

**SECOND AMENDMENT TO
AMENDED AND RESTATED LEASE**

This second amendment ("**Second Amendment**") is dated as of September 1, 2020, and is between the County of Contra Costa, a political subdivision of the State of California ("**Lessor**"), and Byron Airport Hangar Owners Association, a California non-profit mutual benefit corporation ("**Tenant**").

Recitals

A. Lessor and Tenant are parties to an amended and restated lease agreement dated August 10, 2010, as amended on June 26, 2012, under which Tenant is leasing approximately 2.0 acres of land located at Byron Airport (the "**Lease**"). In accordance with Section 26.B of the Lease, Byron Jet Center, LLC assigned its rights and obligations under the Lease to Byron Airport Hangar Owners Association, pursuant to an Assignment and Assumption of Lease Agreement dated September 1, 2020

B. Under the terms of the Lease, the Ground Rent is subject to adjustment at various points throughout the Term. Lessor and Tenant desire to amend the Lease to establish the Ground Rent for the period beginning September 1, 2020, and ending August 31, 2029. Lessor and Tenant also desire to formalize the aviation-related community service activities Tenant is committed to providing in Contra Costa County.

The parties therefore agree to amend the Lease as follows:

Agreement

1. All capitalized terms not otherwise defined in this Second Amendment have the meaning ascribed to them in the Lease.
2. Section 4.Rent is deleted in its entirety and replaced with the following:
 4. **RENT**: Tenant shall pay Construction Period Rent and Ground Rent, each as defined below (together "**Periodic Rent**"), to Lessor without offset or demand on or before the first day of each month. Periodic Rent for any partial month will be prorated at the rate of 1/30th of the applicable rent per day.

A. Construction Period Rent

Tenant shall pay Five Hundred and 00/100 Dollars (\$500.00) per month during the Construction Period, as defined below (the "**Construction Period Rent**"). The "**Construction Period**" is that period of time that begins on November 27, 2007 and ends on the earlier to occur of (i) August 31, 2012, and (ii) the last day of the month following Substantial Completion, as

defined below.

The term "**Substantial Completion**" means the date that the Site Improvements, as defined in Section 7, Improvements, pass final inspection by the Contra Costa County Department of Conservation and Development.

B. Ground Rent

- (i) Start and End Dates. Tenant shall pay ground rent, as adjusted pursuant to this Agreement ("**Ground Rent**"), from the first day of the month following the end of the Construction Period (the "**Ground Rent Commencement Date**") until the expiration or earlier termination of this Lease.
- (ii) Initial Rent. For the period beginning on the Ground Rent Commencement Date and ending August 31, 2013 (the "**Initial Ground Rent Period**"), Ground Rent is equal to One Thousand Twenty and 84/100 Dollars (\$1,020.84) per month.
- (iii) CPI Increases. For each year subsequent to the Initial Ground Rent Period, except for (i) the nine-year period that begins September 1, 2020 (the "**Fixed Rent Period**"), and (ii) the one-year periods that begin September 1, 2030 and September 1, 2040, Ground Rent will increase or remain unchanged from the preceding year, based on the CPI Factor, as defined in subsection C. In any one year, any adjustment to Ground Rent based on the CPI Factor may not be by more than six percent (6%) of Ground Rent then in effect.
- (iv) Fixed Rent Period. For the Fixed Rent Period, Ground Rent is equal to the following amounts:

<u>Period</u>	<u>Monthly Ground Rent</u>
September 1, 2020 – August 31, 2021	\$1,198
September 1, 2021 -- August 31, 2022	\$1,416
September 1, 2022 -- August 31, 2023	\$1,634
September 1, 2023 -- August 31, 2024	\$1,851
September 1, 2024 -- August 31, 2025	\$2,178
September 1, 2025 -- August 31, 2026	\$2,505
September 1, 2026 -- August 31, 2027	\$2,723
September 1, 2027 -- August 31, 2028	\$2,940
September 1, 2028 -- August 31, 2029	\$3,049

- (v) Periodic Revaluation. Ground Rent for the one-year periods that begin September 1, 2030, and September 1, 2040, and, if Tenant

exercises its option to renew the Lease for the Renewal Term, September 1, 2050 (each such date, a "**Revaluation Date**"), will be adjusted in accordance with the revaluation process described in subsection D.

- (vi) No Decrease in Ground Rent. In no event will the Ground Rent for any year be less than the Ground Rent in effect for the immediately preceding year. In the event there is a decrease in the CPI or in the fair market rental value of the Premises, Ground Rent for the year in question will be the same as the Ground Rent for the preceding year.

C. Consumer Price Index Rent Adjustment

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 said Department or by any other United States governmental agency.

Lessor will notify Tenant of any increase in Ground Rent when Lessor 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.

- D. Revaluation of Ground Rent. The revaluation of Ground Rent will be based on the fair market rental value of the Premises without any improvements, using the Revaluation Process, defined below. Lessor shall initiate the Revaluation Process prior to each Revaluation Date. Ground Rent established through the Revaluation Process is subject to adjustment for changes in the CPI Factor in accordance with Section 4.C., other than in those years that begin on a Revaluation Date.

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

- a) All negotiations and actions taken by Lessor 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 Ground 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 Ground Rent no later than thirty (30) days following the completion of the Revaluation Process.
 - c) Except as otherwise provided herein, no waiver by Lessor of any of the provisions of this Section will be deemed to have been made by Lessor, 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) Lessor shall determine the fair market rental value of the Premises (the "**Lessor Revaluation**") and shall notify Tenant in writing of the amount of the new monthly Ground Rent (the "**Revaluation Notice**").
 - b) If Tenant disagrees with the Lessor Revaluation, Tenant may file with Lessor a dispute of the amount of the Lessor Revaluation ("**Tenant Dispute**") and include Tenant's proposed Ground 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 Lessor within the Dispute Period: (i) the Lessor 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 Ground 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 Lessor within the Dispute Period, Lessor and Tenant will have twenty-one (21) days

following Lessor's receipt of the Tenant Dispute to attempt to establish a new Ground 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 Lessor agree in writing on the new monthly Ground Rent during the Rent Negotiation Period, the new monthly Ground Rent will become effective on the applicable Revaluation Date and both Lessor and Tenant will be deemed to have waived the right to contest such new Ground Rent.

- d) If Lessor and Tenant are unable to agree upon a new Ground Rent during the Rent Negotiation Period, then Lessor and Tenant shall each appoint an appraiser to determine the fair market value of the Premises. Lessor 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.

In the event that Tenant does not appoint an appraiser and provide Lessor with written notice of the appointment within the Selection Period: (i) the initial Lessor Revaluation will automatically be deemed to be accepted by Tenant, (ii) the new monthly Ground 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 Lessor Revaluation by arbitration or in any other manner, and (iv) the Revaluation Process will be over.

In the event that Lessor does not appoint an appraiser and provide Tenant with written notice of the appointment within the Selection Period: (i) the monthly Ground Rent will remain unchanged or will equal the fair market rental value determined by Tenant's appraiser, whichever is greater, (ii) such monthly Ground Rent will become effective on the applicable

Revaluation Date, (iii) Lessor will be deemed to have waived the right to contest the amount of the new monthly Ground Rent by arbitration or in any other manner, and (iv) the Revaluation Process will be over.

If Lessor 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 Lessor and Tenant.

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

- e) In the event that Lessor and Tenant cannot agree on a revaluation of the monthly Ground Rent within thirty (30) days following the Appraisal Period, either Lessor 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 Ground Rent revaluation figure; (iii) a statement that the recipient has ten (10) business days to either give written acceptance of the amount of the Ground 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 Ground Rent will become effective on the applicable Revaluation Date and both Lessor and Tenant will be deemed to have waived the right to contest

such new Ground 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 Lessor 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 Lessor and Tenant. The appraiser's decision is binding on all parties and will apply retroactively to the Revaluation Date.

3. The following Section 51. Community Service is added to the Lease:

51. COMMUNITY SERVICE

Beginning September 1, 2020, Tenant shall provide a minimum of 500 hours of community service to be performed each year in Contra Costa County to promote youth services and the development of skills that would support a career in the aviation or aerospace industries. The ways such community service could be provided include, but are not limited to, the following:

- (1) Conducting an annual aviation and aerospace career fair.
- (2) Hosting on-going student groups for aerospace and Science, Technology, Engineering and Mathematics (STEM) programs, which could include, subject matter classes and presentations, hands-on activities, and facility tours.
- (3) Presenting aviation and aerospace specialty curriculum in neighborhood schools, which could include a high-altitude balloon program, cross-curriculum aerospace course, summer aerospace course, and STEM outreach activities.
- (4) Hosting Young Eagles program events at the Premises.

Tenant shall provide the Director of Airports with (i) an estimate of planned activities for the upcoming year by September 1 of each year, and (ii) a report summarizing the activities and community service hours for the prior year by October 1 of each year.

The terms of this Section 51 do not apply in the event this Lease is assigned ,
in accordance with Section 26.B. of the Lease.

4. Notwithstanding Section 8 of the Lease, Tenant shall pay a Transaction Fee in the amount of Three Thousand Five Hundred and No/100 Dollars (\$3,500) to Lessor not later than September 1, 2025, as consideration for this Second Amendment.
5. All other terms of the Lease remain unchanged.

The parties are signing this Second Amendment as of the date first set forth above.

LESSOR

TENANT

CONTRA COSTA COUNTY

BYRON AIRPORT

a political subdivision of the

HANGAR OWNERS ASSOCIATION, a

State of California California non-profit mutual benefit corporation

By: _____

By: Robert Howell

Keith Freitas
Director of Airports

Robert Howell
President

RECOMMENDED FOR APPROVAL:

By: _____

By: Ginette Huot

Beth Lee
Assistant Director of Airports

Ginette Huot
Secretary

APPROVED AS TO FORM:

Sharon L. Anderson,
County Counsel

By:

Kathleen M. Andrus
Deputy County Counsel