

**SECOND AMENDMENT TO  
RIGHT OF ENTRY AGREEMENT**

**No. 5329**

San Carlos Airport  
San Carlos, California

SKYWAY HOLDINGS, INC.

This Second Amendment to Right of Entry Agreement No. 5329 ("Amendment"), dated for reference purposes only as of September 12, 2023 is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, ("County") and MARTIN M. EISENBERG, sole trustee of the Levin Family Trusts established under trust agreement dated July 31, 1984 (the "Operator").

**Recitals**

- A. County is owner of the San Carlos Airport, (the "Airport"); owned and maintained by County for use and benefit of the public for servicing aviation needs; and
- B. Operator is the owner of the property identified as Assessor's Parcel Number 046-081-550, which is improved with office buildings and aircraft hangars (the "Property"); and
- C. On March 1, 1969, Operator executed a ground lease with Skyway Holdings, Inc. for the purposes of constructing office buildings and hangars. Shortly thereafter, the County entered into a Right of Entry Agreement (the "Skyway Agreement") permitting Skyway Holdings, Inc., its tenants and users access from the Property onto the Airport; and
- D. On November 30, 2008, both the Operator's lease agreement with Skyway Holdings, Inc. and the Skyway Agreement expired. In accordance with the Operator's lease, all improvements made by Skyway Holdings, Inc. reverted to the Operator; and
- E. On November 30, 2010, County Board of Supervisors approved the Right of Entry Agreement permitting Operator, Operator's tenants and users access from the Property onto the Airport with Resolution No. 071178; and
- F. On September 1, 2015, County and Operator entered into a First Amendment to Right of Entry Agreement (the "Agreement"), with Resolution No. 075700, amending the Term, Right of Entry Taxilane, Right of Entry Fee, and modifying certain other sections of the agreement; and
- G. County and Operator desire to amend the Agreement under the terms and conditions set herein, the Agreement as Amended.

## Agreement

For good and valuable consideration as herein set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Right-of-Entry Taxilane:** *The following paragraph shall be added after the second paragraph of Section 2;*

To conform to Federal Aviation Administration (FAA) standards, Aircraft Design Group II, and larger aircraft, shall not use the taxilane on the southeast side of the Property.

2. **Right of Entry Fee:** *Section 3 subsection c of the agreement shall be amended in its entirety to state as follows:*

Adjustment of Right of Entry Fee: Starting on July 1, 2024, and each successive July 1<sup>st</sup> thereafter, for the term of this Agreement (the "Adjustment Date"), including any extended terms as set forth herein, the Right of Entry Fee as set forth in Section 5a shall be adjusted to equal one hundred three percent (103%) of the Right of Entry Fee for the year preceding such Adjustment Date.

Extended Term(s) Right of Entry Fee: Per FAA requirements for Through-the-Fence agreements (*FAA Order 5190.6B as amended*), the Right of Entry Fee for any Extended Terms will be adjusted to the same rate as similar on-Airport facilities. If no similar facilities exist, an FAA-approved appraisal firm will be used to determine fair-market-value.

3. Section 21, **Miscellaneous Responsibilities of Operator**, *shall become Section 22 of the agreement, thereby adjusting all subsequent section numbers thereafter; and Section 21 shall now be titled **Limits on Use of Hangars by Operator and Hangar Tenants**. The following paragraphs shall be added as Section 21. Limits on Use of Hangars by Operator and Hangar Tenants"*

- a. Operator affirms that it has requested access to the Airport so that it may provide its tenants, users and guests having airplanes with the convenience of having a Hangar in which they can store their aircraft.
- b. Operator agrees that the use of their Hangars shall be exclusively for the storage of aircraft as well as any *de minimus* activity associated with such storage, including self-service of such aircraft as allowed by FAA Order 5190B, Chapter 11 "Self-Service". Any aircraft stored in the Hangars may not participate in any commercial aeronautical activity on the Airport property, which is aeronautical activity (as defined in FAA Advisory Circular 150/5190-1 or subsequent revisions thereof) provided on the Airport property in exchange for payment.
- c. Operator shall prohibit any use of its Hangars that is inconsistent with the FAA's Policy on the Use of Airport Hangars as set forth in 14 CFR Chapter I [Docket No. FAA 2014-0463] FAA Policy on the Non-Aeronautical Use of Airport Hangars, as amended from time to time.
- d. Nothing in this section shall prohibit the Operator or Hangar Tenants from obtaining services from aeronautical service providers who have agreements with the County to operate at the Airport. In the event that the Operator or Hangar Tenants

require a service that a provider who has an agreement with the County cannot provide, the Operator or Hangar Tenant may obtain such service from an off-airport provider so long as that provider obtains authorization from the County.

- e. Operator also recognizes that County must have a procedure for investigating alleged violations and agrees to the procedure stated herein. Upon receipt of an allegation that the provisions of this section are being violated, County will set forth the allegations in a letter to Operator.

Operator will refer the matter to the alleged violator and make all reasonable efforts to obtain a reply to be sent to County within ten (10) days after the receipt of letter containing allegations. If Operator determines a violation of this section of the Agreement has occurred, it will take any action it considers appropriate and will advise County of such action.

Should the violation continue, County may deny access to the Airport from the Operator's Hangars until County receives reasonable assurance the situation will not recur. Operator shall, if requested by County, take all commercially reasonable action necessary to make available all information about aircraft based on Operator's Property.

- f. Nothing in this Agreement shall operate to deny the owner of any aircraft the right to personally perform on the owner's aircraft any and all types of aircraft maintenance and repair that owner is authorized by the FAA to perform. If an aircraft owner wishes to have such work performed for remuneration of any sort, the owner shall be subject to the same policies and rules as those applying to all other operations and aircraft based on the Airport. The Airport Manager shall keep Operator advised of such policies and changes thereto.

4. **Special Requirements/Conditions:** (Section 26, Subsection e through Subsection g are hereby replaced by the following:)

- e. Operator shall be responsible for the actions and behavior of its tenants, users, customers, contractors, invitees, guests, and animals using their Hangar and shall be responsible for ensuring they are made aware of and operate in accordance with all Airport rules, policies and procedures.

- f. Operator acknowledges and accepts that this Agreement is subject to Federal Aviation Administration approval and oversight and is specifically exempt from the requirements governing aeronautical agreements located on the Airport as described in Federal Aviation Administration Order 5190,6B, as amended.

- g. Operator and its tenants are required to comply with the County Airports Minimum Business Standards ("Minimum Standards") as updated from time to time. The Minimum Standards can be found on the Airports website at [flysmc.com](http://flysmc.com).

5. **Effective Date: Approval.** This Second Amendment shall become effective ("Effective Date") by execution of the County Board of Supervisors and the Second Amendment is duly executed and delivered by County and Operator.

6. **Counterparts:** This Second Amendment may be executed in two counterparts, each of

which shall be deemed an original, but both of which taken together shall constitute one and the same instrument.

7. **No Further Amendment: Conflicts.** All the terms and conditions of the Agreement remain in full force and effect except as expressly provided in this Second Amendment. The Agreement as Amended constitutes the entire agreement between County and Operator regarding the Premises and may not be modified except by an instrument in writing duly executed by the County and Operator. In the event any conflicts between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

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County and Operator have executed this Second Amendment as of September 12, 2023.

**COUNTY:**  
COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Dave Pine, President  
Board of Supervisors

Date: \_\_\_\_\_

**OPERATOR:**

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DocuSigned by:  
*Martin Eisenberg*  
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By: \_\_\_\_\_  
Name: Martin Eisenberg  
Title: Trustee, Levin Trusts  
Date: 8/16/2023

## Exhibit A Property Location



**SKYWAY CENTER PROPERTY**