

FIRST AMENDMENT TO RIGHT OF ENTRY AGREEMENT

(No. 5329)

San Carlos Airport

San Carlos,

California

This First Amendment to Right of Entry Agreement ("Amendment"), dated for reference purposes only as of September 1, 2015 is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, ("County") and ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Sydney Levin bypass trust established under trust agreement dated July 31, 1984, ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Sydney Levin marital trust established under trust agreement dated July 31, 1984 and ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Zelda Levin marital trust established under trust agreement dated July 31, 1984 (collectively the "Operator").

Recitals

County is owner of the airport in the City of San Carlos known as the San Carlos Airport, (the "Airport"), a general purpose airport owned and maintained by County for use and benefit of the public and for servicing aviation needs; and

Operator is the owner of property identified as Assessor's Parcel Number 046-081-550, which is improved with office buildings and aircraft hangars (the "Property"); and

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

On February 28, 2009, 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

On March 19, 2009 and on November 30, 2010 the County Board of Supervisors approved Right of Entry Agreements permitting Operator, Operator's tenants and users access from the Property onto the Airport; and

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 hereinafter set forth, the sufficiency of

which is hereby acknowledged, the parties agree as follows:

1. **TERM.** *Section 1 of the Agreement shall be amended in its entirety to state as follows:*

- a. Initial Term: County grants to Operator permission for aircraft based on the Property to enter and use portions of the Airport under the terms and conditions hereinafter set forth, for an initial term of thirty (30) years (the "Initial Term"). Said Initial Term shall begin upon the earlier of January 1, 2021 or the issuance of a Certificate of Occupancy obtained by Operator for a newly constructed hangar facility upon the Property from any and all public agencies whose approval is required for occupancy and use of aircraft hangar.
- b. Extended Term(s): Operator shall have the option to extend this Agreement for four (4) additional five (5) year periods (the "Options to Extend"). Operator may exercise the Extension Option(s), if at all, by giving written notice to County no earlier than three hundred and sixty five (365) days and no later than two hundred and ten (210) days prior to expiration of the term to be extended; provided, however, if Operator is in material default hereunder on the date of giving such notice and fails to cure such default as provided herein, County may reject such exercise by delivering written notice thereof to Operator promptly after such failure to cure.
- c. Operator has reserved a one-time right to exercise a cancellation of all the terms of this Agreement by giving written notice to County of the exercise of such right of cancellation no later than October 31, 2020. Upon receipt of such notice by County, the rights and obligations of County and Operator under this Amendment shall terminate and Operator's rights and obligations under the Agreement shall terminate.

2. **RIGHT-OF-ENTRY TAXILANE.** *The following paragraph shall be added after the first paragraph of Section 2:*

County understands that Operator's hangars are to be constructed so as the hangar doors may encroach on County property while in the process of being opened and being closed. Operator shall ensure that its tenants and users do not leave the hangar doors partially open or ajar as this results in an unacceptable obstruction and safety hazard of County's taxilane adjacent the Operator's hangar. Should County be required to give notice to Operator more than four (4) times in any twelve (12) month period that the Operator's hangar doors are open and obstructing the County's taxilane, County shall have the option of immediately terminating the Agreement at the time of the fifth notice during any such twelve (12) month period. The provisions of this section shall

supersede any other provisions regarding default, including the provisions set forth in the "Default" section of the Agreement.

3. RIGHT OF ENTRY FEES. *Section 5 shall be amended in its entirety to state as follows:*

a. RIGHT OF ENTRY FEE

On the first of every calendar month, Operator shall pay County ten cents (\$.10) per rentable square foot of aircraft hangar space erected upon the Property in accordance with the approved building permits. Right of Entry Fee shall be paid for all space within the approved aircraft hangar including, without limitation, aircraft storage space, interior common area spaces and spaces reserved for Operator's utilities, facility maintenance services and management services. County and Operator shall execute a Right of Entry Fee commencement letter expressly stating the agreed upon amount in which the Right of Entry Fee shall be paid. The Right of Entry fee shall be paid in full for each month, or any portion thereof, without proration or offset for any partial month in which this Agreement is in effect upon commencement of the Initial Term. Any Right of Entry Fee, if not paid within ten (10) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant as set forth in this Section, nor on any amounts on which late charges are paid by Operator to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Operator due to failure to pay the Right of Entry Fee or for any other reason.

b. RAMP UP OF RIGHT OF ENTRY FEE

Notwithstanding the foregoing subsection (a), during the first thirty (30) months following the commencement of the Initial Term as set forth above (the "Ramp Up Period"), Operator shall pay County a modified Right of Entry Fee (the "Ramp Up Fee") calculated as follows: the proportionate percentage of the erected aircraft hangar, including aircraft storage space, interior common area spaces and spaces reserved for Operator's utilities, facility maintenance services and management services, which has been leased out by Operator or being used by Operator for any purpose multiplied by the total square footage of the aircraft hangar. The resulting square footage shall be multiplied by ten cents (\$.10) to calculate the Ramp Up Fee. The following formula is provided for illustrative purposes:

Ramp Up Fee = Percentage occupancy of newly constructed hangars x Right of Entry Fee

Monthly, Operator shall furnish to County a list of current tenants to ensure accurate payment of the Ramp Up Fee. Notwithstanding the above, at no time shall the Ramp Up Fee be less than fifty percent (50%) of the Right of Entry Fee. After the Ramp Up Period, Operator shall pay County the entirety of the Right of Entry Fee as described in the foregoing subsection (a).

c. **ADJUSTMENT OF RIGHT OF ENTRY FEE** On 1st day of July of each fifth (5th) year following the Commencement Date and each five- year period for which Operator exercises an Extension Option, the Right of Entry Fee set forth in Section 5 shall be adjusted as follows:

The Consumer Price Index for All Urban Consumers (base years 1982-1984 =100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"), which is published for June most immediately preceding the Adjustment Date (the "Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date in the case of the first Adjustment Date or, in the case of any subsequent Adjustment Date, the Index published most immediately preceding the prior Adjustment Date (the "Base Index"). If the Adjustment Index has increased over the Base Index, then the Right of Entry Fee payable on and after the Adjustment Date shall be set by multiplying the Right of Entry Fee in effect immediately prior to the Adjustment Date by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. The adjustment formula can be seen below. In no event shall the monthly Right of Entry Fee on or after the Adjustment Date be less than 110% or more than 120% of the monthly Right of Entry Fee in effect for the last full month immediately prior to the Adjustment Date.

Right of Entry Fee x Adjustment Index = Adjusted Right of Entry Fee (new Right of Base Index Entry Fee)

If the Index is changed so that the Base Index differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4. ACCOUNTS AND RECORDS *Section 6 shall be deleted in its entirety and replaced with the phrase "Intentionally Left Blank."*

5. DEFAULT *Section 9 shall be amended in its entirety to state as follows:*

A. Default by Operator

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Operator:

- (i) The failure by Operator to make any payment of any fee, or any other payment required to be made by Operator hereunder, as and when due, where such failure shall continue for a period of ten (10) days after notice thereof by County to Operator;
- (ii) The failure by Operator to observe or perform any of the terms, covenants or conditions of this Agreement to be observed or performed by Operator, other than described in Sub-section A (i) hereinabove and in the Right-of-Entry Taxilane Section, where such failure shall continue for a period of thirty (30) days after written notice thereof by County to Operator; provided, however, that if the nature of Operator's default and breach is such that more than thirty (30) days are reasonably required for its cure, then Operator shall not be deemed to be in default and breach if Operator commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion within ninety (90) days;
- (iii) The making by Operator of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Operator of a petition to have Operator adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Operator, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Operator's personal property at the Property or of Operator's interest in this Agreement, where possession is not restored to Operator within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of a Operator's personal property at the Property or of Operator's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

B. County's Remedies

In the event of any such default and breach by Operator described hereinabove, County may at any time thereafter:

- (i) Terminate Operator's right of entry by any lawful means, in which case this Agreement shall terminate. In the event Operator shall have abandoned the Right of Entry, which shall constitute non-use of the rights granted herein for more than ninety (90) days, County shall have the option to either (1) deny Right of Entry and recover from Operator the amount specified in this Section, or
(2) proceed under the provisions of the following Sub-section (ii).
- (ii) Maintain Operator's Right of Entry, in which case this Agreement shall continue in effect whether or not Operator shall have abandoned the Property or its Right of Entry. In such event County shall be entitled to enforce all of County's rights and remedies under this Agreement, including the right to recover any fee as it becomes due hereunder.
- (iii) Pursue any other remedy now or hereafter available to County under applicable laws and judicial decisions.

C. Default by County

County shall be in material default and breach of this Agreement if it fails or refuses to perform any of the terms, covenants or conditions of this Agreement that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of the default and breach has been given by Operator to County; provided, however, that if the default and breach of County is such that more than thirty (30) days are reasonably required for its cure, then, County shall not be deemed in default and breach if County commences to cure the default within thirty (30) days after the written notice and thereafter diligently prosecuted such cure to completion within ninety (90) days.

D. Operator's Remedies

In the event of any such material default and breach by County described hereinabove, Operator may at any time thereafter: (a) Terminate this Agreement with a written notice to County and relinquish the right of entry on the date of termination; and/or (b) Pursue any other remedy now or hereafter available to Operator under the applicable laws and judicial decisions.

E. California Law Notice Requirements

The notice requirements set forth in this Section modify and supersede the notice requirements of the applicable unlawful detainer statutes of California, if any.

6. SPECIAL REQUIREMENTS/CONDITIONS *The following shall be inserted after subsection d. of Section 25:*

- e. Operator understands that this is a Right of Entry Agreement and acknowledges that the relationship between the Operator and County is not necessarily subject to all of the Federal Grant Assurance requirements that are applicable to on-airport providers of aeronautical services or lessees of County

airport hangars. Operator is responsible for compliance with those Grant Assurance requirements that apply to through-the-fence operators and providers of aeronautical services.

f. Operator agrees that the use of their hangars shall be for the storage of aircraft owned by individuals or entities engaged in the operation of aircraft being utilized under FAR Part 91 or Part 141. Operator agrees to prohibit the storage of any aircraft operating under 14 CFR Part 119, 121, 125, 135 or any aircraft listed on a CFR Part 121, 125, 135 Operating certificate.

It shall constitute a material default and breach of this Agreement by Operator if any tenant is listed on a Part 135 Operating certificate.

g. Operator shall prohibit the use of its hangars and its property that is inconsistent with the Federal Aviation Administration'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 maybe amended from time-to-time.

7. EXHIBIT A. *Exhibit A shall be replaced with Exhibit "A" attached to this Amendment.*

8. APPENDIX B. *Appendix B shall be replaced with Appendix "B" attached to this Amendment.*

9. APPENDIX C. *Appendix C shall be deleted in its entirety.*

EFFECTIVE DATE; APPROVAL.

This Amendment shall become effective (the "Effective Date") when Amendment is duly executed by the County and Operator and delivered to Operator.

COUNTERPARTS. This 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.

NO FURTHER AMENDMENTS; CONFLICTS. All the terms and conditions of the Agreement as amended by the Amendment to Agreement shall remain in full force and effect except as expressly amended herein, and together with this Amendment to Agreement constitutes the entire agreement between County and Operator and may not be modified except by an instrument in writing duly executed by the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

OPERATOR:

ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Sydney Levin bypass trust established under trust agreement dated July 31, 1984

ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Sydney Levin marital trust established under trust agreement dated July 31, 1984

ZELDA LEVIN AND MARTIN M. EISENBERG, co-trustees of the Zelda Levin marital trust established under trust agreement dated July 31, 1984

By Zelda Levin

Title: CO-TRUSTEE, LEVIN TRUSTS

By Martin M. Eisenberg

Title: CO-TRUSTEE, LEVIN TRUSTS

COUNTY:

COUNTY OF SAN MATEO,

A political subdivision of the State of California

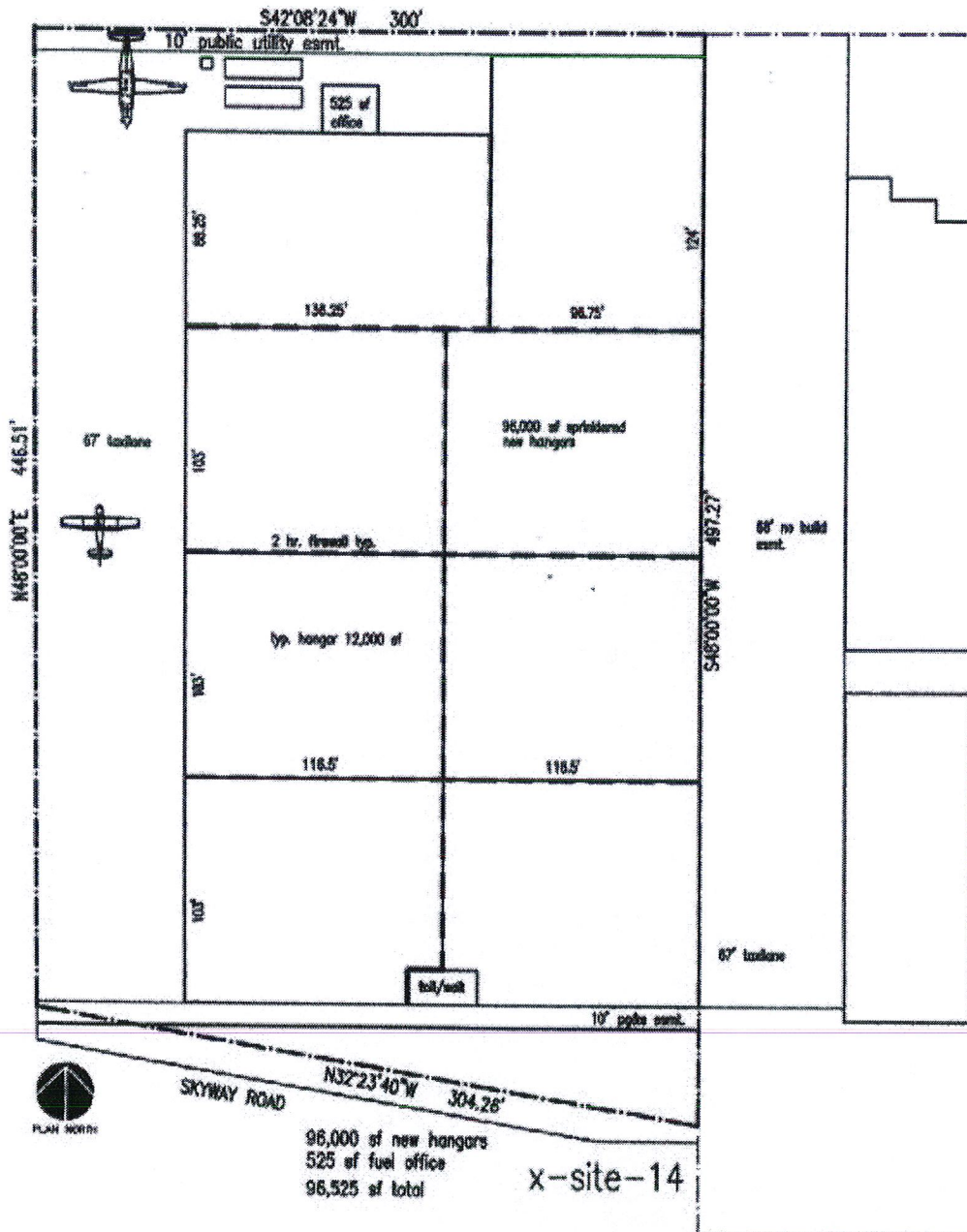
By: _____
President, Board of Supervisors

Attest:

Clerk of the Board

Resolution No.: _____

EXHIBIT "A"
SITE PLAN OF PREMISES



APPENDIX "B"

STANDARD PROVISIONS FOR ALL LEASES, USE, AND OTHER AGREEMENTS AND PERMITS

SAN MATEO COUNTY AIRPORTS

1. Operator/Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, agreement or permit for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator/Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
2. Operator/Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, sex, sexual orientation, color, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the lands and furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that Operator shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, CFR, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. In the event of breach of any of the above nondiscrimination covenants, County may terminate the lease, agreement or permit and re-enter and repossess the land and the facilities thereon and hold them as if the lease, agreement or permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.
4. Operator/Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Operator/Lessee may make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Non-compliance with Provision 4 above shall constitute a material breach of the lease, agreement or permit. In the event of such non-compliance, County may terminate this lease, agreement or permit and the estate hereby created without

liability thereof; or, at the election of County or the United States either or both of these governments may judicially enforce the provision.

6. County may further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Operator/Lessee and without interference or hindrance.
7. County may, but shall not be obligated to Operator/Lessee to, maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport. County also may direct and control the activities of Operator/Lessee in this regard.
8. The lease, agreement or permit shall be subordinate to the provisions and requirements of any existing or future agreement between County and the United States relative to the development, operation or maintenance of the airport.
9. There is hereby reserved to County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises covered by the lease, agreement or permit. This public right of flight shall include the right to cause in this airspace any noise inherent in the operation of any aircraft used for navigation of flight through the airspace or to land at, take off from or operate on the San Carlos or Half Moon Bay Airport, as the case may be.
10. Operator/Lessee shall comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations if future construction of a building is planned for the premises covered by the lease, agreement or permit or in the event of any planned modification or alteration of any present or future building or structure on the premises.
11. Operator/Lessee, by accepting this lease, agreement or permit, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on any land leased that would be in conflict with the provisions of Part 77 of the Federal Aviation regulations. If these covenants are breached, County may enter upon the land and remove the offending structure or object and cut the offending tree, all of which shall be at Operator/Lessee's expense.
12. Operator/Lessee, by accepting this lease, agreement or permit, agrees for itself, its successors and assigns that it will not make use of the premises covered by the lease, agreement or permit in any manner which might interfere with the landing and taking off of aircraft from the airport or otherwise constitute a hazard. If this covenant is breached, County may enter upon the premises and cause the abatement of such interference at Operator/Lessee's expense.
13. Nothing contained in the lease, agreement or permit shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (49 U.S.C. 1349A).
14. The lease, agreement or permit and all its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the airport or the exclusive or non-exclusive use of the airport by the United States during the time of

war or national emergency.

15. Operator/Lessee will conduct its programs and operate its facilities in accordance with the requirements of the Americans with Disabilities Act of 1992 and will assure that no qualified disabled person shall, solely by reason of his or her disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment. Operator/Lessee will conduct its programs and operate its facilities in compliance with all the requirements imposed by or pursuant to **49 CFR Part 27**.
16. Operator/Lessee shall insert the above provisions in any lease, agreement, contract, permit, etc., by which it grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises covered by the lease, agreement or permit, including any subleases, and hereby assures that the above provisions will be included in any agreement, contract, permit or further sub-lease granted or entered into by any sub-lessee of the Operator/Lessee.

