of the Salt Lake International Airport. Intermountain Piper is a specialized concessionaire, as a distributor of aircraft, and is also located on the "front line" on the east side of the airport. Key Aviation, not a party herein, occupies the only other available fixed base operator site on the Airport's east side "front line". (TR. Formal Hearing, pp. 18, 19.) Salt Lake City Corporation owns all the real property located at the airport, including the ground leased by the FBO's. All of the FBO leases are, or will be, standardized as to their terms and conditions. (TR. pp. 17 and 20.) The FBO's, pursuant to those leases, must meet certain criteria and requirements, and provide certain services to the general public. These required services are defined in Section 5 of the leases to include the following:

- A. Provide tie-down and hangar storage for aircraft;
- B. Sell new and used aircraft;

- C. Provide flight training services;
- D. Provide ramp services and a qualified attendant for 24 hours a day, 7 days a week;
- E. Sell aviation fuel and lubricating oil;
- F. Provide maintenance personnel and services;
- G. Provide for removal of disabled aircraft;

The FBO's are also allowed the privilege and right to provide the following services under Section 2 of their leases:

- A. Operate and sell aerial surveys, photographs, and maps;
- B. Repair and sell aircraft radios, instruments, and parts;
- C. Operate schools for flying, navigation, mechanics, photography, aerial surveys, aircraft design and any art, science, craft or skill pertaining thereto;
- D. Operate charter and charter air taxi services, including crop dusting, crop spraying, and helicopter activity;
- E. Provide aircraft rental;
- F. Maintain and clean aircraft interiors and exteriors;
- G. Other aviation or aviation associated businesses.

The Tax Commission ruled in the informal and formal hearings that these activities established the appellants as concessionaires. There is no dispute between the parties that all four of the appellants are located at the Salt Lake International Airport.

The leases, Section 2(k), state that the fixed base operators may operate an administrative and/or business office relative to their operations and/or business as concessionaire.

Interwest Aviation entered into a lease with Salt Lake City on June 12, 1980. This lease a copy of which is attached as Addendum "A," was part of Deposition, Exhibit "2" introduced at the the informal hearing, and admitted as evidence at the formal hearing. Executive Air Services entered in to a lease with Salt Lake City on November 20, 1980. This lease was part of Deposition Exhibit "3," introduced at the informal hearing, and admitted into evidence at the formal hearing. Executive Air Services has since filed for reorganization under Chapter 11 of the United States Bankruptcy Code. Salt Lake Beechcraft, previously known as Thompson Beechcraft, entered into a lease with Salt Lake City on August 15, 1982. This lease was part of Deposition Exhibit "1," introduced at the informal hearing, and admitted into evidence at the formal hearing. Intermountain Piper entered into a lease with Salt City on June 3, 1968, to expand the size of the building it leased at the airport. On March 24, 1981, it entered into a second lease to again expand the size of this building. These leases were included as part of Deposition Exhibit "4," were introduced into evidence at the informal hearing, and were admitted into evidence at the formal hearing.

The leases of the FBO's, all include Section 3, entitled "Obligation of Concessionaire." This Section, Subsection 3.6, requires the concessionaire, without cost to

the City and within a prescribed period, to construct a hangar and office building, with certain listed sizes, on the leased premises. The concessionaire is required to obtain written approval of its preliminary plans, (Section 3.7), and final plans, (Section 3.7a), from Salt Lake City prior to commencing construction. The construction work is inspected by the city engineer to insure conformity with the plans and specifications, (Section 3.9).

The concessionaire is required to file a Statement of Final Cost of Construction with the City after taking occupancy of the completed building. The individual concessionaires were required by their leases to invest the following sums in construction:

- A. Interwest Aviation - \$750,000
- B. Executive Air Services - \$750,000
- C. Salt Lake Beechcraft - \$500,000

All alterations to the buildings costing over \$8,000, must be approved in writing by Salt Lake City. (Section 3.12).

During the term of the lease, Salt Lake City and its employees retain the rights of ingress and egress over the property, (Section 2.3). Salt Lake City must give written approval before any signs may be placed on the property, (Section 2.4). Salt Lake City requires that all FBO employees wear standardized uniforms. It can request termination of any employee who fails to wear appropriate uniforms (Section 3.13).

Salt Lake City covenants in each lease that it has free and clear title to the premises, and has the right and authority to lease it, (Section 4.1). The City agrees that the concessionaire "shall peacefully and quietly have, hold, and enjoy the leased premises for the full term of the agreement," upon paying the rent and performing the other covenants of the lease (Section 4.1).

The leases require that the concessionaires must obtain various insurance policies covering the premises. This includes a fire insurance policy, in an amount equal to the replacement value of the improvements, (Section 10.3). All insurance policies must name Salt Lake City as an additional insured, (Section 10.5c). In the eventuality of complete destruction, the City is entitled to all insurance proceeds in excess of the concessionaire's original construction costs, less a sum equaling the percentage of the leasehold remaining.

Section 11 of the Lease is entitled "Termination." It states in Subsection 11.1, that the "concessionaires have no further rights, interests, or privileges" regarding the property at the end of the lease term. Subsection 11.3 is entitled "Cancellation by City," and states that in the case of various defaults, abandonment, or unlawful assignments by the FBO's, that the City may deem the lease cancelled and may immediately take possession of the leased premises, and remove the concessionaires personal property and trade equipment, (Section 11.3b). Upon such termination and cancellation, "title" to the hangar and all related improvements constructed

or installed by the concessionaires "vests" in the City, (Section 11.4).

The leases include a liquidated damages provision upon termination through cancellation by the City. It requires the City to pay the concessionaire damages equal to the depreciated cost of the original improvements, computed on the basis of a straight-line depreciation over the term of the lease (Section 11.5). Upon such payment, all improvements become the "sole property" of the City.

The concessionaires are unable to assign, transfer, sublease, or otherwise encumber or dispose of the lease agreements, any estates created under the leases, or the premises they construct, (Section 13). They also may not permit any other person to occupy the improvements without first obtaining the City's written permission. At the termination of the lease, the City has the right to require the concessionaires to remove all their personal property. This includes all fixtures, furnishings or equipment, whether or not they are attached or affixed to floors, ceilings, or any other parts of buildings. The City also has the option of accepting "full title" to the buildings or may require the concessionaires at their "sole cost and expense" to raze and remove all buildings and improvements they have constructed, (Section 14c). The concessionaires also must quit their occupancy of the leased premises and "peacefully and quietly" deliver them to the City at termination (Section 20).

At the termination of the leases, the improvements are open to occupancy by the City without any transfer of documents, (TR., p. 23). The lease for the older portion of the Intermountain Piper Building has expired. At the time of its expiration, the City did not require any quitclaim deeds or other type of documents to be executed. (TR. p. 59.)

Intermountain Piper Inc.'s (hereinafter "Piper") lease with Salt Lake City has several variations from the leases signed by the FBO's. Piper purchased the "assets" of Thunderbird Aviation in 1967, and signed a lease in 1968 with Salt Lake City which provided for the enlargement of the existing building. Piper signed a second lease in 1981 to again enlarge its facility at the airport.

The 1981 Lease is similar to the FBO leases in that it requires Piper to construct, at its sole expense, an office building at the airport. The plans for construction must be submitted and approved by the City, which also has the right to inspect the work (Section 6). There are also similar lease provisions for:

- A. Ingress and egress (4c);
- B. Signs (5);
- C. Filing construction cost schedules (6d);
- D. Maintenance and repairs of buildings (11);
- E. Alterations (12);
- F. Insurance (16);
- G. Providing clear title (17);
- H. Destruction (19);

I. Default (21).

The Piper Lease has several clauses that are different from the leases signed by the FBO's. Section 7 is entitled "Title to Buildings." It provides that Piper will have "title to and all incidents of ownership to the building it constructs until October 1, 1983." At that point, the "title to and all incidents of ownership" of the building "vest" in the City. The "title to and all incidents of ownership" of the buildings extension are held by Piper for the full term of the second (latest) lease. The City "accepts full title" to the extension at the termination of that lease.

Piper is given the right to mortgage, execute a deed of trust, or otherwise encumber its interest in the lease and building extension; however, such encumbrances are secondary to and do not effect the City's interest and rights, (Section 8).

Piper, similar to the FBO's, is required to pay the taxes, assessments and charges upon the improvements it makes to the leased premises "in connection with its use and occupancy thereof." Piper is also required to pay taxes for its possessory interest in the premises, which specifically includes any taxes levied under U.C.A. §59-13-73, (Section 9).

The concessionaires, other than Executive Air, provided their own money and financing to construct the improvements without any assurances on the part of the City. (TR. p. 30.) The City considers that the concessionaire acquire a prepaid term for years by their expenditures in

constructing the improvements. The length of this term, when the concessionaires pay no monthly building rent, is set by an Airport Authority schedule. The lease term is set up to anticipate that the concessionaires will receive a straight-line depreciation, in lieu of rental payments, equal to costs of the improvements. Therefore, at the end of the initial lease term, the concessionaire is entitled to no further return on its original construction investment, and must pay rent to continue to occupy the premises and improvements.

The only FBO not involved in this appeal is Key Flight Service. It constructed a building on land it leases at the Salt Lake City International Airport in 1940-1945. Its original lease has expired, therefore, it is paying land and building rent. (TR. p. 40.)

SUMMARY OF ARGUMENT

Appellants lease land at the Salt Lake International Airport. The land is owned by the Salt Lake City Corporation, therefore it is tax exempt. The leases require each appellant to construct a building at a stated minimum cost. In return for their construction investments, appellants do not pay building rent for the term of their leases. The appellants have no right to remove, sell, or otherwise encumber the buildings. At the termination of the leases, appellants have no further rights to occupy the buildings. Utah Code Ann., §59-13-73, states that concessionaires at the Salt Lake International Airport are exempt from taxation. However, Salt Lake County has imposed an ad valorem property tax upon the

improvements the appellants were required to build. The common law of fixtures and attachments states a Lessor owns any buildings constructed on its property, unless otherwise indicated by a lease. There is no such indication in these leases. Courts in Arizona and Washington have reached that leaseholders should not be assessed property taxes for improvements they construct on state-owned, tax-exempt lands. Appellants assert that a review of the leases indicates they are not the owners of the buildings, and thus should not pay the assessed property taxes.

ARGUMENT

POINT I

APPELLANTS ARE EXEMPT FROM TAXATION AS THEY ARE CONCESSIONAIRES AT THE SALT LAKE INTERNATIONAL AIRPORT.

Appellants all lease property at the Salt Lake International Airport. Their leases require them to perform specific functions and to be open to the public. The leases refer to them as concessionaires. The Utah State Tax Commission ruled at the informal hearing held on June 7, 1983, that appellants were all concessionaires. At the formal hearing held on February 29, 1984, the State Tax Commission reaffirmed this ruling, which was not contested by the respondent.

Utah Code Ann. §59-13-73 imposes a tax upon the use or possession of real or personal property by any corporation that is exempt from taxation when such property is

used in connection with a business conducted for profit except where the use is by way of a concession in or relative to the use of a public airport.

Appellants are concessionaires and are located at the public airport. Therefore, they clearly fall within the exemption from taxation of U.C.A., §59-13-73, and should not be required to pay any taxes assessed on the real or personal property they occupy at the airport.

POINT II

IMPROVEMENTS THAT APPPELLANTS ARE REQUIRED BY THEIR
LEASES TO CONSTRUCT AT THE SALT LAKE INTERNATIONAL
AIRPORT ARE EXEMPT FROM TAXATION.

Even though the State Tax Commission ruled the appellants were concessionaires, Salt Lake County has still sought to tax the improvements they each constructed at the airport. These buildings were constructed pursuant to requirements of the "lease" agreements between Salt Lake City and each individual appellant. These leases give the appellant/concessionaires' rights and privileges, which include the right to operate administrative and/or business offices relative to their operations and/or businesses. As part of the consideration for the leases, each appellant was required to construct various hangars and office buildings. The appellants were each required to expend a certain minimum sum, at least \$500,000, in constructing these buildings.

The appellants' leases give them the right to occupy the property for stated terms. The leases give them no

ownership rights in the buildings they construct. They are unable to sell the buildings, sub-lease them, or allow any other entity to occupy them without first obtaining approval from Salt Lake City. They cannot remove the buildings, nor can they use them as any type of binding collateral. At the expiration of the lease term, they are required to vacate the buildings and peacefully return possession to Salt Lake City.

There is no Utah law pertaining to this issue. However, this issue was presented to the Utah State Tax Commission in 1979 by Key Flight Service the only fixed base operator not involved in this appeal. In 1978, Key objected to the assessment and imposition of a property tax on leasehold improvements it had constructed on the property it leased at the Salt Lake International Airport. The Utah State Tax Commission reviewed the issue in "In the matter of Key Flight Service," No. 313. The Commission reviewed the lease and concluded that certain property that could be removed was the personal property of Key. However, they also concluded, as a matter of law, that leasehold improvements were not personal property, but became part of the real property, and were subject to the ownership of the fee holder, (Salt Lake City). The Commission decided that all the city-owned property was exempt from taxation and as a concessionaire, Key Flight Service would not be taxed upon any of the property on which its fixed base operation was based. (See Findings of Fact, Conclusion of Law, Decision No. 313, entered April 10, 1979, by David L. Duncan, Chairman, Utah State Tax Commission, No. 4,

of Depo. Exhibit "2" to the formal hearing below, attached as Addendum "B").

The Arizona Court of Appeals reviewed a situation almost identical to that in the case at hand in Maricopa County v. Novasic, 473 P.2d 476 (Az. 1970). In Maricopa County, the taxpayer's predecessor had entered into a lease with the City of Phoenix for unimproved real property located at the Phoenix Sky Harbor Airport. The lease term was for 52 years, and required the lessee to erect, at its own expense, an office building. The defendant taxing authority assessed a property tax upon the building. The taxpayer filed suit, and the trial court entered judgment enjoining the taxation of the building.

On appeal, the Arizona Appeals Court examined the lease to determine who owned the building. The lease stated that:

1. If the lessee defaulted, the lessor could take immediate possession and retain the building as liquidated damages;
2. That upon termination, the improvements would become the property of the lessor; and
3. In the event of bankruptcy, title to the building would vest in the lessor.

The lessee was required under the lease to:

1. Erect an office building;
2. Post a performance bond;
3. Use the building as an office building and for no other purpose;
4. Obtain approval prior to construction;

5. Obtain fire insurance indicating the lessor as a named insured;
6. Obtain permission before subleasing; and
7. Pay rent for the property and building.

After reviewing the entire lease, the Arizona court held it was the parties' intent to include the building in the lessor/lessor relationship they had established. One of the elements the court emphasized was the provision requiring lessor approval before the taxpayer could enter into a sublease.

In reaching its decision, the Arizona Court relied upon the common law rule that permanent structures placed by a tenant upon leased premises are deemed to be real property and belong to the lessor. This general rule is subject to exception only when the parties include a right to remove the building at the termination of the lease. Maricopa County v. Novasic, supra, at 478, citing Kinkhead v. United States, 150 U.S. 483, 14 S.Ct. 172, 37 L.Ed 1152 (1893).

The Washington State Supreme Court reached a similar conclusion in Pier 67, Inc. v. King County, 426 P.2d 610 (Wa. 1967). In Pier 67, the taxpayer constructed a motel on tax exempt state-owned tide lands. The county assessor assessed a personal property tax on the motel. The taxpayer filed suit to stop the assessment. The trial court ruled that the building was a permanent improvement which would be destroyed if moved and therefore entered an injunction stopping the tax assessment. On appeal, the county argued that the motel was the taxpayer's personal property. The Washington

Supreme Court disagreed on the basis of the common law rule of fixtures. The court stated:

The lease does not provide that the improvements are to be the property of the lessee. In the absence of such a provision, buildings permanently erected on real property become a part of the realty as soon as constructed.

Pier 67 v. King County, supra, at 611.

The Washington Court concluded by holding that since there was no agreement stating that the improvements were the property of the lessee, and they were built on the state-owned tidelands, they immediately became state-owned property. The Court then concluded that pursuant to Washington statutes, the taxpayer's leasehold interest was taxed at a rate that reflected the property's benefits and costs.

The same parties were involved in a continuation of the same matter in Pier 67, Inc. v. King County, 469 P.2d 902 (Wash. 1970). This action was filed to recover taxes that had been paid under protest. The trial court entered judgment for the plaintiff-lessee. On appeal, the Washington State Supreme Court reaffirmed its position that the state owned the improvements on the exempt tidelands. However, they reversed their holding on the method of assessing the value of the leasehold interest, and held that the leasehold interest should be assessed at its market value, or its use value, based on the remaining period of the lease.

The above holdings are based on the common-law doctrine of realty and fixtures. This doctrine, as stated at 1 G. Thompson, Real Property, at 252, is that when a building

is permanently annexed to leased property and the tenant has no right to remove it, it becomes a part of the realty and the landlord's property. See Kinkhead v. United States, supra, at 491.

In this matter, Salt Lake County is attempting to tax improvements at the Salt Lake International Airport. The concessionaires constructed these improvements on tax exempt lands. This construction was performed solely at the expense of the concessionaires and as part of their consideration for their occupancy of land at the airport. Both the concessionaires and the City benefited from the construction of these buildings. The City improved its property without incurring any costs. The concessionaires were able to design, with City approval, and construct a building to fit their specific business operations. The concessionaires were also given the right to occupy the building for a set term without paying any rent. The concessionaires construction costs were treated as prepaid rent, which expires at the end of the lease term.

Salt Lake City retained control over the planning and construction of the buildings, and any subsequent alterations. The city was also given ingress and egress rights to the property, and also maintained control over the buildings' exteriors, any signs affixed thereto, and even the uniforms of the concessionaire's employees. The concessionaires were given the right to possess and occupy the buildings for a fixed term, and nothing more.

The concessionaires as tenants, did not receive any ownership interest in the buildings. They have no right to remove the buildings, destroy them, or use them as collateral. Instead, they have the right to occupy the buildings for the lease term. At the termination of that term, they must vacate the property. At that point they have no rights of any kind, regarding the buildings.

The concessionaires are not allowed to assign or transfer their leasehold rights without permission. The lease also contains a specific section, 13, restricting subleasing of the property. This section states that the concessionaire may not allow any other entity to sublease, or otherwise occupy the leased premises without first obtaining the city's written consent. These sections indicate the parties intended to establish a landlord-tenant relationship. If the concessionaires owned the buildings, they could do with them as they please. As they cannot, and must obtain City approval before taking any actions, all they have is a leasehold interest.

During the lease term, the concessionaire is required to obtain insurance for the building and to name the city as an additional insured. If the building is destroyed, the concessionaire receives the insurance proceeds, minus the value of the expired portion of the lease. This is done to reimburse the concessionaire for what it owns, an expiring leasehold interest. Similar provisions are included to pay

the concessionaire for its leasehold interest, if the city in some manner defaults or no longer operates the Airport.

The leases have certain provisions dealing with termination. They state that at termination title shall "vest" in the city. However, as in Maricopa County v. Novasic, supra, this provision was included to show that the buildings were realty, and a fixture to the property, and not personal property that the tenant could remove. The city does not require a quitclaim deed, or other documents that would normally be evidence of the passing of title to property.

The buildings the concessionaires constructed are permanent and attached to airport land. Therefore, they are part of the realty and the landlord's, (Salt Lake City) property. There are no provisions in the lease stating that the property belongs to the lessees. Therefore, as stated by the U.S. Supreme Court, the general principals of the common law, the Washington Supreme Court and the Arizona Appeals Court, such improvements are owned by the lessor. Thus, as they are not owned by the lessee, the lessee should not be required to pay a property tax on them.

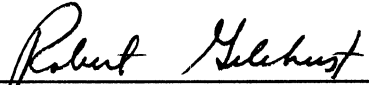
CONCLUSION

In conclusion, the appellants, individually and jointly, respectfully assert that they have no ownership interest in the individual buildings in question, but instead have a declining leasehold interest. Their sole rights under their leases are to possess the buildings for a set time.

Thus, the buildings are not owned by them, but instead are owned and are the property of Salt Lake City. Therefore, appellants respectfully request that this Court enter a ruling reversing the Utah State Tax Commission finding, that the buildings in question are owned by the appellants and are subject to taxation. In the alternative, if appellants are to be taxed, the appellants respectfully request that this Court enter a ruling that the taxpayers/appellants only have a declining leasehold interest in the property in question, and that this matter should be remanded to the Utah State Tax Commission for a determination of the remaining leasehold interest and the appropriate tax thereon.

RESPECTFULLY submitted this 27th day of November, 1985.

RICHARDS, BRANDT, MILLER
& NELSON



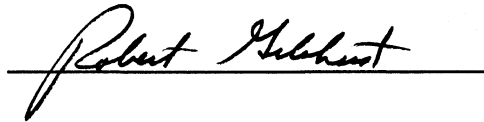
ROBERT W. BRANDT
ROBERT G. GILCHRIST
Attorney for Appellants

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing instrument were mailed, first class, postage prepaid on this 27th day of November, 1985, to the following counsel of record:

Bill Thomas Peters
10 Exchange Place
Suite 100
Salt Lake City, Utah 84111

David L. Wilkinson
Attorney General
236 State Capitol
Salt Lake City, Utah 84114

A handwritten signature in cursive script, appearing to read "Robert M. Galt", is written over a horizontal line.

rgw2
j:11275

ADDENDUM "A"

APPROVED

JUN 12 1980

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 6-4-80
By [Signature]

Michael V. Higgins AGREEMENT
CITY RECORDER

THIS AGREEMENT, made and entered into this 12th day of June, 1980, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter referred to as CITY, and INTERWEST AVIATION, INC., a Utah corporation and BOYD BROWN, individually, hereinafter jointly referred to as CONCESSIONAIRE.

WITNESSETH:

WHEREAS, City owns and operates the Salt Lake City International Airport, located in Salt Lake City, Salt Lake County, State of Utah, hereinafter referred to as Airport; and

WHEREAS, Concessionaire is engaged in a fixed base operation at the Airport and desires to construct new facilities in connection therewith; and

NOW, THEREFORE, in consideration of the mutual covenants hereof, the parties hereto do hereby agree as follows:

SECTION 1 - LEASED PREMISES.

City hereby leases to Concessionaire and Concessionaire hereby leases from City the following premises, hereinafter sometimes referred to as the "Leased Premises":

Subsection 1.1 - Lease Site.

Contiguous ground area consisting of approximately 322,976 square feet, more or less, as shown in Exhibit "A", which is attached hereto and incorporated herein by reference, and more particularly described as follows:

Beginning at a point 2375.53 feet N.0°02'38"E. and 173.50 feet S.89°57'22"E. from the South 1/4 corner of Section 33, T.1 N., R.1 W., S.L.B. & M. said point further described as being Station 66+34.00N. and 11+13.50W. on the Airport Grid System (A.G.S.), East side, and running thence S.0°02'38"W. 405.00 feet; thence N.89°57'22"W. 198.50 feet; thence S.0°02'38"W. 84.50 feet; thence N.89°57'22"W. 493.00 feet; thence N. 0°02'38" E. 509.50 feet; thence S.89°57'22"E. 563.00 feet; thence S.0°02'38" W. 20.00 feet; thence S.89°57'22" E. 128.50 feet to the point of beginning

Contains 332,976 sq., or 7.64 acres, more or less.

less

Subsection 1.2 - Additions to Leased Premises.

City may from time to time during the term of this Agreement make further property west of the Leased Premises up to the parallel taxiway for Runway 34R/16L (as such taxiway may then exist) available for lease. Concessionaire agrees to lease any such property as it becomes available at an annual ground rent per square foot equivalent to that then applicable to the Leased Premises. Such property shall be deemed annexed to and a part of the Leased Premises and shall be subject to all terms and conditions of this Agreement.

For purposes of this Agreement, property shall not be deemed "available for lease" until it is certified by the Director of Airports to be ready for beneficial occupancy by Concessionaire. An appropriate amendment to this Agreement shall be entered into between the parties as each such addition to the Leased Premises becomes available for lease.

Subsection 1.3 - Building Area.

The "Building Area" shall be that portion of the Leased Premises indicated as such on the attached Exhibit "B", which is attached hereto and incorporated by reference herein. The Building Area shall be contiguous ground area consisting of approximately 56092 square feet.

SECTION 2 - USES AND PRIVILEGES.

Concessionaire shall have the following rights and privileges in connection with its use of the Leased Premises:

Subsection 2.1 - Commercial Aviation Activities.

The non-exclusive right and privilege (as provided by Section 4.3) to engage in commercial aviation activities. As used herein, the term "Commercial Aviation Activities" are defined as those activities which involve the sale of aviation services and products to the general public and shall include:

(a) The maintenance and servicing of aircraft, which right shall include but not be limited to overhauling, rebuilding,

repairing, inspection and securing of licensing of same, and the purchase and sale of parts, equipment and accessories therefor.

(b) The storing of aircraft in the hangar or on the Leased Premises of Concessionaire.

(c) The sale of aircraft fuels and lubricants on the Leased Premises, and elsewhere at common areas on the Airport, except at specific places on the Airport other than the Leased Premises as may from time to time be designated by City in a non-discriminatory fashion. The sale of said fuels and lubricants shall include the right to use vehicles necessary for the servicing of aircraft.

(d) The operation of a business of buying and selling aircraft, aircraft parts and accessories therefor and aviation equipment of all descriptions whether at retail, wholesale, or as a dealer. This right shall include the right to sell pilot supplies, and shall also include the right to sell sundry aviation related items.

(e) The operation and sale of aerial survey, photography, and mapping services.

(f) The operation of a radio and instrument shop for the repair of aircraft radios and instruments, and sale of aircraft radios, instruments and parts whether at retail, wholesale or as a dealer.

(g) The operation of schools for the instruction of the general public in flying, navigation, mechanics, aerial survey, photography, aircraft design, and/or the training of the general public in any art, science, craft or skill pertaining directly or indirectly to aircraft and/or aviation.

(h) The operation of charter and charter air-taxi services operating under FAR 135 and such operations as crop dusting, crop spraying, and helicopter activities.

(i) Rental of aircraft to the general public.

(j) The cleaning and maintenance of all aircraft inclusive of interiors, exteriors and related components.

(k) Administrative and/or business offices relative to operations and/or business of Concessionaire.

(l) Other aviation or aviation associated business with prior written permission of City.

(m) Provide assistance to, or act as agent for any car rental company which is authorized to operate at Airport and which has an agreement with City.

(n) The right to load and unload Concessionaire's aircraft in any lawful commercial aviation activity. The right to load and unload other aircraft incidental to any Commercial Aviation Activity; provided, however, Concessionaire shall notify the Airport Management of any such other aircraft not holding a permit to operate on the Airport. Concessionaire shall have no right to load or unload passengers for any charter flight on the Leased Premises wherein the aircraft has an approved maximum certificated gross landing weight in excess of 60,000 pounds; provided, however, that the right to load or unload or charter flights involving aircraft with less than 60,000 pounds approved maximum certificated gross landing weight shall be subject to cancellation by the Director of Airports upon thirty (30) days prior written notice.

(o) The right to train personnel in the employ of Concessionaire in any art, science, craft, or skill pertaining directly or indirectly to aircraft and/or aviation.

(p) Provide food catering service for private aircraft or for meetings upon the Leased Premises in conjunction with a food sales company which is authorized to operate at the Airport and has an agreement with City.

Subsection 2.2 - Public Airport Facilities.

The general use, in common with others authorized so to do, of all public airport facilities and improvements which are now or may hereafter be connected with or appurtenant to said Airport, except as hereinafter provided. As used herein, the term "Public airport facilities" shall include, but not

necessarily be limited to, approach areas, runways, taxiways, public aprons, aircraft and automobile parking areas, roadways, sidewalks, navigational and aviatational aids, terminal facilities, or other public facilities appurtenant to said Airport.

Subsection 2.3 - Ingress and Egress.

The right of ingress to and egress from the Leased Premises over and across public roadways serving the Airport for Concessionaire, its employees, representatives, agents, patrons, guests and suppliers, subject to such nondiscriminatory and lawful ordinances, rules and regulations as now or may hereafter have application at the Airport.

It is understood and agreed that City hereby retains the right of ingress and egress over, through and across the Leased Premises to provide access to the property at any time.

Subsection 2.4 - Signs.

Concessionaire shall not, without the prior written approval of City, erect, maintain or display any signs on the Airport, or on the Leased Premises. The term "signs" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, or any similar devices.

Subject to the foregoing, Concessionaire shall have the right to install identification signs as may be necessary for the proper conduct of Concessionaire's services as contemplated hereunder. All such signs shall be consistent with any over-all signing program established or to be established by City for the general aviation area.

Prior to the erection, construction or placing of any sign on the Airport, or upon the Leased Premises, Concessionaire shall submit to City for approval, drawings, sketches, designs, and dimensions of such signs. Approval shall not be unreasonably withheld. Any conditions, restrictions, or limitations with respect to the use thereof as stated by City in writing shall become conditions of this Agreement.

Subsection 2.5 - Privileges Specifically Excluded.

Concessionaire shall have no right to perform any services not listed in Subsection 2l., except as otherwise provided herein with respect to vending machines. It is further understood and agreed that nothing in this Agreement shall be deemed to permit Concessionaire to commercially engage in any of the following on the Leased Premises:

(a) Ground transportation for hire, including taxicabs, limousines or auto rental services, subject, however, to the provision contained in Subsection 2.1(m).

(b) Food sales, gift items, magazines, and similar items, excluding vending machines; subject, however, to the prior written approval of the Director of Airports, and to the provision contained in Subsection 2.1(p).

(c) Amusement machines.

(d) Any other business or other phase of commercial aviation except that for which approval is specifically granted herein.

(e) Concessionaire shall not allow its employees, while off the Leased Premises, to conduct any activities commonly referred to as hawking or flagging of aircraft.

(f) Concessionaire shall not store aviation fuel upon the Leased Premises.

SECTION 3 - OBLIGATION OF CONCESSIONAIRE.

Subsection 3.1 - Net Lease.

This Agreement shall be without cost to City for the maintenance and operation of the Leased Premises. It shall be the sole responsibility of the Concessionaire to develop, maintain, repair, and operate the entirety of the Leased Premises and all improvements and facilities thereon at Concessionaire's sole cost and expense.

Subsection 3.2 - Condition of Premises.

Concessionaire accepts the Leased Premises in their present condition ("as is") subject to and including all defects latent and patent.

Subsection 3.3 - Utilities and Services.

Concessionaire shall provide at its own cost and expense all heating, lighting, water, sewer, relamping, janitorial services, and all other services to maintain and operate the Leased Premises.

Subsection 3.4 - Trash, Garbage and Refuse.

Concessionaire shall provide or cause to be provided a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of the operations conducted on the Leased Premises. Concessionaire shall provide, at its sole expense, and use suitable covered metal receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels, damaged aircraft, aircraft parts, or other similar items, in an unsightly or unsafe manner, on or about the Leased Premises shall not be permitted. Concessionaire shall dispose of any lavatory waste, from any aircraft or other source and all toxic materials in a manner in full compliance with all public health rules and regulations, and all Federal, State or local laws or ordinances that may be in effect or hereinafter enacted. Concessionaire shall also dispose of drain oil in a proper manner as approved by the Director of Airports.

Subsection 3.5 - Maintenance and Repairs.

(a) Concessionaire shall be obligated, without cost and expense to City, to maintain throughout the term of this Agreement the Leased Premises and every part thereof in good and neat appearance, repair and safe condition. Concessionaire shall maintain and repair all improvements on the Leased Premises (or the portion of the improvements on the Leased Premises), including structures, fixtures, equipment (including mechanical), and ramp blacktop reinforcing. Concessionaire shall repaint improvements on the Leased Premises as necessary. All such maintenance, repairs and replacements shall be of quality equal to the original in materials and workmanship, and all paint

colors shall be subject to the prior written approval of City. Concessionaire shall also maintain any and all landscaping on the Leased Premises. City shall be responsible for the maintenance of the utility system to the commencement of the Leased Premises such as systems supplying water and electricity service to the Leased Premises and the storm sewer system, if any, for the Leased Premises. Concessionaire shall be responsible for the same on the Leased Premises.

(b) Upon written notice by City, Concessionaire shall be required to perform whatever reasonable maintenance City deems necessary. If said maintenance is not undertaken by Concessionaire within ten (10) days after receipt of written notice, City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be borne by Concessionaire and ten percent (10%) thereof paid to the City for cost of administration.

(c) Concessionaire shall be responsible for any or all snow removal necessary as to the land area covered by this Agreement.

Subsection 3.6 - Improvements.

Concessionaire shall, without cost to City and within the periods prescribed herein, commence and complete construction of a hangar and office building on the Leased Premises, having floor space of approximately 35,600 square feet, more or less, all in accordance with plans and specifications prepared by Concessionaire, which shall be subject to City's written approval as hereinafter provided.

Subsection 3.7 - Preliminary Plans.

Concessionaire shall promptly prepare and submit to City within 30 days after execution of this Agreement, preliminary or schematic plans for the proposed hangar and a preliminary cost estimate. City, in its reasonable discretion, reserves the right to reject any designs submitted and to require Concessionaire to re-submit designs and layout proposals until they meet City's approval.

(a) Final Plans - Approval of Plans.

Within sixty (60) days after approval of the preliminary or schematic plans by City, Concessionaire shall submit to City final plans and specifications for the hangar. In the event Concessionaire shall fail to submit final plans within sixty (60) days after approval of the preliminary or schematic plans by City, the City shall have the right without notice to Concessionaire, to terminate this Agreement and to re-enter and repossess the land and any facilities thereon and hold the same as if the Agreement had never been made or issued.

All final plans and specifications supplied by Concessionaire shall require the prior written approval of City before any construction shall take place. Such final plans and specifications shall include detailed plans and drawings at a scale acceptable to City.

Upon written approval by City, said plans and specifications shall become a part of this Agreement.

Subsection 3.8 - Aircraft Apron Plans. Concessionaire shall within ninety (90) days after execution of this Agreement, prepare and submit schematic plans for the grade and drain of the aircraft parking apron. City, in its reasonable discretion reserves the right to reject the design submitted and to require Concessionaire to re-submit designs and layout proposals until they meet City's approval.

Subsection 3.9 - Conformance to Plans - Inspection.

All construction, including the plans and specifications therefor, shall conform in all respects to the architectural requirements of City ordinances, building codes, and rules and regulations of Salt Lake City and Salt Lake County, and such other authority as may have jurisdiction over the Leased Premises or Concessionaire's operations thereon. The approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefor shall at all times remain in Concessionaire.

All construction work shall be subject to inspection by the City Engineer at all reasonable times to assure that such work complies with the final plans and specifications. Concessionaire and City (through the City Engineer) shall maintain close contact in order to coordinate the construction work hereunder with the work of the City at the Airport. The City has employed a Program Management Team to act as advisor and consultant to the City for overall program coordination, program planning, progress reporting and construction monitoring. To assist the City in appraising, with reasonableness, all contract program schedules, evaluating progress of work, assuring adequate planning and contract execution, the Program Management Team shall have access to the work site, and authority to interface and integrate the various contracts for work at Airport. It is understood that the Program Management Team will conduct weekly review meetings which shall be attended, as required or requested by said Program Management Team, by a representative of the contractor or contractors familiar with the construction project to be undertaken by Concessionaire pursuant to the terms of this Agreement. A set of reproducible, final tracings of the completed hangar shall be furnished to the City Engineer.

Subsection 3.10 - Construction Schedule.

Concessionaire shall commence construction of the hangar on the Leased Premises no later than forty-five (45) days after the City has approved the final plans and specifications; provided, however, said construction shall be commenced no later than July 15, 1980. Once construction is commenced, Concessionaire shall diligently prosecute the same to completion and actual occupancy. In the event of a breach of any of the covenants contained in this Subsection (3.8), the City shall have the right without notice to Concessionaire, to terminate this Agreement and to re-enter and repossess the land and any facilities thereon and hold the same as if the Agreement had never been made or issued.

Subsection 3.11 - Construction and Installation Costs.

Within 120 days after Concessionaire assumes actual occupancy of the completed hangar, Concessionaire shall file a statement of final cost, verified by the chief financial officer of Concessionaire, with appropriate detail showing the cost of construction. Concessionaire shall make available to City, at City's request, receipts and invoices for labor and materials covering the cost of construction of said hangar and also including architectural and engineering fees.

Concessionaire's total investment in all construction shall not be less than SEVEN HUNDRED FIFTY THOUSAND AND NO/100 (\$750,000) DOLLARS.

Subsection 3.12 - Alterations.

(a) Concessionaire shall obtain the prior written approval of City before making or causing to be made any alterations, changes in and additions to the Leased Premises, costing \$8,000.00 or more, or which involve structural integrity of the structure, which approval shall not be unreasonably withheld. Any said alterations, changes in and/or additions to the Leased Premises shall be at the cost of Concessionaire.

(b) Concessionaire, at its expense, shall submit to City for approval preliminary plans and outline specifications for any alterations, changes in, or additions to the Leased Premises costing \$8,000.00 or more, or which involve structural integrity of the structure.

(c) Concessionaire, upon the approval of said preliminary plans and specifications, at its cost, and submit the same to City for final approval upon the same terms and conditions outlined in Subsection 3.5 above.

(d) Concessionaire, upon the approval of said final plans and specifications, shall cause the work required to be initiated within a reasonable time thereafter, and Concessionaire shall cause said work to be completed in a workmanlike manner with reasonable diligence; subject, however, to delays beyond the control of Concessionaire, its contractors, or subcontractors.

Concessionaire shall have the right at any time after approval of said final plans and specifications to abandon its plan to make alterations, provided that if it elects so to do, it must give written notice to the Director of Airports, and must restore the premises to their original condition within a reasonable time.

(e) Concessionaire shall provide City with a copy of the bond to protect mechanics and materialmen as required by §14-1-5 Utah Code Annotated 1953, as amended.

(f) All alterations, changes in and additions (except trade fixtures) to the City owned property shall become, immediately upon completion, the property of City and shall remain upon and be surrendered with the Leased Premises at the expiration or termination of this Agreement, or renewal(s), as herein provided.

(g) All such alterations, changes, or additions may be inspected by the City Engineer at all reasonable times.

(h) Concessionaire agrees that prior to making any such alterations, changes in, and/or additions to the Leased Premises, it shall obtain all required and necessary building permits from the appropriate jurisdictions at Concessionaire's sole cost and expense.

Subsection 3.13 - Personnel.

During all hours Concessionaire is open to the public, Concessionaire shall retain on the Airport premises a qualified manager or supervisor to supervise the concession operations and to represent and act for Concessionaire in matters pertaining to the day-to-day operation of the Concession.

Employees shall be qualified in light of the work and service to be performed. It is recognized that in performing work and service at the Airport and on the Leased Premises, that contact is made with members of the general public as well as those connected with aircraft activity and thus employees of Concessionaire should conduct themselves in a manner which is reasonable in light of said circumstances.

Employees of Concessionaire shall be required to wear a

standard item of apparel or identification such as a badge, cap, shirt, or other standard item. Concessionaire shall maintain a reasonable check over its employees in an effort to maintain in light of the work being done a reasonable standard of neatness, cleanliness and courtesy.

Upon written notice by City to Concessionaire that any person employed by Concessionaire on the Airport is, in the City's reasonable opinion, not complying with lawful requirements and the requirements of this Agreement, as set forth above, while on the leased premises or the Airport and engaged in work within the scope of employment, Concessionaire shall take reasonable steps which are lawful to terminate employment of such employee as to work at the Airport, recognizing, however, that progressive disciplinary procedures may be applicable. Such employee shall not again be employed by Concessionaire on the Airport without prior written consent of City.

Subsection 3.14 - Removal and Demolition.

Concessionaire shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of City which may, at its discretion, condition such consent upon the obligation of Concessionaire to replace the same by a reasonable improvement specified in such consent.

Subsection 3.15 - Taxes and Licenses.

Concessionaire agrees to pay all nondiscriminatory taxes, assessments or charges which during the term hereof may become a lien or be levied by the State, County, City or other tax levying body on all personal property of Concessionaire, upon all improvements made to the Leased Premises by Concessionaire in connection with its use and occupancy thereof, and upon the possessory interest, if any, of Concessionaire in the Leased Premises, which shall specifically include, but not by way of limitation, any taxes levied under Section 59-13-73, Utah Code Ann., 1953, if applicable. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the

modification to improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

Subsection 3.16 - Rules and Regulations.

In conducting its operations hereunder, Concessionaire shall comply with all applicable laws of the United States of America and the State of Utah and lawful rules and regulations promulgated by their authority, including the FAA, with reference to aviation, air navigation, and airport security; and all applicable lawful rules, regulations and ordinances of City now in force or hereafter prescribed and promulgated by authority of law, specifically including all fire codes and security regulations.

SECTION 4 - OBLIGATIONS OF CITY.

Subsection 4.1 - Clear Title.

City covenants and agrees that at the granting and delivery of this Agreement, and of the Leased Premises, it is well seized of the Premises and has good title thereto, free and clear of all liens and encumbrances having priority over this Agreement, and that City has full right and authority to lease the same. City agrees that Concessionaire, upon paying the rent and performing the other covenants of this Agreement to be performed by Concessionaire, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full term of this Agreement and as the same may be extended as hereinafter provided.

Subsection 4.2 - Operation as Public Airport.

City covenants that it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances Agreement given by City to the United States Government under the Federal Airport and Airway Development Act.

Subsection 4.3 - Approval of Plans.

In the review and approval of Concessionaire's plan for construction, installation or modification of improvements or of subsequent alterations, as hereinafter set out, City agrees to

act promptly and reasonably upon requests for approval of any plans, changes or alterations thereto.

Subsection 4.4 - Maintenance of Airport.

City shall throughout the term hereof, maintain all public areas and facilities such as access areas and all roads on the Airport providing access to the Leased Premises in good and adequate condition for use by cars and trucks, and shall maintain clear and uninterrupted access to the Leased Premises over said access areas and roads at all times; provided, however, City may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right of way for such access, ingress or egress, whether inside or outside the terminal buildings, and any other area at Airport, in its environs presently or hereafter used as such, so long as a means of access, ingress and egress reasonably equivalent to that formerly provided, and not adverse to Concessionaire's continued use and enjoyment of the Leased Premises, is substituted therefor and is concurrently made available therefor. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the terminal buildings and roadways, and Concessionaire hereby releases and discharges City from any and all claims, demands or causes of action which Concessionaire now or at any time hereafter may have against City arising or alleged to arise out of the closing of any right of way or other area used as such whether within or without airport, so long as City makes available a means of free access, ingress and egress reasonably equivalent to that existing prior to each such modification, if any.

SECTION 5 - SERVICES TO BE PROVIDED BY CONCESSIONAIRE.

Subsection 5.1 - Minimum Services.

As part of the consideration herefor, Concessionaire agrees to provide the following services:

(a) Tie-down and hangar storage for general aviation aircraft.

(b) A dealership for the sale of new and used aircraft;

(c) Flight training services.

(d) Ramp service for general aviation aircraft users, with a qualified attendant available on the ramp 24 hours a day, 7 days a week, except as may be otherwise agreed by the parties.

(e) Concessionaire expressly covenants and agrees to keep and offer for sale, subject to Federal or Petroleum Company allocation, at said Airport aviation fuel and lubricating oil.

(f) Concessionaire does hereby agree to employ or otherwise have readily available at the Airport, certificated maintenance personnel in sufficient numbers as is reasonable to reasonably accommodate general aviation demand, both transient and local, for aircraft service.

(g) Concessionaire shall provide sufficient equipment and properly trained personnel to remove disabled aircraft owned, operated, and/or leased by Concessionaire from the airfield. Such removal shall be performed in an expeditious manner and shall be commenced immediately upon release by the FAA, if such incident requires an FAA investigation, and if no such investigation be required, as soon as is reasonable under the circumstances. Such removal shall be diligently and expeditiously done, shall be completed within reasonable time and shall also be done under the direction of the Director of Airports or his designated representative.

Subsection 5.2 - Non-discrimination.

Concessionaire does also hereby agree to comply with the following provisions as required by the FAA:

(a) The Concessionaire agrees to operate the Leased Premises for the use and benefit of the public and to furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that the Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates or other

similar types of price reductions to volume purchasers.

(b) The Concessionaire, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for any other purpose involving the provision of a similar service or benefit, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements, imposed 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 any provisions of said regulations as may in the future be amended.

(c) The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure 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, Subpart E. The Concessionaire 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 Concessionaire assures that it will require that its covered suborganizations provide assurances to the Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) The Concessionaire, for himself, his personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a

covenant running with the land, that no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in the use of said facilities; that in the construction of any improvements on, over or under such land and the furnishing of services thereof, 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; that the Concessionaire 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 of 1964, and such provisions of said regulations as may in the future be amended.

(e) That in the event of a breach of any of the non-discriminatory covenants pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation, the City shall have the right to terminate this Agreement and to re-enter and repossess said land and the facilities thereon and hold the same as if said Agreement had never been made or issued.

Subsection 5.3 - Non-exclusivity.

(a) Concessionaire understands and agrees that no right or privilege granted hereunder shall operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft, other than on the Leased Premises, with its own regular employees, including but not limited to maintenance and repairs that it may choose to perform.

(b) Concessionaire further understands and agrees that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958, as amended.

SECTION 6 - TERM.

The term of this Agreement shall be for a period of thirty (30) years unless sooner terminated as herein provided, which term shall commence upon the execution of this Agreement.

SECTION 7 - RENTAL AND FEES.

For the rights and privileges granted hereunder, Concessionaire shall pay without demand the following rentals and fees:

Subsection 7.1 - Building Area.

Concessionaire agrees to pay to City for the use of the Building Area, as described in Exhibit B attached hereto and incorporated by reference herein, commencing from the date of execution of this Lease and terminating on the date Concessionaire commences reconstruction of the aircraft parking apron, an annual ground rent in accordance with the cost per square foot schedule contained in Subsection 7.2 below. Said rental shall be payable monthly in advance on the first day of each month in a sum equal to one twelfth (1/12) of the annual ground rental due hereunder.

Subsection 7.2 - Leased Premises.

Commencing on the day after Concessionaire commences reconstruction of the aircraft parking apron, Concessionaire agrees to pay the City for the use of the Leased Premises described in Exhibit "A", attached hereto and made a part hereof by reference, an annual ground rental computed at the rate shown below for the time periods shown:

Cost per square foot:

| | |
|--------------------------------|--|
| March 1, 1980 to March 1, 1981 | 7¢ per square foot |
| March 1, 1981 to March 1, 1982 | 8¢ per square foot |
| March 1, 1983 to March 1, 1983 | 9¢ per square foot |
| March 1, 1983 to March 1, 1984 | 10¢ per square foot |
| March 1, 1984 to March 1, 1989 | Increase of not more than 10% of the prior rate. |

Thereafter said rental shall, at the option of City, be adjusted

upward each five years; provided, however, that any increase shall not exceed ten percent (10%) of the prior rate in effect at the time of any such increase.

Said rental shall be payable monthly in advance on the first day of each month in a sum equal to one-twelfth (1/12th) of the annual ground rental due hereunder.

Subsection 7.3 - Ground Rental Credit.

Concessionaire shall receive a credit of \$46,000 as full settlement for their alleged right to an amortization of a building investment made by Concessionaire. Said credit will be subject to reduction in the following manner:

Commencing July 1, 1979, Concessionaire shall amortize the \$46,000 in the amount of \$585 per month which shall reduce the credit granted herein. Said amount shall be so amortized until the old site is vacated and lease payment for the new Leased Premises commence. Thereafter, Concessionaire shall be allowed a credit to be applied to the new ground rental rate, in the full amount thereof, until any remaining balance is depleted. No interest will accrue on the credit balance. After the credit is fully depleted, Concessionaire shall make the full rental payment required herein.

Subsection 7.4 - Fuel Flowage Fee.

Concessionaire agrees to pay to the City, for the privilege of offering aviation fuel for sale, a fuel flowage fee equal to the rate of TWO CENTS (\$0.02) per gallon of fuel delivered to Concessionaire at the Airport.

It is mutually agreed that City may increase the rate of said fuel flowage fee at any time upon thirty (30) days written notice; provided, however, that any increase in said rate shall be applied in a uniform manner to all other persons authorized by City to sell or dispense aviation fuels at the Airport.

Subsection 7.5 - Oil Dispensing Fee.

Concessionaire agrees to pay to the City for the right of dispensing and selling oil at said Airport, a fee equal to the

rate of FIVE CENTS (\$0.05) per quart of oil delivered to Concessionaire at the Airport.

It is mutually agreed that City may increase the rate of said oil dispensing fee at any time upon thirty (30) days written notice; provided, however, that any increase in said rate shall be applied in a uniform manner to all other persons authorized by City to sell or dispense aviation oil at the Airport.

Subsection 7.6 - Gross Revenue Percentage Fee.

If at any time during the term of this Agreement the city shall desire to impose a gross receipts fee upon all gross receipts of Concessionaire through its fixed base operation (or any successor), it may do so if at the time the fee becomes effective, the same fee and terms with respect thereto shall be applicable and effective as to at least one other fixed base operation location at and/or operating on the Airport.

It is agreed that the gross revenue percentage fee herein provided shall be no greater than one percent (1%) of gross receipts for the first five (5) years from the date said fee becomes effective. Thereafter said fee shall be no greater than two percent (2%) of gross receipts.

The term "gross receipts" as used herein shall be construed to mean, for all purposes hereof, the aggregate amount of all sales made and services performed for cash, or credit or otherwise of every kind, name and nature together with the aggregate amount of all exchange of goods, wares, merchandise and services for like property or services, at the selling price thereof, as if the same had been sold for cash or for the fair and reasonable value thereof, whichever is the greater, excluding only:

(a) Refunds and discounts to customers which have been included in gross sales.

(b) The amount of any sales, use or excise taxes levied upon retail sales where such tax has been charged to the customer.

(c) Any amounts treated on the books of Concessionaire as a receipt by virtue of the transfer of aircraft parts or components from one department or division of Concessionaire to another such *department or division, but not in fact representing proceeds of* the sale of such parcel or components to third party.

(d) Vending machine receipts.

(e) Proceeds from sale of new and used aircraft including brokerage fees.

(f) Proceeds from the sale of aircraft fuel and lubricating oil.

(g) Outside space rentals.

(h) New and used engines including major engine mounted accessories.

(i) Any sums and credits received from loss or damaged merchandise.

The selling price of any accessory, part or supply added to or service furnished to any aircraft sold by or for sale by Concessionaire shall be considered as part of the Gross Receipts hereunder except for those specifically covered under the above paragraph. Where portions of the Leased Premises are subleased to others, only the rental income shall be considered as a part of the gross receipts.

Subsection 7.7 - Proration.

For any period of less than one (1) calendar month that this Agreement shall be in effect, said rentals and fees shall be calculated on a pro rata basis. All payments herein shall be in lawful money of the United States of America.

Subsection 7.8 - Late Charge.

Without waiving any other right of action available to City in the event of default in payment of rentals or fees hereunder, in the event that Concessionaire is delinquent for a period of thirty (30) days or more in paying to City any rental or fee payable to City pursuant to this Agreement, Concessionaire agrees to pay City a late charge equal to five percent (5%) of the total

monthly payment of said delinquent rental or fee. Any payment or payments past due more than sixty (60) days shall also have interest added thereon at the rate of ten percent (10%) per annum.

SECTION 8 - ACCOUNTING.

Subsection 8.1 - Books and Records.

Concessionaire shall keep true and accurate accounts and records which shall show in detail all gross receipts from the commercial aviation business of Concessionaire, all fuel flowage and amount of oil received at Airport.

Subsection 8.2 - Accounting Equipment.

Concessionaire shall install and use, or cause to be installed and used on the Leased Premises, cash registers, sales slips, numerical invoices and any other automatic accounting equipment or devices required to properly and accurately record the gross receipts on all sales and services made by Concessionaire under this Agreement.

Subsection 8.3 - Reports and Payments.

Concessionaire shall provide the following reports and payments to City:

(a) On or before the 12th day of each month during the term hereof, Concessionaire shall submit to City a detailed statement showing all fuel and oil delivered to Concessionaire during the preceding calendar month. Such report shall be submitted on forms as determined mutually acceptable to Concessionaire and City. City shall then re-bill Concessionaire for such preceding calendar month taking into account the customary shrinkage allowance. Concessionaire shall pay the amount due and owing within ten days of receipt of said re-billing from City.

(b) On or before the 12th day of each month after imposition of a gross receipts fee pursuant to Subsection 7.4 herein. Concessionaire shall submit to City a detailed statement showing all gross receipts, as that term is defined in Subsection 7.4, derived from the business operations of Concessionaire

during the preceding calendar month. Such statement shall be submitted on forms as determined mutually acceptable to Concessionaire and City, and shall be accompanied by payment to City of the gross receipt fee due as provided for herein.

(c) With respect to any contract year during any part of which a gross revenue percentage fee is imposed on Concessionaire pursuant to Subsection 7.4 herein, an annual report of gross receipts for such contract year covering all business transacted by Concessionaire under this Agreement at the airport shall be submitted within ninety (90) days after the close of such contract year. Such annual report shall be certified by an Independent Certified Public Accountant and shall be prepared in such detail and on such forms as are determined mutually satisfactory by Concessionaire and City. It shall opine as to the fairness of the statement of gross receipts prepared and submitted by Concessionaire, shall not be limited in scope and must further be prepared in accordance with generally accepted accounting principles which are consistently applied.

(d) Any other reasonable financial or statistical reports which City from time to time may request by written notice to Concessionaire.

Subsection 8.4 - Audit.

(a) Upon written notice at any time within two (2) years after the end of any year of operation, City may cause, without cost to Concessionaire unless otherwise provided hereinafter, an inspection and audit to be made of the books and records of Concessionaire relating to its fixed base operations on the Leased Premises. Such audit shall be made to determine the correctness of the computation of fuel flowage fees, oil dispensing fees and gross receipts fees for either of the two preceding years.

If, as a result of such inspection and audit, it is established that additional fees or rentals are due City, Concessionaire shall, upon written notice by City, pay such

additional fees or rentals within thirty (30) days of such written notice. In addition to fees and rentals Concessionaire shall pay interest computed at an annual percentage rate of ten (10%) percent from the date fees or rentals should have been remitted to City.

The substantiated finding of a fraudulent discrepancy shall constitute grounds for termination of this Agreement in its entirety upon thirty (30) days written notice if the City elects so to do.

Subsection 8.5 - Location and Retention of Records.

Concessionaire shall make available in the County of Salt Lake for inspection by City, or its designee, during regular business hours, upon three (3) days written notice, for a period of two (2) years after each year of operation, the books and records of account of Concessionaire's fixed base operation at the Airport for such years showing in detail the gross revenues of Concessionaire from business conducted on the Leased Premises and the fuel and oil received by Concessionaire at Airport, together with the deductions therefrom and other pertinent information reasonably required by City.

SECTION 9 - INDEMNIFICATION, ETC.

Subsection 9.1 - Independent Contractor.

It is understood and agreed that Concessionaire is an independent contractor and not an agent or employee of City with respect to its acts or omissions hereunder. It is also understood and agreed that City is an independent contractor and not an agent or employee of Concessionaire with respect to its acts or omissions hereunder.

Subsection 9.2 - Hold Harmless.

Concessionaire agrees to indemnify fully and save and hold harmless City, its officers, agents and employees from and against all losses, damages, claims, liabilities, and causes of action of every kind or character and nature as well as costs and fees including reasonable attorney's fees connected therewith,

and expenses of the investigations thereof, based upon or arising out of damages or injuries to third persons or their property caused wholly by the negligence of Concessionaire. City shall give to Concessionaire prompt and reasonable written notice of any such claims or action, and Concessionaire shall have the right to investigate, compromise, and defend the same to the extent of its own interests.

Subsection 9.3 - Damage to Concessionaire's Property.

It is further understood and agreed that the City assumes no responsibility for any damages or losses that may occur to the Concessionaire's property, except the obligation that the City assumes is that it will not willfully, intentionally or negligently damage the property of the Concessionaire.

SECTION 10 - INSURANCE AND BOND.

Concessionaire, at its own cost and expense, shall secure and maintain the following policies of insurance:

Subsection 10.1 - Comprehensive Third-Party Public Liability Insurance.

Public liability coverage for injury to property and person including owned and non-owned aircraft and vehicles, products liability, and such other coverage as may be necessary to protect City herein from such claims and actions set forth in Subsection 9.2 above. Said insurance shall have limits of not less than \$2,000,000 combined single limit each occurrence.

Subsection 10.2 - Hangar Keeper's Liability Insurance.

Hangar Keeper's liability coverage for damage to aircraft stored or parked on or about the Leased Premises under the terms and conditions or any contract of bailment or license. The limits of such coverage shall not be less than \$2,000,000.

Subsection 10.3 - Fire Insurance.

Concessionaire shall insure the hangar and all improvements on the Leased Premises for fire and standard extended coverage risks in an amount equal to the full insurable replacement value of said hangar and improvements.

Subsection 10.4 - Qualifying Insurance Company.

All policies of insurance provided herein shall be issued by insurance companies, with general policy holders rating of A plus and a financial rating of Class 12 or its equivalent as rated in the most current available "Best's" Insurance Reports, qualified to do business in the State of Utah.

Subsection 10.5 - Certificate of Insurance.

(a) Certificates evidencing such insurance coverage shall be filed with City upon execution of this Agreement, and such certificates shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to City. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with City. If such insurance coverage is cancelled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies qualifying under Subsection 9.3.

(b) In the event that Concessionaire shall at any time fail to furnish City with the certificate or certificates required, City, upon written notice to Concessionaire of its intention so to do, shall have the right to secure the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to reimburse City promptly for the cost thereof and ten percent (10%) for cost of administration.

(c) All insurance policies shall name the City as an additional insured.

Subsection 10.6 - Workmen's Compensation and Social Security.

Concessionaire shall, upon request, furnish to City adequate evidence of provisions for Workmen's Compensation Insurance, Social Security, and Unemployment Compensation, to the extent

such provisions are applicable to Concessionaire's operations hereunder.

Subsection 10.7 - Performance Bond.

As a condition precedent to the execution of this Agreement, Concessionaire shall, without expense to City, cause to be made executed and delivered to City a performance bond in the sum of THIRTY THOUSAND AND NO/100 (\$30,000) DOLLARS conditioned on the faithful performance of all terms, conditions and covenants of this Agreement.

SECTION 11 - TERMINATION.

Subsection 11.1 - Expiration.

This Agreement shall expire at the end of the full term hereof, unless sooner terminated as provided hereinafter, and Concessionaire shall have no further rights, interests, or privileges hereby granted by this Agreement, except with respect to the option to renew as provided for in Section 6 herein.

Subsection 11.2 - Cancellation by Concessionaire.

(a) This Agreement shall be subject to cancellation by Concessionaire after the happening of one or more of the following events:

(1) The permanent abandonment of the airport as a public airport facility.

(2) The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to restrict Concessionaire for a period of at least ninety (90) days from operating thereon.

(3) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

(4) The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of thirty

(30) days after receipt from Concessionaire of written notice to remedy the same.

(5) Any other activity beyond the reasonable control of Concessionaire which substantially restricts Concessionaire's use of the Leased Premises for a period of ninety (90) days.

(b) Concessionaire may exercise such right of termination by written notice to City at any time after the elapse of the applicable periods of time and this Agreement shall terminate as of that date. Rentals and fees due hereunder shall be payable only to the date of said termination.

Subsection 11.3 - Cancellation by City.

(a) This Agreement shall be subject to cancellation by City in the event Concessionaire shall:

(1) Be in arrears in the payment to City of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after receipt of written notice from City.

(2) Make a general assignment for the benefit of creditors.

(3) File a voluntary petition in bankruptcy.

(4) Abandon the Leased Premises.

(5) Default in the performance of any of the covenants and conditions required herein to be kept and performed by Concessionaire, and such default continues for a period of thirty (30) days after receipt of written notice from City of said default. If the nature of the default is such that it cannot be cured within thirty (30) days, Concessionaire shall be deemed to have cured such default if it, or its nominee, shall within such thirty (30) day period commence performance and thereafter diligently prosecute the same to completion.

(6) The substantially complete destruction of Leasehold improvements where Concessionaire fails to commence replacement of said improvements within six (6) months after said destruction. For purposes of this Subsection 11.3, the terms "substantially complete destruction of the leasehold improvements" shall mean such destruction of the leasehold

improvements as renders Concessionaire unable to function as a business on a day-to-day basis.

(b) In the case of any of the aforesaid events of cancellation, City may take immediate possession of the Leased Premises after cancellation and, at its option, remove Concessionaire's personal property and trade equipment. Upon such entry, this Agreement shall terminate. Any rental due hereunder shall be payable to said date of termination. Concessionaire's personal property and trade equipment shall be tendered to Concessionaire upon payment of all rent due hereunder up to the date of termination plus storage costs.

(c) Upon the default of Concessionaire in performance of any covenant or agreement herein required to be performed by Concessionaire and upon the failure of Concessionaire to remedy such default within a period of thirty (30) days after receipt from City of written notice to remedy the same and without waiving any other provisions of this Subsection 11.3, City shall have the right to enter upon the Leased Premises and remedy the default or cause such default to be remedied, the cost of which shall, together with ten percent (10%) thereof for costs of administration, be paid by Concessionaire to City.

Subsection 11.4 - Rights Upon Termination.

Upon termination of this Agreement prior to full term for any reason except those outlined in Subsection 11.2, title to the hangar and all related improvements constructed or installed by Concessionaire on the Leased Premises, except trade equipment, shall vest in the City.

Subsection 11.5 - Rights Upon Termination by Concessionaire.

In the event this Agreement is cancelled for any of the reasons outlined in Subsection 11.2, City shall pay to Concessionaire liquidated damages, as follows:

(a) Said liquidated damages shall be the depreciated cost of original improvements to the Leased Premises as if computed on the basis of straight-line depreciation over a thirty year (30)

period, beginning with the date six (6) months after execution of this Agreement.

(b) Cost of original improvements shall be determined from the verified statement of the chief financial officer of Concessionaire referred to in Subsection 3.11 herein. Appropriate adjustments to depreciated value may be made with respect to alterations and improvements to the Leased Premises made pursuant to Subsection 3.11 herein. Upon payment by City to Concessionaire of said liquidated damages, the hangar together with all improvements shall become the sole property of City.

Concessionaire may, at its own option, remove said hangar in lieu of accepting said depreciated value.

SECTION 12 - DAMAGE OR DESTRUCTION.

If any portion of the hangar or the appurtenances thereto shall be damaged or destroyed by a fire or any other cause, and this Agreement is not terminated as hereinafter provided, Concessionaire shall, at its expense, remove the debris and restore the Leased Premises to a complete architectural unit. Should such damage or destruction (a) exceed \$10,000; or (b) result from a cause not covered under standard extended coverage insurance, Concessionaire may, not later than sixty (60) days after the date of such damage or destruction, elect to terminate this Agreement by giving notice to City, such termination to be effective not later than 120 days after the date of such damage or destruction. In the event of such termination, City shall be entitled to all insurance proceeds in excess of Concessionaire's original cost of the hangar less depreciation (which, for purposes of this Section 12 shall be computed on the basis of straight-line depreciation over a thirty (30) year period beginning with the date six (6) months after execution of this Agreement); provided, however, that Concessionaire shall have the option to repair such damage or destruction, and if Concessionaire elects to repair such damage or destruction, then City and Concessionaire shall apply all insurance proceeds to the repair

of such damage or destruction and Concessionaire shall pay the excess over the insurance proceeds to complete such repair. In the event of such damage or destruction, Concessionaire shall be entitled to all property salvaged from the Leased Premises prior to the expiration or termination of this Agreement and if terminated, Concessionaire shall not be required to restore the hangar, but upon request from City Concessionaire shall raze and remove all structures on the Leased Premises, safely cap all utilities and pave the Leased Premises. If this Agreement is not so terminated, it shall continue and Concessionaire shall not be entitled to any reduction or abatement of rent, except as otherwise provided by Section 16 herein.

SECTION 13 - ASSIGNMENT AND SUBLEASING.

The Concessionaire shall not assign, transfer, sublease, pledge, hypothecate, surrender or otherwise encumber or dispose of this Agreement or any estate created by this Agreement, or any interest in any portion of the same, or permit any other person or persons, company or corporation to occupy the Leased Premises without written consent of the City being first obtained, which consent shall not be unreasonably withheld.

In case of total assignment of this Agreement, such consent may be conditioned upon the assignee being required to pay the first and last two months rent in advance, and/or that the assignee shall, without expense to City, cause to be made, executed and delivered to City a performance bond in the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), conditioned on the faithful performance of all terms, conditions and covenants of this Agreement. Said surety bond shall be renewable annually and shall be kept in full force for the balance of the terms of this Agreement and any extension.

SECTION 14 - REMOVAL OF PERSONAL PROPERTY.

(a) Title to personal property shall at all times remain in Concessionaire, and Concessionaire shall have the right at any time to remove any or all personal property of every kind and

nature whatsoever which Concessionaire may have placed or installed upon the Leased Premises. It is expressly understood and agreed that any and all fixtures, tools, devices, appliances, furniture, carpeting, pictures, furnishings, equipment, and supplies, of any kind and nature, heretofore or hereafter placed or installed by Concessionaire on the Leased Premises shall, as between City and Concessionaire, be and remain the personal property of Concessionaire, notwithstanding the same are or may be attached or affixed to the floors, ceilings, or any other parts of any buildings or structures on the Leased Premises. Concessionaire shall have said right to remove same provided that, upon any such removal Concessionaire shall repair, at its own expense, any damage resulting therefrom and leave the Leased Premises in a clean and neat condition, with all other improvements in place.

(b) At the termination of this Agreement, City shall be entitled, upon its specific written request, to have Concessionaire remove all personal property from the Leased Premises within thirty (30) days after said termination. At the termination of this Agreement under circumstances vesting title to the hangar in the City, Concessionaire shall repair, at its own expense, any damage resulting from said removal of personal property and shall leave the Leased Premises in a neat and clean conditions, with all other improvements in place. If Concessionaire fails to remove said personal property if so requested by City, said property may after ten (10) days be removed by City at Concessionaire's expense and 10% of the removal expense for cost of administration.

(c) At the expiration of this Agreement, City shall have the option of accepting full title to the buildings built by Concessionaire, together with all alterations and additions thereto or City may require the buildings to be removed by Concessionaire, in which event Concessionaire shall, at its sole cost and expense, raze and remove all structures on the Leased

Premises, safely cap all utilities and gas tanks and pave the Leased Premises, if so required by the City. In the event City elects to accept title, it shall accept the buildings with all alterations and additions thereto in its condition at such time, which shall upon acceptance and without any cost to or payment by City and without the execution of any deed or other document automatically pass to and become vested in City.

SECTION 15 - INSPECTION OF PREMISES.

City or its duly authorized representatives, or agents and other persons for it, may enter upon the Leased Premises at any and all reasonable times during the terms hereof for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof or for any other purpose incidental to rights of City.

SECTION 16 - FORCE MAJEURE.

Any prevention, delay, or stoppage of performance of Concessionaire's obligations hereunder due to strikes, lockouts, labor disputes, acts of God, inability to obtain fuel allocations, labor or materials or reasonable substitutes therefor, governmental restriction, governmental controls, governmental regulations, enemy or hostile government action, civil commotion, fire or other casualty, or any other caused beyond the reasonable control of Concessionaire shall not be deemed to be a breach of this Agreement or a violation of or failure to perform any covenants hereof, and Concessionaire shall have a reasonable time after cessation of any of such caused within which to render performance delayed thereby.

SECTION 17 - SPONSOR'S ASSURANCES.

This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States Government, relative to the operation or maintenance of the airport, the execution of which has been or will be required as a condition precedent to the granting of Federal funds for the development of the Airport to the extent that the provisions of

any such existing or future agreements are generally required by the United States at other civil air carrier airports receiving Federal funds and provided that City agrees to give Concessionaire written notice in advance of the execution of such agreements of any provisions which will modify the terms of this Agreement.

SECTION 18 - THIRD PARTIES.

This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to parties to whom the Concessionaire may assign this Agreement in accordance with permission of the City as provided for in the Agreement, and excepting any successor to the City, any rights to claim damages or to bring any suit, action or other proceeding against either the City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.

SECTION 19 - RIGHT OF FLIGHT.

Concessionaire understands and agrees that City reserves the right of flight for the passage of aircraft above the surface of the Leased Premises hereunder in accordance with Federal Aviation Administration criteria, and such right of flight shall include the right to cause in such airspace such noises as may be inherent to the operation of aircraft now known or hereafter used for navigation of or flight in the air; and that City reserves the right to use said airspace for landing at, taking off from or operating aircraft on or over said Airport.

SECTION 20 - REDELIVERY OF PREMISES.

Concessionaire shall, upon termination of this Agreement quit and deliver up the Leased Premises to City peaceably, quietly, and in as good order and condition as the same now are or may hereafter be improved by Concessionaire or City, reasonable use, wear, tear and deterioration excepted, and subject to the other provisions herein contained with respect to improvements.

SECTION 21 - HOLDING OVER.

In the event Concessionaire remains in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a tenancy from month to month which may be terminated at any time by City, giving thirty (30) days prior written notice of termination.

SECTION 22 - AGREEMENT MADE IN UTAH.

This Agreement has been made in and shall be construed in accordance with the laws of the State of Utah.

SECTION 23 - SUCCESSORS.

This Agreement shall bind and inure to the benefit of any successor of City and any successor, assignee, or sublessee of Concessionaire.

SECTION 24 - HEADINGS.

The section and subsection headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 25 - NON-WAIVER.

Any waiver of any breach of covenants herein contained shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the waiving party from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

SECTION 26 - TIME OF ESSENCE.

Time is of the essence of this Agreement.

SECTION 27 - NOTICES.

Notices to City provided for herein shall be sufficient if sent by registered mail, postage prepaid, to:

Director of Airports
Salt Lake City Airport Authority
AMF Box 22084
Salt Lake City, Utah 84122

and notices to Concessionaire, if sent by registered mail, postage prepaid, addressed to:

Interwest Aviation
AMF Box 22063
Salt Lake City, Utah 84122

or to such other addresses as the parties may designate to each other in writing from time to time.

SECTION 28 - MERGER CLAUSE.

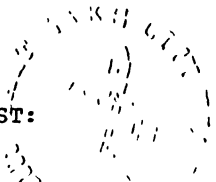
This Agreement constitutes the final and complete written expression of the agreement between the parties with respect to the Leased Premises. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of this Agreement shall be given no force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

SALT LAKE CITY CORPORATION

By 
MAYOR

ATTEST:



CITY RECORDER

INTERWEST AVIATION, INC.

By 
BOYD BROWN, President


BOYD BROWN, Individually

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 12th day of June, 197⁸⁰9, personally

appeared before me TED L. WILSON and MILDRED V. HIGHAM, who being by me duly sworn, did say that they are the MAYOR and CITY RECORDER, respectively, of SALT LAKE CITY CORPORATION, and said persons acknowledged to me that said corporation executed the same.

Katherine L. Boranick
NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

1-8-83

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 22nd day of May, 19~~79~~⁸⁰, personally-
appeared before me Boyd J. Brown, who being by me duly
sworn, did say that he is the President of INTERWEST
AVIATION, INC., a Utah corporation, and that the foregoing
instrument was signed in behalf of said corporation by authority
of a resolution (or bylaws) of its Board of Directors; and said
person acknowledged to me that said corporation executed the
same.

Thomas K. Lehmann, Jr.
NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

June 26, 1982



STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 22nd day of May, 19~~79~~⁸⁰, personally

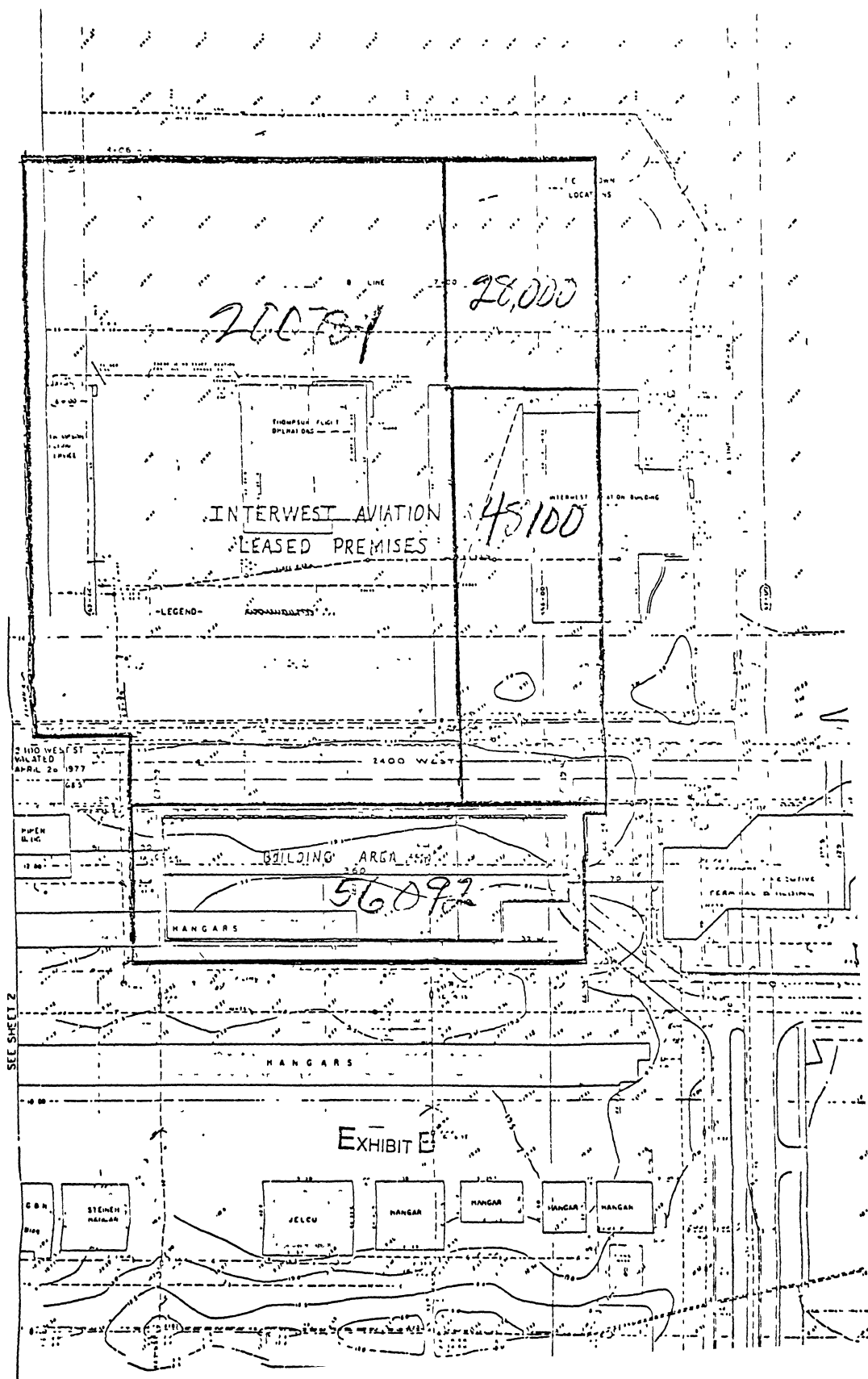
appeared before me BOYD BROWN, who being by me duly sworn did say
that he executed the foregoing instrument.

Thomas K. Lehman Jr
NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

June 26, 1982





ADDENDUM "B"

BEFORE THE UTAH STATE TAX COMMISSION

In the Matter of
KEY FLIGHT SERVICE

)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND DECISION

513

The above entitled matter came on for formal hearing before the Utah State Tax Commission on the 20th day of September, 1978, at the offices of the State Tax Commission, 201 State Office Building, Salt Lake City, Salt Lake County, State of Utah. Gifford W. Price, Esq., appeared for and in behalf of Salt Lake County, and Frank V. Nelson, Esq., appeared for and in behalf of the Utah State Attorney General's office. David L. Duncan, Chairman, and Vernon L. Holman, Eleanor Lee Brennan, and Douglas Sonntag, Commissioners were present.

Witnesses were sworn and testified, three exhibits ((1) list of leasehold improvements, (2) lease agreement, (3) Key Flight Service brochure) were entered as part of the evidence, and the following items were stipulated: (1) that Exhibit No. 1 contains a list of assessments which were assessed for the year in question and subject of this hearing, (2) that Exhibit No. 1 lists improvements to city owned real estate, (3) that Exhibit No. 2 is an accurate xerox copy of the agreement entered into between Salt Lake City Corporation and Johns - Manville, and that there is no need to tender the original, and (4) that Exhibit No. 3 contains a reasonable representation of the Key Flight Service operation and that the photographer need not identify the items contained therein.

Based upon said testimony, evidence, exhibits and stipulations, the Commission now makes and enters its:

FINDINGS OF FACT

1. Petitioner, Key Flight Service, is the Utah operation of the Key Transportation Division of Johns-Manville Corporation a Delaware corporation qualified to do business in the State of Utah at the Salt Lake International Airport.

2. Petitioner leases facilities at the Salt Lake International Airport from Salt Lake City Corporation, pursuant to a Lease Agreement entered into March 29, 1978, effective January 1, 1975.

3. Petitioner's lease includes a hangar, flight lounge area, office, a tie-down area and ramps. It was stipulated at hearing that all such facilities and leasehold improvements outlined in Petitioner's Exhibit No. 1 were owned by Salt Lake City Corporation.

4. Petitioner engages in a fixed base operation at the airport which provides general airport services for the general aviation public rather than for commercial aviation.

5. A general aviation service is operated for privately owned or corporate owned aircraft.

6. Petitioner occasionally provides fueling services for commercial aviation and provides fueling services, baggage services, passenger check-in, and aircraft cleaning for charter flights.

7. In general, Petitioner offers the following services at its fixed base operation: (1) fueling; (2) maintenance and minor repair; (3) car rentals; (4) motel reservations and accommodations; (5) pilot supplies; and (6) various assorted facilities for business and recreational use.

8. Petitioner is designated in its lease as a concessionaire, and as such, certain specific service requirements are imposed as affirmative duties. A portion of these duties

relate to maintenance and improvement of city owned facilities and require that any such activities will be controlled and approved by the lessor.

9. Further lease provisions outline specific requirements governing the types and extent to which services must be provided.

Based upon the foregoing findings of fact, the Commission now enters its:

CONCLUSIONS OF LAW

1. Utah Code Ann., 1953, §59-13-73, imposes a privilege tax upon the possession and use of tax exempt property. Expressly, included are businesses operated for profit using tax exempt property.

2. Utah Code Ann., 1953, §59-13-73, however, expressly grants an exception to parties using tax exempt property "by way of a concession in or relative to the use of a public airport, park, fairground, or similar property which is available as a matter of right to the use of the general public. . . ."

3. Petitioner's Lease Agreement characterizes Petitioner as a concessionaire and imposes numerous requirements, restrictions, and duties typically required of a concession.

4. Petitioner provides indispensable services which are not provided by Salt Lake City Corporation themselves.

5. The Lease Agreement stipulates that certain property is considered as personal property and can be removed at any time by Petitioners.

6. Leasehold improvements are not personal property and become part of the real property and subject to the ownership of the fee holder.

Based upon the foregoing conclusions, the Commission now makes and enters its:

DECISION

THEREFORE, It is the decision of the Utah State Tax Commission that the Petitioner is deemed a concession, under

contract with Salt Lake City Corporation, and is therefore, .
exempt from imposition of the privilege tax upon all city
owned property upon which its fixed based operation is based.

PETITIONER is hereby relieved from any privilege tax
imposed upon its fixed base operation.

Dated this 10th day of ^{April} March, 1979.

David L. Duncan
DAVID L. DUNCAN, Chairman

Douglas L. Sonntag
DOUGLAS SONNTAG, Commissioner

VERNON L. HOLMON, Commissioner

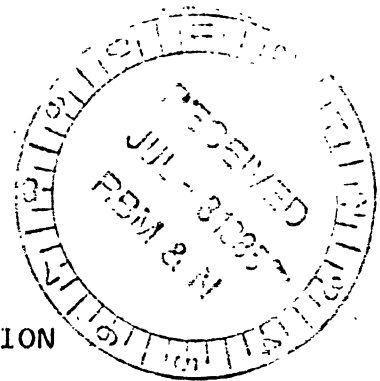
MAILING CERTIFICATE

I hereby certify that a copy of the foregoing Findings of Fact,
Conclusions of Law and Decision was mailed this 8th day of May, 1979 to:

Gifford Price
Attorney at Law
200 Kennecott Copper Bldg.
Salt Lake City, Utah 84133

Gifford Price
Secretary

ADDENDUM "C"



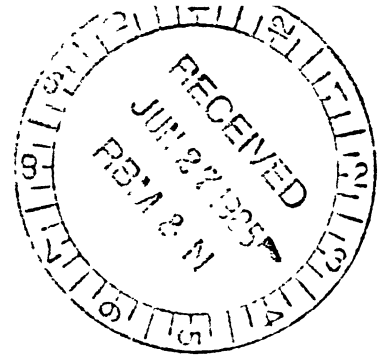
BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|---------------------------------|---|-------------------------|
| INTERWEST AVIATION, |) | AMENDED |
| EXECUTIVE AIR SERVICES, | : | DECISION OF |
| THOMPSON BEECHCRAFT, |) | FORMAL HEARING |
| INTERMOUNTAIN PIPER, | : | |
| |) | Appeal No. 82-18-1358 |
| | : | 82-18-1359 |
| Appellant, |) | 82-18-1360 |
| | : | 82-18-1361 |
| COUNTY BOARD OF EQUALIZATION OF |) | |
| SALT LAKE COUNTY, | : | Serial Nos. 11-9999-053 |
| STATE OF UTAH, |) | 11-9999-128 |
| | : | 11-9999-052-01 |
| Respondent. |) | 11-9999-054 |

STATEMENT OF FACTS

This is an appeal from an informal decision by the Utah State Tax Commission that was rendered on August 30, 1983 (August 31, 1983 for the Appellant, Intermountain Piper).

A formal hearing was held on February 29, 1984 at 2:00 p.m. in the offices of the Commission. Mark K. Buchi, Chairman, heard the matter as and for the Commission. Robert W. Brandt of Richards, Brandt, Miller & Nelson, appeared on behalf of the Appellants. Bill Thomas Peters, Special Deputy County Attorney for Salt Lake County, appeared on behalf of and representing the Board of Equalization, Salt Lake County, State of Utah.



BEFORE THE UTAH STATE TAX COMMISSION

4759-04

| | | |
|---------------------------------|---|-----------------------|
| INTERWEST AVIATION, |) | |
| EXECUTIVE AIR SERVICES, | : | |
| THOMPSON BEECHCRAFT, |) | |
| INTERMOUNTAIN PIPER, | : | DECISION OF |
| |) | FORMAL HEARING |
| | : | |
| Appellant, |) | Appeal No. 82-18-1358 |
| | : | 82-18-1359 |
| COUNTY BOARD OF EQUALIZATION OF |) | 82-18-1360 |
| SALT LAKE COUNTY, | : | 82-18-1361 |
| STATE OF UTAH, |) | |
| | : | |
| Respondent, |) | |

STATEMENT OF FACTS

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STATEMENT OF POSITIONS

The tax year in question is 1982.

The parties have stipulated and agreed that the Appellants are "concessionaries" under Utah Code Ann. § 59-13-73 (1953, as amended) for the purpose of exempting from privilege taxes certain Salt Lake County real property leased to the Appellants.

The parties have not stipulated whether the improvements constructed by the Appellants on the exempt property likewise qualify for exemption treatment under Utah Code Ann. § 59-13-73 (1953, as amended), the issue being whether or not Salt Lake County "owns" these improvements. If the County owns the improvements, the improvements are then exempt from privilege taxes under § 59-13-73 (1953, as amended).

Salt Lake County has the authority to assess ad valorem property taxes on any improvements that have been built on exempt real property when those improvements are owned and used by a non-exempt person or entity. If the Appellants are found to own the improvements, an exemption from ad valorem taxes would be denied.

The Appellants would characterize the nature of their long-term contracts with the County and property ownership as follows: (1) County ownership of the leased real property for which rental payments are currently made, and (2) County

ownership of the improvements for which a prepaid, lump-sum rental payment was made by the Appellants in the form of property construction costs incurred solely by the Appellants.

The County would characterize the nature of its long-term contracts with the Appellants and property ownership as follows: (1) County ownership of the leased real property for which rental payments are currently made, and (2) Ownership by the Appellants in the improvements for which no rental payments are made, but for which the length of the lease was negotiated to be of sufficient length to enable the Appellants' full recovery of their investments in constructing the improvements.

FINDINGS OF FACT AND RELEVANT LAW

1. The incidence of ownership rights in the leasehold improvements is restricted by provisions in the lease agreements. The restrictions serve legitimate needs apart from limiting ownership interests.

2. Privately owned improvements located on leased public property may be restricted without the loss of taxable ownership. See Salt Lake County v. Tax Commission, ex. rel. Greater Salt Lake Recreational Facilities, 596 P.2d 641 (Utah 1979); Great Salt Lake Minerals & Chemicals Corp. v. State Tax Commission, 573 P.2d 337 (Utah 1977).

3. When a government entity unnecessarily restricts the property beyond that which is necessary to adequately

administer the property, it exceeds the legitimate government interests and such action would be construed as incidents of ownership. Gebhardt v. City of West Allis; 278 N.W.2d 465 (Wisc. 1979). See Salt Lake County v. Tax Commission, ex. rel. Greater Salt Lake Recreational Facilities, 596 P.2d 641 (Utah 1979); Great Salt Lake Minerals & Chemicals Corp. v. State Tax Commission, 573 P 2d 337 (Utah 1977).

4. The Appellants do not pay rents to the County on the improvements.

5. The Appellants are able to expense or amortize the costs of these improvements over the lives of their capital leases, thus recouping their investments.

6 The negotiations for the leases took into account the economic effects associated with surrendering the improvements to the County at the end of the lease terms, and

7. The risks of loss of the improvements are primarily born by the Appellants.

8. The improvements become County property upon termination of the lease.

CONCLUSION

The ownership of improvements has not passed to the county, therefore, the improvements do not have tax exempt status. Therefore, The Salt Lake County Board of Equalization

Appeal No. 82-18-1358

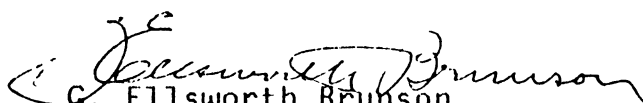
action is affirmed, and the Appeal is denied. The appropriate County officials will be so notified.

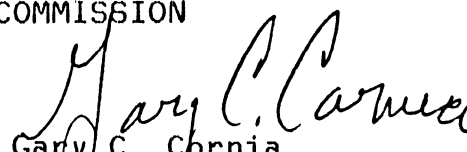
DATED this 21st day of June, 1985.

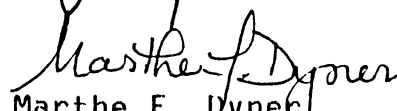
BY ORDER OF THE UTAH STATE TAX COMMISSION

ABSENT

Mark K. Buchi
Chairman


G. Ellsworth Brunson
Commissioner


Gary C. Cornia
Commissioner


Marthe F. Dyner
Commissioner

kml/kml/1039w

kml/kml/1039w