NHR
4/30/15
Item No. 19B

AN ORDINANCE 2015-04-30-0350

CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF A LEASE AGREEMENT FROM SAN ANTONIO AVIATION, INC. TO IMPERIAL AVIATION, LLC AND AUTHORIZING A LEASE AMENDMENT FOR SPACE AT STINSON MUNICIPAL AIRPORT.

* * * * * *

WHEREAS, pursuant to Ordinance No. 2006-06-29-0783 dated June 29, 2006, a Lease Agreement was executed on July 24, 2006 between the City and San Antonio Aviation, Inc. for lease of 128,125 square feet of ground space/preferential use ramp space, 21,222 square feet of hangar space, 6,610 square feet of office/hangar space, and 9,320 square feet of parking area, at Stinson Municipal Airport (the "Original Lease"), for a ten year term; and

WHEREAS, San Antonio Aviation, Inc. has requested the City's consent to the assignment to and assumption by Imperial Aviation, LLC, as assignee, of the rights and obligations under the Original Lease; and

WHEREAS, the Original Lease is being amended to add Suite 108, consisting of 1,477 square feet and Suite 109, consisting of 504 square feet within the Stinson Terminal Building; providing the lessee with a right of first refusal to lease Hangar 4; extending the lease term until January 31, 2024; and providing a five year renewal option, and which if exercised, will extend the lease term until January 31, 2029; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Consent is hereby granted to the Assignment and Assumption of the Original Lease from San Antonio Aviation, Inc. to Imperial Aviation, LLC. The City Manager or her designee is authorized to execute the Assignment and Assumption Agreement, a copy of which is set out in **Exhibit 1.**

SECTION 2. The City Manager or her designee is authorized to execute the First Amendment of Lease with Imperial Aviation, LLC, a copy of which is set out in **Exhibit 2**.

SECTION 3. Funds generated by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000014 and General Ledger 4405400.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 30th day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**19B (in consent vote: 6, 7, 8, 9, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 17, 18, 19A, 19B, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30)**
Date:	04/30/2015
Time:	11:00:22 AM
Vote Type:	Motion to Approve
Description:	An Ordinance consenting to the assignment and assumption agreement between San Antonio Aviation, LLC and Imperial Aviation, LLC and authorizing an amendment to the agreement for the rental of 1,981 square feet of office space within the Terminal Building and extension of the term to January 31, 2024 with an option of a five-year extension which will generate $25,178.51 in annual rental.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x			x	

EXHIBIT 1

ASSIGNMENT AND ASSUMPTION AGREEMENT WITH LANDLORD CONSENT

This Assignment and Assumption Agreement (this "Agreement") is entered into to be effective as of May 1, 2015 (the "Effective Date"), which date is preceded by the Closing Date of April 30, 2015 for closing and funding of the "Transaction" further described in Recital B below, between San Antonio Aviation, Inc., a Texas corporation (hereinafter called "Assignor"), and Imperial Aviation, LLC, dba Gateone, a Texas Limited Liability Company (hereinafter called "Assignee"), and consented to by the City of San Antonio, a Texas Municipal Corporation (hereafter called "City"), acting by and through its City Manager pursuant to Ordinance Number _____, passed and approved by the San Antonio City Council on _____.

WITNESSETH

A. WHEREAS, a municipal airport lease agreement ("Lease Agreement") was executed on July 24, 2006 between the City and Assignor pursuant to Ordinance No. 2006-06-29-0783 dated June 29, 2006; and

B. WHEREAS, Assignee has agreed to purchase from Assignor, and Assignor has agreed to sell to Assignee, certain of Assignor's assets (the "Transaction" known between Assignor and Assignee as the "Asset Purchase Agreement"); and

C. WHEREAS, San Antonio Aviation, Inc. ("Assignor") has requested the City's consent to the assignment of Assignor's rights and obligations under the Lease Agreement to Imperial Aviation, LLC, dba Gateone ("Assignee"); and

D. WHEREAS, the City is willing to consent to this request of Assignor to assign its rights under the Lease Agreement, as amended by the First Amendment of Lease executed by Assignee simultaneously to this Assignment and Assumption Agreement, to Assignee, which consent shall become null and void if the closing and funding of the Transaction ("Asset Purchase Agreement") does not occur immediately following consent to this Assignment by the San Antonio City Council;

NOW THEREFORE, in consideration of the terms, covenants and promises, agreements, and demises herein contained, and for other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby conveys, transfers, and assigns and delivers to Assignee and its successors and assigns all of Assignor's rights, title, and interest in and to the Lease Agreement, as amended, effective as hereinafter set forth.

2. In consideration therefore, Assignee hereby accepts, assumes, takes over, and succeeds to all of the Assignor's rights, duties, interests, liabilities, and obligations under the Lease Agreement, as amended. Assignee agrees to indemnify and hold harmless the City with respect to any and all such duties, liabilities, or obligations.

3. Assignor warrants to Assignee that it is not in material breach of the Lease Agreement and hereby agrees for itself and its successors and assigns to indemnify and hold harmless Assignee from any loss, damage, environmental

damage, claim, cost, or expense arising from the failure of Assignor or its successors or assigns to perform any of the terms, conditions, covenants, and obligations of the Lease Agreement, provided such indemnity shall apply only to failure accruing prior to the Effective Date of this Agreement.

4. The City consents to the assignment of the rights and obligations of San Antonio Aviation, Inc., Assignor, to Imperial Aviation, LLC, dba Gateone, Assignee, which consent shall be null and void if the closing and funding of the Transaction does not occur after this Agreement is consented to by City Council.

5. The Effective Date of this Agreement shall be May 1, 2015.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Agreement as of the Effective Date.

EXECUTED the _____ day of _____, 2015

ASSIGNOR:

SAN ANTONIO AVIATION, INC., a Texas corporation

By: John R. Bean
Name: John R. Bean
Title: President

ASSIGNEE:

IMPERIAL AVIATION, LLC, dba Gateone, a Texas Limited Liability Company

By: _____
Thomas Mathew, Manager

CONSENT GRANTED: City of San Antonio

By: _____
Name: _____
Title: _____

_____
Date Approved

APPROVED:

_____
City Attorney

EXHIBIT 2

STINSON MUNICIPAL AIRPORT
FIRST AMENDMENT OF LEASE

THIS FIRST AMENDMENT OF LEASE ("First Amendment") is entered into by and between Imperial Aviation, LLC dba Gateone ("Lessee"), a Texas Limited Liability Company, acting by and through its Manager, which Lessee is assignee of San Antonio Aviation, Inc.; and the **City of San Antonio** ("City" or "Lessor") acting by and through its City Manager pursuant to Ordinance No._____ passed and approved on _____, which First Amendment is set forth as follows:

WHEREAS, City and San Antonio Aviation, Inc. entered into that certain Stinson Municipal Airport Lease on July 24, 2006, pursuant to Ordinance No. 2006-06-29-0783 dated June 29, 2006 (hereinafter the "Lease); and

WHEREAS, San Antonio Aviation, Inc. and Lessee have requested City's approval of an Assignment and Assumption of the Lease; and

WHEREAS, Lessee and City have agreed to amend the Lease to provide an option to Lessee to extend the term of the Lease and to modify other provisions of the Lease as set forth herein;

NOW THEREFORE: in consideration of the terms, covenants and promises, agreements and demises herein contained, and for other good and valuable consideration, each to the other given, the receipt and sufficiency of which is hereby acknowledged, Lessee and City agree:

I. The following Articles, Sections, and Exhibits of the Lease Agreement are modified as set forth herein.

1. **Article I, Description of Premises Demised** is modified to add a new Subsection 1.1.5, a new Section 1.2, and a new **Exhibit 1** as follows:

1.1.5 Stinson Terminal Building: Suite 108, consisting of 1,477 square feet, and Suite 109, consisting of 504 square feet within the Stinson Terminal Building, as more particularly described on the attached **Exhibits 1-B**.

1.2 Lessee Right of First Refusal – Hangar 4. Upon payment by Lessee to City of the amount of TWO HUNDRED AND ZERO/HUNDRED DOLLARS ($200.00) ("First Refusal Fee"), which payment shall be tendered no later than the Effective Date of this First Amendment, Lessee shall have the right ("Right of First Refusal") to lease Hangar 4, including parking and ground space area, for the remainder of the term of this Lease, as more particularly described in the attached **Exhibit 1-C**. Lessee's Right of First Refusal shall terminate no later than one year from the Effective Date of this Amendment ("First Refusal Period"), and shall require City to present to Lessee all bona fide offers received from third parties during the first eleven (11) months of the First Refusal Period to lease Hangar 4. During the First Refusal Period, Lessee shall be required to notify City in writing of its election either to lease or not to lease Hangar 4 no later than ten (10) days from the date of City's notification to Lessee that it has received any such bona fide offers, or, in any event, no later than twenty (20) days prior to expiration of the First

Refusal Period. In the event Lessee elects to lease Hangar 4, rental for Hangar 4 shall be the then current market rate per square foot per appraisal, which rental rate shall increase fifteen percent (15%) every five years during the remaining term of this Lease. It is understood and agreed that the First Refusal Fee is consideration for Lessor's granting Lessee the Right of First Refusal, and is non-refundable; however, in the event Lessee exercises the Right of First Refusal, the First Refusal Fee may be credited to rent owed by Lessee for Hangar 4. Lessee may exercise the Right of First Refusal during the First Refusal Period regardless of whether City receives any bona fide offers from third parties to lease Hangar 4. In the event Lessee exercises the Right of First Refusal, the Aviation Director is authorized to execute an Administrative Amendment to the Lease in accordance with the terms and conditions set forth in this Section 1.2.

Exhibit 1 of the Lease Agreement is deleted in its entirety, and a new **Exhibit 1**, consisting of **Exhibits 1-A, 1-B, and 1-C** is substituted in its place.

The remainder of Article I shall remain unchanged.

2. **Article II, Rental, Section 2.1** is modified to add a new Subsection 2.1 (C) to read as follows:

C. Beginning thirty (30) days after the Effective Date of this First Amendment, or, in the event the Effective Date of this First Amendment occurs on a day other than the first day of a month, then on the first day of the second full month following the Effective Date, in order to provide Lessee an initial rent-free period for renovations to the Stinson Terminal Building space, the Rental Rates for Stinson Terminal Building, Suites 108 and 109, shall be as follows:

Leased Premises Suites 108 & 109	Sq. Ft.	Annual Rate per square foot	Annual Rental	Monthly Rental
Suite 108	1,477	$11.00	$16,247.00	$1,353.92
Suite 108 CAM	1,477	$ 1.71*	$2,525.67	$210.47
Suite 109	504	$11.00	$5,544.00	$462.00
Suite 109 CAM	504	$ 1.71*	$861.84	$71.82
TOTAL RENTAL (Suites 108 and 109)			$25,178.51	$ 2,098.21

*The Common Area Maintenance Fee is subject to adjustment as set out herein. The Common Area Maintenance Fee is initially set at $1.71 per square foot per year but is subject to adjustment each October 1st. Notwithstanding the foregoing, in no event shall the Common Area Maintenance fee exceed twenty-five percent (25%) of the monthly rental rate.

3. **Article II, Rental, Section 2.4** is deleted in its entirety, and the following inserted in its place:

2.4 Rentals for the Premises set forth in **Subsections 2.1(A) and (B)** of the Lease Agreement shall be subject to the adjustments in rental rates contained in Standard Provision 1, 1.1 Economic Adjustment, of the Standard Provisions attached hereto as Exhibit 2. Rental for the Premises set forth in **Subsection 2.1(C)** above shall be subject to the adjustments in rental rates contained in Standard Provision 1, 1.2 Appraisal Adjustment, which appraisal process shall be conducted every five (5) years, commencing in 2020.

The remainder of Article II shall remain unchanged.

4. **Article III, Lease Term** of the Lease is deleted in its entirety, and the following inserted in its place:

3.1 The term of this Lease Agreement commenced ten (10) days following the passage of the ordinance by the City Council approving such action and authorizing the execution of this Lease Agreement, that is, July 9, 2009 ("Commencement Date"). This Lease Agreement shall terminate at midnight January 31, 2024 unless sooner terminated in accordance with the provisions of this Lease Agreement. Notwithstanding the foregoing, upon Lessee's providing 90 days written notice to Lessor, which notice shall be provided to Lessor no later than October 31, 2023, Lessee may exercise an option to extend the lease term for an additional five (5) years, commencing on February 1, 2024, and terminating on January 31, 2029.

3.2 The Lease Term and subsequent renewals, if any, will at all times be subject to the provisions for recapture and/or early termination herein contained.

5. **Article IV, Use of the Premises** is deleted in its entirety, and the following inserted in its place:

4.1 Lessee shall use the Leased Premises for the following purposes and for no other: sale of aircraft, aircraft parts, and pilot supplies; aircraft maintenance, storage, aircraft rental and charter; flight instruction; fuel and oil dispensing services; except for Stinson Terminal Building Suites 108 and 109, which are limited to office use only, in relation to Lessee's aviation-related operations; and/or such other aviation related purposes as approved in writing by the Aviation Director.

6. **Article VII, Performance Guarantee, Section 7.1** of the Lease is deleted in its entirety, and the following inserted in its place:

> 7.1 Lessee shall deliver to the Director on or before the execution of this Lease Agreement and shall keep in force throughout the term hereof either an Irrevocable Letter of Credit in favor of Lessor drawn upon a bank satisfactory to Lessor or a Surety Bond payable to Lessor. The foregoing shall be in form and content satisfactory to Lessor, shall be conditioned on the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the Irrevocable Letter of Credit or Surety Bond to be delivered by Lessee to the Director shall be not less than THIRTY-NINE THOUSAND ONE HUNDRED THIRTY-SIX AND TWENTY/ONE HUNDRED DOLLARS ($39,136.20). The amount of the Irrevocable Letter of Credit or Surety Bond shall be adjusted as necessary so that such amount shall at all times equal at least one-half (1/2) of the total annual rental payable by Lessee to Lessor hereunder.

6. **Exhibit No. 2, Standard Provisions, Provision 17, *Default and Remedies*,** is hereby modified to add the following to Subsection 17.1:

> J. An event of default on the part of Lessee occurs under that certain Lease Agreement assigned to and assumed by Lessee, dated July 1, 2004, authorized pursuant to Ordinance No. 99269 dated June 3, 2004, which Lease Agreement was originally by and between Check-Six Aviation, Inc. and City.

The remainder of Provision 17 shall remain unchanged.

II. This First Amendment sets forth the entire agreement between the parties regarding the subject matter hereof. Unless modified herein, the terms and conditions of the Lease, as amended by this First Amendment, remain in full force and effect.

III. The First Amendment shall be effective upon passage of an Ordinance authorizing this First Amendment and consenting to assignment and assumption by Lessee of the Lease, as amended ("Effective Date").

IV. This First Amendment is executed in multiple counterparts each of which contains all required original signatures and shall be considered an original on its own.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed this First Amendment of Lease as of the dates set forth below.

CITY OF SAN ANTONIO
A Texas home-rule municipality

By:_____
Sheryl Sculley, City Manager

Date:_____

Approved as to form:

_____
City Attorney

IMPERIAL AVIATION, LLC
dba Gateone

By:_____
Thomas Mathew, Manager

Date:_____

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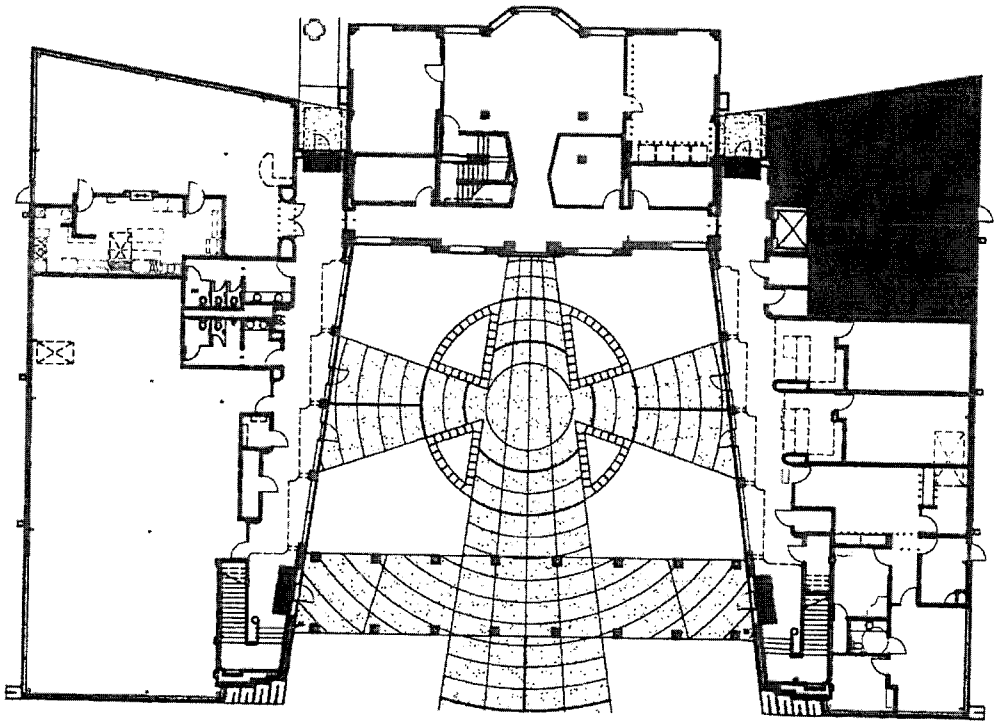

SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
STINSON MUNICIPAL AIRPORT
9800 AIRPORT BLVD., SAN ANTONIO TX 78216

ARRIVAL LEVEL

Mar 13, 2015

OVERALL FLOOR PLAN

EXHIBIT 1-B, PAGE 1/3
for premised lease to
IMPERIAL AVIATION
dba GATEONE
at
STINSON
MUNICIPAL AIRPORT
LEASE No. _____

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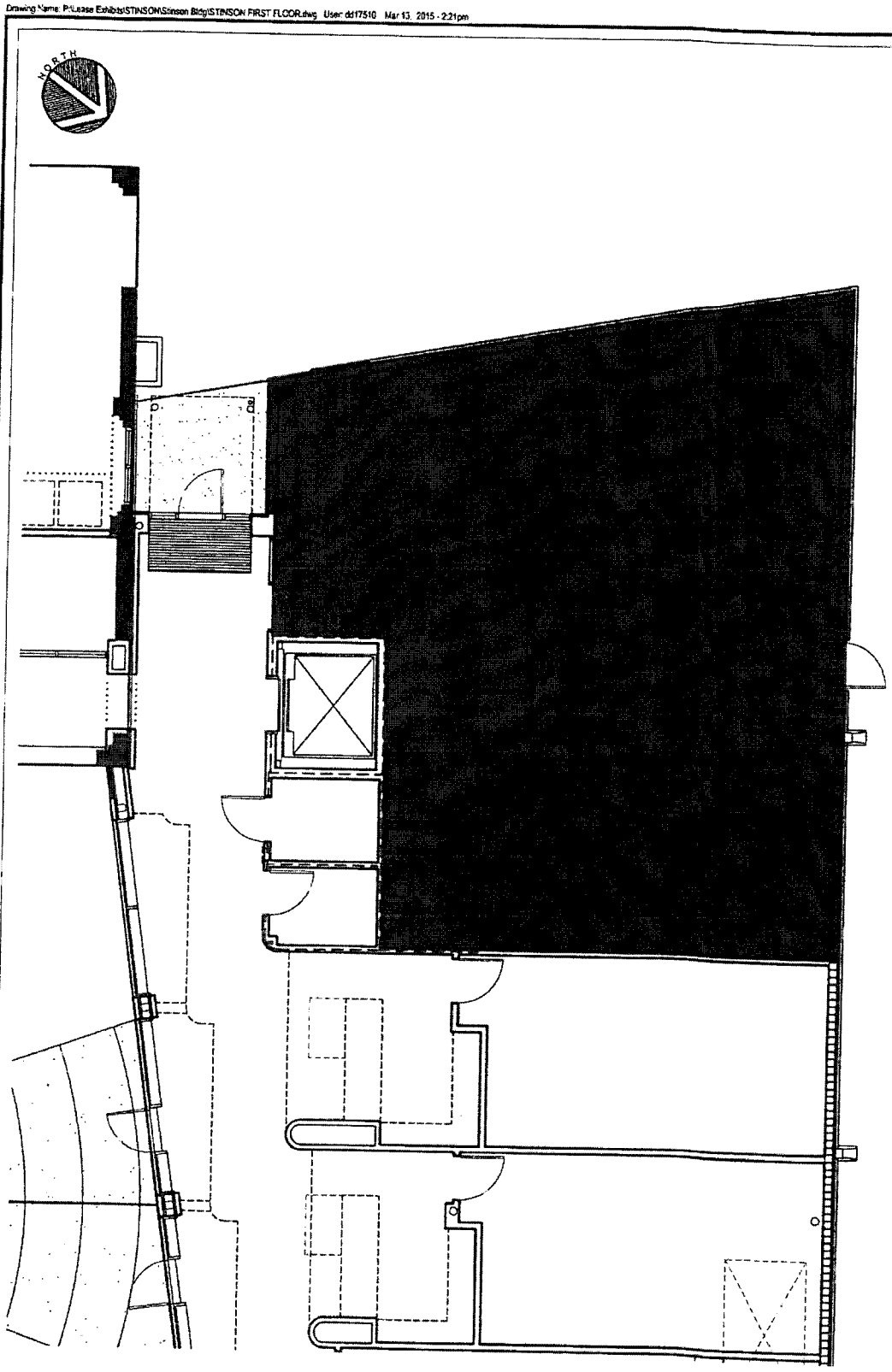

SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
STINSON MUNICIPAL AIRPORT
9800 AIRPORT BLVD., SAN ANTONIO, TX 78216

ARRIVAL LEVEL

Mar 13, 2015

SUITE 108
TOTAL LEASE AREA :1,477 SQ.FT.

EXHIBIT 1-b PAGE 2/3
for premised lease to
IMPERIAL AVIATION
dba GATEONE
at
STINSON
MUNICIPAL AIRPORT
LEASE No. _____

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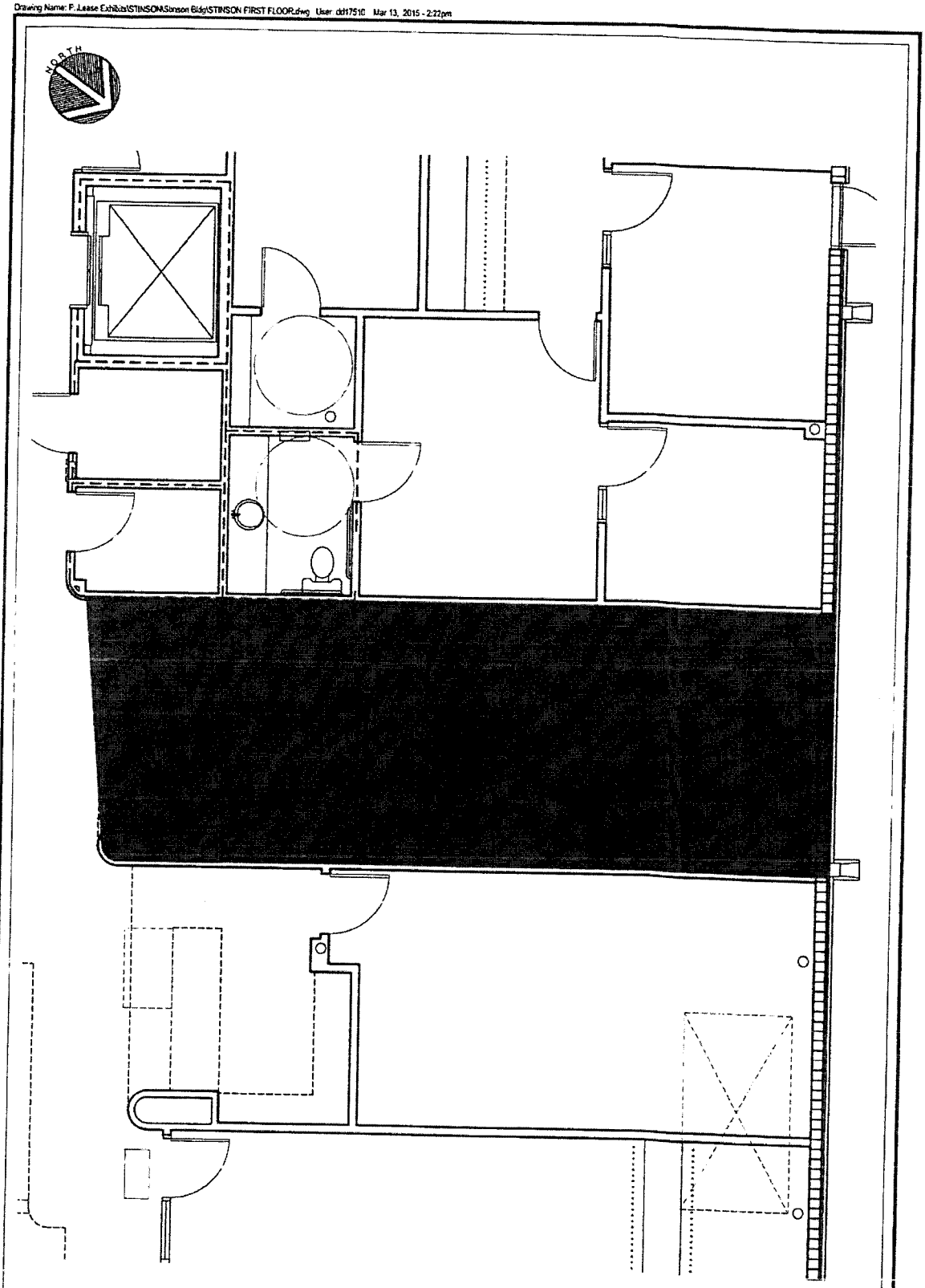


SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
STINSON MUNICIPAL AIRPORT
9800 AIRPORT BLVD., SAN ANTONIO, TX 78216

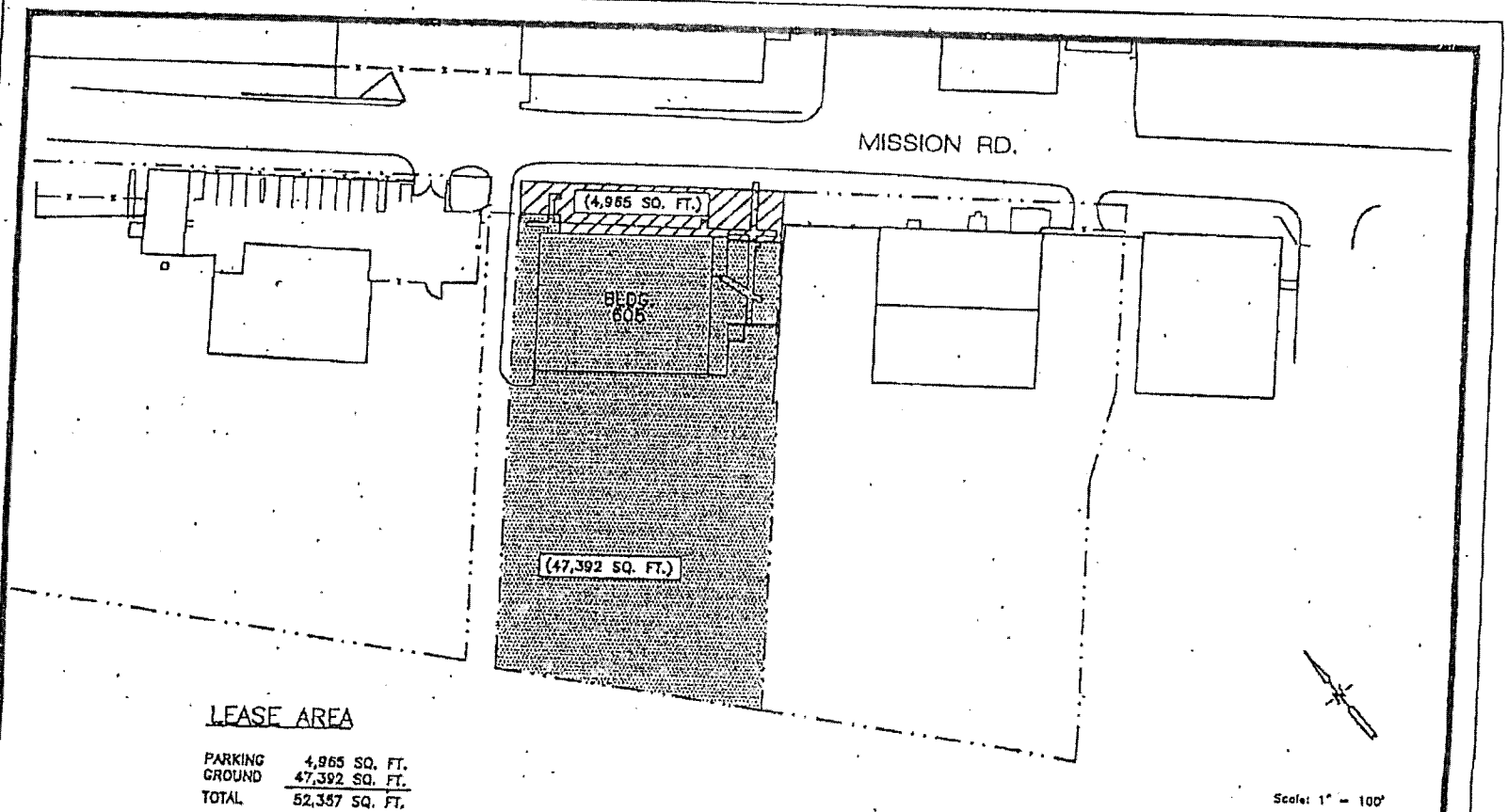
ARRIVAL LEVEL

Mar 13, 2015

SUITE 109
TOTAL LEASE AREA :504 SQ.FT.

EXHIBIT 1-B PAGE 3/3
for premised lease to
IMPERIAL AVIATION
dba GATEONE
at
STINSON
MUNICIPAL AIRPORT
LEASE No. _____

COSA AVIATION PLANNING & ENGINEERING



LEASE AREA

PARKING	4,965 SQ. FT.
GROUND	47,392 SQ. FT.
TOTAL	52,357 SQ. FT.

Scale: 1" = 100'

EXHIBIT 1-C
for premises leased to

at
STINSON
MUNICIPAL AIRPORT
LEASE No. _____

STINSON MUNICIPAL AIRPORT
HANGAR 4

DIMENSIONS, CONFIGURATION AND AREA SUBJECT TO FINAL SURVEY RESULTS