


# THE CITY OF SAN DIEGO

## Lease Agreement

## Between

## THE CITY OF SAN DIEGO

## And

## MYF HOLDINGS, LLC

**CITY OF SAN DIEGO**
**MONTH-TO-MONTH FLAT RATE LEASE**

THIS MONTH-TO-MONTH FLAT RATE LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and MYF HOLDINGS, LLC, a Delaware limited liability company, hereinafter called "LESSEE.", to be effective when signed by the parties and approved by the San Diego City Attorney.

RECITALS

**WHEREAS**, LESSEE leases that certain real property situated at Montgomery-Gibbs Executive Airport (the "Airport") in the City of San Diego, County of San Diego, State of California, consisting of approximately 16 acres in accordance with that certain City of San Diego Flat Rate Lease, on file with the San Diego City Clerk as Document No. RR-310431, assigned to LESSEE pursuant to that certain Consent to Assignment, dated November 22, 2016 (collectively the "Existing Lease"); and

**WHEREAS**, LESSEE is redeveloping the leasehold as further set forth in the Existing Lease and desires the use of ramp space in the transient parking area for aircraft parking during the construction, as further set forth herein.

**NOW THEREFORE**, for valuable consideration, the sufficiency of which is acknowledged, LESSEE agrees to the following:

**SECTION 1: USES**

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated at the Airport in the City of San Diego, County of San Diego, State of California, consisting of approximately 27,375 square feet of land ("Premises"), more particularly depicted on **Exhibit "A"** as "Premises."

1.2 Uses.

The Premises is leased to LESSEE solely for the purposes of storage of aircraft and for such other related or incidental purposes, as may be first approved in writing by the CITY and for no other purpose.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purpose and to diligently pursue said purpose throughout the Term hereof.

Failure to continuously use the Premises for said purpose, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

Further, LESSEE and its officers, employees, contractors, agents, and all others operating through LESSEE shall conform to the FAA covenants and reservation of rights set forth in **"Exhibit B"** attached hereto and by this reference made part of this Lease.

1.3 Related Council Actions.

By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezoning's, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the Term (defined below) peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the Term, or if during the Term, LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

1.5 Easements and Reservations.

a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE's use of the Premises and will reimburse LESSEE for physical damages caused by CITY, if any, to LESSEE's personal property located on the Premises, resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage, as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management.

Throughout the Term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the CITY. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an aircraft maintenance and repair services business in a fiscally responsible manner.

1.7 Political Activities.

The Premises shall be used exclusively for the purpose specified in Section 1.2, Uses, hereof. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events, subject to LESSEE's compliance with all applicable laws.

**SECTION 2: TERM**

2.1 Commencement.

The term of this Lease shall be month-to-month, for a period not to exceed three (3) years ("Term"), commencing on the Effective Date. This Lease may be terminated by either party, without the necessity of cause, by one party serving the other party with a written notice of termination, sent by U.S. First Class Mail, at least 30-days prior to the date of termination. Provided that LESSEE is not in default of any condition of this Lease, if CITY provides a notice of termination to LESSEE during a semester that LESSEE is currently providing instruction at the Premises, upon written request of LESSEE, the Lease shall not terminate until 30-days after the last day of class. The LESSEE shall provide such written notice to CITY within ten (10) days of the date of a notice of termination from CITY, and such notice shall include the final date of classes for the current semester. Notwithstanding the foregoing, in no event shall LESSEE remain on the Premises longer than 150 days from the receipt of the initial 30-day notice of termination.

2.2 Surrender of Premises.

Prior to the effective date of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, a valid and recordable quitclaim deed covering all of the Premises to hold until the termination of this Lease. The quitclaim deed shall provide that the Premises shall be delivered to CITY free and clear of all liens, encumbrances, and personal property, and in a decent, safe, and sanitary condition.

**SECTION 3: RENT**

3.1 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to:

City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:
The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

a. Rent Amount. The total initial monthly flat- rate rent is One Thousand Two Hundred Forty-Two Dollars($1,242.00) per month. Said rent is subject to annual adjustments as described below.

b. CPI Index Adjustments. On each anniversary of the Effective Date, the monthly rent shall be increased by the percentage increase, if any, in the CPI. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date. CPI adjustments shall occur annually, beginning at the end of the first year following the Effective Date of the Lease and every year thereafter during the Term, rent shall be adjusted to reflect any increases in the Consumer Price Index.

The index used will be the CPI for ("All Urban Consumers") for Los Angeles, Riverside, Orange County (1982-84 = 100) of the U.S. Department

of Labor, Bureau of Labor Statistics. If the above index is no longer published, the index for adjustment will be the U.S. Department of the Labor's "Comprehensive Official Index" most comparable to the aforesaid index. In the event that such indices are no longer published, then another comparable index or source of such information generally recognized as authoritative will be substituted, at CITY's reasonable discretion.

Regardless of the index publication dates, the effective dates of rent adjustments shall be as specified in this Section. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the then existing rental rate. When the adjustment is determined, the balance of rent due at the adjusted rate will be paid to CITY within thirty (30) days.

c. Index Adjustment Computation. The rent for each monthly rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure," as defined herein:

The "current index" shall be an average of CPI index figures for the fourth, fifth and sixth months immediately preceding the adjustment date.

The "base figure" for the first such adjustment shall be an average of the CPI index figures for the fourth, fifth and sixth months immediately preceding the Effective Date.

To illustrate, if the figure for the average of the CPI index figures for the fourth, fifth and sixth months immediately preceding the Effective Date was 110, then 110 would be the "base figure" for the first CPI adjustment (Example 1).

The "current index" shall be the index figure for the fourth, fifth and sixth months immediately preceding the adjustment date. For instance, if the rent adjustment date is November 1, 2016, we would use the index figure that are the average of CPI index figures for the fourth, fifth and sixth months immediately preceding the November 1, 2016, and if the average index were 121, the "current index" for the adjustment would be 121, as shown in Example 1 below:

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121
Base Figure 110 = 1.10 (Adjustment Figure)
Effective Rent x 1.10 = Adjustment Rent

Example 2

Current Index 138
Base Figure 121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjustment Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now $1,000 per month, after the first adjustment it will be $1,100 per month($1,000 x 1.10). In the second adjustment it will be $1,254 per month ($1,100 x 1.14).

3.3 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars ($25). In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

3.4 Security Deposit

A security deposit shall be paid to the City by LESSEE in the sum of Three Thousand Seven Hundred Twenty-Six Dollars ($3,726.00) (the "Security Deposit") before the Effective Date of this Lease. All or any portion of the Security Deposit shall be available unconditionally to CITY for correcting any default or breach of this Lease by LESSEE or LESSEE's successors or assigns, or

for payment of expenses incurred by CITY as a result of LESSEEe's failure to faithfully perform all terms, covenants, and conditions of this Lease.

The security deposit shall take one of the forms set out below:

(a) Cash. All cash shall be deposited in a CITY fund, and CITY shall not be liable to LESSEE for any interest thereon. Provided further, any interest earned by CITY from such deposit or redeposit shall be and remain the property of CITY.

(b) Instrument(s) of Credit. An instrument(s) of credit from one or more financial institutions, subject to regulation and insurance by the state or federal government, shall pledge that the funds are on deposit and guaranteed for payment and agree that any or all funds shall be paid to CITY upon demand by CITY. The financial institution and the form of any instrument pledging the funds must be approved in advance by CITY.

LESSEE will maintain the required Security Deposit throughout the Term. Failure to do so shall be considered a default and is grounds for immediate termination of this Lease.

In the event CITY utilizes all or any portion of the Security Deposit as a result of LESSEE's default, LESSEE shall redeposit the Security Deposit with the CITY within ten (10) days of notice from CITY to bring the Security Deposit up to the full specified amount.

The Security Deposit or any balance thereof will be returned to LESSEE in compliance with California law following expiration or earlier termination of this Lease, provided LESSEE has faithfully complied with all terms, covenants, and conditions hereof or has cured any default under this Lease.

The Security Deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon sixty (60) days prior written notice from CITY of such required increase.

## SECTION 4: ASSIGNMENT

4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence for all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or

suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof. This Lease shall not, nor shall any interest therein, be assigned as to the interest of LESSEE by operation of law, without the written consent of the CITY.

"Assignment" for the purposes of this clause shall include any transfer of any interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals, to any other person or entity.

4.3 Encumbrance.

LESSEE shall not encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE.

4.4 Defaults and Remedies.

a. Default. Each of the following shall constitute an event of default under this Lease:

(1) LESSEE'S failure to make any payment required under this Lease when due, if the failure continues for five (5) calendar days past due following written notice of the failure by CITY; or

(2) Other than the payment of rent, LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE sand shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or

(3) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

(4) LESSEE shall be adjudicated a bankrupt; or

(5) LESSEE shall make a general assignment for the benefit of creditors;

(6) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies. Upon LESSEE'S default, City may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required

payments, or (2) a "Notice of Termination" for defaults not requiring payment to City, in order that City may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, City may enter and take possession of the Premises, and may recover from LESSEE the sum of:

(1) the worth at the time of any unpaid rent that was due at the time of termination;

(2) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;

(3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;

(4) any other amount necessary to compensate City for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and

(5) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (1) and (2), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (3), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by CITY in order to constitute a valid and binding waiver. CITY's delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same

default or for another or later default. CITY's acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by CITY to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

4.5 Eminent Domain.

If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE will be as follows:

a. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken if the portion taken directly affects LESSEE's allowed operations, which determination shall be made by CITY in its reasonable discretion.

d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in the Premises. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain.

f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

**SECTION 5: INSURANCE RISKS/SECURITY**

5.1 Indemnity.

LESSEE agrees to defend, indemnify, protect, and hold CITY and its elected officials, officers employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's use, occupancy, management, development, maintenance, restoration, improvement, or operation of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of the CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.

5.2 Insurance.

LESSEE shall obtain and maintain throughout the Term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss.

a. LESSEE shall obtain and deliver to CITY's Airport Division current certificates of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

(1) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Ten Million Dollars ($10,000,000) per occurrence, subject to an annual aggregate of at least Twenty Million Dollars ($20,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

(2) Commercial Automobile Liability Insurance ("Auto"), if and when LESSEE uses vehicles on the Premises and/or in connection with LESSEE's use of the Premises, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least Ten Million Dollars ($10,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.

(3) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees, if any, who work on the Premises and/or in connection with LESSEE's use of the Premises, with employers' liability coverage with a limit of at least One Million Dollars ($1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

(4) Aircraft Liability Insurance, General Aircraft Operation Liability, in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence.

(5) Environmental Liability Insurance, providing coverage for gradual, sudden and accidental discharge or spill of pollutants including first party clean up and remediation of the Premises; wrongful delivery or misdelivery of fuel; loading and unloading of fuel to and from the Aboveground Storage Tank (AST) or Mobile Storage Tank (MST)

b. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations

performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.

c. Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.

d. Severability of Interest. Each CGL and Auto policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

e. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

f. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

g. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at

least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

h. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

i. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the allowed uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

j. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

5.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within forty eight (48) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of the occurrence of the damage, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may, in its sole discretion, determine an equitable deduction in the monthly rent requirement for such period or periods that said Premises are untenantable by reason of such damage if such damage is not directly or indirectly caused by LESSEE or LESSEE's operations on the Premises.

## SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any Hazardous Substances, as defined below.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the Term. LESSEE will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

6.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the CITY. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the CITY, and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair, restoration and/or replacement of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.5 Reserved

6.6 Liens.

LESSEE shall at all times hold CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, repairs or replacements are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

a. take all actions necessary to record a valid release of lien, or

b. file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that

this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within 24 hours' notice thereof by CITY or CITY may thereupon remove the item at LESSEE's cost.

6.9 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this Lease.

b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or sixty (60) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before Lease expiration or earlier termination. If LESSEE fails to remove any improvements, structures, and installations as directed by CITY, LESSEE agrees to pay CITY the full cost of any removal.

c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and, subject to applicable law, become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.

d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage.

e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination of this Lease shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.

f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rent as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

6.11 Hazardous Substance.

LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

a. Release. For purposes of this Lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.

b. Hazardous Substance. For purposes of this Lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

c. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance,

LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.

d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

e. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

6.12 Reserved

## SECTION 7: SAFETY MANAGEMENT SYSTEMS

7.1 Safety Management Systems Compliance.

Although the use of Safety Management Systems (SMS) are not required by the FAA as of the commencement of this Lease, it is anticipated that during the Term that the FAA will mandate SMS compliance for general aviation airports, which would include the AIRPORT. Because the use of SMS at airports can contribute to helping airports detect and correct safety problems before they result in aircraft accidents or incidents, and can contribute to efforts to adopt new measures therefor, LESSEE agrees that LESSEE will timely comply with, and respond to: (1) CITY's requirement that LESSEE conduct regular (and other as-needed) SMS-related inspections of the Premises and that LESSEE will compile and report said information in a form acceptable to the FAA and CITY; (2) all CITY

requests for SMS-related data; (3) the CITY's right to conduct SMS-related inspections of the Premises; (4) all other SMS-related requests made by CITY in its effort to implement a system-wide SMS and maintain an SMS Manual for the CITY's airport system or a part thereof; and (5) all FAA-mandated information, data, etc.. Information that may need to be compiled includes hazard reporting and tracking, data collection, safety risk assessment processes, and gap analyses. All SMS-related information, reports and documents provided by LESSEE shall be verified by LESSEE to be accurate and shall be provided without cost to CITY.

## SECTION 8: GENERAL PROVISIONS

8.1 Notices.

a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

CITY:
Airports Deputy Director
Montgomery-Gibbs Executive Airport Terminal Building
3750 John J Montgomery Dr.
San Diego, CA 92123

LESSEE:

MYF Holdings, Inc.
Attn: David S. Ryan
3753 John J. Montgomery Drive
San Diego, CA 92123

8.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by CITY or other appropriate authority, under the authority of any such law, statute, ordinance, or regulation.

8.3 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor, or his designee, unless otherwise specified or required by law, without need for further resolution by the City Council.

8.4 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

8.5 Compliance with CITY's Equal Opportunity Contracting Program.

a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY's Equal Opportunity Contracting Program staff.

b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease agreement

from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

8.6 Equal Benefits.

LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

8.7 Equal Pay Ordinance.

Unless an exception applies, LESSEE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

a. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE will require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

b. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

8.8 Survival.

Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.

8.9 Joint and Several Liability.

If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.

8.10 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

8.10 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural when the tense requires.

8.11 Captions.

The section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is not intentional and shall have no effect on the enforceability of this Lease.

8.12 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

8.13 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace.

(2) The LESSEE's policy of maintaining a drug-free workplace.

(3) Any available drug counseling rehabilitation, and employees assistance programs

(4) The penalties that may be imposed upon employees' for drug abuse violations.

c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

8.14 Accessibility Compliance.

LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable local, state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, Lessee will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE'S compliance shall include without limitation the following:

a. LESSEE shall not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.

c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

d. Where required by law, any improvements, fixtures, structures, or installations on the Premises shall comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations shall be at the sole cost of LESSEE.

e. LESSEE shall include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this Section 8.14. LESSEE and each of its sublessees shall be individually responsible for their own ADA employment programs.

f. LESSEE failure to comply with the accessibility requirements of this Section 8.14 or submitting false information in response to these accessibility requirements, or both, shall constitute a default of this Lease.

8.15 Accessibility Assessment.

In accordance with California Civil Code section 1938, CITY hereby states that neither the Premises nor the AIRPORT have been inspected by a certified Access Specialist (CAS).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

8.16 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.

8.17 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

8.18 Water Quality – Best Management Practices

The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and

Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum implement and comply, as applicable, with the Minimum Industrial Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

8.19 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its Mayor, and by LESSEE, acting through its legally authorized representative.

**THE CITY OF SAN DIEGO**, a California municipal corporation

Date 12/19/18

By _____
Cybele L. Thompson
Director, Real Estate Assets Department

**MYF HOLDINGS LLC, a Delaware limited liability company**

Date Dec 13 2018

By _____
Ray Richmond
General Manager

*Environmental Analysis Section Environmental Clearance:*

This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

Date: 12/18/18

By: _____
for Alyssa Muto
Deputy Director, Planning Department

Approved as to form this 8th day of ~~December 2018.~~ January 2019.

MARA W. ELLIOTT, City Attorney

By _____
Name: Hilda R. Mendoza
Title: Deputy City Attorney

## EXHIBIT B

FAA Requirements and Reservations of Rights

LESSEE and its officers, employees, contractors, agents, and all others operating through LESSEE shall conform to the following FAA covenants and reservations of rights.

B-1. LESSEE's Use to Conform with Law and Other Rules. LESSEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under LESSEE's control. LESSEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

B-2. LESSEE's Use and Construction to Conform with Federal Aviation Regulations. LESSEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Site and the AIRPORT. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the Site and the Airport.

B-3. LESSEE's Noninterference with Aircraft. LESSEE and LESSEE's successors and assigns agree not to use the Premises in any manner that might interfere with any aircraft landing or taking off from the AIRPORT or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to abate or eliminate the interference at the expense of the LESSEE.

B-4. Agreement Subordinate to City/United States Agreements. This Lease shall be subordinate to the terms of any existing or future agreements between CITY and the United States, or to any United States legal requirement relative to the development, operation or maintenance of the AIRPORT. LESSEE acknowledges and agrees that should any existing or future agreement between CITY and the United States, or any United States legal requirement, cause this Lease to terminate or otherwise be affected, LESSEE shall have no right to seek damages of any type therefor from CITY.

B-5. Height Limitation. The LESSEE and the LESSEE's successors and assigns agree not to erect or permit any structure unless it complies with all FAA and Airport Land Use Compatibility Plan ("ALUCP") height limitations. If this covenant is breached in any way, CITY reserves the right to remove the structure or object at the expense of the LESSEE.

B-6. Right of Flight Easement. CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the Premises, for the benefit and use of the

public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near the AIRPORT.

B-7. War or National Emergency. In the event of war or national emergency, this Lease and all of its provisions shall be subject to any United States Government right, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the AIRPORT. During any war or national emergency, CITY shall have the right to lease, or allow the use of, any part of the AIRPORT, including its landing areas, to the United States Government. In this event, any provisions of this Lease which are inconsistent with the provisions of the Lease to the Government shall be suspended. CITY shall not be liable for any loss or damages alleged by the LESSEE as a result of this action. However, nothing in this Lease shall prevent the LESSEE from pursuing any rights it may have for reimbursement from the United States Government.

B-8. Airport Development. CITY reserves the right to further develop, change or improve the AIRPORT, including its routes and landing areas, as CITY sees fit, without LESSEE's interference or hindrance and regardless of LESSEE's views and desires. CITY shall have the right to perform any and all such actions referred to in this Section, including the right to shut parts or all of the AIRPORT down, at no liability to CITY, regardless of any damages or losses LESSEE may suffer from said actions.

B-9. Nonexclusive Right. LESSEE understands and agrees that nothing in this Lease shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code).

B-10 Landing Area Maintenance. CITY reserves the right, but not the obligation, to maintain and repair the Airport Landing Area and all other public facilities. CITY also has the right to direct and control all of LESSEE's activities affecting the maintenance and repair of the Airport Landing Area and all other public facilities.

B-11. FAA Nondiscrimination Covenant.

a. LESSEE and LESSEE's representatives, successors, and assigns agree, as part of the consideration for this Lease, that:

(1) No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the Premises based on race, color, sex or national origin.

(2) No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the Premises, based on race, color, sex or national origin.

(3) LESSEE shall conduct all activities contemplated by this Lease in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the

Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

b. If any of the provisions are breached, CITY may terminate this Lease and reenter and repossess the Premises as if this Lease had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are allowed and completed, including expiration of appeal rights.

c. LESSEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. LESSEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If LESSEE does not comply with this provision, CITY has the right to terminate this Lease, without liability, and either CITY or the United States may judicially enforce this entire covenant.

d. LESSEE agrees to include this entire covenant in any sublease or other agreement by which LESSEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the Premises.

B-12. Equal Opportunity. The LESSEE, the LESSEE's successors and assigns agree to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

B-13. CITY to Mitigate Impacts of Subordination. If subordination agreements between CITY and United States of America result in LESSEE's inability to operate as a business on the Premises, or if the operations under this Lease are materially affected during a period of subordination, CITY agrees to make a reasonable adjustment to the terms and conditions of the Lease, as determined by CITY, in its sole discretion. LESSEE agrees that any damages claimed during this subordination period will be limited to the relief granted by CITY, if any, and that CITY will incur no liability for any losses suffered by LESSEE.

B-14. City to Mitigate Impacts of Subordination by Termination or Extension. If subordination agreements between CITY and the United States of America result in LESSEE's inability to operate as authorized on the Premises, or if LESSEE's operations authorized under this Lease are materially affected during a period of subordination, CITY, upon written request from LESSEE, will terminate this Lease or extend the term of this Lease for the period of time that LESSEE's operation is affected, and no rent shall accrue during any period of non-operation.

B-15. Hangar Keeper's Insurance. If so instructed by CITY, LESSEE agrees to maintain Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others. Failure to provide or maintain Hangar Keeper's Insurance is subject to the same requirements, restrictions and penalties, as detailed under the insurance provision of this Lease.

B-16. Licenses and Certifications. LESSEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and CITY then has the right to terminate this Lease without liability.

B-17. Employee Conduct. LESSEE shall be responsible for the conduct of all employees, contractors, agents, invitees, and guests on the Premises and AIRPORT, if that employee, contractor, agent, invitee or guest is on AIRPORT property during any period of employment or in connection with LESSEE's operations or activities on the AIRPORT.

B-18. Aircraft Parking. LESSEE shall require that all Aircraft under its control be parked only on the Premises, except as otherwise provided by the direction of CITY. At no time shall any Aircraft, Motor Vehicle or other object, including refuse, under LESSEE's control, be allowed to obstruct any designated taxiways.

B-19. Minority Business Policy. LESSEE agrees that it and its contractors will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. The LESSEE and the LESSEE's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

B-20. Provisions to be Included in All Pertinent Documents. LESSEE agrees that it shall insert all of the FAA Requirements provisions set forth in this **EXHIBIT B** in all contracts or agreements by which LESSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

# EXHIBIT A

