

ORDINANCE NO. 071, 2024
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE FIRST AMENDMENT TO THE HANGAR
GROUND LEASE AGREEMENT WITH IC LOVELAND, LLC,
FOR THE AERO FNL HANGAR DEVELOPMENT AT THE
NORTHERN COLORADO REGIONAL AIRPORT

A. The City of Fort Collins ("City") and the City of Loveland ("Loveland") (collectively, the "Cities") jointly own property located in Loveland known as the Northern Colorado Regional Airport.

B. The Cities currently operate and maintain the Airport pursuant to that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Airport, dated January 22, 2015, as amended (the "IGA").

C. The Cities are parties to that certain Amended and Restated Hangar Ground Lease Agreement ("Ground Lease"), dated August 22, 2022, with IC Loveland, LLC, as lessee, with an initial term of 25 years with the option of three 5-year extensions. The Ground Lease was approved by the Northern Colorado Regional Airport Commission pursuant to its authority under the IGA and City Code Section 23-113(3). The Ground Lease was executed by the Chair of the Airport Commission.

D. IC Loveland, LLC is developing hangars upon the leased premises, which project is known as the Aero FNL development.

E. IC Loveland, LLC has requested the Ground Lease be amended to remove the condominium structure for the marketing of individual hangar units and to replace it with a subleasing structure, which would be a deviation from the standard ground lease form utilized at the Airport. The proposed First Amendment is attached hereto as Exhibit "A."

F. The First Amendment to the Ground Lease was presented to the Airport Commission at its April 18, 2024, meeting and the Airport Commission voted unanimously to recommend the City Council and the Loveland City Council approve the First Amendment.

G. Section 23-113 of the City Code allows the City Council to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interests of the City, with such leases being approved by resolution unless the proposed term of the lease exceeds twenty (20) years, in which event the lease must be approved by the City Council by ordinance.

H. City Council finds that the amendment of the Ground Lease is in the best interest of the City and its residents in that it will allow for the marketing of the individual hangars in a manner suitable for IC Loveland, LLC, which in turn will promote the success of the development and continued lease revenue for the Airport.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The First Amendment to the Amended and Restated Hangar Ground Lease Agreement with IC Loveland, LLC, attached hereto as Exhibit "A" and incorporated herein by reference is hereby approved.

Section 2. The Mayor is authorized to execute the First Amendment in substantially the form as Exhibit "A," with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interest of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading on May 21, 2024, and approved on second reading for final passage on June 4, 2024.

Mayor

ATTEST:

Interim City Clerk

Effective Date: June 14, 2024

Approving Attorney: Ryan Malarky

FIRST AMENDMENT TO HANGAR GROUND LEASE AGREEMENT

(5232, 5240, 5250, 5260, 5270 Stearman Street)

THIS FIRST AMENDMENT TO HANGAR GROUND LEASE AGREEMENT (this “***Amendment***”) is entered into as of _____, 2024 (the “***Effective Date***”), by and between the CITY OF LOVELAND, COLORADO AND THE CITY OF FORT COLLINS, COLORADO (the “***Cities***”), and IC LOVELAND INVESTORS, LLC, a Colorado limited liability company (“***Lessee***”).

RECITALS

WHEREAS, the Cities, the Commission, and Lessee (as assignee) are parties to that certain Amended and Restated Hangar Ground Agreement dated as of August 22, 2022 (the “***Original Agreement***,” and as amended hereby, the “***Agreement***”) whereby Lessee leases from the Cities the parcel of land consisting of approximately 3.665 acres located at the Northern Colorado Regional Airport (the “***Airport***”) described in Exhibit A to the Original Agreement (the “***Leased Premises***”); and

WHEREAS, the Commission does not have authority under that certain Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015 due to the substantive changes made in this Amendment to the Original Agreement;

WHEREAS, Lessee has requested the Cities amend the Original Agreement to remove the condominium structure set forth in the Original Agreement and replace it with a subleasing structure; and

WHEREAS, the Cities and Lessee have agreed to amend certain terms, covenants, and conditions of the Original Agreement as set forth in this Amendment.

AGREEMENT

In consideration of the following terms and conditions, the Cities and Lessee agree as follows:

1. **Capitalized Terms.** All capitalized terms contained in this Amendment, unless specifically defined herein, shall have the meaning ascribed to them in the Original Agreement.

2. **Fourth Recital.** The fourth Recital of the Original Agreement is hereby deleted in its entirety and is amended and restated as follows in its entirety to remove reference to a condominium structure:

WHEREAS, Lessee is a Colorado limited liability company and desires to construct a hangar building or buildings and other improvements installed or constructed on the Leased Premises in accordance with the terms and conditions hereof (“***Hangars***”); and

3. **New Recital.** After the amended and restated fourth Recital set forth in Section 2 above, a new Recital is hereby added to Agreement:

WHEREAS, Lessee desires to sublease to tenants (“***Tenants***”) all or portions of the Hangars (as defined below) pursuant to subleases for the use or occupancy of such Hangars (“***Tenant Subleases***”); and

4. **Defined Terms.** Throughout the Original Agreement, including, but not limited to, paragraphs 3.1, 5.2, 6.1, 6.3, 6.10, 15.3, and 18.5 of the Original Agreement:

4.1 the term “*Condominium Declaration*” shall be replaced by the term “*Tenant Subleases*;”

4.2 the terms “*Condominium Unit*” and “*Hangar Condominium Unit*” shall be replaced by the term “*Hangar*;”

4.3 the terms “*Unit Owners*” and “*hangar tenants*” shall be replaced by the term “*Tenants*;”

4.4 the term “*Act*”, referring to the Condominium Ownership Act, is hereby deleted; and

4.5 the term “*Condominium Association*” is hereby deleted.

5. **Use of Leased Premises.** The words “operation of a hangar building (the “*Hangers*”)...” in the first sentence of paragraph 3.1.1 shall be replaced by the words “operation of Hangars...”

6. **Assignment and Subletting.** Article 13: Assignment and Sublease of the Original Agreement is hereby deleted and is amended and restated in its entirety as follows:

ARTICLE 13: ASSIGNMENT AND TENANT SUBLEASES

13.1 Consent to Assignment. The prior written consent of the Cities shall be required for any assignment or transfer of this Agreement and of the leasehold estate created hereby, except in connection with a leasehold mortgage. Consent to assignment of this Agreement may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement, (b) the assignee or transferee (the “*Assignee*”) does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form satisfactory to the Cities, or (c) the Assignee does not submit proof of insurance as required in Articles 8 and 9. Consent to assignment shall not otherwise be unreasonably withheld. Upon the granting of written consent by the Cities and assignment of this Agreement, Lessee shall be released by the Cities from its obligations under this Agreement.

13.2.2 Conditions of Assignment. Each assignment of this Agreement shall, among other terms, conditions, and restrictions, require the Assignee to comply with all terms and conditions of this Agreement. Lessee and any Assignee shall be jointly and severally responsible for compliance with the terms and conditions of this Agreement; provided, that, notwithstanding the foregoing, or any other provision of this Agreement to the contrary (including by way of example and not in limitation, the provisions of Articles 9, 18, and 21), the person above identified as Lessee (“*Initial Lessee*”) shall not be responsible for noncompliance of any Assignee, and Initial Lessee’s obligations under this Agreement shall terminate at such time that Initial Lessee (i) assigns this Agreement to an Assignee and the consent of the Cities is obtained pursuant to paragraph 13.1, or (ii) holds no ownership interest in any Hangar, whichever event first occurs (“*Initial Lessee Termination*”) and all obligations of Lessee under this Agreement shall thereupon be the responsibility of the Assignee of this Agreement. Following Initial Lessee Termination,

except as the context otherwise indicates, the Assignee of this Agreement shall exercise the rights and fulfill the responsibilities of Lessee hereunder as Lessee.

13.3 Tenant Subleases.

13.3.1 Other than in the manner set forth in in this Article 13, Lessee shall not subdivide, sublease, or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.3.2 Lessee shall have the right and obligation to construct Improvements and sublease Hangars on the Leased Premises in accordance with applicable law, without the prior consent of the Cities, except that Lessee shall not have the right to subdivide, sublease or fractionalize either its ownership of the Improvements or its interest in the Leased Premises, except in accordance with a map of the Leased Premises previously approved by the Cities. By way of clarification, and not by limitation, the restrictions on assignment contained in paragraph 13.1 shall not apply to subleasing by Lessee of an individual Hangar to a Tenant pursuant to a Tenant Sublease that is in compliance with the terms and conditions of this Agreement.

13.3.3 Any such Tenant Sublease shall be subject and subordinate to this Agreement. Lessee shall cause any future Tenant Sublease, entered into by Lessee or any Tenant of Lessee, to contain provisions substantially similar to the following provision:

If at any time during the term of this lease the leasehold estate of lessor shall terminate or be terminated for any reason, lessee agrees, at the election and upon demand of any owner or overlessor of the Leased Premises or Improvements, or of any mortgagee in possession thereof, or of any holder of a leasehold now or hereafter affecting premises which include the Leased Premises, to attorn, from time to time, to any such owner, overlessor, mortgagee, or holder, upon the terms and conditions set forth herein for the remainder of the term demised in this lease. The foregoing provisions shall inure to the benefit of any such owner, overlessor, mortgagee, or holder, and shall apply to the tenancy of the lessee notwithstanding that this lease may terminate upon the termination of any such leasehold estate and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. Lessee, however, upon demand of any such owner, overlessor, mortgagee, or holder, agrees to execute, from time to time, an instrument in confirmation of the foregoing, in which lessee shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the term originally demised in this lease. Nothing contained in this Section shall be construed to impair any right, privilege or option of any such owner, overlessor, mortgagee, or holder.

13.3.3 Upon the sublease or the assignment of a Tenant Sublease of any Hangar, Lessor or Tenant (as applicable) shall provide the Cities with notification of the Tenant Sublease, providing the Cities with the name, address, and other

contact information for the Tenant and a description of the aircraft to be regularly stored in such Hangar.

13.3.4 At all times during the term of this Agreement, the Tenant Subleases shall provide the following: the date on which this Agreement is scheduled to expire; a legal description of the Leased Premises; a statement that the Tenants have no right to redeem any reversion in the Leased Premises or this Agreement; a statement that Tenants have no right to remove any Improvements on the Leased Premises, including at or after termination of this Agreement; and a statement that Tenants have no right to renew this Agreement at or after termination, other than the contingent right of Lessee to do so under paragraph 1.3 above.

13.3.5 The Tenant Subleases shall require that with respect to Hangars and the Tenant's use thereof, and activities of Tenants on the Airport, each Tenant shall comply with applicable terms of this Agreement and shall take no action which is in violation of any term or condition of an applicable term of this Agreement. The Tenant Subleases shall provide that any act or omission of a Tenant which is contrary to or violates an applicable term of this Agreement, or of any Airport rule or regulation, shall be a violation of the terms of the Tenant Sublease, and shall contain adequate provisions for Lessee's enforcement of such requirements. Before or at the closing of any sublease or assignment of a Tenant Sublease with respect to a Hangar, the prospective Tenant of the Hangar shall be required to sign and deliver to the Cities, on a form acceptable to the Cities, a declaration providing the prospective Tenant's name, address and contact information, and acknowledging that such prospective Tenant has been provided with a copy of this Agreement and the Tenant Sublease, has read this paragraph 13.3, and understands the prospective Tenant's obligations to comply with the applicable terms of this Agreement.

7. **Requirements for Condominiumization.** Article 31 of the Original Agreement is hereby deleted in its entirety.

8. **Notice Address of Lessee.** Paragraph 23.2 of the Original Agreement is hereby amended to provide that all notices to Lessee shall be addressed as follows:

IC Loveland Investors, LLC
8084 S Wallace Ct. Ste A
Englewood, CO 80112
Gary.roffe@cypress16.com

9. **Counterparts/Electronic Signatures.** This Amendment may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. This Amendment may be transmitted by DocuSign or by electronic mail in portable document format ("pdf") and signatures appearing on DocuSigned and/or electronic mail instruments shall be treated as original signatures.

10. **Interpretation of Amendment.** In the event of any conflict between the Original Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly amended,

supplemented, or modified by this Amendment, the Agreement shall continue in full force and effect with respect to the Premises, as amended hereby.

11. **Binding Effect.** This Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

12. **Submission.** Submission of this Amendment by the Cities to Lessee for examination and/or execution shall not in any manner bind the Cities and no obligations on the Cities shall arise under this Amendment unless and until this Amendment is fully signed and delivered by the Cities and Lessee.

13. **Modification.** A modification of any provision herein contained, or any other amendment to this Amendment, shall be effective only if the modification or amendment is in writing and signed by both the Cities and Lessee.

14. **No Third Party Beneficiaries.** Except as otherwise provided herein, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Amendment (either expressed or implied) is intended to confer upon any person or entity, other than the Cities and/or Lessee (and their respective nominees, successors and assigns), any rights, remedies, obligations, or liabilities under or by reason of this Amendment.

15. **Construction.** This Amendment shall not be construed as if it had been prepared by only the Cities or Lessee, but rather as if both the Cities and Lessee had prepared the same.

[Remainder of page left blank; signature page follows.]

IN WITNESS WHEREOF, the Cities and Lessee have caused this Amendment to be executed as of the Effective Date set forth above.

IC LOVELAND INVESTORS, LLC,
a Colorado limited liability company

By: _____

Name:

Title:

Date: _____

CITY OF FORT COLLINS, COLORADO
A Municipal Corporation

By: _____

Title: _____

ATTEST:

By: _____ Date

Title: _____

APPROVE AS TO FORM:

Assistant City Attorney

CITY OF LOVELAND, COLORADO
A Municipal Corporation

By: _____

Title: _____

ATTEST:

Date

City Clerk

APPROVE AS TO FORM:

Acting Deputy City Attorney