



CITY OF  
**HAYWARD**  
HEART OF THE BAY

8

DATE: December 15, 2009

TO: Mayor and City Council

FROM: Robert A. Bauman, Director of Public Works

SUBJECT: Authorization for City Manager to Approve a Second Amendment and Assignment of the Commercial Aviation Site Lease between the City and Volo Holdings Hayward LLC to Hayward FBO LLC and Conduct Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Airport Property Partners LLC

**RECOMMENDATION**

That Council adopts the attached resolutions:

- 1) Approving a Second Amendment and Assignment of the Commercial Aviation Site lease between Volo Holdings LLC and the City, to Hayward FBO LLC, including a 24-month extension to the development timeline for Hayward FBO LLC to complete the improvements and modifications contained in the First Amendment to Lease and;
- 2) Approving the issuance by California Statewide Communities Development Authority of Tax-Exempt Obligations in an aggregate amount not to exceed \$5,000,000.

**SUMMARY**

The existing Volo Aviation leasehold, owned by Volo Holdings Hayward LLC at the Hayward Airport, is being purchased by Hayward FBO LLC. The purchase is being financed with tax-free bonds issued by California Statewide Community Development Authority. As part of the Assignment and Assumption of the leasehold, a Second Amendment is proposed to ensure a minimum of \$2 million in improvements to the leasehold are accomplished. Because of the tax-free financing, a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing is required.

**BACKGROUND**

The Airport Fixed Base Operator (FBO), known as Hayward Jet Center, originally owned and operated by Career Aviation Inc., was purchased in December 2007 by FBO Ventures LLC, a joint ownership entity with Merrill Lynch Corporation (Merrill). Volo Holdings Hayward LLC is the present leasehold owner and has managed the FBO property as Volo Aviation. The Volo Aviation

FBO at Hayward is one of a chain of such facilities at five airports nationwide that were branded under the Volo name.

In 2008, Merrill began to experience financial difficulties that culminated in the company's sale to Bank of America in December 2008. During this period, Merrill became unable to continue its financial support of the Volo operated and managed FBOs. Financial problems prevented scheduled development from occurring as prescribed under the terms of its ground lease. The original Hayward Jet Center ground lease was extended to December 2053 by Council action in 2005, based on certain improvements and investments being made. However, the lease also allows that it would expire in December of 2013, if the stipulated improvements were not completed. This condition was continued under the ownership by Volo Holdings Hayward LLC.

In June 2009, Airport staff held several meetings with Volo's local management and corporate officers to determine what, if any, improvements would be constructed by Volo and how Volo proposed to meet the construction and occupancy date defined in its lease. Since taking possession of the leasehold in December 2007, no construction permits have been issued, nor have any site improvements been made that would result in issuance of a City certificate of occupancy. The target date for permits to have been issued was defined as June 30, 2010. It was determined that Volo would not be able to comply with the construction terms contained in its leasehold and that a new financial ownership structure was being developed.

## **DISCUSSION**

In July 2009, a newly created entity, Airport Property Partners LLC (APP) and Merrill reached agreement on the sale of four of the five Volo facilities (including Hayward) to APP in a transaction that is now scheduled to close in December 2009. The other purchased FBOs are in Sarasota and Ft. Pierce, FL and Manassas, VA. Each has already gone through their local approval and financing processes. APP is, to a large extent, comprised of personnel who currently manage the Volo facilities for Merrill, and it is APP's intention to maintain the staff and management of the FBOs it is acquiring. According to APP, this transaction will allow control of the Volo FBO by an owner-investor team for whom FBOs are its sole business. Each of the individual facilities has been established as a separate limited liability company. The Hayward FBO LLC, wholly owned by APP, will be assigned the existing leasehold.

APP is a Delaware Limited Liability Company formed in 2008 for investment in airport properties, generally, FBOs in particular. Thom Harrow is the Chief Executive Officer of APP and an owner of the company. APP's financial backing comes principally from Greenwich Investment Management (GIM), a Greenwich, Connecticut investment advisory firm. GIM manages in excess of \$350 million for its clients and has made numerous successful airport real estate related investments, including the air cargo sector, with locations at Ft. Lauderdale and Jacksonville, Florida and, more recently, in the FBO sector, including FBOs in Illinois, Connecticut, and Texas.

APP is seeking an assignment of the Volo leasehold to Hayward FBO LLC. When purchased by APP in December, APP will be the sole owner of the Hayward FBO location. With exception of the modified construction schedule, the terms contained in the current ground lease will not be changed (see Attachment III – Assignment and Assumption of Agreement).

The existing ground lease contains three aircraft hangars, and a temporary terminal and office building (double wide trailer). The property also houses an underground fuel storage facility which needs to be replaced. While the tanks themselves have continued to pass required integrity tests, some historic soil and water contamination has been identified and cleanup can best be addressed when the tanks are removed. The need to repair the fuel farm was identified prior to the sale to Volo Holdings Hayward LLC, and approximately \$300,000 was held in escrow for that purpose. Responsibility for future cleanup and construction of a new facility is being accepted as part of the leasehold purchase by the leasee. Most modern airport fueling facilities today are being built with above ground tanks because there is less possibility for ground contamination. The newer above-ground tanks can be just as safe as an underground facility with appropriate design and mitigation. Airport staff has been in discussions with the Hayward Fire Department to allow above ground tanks at the Airport as an exception to the Hayward Fire Code prohibition of above-ground tanks. The recent acquisition by the Airport of an Aircraft Rescue and Firefighting (ARFF) truck and funding of fire fighter ARFF training has provided a rationale for the Fire Department to consider in granting such an exception. Long term funding for ARFF requirements, however, has been an issue for the Airport and the Fire Department. The nature and extent of ARFF services at the Airport will be addressed at a future Council Airport Committee meeting as part of a broader discussion of a sustainable funding source for such services, consistent with FAA and local requirements.

Staff believes it is in the Airport's best interest to have a new owner of the FBO leasehold that will have the resources and the commitment to improve the leasehold and continue to provide significant revenue to the Airport. The proposed assignment and associated financing will provide that. Staff supports assignment of the leasehold to Hayward FBO LLC and extension of the time required to construct the \$2.0 million in improvements, with certain conditions that will ensure improvements are constructed prior to the contingent lease termination date of December 31, 2013. Those conditions are as follows:

1. Hayward FBO LLC must remove all existing underground fuel storage tanks from the present fuel storage and dispensing site and construct a new fuel storage facility within 12 months. Further, Hayward FBO LLC agrees that the new facility will include reestablishment of the 100LL Aviation Gasoline (AVGAS) self-serve capability, which was deactivated in April 2009.
2. The actual start of construction will be contingent upon the City's issuance of permits to construct, but in no case will completion of the required improvements extend beyond the contingent lease termination date of December 31, 2013
3. As part of mitigation to obtain an exception for above ground fuel tanks from the Hayward Fire Department, Hayward FBO LLC is agreeable to provide \$100,000 towards Airport Rescue and Fire Fighting (ARFF) requirements on the Airport. The ARFF fund money will be paid within 12 months of execution of the lease amendment.
4. Hayward FBO LLC will construct, within 24-months of the Amendment, a new FBO terminal facility of 2,500 square feet minimum. There are two acceptable ways to meet this requirement as shown on the leasehold site plans. One is for a new hanger and FBO terminal building, and the second would be to make improvements to the existing SP Aviation hangar facility and attach a new structure on the side of the hangar to serve as the

FBO terminal facility, providing that the minimum investment is at least \$2.0 million (see Attachment V – Leasehold Site Plans).

Financing and Required TEFRA Hearing: APP is financing the acquisition of the Hayward FBO property through issuance of tax-free bonds, issued by California Statewide Communities Development Authority (California Communities). APP has applied for \$5.0 million to cover property acquisition and improvements. The City has been a member of the California Communities JPA since 1998 and California Communities is the authority providing the Proposition 1A Securitization Program to the City. In addition the city has in the past worked with California Communities on financing that supported various entities including Kaiser Permanente. However this is the first time tax-free financing is being used at the Airport, although it is very common financing method at other airports, including the FBO being purchased by APP at Sarasota, FL. There is no risk to the City or the Airport because the City is not issuing the bonds. As with any other mortgage arrangement, in the event the borrower defaults on the bond payments, the trustee could foreclose on the leasehold interest and take over operation of the FBO until a subsequent operator was found. Because the bonds are only being sold by California Communities to select high worth investors, the investors are responsible to review the financial analysis provided to California Communities and thus default is not likely. The source of payment for the bonds is the projected revenue from the operation of all four purchased FBOs. For federal tax purposes, the City is considered the owner of the improvements on the leasehold (normally, this actually occurs at the termination of the lease), however, the leaseholder is still responsible for possessory interest taxes and for all liabilities associated with the improvements.

The issuance of the tax-free bonds by California Communities does require holding a public Tax Equity and Fiscal Responsibility Act (TEFRA) hearing, and California Communities has requested the City conduct that hearing for them in accordance with the JPA. Airport improvements are one of the specific categories that are eligible for tax-free financing under the California Communities JPA. TEFRA hearings have taken place in the past when the City issued bonds, usually for affordable housing and as noted above for other California Communities financing in the city. The purpose of a TEFRA hearing is to allow public comment, either for or against issuance of tax exempt bonds. California Communities has designated Vanessa Lowry of the firm of Greenberg Traurig as Bond Counsel. She has reviewed the associated documents and this agenda report. Council is asked to hold that hearing as part of this action and approve the necessary documents. One of the determinations to be made is that significant public benefits occur from the financing of the acquisition, rehabilitation and improvements which staff has addressed under the Fiscal and Economic Impact sections below.

## **FISCAL IMPACT**

Volo Aviation fuel sales in 2008 totaled 850,000 gallons of fuel, more than one-half of all fueling activity on the Airport. Volo Aviation's fuel sales in 2008 provided \$118,905.20 in fuel flowage fees as revenue back to the Airport. The ground lease provides \$79,253 in annual rent. As stated previously, the terms, rates, and conditions contained within the existing ground lease will not change as a result of this action. These are significant sources of revenue for the Airport.

Yet unknown will be the impact upon AVGAS fuel sales and flowage fee revenues returned to the Airport with reestablishment of a self-serve fueling point, although an improvement is expected. Total flowage fees have fallen over 20% year-to-date, since Volo Aviation deactivated the self-serve fueling point in April 2009 as part of dealing with rehabilitation of its fueling facilities. Having a self-serve fueling point with corresponding lower fuel pricing on the Airport is very important to many of the tenants at the Airport. It has been an objective of staff to re-establish one as soon as possible. This leasehold agreement will accomplish that.

As noted above, Mr. Harrow has also agreed to contribute \$100,000 in one time funds to the Airport ARFF funding, which will be used to support construction of a facility to house the ARFF truck. It is anticipated that all future major developments on the Airport will be required to contribute to this funding through similar lease provisions to assist with the added costs associated with providing ARFF services on the airfield.

## **ECONOMIC IMPACT**

An important factor in the success of an airport is having well maintained and operated FBO facilities. This action is one aspect of ensuring that each FBO on the Airport contributes to that success. In addition to the direct revenue to the Airport, it is also anticipated that the facility upgrades will serve to attract additional corporate and transient traffic, which can have other economic benefits for the City.

## **PUBLIC CONTACT**

Mr. Harrow only reached agreement on his purchase of the Volo Holdings Hayward FBO assets in October. Therefore, it was not possible to provide the Council Airport Committee an informational report on this item at its last quarterly meeting, where information would have been provided to Airport tenants. However, a copy of the report has been made available to those who have requested to be informed on Airport issues. A public notice of the TEFRA hearing was published in the *Daily Review* on December 1, 2009.

## **SCHEDULE**

Airport staff anticipates that Mr. Harrow will be able to begin the permit application process in early January 2010. Based upon the process discussed with Mr. Harrow, it is likely that the new fuel storage facility could be completed by July 1, 2010, with completion of the additional FBO improvements within 24-months, meeting the requirement of completion of the defined minimum improvements by December 31, 2013.

Prepared by: Lloyd Partin, Airport Manager

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:



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Gregory T. Jones, City Manager

Attachments:

- |                |   |
|----------------|---|
| Attachment I   | Draft Resolution to Adopt Second Amendment and Assignment                                 |
| Attachment II  | Draft Resolution for Tax Free Financing through California<br>Communities (TEFRA Hearing) |
| Attachment III | Assignment and Assumption Agreement with Estoppel Certificate                             |
| Attachment IV  | Second Amendment to Commercial Aviation Site Lease  |
| Attachment V   | Leasehold Site Plans  |

HAYWARD CITY COUNCIL

RESOLUTION NO. 09-\_\_\_

Introduced by Council Member \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE ISSUANCE BY CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF TAX-EXEMPT OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000, FOR THE PROJECT (AS DEFINED BELOW), AND AUTHORIZING RELATED ACTIONS

WHEREAS, Hayward FBO LLC, a California limited liability company (the "Borrower"), the managing member of which is Airport Property Partners LLC, a Delaware limited liability company desires to acquire certain leasehold and related rights in a full service fixed base of operations ("FBO") private and corporate jet aviation facility (the "Facility"), comprised of four one-story buildings (between 4,500 and 10,000 square feet each), a fuel island and a manufactured building serving as the temporary FBO terminal, which Facility is commonly known as "Volo Aviation," located at the west side of Skywest Drive between Sueirro Street and Hesperian Boulevard; and

WHEREAS, the Facility is located on land owned by the City of Hayward (the "City") and leased to the current ground lessee of Volo Aviation pursuant to one or more ground leases and related agreements (collectively, the "Ground Lease") and it is these rights which the Borrower is to acquire; and

WHEREAS, the Borrower further wishes to rehabilitate and improve the Facility in accordance with the provisions of the Ground Lease; and

WHEREAS, the Borrower desires to finance the Facility through the issuance by CSCDA of tax-exempt obligations in an aggregate principal amount not to exceed \$5,000,000 ("2009 Obligations"); and

WHEREAS, the parties intend that the City will be the federal tax owner of the Project for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended, following the issuance of the 2009 Obligations; and

WHEREAS, the City has determined that there are significant public benefits in financing the acquisition, rehabilitation and improvement of the Facility; and

WHEREAS, the Authority intends to assist the City in financing the acquisition, rehabilitation and improvement of the Facility by issuing the 2009 Obligations; and

WHEREAS, all acts, things, and conditions required by the laws of the State of California and the City Charter to exist, to have happened and to have been performed precedent

to and in connection with the issuance of the 2009 Obligations and the undertakings of the Authority and the City hereunder and thereunder exist, have happened and have been performed in regular and due time, form and manner as required by law.

NOW, THEREFORE, the City Council of the City of Hayward resolves as follows:

Section 1. The foregoing recitals are true and correct and this Council does hereby so find and determine.

Section 2. The issuance by the Authority of the 2009 Obligations in an aggregate principal amount not to exceed \$5,000,000 (the "Financing") is hereby approved, and this Council hereby acknowledges and consents to the financing of the acquisition, rehabilitation and improvement for the Facility which includes the issuance of the 2009 Obligations, at one or more interest rates which are federally tax-exempt. This approval constitutes approval of the Financing by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Facility is located for the purposes of Section 147(f) of the Internal Revenue Code of 1986 and is given in satisfaction of Section 9 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the California Statewide Communities Development Authority dated as of June 1, 1988, as amended, among certain local agencies, including the City.

Section 3. The City Manager, Director of Finance, City Treasurer, City Attorney, City Clerk and all other officers, agents and employees of the City are, and each of them is, hereby authorized and directed to take any and all actions and execute and deliver any and all documents necessary or convenient to assist the Authority in the issuance of the 2009 Obligations. This Council hereby ratifies, confirms and approves all other documents and all actions heretofore taken by the officers and agents of the Council or the City with respect to the Refinancing.

Section 4. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Hayward at its meeting of December 15, 2009, by the following vote:

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 09- \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE ISSUANCE BY CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF TAX-EXEMPT OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000, FOR THE PROJECT (AS DEFINED BELOW), AND AUTHORIZING RELATED ACTIONS

WHEREAS, Hayward FBO LLC, a California limited liability company (the "Borrower"), the managing member of which is Airport Property Partners I, LP, a Delaware limited partnership desires to acquire certain leasehold and related rights in a full service fixed base of operations ("FBO") private and corporate jet aviation facility (the "Facility"), comprised of four one-story buildings (between 4,500 and 10,000 square feet each), a fuel island and a manufactured building serving as the temporary FBO terminal, which Facility is commonly known as "Volo Aviation," located at the west side of Skywest Drive between Sueirro Street and Hesperian Boulevard; and

WHEREAS, the Facility is located on land owned by the City of Hayward (the "City") and leased to the current ground lessee of Volo Aviation pursuant to one or more ground leases and related agreements (collectively, the "Ground Lease") and it is these rights which the Borrower is to acquire; and

WHEREAS, the Borrower further wishes to rehabilitate and improve the Facility in accordance with the provisions of the Ground Lease; and

WHEREAS, the Borrower desires to Finance the Facility through the issuance by California Statewide Communities Development Authority ("Authority") of tax-exempt obligations in an aggregate principal amount not to exceed \$5,000,000 ("2009 Obligations"); and

WHEREAS, the parties intend that the City will be the federal tax owner of the Facility for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended, following the issuance of the 2009 Obligations; and

WHEREAS, the City of Hayward (the "City") has determined that there are significant public benefits in financing the acquisition, rehabilitation and improvement of the Facility; and



NOES: COUNCIL MEMBERS:

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

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

Date: \_\_\_\_\_, 2009

Parties: Volo Holdings Hayward LLC (“Lessee/Assignor”)  
c/o FBO Ventures LLC  
250 Vesey Street, 10<sup>th</sup> Floor  
New York, NY 10080

And: Hayward FBO LLC (“Assignee”)  
c/o Airport Property Partners LLC  
95B Rowayton Avenue, Suite 2E  
Rowayton, CT 06853

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 \_\_\_\_\_, 2009, 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 (as amended, the “Lease”) for property located in the City of Hayward, California as evidenced by that certain Memorandum of Lease recorded as Instrument No. 2007411532 among the land records of Alameda County, California such property being more particularly described on Exhibit A attached hereto.
- B. This Assignment is made and entered into pursuant to that certain Purchase and Sale Agreement dated October 9, 2009, (the “Purchase and Sale Agreement”).
- C. Pursuant to the Purchase and Sale Agreement, Assignor agreed to assign to Assignee, which succeeded to the rights of Airport Property Partners LLC as contract purchaser, 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 \_\_\_\_\_, 2009 (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 Agreements and Fixture Filings (the "Deed of Trust") by Assignee for the benefit of Wells Fargo Bank, its successors and/or assigns, as Master Trustee under a Master Trust Indenture, as amended by a First Supplemental Trust Indenture, to be entered into by Assignee with a group of affiliated entities (together with Assignee, the "Obligated Group") and the Master Trustee, financing projects at various airports with bonds issued for such purposes, with the Deeds of Trust securing the joint and several obligations of the Obligated Group. 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 to Assignee of the Agreement for Temporary Use of City-Owned Property between Lessor and the predecessor in interest to 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.

[Signature page follows]

**ASSIGNEE:**

HAYWARD FBO LLC

By: Airport Property Partners LLC

By: West Road Holdings LLC, Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }

COUNTY OF \_\_\_\_\_ }

On \_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Signature \_\_\_\_\_ [Seal]

**ASSIGNOR:**

VOLO HOLDINGS HAYWARD LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }

COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature \_\_\_\_\_ [Seal]

**LESSOR:**

CITY OF HAYWARD  
A California municipal corporation

By: \_\_\_\_\_  
Gregory T. Jones, City Manager

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Miriam Lens, City Clerk

Dated: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Michael Lawson, City Attorney

STATE OF \_\_\_\_\_ }

COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared Gregory T. Jones, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature \_\_\_\_\_ [Seal]

**EXHIBIT A**  
**Legal Description**

Real property in the City of HAYWARD, County of ALAMEDA, State of California, described as follows:

THE BEARINGS AND COORDINATES USED IN THE FOLLOWING DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM (CC327, ZONE 3). DISTANCES ARE GROUND LEVEL DISTANCES, MULTIPLY DISTANCES BY 0.99993 TO OBTAIN GRID DISTANCE.

COMMENCING AT THE ALAMEDA COUNTY MONUMENT DESIGNATED "HESP RUSS" MARKING THE INTERSECTION OF THE CENTER LINE OF COUNTY ROAD NO. 90, KNOWN AS HESPERIAN BOULEVARD, 66.00 FEET IN WIDTH, WITH THE CENTER LINE OF COUNTY ROAD NO. 1009, KNOWN AS WEST WINTON AVENUE, COORDINATES Y (NORTH) 423,854.02 & X (EAST) 1,534.153.15; RUN THENCE ALONG SAID CENTER LINE OF HESPERIAN BOULEVARD NORTH 25°08' 10" WEST, 52.910 FEET TO THE INTERSECTION THEREOF WITH THE DIRECT PRODUCTION SOUTHEASTERLY OF THE CENTERLINE OF THE MAIN NORTHWEST-SOUTHEAST RUNWAY ON THE HAYWARD AIR TERMINAL; THENCE ALONG SAID DIRECT PRODUCTION AND ENTER LINE NORTH 59° 08' 46" WEST, 1491.389 FEET TO THE BRASS PIN MARKING THE INTERSECTION THEREOF WITH THE CENTERLINE OF THE MAIN NORTHWEST-SOUTHEAST TAXIWAY EAST ON THE HAYWARD AIR TERMINAL; THENCE ALONG LAST SAID CENTER LINE THE THREE (3) FOLLOWING COURSES AND DISTANCES: (1) NORTH 30° 41' 30" EAST, 525.514 FEET, (2) NORTH 59° 10' 40" WEST 698.143 FEET; (3) NORTH 26° 12' 19" WEST 475.088 FEET; THENCE LEAVING LAST SAID CENTER LINE NORTH 63° 47' 41" EAST, 75.00 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED, COORDINATES Y (NORTH) 425,935.67 & X (EAST) 1,532.376.66, SAID POINT BEING THE MOST WESTERN CORNER OF PLOT "A" IN SEGMENT VI, OF THE HAYWARD AIR TERMINAL; THENCE PARALLEL WITH LAST SAID CENTER LINE NORTH 20° 12' 19" WEST, 163.953 FEET TO THE MOST SOUTHERLY CORNER OF HANGAR LOT 6 OF THE SAID HAYWARD AIR TERMINAL; THENCE ALONG THE SOUTHEASTERN LINE OF SAID LOT, NORTH 63° 47' 41" EAST, 150.000 FEET, TO THE MOST EASTERLY CORNER THEREOF; THENCE ALONG THE NORTHEASTERN LINE OF SAID LOT, NORTH 26° 12' 19" WEST, 150.000 FEET TO THE MOST NORTHERLY CORNER THEREOF; THENCE ALONG THE NORTHWESTERN LINE OF SAID LOT AND ALONG THE SOUTHWESTERLY PROLONGATION THEREOF, SOUTH 63° 47' 41" WEST, 264.500 FEET TO THE INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANCE SOUTHWESTERLY 39.50 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE DIAGONAL TAXIWAY, BEING A DIRECT EXTENSION OF THE HEREINABOVE DESCRIBED COURSE NO 3 ON THE MAIN NORTHWEST-SOUTHEAST TAXIWAY EAST ON THE HAYWARD AIR TERMINAL; THENCE ALONG SAID PARALLEL LINE GO DRAWN, SOUTH 26° 12' 19" EAST, 142.479 FEET TO THE INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANCE NORTHEASTERLY 91.000 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF TAXIWAY 'A' AS-BUILT LOCATION AS IT EXISTED ON AUGUST 12, 2004; THENCE ALONG SAID PARALLEL LINE SO DRAWN, NORTH 59° 08' 29" WEST, 538.495 FEET TO THE INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANT SOUTHEASTERLY 100.00 FEET, MEASURED AT RIGHT ANGLES FROM THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERN LINE OF PLOT "H" IN SEGMENT IV OF SAID HAYWARD AIR TERMINAL; THENCE ALONG LAST SAID PARALLEL LINE, SO DRAWN, NORTH 30° 51' 31" EAST, 348.850 FEET TO THE INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANCE SOUTHWESTERLY 39.50 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE AFORESAID DIAGONAL TAXIWAY; THENCE ALONG SAID PARALLEL LINE SO DRAWN SOUTH 26°12' 19" EAST, 127.190 FEET; THENCE LEAVING LAST SAID PARALLEL LINE, ALONG A LINE PARALLEL WITH THE AFORESAID CENTER LINE OF TAXIWAY 'A' AS-BUILT LOCATION AS IT EXISTED ON AUGUST 12, 2004, SOUTH 59° 08' 29" EAST, 145.300 FEET TO THE INTERSECTION THEREOF WITH A LINE DRAWN PARALLEL WITH AND DISTANCE NORTHEASTERLY 39.50 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE AFORESAID DIAGONAL TAXIWAY WITH THE

SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERN LINE OF HANGAR LOT 4 OF SAID HAYWARD AIR TERMINAL; THENCE LEAVING SAID PARALLEL LINE, ALONG LAST SAID SOUTHWESTERLY PROLONGATION AND SAID SOUTHEASTERN LINE NORTH 63° 47' 41" EAST, 185.500 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 4; THENCE ALONG THE NORTHEASTERN LINE OF SAID LOT 4, NORTH 26° 12' 19" WEST, 22.959 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERN LINE OF PLOT "F" IN SEGMENT VI OF SAID HAYWARD AIR TERMINAL; THENCE ALONG LAST SAID PROLONGATION SOUTHEASTERN LINE, NORTH 63° 47' 41" EAST, 169.157 TO A POINT ON THE SOUTHWESTERN LINE OF SKYWEST DRIVE, (59.50 FEET IN WIDTH) AS SHOWN ON THAT CERTAIN PARCEL MAP NO. 4273, FILED FOR RECORD ON JUNE 5, 1984 IN BOOK 143 OF PARCEL MAPS, AT PAGES 84 THROUGH 85, INCLUSIVE, OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA, SAID SOUTHWESTERN LINE BEING 34.000 FEET MEASURED AT RIGHT ANGLES FROM THE MONUMENT LINE AS SAID LINE IS SHOWN ON SAID MAP; THENCE ALONG SAID SOUTHWESTERN LINE SOUTH 26° 12' 19" EAST 586.913 FEET TO THE INTERSECTION THEREOF WITH THE NORTHWESTERN LINE OF SAID PLOT "A"; THENCE ALONG LAST SAID LINE SOUTH 63° 47' 41" WEST, 319.157 FEET TO THE ACTUAL POINT OF BEGINNING.

APN: 432-0124-01-04

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

Date: \_\_\_\_\_, 2009

From:

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

To:

Hayward FBO LLC ("Assignee")  
c/o Airport Property Partners LLC  
95B Rowayton Avenue, Suite 2E  
Rowayton, Connecticut 06853

And:

Volo Holdings Hayward LLC ("Assignor/Lessee")  
c/o FBO Ventures LLC  
250 Vesey Street, 10<sup>th</sup> Floor  
New York, NY 10080

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), as amended by First Amendment to Commercial Aviation Site Lease dated December 13, 2007 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 \$0.
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, except for a leasehold deed of trust securing Merrill Lynch Mortgage Capital, Inc, which is to be released in connection with Assignee's acquisition of the Lessee's rights in the Lease and leased premises.
9. 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.**

**SECOND AMENDMENT TO VOLO HOLDINGS GROUND LEASE**

**WITH THE CITY OF HAYWARD**

**Commercial Aviation Site Lease**

THIS SECOND AMENDMENT TO LEASE (the "Second Amendment"), made and entered into on this \_\_\_ day of December, 2009, 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 HAYWARD FBO LLC, a California limited liability company, hereinafter called "Lessee", whose address is 95B Rowayton Avenue, Rowayton CT 06853. The parties agree as follows:

RECITALS:

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., which was amended by First Amendment to Lease dated December 13, 2007 (collectively, the "Lease"), between the City and Volo Holdings Hayward LLC, which assumed and took an assignment of the Lease; and

WHEREAS, Lessee will assume and take an assignment of the Lease from Volo Holdings Hayward LLC, with the City's consent, contemporaneously with this Second Amendment; and

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

## SECOND AMENDMENT

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:

1. The Second Amendment, set forth below, shall be effective on the date of execution of this agreement as set forth above. All other provisions of the Lease not expressly changed and agreed to hereby, remain the same and in full force and effect unless modified by written agreement otherwise. It is further understood and agreed to by the parties that the total minimum aggregate investment required for this Second Amendment shall be \$2.0 million.

2. The City agrees and consents to the assignment and assumption of the Lease between Volo Holdings Hayward LLC and HAYWARD FBO LLC.

3. That section in the Lease entitled "Section 1.03, Title" is hereby amended as follows: "Section 1.03, Title" shall be amended to state that the City acknowledges that following the waiver by Lessee of federal tax depreciation and similar rights, the City will become the federal tax owner (for the purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended) of any and all improvements currently on the Leased Premises and those improvements hereafter placed on the Leased Premises by Lessee as and when such improvements are fully constructed or installed and the City has issued a Certificate of Occupancy to said improvements. Following issuance of a City of Hayward Certificate of Occupancy, Lessee shall retain an exclusive possessory interest in such improvements."

4. That section in the Lease entitled "Section 2.02, Construction Period" is hereby amended by deleting subsections a – d, inclusive, and substituting the following subsections:

"Section 2.02, Construction Period.

### Removal of Existing Fuel Farm

a. Promptly after Lessee's full and complete acquisition of the Leased Premises (but after installation of the new fuel farm facility as described in subsection b. below), Lessee will commence removal of the existing fuel tanks and island, complete all necessary remediation in connection with the prior leakage/fuel spill and restore the area, with such work to be fully completed within twelve (12) months of the effective date of this Second Amendment.

### Installation of New Fuel Farm Facility

b. Subject to the receipt of all applicable permits and approvals, Lessee will promptly commence construction of a new fuel farm located and described in the plans prepared by Stantec Corporation and submitted on behalf of Lessee to the City. Subject to Section 2.03, "Force Majeure" of this Article 2, Lessee will complete construction of, or will cause completion of construction of the new fuel farm upon the Leased Premises within twelve (12) months of the effective date of this Second Amendment. In addition, subject to receipt of all applicable permits and approvals, Lessee agrees to provide, construct, or make available, within such twelve (12) month period a 100LL, self service point, whose location shall be agreed to by the City, providing 24 hour self service fueling to all based and transient fuel customers. Lessee's self service fuel point shall be prominently marked and visible from the public use runway and taxiways on the Airport.

### FBO Terminal

c. Lessee has agreed to provide a minimum 2,500 square foot FBO terminal by (i) renovating the existing SP Aviation hangar and adding the terminal to the airside face of the renovated structure, or (ii) constructing a new hangar in that same location, incorporating the terminal into the new construction, with such work in either case to commence within twelve (12) months of the effective date of this Second Amendment and to be completed within twenty-four (24) months of such date. The construction of the agreed upon modification of

improvements remain subject to "Force Majeure" and to approval by the City of all subject area site plans and issuance of all necessary permits and approvals. Exhibit "B" (Construction Agreement), attached and incorporated with the Lease and incorporated by reference, shall remain applicable to the improvements described in this Section 2.02, subsections b and c inclusive. As defined under the Title "Project Improvements" as used in Exhibit "B" and elsewhere in the Lease, such term shall be amended to refer to the improvements described herein in lieu of those described on Exhibit "B". Exhibit B-1 is replaced with the revised Exhibit B-1 attached to this amendment and showing conceptually the new "Project Improvements". The parties agree to such modification and also agree that such performance under this Second Amendment shall be construed as the "Minimum" required for extension of the Lease term beyond December 30, 2013. Failure by Lessee to complete the improvements as specified in this Second Amendment; shall place Lessee in default and may, at City's discretion, subject Lessee to Termination of the Ground Lease on June 30, 2013, as contained under Article 10 "Termination, Default and Remedies".

#### Minimum Expenditure

d. Lessee will provide a contribution to City of \$100,000.00 to be applied by City to improvements being made to the AARF facility and for consideration of additional review and consideration of Lessee's intent to seek a modification to existing City standards, requesting consideration of an application by Lessee for approval of an above ground fuels storage facility and for such costs as associated with provision of such. Payment of the contribution shall be made within twelve (12) months of the effective date of this Second Amendment.

The cost of all improvements, renovations and construction undertaken by Lessee pursuant to subsections a – c above, together with such contribution, shall equal at least Two Million Dollars (\$2,000,000.00) and Lessee will provide substantiation of such spending to City.

5. 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:

Hayward FBO LLC  
95B Rowayton Avenue  
Rowayton, Connecticut 06853  
Attn: Thom W. Harrow  
(203) 299-6110  
(203) 857-0280 [FAX]

with a copy to:

Hayward FBO LLC  
21889 Skywest Drive  
Hayward, California 94541  
Attn: General Manager  
(510) 670-2864  
(510) 259-1959 [FAX]

## II.

This Second 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 Second Amendment are hereby declared to be merged in this agreement. This Second 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 parties hereto agree to these terms and have therefore presented this Second Amendment, as represented by Mr. Thom W. Harrow, managing member of West Road Holdings LLC, the manager of AIRPORT PROPERTY PARTNERS LLC, being duly recognized and authorized to represent HAYWARD FBO LLC and the City of Hayward, by and through the City Manager, are duly authorized to act and have caused this Second Amendment to be executed the day and year first written above.

[signatures appear on following page]

RECOMMENDED BY:

\_\_\_\_\_  
Lloyd A. Partin, Airport Manager

APPROVED BY:

\_\_\_\_\_  
Robert Bauman, Director of Public Works

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael Lawson, City Attorney

LESSEE:  
HAYWARD FBO LLC

By: Airport Property Partners LLC  
By: West Road Holdings LLC, its Manager

By: \_\_\_\_\_  
Name: Thom W. Harrow  
Title: Managing Member

CITY OF HAYWARD,  
a municipal corporation

\_\_\_\_\_  
Gregory T. Jones, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Angelina Reyes, City Clerk