DUPLICATE

SECOND AMENDMENT
TO
CITY OF SAN DIEGO
THIRD AMENDED AND RESTATED FLAT RATE LEASE

THIS SECOND AMENDMENT (Amendment) to the CITY OF SAN DIEGO THIRD AMENDED AND RESTATED FLAT RATE LEASE between the City of San Diego and Brown Field Aviation Ventures, filed with the Office of the City Clerk on November 21, 2005, as Document No. RR-301059 (LEASE), is made and entered into by and between the CITY OF SAN DIEGO, a California municipal corporation (CITY), and BROWN FIELD AVIATION VENTURES, INC., a California corporation (LESSEE), to be effective as of the date this Amendment is executed by the parties and approved by the City Attorney (Effective Date).

RECITALS

A. In 1996, CITY and LESSEE entered into a long-term, flat rate lease for approximately fifteen acres at the Brown Field Airport in the Otay Mesa community of the City of San Diego. The leased property included 15,733 square feet of office space. The City Council approved the lease by Ordinance No. 0-18361, adopted November 12, 1996.

B. CITY and LESSEE executed the First Amendment to Lease Agreement on or about March 10, 1997, adding 2.2 acres to the leased property.

C. CITY and LESSEE executed the Second Amendment to Lease Agreement on or about May 23, 1997, adding 1.78 acres of land and 3,424 square feet of office space. The leased property now totaled 18.98 acres.

D. CITY and LESSEE executed a Consent to Assignment Agreement on or about April 8, 1999, assigning 2.94 acres and 3,424 square feet of office space to Flying J Aviation.

E. CITY and LESSEE executed a Consent to Sublease Agreement on or about April 2, 2001, authorizing LESSEE to sublease the leased premises to Lancair Corporation (LANCAIR).

F. On November 21, 2005, CITY and LESSEE entered into the Third Amended and Restated Flat Rate Lease, filed in the Office of the San Diego City Clerk as Document No. RR-301059.

G. Pursuant to Section 2.1 Term of the LEASE, to extend the term of the LEASE for an additional ten (10) years, LESSEE is required to make significant capital improvements to the Premises at a cost of not less than $1,000,000 and include construction of not less than 20,000 square feet of new hangar space within ten (10) years of the effective date of the LEASE, the original deadline being December 28, 2015.

H. On December 11, 2015, CITY and LESSEE entered into a First Amendment to the LEASE granting LESSEE a two-year extension to the deadline to complete the capital improvements outlined in Section 2.1 of the LEASE.

DOCUMENT NO RR-312042
FILED NOV 13 2018
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

I. CITY and LESSEE now wish to enter into a Second Amendment to the LEASE to provide LESSEE an extension of four (4) years to complete the capital improvements necessary to extend the term of the LEASE for an additional ten (10) years as described in Section 2.1 of the LEASE.

J. CITY and LESSEE also agree to amend the LEASE to add a cost sharing arrangement for restroom maintenance that provides that LESSEE will reimburse CITY for a proportionate share of the cost of restroom maintenance for the terminal building at Brown Field Airport.

K. CITY and LESSEE also agree to amend the Lease to include the standard City lease requirements in accordance with Section 4.2 of the Lease.

L. Unless otherwise defined herein, capitalized terms as used in this Amendment shall have the same meanings as given therefor in the LEASE.

NOW THEREFORE, in consideration of the above recitals, the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which is acknowledged, the parties agree as follows:

AGREEMENT

1. Section 2.1. of the LEASE is hereby **DELETED** in its entirety and **REPLACED** with the following:

"2.1. Commencement. The term of this agreement shall be thirty-five years beginning on December 1, 1996 (the first day of the month following execution of the original agreement by the City Manager) and ending November 30, 2031 ("Term"). "Lease year" as used in this lease shall mean the 12-month period following commencement.

The Term shall be extended for a period of ten (10) years (December 1, 2031 to November 30, 2041, the "Additional Term") upon the written approval by the City Manager of a new development plan submitted by LESSEE for the Premises ("New Development Plan") requiring that LESSEE make significant capital improvements to the Premises at a cost of not less than one million dollars ($1,000,000) and including construction of not less than twenty thousand (20,000) square feet of new hangar space, all to be completed no later than four (4) years from the Effective Date of this Agreement. For this provision to take effect, LESSEE must submit the New Development Plan within 24 months of the City's execution of this Second Amendment to the Third Amended and Restated Lease and obtain the Mayor's written approval of it. The New Development Plan must contain each of the following:

a. A site and floor plan showing the general location of all of the proposed capital improvements on the Premises, including the schedule of all work,

a description of any demolition proposed, narrative description and plot plan.

b. Preliminary construction drawings that show the types, dimensions and locations of all proposed improvements and facilities.

c. Preliminary construction costs for all improvements planned on the Premises.

d. Preliminary construction schedule for all improvements planned on the Premises.

LESSEE shall have the option to extend the Term for an additional ten (10) years (the "Option Term") beyond the expiration of the Additional Term by giving City written notice of its election to exercise its option not later than 180 days prior to the expiration of the Additional Term, i.e., before May 31, 2041, provided, however, that LESSEE's right to exercise the option shall be contingent upon LESSEE having substantially completed the improvements required by the New Development Plan, as evidenced by a certificate of occupancy or a certificate of temporary occupancy issued by CITY, and being in compliance with the Third Amended and Restated Lease, including any subsequent amendments. The rent for the Additional Term and the Option Term shall be calculated pursuant to Section 3. Rent."

2. Section 3.5. is hereby **ADDED** to the LEASE as follows:

"3.5. Reimbursement for Restroom Maintenance. Beginning on the Effective Date of the Amendment, LESSEE hereby agrees to reimburse CITY, on an annual basis, its proportionate share of the actual cost incurred by CITY for restroom maintenance. LESSEE acknowledges and agrees that its propionate share for this provision is twenty-four-point-five percent (24.5%) of the total costs.

To obtain the reimbursement from LESSEE, CITY shall provide LESSEE with a statement of the actual cost incurred by CITY for restroom maintenance along with an invoice for reimbursement within 90 days of June 30th of every calendar year. LESSEE shall pay said invoice within 30 days after receipt."

3. Section 5.2 of the Lease is **DELETED** in its entirety and **REPLACED** with the following:

"5.2 Insurance.

a. Lessee shall deliver to City a current certificate of insurance and relevant endorsements for:

(1) Commercial General Liability Insurance, providing coverage for the damages due to bodily injury, including death, personal injury, 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), products and completed operations and if applicable, use of unlicensed vehicles that in any way arise from the use of the Leased Premises and operations of activities of the entity. Non-licensed vehicles operated on the movement area will require coverage in an amount not less than Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

(2) Fire, extended coverage, and vandalism insurance policy on all City owned insurable property on the Premises, in an amount to cover one hundred percent (100%) of the replacement. Any proceeds from a loss shall be payable jointly to City and Lessee. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. Lessee shall submit to the City recommendations and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.4, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to City has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.

(3) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars ($1,000,000) per occurrence or Two Million Dollars ($2,000,000) per occurrence for automobiles operated on airside. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.

(4) Workers' Compensation Insurance, as required by the laws of the State of California for all of Lessee's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars ($1,000,000).

(5) Hangar Keeper's Insurance, sufficient to cover replacement cost and aircraft hangared for others, but no less than Ten Million Dollars ($10,000,000).

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

(7) 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. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

c. Primary and Non-Contributory. Insurance policies shall be endorsed such that that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the Term and any extended use.

d. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

e. 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.

f. 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. 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.

g. Modification. To assure protection from and against the kind and extent of risk existing on the Premises, City, at its discretion, may require the revision of amounts and coverage at any time during the Term 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 Lessee's use of the Premises.

h. Accident Reports. Lessee shall immediately report to City any accident causing property damage or injury to persons on the Premises. 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.

i. 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 on the Premises, excepting wells, irrigation piping, and plant material, in an amount to cover one hundred percent (100%) of the replacement cost. Lessee shall deliver to City a certificate of such insurance."

4. Section 7.4 of the Lease is **DELETED** in its entirety and **REPLACED** with the following:

"7.4 No Discrimination. LESSEE shall not 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."

5. Section 9.12 of the Lease is **DELETED** in its entirety and **REPLACED** with the following:

"9.12 Equal Opportunity. LESSEE shall 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 all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year."

6. Section 9.22 is **ADDED** to the Lease to read as follows:

"9.22 Water Quality – Best Management Practices. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) contained in the Brown Field Airport Storm Water Pollution Prevention Plan ("**SDM SWPPP**") to manage activities on the premises in a manner which aids in the protection of CITY's precious water resources. It is 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) or the SDM SWPPP.

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under San Diego Municipal Code section 43.0307(a) and the SDM SWPPP. In addition, Lessee shall become a Co-Permittee to the MYF SWPPP.

Federal Environmental Protection Agency (EPA) rules for above ground tank systems ("ASTs") and oil pollution prevention require that each facility that owns or operates above ground tank systems (including refueler trucks) that contain an aggregate storage capacity of 1,320 gallons or higher must prepare a Spill Prevention Control and Countermeasures ("**SPCC Plan**") Program, pursuant to 40 C.F.R. Part 112. The plan includes requirements for secondary containment, loading/unloading of fuel and oil, discharge of accumulated rainwater, inspections, training, updates to the plan, and other miscellaneous items. LESSEE shall prepare a site specific SPCC Plan and provide a copy to CITY.

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

7. Section 9.23 is **ADDED** to the Lease to read as follows:

"9.23 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the premises has not been inspected by a Certified Access Specialist (**CASp**).

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. Section 9.24 is **ADDED** to the Lease to read as follows:

"9.24 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as 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 domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease"

9. Section 9.25 is **ADDED** to the Lease to read as follows:

"9.25 Equal Pay Ordinance. Unless an exception applies, LESSEE shall 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 of this Lease.

The Equal Pay Ordinance applies to any sub-lessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sub-lessees to certify compliance with the Equal Pay Ordinance in their subleases.

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

10. Section 9.26 is **ADDED** to the Lease to read as follows:

"9.26 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."

11. This Amendment will be effective when it is signed by both parties and approved by the City Attorney in accordance with Charter section 40.

12. Authority. Each individual executing this Second Amendment on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Second Amendment 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 Second Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Second Amendment 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.

13. All provisions of the LEASE not addressed in this Amendment remain in full force and effect.

*****REMAINDER OF PAGE LEFT INTENTIONALLY BLANK*****

IN WITNESS WHEREOF, this Second Amendment is executed by CITY, acting by and through its Mayor, or his designee, and by LESSEE, acting by and through its lawfully authorized officer.

Date: 12/3/18

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Name: Cybele L. Thompson
Title: Director Real Estate Assets

Date: 9/7/18

BROWN FIELD AVIATION VENTURES, INC., a California corporation

By: Bruce Young
Name: BRUCE YOUNG
Title: PRESIDENT

Approved as to form this 4th *day of* December, *2018.*

MARA W. ELLIOTT, City Attorney

By: _____
Name: David Powell
Title: Deputy City Attorney

#101 A
11/13/18

(R-2019-219)

RESOLUTION NUMBER R- 312042

DATE OF FINAL PASSAGE NOV 20 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE SECOND AMENDMENT TO THE THIRD AMENDED AND RESTATED FLAT RATE LEASE WITH BROWN FIELD AVIATION VENTURES, INC.

WHEREAS, the City of San Diego (City) owns the real property located at 1424 Continental Street, San Diego, California, 92154, commonly known as at Brown Field Municipal Airport (Brown Field); and

WHEREAS, pursuant to that certain City of San Diego Third Amended and Restated Flat Rate Lease (Lease), Brown Field Aviation Ventures, Inc. (BFAV) currently leases 20.29 acres at Brown Field for a Fixed-Base Operator; and

WHEREAS, the term of the Lease currently expires on November 30, 2031; and

WHEREAS, the Lease provides that to extend the term of the Lease for an additional ten (10) years, BFAV is required to make capital improvements to the leasehold at a cost of not less than $1,000,000, including construction of not less than 20,000 square feet of new hangar space within ten (10) years of the effective date of the Lease (the "Improvements"), the original deadline being December 28, 2015; and

WHEREAS, on December 11, 2015, City and BFAV entered into a First Amendment to the Lease for a two-year extension to the deadline to complete the Improvements until December 28, 2017; and

WHEREAS, the City and BFAV now wish to enter into that certain Second Amendment to the City of San Diego Third Amended and Restated Flat Rate Lease between the City and BFAV, on file in the Office of the City Clerk as Document No. RR- 312042-1, which

will, among other things, extend the deadline for BFAV to construct the Improvements to four (4) years from the effective date of the Second Amendment to the Lease, and add a cost sharing arrangement requiring BFAV to pay a proportionate share of restroom maintenance costs for the terminal building at Brown Field; and NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is authorized to execute and deliver that certain Second Amendment to the Third Amended and Restated Flat Rate Lease, on file in the Office of the City Clerk as Document No. RR- 312042-2, between the City and Brown Field Aviation Ventures, Inc.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
David L. Powell
Deputy City Attorney

DLP:nja
10/30/18
Or. Dept: READ
Doc. No.: 1868433

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 13 2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 11/20/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 13 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 NOV 20 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 Linda Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312042

Passed by the Council of The City of San Diego on November 13, 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: Linda Irwin, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-312042**, approved on **November 13, 2018**. The date of final passage is **November 20, 2018.**

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Linda Irwin, Deputy