

**AGREEMENT** made this 12<sup>th</sup> day of **October, 2019**

**B E T W E E N**

**THE CORPORATION OF THE CITY OF KAWARTHA LAKES**

hereinafter called the "Landlord"

—and —

**BRADLEY MARTYN, IN TRUST FOR A TO BE NAMED CORPORATION**

Hereinafter called the "Tenant"

**1.0 PREMISES**

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter respectively reserved and contained the Landlord doth demise and lease unto the Tenant that certain tract of land situate:

In the geographic Township of Ops, City of Kawartha Lakes, municipally known as 3187 Highway 35N., Lindsay, and legally described as part of the North half of Lot 23, Concession 3; part of Lot 24, Concession 3; part of the south half of Lot 25, Concession 3; as in VT63568, A12243 & VT63532, as shown on the attached Schedule "A", being approximately **3900 square feet (52 feet wide by 75 feet depth)** square feet more or less and located within the General Aviation Area at the Kawartha Lakes Municipal Airport.

hereinafter referred to as the "Demised Premises", upon which the Tenant shall construct a hangar, designed and built in accordance with the specifications, limitations, and inclusions identified and described in Schedule "B"

**2.0 TERMS AND CONDITIONS**

TO HAVE AND TO HOLD the said Demised Premises for and during the term of twenty (25) years computed from the **1st of November 2019** and thenceforth next ensuing, and fully to be completed and ended on the **31st day of December, 2044**.

**3.0 EXTENSION OF TERM**

The Landlord covenants that if:

- a. the Tenant pays all Annual Rent and additional rent punctually when due and payable and duly and regularly observes and performs all of the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this Lease;



- b. the Tenant is not then in default pursuant to the terms of this Lease;
- c. the Tenant gives the Landlord not less than sixty (60) days written notice prior to the expiration of the Term of this Lease of the Tenant's intention to extend the Term of this Lease;

then the Landlord will grant to the Tenant the right to extend the Term of this Lease upon the expiry of the initial Term for one (1) further term of ten (10) years upon the same terms and conditions as set out in this Lease except that: (i) there shall be no further right to extend the Term; and (ii) the Landlord may at its option require that the Tenant (1) execute a new net Lease; or (2) enter into an extension agreement as prepared by the Landlord at the Tenant's expense, to give effect to the extended Term.

#### **4.0 QUIET ENJOYMENT**

If so long as the Tenant performs its obligations made under this Lease, the Landlord covenants with the Tenant for quiet enjoyment.

#### **5.0 RENT**

YIELDING AND PAYING rent therefore yearly and for every year during the said Term unto the Landlord, in annual instalments, in advance, on the **1<sup>st</sup> day of January**, in each and every year during the Term hereof, the Annual Rent is **\$1170.00** plus HST, calculated at 30c per square foot. Such rent to be adjusted each year in accordance with the Ontario Consumer Price Index

For clarity, HST means the goods and services tax imposed under the *Excise Tax Act* (Canada) and any goods and services taxes, value added, sales, use, consumption or other similar taxes of whatsoever name imposed by the Government of Canada or by a provincial or local government having jurisdiction.

For any extension of the Term thereof, the Annual Rent shall be negotiated but largely upon the same terms and conditions as set out herein

#### **6.0 ADDITIONAL RENT**

Without limiting the generality of the foregoing, the Tenant covenants to pay, as additional rent, all property taxes and common element fees currently established at **\$805.88** per year plus HST, subject to change of assessed value and/or municipal tax rate or common element fee. The obligation to pay taxes and common element fees shall be deemed, for the purpose of this Lease to be an obligation to pay rent.

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## **7.0 NET LEASE AND RENT**

The said Tenant covenants with the said Landlord to pay Annual Rent; and to pay taxes, including local improvements.

It is the intent of the Landlord and the Tenant that this Lease is absolutely net to the Landlord, and any amount or any obligation which is not expressly declared herein to be that of the Landlord shall be deemed to be the obligation of the Tenant to be performed by and at the expense of the Tenant, and, for greater certainty, the Tenant covenants and agrees that it will be responsible for, among other things, the cost of constructing any building(s) on the Demised Premises, maintaining, repairing (including structural) and replacing any building(s), improvements, structures and fixtures, including, without limitation, the Hangar, as may constructed on the Demised Premises and for all other costs which a normal and prudent owner would incur and/or make as if it was a fee simple owner of the Demised Premises.

## **8.0 NUISANCE**

The Tenant covenants that s/he will not do or permit to be done on the Demised Premises anything which may be annoying to the Landlord, or which the Landlord may deem to be a nuisance.

## **9.0 USE**

The Tenant or any occupant shall use and occupy the Demised Premised only for the purpose of a recreational aircraft Hangar and shall not carry on any business enterprise within the Hangar.

## **10.0 REFUEL**

No refuelling shall occur within the Hangar or fuel tanks stored on the Demised Premises; and any refuelling shall occur outside the Hangar at a designated area, as determined by the Landlord.

## **11.0 MAINTENANCE, REPAIR AND REPLACEMENT**

The Tenant covenants, at its sole cost, to maintain, repair and replace the Demised Premises including all buildings and structures, fixtures and improvements thereon (including, without limitation the Hangar) in a clean and first-class condition, and not to cause or permit to be located on the Demised Premises:

- a. Storage of rubbish, refuse, debris or other objectionable material;
- b. Storage of inflammable or explosive substances; and
- c. Fuels, other than fuel tanks internal to the stored aircraft.
- d. Any fuel or substance related to aircraft repair or maintenance in non approved containers or in any quantity in excess of 5 gallons.

## 12.0 TOXIC SUBSTANCE AND WASTE

The Tenant covenants not to bring onto the Demised Premises or the Airport any toxic or hazardous materials, except in the quantity permitted by law. The Tenant shall use, store, handle and treat such materials in accordance with applicable law.

The Tenant shall be responsible for the proper removal and disposal of all hazardous or toxic substances, materials or wastes, pollutants or contaminants, aircraft fluids, petroleum products or by-products.

The Tenant shall not discharge or cause to be discharged or however pass into the sewer systems, storm drains or surface drainage facilities, at the Airport, any deleterious material, noxious, contaminated or poisonous substances;

- a. In the event of a discharge or escape of such deleterious materials, noxious, contaminated or poisonous substance in and under the control of the Tenant, the Tenant shall terminate and rectify all damage or injury therefrom to the satisfaction of the Landlord; and
- b. The Tenant shall save the Landlord harmless against and from any and all liabilities, obligations, damages, penalties, claims, cost including compliance and clean-up costs, charges, expenses and disbursements including, without limitation, legal fees and expenses, fees of expert witnesses, engineers and other consultants which may be imposed upon, incurred by or asserted against the Landlord by reason of any environmental contamination of the premises caused by the Tenant or its employees, agents or invitees.

## 13.0 CONSTRUCTION AND REMOVAL

- a. The Tenant shall within **six (6)** months of the commencement of this Lease commence the construction of a hangar on the demised premises and shall complete the construction within **eleven (11)** months of the commencement of this Lease. If the construction of the said hangar is not substantially completed within the agreed upon period, and completed in accordance with the plans filed, this lease shall be terminated at the end of such period. Notwithstanding any other term to the contrary, the Tenant shall have thirty (30) days in which to remove any partially constructed hangar on the demised premises. If not removed within such period, any partially constructed hangar or remains thereof shall become the property of the Landlord.
- b. The Tenant covenants not to make any changes in surfacing, grade or landscaping, at or on the Demised Premises, except in accordance with plans therefore which have been submitted to, and approved in writing by the Landlord

and to make any such changes expeditiously in a good and workmanlike manner, including proper clean-up to the reasonable satisfaction of the Landlord;

- c. The Tenant shall, at the end of the Term hereof, if so directed by the Landlord remove from the Demised Premises at his own expense the Hangar and any building or other improvements, structures or fixtures thereon, provided that the Demised Premises shall be returned to their original condition, to the reasonable satisfaction of the Landlord. For clarity, the Tenant will repair any damage caused to the Demised Premises as a result of any removal of all buildings, structures, fixtures, and improvements thereon (including without limitation the Hangar).

#### **14.0 PAVED APRON**

The Tenant further acknowledges that the installation of a paved apron, from the edge of the paved taxiway to the front of the hangar, will be at the sole expense of the Tenant.

#### **15.0 UTILITIES**

The Landlord shall be responsible for utilities to be brought to the Demised Premises, and the Tenant shall arrange for the connecting to and payment of all utilities

#### **16.0 TRANSFER**

- a. The Tenant covenants not to effect or permit a Transfer of the Demised Premises without the Landlord's prior written consent, which consent may not be unreasonably withheld. In this section, "Transfer" means (i) an assignment, sale, conveyance, sublease, disposition, or licensing of this Lease or the Demised Premises, or any part of them, or any interest in this Lease (whether or not by operation of law) or in a partnership that is a Tenant under this Lease, (ii) a mortgage, charge, lien or debenture (floating or otherwise) or other encumbrance of this Lease or the Demised Premises or any part of them or of any interest in this Lease or of a partnership or partnership interest where the partnership is a Tenant under this Lease, (iii) a parting with or sharing of possession of all or part of the Demised Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Tenant or an "Affiliate" of the Tenant which results in a change in the effective voting control of the Tenant. "Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer" set out above, (it being understood that for a Transfer described in subsection (iv) above, the Transferor is the person that has effective voting control before the Transfer and the Transferee is the person that has effective voting control after the Transfer). For the purposes of this Section, "Affiliate" means an affiliate within the meaning of the *Canada Business Corporation Act* as it exists as of the date of this Lease.

- b. The Tenant shall be permitted to assign this Lease in accordance with section 16 a., subject to the Transferee and the Landlord entering into an Assignment Agreement. The Transferee shall be responsible for maintaining insurance in accordance with section 18 of this Lease and shall be responsible for all obligations contained in this Lease.
- c. In the case of a sublease or rental of the whole or any part of the Demised Premises, the landlord shall not lease or rent the Demised Premises or any part thereof to a third party for less on a per aircraft basis, than the highest current hangar rental rate offered by the Kawartha Lakes Municipal Airport.
- d. In the case of a sublease, the Transferee shall waive any rights it may have under any legal or equitable rule of law or under the *Commercial Tenancies Act* (Ontario), as amended from time to time, or any other applicable legislation, to apply to a court or to otherwise elect to (A) retain the unexpired Term of this Lease or the unexpired sublease term, (B) obtain any right to enter into any lease or other agreement directly with the Landlord for the Demised Premises or the subleased premises, or (C) otherwise remain in possession of any portion of the subleased premises or the Demised Premises, in any case where this Lease is terminated, surrendered or otherwise cancelled, including a disclaimer of this Lease by a trustee in bankruptcy of the Tenant. The Tenant and the Transferee shall promptly execute an agreement required by the Landlord to give effect to the foregoing terms.

## **17.0 COMPLIANCE WITH LAW AND OTHER POLICIES**

The Tenant covenants to abide by any code of conduct or other policy regarding use, access and transportation within the airport development areas, including the Demised Premises, which may be established by the Landlord and any other applicable legislation.

- a. The Tenant agrees to adhere to all Transport Canada and Kawartha Lakes Municipal Airport regulations, as amended from time-to-time; and
- b. The Tenant further agrees to comply with all federal, provincial and municipal laws, rules and regulations affecting the Demised Premises, including, but not limited to the obtaining of all necessary permits and licences, and to save the Landlord harmless from any liability or cost suffered by it as a result of failure of the Tenant to do so.

## **18.0 INSURANCE**

The Tenant covenants that s/he will not do or permit to be done any act or thing which may make void or voidable any insurance upon any building, or part thereof, upon the said Demised Premises, or which may cause any increased or additional premium to be payable for any such insurance. The Tenant shall, throughout the Term of this Lease and at its sole cost and expense keep in force insurance policies described as follows:

- a. A General Aviation Liability policy, with a combined limit of not less than \$2,000,000 for bodily injury and property damage, to provide coverage for the Demised Premises, hazard of the hangar and the Tenant's operations in and about the hangar and elsewhere on the airport property. The policy shall include the Landlord as an additional insured and shall contain a clause requiring 30 days written notice be given to the Landlord of any material change, cancellation or non - renewal of the policy;
- b. All Risk Property Insurance to cover the value of all buildings, fixtures, improvements, structures and other Tenant's property on the Demised Premises including without limitation the Hangar; and
- c. Any other insurance coverage the Landlord, acting reasonably, may require

The Tenant's insurance shall be with insurers acceptable to the Landlord, and the Tenant will provide to the Landlord a Certificate of Insurance.

The Landlord assumes no responsibility for damage by fire, theft or otherwise whatsoever, to the goods, chattels, fixtures and improvements of the Tenant or of any other person.

## **19.0 REVIEW OF INSURANCE COVERAGE**

It is agreed by and between the Landlord and the Tenant that all insurance requirements contained in this Lease will be reviewed from time to time and insurance coverage, the policy amounts and risks covered by such insurance will be adjusted to any such limit as the Landlord may reasonably require.

## **20.0 INDEMNIFICATION**

The Tenant agrees to indemnify and save the Landlord harmless from and against any and all actions, claims or demands made or brought against Landlord, its agents, servants and employees, by any person or persons by reason of the negligence, acts or omissions of the Tenant in connection with its occupation of the Demised Premises.

## **21.0 CONSTRUCTION LIEN**

The Tenant shall at all times indemnify and save harmless the Landlord from and against any and all claims, demands, loss, costs, charges, actions and other proceedings under the *Construction Lien Act*, R.O.S. 1990, c C.30, as amended from time to time, in connection with



any work done for the Tenant at or on the Demised Premises, and shall at its own expense, within 10 days of notice of any such lien, certificate of action, remove from the registered title to the Demised Premises, of every claim for lien or certificate of action having to do with such work and in any event within 10 days of being notified in writing by the Landlord to do so, failing which the Landlord may see to such removal and recover the expense and all attendant costs from the Tenant as rent owing and in arrears.

## **22.0 SECURITY INTERESTS IN TENANT'S LEASEHOLD INTEREST**

### **22.1 GENERAL**

The Tenant may at any time mortgage, encumber, pledge or assign as security its right, title and interest in and to the leasehold estate created hereby, provided that such mortgagee, encumbrancer, pledge, or assignee operates at arm's length from the Tenant and enters into an agreement with the Landlord, as more particularly set out in Section 21.2 hereof.

### **22.2 MORTGAGE LENDER**

The Mortgage Lender may, at any time permitted under its loan documents, foreclose or otherwise realize upon its lien on the leasehold estate created hereby and the Landlord shall recognize the person, firm or corporation acquiring the leasehold estate created hereby as the Tenant hereunder with all the rights and estate of the Tenant, provided such person, firm, or corporation first cures all defaults of the Tenant under this Lease and enters into an agreement satisfactory to the Landlord pursuant to which it agrees to assume and be bound by all the terms, covenants, and conditions hereof.

## **23.0 LANDLORD'S REMEDIES**

### **23.1 GENERAL**

If the Tenant or any successor, assign or other transferee makes an assignment for the benefit of creditors, or becomes insolvent or commits an act of bankruptcy as defined by the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time, or if the leasehold interest, including but not limited to any and all goods and chattels of the Tenant, is at any time seized or taken in execution or in attachment by any creditor of the Tenant, or if the Tenant or any successor, assign or other transferee is subjected to voluntary or compulsory liquidation or winding-up, or if the Demised Premises becomes abandoned or vacant for more than 30 days, or if the Demised Premises is used for any other purpose than that for which they were let, then, at the option of the Landlord, this Lease shall terminate and, the current month's rent, together with rent for the balance of the Term shall be immediately due and payable.

### **23.2 RECOVERY OF PAYMENT**





In every of the scenarios in section 22.1, such taxes or accrued portion thereof shall be recoverable by the Landlord in the same manner as the rent hereby reserved.

### 23.3 PROVISIO FOR RE-ENTRY ON DEFAULTS BY THE TENANT

If:

- a. the Tenant shall default in the payment of rent or any other sums required to be paid to the Landlord by any provision of this Lease and the Landlord shall have given to the Tenant notice of such default, and at the expiration of ten (10) days after the giving of such notice the default shall continue to exist; or
- b. the Tenant shall default in performing or observing any of its other covenants or obligations under this Lease, or any contingency shall occur which by the terms of this Lease constitutes a breach hereof or confers upon the Landlord the right to re-enter or forfeit or terminate this Lease, and the Landlord shall have given to the Tenant notice of such default or the happening of such contingency, and at the expiration of ten (10) days after the giving of such notice the default or contingency shall continue to exist (or, in the case of a default or contingency which cannot with due diligence be cured within a period of ten (10) days, the Tenant fails to proceed promptly after the giving of such notice even though it thereafter proceeds with due diligence to cure the same); or
- c. this Lease shall expire or be forfeited or be terminated by any other provision in it contained, then,

the Landlord or the Landlord's agents or employees authorized by it may immediately or at any time thereafter re-enter the Demised Premises, may remove all persons and their property therefrom either by summary eviction proceedings or by any other suitable action or proceeding at law, equity or otherwise without being liable to any prosecution or damages therefor, and may repossess and enjoy the Demised Premises and all fixtures and improvements upon the Demised Premises without such re-entry and repossession working a forfeiture or waiver of the rents to be paid and the covenants to be performed by the Tenant up to the date of such re-entry and repossession.

### 23.4 LANDLORD'S RIGHT TO CURE DEFAULTS

The Landlord (without limiting any other remedy which it may have) shall have the right at all times to enter the Demised Premises and any structures, improvements and fixtures thereon, for the purpose of curing any default of the Tenant, and no such entry for such purpose shall be deemed to work a forfeiture or termination of this Lease, and the Tenant shall permit such entry. The Landlord shall give not less than twenty-four (24) hours' notice to the Tenant of its intention to enter for such purpose, but may enter upon a shorter period of notice, or without notice where in the Landlord's reasonable judgment there is real or apprehended emergency or danger to persons or property, or where any delay in remedying such default would or might materially prejudice the



Landlord. The Tenant shall reimburse the Landlord upon demand for all expenses incurred by the Landlord in remedying any default, together with interest hereon at the prime lending rate of The Canadian Imperial Bank of Commerce plus five percent (5%) per annum from the date incurred until paid. The Landlord shall be under no obligation to remedy any default of the Tenant, and shall not incur any liability to the Tenant for any action or omission in the course of its remedying or attempting to remedy any such default unless such act amounts to intentional misconduct or gross negligence of the Landlord.

### **23.5 NO EXEMPTION FROM DISTRESS**

Notwithstanding the benefit of any present or future statute taking away or limiting the Landlord's right of distress, none of the goods and chattels of the Tenant on the Demised Premises at any time during the set Term shall be exempt from levy by distress for rent in arrears.

This covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in any Act above referred to, the Tenant waiving, as he hereby does, all and every benefit that could or might have accrued to him under and by virtue of any such Act for the above covenant.

### **23.6 REMEDIES OF LANDLORD ARE CUMULATIVE**

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Landlord shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Tenant of any of the covenants hereof.

### **24.0 RELOCATION**

Should the Landlord require the Demised Premises, the Landlord upon at least one (1) year's written notice to the Tenant, may require the Tenant to relocate to an alternative location, provided that the Landlord shall pay the Tenant's reasonable costs of relocation.

Should the Tenant wish to relocate to an alternative location, the Tenant shall first obtain the Landlord's written consent. The Tenant shall be responsible for one hundred percent (100%) of the Tenant's cost of relocation.

### **25.0 HOLDING OVER**



Should the Tenant remain in possession of the end of the Term, any extension hereby granted or termination of the Lease, with or without consent of the Landlord, it shall be a monthly tenant only at a monthly rent equal to one hundred and fifty percent (150%) of the rent paid for the last month of the Term or any extension and be subject in all other respects to the terms of this Lease.

## **26.0 RIGHT OF ENTRY**

The Landlord or the Landlord's representatives shall have the rights with twenty four (24) hour notice, during normal business hours unless in the case of an anticipated or current emergency, to enter the Demised Premises to inspect (i) general condition and state of repair thereof, (ii) to make repairs permitted under the Lease, (iii) to show the Demised Premises to any prospective tenant, purchaser or lender, or (iv) for any other reasonable and lawful purpose.

## **27.0 GRASS CUTTING AND SNOW PLOWING**

The landlord will be responsible for all grass cutting and snow removal to within two feet of the hangar for the Demised Premises.

## **28.0 INTERPRETATION**

It is agreed that every covenant, proviso and agreement herein contained shall enure to the benefit of and be binding upon the Parties hereto and their heirs, executors, administrators, successors and assigns, and that all covenants herein contained shall be construed as being joint and several, and that when the context so requires or permits the singular number shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

## **29.0 ENTIRE AGREEMENT**

This Lease constitutes the entire Agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings, undertakings, representations, warranties, terms, conditions and agreements, whether collateral, express, implied or statutory, between the Parties with respect thereto.

## **30.0 AMENDMENTS AND WAIVERS**

No amendment to this Lease will be valid or binding unless it is in writing and duly executed by all of the Parties hereto.

## **31.0 SUCCESSORS AND ASSIGNS**

This Lease shall operate to the benefit of and be binding upon, the Parties hereto and their successors and assigns.



### **32.0 SURVIVAL**

All representations, warranties and indemnities given by each of the Parties, all outstanding payment obligations, shall survive indefinitely the termination of this Lease.

### **33.0 SEVERABILITY**

If any provision of this Lease is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Lease shall continue in full force and effect.

### **34.0 NOTICES**

All notices required or permitted to be given under this Lease shall be in writing and shall be deemed to be properly given if hand-delivered, sent by confirmed facsimile and by registered mail postage prepaid, return receipt requested, or by courier, to the Parties at their respective addresses as set forth below, or to such other addresses as the Parties may advise by like notice. Such notices if sent by registered mail or courier shall be deemed to have been given when received.

a. if to the Landlord:

b. if to the Tenant:

### **35.0 FREEDOM OF INFORMATION**

The Tenant understands and agrees that this Lease and any materials or information provided to the Landlord, relating to this Lease may be subject to disclosure under the *Municipal of Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, or as otherwise required by law.

**\*\* The Next Page is the Signature Page\*\***



IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals.

Executed at Lindsay on the **12<sup>th</sup>** day of **October 2019**

BRADLEY MARTYN, IN TRUST FOR A TO BE NAMED CORPORATION

Per:

  
Bradley Martyn

I have authority to bind the Tenancy


Executed at Kawartha Lakes on the 9<sup>th</sup> day of March 2019~~20~~

**THE CORPORATION OF THE CITY OF  
KAWARTHA LAKES**

Per:

  
Name: Andy Letham  
Title: Mayor

Per:

  
Name: Cathie Ritchie  
Title: City Clerk

We have authority to bind the Corporation



# SCHEDULE A



## SCHEDULE B

The hangar to be constructed is to meet the following criteria:

- Width: 45 feet, depth: 35 feet.
- Compliance with height restrictions determined by airport management
- Clad with metal siding in same pale green colour as the two T hangars
- Poured concrete floor
- Bifold or hydraulic door
- At least one man door
- Exterior security lighting
- Final grade to be at or above existing elevation
- Subject to periodic inspection by City engineering staff
- Constructed to engineered standard
- Location no less than five feet from each side and rear of lot
- Minimum distance of 25 feet from taxiway to front of hangar