



DATE: August 1, 2012

TO: Honorable Mayor and City Council Members

FROM: Property Management Division

SUBJECT: **APPROVAL TO AMEND THE AMENDED AND RESTATED LEASE AND OPERATING AGREEMENTS WITH AIRPORT PROPERTY VENTURES TO INCLUDE ADDITIONAL PROPERTY AS PART OF THE PREMISES; ACCEPT \$96,112 IN GRANT FUNDS FROM THE FEDERAL AVIATION ADMINISTRATION AND APPROVE THE APPROPRIATION OF SAID GRANT FUNDS TO THE AIRPORT MAINTENANCE AND OPERATION FUND; AND ADOPT A RESOLUTION TO AUTHORIZE THE SUBMITTAL OF AN APPLICATION WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR A STATE AIRPORT LOAN**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Amended and Restated Lease and Operating Agreements with Airport Property Ventures, LLC, to include additional property as part of the Oceanside Municipal Airport property; authorize the City Manager to execute the amendment; accept \$96,112 in grant funds from the Federal Aviation Administration and approve the appropriation of said grant funds to the airport maintenance and operation fund; adopt a resolution authorizing the submittal of an application with the California Department of Transportation for a state airport loan, authorizing the City Manager to execute the related loan agreement and certifying the City's ability to repay the loan.

BACKGROUND

In August 2009, the City Council approved an Amended and Restated Lease Agreement and an Amended and Restated Operating Agreement (collectively "Agreements") with Airport Property Ventures, LLC ("APV") for the lease and operation of the Oceanside Municipal Airport ("Airport"). The Agreements provided that once an approximately 14.7-acre parcel ("North Side Parcel") was free of all claims and encumbrances on title, the City would amend the Agreements to add

the North Side Parcel to the Airport. In 2011, as a result of the dismissal of a lawsuit, the North Side Parcel was freed of all claims and encumbrances on title.

Per the Agreements APV is required to make improvements to the Airport, including constructing new hangars and upgrading the existing facilities (e.g., administration building). In addition, the Agreements also give APV the opportunity to pursue grants from the Federal Aviation Administration ("FAA") for improvements to the Airport on behalf of the City as the airport sponsor. APV has applied for and received approval of grants from the FAA for the installation of a water line and fire hydrant required for the new hangar construction, and Americans with Disability Act ("ADA") upgrades to the administration building restroom. APV is now requesting that the City accept the FAA grants.

As part of its obligation to construct new hangars at the Airport, APV would like to submit an application for a new loan to the California Department of Transportation Division of Aeronautics ("Caltrans"). However, the Caltrans loan application requires the City, as the airport sponsor, to adopt a resolution authorizing the filing of the application, authorize execution of a loan agreement and certify the City's ability to repay the loan. APV has requested that the City adopt such a resolution for a loan to finance the construction of the new hangars.

ANALYSIS

Addition of the North Side Parcel

The Agreements with APV require amendments to the Agreements ("Amendment") once the City is able to clear all claims and encumbrances from title to the North Side Parcel. Inasmuch as the lawsuit encumbering title to the North Side Parcel has been dismissed, the North Side Parcel is now clear of all claims and encumbrances from title. Thus, in accordance with the terms of the Agreements, the Agreements will be amended to include the North Side Parcel as part of the Airport. By adding the North Side Parcel to the Airport, APV can begin planning for the development of the property, which will include outreach to the neighborhood at the appropriate time in accordance with the CBO Agreement.

Acceptance of FAA Grant

Notwithstanding the approval of a grant application by APV on behalf of the City, as the Airport sponsor, for the waterline and fire hydrant, and the ADA upgrades to the restrooms at the administration building, the City is required, per its administrative directives, to accept the grant funds from the FAA. By accepting the grant from the FAA, the Airport will receive funding for the waterline and fire hydrant required to construct the new hangars and to provide the ADA

required upgrades to the restrooms in the administration building. The new hangar construction is anticipated to occur shortly after the Caltrans Loan is approved and funded.

Adoption of Resolution for Caltrans Loan

Per the Agreements the obligation to securing financing for improvements to the Airport is the responsibility of APV. Although a new loan from Caltrans requires a repayment obligation from the City as the airport sponsor, a new loan from Caltrans compared to a loan from a private lender has a significantly lower interest rate. A lower interest rate in turn, can potentially generate more revenue to the City under its lease payment from APV per the terms of the Agreements.

In addition to requiring the City, as the airport sponsor, to adopt a resolution authorizing the filing of the application and execution of a loan agreement, the new Caltrans loan obligates the City, as the airport sponsor, to repay the loan. Thus, in order to entertain a new loan from Caltrans, the City needs to specifically identify a source of revenue to see that there is sufficient funding to make the new loan payments. To obtain a new loan from Caltrans, APV is agreeable to specifically obligating the revenue generated from the new hangars to the repayment of the new Caltrans loan.

The new loan repayment would be set up so that APV would segregate the rental revenue for the new hangars and make a payment to the City, who in turn would pay Caltrans. This arrangement is similar to what the City currently does in repaying their current loan with Caltrans. In addition, APV is also agreeable to setting up an escrow account for a payment reserve for an additional funding source available to the City to pay Caltrans. Should APV not make timely payments as well as keep the payment reserve at a minimum level, the City would have additional rights to declare APV in default of the Agreements and pursue its available remedies.

FISCAL IMPACT

Addition of North Side Parcel

There is no immediate fiscal impact resulting from the amendment to the Agreements to include the North Side Parcel as part of the Airport.

Acceptance of FAA Grant

Acceptance of the FAA grant funds in the amount of \$96,112 necessitates approval of a budget appropriation for said amount to Business Unit 8222127900274 in order to utilize said grant

funds. The \$96,112 in grant funds will be handled as a reimbursement program for the waterline and fire hydrant installation, and the ADA restrooms upgrades at the administration building to be completed by APV.

Adoption of Resolution for Caltrans Loan

The new loan from Caltrans is estimated to be \$628,000 with a seventeen year term. The actual amount cannot be determined until such time as Caltrans approves the loan application. The new hangars are designed to be 16,661 square feet in size. The rent for the new hangars is projected to be \$0.68 per square foot or \$10,196 per month (taking into account a ten percent vacancy factor). At the time of this staff report, the Caltrans interest rate is four and one-half percent whereas the private lender interest rate is around eight percent. With the anticipated Caltrans loan monthly payment of approximately \$4,400 compared to a private lender monthly payment, the City could also get additional revenue as rent, depending on the reconciliation of net revenue as set forth under the Agreements.

Monthly rent received from the leasing of the new hangars will be sufficient to cover the Caltrans monthly loan payment. As previously mentioned, APV will also deposit into a separate City account earmarked for Airport Maintenance and Operating Fund Reserve, an amount equal to six times the Caltrans monthly loan payment amount, which account can be used to pay the Caltrans monthly loan payment in the event APV does not make the monthly payments in a timely manner.

INSURANCE REQUIREMENTS

City minimum insurance coverage requirements identified in the Agreements will be met and coverage extended through the term of the Agreements.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

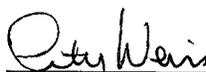
Staff recommends that the City Council approve Amendment 1 to the Amended and Restated Lease and Operating Agreements with Airport Property Ventures, LLC, to include additional property as part of the Oceanside Municipal Airport property; authorize the City Manager to execute the amendment; accept \$96,112 in grant funds from the Federal Aviation Administration and approve the appropriation of said grant funds to the airport maintenance and operation fund; adopt a resolution authorizing the submittal of an application with the California Department of Transportation for a state airport loan, authorizing the City Manager to execute the related loan agreement and certifying the City's ability to repay the loan.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:

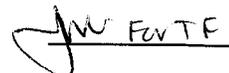


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director



**FIRST AMENDMENT
TO
AMENDED AND RESTATED LEASE AGREEMENT**

This First Amendment to Amended and Restated Lease Agreement (“Amendment”) is made the 1st day of August, 2012 (“Effective Date”), by and between the City of Oceanside, a California charter city (“Landlord”) and Airport Property Ventures, LLC, a California limited liability company (“Tenant”).

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Amended and Restated Lease Agreement (“Lease”), dated August 12, 2009 for the use of the real property described as the Oceanside Municipal Airport (“Airport”), excluding the Airport Movement Areas and Existing Airfield Improvements (“Premises”);

WHEREAS, Landlord and Tenant also entered into that certain Amended and Restated Operating Agreement, also dated August 12, 2009, for the operation, management and maintenance of the Airport Movement Areas and Existing Airfield Improvements of the Airport;

WHEREAS, Subsection 2.2 of the Lease provides for the addition of the North Side of the Airport to the Premises at such time as Landlord clears all claims and encumbrances from title to the North Side of the Airport;

WHEREAS, the Landlord, pursuant to the United States District Court for the Southern District of California, Order Dismissing Case with Prejudice – Case No.: 3:08-cv-02180-JAH (BGS), has cleared all such claims and encumbrances from title to the North Side of the Airport; and

WHEREAS, Landlord and Tenant are desirous of adding the North Side of the Airport to the Premises in accordance with Subsection 2.2 of the Lease and amending the Lease in accordance thereto.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

AGREEMENT

The Lease, beginning on the date hereof, shall be amended to read as follows:

1. Subsection 2.1 Lease of Premises is amended to include as part of the Premises the real property described as the North Side as more specifically defined in Subsection 1.16

“North Side”. All other sections of the Lease when referring to the Premises shall include the North Side as part of the Premises.

2. All other terms, conditions, covenants and provisions of the Lease shall remain in full force and effect. In the event of any conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall control.

“Landlord”

THE CITY OF OCEANSIDE
a California charter city

APPROVED AS TO FORM:

By: _____
City Manager

By: *Antonia Hamilton, ASST.*
City Attorney

“Tenant”

AIRPORT PROPERTY VENTURES, LLC
a California limited liability company

By: *John J. Driscoll*

Name: JOHN J. DRISCOLL

Title: PRESIDENT

By: *Lidia H. Kennard*

Name: LYDIA H. KENNARD

Title: SECRETARY

NOTARY ACKNOWLEDGEMENT OF TENANT’S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

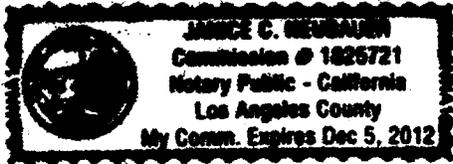
State of California

County of Los Angeles

On July 18, 2012 before me, JANICE C. NEUBAUER
Date Here Insert Name and Title of the Officer

personally appeared LYDIA H. KINNARD
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Janice C. Neubauer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

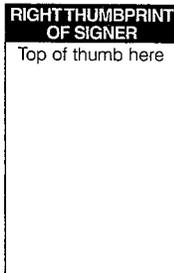
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment to Amended 3-Party Lease Agreement
 Document Date: 8-1-2012 Number of Pages: 2 pgs.
 Signer(s) Other Than Named Above: _____

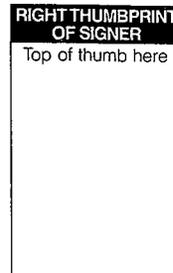
Capacity(ies) Claimed by Signer(s)

Signer's Name: Lydia H. Kinnard
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: Secretary



Signer Is Representing: _____

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Los Angeles

On July 19, 2012 before me, Amy Wong, Notary Public

personally appeared JOHN J. DRISCOLL

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Amy Wong
Signature of Notary Public

Place Notary Seal Above **OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST AMENDMENT TO AMENDED + RESTATED LEASE AGREEMENT

Document Date: August 12, 2009 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: JOHN J. DRISCOLL

Corporate Officer — Title(s): CEO

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

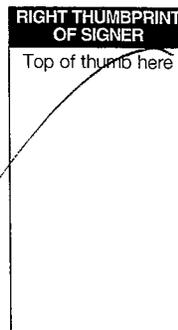


Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

**FIRST AMENDMENT
TO
AMENDED AND RESTATED OPERATING AGREEMENT**

This First Amendment to Amended and Restated Operating Agreement (“Amendment”) is made the 1st day of August, 2012 (“Effective Date”), by and between the City of Oceanside, a California charter city (“City”) and Airport Property Ventures, LLC, a California limited liability company (“Operator”).

RECITALS

WHEREAS, City and Operator entered into that certain Amended and Restated Operating Agreement (“Operating Agreement”), dated August 12, 2009 for the operation, management and maintenance of the airport movement areas and existing airfield improvements (“Airport Movement Areas and Existing Airfield Improvements”);

WHEREAS, City and Operator also entered into that certain Amended and Restated Lease Agreement (“Lease”), also dated August 12, 2009, for use of the real property described as the Oceanside Municipal Airport (“Airport”), excluding Airport Movement Areas and Existing Airfield Improvements (“Premises”);

WHEREAS, City and Operator as Landlord and Tenant under the Lease and in accordance with Subsection 2.2 of Lease have added the North Side of the Airport to the Premises;

WHEREAS, City and Operator are desirous of referencing in the Operating Agreement the addition of the North Side of the Airport as part of the Premises in the Lease.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

AGREEMENT

The Operating Agreement as of the date hereof, shall be amended to read as follows:

1. The term Premises as set forth in the Operating Agreement shall include, as part of the Premises under the Lease, the real property described as the North Side, as more specifically defined in Subsection 1.13 “North Side”.

2. All other terms, conditions, covenants and provisions of the Operating Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall control.

“City”

THE CITY OF OCEANSIDE
a California charter city

APPROVED AS TO FORM:

By: _____
City Manager

By: *Antonia Hamilton, 13887*
City Attorney

“Operator”

AIRPORT PROPERTY VENTURES, LLC
a California limited liability company

By: *John J. Driscoll*

Name: John J. Driscoll

Title: President

By: *Lydia H. Kennard*

Name: Lydia H. Kennard

Title: Secretary

NOTARY ACKNOWLEDGEMENT OF OPERATOR’S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On July 18, 2012 before me, JANICE C. NEUBAUER
Date Here Insert Name and Title of the Officer

personally appeared LYDIA H. KINNAIRD
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Janice C. Neubauer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Amendment to Amended Restated Operating Agreement

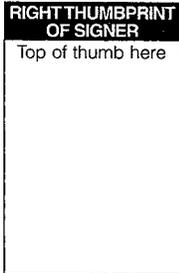
Document Date: Aug 1, 2012 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Lydia H. Kinnaird

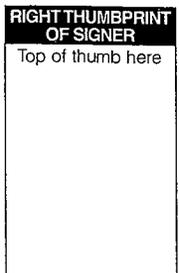
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: Secretary



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

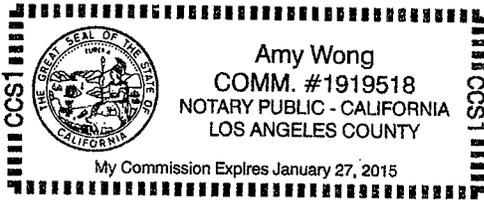
State of California

County of LOS ANGELES

On JULY 19, 2012 before me, AMY WONG, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared JOHN J. DRISCOLL
Name(s) of Signer(s)

who 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.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: Amy Wong
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST AMENDMENT TO AMENDED & RESTATED

Document Date: AUGUST 12, 2012 Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: JOHN J. DRISCOLL

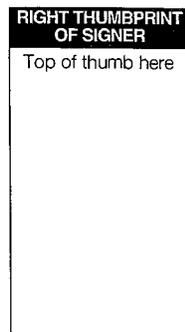
- Corporate Officer — Title(s): CFO
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY
3 OF OCEANSIDE AUTHORIZING THE SUBMITTAL OF
4 AN APPLICATION AND EXECUTION OF AN
5 AGREEMENT WITH THE CALIFORNIA DEPARTMENT
6 OF TRANSPORTATION FOR A STATE AIRPORT LOAN

7 WHEREAS, the California Department of Transportation, pursuant to the Public
8 Utilities Code Section 21602, provides loans for the improvement and operation of airports;

9 WHEREAS, the California Department of Transportation requires the City Council of
10 the City of Oceanside to adopt a resolution authorizing the submission of an application for a
11 state airport loan; and

12 WHEREAS, it is the desire of the City Council to adopt a resolution authorizing the
13 submission of an application for a state airport loan.

14 NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oceanside,
15 State of California:

- 16 1. Authorizes filing an application for a state airport loan for new hangar
17 improvements at the Oceanside Municipal Airport ("Project").
- 18 2. Authorizes execution of a Loan Agreement for the Project.
- 19 3. Certifies the City of Oceanside's ability to repay the state loan for this
20 Project.

21 BE IT FURTHER RESOLVED, that the City Council of the City of Oceanside does
22 hereby authorize Peter A. Weiss, City Manager, to sign any documents required to apply for and
23 accept these loan funds on behalf of the City of Oceanside.

24 ///

25 ///

26 ///

27 ///

28 ///

1 PASSED AND ADOPTED by the City Council of the City of Oceanside, California this
2 ____ day of ____, 2012, by the following vote:

- 3 AYES:
- 4 NAYS:
- 5 ABSENT:
- 6 ABSTAIN:

7 _____
8 Mayor of the City of Oceanside

10 ATTEST:

11 APPROVED AS TO FORM:
12 OFFICE OF THE CITY ATTORNEY

13 _____
14 City Clerk

15 *Andrew D. Hamilton, ASST.*
16 _____
17 City Attorney

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28 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AUTHORIZING THE SUBMITTAL OF AN
APPLICATION AND EXECUTION OF AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION
FOR A STATE AIRPORT LOAN

MEMORANDUM

DATE: August 1, 2012
TO: Honorable Mayor and Councilmembers
FROM: Patricia Allison, City Manager's Office
SUBJECT: AVAILABILITY OF DOCUMENTS FOR REVIEW

Due to their size, the remaining attachments for this item are not included in the agenda packet, but are available for review in the City Manager's Office.

Amended and Restated Lease Agreement dated August 12, 2009
Amended and Restated Operating Agreement dated August 12, 2009