ORIGINAL

SECOND AMENDMENT TO
FLAT RATE PARCEL GROUND LEASE

THIS SECOND AMENDMENT TO FLAT RATE PARCEL GROUND LEASE ("Amendment") is made and entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("City"), and AIR CENTER MYF, LLC, a California limited liability company ("Lessee"), to be effective as of the date this Amendment is executed by the parties and approved by the San Diego City Attorney (the "Amendment Effective Date").

RECITALS

A. City owns that certain real property consisting of approximately 7.69 acres of unimproved land (the "Property") located at the Montgomery-Gibbs Executive Airport (the "Airport"), 3750 John J Montgomery Dr., San Diego, CA 92123,, as more particularly depicted and described on the attached Exhibit A: Depiction and Legal Descriptions of the "Property".

B. The Property consists of three (3) parcels identified as: 1) a 4.72-acre lot ("Parcel l"); 2) a 1.59 -acre lot ("Parcel 2"); and 3) a 1.38-acre lot ("Parcel 3"), and as are more particularly depicted and described on the attached Exhibit A-1: "Parcel 1," Exhibit A-2: "Parcel 2," and Exhibit A-3: "Parcel, 3."

C. Pursuant to that certain Flat Rate Parcel Ground Lease between City and Lessee, on file with the San Diego City Clerk as Document No. RR-311540 ("Original Lease"), as amended by that certain First Amendment to Flat Rate Parcel Ground Lease between City and Lessee, on file with the San Diego City Clerk as Document No. RR-312911 ("First Amendment") (the Original Lease and the First Amendment are collectively referred to herein as the "Lease"), City leased Parcel 1 to Lessee and provided Lessee with the option to add Parcel 2 and/or Parcel 3 to the Premises within seven (7) years of the Commencement Date.

D. The Original Lease provided that the Commencement Date initiating the obligation of the Lessee to pay Rent would occur on the first day of occupancy by Lessee of Parcel 1, but no later than two (2) years from the Effective Date, or March 8, 2020. The Original Lease also required Lessee to secure all required permits and approvals to commence work on Parcel 1 in accordance with the General Development Plan within five (5) years from the Effective Date, or March 8, 2023.

E. Among other changes, the First Amendment extended the Commencement Date to the first day of occupancy by Lessee of Parcel 1, but no later than four (4) years from the Effective Date, or March 8, 2022.

F. The Lessee applied to the City's Development Services Department for permits to develop Parcel 1 on October 3, 2018, but has not received final approval of its application due to additional environmental studies and analysis required for the

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FILED MAY 17 2022
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

application. In addition, the Federal Aviation Administration requires compliance with National Environmental Policy Act reviews for this type of project.

G. The Lessee's project also experienced significant delays due to the on-going pandemic.

H. Lessee continues to work on the environmental studies and analysis for its application to develop Parcel 1, and requests an additional three (3) year extension of the Commencement Date to March 8, 2025 while it works to complete the development entitlement process. Lessee also requests a three (3) year extension of the date to secure all required permits and approvals for work on Parcel 1 to March 8, 2026.

I. The parties now desire to amend the Lease to provide Lessee with additional time to complete the development entitlement process by revising the Commencement Date to be no later than seven (7) years from the Effective Date of the Lease and requiring Lessee to secure all required permits and approvals to commence work in accordance with the General Development Plan within eight (8) years from the Effective Date.

J. The Lease requires the Lessee to invest a minimum of $5 million in capital improvements for Parcel 1. As consideration for the City agreeing to extend the Commencement Date, Lessee agrees to revise the General Development Plan to invest a minimum of $6 million in capital improvements for Parcel 1.

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

L. By this reference, the above Recitals are hereby incorporated into, and made a part of 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 Term, of the Lease is hereby **DELETED** in its entirety and **REPLACED** with the following:

"2.1. Term. The term of this Lease shall commence on the first date of occupancy by Lessee of the Premises ("Commencement Date"), and shall continue for fifty (50) years (the "Term"). Notwithstanding the foregoing, the Commencement Date shall be no later than seven (7) years from the Effective Date of this Lease. The Commencement Date shall be memorialized by City pursuant to the "Notice of Commencement Date" as attached hereto as Exhibit C. "Lease Year" as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the Commencement Date and each succeeding 12 month period thereafter during the Term.

As used in this Section 2.1, "first date of occupancy" shall mean the date Lessee commences construction activities on the Premises, as determined by the City.

2. Section 10.1 General Development Plan of the Lease is hereby **DELETED** in its entirety and **REPLACED** with the following:

10.1 General Development Plan. Notwithstanding anything to the contrary contained herein, Lessee shall make those certain improvements to the Premises, within the required completion dates, as set forth in **Revised Exhibit "B"** General Development Plan ("General Development Plan") and depicted on **Exhibit "B-1"** Master Leasehold Map attached hereto and made a part hereof. City and Lessee understand, acknowledge and agree that reasonable modifications of the General Development Plan may be necessary in connection with the processing of building permits and other approvals from the City of San Diego acting in its regulatory capacity, and any such modifications shall be subject to the prior written approval of City as Lessor under this Lease. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by City, with the operation and maintenance of the transient ramp, with the monitoring and sampling of groundwater, or other monitoring components, and the public and other persons and organizations entitled to use of the same. Lessee shall secure City's prior written approval to commence work on the improvements set forth in **Revised Exhibit "B"** General Development Plan and depicted on **Exhibit "B-1"** Master Leasehold Map.

10.1.1 Parcel 1 Permits and Approvals. Prior to commencing any work on Parcel 1, in accordance with the General Development Plan, Lessee shall (1) submit development plans and all documents required by the applicable City departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work set forth in the General Development Plan, including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives or mitigation measures for purposes of CEQA. If Lessee fails to secure all required permits and approvals from the competent governmental authorities to commence work on Parcel 1 in accordance with the General Development Plan within eight (8) years from the Effective Date, the parties shall terminate this Lease pursuant to a lease termination agreement in a form approved by the San Diego City Attorney, without the need for further City Council resolution.

10.1.2 Option(s) Permits and Approvals. If Lessee exercises its Option for Parcel 2 and/or Parcel 3, then prior to commencing any work pursuant to the Option(s), in accordance with the General

Development Plan, as may be amended, Lessee shall (1) submit development plans and all documents required by the applicable City departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work set forth in the General Development Plan applicable to the Option(s), including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of the Option(s) does not foreclose all options, alternatives or mitigation measures for purposes of CEQA. If Lessee fails to secure all required permits and approvals from the competent governmental authorities to commence work, pursuant to a successfully exercised Option(s) within five (5) years from the effective date of each amendment pursuant to an Option(s) the parties agree that the amendment for that Option(s) shall be deemed void, without the need for further City Council resolution.

3. Exhibit B is hereby **DELETED** in its entirety and **REPLACED** with the Revised Exhibit B, attached to this Amendment.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

THE CITY OF SAN DIEGO, a California municipal corporation

Date 7-13-2022

By _____
Penny Maus
Director, Department of Real Estate and Airport Management

AIR CENTER MYF, LLC,
a California limited liability company

Date _____

By _____
Deann Shier
Member

Approved as to form this 18th day of July, 2022

MARA W. ELLIOTT, City Attorney

By _____

Name: William Witt
Title: Deputy City Attorney

R-314101

REVISED EXHIBIT B

GENERAL DEVELOPMENT PLAN
Air Center MYF, LLC

		Estimated Commencement Date	Minimum Improvement Costs
Parcel 1	**To be completed no later than March 1, 2028***		**$6,000,000**
	City Lease Signed - Effective Date - March 8, 2018		
	Take possession- commence paying rent no later than	March 1, 2025	
	Construction Staging		
	Sitework		
	Ramp Construction ~113,000 SF		
	Construction of ~30,000 SF of Hangars		
	Optional ~10,000 SF of Hangars		
	Marshall & Swift - Class C Construction		
	Parking Lot Construction ~34,000 SF		
	Tenant Improvements ~6,000 SF		
	Completion/ Inspection/ Move In		
Parcel 2	**To be completed no later than March 1, 2037***		**$840,000**
	If Option Notice Provided by Lessee to City - Exercise Option Parcel 2 by - February 28, 2032		
	Take possession - commence paying rent no later than	March 1, 2034	
	Construction Staging		
	Sitework		
	Ramp Construction and Misc ~70,000 SF		
Parcel 3	**To be completed no later than February 1, 2037***		**$3,160,000**
	If Option Notice Provided by Lessee to City - Exercise Option Parcel 3 by - February 28, 2032		
	Take possession - commence paying rent no later than	March 1, 2034	
	Construction Staging		
	Sitework		
	Construct Hangars ~25,000 SF		
	Marshall & Swift - Class C Construction		
	Construct Hangar ~4,900 SF (on Parcel 1)		
	Ramp ~30,000 SF		
	Parking and Misc ~8,000 SF (on Parcel 1)		
	Total		**$10,000,000**

* Subject to any extensions as a result of an Unavoidable Delay as provided for in Section 12.8 of the Lease

#102 5/17/2022

(R-2022-463)

RESOLUTION NUMBER R- 314101

DATE OF FINAL PASSAGE JUN 01 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SECOND AMENDMENT TO FLAT RATE PARCEL GROUND LEASE WITH AIR CENTER MYF, LLC, FOR UP TO 7.69 ACRES OF UNIMPROVED LAND LOCATED AT MONTGOMERY-GIBBS EXECUTIVE AIRPORT.

WHEREAS, the City owns that certain real property consisting of approximately 7.69 acres of unimproved land (Property) generally located at 3750 John J Montgomery Drive, San Diego, California 92123, and commonly known as the Montgomery-Gibbs Executive Airport (Airport); and

WHEREAS, the Property consists of three parcels identified as a 4.72-acre lot (Parcel l), a 1.59-acre lot (Parcel 2), and a 1.38-acre lot (Parcel 3); and

WHEREAS, on February 13, 2018, the City Council approved Resolution R-311540 authorizing that certain Flat Rate Parcel Ground Lease between the City and Air Center MYF, LLC (Lessee), on file with the San Diego City Clerk as Document No. RR-311540 (Lease), for the future construction, operation, and maintenance of a helicopter fixed based operator facility on Parcel 1 (Project) and an option for Lessee to add Parcel 2 or Parcel 3, or both, to the leasehold premises under certain conditions set forth in the Lease; and

WHEREAS, the Lease provided that the term shall commence on the first day of occupancy by Lessee, but no later than March 8, 2020; and

WHEREAS, on April 7, 2020, the City Council approved Resolution R-312911 authorizing the First Amendment to the Lease, on file with the San Diego City Clerk as Document No. RR-312911 (First Amendment); and

WHEREAS, the First Amendment amended the Lease to, among other things, provide that the term shall commence on the first day of occupancy by Lessee, but no later than March 8, 2022; and

WHEREAS, the Project requires approvals from the City and the Federal Aviation Administration (FAA), including environmental studies and analysis; and

WHEREAS, Lessee has encountered significant delays in moving forward with the Project due to the COVID-19 pandemic; and

WHEREAS, Lessee has completed the environmental studies and analysis required by the City but has not received final Project approval from the City; and

WHEREAS, Lessee is preparing additional environmental documentation required by the FAA for its approval; and

WHEREAS, the City and Lessee have negotiated the provisions of a proposed Second Amendment to the Lease (Second Amendment), which provides that the term shall commence on the first day of occupancy by Lessee, but no later than March 8, 2025, and extends the date by which Lessee must secure all required permits and approvals for work on Parcel 1 to March 8, 2026; and

WHEREAS, the Second Amendment preserves Lessee's option to add Parcel 2 or Parcel 3, or both, to the leasehold premises under specified conditions; and

WHEREAS, a copy of the Second Amendment is included in the docket materials accompanying this Resolution; and

WHEREAS, as consideration for the City agreeing to the Second Amendment, Lessee agrees to increase the required minimum investment in capital improvements for Parcel 1 to $6 million from an original amount of $5 million; and

WHEREAS, the Property is needed for the City's use as a general aviation airport as set forth in the Montgomery Field Airport Master Plan approved by the City Council on July 7, 1984, and as such, the City's continued leasing of the Property is not a disposition of surplus land and is not subject to the Surplus Land Act as set forth in California Government Code sections 54220 through 54234; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The Council approves the Second Amendment.

2. The Mayor, or designee, is authorized and directed to sign the Second Amendment on the City's behalf. The Second Amendment, once fully executed, shall be placed on file in the Office of the City Clerk as Document No. RR- 314101 .

APPROVED: MARA W. ELLIOTT, City Attorney

By */s/William Witt*
William Witt
Deputy City Attorney

WWW:nja
April 25, 2022
Or.Dept: Real Estate Assets Department
CC No. N/A
Doc. No.: 2962000

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 17 2022.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 5/31/22
(date)

_____
TODD GLORIA, Mayor

Vetoed: _____
(date)

_____
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on MAY 17 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage JUN 01 2022.

(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:

TODD GLORIA
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

Resolution Number R- 314101

Passed by the Council of The City of San Diego on May 17, 2022, by the following vote:

YEAS:	**LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, CATE, CAMPILLO, MORENO, & ELO-RIVERA.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

TODD GLORIA

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-314101** approved on **May 17, 2022**. The date of final passage is **June 1, 2022**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: _____, Deputy