

DATE: December 11, 2007

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Authorization for the City Manager to Approve an Amendment and Assignment of the Commercial Aviation Site Lease between the City and Hayward Jet Center, Inc., to Volo Holdings Hayward LLC

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to approve the amendment and assignment of the Commercial Aviation Site Lease between the City and Hayward Jet Center, Inc., to Volo Holdings Hayward LLC.

BACKGROUND

On June 28, 2005, Hayward Jet Center, Inc. (Hayward Jet Center), formerly known as Career Aviation Sales, Inc., entered into a new commercial aviation site lease for the real property commonly known as 21889, 21893, & 21927 Skywest Drive. Hayward Jet Center has sold certain assets, including the commercial aviation site lease at Hayward Executive Airport, to Volo Holdings Hayward LLC (Volo Holdings Hayward), a Delaware limited liability company. The lease with the current tenant, Hayward Jet Center, Inc., prevents them from assigning the lease without first obtaining permission from the City; however, consent cannot be unreasonably withheld.

DISCUSSION

Volo Holdings Hayward is owned by Volo Facilities LLC, a private investment vehicle of an individual investor, and by Merrill Lynch & Company. Its businesses and investments include Fixed Based Operator (FBO) facilities in Sarasota, Florida; Ft. Pierce, Florida; Manassas, Virginia; and Stratford, Connecticut. Volo Holdings Hayward will be the City's new tenant and is committed to fulfilling the same terms and obligations of Hayward Jet Center's existing lease. It is anticipated that at some point in the near future Volo Facilities LLC will brand all FBO operations "Volo Aviation."

The City Attorney's office has reviewed and approved all relevant documents as to form. The provisions contained within the amendment are acceptable to the City. The Director of Finance and Internal Services has reviewed the financial statements for Volo Facilities LLC and finds its

financial resources satisfactory to meet City requirements for an assignment. The principle changes relate to mortgagee financing protections required by the lender for Volo Aviation to acquire the funds necessary to meet the \$2,000,000 investment required under the existing lease. Volo Aviation will be obligated to construct aviation facilities previously negotiated with Hayward Jet Center, which led to the new long-term commercial aviation site lease with the City. The spirit of the lease amendment specifies Merrill Lynch & Company as entitled to the award of insurance proceeds to the extent necessary to pay off mortgage debt in connection with a casualty or proceeds due to condemnation.

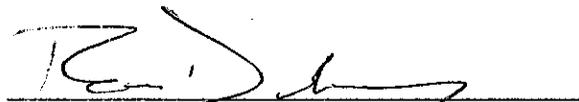
FISCAL IMPACT

The current ground lease terminates June 30, 2056. The rent paid to the City for the property is \$4,711 per month plus periodic increases in conformance with the City's standard land value for all similar aviation uses. The sale will have no effect on these rent provisions.

PUBLIC CONTACT

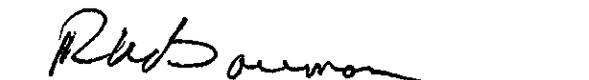
Not applicable.

Prepared by:



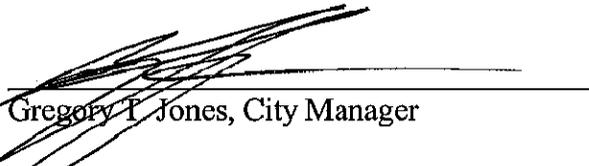
Ross Dubarry, Airport Manager

Recommended by:



Robert A. Bauman, Director of Public Works

Approved by:



Gregory T. Jones, City Manager

Attachments:

- Exhibit A - Assignment and Assumption Agreement
- Exhibit B - Estoppel Certificate
- Exhibit C - Amendment to Commercial Aviation Site Lease
- Draft Resolution

ASSIGNMENT AND ASSUMPTION AGREEMENT
WITH RESPECT TO COMMERCIAL AVIATION SITE LEASE
WITH THE CITY OF HAYWARD

Date: _____

Parties:

Hayward Jet Center, Inc.
formerly known as Career Aviation Sales, Inc. (“Lessee/Assignor”)
21889 Skywest Drive
Hayward, CA 94541

And:

Volo Holdings Hayward LLC (“Assignee”)
Sikorsky Memorial Airport
325 Main Street
Stratford, CT 06615

And:

City of Hayward (“Lessor”)
Attention: City Manager
777 “B” Street
Hayward, CA 94541

RECITALS

This ASSIGNMENT AND ASSUMPTION AGREEMENT WITH RESPECT TO COMMERCIAL AVIATION SITE LEASE WITH THE CITY OF HAYWARD (this “Assignment”) is dated as of _____, by and between Assignor and Assignee.

- A. Assignor is the present holder of the Lessee’s interest in the Commercial Aviation Site Lease dated June 28, 2005, between Lessor and Assignor (the “Lease”).
- B. This Assignment is made and entered into pursuant to that certain Purchase and Sale Agreement dated August 3, 2007, as amended by that certain First Amendment to Purchase and Sale Agreement dated September 21, 2007 (collectively, “Purchase and Sale Agreement”), such Purchase and Sale Agreement having been assigned to Assignee by FBO Company, LLC by Assignment and Assumption of Purchase and Sale Agreement.
- C. Pursuant to the Purchase and Sale Agreement, Assignor agreed to assign to Assignee all of Assignor’s right, title and interest in and to the Lease.
- D. Assignee desires to obtain all of Assignor’s right, title and interest in, and to assume all of Assignor’s obligations under the Lease, accruing from the date of closing of the Purchase and Sale Agreement on _____ (the “Execution Date”).

AGREEMENT

NOW THEREFORE, in consideration of the Leased Premises (as defined in the Lease), the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, Assignee and Lessor hereby agree as follows:

1. **Assignment.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under the Lease, including performance or security deposit, if any.
2. **Assumption.** Assignee hereby accepts the assignment. Assignee shall perform all of the obligations of Lessee under the Lease, from and after the Execution Date, including but not limited to the payment of all rent required under the Lease, and the performance of all of the covenants, agreements, conditions, and other provisions of the Lease.
3. **No Modification of Purchase Agreement and Lease.** Nothing in this Assignment and Assumption Agreement shall be deemed to modify or amend any provisions of the Purchase and Sale Agreement or the Lease.
4. **Warranty.** Assignor hereby warrants to Assignee that:
 - 4.1 Assignor has full legal right and title in and to the entire Lessee's interest in the Lease; and
 - 4.2 Such interest has not been previously assigned or pledged by Assignor and is free from prior liens, security interests, or encumbrances; and
 - 4.3 Assignor has full right and power, with the consent of Lessor, to assign the Lease to Assignee; and
 - 4.4 The Lease is in full force and effect and Assignor is not in material default of any of its terms; and
 - 4.5 All amounts owed to Lessor through the Execution Date have been fully paid.
5. **Lessor's Consent, Acknowledgement and Release of Lessee.** Lessor hereby acknowledges this Assignment and to the extent required by the Lease, hereby consents thereto. Lessor releases Assignor from all obligations of Lessee under the Lease except as to any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property or any violation of any state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Assignor that occurred prior to the date of this Assignment.
6. **Lessor's Consent and Acknowledgement of Assignee's Mortgage.** Lessor hereby consents to the granting of one or more Leasehold Deeds of Trust and Security Agreement and Fixture Filing (the "Deed of Trust") by Assignee for the benefit of Merrill

Lynch Mortgage Capital, Inc., its successors and/or assigns. Such Deeds of Trust shall only encumber the leasehold interest of Lessee and not the fee simple interest of Lessor.

7. **Lessor's Consent, Acknowledgement and Release of Bendor Lease.** Lessor hereby acknowledges the assignment of and to the extent required, hereby consents thereto, the assignment of the Agreement for Temporary Use of City-Owned Property between Lessor and Assignor dated September 20, 2007 ("Bendor Lease"). Lessor releases Assignor from all obligations of Lessee under the Bendor Lease except as to any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property or any violation of any state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Assignor that occurred prior to the date of this Assignment.
8. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns.
9. **Counterparts.** This Assignment may be signed in counterparts.
10. **Conflicts.** To the extent any conflict or inconsistency exists between this Assignment and the Purchase and Sale Agreement, the provisions of the Assignment shall control. To the extent any conflict or inconsistency exists between this Assignment, the Purchase Agreement, and the Lease, the provisions of the Lease shall control.

IN WITNESS WHEREOF, the parties have executed this Assignment effective as of the day and year first above.

ASSIGNEE:

VOLO HOLDINGS HAYWARD LLC

By: _____

Name: _____

Title: _____

ASSIGNOR:

HAYWARD JET CENTER, INC.,
formerly known as Career Aviation Sales, Inc.

By: _____

Name: _____

Title: _____

LESSOR:

CITY OF HAYWARD
A California municipal corporation

By: _____
Gregory T. Jones, City Manager

Dated: _____

Attest: _____
Angelina Reyes, City Clerk

Dated: _____

APPROVED AS TO FORM

By: _____
Maureen Conneely, Acting City Attorney

**ESTOPPEL CERTIFICATE REGARDING COMMERCIAL
AVIATION SITE LEASE WITH CITY OF HAYWARD**

Date: _____, 2007

From:

City of Hayward ("Lessor")
Attention: City Manager
777 "B" Street
Hayward, CA 94541

To:

Volo Holdings Hayward LLC ("Assignee")
a Delaware Limited Liability Company
Attention: Thom Harrow
Sikorsky Memorial Airport
325 Main Street
Stratford, Connecticut 06615

And:

Hayward Jet Center, Inc. ("Lessee/Assignor")
formerly known as Career Aviation Sales, Inc.
a California Corporation
Attention: Ken Robinson, President
21889 Skywest Drive
Hayward, CA 94541

REGARDING: The Commercial Aviation Site Lease dated June 28, 2005, between the City of Hayward, Hayward Executive Airport and Hayward Jet Center, Inc. (formerly known as Career Aviation Sales, Incorporated) attached hereto and incorporated as if fully set forth herein by this reference (the "Lease").

Lessor hereby acknowledges and states that:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Lease, which Lease is in good standing and is in full force and effect.
2. Lessor is the owner and the holder of all of the Lessor's interest under the Lease, and such interest has not been assigned, encumbered or hypothecated.

3. Lessor has not received written notice of any pending eminent domain proceedings or any judicial actions of any kind against the Lessor's interest in the premises.
4. Lessee is in possession of the leased premises as described in the Lease.
5. There have been no modifications, alterations, supplementations, amendments or changes in the Lease and there are no other agreements between Lessor and Lessee regarding the Lease or the leased premises, other than listed below:

6. All rent and expenses due under the Lease have been paid through _____. No rent or other sum payable under the Lease is in default or dispute. The amount of the deposit returnable to Lessee upon termination of the Lease is \$_____.
7. Lessor has no claim against the Lessee.
8. Lessor has not received any notice of any prior trust deed or mortgage of the Lessee's interest in the Lease.
9. There is no existing default on the part of Lessor or Lessee under the terms of the Lease and no event has occurred which, with the giving of the notice, or the passage of time, or both, would constitute a default under the terms of the Lease.
10. Lessee has complied with all construction obligations in the Lease that were required to be completed to date, including obtaining plan approval and building permits.
11. Lessee, Assignee and Assignee's lender shall be entitled to rely upon the statements and acknowledgements contained herein.

Attest:

City of Hayward

By: _____

By: _____

Title: _____

Its: _____

EXHIBIT A
Copy of Lease

See Attached.

FIRST AMENDMENT

Volo Holdings Hayward LLC

Commercial Aviation Site Lease

THIS FIRST AMENDMENT TO LEASE (the "First Amendment"), made and entered into on this _____ day of _____, 2007, by and between the City of Hayward, a municipal corporation located in the County of Alameda, State of California, hereinafter designated "Lessor or City", and VOLO HOLDINGS HAYWARD LLC, a Delaware limited liability company, hereinafter called "Lessee", whose address is Sikorsky Memorial Airport, 325 Main Street, Stratford, CT 06615.

WITNESSETH:

WHEREAS, Lessor and Lessee's predecessor in interest have entered into that certain agreement and lease dated June 28, 2005, and entitled, "Hayward Executive Airport Commercial Aviation Site Lease" between the City and Hayward Jet Center, Inc., formerly known as Career Aviation Sales, Inc. (the "Lease") and assigned to Lessee on _____, 2007; and

WHEREAS, the parties desire to amend the Lease in certain respects.

NOW, THEREFORE, in consideration of the covenants, conditions, and terms hereinafter set forth, Lessor and Lessee do hereby agree that the Lease, as assigned, is hereby amended in the following particulars only, to wit:

All other provisions of the Lease, not expressly changed hereby, remain the same and in full force and effect.

That Article in the Lease entitled "ARTICLE 6 LEASEHOLD FINANCING LESSEE'S ENCUMBRANCES" is hereby amended by adding the following section:

"Section 6.04 Modification of Lease. (a) City and Lessee shall not enter into any agreement modifying, canceling, terminating or surrendering the Lease or waiving rights without the prior written consent of Leasehold Mortgagee, which shall not be unreasonably withheld, conditioned, or delayed. Any such agreement entered into without Leasehold Mortgagee's prior written consent shall be void.

(b) If the Leasehold Mortgagee or its nominee or designee succeeds to the interests of Lessee by reason of foreclosure or an assignment in lieu thereof or by reason of delivery of a new lease or otherwise, the Leasehold Mortgagee's, its nominee's, designee's or assignee's, liability to City shall be limited to its interest in the Leased Premises, and City shall have no recourse whatsoever to any other assets of the Leasehold Mortgagee, its nominee, designee or assignee."

That Article in the Lease entitled "ARTICLE 9 INDEMNITY, INSURANCE AND BONDS" is hereby amended by adding the following section to read as:

"Section 9.05 Damage and Destruction.

a. If the Improvements on the Premises are damaged or destroyed during the Term by a fire or other casualty ("Casualty"), this Lease shall continue in effect (except as herein specifically provided). Upon such casualty Lessee shall have the right, at its election, to (i) rebuild and restore such Improvements and/or construct other improvements pursuant to Article 7 of the Lease; or (ii) raze the Improvements and place the Premises in a safe and sightly condition. If Lessee elects to raze such damaged Improvements and Lessee shall not rebuild a building(s) or commence the rebuilding process (including starting working drawings) consisting of approximately 16,000 square feet within 12 months after Lessee shall have razed the Improvements, then Lessee and/or Lessor shall each have the right to terminate this Lease by

providing the other party sixty (60) days written notice ("Termination Notice") of such election, in which event all of the obligations of the parties shall terminate sixty (60) days after the delivery of such Termination Notice. Lessee shall have full use of and shall apply any insurance proceeds available for such rebuilding and restoration if it elects to rebuild, otherwise Leasehold Mortgagee is entitled to the insurance proceeds up to the unpaid amount of the Leasehold Mortgage, with any remaining proceeds paid to Lessee. All restoration, repairs or alternative construction done pursuant to this Section shall comply with the applicable building and fire code provisions in effect at the time of the restoration, repairs or alternative construction are made. Notwithstanding the foregoing, if Lessee desires to rebuild a building(s) that in the aggregate shall consist of less than 16,000 square feet, then Lessee shall obtain Lessor's prior written consent to construct such smaller building(s), which consent shall not be unreasonably withheld conditioned or delayed provided that the proposed use for such building meets the airport's Minimum Standards now in effect or as may be amended from time to time. Upon providing such consent, Lessor's right to terminate this Lease pursuant to the provisions of this Section 9.05 (a) shall be null and void until the occurrence of the next Casualty event.

b. Notwithstanding the terms and conditions set forth in Section 9.05 (a) above, in the event the Casualty occurs during the last 15 years of the Term in effect and the amount of damage or destruction exceeds One Million Dollars (\$1,000,000.00), then Lessee may thereafter terminate this Lease by giving written notice to City within sixty (60) days of the date of the Casualty specifying a date of termination within sixty (60) days after the date of the notice. In the event of such termination and prior to the effective date thereof, Lessee shall, at its own costs and expense, remove and raze the portion of the Premises which is damaged and pave over such portion of the Premises, and pay off and discharge any Leasehold Mortgage. The balance, if any, of any insurance proceeds shall be retained by Lessee.

That Article in the Lease entitled "ARTICLE 11 ASSIGNMENT AND SUBLEASING" is hereby amended in the second paragraph of Section 11.02 Lessee's Right to Sublease to clarify that Lessor's security interest in the rent from sublessees is subject and subordinate to the assignment of rent from sublessees in favor of Leasehold Mortgagee as security for Lessee's obligations under the Loan provided by Leasehold Mortgagee.

That Article in the Lease entitled "ARTICLE 11 ASSIGNMENT AND SUBLEASING" is hereby amended by adding the following section to read as:

"Section 11.03 Non-Disturbance. In the event of default by Lessee under this Lease or termination of this Lease and the failure of City to enter into a new lease with Leasehold Mortgagee, City agrees that so long as an individual sublessee pays its pro rata share of the Rent and other obligations under this Lease (based on its percentage share of the square footage in the hangar building as set forth in each individual long term possession and use agreement and described in Exhibit ___, and as adjusted periodically as set forth in Exhibit ___) to City, upon City's written request, irrespective of whether or not such monies have been prepaid to Lessee, performs all of its other obligations under this Lease, and complies with all other terms and conditions of its long term possession and use agreement, which is expressly made subject to all other terms and conditions of this Lease, then City shall not disturb such sublessee's quiet possession of its hangar for the term thereof. In no event shall City have the right to terminate an individual sublessee's rights by reason of the default of any other sublessee."

That Article in the Lease entitled "ARTICLE 14 MISCELLANEOUS PROVISIONS" is hereby amended in Section 14.09 to substitute the address to which notices to Lessee are to be sent as follows:

Lessee: Volo Holdings Hayward LLC
c/o Volo Facilities
325 Main Street
Stratford, Connecticut 06615
Attn: Thom W. Harrow

with a copy to: Greenfield Partners
50 North Water Street
South Norwalk, Connecticut 06854
Attn: Barry P. Marcus, Esq.

That Article in the Lease entitled "ARTICLE 14 MISCELLANEOUS PROVISIONS" is hereby amended by adding the following sections to read as:

Section 14.20 Automatic Termination Upon Condemnation. If, after the execution of this Lease and prior to the expiration of the Term, the whole of the Premises shall be taken under power of eminent domain by any public or private authority, or conveyed by City to said authority in lieu of such taking (collectively, "Condemnation"), then this Lease and the Term shall cease and terminate as of the date of such taking, subject, however, to the right of Lessee, at its election, to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part, as Lessee may determine, of the period between the date of such taking and the date when possession of the Premises shall be taken by the taking authority, and any unearned rent or other charges, if any, paid in advance shall be refunded to Lessee.

Section 14.21 Voluntary Termination Upon Condemnation. If, after the execution of this Lease and prior to the expiration of the Term, any Condemnation results in a taking (i) of any portion of Lessee's Improvements, or results in a taking of a portion of the access roads to the Premises, or any portion of the Premises, which, from a reasonable objective standard, materially impedes or interferes with access to the Premises, or materially affects the conduct of Lessee's business at the Premises; or (ii) which permits the Lessee's sublessee under the sublease to

terminate the sublease and the sublessee elects to terminate the sublease, then Lessee may, at its election, terminate this Lease by giving City notice of the exercise of Lessee's election within sixty (60) days after Lessee receives notice of such taking. In the event of termination by Lessee under the provisions of this Section, this Lease and the Term shall cease and terminate as of the date of such taking, contingent on the right of Lessee, at its election, to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part as Lessee may determine for the period between the date of such taking and the date when possession of the Premises shall be taken by the appropriating authority. Upon termination of this Lease, any unearned rent or other charges, if any, paid in the advance shall be refunded to Lessee.

Section 14.22 Restoration. In the event of a Condemnation with respect to which Lessee shall not have the right to elect to terminate this Lease or, having such right, shall not elect to terminate this Lease, this Lease and the Term shall continue in full force and effect for that portion of the Premises which shall not have been expropriated or taken, in which event Lessee upon receipt of condemnation award shall restore the Premises, as nearly as practicable to complete units of like quality and character as existed just prior to such Condemnation. The Base Rent shall be reduced as of the date of the taking to an amount which reflects the reduction in utility or economic value of the Premises as a result of such taking.

Section 14.23 Award – Lease Not Terminated. In the event of a Condemnation of any portion of the Premises and the Lease is not terminated, the award paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows:

- (a) First, Leasehold Mortgagee shall receive so much of the award as is necessary to restore the Premises and Lessee's Improvements and for the value of Lessee's Improvements taken; and
- (b) Second, City shall receive the balance of the award.

Section 14.24 Award – Lease Terminated. In the event of a Condemnation and this Lease is terminated as herein provided, the award paid by the condemning authority (after payment of expenses incurred in connection with collecting the same) shall be allocated as follows:

- (a) First, to the extent the award is allocable to the Premises and/or to the leasehold estate under this Lease, then the Leasehold Mortgagee shall be paid the balance due on any note and Leasehold Mortgage;
- (b) Second, to the extent the award is allocable to the Premises and/or the leasehold estate under this Lease, including, without limitation, loss of business and goodwill, depreciation of fixtures, fixture and equipment damage, Lessee's Improvements, removal and reinstallation costs, moving expenses, to Lessee the amount of the award for the value of the Premises, Lessee's Improvements, and/or such leasehold estate taken after the payment under subparagraph (a) above;
- (c) Third, the balance of the award to City.

Nothing herein contained shall be construed as preventing Lessee from being entitled to any separate award made to Lessee for the taking of Lessee's personal property, or from claiming all or any portion of its award directly against the condemning authority.

This First Amendment contains the entire agreement of the parties as to the subject matter hereof and all negotiations and agreements between the parties herein or their agents with respect to this First Amendment are hereby declared to be merged in this agreement. This First Amendment shall be binding on and inure to the benefit of Lessor, Lessee, any Leasehold Mortgagee, and their respective permitted successors and assigns.

IN WITNESS WHEREOF, the City, by and through the City Manager, and Lessee are duly authorized to act and have caused these presents to be executed the day and year first written above.

RECOMMENDED BY:

Ross Dubarry, Airport Manager

APPROVED BY:

Robert Bauman, Director of Public Works

LESSEE:

VOLO HOLDINGS HAYWARD LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

CITY OF HAYWARD,
A municipal corporation

Gregory T. Jones, City Manager

APPROVED AS TO FORM:

Date: _____

City Attorney

ATTEST:

Angelina Reyes, City Clerk

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward