

**SECOND AMENDMENT TO LEASE/CONCESSION AGREEMENT
No. 5223**

This Second Amendment to Lease/Concession Agreement ("Amendment"), dated for reference purposes only as of June 19, 2012 is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Landlord"), and DIAMOND AIR VENTURES, INC. an Oregon Corporation DBA DIAMOND AVIATION, ("Diamond" or "Tenant").

Recitals

A. As authorized by San Mateo County Resolution No. 68821, County and Tenant entered into a Lease/Concession Agreement dated for reference purposes as of June 1, 2007 (the "Agreement") for approximately 1,600 square feet of office space at that certain property commonly known as the San Carlos Airport Terminal Building for the purpose of operating flight training, aircraft leasing and sales, aircraft maintenance and related activities; and

B. On March 15, 2010, County and Tenant entered into a First Amendment to Lease/Concession Agreement acknowledging the official change of the business name; and

C. The Term of the Lease/Concession Agreement expires on June 30, 2012, and Tenant did not exercise its option to extend the Term; and

D. County and Tenant desire to amend the Agreement to extend the Term, modify the Premises size and location, modify the rent and utility charge based on the change of Premises and to reflect fair market rates, and modify certain sections of the agreement to meet current County standard lease terms, under the terms and conditions set forth in the Agreement as Amended.

Agreement

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

1. **Term**. Any references to the expiration date of the Agreement notwithstanding, the expiration date of the Agreement is hereby extended to June 30, 2017, with no further options to extend.
2. **Premises**. Any references to the Premises notwithstanding; effective July 1, 2012, the Premises shall consist of 800 sq ft of office space located at 620 Airport Drive, Suite 5, San Carlos, CA 94070.
3. **Rent**. Any references to the Base Permit Fee of the Agreement notwithstanding; effective July 1, 2012, the Base Permit Fee shall be \$1,520.00 per month, which rate shall be subject to annual adjustment in accordance with Section 7C. (Base Permit Fee Adjustment) of the Agreement.

4. **Utilities.** Any references to the Utility Charge notwithstanding, effective July 1, 2012, the Utility Charge shall be \$223.00 per month, which rate shall be subject to adjustment in accordance with Section 6C. (Utility Charge) of the Agreement.

5. **Use and Concession.** Section 12 (Use and Concession) shall be amended to authorize, on a non-exclusive basis, aircraft flying and ground training instruction in both fixed-wing and rotocraft aircraft, subject to the terms and conditions of the Agreement.

6. **Assignment and Subletting.** Section 35 (Assignment and Subletting) shall be deleted in its entirety and replaced with the following:

Tenant shall not, either voluntarily or by operation of law, assign, sell, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without the written consent of Landlord first had and obtained, which consent is at the sole discretion of the Landlord. Furthermore, Landlord's consent to any assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be voidable, and shall, at the option of Landlord, constitute a default under this Lease.

If Landlord consents in writing to the proposed assignment or sublet, such assignment or sublet shall be subject to the following conditions:

- a) *Any assignment or sublease shall include a provision to the effect that the assignee or subtenant is subject to the same terms and conditions set forth in this lease;*
- b) *No assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to and approved by Landlord;*
- c) *No assignee or subtenant shall have a further right to assign or sublet;*
- d) *Fifty percent (50%) of any sums or other consideration payable by Transferee to Tenant as a result of or in connection with such assignment or sublet (except proceeds from the sale of the business, rental or other payments received which are attributable to the amortization over the term of this lease of the cost of leasehold improvements constructed by Tenant for such assignee or subtenant, excluding the initial tenant improvements to be constructed in the Premises pursuant to the terms of this lease, if any, and broker fees and attorneys fees paid by Tenant in connection therewith) whether denominated rentals or otherwise, which exceed the Base Rent and direct expenses which Tenant is obligated to pay Landlord under this lease during the term of such assignment or sublease (prorated to reflect obligations allocable to that portion of the Premises subject to such sublease), shall be payable to Landlord monthly as Additional Rent under this Lease without affecting or reducing any other obligation of*

Tenant hereunder (such amounts are referred to herein as the "Transfer Premium");

- e) Three percent (3%) of the proceeds of the sale of the business shall be payable to Landlord within thirty (30) days of the sale closing (such amount is referred to herein as the "Transfer Fee"); and
- f) No assignment or sublet shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder.

If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock of Tenant, or the sale of at least 51 percent of the value of the assets of Tenant, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 10% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph shall not apply to corporations the stock of which is traded through an exchange or over the counter.

7. **Signage and Windows**. Section 11 (Signage and Windows) of Exhibit C (Special Requirements/Conditions) shall be deleted in its entirety and replaced with the following:

No permanent banners or signs of any kind may be installed or displayed outside on the airport without the written approval of the County. All signage shall comply with applicable Local and County requirements. Signs and banners installed without the written approval of the County will be removed and disposed of at Tenant's sole cost and expense.

Tenant shall be limited to one exterior sign. The total sum of the surface area of this sign shall not exceed 64 square feet. All signage shall be mounted securely to the parapet above the Tenant's portion of the premises on the airside of the building and no portion of the signage shall exceed the existing dimensions of the parapet. Appropriate signage may also be added to the entry and exit doors. All draft styles, materials, size, proposed locations and installation methods of all new and replacement signage on parapets and doors shall be approved in advance by the Airport Manager and conform to all requirements herein. Any signage placed in locations other than the parapets or doors must be approved by the Airport Manager prior to installation or construction.

Existing signs and banners in place on July 1st, 2012 that are found to be in non-compliance with these policies may remain on the premises but shall be subject to any existing or future airport signage policies including, but not limited to, their overall condition and appearance.

Tenant shall keep all exterior and shared interior windows free of any signs, advertisements, posters, fliers, stickers and/or other articles which are unrelated to the business or operation of the business that would otherwise prevent a clear and unobstructed view through the window. Articles placed on windows must be confined to one 24 inch by 24 inch area on one exterior and/or interior window. Landlord reserves the right to remove any object found to be in non-compliance within 24 hours after delivery of written notification to the tenant. Tenant, at its sole cost and expense, shall

have the right to install neutral colored curtains, blinds or shades, or other window coverings with Landlord's prior written approval.

8. **Effective Date; Approval.** This Second Amendment shall become effective (the "Effective Date") when the County Board of Supervisors adopts a resolution authorizing the execution of this Second Amendment, and the Second Amendment is duly executed by the County and delivered to Permittee.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT, PERMITTOR ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF COUNTY HAS AUTHORITY TO COMMIT COUNTY HERETO UNLESS AND UNTIL THE COUNTY BOARD OF SUPERVISORS HAS ADOPTED A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT TO THE AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF COUNTY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AMENDMENT SHALL BE NULL AND VOID UNLESS THE BOARD OF SUPERVISORS ADOPTS A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. APPROVAL OF THIS AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

9. **Counterparts.** This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10. **No Further Amendments; Conflicts.** All the terms and conditions of the Lease/Concession Agreement as amended by the Second Amendment to Lease/Concession Agreement shall remain in full force and effect except as expressly amended herein, and together with this Second Amendment to Lease/Concession Agreement constitutes the entire agreement between County and Tenant and may not be modified except by an instrument in writing duly executed by the parties hereto.

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County and Tenant have executed this Second Amendment to Lease/Concession Agreement as of the date first written above.

TENANT:
DIAMOND AIR VENTURES, INC., an Oregon Corporation DBA DIAMOND AVIATION

By:  

Uche Emetarom
President

COUNTY:
COUNTY OF SAN MATEO,
a political subdivision of the State of California

By: _____
Adrienne J. Tissier
President, Board of Supervisors

Attest:

Clerk of the Board

Resolution No.: _____