ORIGINAL

AGREEMENT FOR OFFSET OF RENT

THIS AGREEMENT FOR OFFSET OF RENT ("Agreement") is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and METROPOLITAN AIRPARK, LLC, a Delaware limited liability company ("LESSEE"), to be effective as of [the date the Agreement is signed by the parties and approved by the San Diego City Attorney] (the "Agreement Effective Date").

RECITALS

A. CITY owns that certain real property consisting of approximately 331 acres of unimproved land (the "Property") located at Brown Field Municipal Airport (the "Airport"), as more particularly depicted and described on the attached **EXHIBIT A: Depictions and Descriptions of the Property**.

B. As further set forth in those certain Flat Rate Parcel Ground Lease and Right of Entry License Agreements (collectively referred to hereinafter as the "Lease Agreements"), as listed in the attached **EXHIBIT B: Fifty-Nine Flat Rate Parcel Ground Lease and Right of Entry License Agreements**, CITY and LESSEE entered into the Lease Agreements for LESSEE to develop and lease the Property.

C. CITY and LESSEE agree that it is to the benefit of the parties and the Airport for LESSEE to offset the loss of rent that would otherwise be received by CITY upon commencement of development by LESSEE on the portions of the Property subject to the Lease Agreements for Parcels 30-51, 54 and 55 ("Affected Parcels"), as further depicted and described in attached **EXHIBIT A**.

D. CITY and LESSEE further agree that LESSEE will be entitled to reimbursement of any amounts actually paid to offset the loss of rent through a rent credit against the Lease Agreements, as set forth in this Agreement.

E. Capitalized terms not otherwise defined in this Agreement have the same meaning as in the Lease Agreements.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

Recitals. By this reference, the above Recitals are incorporated into, and made a part of, this Agreement.

DOCUMENT NO. RR-312021-60
FILED OCT 23 2018
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. Incorporation of Agreements. The Lease Agreements are hereby incorporated into, and made a part of, this Agreement.

2. Rent Offset. Commencing on [To be filled in by City] ("Payment Commencement Date") and ending on the date five years after the Payment Commencement Date ("Payment Period"), LESSEE shall pay CITY the monthly offset rent ("Monthly Offset Rent") in the amount of Twenty Thousand Eight Hundred Thirty-Three and Thirty-Four One-Hundredths Dollars ($20,833.34) minus the Base Monthly Rent paid by LESSEE pursuant to the Lease Agreements, for a total amount not to exceed One Million Two Hundred Fifty Thousand Dollars ($1,250,000). For example, if LESSEE paid zero in Base Monthly Rent for a particular month under all the Lease Agreements, then LESEE would pay $20,833.34 to CITY as the Monthly Offset Rent ($20,833.34 - $0.00 = $20,833.34) for that month; however, if LESSEE paid a total amount of $10,000.00 in Base Monthly Rent for a particular month under all the Lease Agreements, then LESSEE would pay $10,833.34 to CITY as the Monthly Offset Rent ($20,833.34 - $10,000.00 = $10,833.34). The total amount paid by LESSEE in Monthly Offset Rent for the Payment Period shall be the total offset rent ("Total Offset Rent").

3. Rent Credit. CITY will reimburse LESSEE for the Total Offset Rent. Commencing on [To be filled in by City] ("Credit Commencement Date") and ending on the date when the full amount of the Total Offset Rent is paid to LESSEE ("Payment in Full Date"), CITY shall credit LESSEE against Base Monthly Rent due pursuant to the Lease Agreements ("Rent Credit") the amount above the baseline revenue ("Baseline Revenue") received by CITY from the Project ("Project Revenue"). The Baseline Revenue shall mean the amount of Twenty Thousand Eight Hundred Thirty-Three and Thirty-Four One-Hundredths Dollars ($20,833.34). The Project Revenue shall mean (1) the Base Monthly Rent pursuant to the Lease Agreements and (2) the revenues payable to CITY as fuel flowage fees from the Property, subject to the prior written approval of the Federal Aviation Administration.

4. Interest on the Total Offset Rent. LESSEE shall not be entitled to interest on the repayment of the Total Offset Rent pursuant to the rent credit set forth in Section 3, above.

5. Audit. The Monthly Offset Rent and the Rent Credit shall be subject to the verification by CITY audit as set forth in the Lease Agreements.

6. Delinquent Payments. If LESSEE fails to make any payment under this Agreement when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent, as set forth in the Lease Agreements. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent, as set forth in the Lease Agreements. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than One Hundred Twenty-Five Dollars ($125). After thirty (30) days past due, unpaid amounts due CITY under this Agreement may be referred to the San Diego City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

7. Time and Payment; Delivery of Offset Rent Payments. Payments of Monthly Offset Rent shall be made monthly in advance, no later than the first day of each calendar month during the Term after the Payment Commencement Date. Payments shall be sent by mail to:

City of San Diego

P.O. Box 129030

San Diego, CA 92112-9030

or hand-delivered to:

The Office of the City Treasurer

Civic Center Plaza

1200 Third Avenue, First Floor

San Diego, CA 92101

CITY may change the place of payment at any time by written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt. CITY may, but is not obligated to, send monthly invoices to LESSEE.

8. Term. The term of this Agreement (Agreement Term) shall be from the Effective Date of this Agreement, until the earlier of (a) the Payment in Full Date, and (b) the expiration of the Lease Term or the earlier termination of all the Lease Agreements.

10. CITY's Consent. CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Agreement or as required by law. CITY's discretionary acts pursuant to this Agreement shall be made in the Mayor's discretion, unless otherwise expressly provided in this Agreement.

Indemnification. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees 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, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Agreement, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any established liability arising from the active negligence, sole negligence or willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue any or all of the indemnified parties for liabilities arising out of any activity within or upon or relating to the Property and this Agreement. This indemnity obligation shall include, without limitation, claims for bodily injury, property damage, natural resource damages, emergency response costs, removal costs, clean-up costs, remediation costs, penalties, and/or fines which arise out of or are in any manner directly or indirectly connected to this Agreement and/or the acts or omissions of any third party or the LESSEE in connection with the exercise of the rights granted under this Agreement, and all expenses of investigating, prosecuting or defending against same, including any appeals. LESSEE shall promptly provide the City with written notice of any event or circumstance, such as damages or losses related to the Construction Activities, which LESSEE reasonably believes may be covered by the defense and indemnification provisions of this Agreement. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election 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 all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Agreement shall be in writing and deemed received upon personal service, delivery by a reputable overnight courier service with receipt signature required, or delivery by

United States mail, return receipt requested, postage prepaid, and addressed to the parties, or any such notice, request, payment, demand or other communication required or permitted may be given electronically via written email communication. Electronic notification is considered received upon electronic delivery and reply confirming receipt thereof from the receiving party, as follows:

CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director
1200 Third Avenue, Suite 1700 (MS 51 A)
San Diego, California 92101

-and -

THE CITY OF SAN DIEGO
Airport Administration
Attention: Deputy Director, Airports
3750 John J. Montgomery Drive
San Diego, CA 92123

LESSEE:

METROPOLITAN AIRPARK LLC
2100 Palomar Airport Road, Suite 209
Carlsbad, CA, 92011

Subordination to Federal Obligations. Without the necessity of any other document being executed and delivered by LESSEE or CITY, this Agreement is and shall be junior, subject, and subordinate to any existing permits, agreements, contracts, or approvals issued by the United States of America or any local, State, or federal agency affecting the control or operation of the Airport, Property and/or Premises; LESSEE shall be bound by the terms and provisions of such permits, agreements, contracts or approval. CITY shall not seek, cooperate in, or otherwise be a party to any new or amended permit, agreement, contract, or approval issued by any governmental agency, except as required by law or contract with a governmental agency, that further restricts or impairs LESSEE's rights hereunder.

Nothing contained in this section shall prohibit LESSEE from commencing a takings claim against the United States of America or any local, State, or federal agency affecting the control or operation

of the Property. If LESSEE elects to commence such a takings claim, LESSEE agrees to indemnify and hold CITY harmless from and against all losses, damages, or injuries suffered or incurred resulting from any proceedings related to such claim(s).

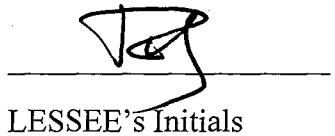
11. Compliance with Laws. LESSEE shall, at LESSEE's expense, comply promptly with all valid and applicable statutes, laws, ordinances, rules, regulations, orders, covenants, and restrictions of record regulating the use of the Property and this Agreement. The final and non-appealable judgment of any court of competent jurisdiction, or the admission by LESSEE in any action or proceeding against it, whether or not CITY is a party to such action or proceeding, that LESSEE has violated any such ordinance, law, statute, regulation, covenant, restriction, or requirement pertaining to this Agreement or the use of the Premises, shall be conclusive as to that fact (i.e., the violation of any such ordinance, law, statute, regulation, covenant, restriction, or requirement) as between CITY and LESSEE under this Agreement.

12. City Council Approval. LESSEE acknowledges that this Agreement is subject to approval by CITY's City Council (the "City Council"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable for, or obligated for, any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's failure to approve this Agreement. LESSEE waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's failure to approve this Agreement.

California Public Records Act._ CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election 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 all of the costs related thereto, including without limitation reasonable attorney fees and costs.

CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.



LESSEE's Initials

Exhibits. All exhibits referred to herein are incorporated into this Agreement by this reference and made a part of this Agreement.

Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the internal laws of the State of California, without regard to conflict of laws principles. All code sections (laws) referenced in this Agreement shall include all amendments thereto, and renumbering and/or renaming thereof, whether or not individually stated at the reference(s).

Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Agreement, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the party who caused an uncertainty to exist or against the draftsperson.

No Third Party Beneficiaries. This Agreement is intended to be for the benefit of only the parties hereto and their respective permitted successors and assigns and this Agreement is not intended to create any third party beneficiaries. Not by way of limitation of the foregoing, by entering into and administering and enforcing this Agreement CITY does not intend to protect any third party against the risk of any particular kind of injury within the meaning of California Government Code Section 815.6 and CITY does not intend to create any rights or liabilities thereunder.

Waiver. No provision of this Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition of any subsequent breach thereof, or of any other term, covenant, or condition contained in this Agreement. Either party's subsequent acceptance of partial payment or performance by LESSEE shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by LESSEE of any term, covenant, or

condition of this Agreement or of any right of either party to a forfeiture of the Agreement by reason of such breach, regardless of either party's knowledge of such preceding breach at the time of either party's acceptance. The failure on the part of either party to require exact or full and complete compliance with any of the covenants, conditions, of agreements of this Agreement shall not be construed as in any manner changing or waiving the terms of this Agreement or as estopping either party from enforcing in full the provisions hereof. No custom or practice which may arise or grow up between the parties hereto in the course of administering this Agreement shall be construed to waive, estop, or in any way lessen the right of either party to insist upon the full performance of, or compliance with, any term, covenant, or condition hereof by LESSEE, or construed to inhibit or prevent the rights of either party to exercise its rights with respect to any default, dereliction, or breach of this Agreement by LESSEE.

Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.

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

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 Agreement.

No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Agreement is binding upon such party in accordance with its terms.

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

Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on

behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, CITY and LESSEE have duly executed this Agreement with the intent that the parties hereto shall be bound by the terms and conditions of the entirety of this Agreement.

LESSEE:

METROPOLITAN AIRPARK LLC,

a Delaware limited liability company

By: _____

Name: Richard Lee Sax

Title: President

CITY:

CITY OF SAN DIEGO,

a California municipal corporation

By: _____

Name: Penny Maus

Title: Director Real Estate Assets

Approved as to form this 11th day

of August, 2021.

MARA W. ELLIOTT, City Attorney

By: _____

Name: Melissa Ables

Title: Deputy City Attorney

R-312021

EXHIBIT A:

DEPICTIONS AND DESCRIPTIONS OF THE PROPERTY

EXHIBIT B:

Fifty-Nine Flat Rate Parcel Ground Lease and Right of Entry License Agreements

1. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-1, on file with the San Diego City Clerk as Document No. R- 312021-1.
2. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-2, on file with the San Diego City Clerk as Document No. R- 312021-2.
3. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-3, on file with the San Diego City Clerk as Document No. R- 312021-3.
4. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-4, on file with the San Diego City Clerk as Document No. R- 312021-4.
5. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-5, on file with the San Diego City Clerk as Document No. R- 312021-5.
6. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-6, on file with the San Diego City Clerk as Document No. R- 312021-6.
7. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-7, on file with the San Diego City Clerk as Document No. R- 312021-7.
8. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-8, on file with the San Diego City Clerk as Document No. R- 312021-8.
9. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-9, on file with the San Diego City Clerk as Document No. R- 312021-9.
10. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-10, on file with the San Diego City Clerk as Document No. R- 312021-10.
11. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-11, on file with the San Diego City Clerk as Document No. R- 312021-11.
12. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-12, on file with the San Diego City Clerk as Document No. R- 312021-12.
13. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-13, on file with the San Diego City Clerk as Document No. R- 312021-13.
14. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel N-14, on file with the San Diego City Clerk as Document No. R- 312021-14.
15. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-15, on file with the San Diego City Clerk as Document No. R- 312021-15.

16. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-16, on file with the San Diego City Clerk as Document No. R- 312021-16.

17. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-17, on file with the San Diego City Clerk as Document No. R- 312021-17.

18. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-18, on file with the San Diego City Clerk as Document No. R- 312021-18.

19. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-19, on file with the San Diego City Clerk as Document No. R- 312021-19.

20. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-20, on file with the San Diego City Clerk as Document No. R- 312021-20.

21. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-21, on file with the San Diego City Clerk as Document No. R- 312021-21.

22. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-22, on file with the San Diego City Clerk as Document No. R- 312021-22.

23. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel C-23, on file with the San Diego City Clerk as Document No. R- 312021-23.

24. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-24, on file with the San Diego City Clerk as Document No. R- 312021-24.

25. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-25, on file with the San Diego City Clerk as Document No. R- 312021-25.

26. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-26, on file with the San Diego City Clerk as Document No. R- 312021-26.

27. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-27, on file with the San Diego City Clerk as Document No. R- 312021-27.

28. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-28, on file with the San Diego City Clerk as Document No. R- 312021-28.

29. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-29, on file with the San Diego City Clerk as Document No. R- 312021-29.

30. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel G-30, on file with the San Diego City Clerk as Document No. R- 312021-30.

31. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-31, on file with the San Diego City Clerk as Document No. R- 312021-31.

32. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-32, on file with the San Diego City Clerk as Document No. R- 312021-32.

33. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-33, on file with the San Diego City Clerk as Document No. R- 312021-33.

34. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-34, on file with the San Diego City Clerk as Document No. R- 312021-34.

35. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-35, on file with the San Diego City Clerk as Document No. R- 312021-35.

36. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-36, on file with the San Diego City Clerk as Document No. R- 312021-36.

37. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-37, on file with the San Diego City Clerk as Document No. R- 312021-37.

38. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-38, on file with the San Diego City Clerk as Document No. R- 312021-38.

39. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-39, on file with the San Diego City Clerk as Document No. R- 312021-39.

40. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-40, on file with the San Diego City Clerk as Document No. R- 312021-40.

41. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-41, on file with the San Diego City Clerk as Document No. R- 312021-41.

42. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-42, on file with the San Diego City Clerk as Document No. R- 312021-42.

43. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-43, on file with the San Diego City Clerk as Document No. R- 312021-43.

44. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-44, on file with the San Diego City Clerk as Document No. R- 312021-44.

45. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-45, on file with the San Diego City Clerk as Document No. R- 312021-45.

46. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-46, on file with the San Diego City Clerk as Document No. R- 312021-46.

47. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-47, on file with the San Diego City Clerk as Document No. R- 312021-47.

48. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-48, on file with the San Diego City Clerk as Document No. R- 312021-48.

49. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-49, on file with the San Diego City Clerk as Document No. R- 312021-49.

50. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-50, on file with the San Diego City Clerk as Document No. R- 312021-50.

51. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-51, on file with the San Diego City Clerk as Document No. R- 312021-51.

52. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-52, on file with the San Diego City Clerk as Document No. R- 312021-52.

53. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-53, on file with the San Diego City Clerk as Document No. R- 312021-53.

54. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-54, on file with the San Diego City Clerk as Document No. R- 312021-54.

55. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-55, on file with the San Diego City Clerk as Document No. R- 312021-55.

56. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-56, on file with the San Diego City Clerk as Document No. R- 312021-56.

57. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-57, on file with the San Diego City Clerk as Document No. R- 312021-57.

58. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-58, on file with the San Diego City Clerk as Document No. R- 312021-58.

59. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-59, on file with the San Diego City Clerk as Document No. R- 312021-59.

Item 333 10-23-18

(R-2019-194)

RESOLUTION NUMBER R- 312021

DATE OF FINAL PASSAGE OCT 26 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING 59 FLAT RATE PARCEL GROUND LEASE AND RIGHT OF ENTRY LICENSE AGREEMENTS AND AGREEMENT FOR OFFSET OF RENT WITH METROPOLITAN AIRPARK, LLC, AND AGREEMENT FOR EXCHANGE OF EASEMENTS WITH THE UNITED STATES OF AMERICA AND METROPOLITAN AIRPARK, LLC, REGARDING APPROXIMATELY 207.56 ACRES OF CITY-OWNED REAL PROPERTY AT THE BROWN FIELD MUNICIPAL AIRPORT.

WHEREAS, in 2013, the Council of the City of San Diego authorized the Mayor to enter into a Leasehold Development Agreement (LDA), on file with the Office of the City Clerk as Document No. RR-308482, between the City of San Diego (City) and Brown Field International Business Park, LLC, which document contemplated the development of certain real property at Brown Field Municipal Airport (Airport). The LDA, and all rights thereto, pursuant to its own terms, has since been assigned to Metropolitan Airpark, LLC (Lessee) for the lease and development of approximately 331 acres (Property) of the 880 acres of the Airport. The LDA establishes the terms and conditions between Lessee and the City for Lessee to enter upon, lease and develop the Property in four phases over 20 years; and

WHEREAS, the LDA contemplates that the City and Lessee will enter into a number of ground leases, including for the master planned, four-phased development of aviation and non-aviation uses on approximately 207.56 acres of the Property (Project). The proposed Project will create new aviation facilities, aviation industrial, industrial, commercial, and other uses satisfying immediate and long-term aviation needs at the Airport; and

WHEREAS, City staff and Lessee have negotiated terms and conditions for 59 Flat Rate Parcel Ground Lease and Right of Entry License Agreements (individually "Agreement" and collectively the "Agreements"). The Agreements have the following terms and conditions: term of the lease portion of each of the Agreements will be 50 years commencing at the sooner of the date of issuance of the first certificate of occupancy for any improvement constructed within any individual parcel or 30 months after the issuance of vertical building permits; the rent for each Agreement for lease year one through lease year five will be determined by adjusting upward the appraised value by the increase in the consumer price index (capped at 3% per year) between February 22, 2018 (the date the appraised value of the Property was determined) and the lease commencement date; and the first phase of construction (the aviation uses) must be constructed before a certificate of occupancy is granted on any other phase of the Project; and

WHEREAS, in the first phase of the Project, Lessee will develop a minimum of 14,500 square feet jet aviation fixed based operator facility; five large aircraft hangars totaling 75,000 square feet; 28 small aircraft T-hangars, each containing a minimum of 1,200 square feet; and the required apron and ramp improvements. The estimated cost for this minimum requirement is Twenty-Six Million Dollars ($26,000,000); and

WHEREAS, the market value of the real estate subject to the Agreements, as appraised by an independent fee appraiser, is approximately $1,350,000; and

WHEREAS, the Project will result in the removal of an existing tenant of the Airport and a loss of rent payments by that tenant in the amount of $250,000 each year. The proposed Agreement for Offset of Rent requires Lessee to pay the City up to $250,000 per year as advanced payment of rent for five years from the date of revenue lost from the existing tenant, offset by any rent paid by Lessee under any of the Agreements during the five years Lessee is to

pay this amount to the City. The City will reimburse Lessee by rent credits under the Agreements as further set forth in the proposed Agreement for Offset of Rent; and

WHEREAS, the LDA does not provide for the advanced payment of rent. However, the proposed Agreement for Offset of Rent was negotiated by City staff to ensure that the Airport enterprise fund would not suffer significant revenue loss during the early years of the Project development; and

WHEREAS, when the United States of America (USA) conveyed the Airport to the City, it reserved an access easement (Original Easement) over portions of the Airport to provide for continued access to its property adjacent to the northeast border of the Airport. This access easement is in the area that is proposed for development for the Project; and

WHEREAS, it is proposed that the City exchange the existing access easement with an access easement that runs across the northeastern boundary of the Airport from La Media Road to the USA's property as set forth in the proposed Agreement to Provide the United States of America, including U.S. Customs and Border Protections, an Access Easement for Ingress and Egress to and from Federally Owned Property, Over Land Used and Operated as Part of the Brown Field Airport (Easement Exchange Agreement); and

WHEREAS, the existing easement is 50 feet by approximately 5,944 feet and contains approximately 295,630 square feet and the proposed new easement to be conveyed by the City to the USA is 48 feet in width by approximately 6,159 feet in length and contains approximately 295,632 square feet (New Easement). The New Easement to be conveyed by the City to the USA is approximately the same size as the existing easement to be quitclaimed by the USA to the City, via a quitclaim deed (Quitclaim Deed); and

WHEREAS, on February 2, 2018, a qualified real estate appraiser conducted an appraisal of the easement interests proposed to be exchanged. Based on the appraisal, the Mayor certifies that the easement interests in the New Easement and the easement interests in the Quitclaim Deed are approximately equal in value; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is hereby authorized and directed to execute 59 Flat Rate Parcel Ground Lease and Right of Entry License Agreements with Metropolitan Airpark, LLC, as specifically set forth in attached Exhibit A, for the development of a total of 207.56 acres of City owned real property at the Brown Field Municipal Airport.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute the Agreement for Offset of Rent with Metropolitan Airpark, LLC, which is on file in the Office of the City Clerk as Document No. RR-312021-60 to offset revenue loss from an existing tenant.

BE IT FURTHER RESOLVED, that the exchange of the United States of America's easement interests in the Original Easement for those easement interests in the New Easement are approved.

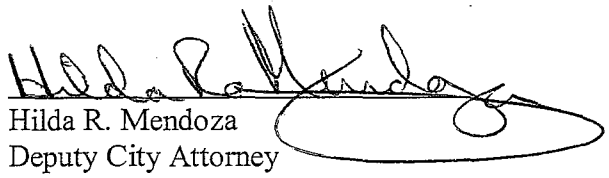
BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute the Agreement to Provide the United States of America, including U.S. Customs and Border Protections, an Access Easement for Ingress and Egress to and from Federally Owned Property, Over Land Used and Operated as Part of the Brown Field Airport with Metropolitan Airpark, LLC and the United States of America, which is on file in the Office of the City Clerk as Document No. RR-312021-61, for the exchange of easements with the United States of America to provide the United States of America, and specifically the Customs and

Border Protection, with continued access to their facility adjacent to the Airport and execute and deliver an easement deed in favor of the United States of America conveying a new location for an access easement.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute and deliver all other instruments to effect and complete the transactions contemplated by this Resolution.

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force upon (1) the Federal Aviation Administration's approval of the Airport Layout Plan and issues a record of decision for the environmental assessment which approve Parcels D, F, H and a portion of J of the Property for use as authorized in the LDA, and (2) the Federal Aviation Administration has not advised the City that the Agreements fail to comply with the Brown Field Quitclaim Deed, existing agreements between the City and the United States of America, and legal requirements of the United States of America relative to the development, operation, and maintenance of the Airport, but in no event shall this resolution take effect earlier than the day of this resolution's final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:nja
09/18/18
Attachments
Or. Dept: READ
Doc. No.: 1838571

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 23 2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 10/26/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

EXHIBIT A:

Fifty-Nine Flat Rate Parcel Ground Lease and Right of Entry License Agreements

1. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-1, on file with the San Diego City Clerk as Document No. R- 312021-1
2. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-2, on file with the San Diego City Clerk as Document No. R- 312021-2
3. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-3, on file with the San Diego City Clerk as Document No. R- 312021-3
4. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-4, on file with the San Diego City Clerk as Document No. R- 312021-4
5. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel L-5, on file with the San Diego City Clerk as Document No. R- 312021-5
6. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-6, on file with the San Diego City Clerk as Document No. R- 312021-6
7. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-7, on file with the San Diego City Clerk as Document No. R- 312021-7
8. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-8, on file with the San Diego City Clerk as Document No. R- 312021-8
9. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-9, on file with the San Diego City Clerk as Document No. R- 312021-9
10. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-10, on file with the San Diego City Clerk as Document No. R- 312021-10
11. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-11, on file with the San Diego City Clerk as Document No. R- 312021-11
12. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-12, on file with the San Diego City Clerk as Document No. R- 312021-12
13. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel M-13, on file with the San Diego City Clerk as Document No. R- 312021-13
14. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel N-14, on file with the San Diego City Clerk as Document No. R- 312021-14
15. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-15, on file with the San Diego City Clerk as Document No. R- 312021-15

16. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-16, on file with the San Diego City Clerk as Document No. R- 312021-16

17. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel A-17, on file with the San Diego City Clerk as Document No. R- 312021-17

18. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-18, on file with the San Diego City Clerk as Document No. R- 312021-18

19. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-19, on file with the San Diego City Clerk as Document No. R- 312021-19

20. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-20, on file with the San Diego City Clerk as Document No. R- 312021-20

21. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-21, on file with the San Diego City Clerk as Document No. R- 312021-21

22. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel B-22, on file with the San Diego City Clerk as Document No. R- 312021-22

23. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel C-23, on file with the San Diego City Clerk as Document No. R- 312021-23

24. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-24, on file with the San Diego City Clerk as Document No. R- 312021-24

25. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel D-25, on file with the San Diego City Clerk as Document No. R- 312021-25

26. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-26, on file with the San Diego City Clerk as Document No. R- 312021-26

27. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-27, on file with the San Diego City Clerk as Document No. R- 312021-27

28. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-28, on file with the San Diego City Clerk as Document No. R- 312021-28

29. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel E-29, on file with the San Diego City Clerk as Document No. R- 312021-29

30. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel G-30, on file with the San Diego City Clerk as Document No. R- 312021-30

31. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-31, on file with the San Diego City Clerk as Document No. R- 312021-31

32. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-32, on file with the San Diego City Clerk as Document No. R- 312021-32

33. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-33, on file with the San Diego City Clerk as Document No. R- 312021-33

34. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-34, on file with the San Diego City Clerk as Document No. R- 312021-34

35. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-35, on file with the San Diego City Clerk as Document No. R- 312021-35

36. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-36, on file with the San Diego City Clerk as Document No. R- 312021-36

37. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-37, on file with the San Diego City Clerk as Document No. R- 312021-37

38. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-38, on file with the San Diego City Clerk as Document No. R- 312021-38

39. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-39, on file with the San Diego City Clerk as Document No. R- 312021-39

40. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-40, on file with the San Diego City Clerk as Document No. R- 312021-40

41. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-41, on file with the San Diego City Clerk as Document No. R- 312021-41

42. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-42, on file with the San Diego City Clerk as Document No. R- 312021-42

43. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-43, on file with the San Diego City Clerk as Document No. R- 312021-43

44. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-44, on file with the San Diego City Clerk as Document No. R- 312021-44

45. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-45, on file with the San Diego City Clerk as Document No. R- 312021-45

46. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-46, on file with the San Diego City Clerk as Document No. R- 312021-46

47. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-47, on file with the San Diego City Clerk as Document No. R- 312021-47

48. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-48, on file with the San Diego City Clerk as Document No. R- 312021-48

49. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-49, on file with the San Diego City Clerk as Document No. R- 312021-49

50. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-50, on file with the San Diego City Clerk as Document No. R- 312021-50

51. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-51, on file with the San Diego City Clerk as Document No. R- 312021-51

52. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-52, on file with the San Diego City Clerk as Document No. R- 312021-52

53. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-53, on file with the San Diego City Clerk as Document No. R- 312021-53

54. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-54, on file with the San Diego City Clerk as Document No. R- 312021-54

55. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-55, on file with the San Diego City Clerk as Document No. R- 312021-55

56. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-56, on file with the San Diego City Clerk as Document No. R- 312021-56

57. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-57, on file with the San Diego City Clerk as Document No. R- 312021-57

58. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-58, on file with the San Diego City Clerk as Document No. R- 312021-58

59. Flat Rate Parcel Ground Lease and Right of Entry License Agreement for Parcel I-59, on file with the San Diego City Clerk as Document No. R- 312021-59

Passed by the Council of The City of San Diego on OCT 23 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Chris Ward	☑	☐	☐	☐
Myrtle Cole	☑	☐	☐	☐
Mark Kersey	☑	☐	☐	☐
Chris Cate	☑	☐	☐	☐
Scott Sherman	☑	☐	☐	☐
David Alvarez	☑	☐	☐	☐
Georgette Gomez	☑	☐	☐	☐

Date of final passage OCT 26 2018.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

312021

Resolution Number R-_____

Passed by the Council of The City of San Diego October 23, 2018, by the following vote:

YEAS:	**BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN, ALVAREZ, GÓMEZ.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-312021**, approved on **October 23, 2018**. The date of final passage is **October 26, 2018**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: _____, Deputy