**SECOND AMENDMENT TO**

**FLAT RATE PARCEL GROUND LEASE**

**AND**

**RIGHT OF ENTRY LICENSE AGREEMENT**

**BROWN FIELD MUNICIPAL AIRPORT (SDM)**

**SAN DIEGO, CALIFORNIA**

**PARCEL: I-36**

**LESSOR: CITY OF SAN DIEGO**

**LESSEE: SAN DIEGO AIRPARK, LLC**

**SECOND AMENDMENT TO FLAT RATE PARCEL GROUND LEASE**

**AND RIGHT OF ENTRY LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF SAN DIEGO AND SAN DIEGO AIRPARK, LLC**

**PARCEL: I-36**

THIS SECOND AMENDMENT TO FLAT RATE PARCEL GROUND LEASE AND RIGHT OF ENTRY LICENSE AGREEMENT (Second Amendment) for Parcel I-36 is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor and licensor, and SAN DIEGO AIRPARK, LLC, a Delaware limited liability company ("LESSEE"), as lessee and licensee, to be effective as of the date this Second Amendment is executed by the parties and approved by the San Diego City Attorney (the "Amendment Effective Date").

## RECITALS

A. CITY owns certain real property consisting of approximately 331 acres of unimproved land (the "Property") located at Brown Field Airport.

B. CITY and Brown Field International Business Park, LLC entered into that certain Leasehold Development Agreement ("LDA"), filed with the San Diego City Clerk on October 22, 2013, as Document No. RR-308482, related to the lease and development of the Property in four phases ("Project").

C. Consistent with the LDA, CITY and Metropolitan Airpark, LLC, as successor to Brown Field International Business Park, LLC, entered into that certain Flat Rate Parcel Ground Lease and Right of Entry Agreement for Parcel I-36 ("Lease"), filed with the San Diego City Clerk on October 23, 2018, as Document No. RR-312021-36. LESSEE is the successor in interest to Metropolitan Airpark, LLC under the Lease.

D. Under the Lease, LESSEE has the right to lease Parcel I-36 of the Property, as more particularly described and depicted as "Lot 36" on Exhibit A attached to the Lease ("Premises").

E. Pursuant to that certain First Amendment to Flat Rate Parcel Ground Lease and Right of Entry Agreement between CITY and LESSEE, on file with the San Diego City Clerk on August 2, 2022, as Document No. RR-314287-37, the Lease was amended to update the Federal Aviation Administration lease requirements.

F. LESSEE and CITY now desire to amend the Lease to provide additional terms for a future Beneficiary of a leasehold mortgage.

G. Unless otherwise defined in this Second Amendment, capitalized terms used in this Second Amendment shall have the same meaning as given in the Lease.

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

1. **DELETE** Article 1, Section 16 of the Lease in its entirety and **REPLACE** it with the following:

   16. Encumbrances. LESSEE shall keep CITY's Airport, the Property and the Premises, free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with LESSEE's activities under this ROE, except where CITY has consented to an encumbrance or lien under Article 2, Section 14 of the Lease. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, employees, agents, and representatives harmless from and against any and all such unpermitted encumbrances and/or liens, and from and against any claim, liability, damage, cost, loss or expense, including without limitation all attorneys' fees and costs, relating to or charged against CITY, the Airport, the Property, or the Premises.

2. **DELETE** Article 1, Section 19 of the Lease in its entirety and **REPLACE** it with the following:

   19. Payment and Performance Bond. Prior to the commencement of any work on the Construction Activities, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction of the Construction Activities to satisfy claims of material suppliers and of mechanics and laborers employed on the Construction Activities. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements for the Construction Activities are completed, until the Lease Commencement Date (defined in Article 2 of this Agreement), and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.

   Prior to the commencement of the Construction Activities, LESSEE shall provide CITY with a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the work commenced by LESSEE will be completed in accordance with the plans approved by CITY or, at the option of CITY that the

uncompleted work will be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to CITY a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining, and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon CITY's approval of such request, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

Notwithstanding the foregoing, it is understood that the payment or performance bond described in this Section 19 may be a dual obligee bond, and CITY's rights to such bond shall be subject to any applicable joint rights of Beneficiary (as defined below) if Beneficiary becomes an obligee under the payment or performance bond, including, without limitation, the right to call such bond.

3. **ADD** Article 1, Section 28 to the Lease as follows:

28. Assignment, Subletting and Encumbrances. The assignment, subletting, and encumbrances provisions of Article 2, Section 14 of the Lease shall apply equally during the ROE Term with respect to LESSEE's rights under the ROE. Without limiting the foregoing, the parties acknowledge and agree that the protections granted to Beneficiaries (as defined below) under Article 2, Section 14.7 of the Lease also apply to the ROE, including (without limitation) that the Beneficiary or its designated affiliate shall have the option to enter into a new ROE with CITY upon the termination of the ROE under the same terms and conditions described in Article 2, Section 14.7.3 for a termination of the Lease.

**4.** **DELETE** Article 2, Section 5.2 of the Lease in its entirety and **REPLACE** it with the following:

5.2. Construction Bond. LESSEE shall deposit with CITY, prior to commencement of any construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed under Section 5. The bond may be in cash or may be a corporate surety bond or

other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the subject development, or other plans approved by CITY, or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to CITY a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon CITY's approval of such request, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

Notwithstanding the foregoing, it is understood that the construction bond described in this Section 5.2 may be a dual obligee bond, and CITY's rights to such bond shall be subject to any applicable joint rights of Beneficiary (as defined below), if Beneficiary becomes an obligee under the construction bond, including, without limitation, the right to call such bond.

**5. DELETE** Article 2, Section 6.5 of the Lease in its entirety and **REPLACE** it with the following:

6.5 Construction Bond. If LESSEE constructs improvements, alternations, or repairs on the Premises (other than those contemplated by the Development Documents for which LESSEE's requirement to have bonds are already set forth/agreed upon), CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's

option may be placed in an escrow approved by CITY. If during the course of construction, LESSEE's progress and performance reaches either fifty percent (50%) or seventy-five percent (75%) completion, then LESSEE may submit to CITY a request for a partial release of the surety which shall be accompanied by (1) a detailed estimate of both the value of work completed as well as the value of work remaining and (2) written confirmation from CITY's Development Services Department of said completion amount. Upon CITY's approval of such request, LESSEE's obligations hereunder shall be reduced by the same and the CITY shall release, or if applicable, cause escrow or the trust to release, the surety in the same proportional amount of the work completed; provided however, the surety amount to be released must exceed $25,000 and in no case shall less than 25% of the original bond amount be retained in force until all work is completed. Upon the completion of construction and final approval is given by a "Notice of Completion and Acceptance," or similar, CITY shall release the full amount remaining on the bond.

Notwithstanding the foregoing, it is understood that the construction bond described in this Section 6.5 may be a dual obligee bond, and CITY's rights to such bond shall be subject to any applicable joint rights of Beneficiary (as defined below), if Beneficiary becomes an obligee under the construction bond, including, without limitation, the right to call such bond.

6. **DELETE** Article 2 Section 13.4 of the Lease in its entirety and **REPLACE** it with the following:

13.4. Comparative Negligence; Liability. The indemnification in subsection 13.1 shall not apply to the extent that a final non-appealable judgment of a court of competent jurisdiction establishes that a Claim by or against one or more CITY Parties was caused, either solely or proportionally, by the negligence or willful misconduct of one or more of the CITY Parties and, following any such determination of liability, LESSEE shall only be responsible to pay an amount of such costs equal to the finally determined percent of liability based upon the comparative fault of LESSEE.

7. **DELETE** Article 2, Section 14.7.4(b) of the Lease in its entirety and **REPLACE** it with the following:

b) If a substantial portion of the Premises is subject to the casualty and CITY and LESSEE agree that restoration is commercially impracticable, then LESSEE shall have the right to terminate this Lease, in which event the insurance proceeds shall be payable as follows: first, to compensate Beneficiary for outstanding amounts secured by the Mortgage; second, in such amount to compensate CITY for the market value, as determined by a qualified appraiser (selected in the same

manner as appraisers are selected pursuant to Subsection 3.5.2 of this Lease) of CITY's interest in the improvements to the Premises, and third, to LESSEE for its remaining interests in the Premises and the improvements thereon.

8. **ADD** Article 2, Section 14.7.6 to the Lease as follows:

14.7.6 Cure Rights. In the event of any default by LESSEE under the provisions of this Lease, Beneficiary will have the same periods as are given LESSEE under the Lease for curing such default or causing it to be cured, plus, in each case, an additional period of five (5) days, with respect to any payment default, or thirty (30) days, with respect to any other default, in each case after the expiration thereof or after CITY has served a notice or a copy of a notice of such default upon Beneficiary as provided in this Lease, whichever is later; provided that if possession by Beneficiary is necessary in order to effect such cure, Beneficiary, within such thirty (30) day period, files the appropriate legal action, subject to the conditions of this Lease, to commence a Foreclosure and thereafter diligently prosecutes such proceedings and within thirty (30) days after acquiring the leasehold interest in the Premises cures such default, and if any Beneficiary is prohibited from curing any event of default of this Lease by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving LESSEE, then the time periods specified in this Section for curing an event of default shall be extended for the shorter of the period of such prohibition or ninety (90) days. In the event of any default by LESSEE under the provisions of this Lease, CITY will not terminate this Lease prior to the expiration of the applicable cure periods provided to Beneficiary under this Section.

9. **DELETE** Article 2, Section 14.8 of the Lease in its entirety and **REPLACE** it with the following:

14.8. Estoppel Certificate. Within thirty (30) calendar days after written request by LESSEE or Beneficiary, CITY shall execute and deliver a statement certifying as follows:

(i) The existence and effect of the Lease and all amendments to it, if any;

(ii) The last date CITY received rent under the Lease, the date such rent was due and the amount thereof;

(iii) Whether there are any events of default under the Lease (and, whether there is or has been any event, act, or omission which would constitute an event of default with notice or lapse of time or both) to the best knowledge of CITY as of the date of the certificate;

(iv) Acknowledging Beneficiary and receipt of Beneficiary's name and address for purpose of notices to be given and received pursuant to the provisions of the Lease;

(v) That Beneficiary may exercise against CITY all of Beneficiary's rights in the Lease and all amendments to it, if any;

(vi) Confirming the commencement and termination dates of the Lease, whether any options to renew or extend the Lease or to purchase the CITY's interests in the Premises have been exercised or have lapsed; and

(vii) That CITY understands the recipient will rely on the certificate.

10. **DELETE** Article 2, Section 15.2 of the Lease in its entirety and **REPLACE** it with the following:

15.2. Notices. Following the occurrence of any of the defaults specified above, and subject to Section 14.7 and the rights of the Beneficiary of a Mortgage consented to by CITY, CITY shall give LESSEE a written notice specifying the nature of the default and the provisions of this Lease breached and demanding that LESSEE either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to CITY:

a) For nonpayment of any payment required, ten (10) business days; and

b) For any non-monetary default, a reasonable period not to exceed forty-five (45) business days, provided, however, that if such default cannot reasonably be cured within said time period, LESSEE shall be deemed to have cured such default if LESSEE so notifies CITY in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and actually completes said cure.

To the extent permitted by applicable State law, the time periods provided in this subsection for cure of LESSEE's defaults under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against LESSEE for possession of the Premises.

11. **DELETE** Article 2, Section 15.3 of the Lease in its entirety and **REPLACE** it with the following:

15.3. City's Rights and Remedies. Should LESSEE fail to cure any such defaults within the time periods specified in the immediately preceding subsection, or fail to quit the Premises as required thereby, subject to Section 14.7 and the rights of the Beneficiary of a Mortgage consented to by CITY, and except as may otherwise

be required by applicable California law, CITY may exercise any of the following rights without further notice or demand of any kind to LESSEE or any other person:

15.3.1 The right of CITY to terminate this Lease and LESSEE's right to possession of the Premises and to reenter the Premises, take possession thereof and remove all persons therefrom, following which LESSEE shall have no further claim on the Premises or under this Lease;

15.3.2 The right of CITY without terminating this Lease and LESSEE's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of LESSEE and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4, or successor statute thereto; or

15.3.3 The right of CITY, even though it may have reentered the Premises in accordance with the immediately preceding subsection, to elect thereafter to terminate this Lease and LESSEE's right to possession of the Premises.

Should CITY have acted under the provisions of subsection 15.3.2, CITY shall not be deemed to have (i) terminated this Lease, (ii) assumed the liability of LESSEE to pay rent or other charges thereafter accruing, or (iii) assumed LESSEE's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless CITY shall have notified LESSEE in writing that it has so elected to terminate this Lease and LESSEE's right to possession. LESSEE further covenants that the service by CITY of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless CITY elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to LESSEE) be deemed to be a termination of this Lease. In the event of any reentry or taking possession of the Premises as aforesaid, CITY shall have the right, but not the obligation, at LESSEE's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by LESSEE or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of LESSEE. The rights and remedies given to CITY in this Section shall be additional and supplemental to all other rights or remedies which CITY may have under laws in force when the default occurs.

12. **DELETE** Article 2, Section 20.15 of the Lease in its entirety and **REPLACE** it with the following:

20.15 No Third-Party Beneficiaries. This Lease is intended to be for the benefit of only the parties hereto and their respective permitted successors and assigns and this Lease is not intended to create any third-party beneficiaries, except that Beneficiary shall be a third-party beneficiary of Article 2, Section 14.7 with the right to directly enforce such provisions. Not by way of limitation of the foregoing, by entering into and administering and enforcing this Lease 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.

13. **ADD** Article 2, Section 20.27 to the Lease as follows:

    20.27. Zero Emissions Municipal Buildings and Operations Policy. LESSEE shall comply with the applicable provisions in Council Policy 900-03 (Zero Emissions Municipal Buildings and Operations Policy), as may be amended from time to time, and which is incorporated into the Lease by this reference.

14. Except as set forth in this Second Amendment, all other terms and conditions of the Lease not addressed in this Second Amendment shall remain in full force and effect. Any conflict between the terms and conditions of this Second Amendment and those of the Lease shall be resolved in favor of the terms and conditions of this Second Amendment.

15. This Second Amendment may be signed by the authorized representatives of the parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

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

**LESSEE:**

**SAN DIEGO AIRPARK LLC,**
a Delaware limited liability company
By: IRG San Diego Airpark Manager, LLC,
a Delaware limited liability company
Its Manager

By: Richard H. Klein
Richard H. Klein (Oct 1, 2024 13:59 PDT)
Richard H. Klein
Chief Financial Officer

**CITY:**

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

By: _____
Jorge E. Rubio
Deputy Director Airport Management

Approved as to form:

Date: _____

MARA W. ELLIOTT, City Attorney

By: _____
Name: William Witt
Title: Senior Deputy City Attorney