

FIFTH AMENDMENT TO LEASE

This fifth amendment to lease is dated _____, 2015 (the “**Effective Date**”), and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (“**Airport**”) and BYRON AVIATION SERVICES LIMITED, a Nevada limited partnership (“**Tenant**”).

Recitals

- A. Airport and Tenant are parties to a lease dated August 8, 1995, as amended on April 14, 1998, September 21, 1999, November 16, 1999, and June 20, 2000 (the “**Lease**”). Pursuant to the Lease, Tenant is leasing approximately 1.4 acres of land located at Byron Airport in Contra Costa County. Tenant has constructed Hangars on the Leased Premises, which it subleases to owners of private aircraft.
- B. Under the current terms of the Lease, Tenant is paying Site 1 Base Rent, Site 2 Base Rent, Site 1 Percentage Rent, and Site 2 Percentage Rent. The parties desire to amend the Lease to (i) combine the Site 1 Base Rent and Site 2 Base Rent into one monthly rent payment, (ii) eliminate the requirement that Tenant pay any percentage rent, and (iii) cause the additional payment provisions to be comparable to those of other long-term airport leases.

The parties therefore agree as follows:

Agreement

1. All defined terms used but not defined in this fifth amendment have the meaning ascribed to them in the Lease.
2. Effective on the Effective Date of the fifth amendment to the Lease, Section 6. Rent is deleted in its entirety and replaced with the following:

6. RENT

- A. Monthly Rent. Tenant shall pay rent to Airport on the first day of each month during the term in an amount equal to \$1,885.00, subject to adjustment as provided in Section 6.B and Section 6.C. In no event will the rent for any year be less than the rent in effect for the immediately preceding year.

Rent for any fractional month will be prorated and computed on a daily basis with each day's rent equal to one-thirtieth (1/30) of the monthly rent.

- B. CPI Adjustments. With the exception of the year that begins on a Revaluation Date, as defined below, on August 1, of each year beginning August 1, 2016, and continuing throughout the Term of this Lease, rent will be increased (or remain unchanged, but not

decreased), according to the change in the Consumer Price Index ("CPI") for the most recent one-year period ending June 30, based on the CPI Factor, as defined below.

The "**CPI Factor**" means the percentage by which the "Index," as defined below, for the most recent one-year period ending June 30 has increased over the Index in effect for the immediately preceding one-year period, calculated to the nearest one-tenth of one percent. The term "**Index**" means the Consumer Price Index, all Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or its successor or a substitute index published as a replacement for that index by the U.S. Department of Labor or by any other United States governmental agency.

Airport will notify Tenant of any increase in rent based on a CPI adjustment when Airport completes the calculation of increased rent. If such notice is given after the effective date of the increase, Tenant shall pay any increased rent retroactively to the effective date of the increase; provided, however, in no event will Tenant be required to pay the increased rent retroactively for a period greater than six (6) months.

C. Revaluation of Rent. On August 1, 2026 ("**Revaluation Date**"), the rent will be revalued based on the fair market rental value of the Premises without any improvements, using the Revaluation Process, as defined below. Airport shall initiate the Revaluation Process prior to the Revaluation Date. Rent established through the Revaluation Process is subject to adjustment for changes in the CPI Factor in accordance with Section 6.B., other than in the year that begins on a Revaluation Date.

(1) Conditions of Revaluation. The revaluation of rent, including any appraisals prepared as part of the Revaluation Process, will be conducted as follows:

- a. All negotiations and actions taken by Airport and Tenant under this Section will be undertaken and conducted by the parties in good faith.
- b. If the Revaluation Process is not concluded by the Revaluation Date, the rent determined by the Revaluation Process described herein will be retroactive to the Revaluation Date to which the Revaluation Process applies. Tenant shall make any retroactive payments of rent no later than thirty (30) days following the completion of the Revaluation Process.
- c. Except as otherwise provided herein, no waiver by Airport of any of the provisions of this Section will be deemed to have been made by Airport, unless made expressly in writing by the Director of Airports and no waiver by Tenant will be deemed to have been made unless made expressly in writing by the duly authorized agent of Tenant.
- d. All time periods specified in this Section will be counted in calendar days.

(2) Revaluation Process. The "**Revaluation Process**" consists of the following:

- a. Airport shall determine the fair market rental value of the Premises (the **"Airport Revaluation"**) and shall notify Tenant in writing of the amount of the new monthly Rent (the **"Revaluation Notice"**).
- b. If Tenant disagrees with the Airport Revaluation, Tenant may file with Airport a dispute of the amount of the Airport Revaluation (**"Tenant Dispute"**) and include Tenant's proposed rent revaluation amount. The Tenant Dispute must be in writing and delivered to the Director of Airports no later than twenty-one (21) days after the Revaluation Notice is delivered to Tenant (the **"Dispute Period"**). If Tenant does not file a Tenant Dispute with Airport within the Dispute Period: (i) the Airport Revaluation will automatically be deemed to be accepted by Tenant, (ii) Tenant will be deemed to have waived the right to contest the amount specified in the Revaluation Notice, (iii) the new rent specified in the Revaluation Notice will become effective on the applicable Revaluation Date, and (iv) the Revaluation Process will be over.
- c. If Tenant delivers a Tenant Dispute to Airport within the Dispute Period, Airport and Tenant will have twenty-one (21) days following Airport's receipt of the Tenant Dispute to attempt to establish a new rent by negotiation (the **"Rent Negotiation Period"**). The Rent Negotiation Period may not be extended beyond the initial twenty-one (21) day period except by mutual written agreement of Tenant and the Director of Airports. If Tenant and Airport agree in writing on the new monthly rent during the Rent Negotiation Period, the new monthly rent will become effective on the applicable Revaluation Date and both Airport and Tenant will be deemed to have waived the right to contest such new rent.
- d. If Airport and Tenant are unable to agree upon a new rent during the Rent Negotiation Period, then Airport and Tenant shall each appoint an appraiser to determine the fair market value of the Premises. Airport and Tenant shall identify the name of their appraiser by written notice to the other party. The appointment of the appraiser will be made and notice of the appointment will be given to the other party within twenty-one (21) days after the end of the Rent Negotiation Period (the **"Selection Period"**). Each appraiser must be a member of the American Institute of Real Estate Appraisers, have the designation of Member of the Appraisal Institute (**"MAI"**), and have current aviation appraisal experience in appraising property in the geographic area where the Premises is situated. Each party is responsible for paying the fees and costs of its appraiser.

If Tenant does not appoint an appraiser and provide Airport with written notice of the appointment within the Selection Period: (i) the initial Airport Revaluation will automatically be deemed to be accepted by Tenant, (ii) the new monthly rent, specified in the Revaluation Notice will become effective on the applicable Revaluation Date, (iii) Tenant will be deemed to have waived the right to further contest the amount of the

Airport Revaluation by arbitration or in any other manner, and (iv) the Revaluation Process will be over.

If Airport does not appoint an appraiser and provide Tenant with written notice of the appointment within the Selection Period: (i) the monthly rent will remain unchanged or will equal the fair market rental value determined by Tenant's appraiser, whichever is greater, (ii) such monthly rent will become effective on the applicable Revaluation Date, (iii) Airport will be deemed to have waived the right to contest the amount of the new monthly rent by arbitration or in any other manner, and (iv) the Revaluation Process will be over.

If Airport and Tenant each properly appoint an appraiser during the Selection Period, both appraisers will make an independent determination of the fair market rental value of the Premises. Each appraisal must be completed and a copy of the appraisal report delivered to the other party no later than sixty (60) days from the date the appraiser was appointed (the "**Appraisal Period**") unless otherwise extended by the mutual agreement of Airport and Tenant.

Upon completion of both appraisals, Airport and Tenant shall make a final attempt to establish a new monthly rent by negotiation. If Airport and Tenant agree in writing on a new monthly rent, the new monthly rent will become effective on the applicable Revaluation Date and both Airport and Tenant will be deemed to have waived the right to contest the new rent.

- e. If Airport and Tenant cannot agree on a revaluation of the monthly rent within thirty (30) days following the Appraisal Period, either Airport or Tenant may declare an impasse in the negotiations by providing written notice of the impasse to the other party. The written notice of impasse (the "**Final Proposal**") will include all of the following information: (i) a statement that the declaring party has determined that negotiations have reached an impasse; (ii) the declaring party's final proposed rent revaluation figure; (iii) a statement that the recipient has ten (10) business days to either give written acceptance of the amount of the rent revaluation specified in the Final Proposal or deliver a counter-final proposal (the "**Counter-Final Proposal**") to the declaring party; and (iv) any other supplementary information as the declaring party deems appropriate. The party upon whom the Final Proposal is served shall then have ten (10) business days following receipt of the Final Proposal to either accept the Final Proposal or to reject the Final Proposal and deliver a Counter-Final Proposal to the declaring party. If either the Final Proposal or the Counter-Final Proposal is accepted in writing, then the new monthly rent will become effective on the applicable Revaluation Date and both Airport and Tenant will be deemed to have waived the right to contest such new rent.

- f. If neither the Final Proposal nor the Counter-Final Proposal is accepted, not later than forty-five (45) days after delivery of the Final Proposal, the appraiser selected by Airport and the appraiser selected by Tenant will jointly select a third appraiser with the designation of MAI and with current aviation appraisal experience in appraising property in the geographic area where the Premises is situated. The third appraiser will determine the fair market value of the Premises. The third appraiser will render a final written decision within thirty (30) days of his appointment. The cost of the third appraiser will be shared equally by Airport and Tenant. The appraiser's decision is binding on all parties and will apply retroactively to the Revaluation Date.

D. Reimbursement of Airport Improvements. Airport has installed certain improvements adjacent to the Premises at a cost of Thirty-Two Thousand Three Hundred Eighty-Four Dollars (\$32,384.00) (the "**Principal**"). Tenant shall repay the Principal, plus interest at 7%, to the Airport by making 240 monthly payments in the amount of Two Hundred Fifty-One and 07/100 Dollars (\$251.07) beginning August 1, 1995.

E. Additional Consideration. The Airport is the owner of the Air Compressor, Irrigation Materials (each as defined in the Second Amendment to Lease dated September 21, 1999, between the Tenant and the Airport (the "**Second Amendment**")) and the work bench described in the Second Amendment. The Airport is the owner of the Telephone Cable Improvements (as defined in the Second Amendment) installed by the Tenant between the MPOE and the Secondary MPOE (each as defined in the Second Amendment). Upon the expiration or earlier termination of the Lease, the Airport will be the owner of the Tenant's Cable (as defined in the Second Amendment) without compensation to the Tenant.

3. Section 7. Additional Payment Provisions is deleted in its entirety and replaced with the following:

7. ADDITIONAL PAYMENT PROVISIONS

A. Late Rental Payments. In the event Tenant fails to pay Airport rent due under this Lease within ten (10) days after such amount is due, Tenant shall pay to Airport a late charge of One Hundred Dollars (\$100) per occurrence (the "**Late Charge**"), plus interest on the unpaid balance at a rate of one and one-half percent (1-1/2%) per month, from the date the payment was due and payable until paid in full. Tenant shall pay all Late Charges, as Additional Rent on or before the date the next installment of monthly rent is due. Airport and Tenant hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix Airport's actual damage from any late payments and, thus, that Tenant shall pay as liquidated damages to Airport the Late Charge specified in this Section, which is the result of the parties' reasonable endeavor to estimate fair average compensation therefor (other than attorneys' fees and costs). Airport's acceptance of the Late Charge as liquidated damages will not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Airport from exercising any of the rights and remedies available to Airport under this Lease.

- B. Form and Place of Payment. Tenant shall pay all rents and fees in cash or by personal check, certified check, or money order, payable to the County of Contra Costa, by delivering same on or before due date to the Director of Airports Office, 550 Sally Ride Drive, Concord, California 94520, or at such other place as Airport may designate from time to time.
- C. Returned Checks. If a check written by Tenant is returned for insufficient funds, Airport may impose a reasonable service charge in addition to any Late Charge and in addition to any charges imposed by the bank. Airport may require Tenant to pay rent by certified check or money order if Tenant's bank or banks have returned one or more personal checks in any twelve (12) month period.
- D. Security Deposit. Upon execution of the Lease, Tenant paid to Airport the sum of Two Thousand and 00/100 Dollars (\$2,000.00) in cash or by certified check made payable to Airport as security for the faithful performance of the terms, covenants, and conditions of the Lease (the "**Security Deposit**").

If Tenant is in Default under the terms of this Lease, Airport may in its sole discretion (but is not be required to) apply the Security Deposit, or any portion of it, to any expense or loss incurred by the Airport and to any amounts due to the Airport from Tenant for any reason, including: (i) any Rent or other sum owed to Airport, (ii) any amount that Airport may spend or become obligated to spend in exercising its rights under this Lease, (iii) expenses incurred in removing any unauthorized alteration or addition, as defined in Section 10. Alterations and Additions, and (iv) damage sustained by Airport resulting from Tenant's Default. Upon demand by Airport, Tenant shall immediately pay to Airport a sum equal to the portion of Security Deposit that is expended or applied by Airport as provided in this Section 7.D. so as to maintain the Security Deposit in the sum initially deposited.

Upon the expiration or termination of this Lease and a final accounting by Airport, any remaining Security Deposit balance will be refunded to Tenant, without interest. Tenant waives the provisions of California Civil Code Section 1950.7, and all other provisions of law in force or that become in force after the Effective Date, that provide that Airport may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises. Airport and Tenant agree that Airport may, in addition, claim those sums reasonably necessary to compensate Airport for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant or Tenant's officers, agents, employees, independent contractors or invitees.

- E. Airport Processing and Transaction Fees. In the event Tenant requires or requests Airport's review, investigation, processing, recordation, or any other action in connection with any Tenant document, proposal or other matter (such as review of a proposed assignment or other transfer, lease amendment, an estoppel certificate or financing of Tenant's leasehold interest hereunder), Tenant shall pay to Airport a transaction fee of

Two Thousand Five Hundred Dollars (\$2,500.00) (the “**Transaction Fee**”), plus all of Airport’s reasonable costs, including, but not limited to, staff time at rates determined by the County, for any time Airport spends in connection with such review, investigation or other activity. The Transaction Fee will increase by Five Hundred Dollars (\$500.00) every five (5) years after the Effective Date of the fifth amendment to the Lease and is due thirty (30) days after demand therefor by Airport.

4. Section 36. Airport Processing Fees is deleted in its entirety and is replaced with Section 7.E. Airport Processing and Transaction Fees above.

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4. All other terms of the Lease remain unchanged.

The parties are signing this fifth amendment as of the date first set forth above.

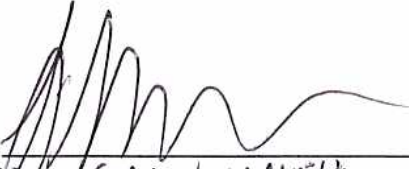
AIRPORT

Contra Costa County,
a political subdivision of the
State of California

By: _____
Keith Freitas
Director of Airports

TENANT

Byron Aviation Services Limited,
a Nevada Limited Partnership

By:  _____
Name GORDON GAVALLE
Title MANAGING MEMBER

RECOMMENDED FOR APPROVAL:

By: _____
Beth Lee
Assistant Director of Airports

By: _____
Name
Title

By: _____
Karen Laws
Principal Real Property Agent

APPROVED AS TO FORM:

Sharon L. Anderson,

By: _____
Kathleen M. Andrus
Deputy County Counsel