



WILLISTON BASIN
INTERNATIONAL AIRPORT

421 Airport Road
P.O. Box 1306
Williston, ND 58802
701-774-8594

Commercial/Non- Commercial Lease and Use Agreement

City of Williston

Williston Basin International Airport (XWA)

February 24, 2017

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Commercial/Non-Commercial Lease and Use Agreement

between
City of Williston
and

LESSEE FULL NAME

This **Commercial/Non-Commercial** Lease and Use Agreement (Agreement), made and entered into this _____ day of **MONTH**, 20____, by and between the City of Williston (City), a political subdivision of the State of North Dakota (Lessor) and **LESSEE FULL NAME**, a **STATE corporation** (Lessee). Lessor and Lessee may hereinafter be referred to as the Parties.

1. INTRODUCTION

1.1. Recitals

- 1.1.1. WHEREAS, Lessor is the owner and operator of the Williston Basin International Airport (Airport);
- 1.1.2. WHEREAS, Lessee desires to lease certain **land and Improvements** from Lessor and engage in certain **Commercial/Non-Commercial** Aeronautical Activities at the Airport; and
- 1.1.3. WHEREAS, Lessor desires to lease certain **land and Improvements** to Lessee and allow Lessee to engage in certain **Commercial/Non-Commercial** Aeronautical Activities at the Airport.
- 1.1.4. NOW, THEREFORE, for and in consideration of the conditions, obligations, privileges, and agreements contained herein, and for other good and valuable consideration, Lessor hereby leases certain **land and Improvements** (Leased Premises) to Lessee and Lessee hereby leases the Leased Premises from Lessor and the Parties hereby agree as follows:

2. INCORPORATION OF RECITALS

- 2.1.1. This Agreement is based on the preceding recitals which are incorporated herein by reference.

3. DEFINITIONS

- 3.1.1. The terms identified by use of a capital letter in this Agreement are defined in Section 1.2. of the General Provisions.

4. LEASED PREMISES

4.1. Description

- 4.1.1. The Leased Premises consist of a total of approximately _____ square feet (or approximately _____ acres) of land on which approximately _____ square feet of Improvement are situated. The Improvements consist of approximately _____ square feet of **IMPROVEMENT 1**, approximately _____ square feet of **IMPROVEMENT 2**, and _____ square feet of **IMPROVEMENT 3**.
- 4.1.2. The address of the Leased Premises is _____.
- 4.1.3. A **drawing** of the Leased Premises is provided in **Exhibit A**, attached hereto, made part hereof, and incorporated herein by reference.
- 4.1.4. At the time this Agreement was executed by the Parties, there were no other improvements located or situated on the Leased Premises.

- 4.1.5. No other improvements shall be made to the Leased Premises by Lessee without the prior written approval of Lessor.
- 4.1.6. Lessee warrants and represents that Lessee has carefully and completely examined and inspected the Leased Premises and that Lessee fully understands the Lessee's responsibilities and obligations with respect to the Leased Premises and this Agreement.
- 4.1.7. Lessee accepts the Leased Premises in an "as is, where is" condition without representation or warranties from Lessor as to the condition, suitability, or sufficiency of the Leased Premises for engaging in the **Commercial/Non-Commercial** Aeronautical Activities authorized in this Agreement.

4.2. Use

4.2.1. General

4.2.1.1. In addition to Lessor leasing the Leased Premises identified in **Exhibit A** to Lessee and Lessee leasing the Leased Premises from Lessor, in accordance with the conditions, obligations, privileges, and agreements contained herein, this Agreement grants Lessee the right and privilege to use the Leased Premises to engage (on a non-exclusive basis) in certain **Commercial/Non-Commercial** Aeronautical Activities at the Airport, subject to, and in accordance with, the terms and conditions of this Agreement **[OPTION 1 – COMMERCIAL ONLY]**, the Airport's Primary Guiding Documents, and Lessee's General Aviation Operator Permit (Permit) **[OPTION 2 – NON-COMMERCIAL ONLY]** and the Airport's Primary Guiding Documents.

4.2.1.1.1. Lessee's right and privilege to use the Leased Premises to engage in **Commercial/Non-Commercial** Aeronautical Activities at the Airport may be suspended for any period of time or temporarily or permanently revoked if Lessee does not comply with the terms and conditions of this Agreement **[OPTION 1 – COMMERCIAL ONLY]**, the Airport's Primary Guiding Documents, or Lessee's Permit **[OPTION 2 – NON-COMMERCIAL ONLY]** and the Airport's Primary Guiding Documents.

4.2.2. [OPTIONAL – IF APPLICABLE ONLY] Ramp

4.2.2.1. **[OPTIONAL – IF APPLICABLE ONLY]** Lessee is granted the use (on a non-exclusive basis) of _____ square feet (approximately _____ acres) of ramp located **adjacent** to the Leased Premises.

4.2.2.1.1. **[OPTIONAL – IF APPLICABLE ONLY]** This area, which shall be used for the sole purpose of staging and/or parking customer aircraft, is identified in **Exhibit A**.

4.3. [COMMERCIAL ONLY] Required Products, Services and Facilities

4.3.1. **[COMMERCIAL ONLY]** Lessee shall use the Leased Premises to provide, at a minimum, the products, services, and facilities identified in Section _____ of the Airport's Minimum Standards.

4.3.2. [COMMERCIAL ONLY] The products, services, and facilities identified in Section 4.3.1. of this Agreement shall be provided in accordance with the Airport's Minimum Standards.

4.3.3. [COMMERCIAL ONLY] The products, services, and facilities identified in Section 4.3.1. of this Agreement shall be continuously offered and available to meet the reasonable demands of customers in accordance with the Airport's Minimum Standards.

4.4. [COMMERCIAL ONLY] Optional Products, Services, and Facilities

4.4.1. [COMMERCIAL ONLY] Lessee may provide any of the other products, services, and/or facilities identified in Section [] of the Airport's Minimum Standards.

4.5. Prohibited Uses

4.5.1. Lessee agrees not to engage in any other Aeronautical Activities on the Leased Premises other than those Aeronautical Activities specifically permitted under this Agreement.

4.5.2. [COMMERCIAL ONLY] Lessee shall not use and/or occupy the Leased Premises for any other purpose(s) or provide any other products, services, and/or facilities from the Leased Premises other than those specifically described in this Agreement.

4.5.3. Lessee agrees not to use and/or occupy the Leased Premises in any manner or purpose contrary to the Airport Master Plan, the Airport Layout Plan, the Airport Land Use Plan, or any Regulatory Measure.

4.5.4. In addition to the prohibited Aeronautical Activities identified in the Airport's Primary Guiding Documents, the following products, services, and/or facilities (or uses, occupancy, and/or purposes) are expressly prohibited on the Leased Premises:

4.5.4.1. The provision of non-aeronautical products, services, or facilities (or any non-aeronautical uses, occupancy, and/or purposes).

4.5.4.2. [NON-COMMERCIAL ONLY] The provision of Commercial products, services, or facilities (or any Commercial uses, occupancy, and/or purposes).

4.5.4.3. The provision of any products, services, or facilities (or uses, occupancy, and/or purposes) prohibited by law or deemed not in the best interests of Lessor, as determined by Lessor.

4.6. Compliance

4.6.1. Lessee's use of the Leased Premises and the Airport is subject to the following requirements:

4.6.1.1. As may be promulgated or amended from time to time, Lessee shall comply with all:

4.6.1.1.1.1. Regulatory Measures,

4.6.1.1.1.2. Airport Sponsor Assurances and all other federal laws or Federal Aviation Administration (FAA) regulations, obligations, or guidance,

4.6.1.1.1.3. Airport's Primary Guiding Documents,

- 4.6.1.1.4. Airport policies, standards, and directives, and
- 4.6.1.1.5. Zoning, building, fire, safety, and other codes, ordinances, statues, and other directives of any Agencies having jurisdiction.
- 4.6.1.2. If any provision of this Agreement is found to be in conflict with any existing or future Regulatory Measures, the Airport Sponsor Assurances or other federal regulations, obligations, or guidance, Airport's Primary Guiding Documents, Airport policies, standards, or directives, or any zoning, building, fire, safety, or other codes, ordinances, statues, or other directives:
 - 4.6.1.2.1.1. The provision that establishes the higher or stricter standard shall prevail, or
 - 4.6.1.2.1.2. Lessor may modify or terminate this Agreement, in whole or part, with or without prior notice, to resolve the conflict.
- 4.6.1.3. In the event of an alleged violation of the preceding paragraphs (or an investigation relating to same), Lessee shall immediately notify Lessor of the alleged violation and the action(s) being taken by Lessee to resolve it.
- 4.6.1.4. Any violation of the preceding paragraphs (or failure to comply in any manner) by Lessee shall be construed as a default or breach of this Agreement authorizing the termination of this Agreement in accordance with Section 12. of this Agreement.
 - 4.6.1.4.1.1. Lessor may also deny access to the Airport or the Leased Premises to Lessee or its representatives, officers, agents, employees, guests, patrons, suppliers, vendors, invitees, contactors, subcontractors, **[COMMERCIAL ONLY]Sublessees** or any other entity for any violation of the preceding paragraphs (or failure to comply in any manner).
- 4.6.1.5. Lessee shall pay any penalties, fines, costs, and expenses for any violation of the preceding paragraphs (or failure to comply in any manner).
- 4.6.1.6. If penalties or fines are levied against Lessor or costs or expenses are incurred by Lessor relating to Lessee's violation of the preceding paragraphs (or Lessee's failure to comply in any manner), Lessee shall pay Lessor 125% of the penalty, fine, cost, or expense.

5. TERM

5.1. Original

- 5.1.1. The original term of this Agreement shall be for a period of () years commencing on the day of **MONTH**, 20 (Commencement Date) and ending on the day of **MONTH**, 20 (Original Term), unless sooner terminated in accordance with this Agreement.

5.2. Renewal

- 5.2.1. Notwithstanding any provision to the contrary, at Lessor's option and subject to the conditions, obligations, privileges, and agreements contained herein (unless otherwise mutually agreed in writing and in advance between the Parties), upon the expiration of the Original Term of this Agreement, Lessor may extend this Agreement for _____ () additional period(s) of up to _____ () years each (Renewal Term), provided that Lessee, in the opinion of Lessor, has been and is Current and not in default or breach of this Agreement and in Good Standing and the Improvements are in a good repair and serviceable condition.
- 5.2.2. If Lessee desires to renew this Agreement beyond the Original Term or any Renewal Term, Lessee shall, no later than 365 calendar days prior to the expiration of the Original Term or any Renewal Term, give written notice to Lessor to such effect. Lessor is not bound, however, to extend this Agreement beyond the Original Term or any Renewal Term or enter into a new agreement with Lessee.
- 5.2.3. If, in the opinion of Lessor, the Improvements are not deemed to be in a good repair and serviceable condition, Lessor shall provide Lessee with a list of items requiring maintenance, repair, restoration, replacement, or cleaning by Lessee at Lessee's sole risk, cost, and expense. The list shall be provided by Lessor to Lessee a minimum of 270 calendar days prior to the expiration of this Agreement. Lessee shall have 90 calendar days to complete the items on the list to the satisfaction of Lessor.
- 5.2.4. Lessor shall provide Lessee notice of its intent to renew this Agreement not less than 180 calendar days prior to the scheduled expiration of this Agreement notwithstanding circumstances beyond Lessor's control.

5.3. [COMMERCIAL ONLY] Transition

- 5.3.1. [COMMERCIAL ONLY] Upon termination or expiration of this Agreement, if another entity enters into an agreement with Lessor to use and/or occupy the Leased Premises for Commercial Aeronautical Activities, Lessee shall work in a cooperative and prompt fashion with the other entity to complete a transition while also ensuring there is no interruption in the provision of products, services, and facilities at the Airport for the duration of this Agreement.

6. RENTS AND FEES

6.1. Rent

- 6.1.1. Annual Rent
- 6.1.1.1. The annual rent for the Leased Premises for the first year of the Original Term of this Agreement shall be \$_____.
- 6.1.2. Adjustments
- 6.1.2.1. Throughout the Original Term of this Agreement and any Renewal Term, the annual rent shall be adjusted in compliance with the Airport's General Aviation Leasing/Rents and Fees Policy.

6.2. Fees and Other Charges

- 6.2.1. Lessee shall pay the fees and other charges identified in the Airport's General Aviation Rents and Fees Schedule, which are subject to change from time to time in accordance with the Airport's General Aviation Leasing/Rents and Fees Policy, to Lessor when due and owing.
 - 6.2.1.1. [OPTIONAL – IF APPLICABLE ONLY] Lessee shall collect Transient Aircraft Fees from all turbine general aviation aircraft that do not purchase fuel from Lessee using the Lessee's ramp (as outlined in Section 4.2.2. of this Agreement) in accordance with the Airport's General Aviation Rents and Fees Schedule. Lessee may retain an administrative fee consistent with the Airport's General Aviation Rents and Fees Schedule.
 - 6.2.1.2. [OPTIONAL – IF APPLICABLE ONLY] Lessee shall collect Aircraft Parking Fees from all general aviation aircraft parking on the Lessee's ramp (as outlined in Section 4.2.2. of this Agreement) in accordance with the Airport's General Aviation Rents and Fees Schedule. Lessee may retain an administrative fee consistent with the Airport's General Aviation Rents and Fees Schedule.

6.3. Payments

- 6.3.1. Payment of rents, fees, and other charges shall be made promptly without notice or demand, in legal tender of the United States of America. Payments shall be made by check or money order, payable to the City of Williston. Payments shall be personally delivered or mailed to the Airport Administrative Office located at the Williston Basin International Airport, 421 Airport Road P.O. Box 1306 Williston, ND 58802 or to such other location as may be directed in writing by Lessor. Payments shall be absolutely net to Lessor and shall be made without any abatement, deductions, reductions, offsets, or counterclaims of any kind.
 - 6.3.1.1. Payment of rent shall be made by Lessee to Lessor monthly (in installments equal to 1/12 of the annual rent) in advance on or before the 1st day of each month. The rent for any partial month shall be prorated.
 - 6.3.1.2. Payment of fees and other charges shall be made by Lessee to Lessor monthly on or before the 10th day of each month for the previous month.
- 6.3.2. Lessee shall furnish a Performance Bond or personal guarantee in the form acceptable to Lessor in the amount of 100% of the annual rents and fees to guarantee full payment to Lessor.

6.4. Late Charges

- 6.4.1. A late charge (as identified in the Airport's General Aviation Rents and Fees Schedule) shall be automatically added to any rents, fees, or other charges not received by Lessor by the close of business five (5) calendar days after due and owing. The late charge shall become part of the rents, fees, and other charges due and owing to Lessor. Additional late charges shall be imposed for each thirty (30) calendar day period payment remains due and owing. Such charges shall also become part of the rents, fees, and other charges due and owing to Lessor.
- 6.4.2. In addition to such late charges, Lessor shall be entitled to interest at the State of North Dakota judgment rate plus all costs and expenses incurred by Lessor to collect (or attempt to collect) amounts past due, including without limitation, attorney and court fees, costs, and expenses.

7. IMPROVEMENTS

- 7.1.1. Lessee shall not make any Improvements (including any modifications, additions, or deletions) to the Leased Premises without the prior written consent of Lessor and in compliance with the Development Standards.
 - 7.1.1.1. In addition to the other remedies available to Lessor, any Improvements made to the Leased Premises without the prior written consent of Lessor may be removed by Lessor or Lessor may require that Lessee modify the Improvements to Lessor's satisfaction.
 - 7.1.1.1.1. If Lessee fails to comply with such notice within thirty (30) calendar days, Lessor may affect the removal or modification of said Improvements and Lessee shall pay 125% of the costs and expenses thereof within thirty (30) calendar days upon receipt of an invoice from Lessor.
- 7.1.2. Within ninety (90) calendar days of Lessor's written approval, Lessee shall commence work on the approved Improvements to the Leased Premises in accordance with the approved plans, designs, and specifications and any other terms and conditions of Lessor's approval.
- 7.1.3. No work shall be performed until a funding commitment (to fund 100% of costs and expenses of the approved Improvements) has been obtained by Lessee and evidence of such a funding commitment has been provided by Lessee to the satisfaction of Lessor.
- 7.1.4. No work shall be performed until the insurance coverages required by Lessor have been obtained by Lessee and evidence of such coverages has been provided by Lessee to the satisfaction of Lessor.
- 7.1.5. Lessee shall be fully liable to Lessor for any damage relating to the work on or associated with the approved Improvements.
- 7.1.6. All materials and supplies shall be delivered directly to the Leased Premises or via Airport access points and/or routes designated specifically by Lessor.
- 7.1.7. All work on or associated with the approved Improvements shall be completed within the timeframe specified in this Agreement, at Lessee's sole risk, cost, and expense, free and clear of liens for labor and/or material.

- 7.1.8. Lessee shall indemnify Lessor, as required by the Airport's Primary Guiding Documents.
- 7.1.9. If the work on or associated with the approved Improvements is not completed within the timeframe specified in this Agreement (or Improvements have only been partially completed), at Lessor's option, the Improvements that have been made may be removed or demolished by Lessor.
- 7.1.10. Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, material men, and workmen, and all claims lawfully made against it by other third persons resulting from, caused by, arising out of, or connected (or associated) with the performance of any work on or associated with the approved Improvements, and shall cause its contractors, subcontractors, material men, and workmen to pay all such claims lawfully made against them. Lessee shall also pay all liens held by contractors, subcontractors, material men, and workmen and provide proof of payment to Lessor.
 - 7.1.10.1. Nothing in this Agreement shall be construed, in any way, to constitute consent to the creation of any lien or claim against the Leased Premises or any part thereof, any Improvements thereto or thereon, or any other part of the Airport and Lessee shall not permit any lien to be attached to any such areas.
- 7.1.11. Lessee shall furnish a Performance Bond or personal guarantee in the form acceptable to Lessor in the amount of 100% of its total construction costs and expenses to guarantee completion of the Improvements.
- 7.1.12. Unless otherwise stated in this Agreement, upon expiration of the term of this Agreement, at Lessor's option, Lessee shall remove and/or demolish any and/or all Improvements (as designated by Lessor) and return the Leased Premises to its original condition and character, ordinary and reasonable wear and tear excepted.

8. LESSEE'S RIGHTS AND PRIVILEGES

8.1. Use of the Airport

- 8.1.1. Lessee is allowed to use the Airport and its appurtenances together with all Public Areas and facilities, in common with others, on a non-exclusive basis and subject to Section 4.6. of this Agreement for the purposes authorized in Sections 4.2. [COMMERCIAL ONLY], Section 4.3., and Section 4.4. of this Agreement.
- 8.1.2. Lessee shall be solely liable for and shall reimburse Lessor for all costs and expenses incurred by Lessor, for the repair of any damage caused by Lessee to the Airport and its appurtenances and/or Public Areas or facilities at the Airport, excluding ordinary and reasonable wear and tear.

8.2. Ingress and Egress

8.2.1. Lessee, its representatives, officers, agents, Employees, guests, patrons, suppliers, vendors, invitees, contactors, subcontractors, and [COMMERCIAL ONLY]Sublessees, shall have the right of ingress and egress to and from the Leased Premises. However, if the privileges granted by this provision adversely affect or conflict with others, Lessor shall have the right to restrict and/or limit the hours of and/or the manner in which such ingress and/or egress may be exercised.

8.3. Quiet Enjoyment

8.3.1. Subject to Lessee's payment of rents, fees, and other charges when due and owing and the performance of the conditions, obligations, privileges, and agreements contained herein, Lessee shall peacefully and quietly have, hold, and enjoy the Leased Premises for the term of this Agreement free from hindrance or interruption by Lessor. Lessee agrees temporary inconveniences such as noise, disturbances, traffic detours and the like resulting from, caused by, arising out of, or connected (or associated) with the construction of Airport improvements or other Airport events shall not constitute a breach of quiet enjoyment of the Leased Premises.

8.4. Fixtures and Equipment

8.4.1. Lessee may install fixtures on the Leased Premises and use equipment, tools, machinery, or other items of personal Property as it deems necessary in connection with Lessee's use of the Leased Premises and conduct of the Commercial/Non-Commercial Aeronautical Activities authorized in this Agreement. Lessee shall retain title to Lessee's personal Property.

8.4.2. All such fixtures, equipment, tools, machinery, or other items of personal Property belonging to Lessee located on the Leased Premises shall be there at the sole risk, cost, and expense of Lessee. Lessor shall have no liability or responsibility for any theft, misappropriation, or damage to any personal Property belonging to Lessee or others.

8.4.3. Lessee shall be entitled to remove from the Leased Premises any fixtures, equipment, tools, machinery, or other items of personal Property located thereon; provided, however, that the items removed are not required by the Airport's Primary Guiding Documents in order to conduct the Commercial/Non-Commercial Aeronautical Activities authorized in this Agreement. If a facility or Improvement is damaged from removal of personal Property, it shall be restored by Lessee to the same condition that existed before the installation or placement of the personal Property.

8.4.4. Lessee shall remove all fixtures, equipment, tools, machinery, and other items of personal Property from the Leased Premises upon expiration or termination of this Agreement. If Lessee fails to remove such Property from the Leased Premises upon expiration or termination of this Agreement, then Lessor retains the right to remove or caused to be removed, at Lessee's sole risk, cost, and expense and without any liability to Lessor for resulting damage, all fixtures, equipment, tools, machinery, and other items of personal Property and Lessee agrees to pay Lessor for such costs and expenses incurred by Lessor within fourteen (14) calendar days upon receipt of an invoice from Lessor. Lessor may dispose of any fixtures, equipment, tools, machinery, and other items of personal Property removed from the Leased Premises in accordance with the Airport's Primary Guiding Documents, other directives of the Airport Director and/or City, and Regulatory Measures.

8.5. Other

8.5.1. Unless otherwise stated in this Agreement, Lessee's rights and privileges are limited strictly to the Leased Premises, no other rights or privileges are being granted by Lessor to Lessee for any other premises leased to Lessee by Lessor at the Airport or any other properties owned by Lessee.

8.5.2. Unless otherwise stated, this Agreement does not: (a) modify any other agreements between the Parties or (b) extend any rights or privileges to Lessee in any other agreements between the Parties.

9. LESSOR'S RIGHTS AND PRIVILEGES

9.1. Rights

9.1.1. Lessor reserves the following rights:

9.1.1.1. Nothing contained in this Agreement shall be construed, in any way, to limit the use of the Airport or any portion of the Airport by Lessor or others or shall prevent any FAA, Department of Homeland Security, TSA, City of Williston Police Department or other law enforcement personnel, City of Williston Fire Department or other emergency services personnel, or code enforcement officers from acting in official capacities and/or performing official duties at the Airport.

9.1.1.2. Lessor reserves the right for others to use the Airport.

9.1.1.3. Lessor reserves the right to designate specific areas of the Airport for activities in accordance with the currently adopted Airport Layout Plan. Such designation shall give consideration to the nature and extent of current and/or future (anticipated) activities and the land and/or improvements that may be available and/or used for specific purposes and/or activities and shall be consistent with the safe, secure, orderly, and efficient use of the Airport.

- 9.1.1.4. It is the policy of Lessor that any occupancy, use, and/or development (construction or modification) of land and/or improvements which is inconsistent with the Airport Layout Plan is undesirable. Any development that is substantially different than that depicted on the Airport Layout Plan could adversely affect the safe, secure, orderly, or efficient use of the Airport. Nothing contained in this Agreement shall require or obligate Lessor to apply to the FAA for approval of any revision to the Airport Layout Plan on behalf of Lessee or any current or prospective Lessee, [COMMERCIAL ONLY]Sublessee, or user of the Airport.
- 9.1.1.5. Lessor reserves the right to develop and make any improvements, repairs, restoration, or replacement on, at, or to the Airport it deems necessary. Lessor will provide advance notice of the date and time that such development, improvements, repairs, restoration, or replacement will be made. Lessor shall not be obligated or required to reimburse or compensate Lessee, [COMMERCIAL ONLY]Sublessee, or any other entities for any cost and/or expense incurred, for any revenue lost, or for any inconvenience that may result from, arise out of, or be connected (or associated) in any way with such development, improvement, repair, restoration, or replacement.
- 9.1.1.6. Lessor (and its representatives, officers, officials, employees, agents, and volunteers) shall not be responsible for loss, injury, or damage to persons or Property at the Airport resulting from, caused by, arising out of, or connected (or associated) in any way with any acts of nature, natural disasters, or illegal activity.
- 9.1.1.7. Lessor reserves the right to prohibit Lessee or any other entity from using the Airport or conducting Aeronautical Activities at the Airport (and/or Lessor may suspend for any period of time and/or temporarily or permanently revoke any privileges granted to Lessee or any other entity) upon determination by Lessor that Lessee or any other entity has not complied with Airport's Primary Guiding Documents, other directives of the Airport Director and/or City, and Regulatory Measures, or has otherwise jeopardized the safety or security of entities utilizing the Airport or the land and/or improvements located at the Airport.
- 9.1.1.8. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military use of part or all of the landing area(s), the publicly owned air navigation facilities, and/or other areas, facilities, or structures at the Airport. If any such agreement is executed, any agreement between Lessor and Lessee, insofar as it is inconsistent with the agreement between Lessor and the United States Government, shall be suspended, without any liability on the part of Lessor to Lessee.

- 9.1.1.9. Lessor will not relinquish the right to take any action Lessor considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent any person from erecting or permitting to be erected any facility or structure which might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- 9.1.1.10. Lessor will not waive any sovereign, governmental, or other immunity to which Lessor may be entitled nor shall any provision of this Agreement or any other agreement with Lessor be so construed.
- 9.1.1.11. Lessor will not submit to the laws of any state other than those of the State of North Dakota.
- 9.1.1.12. Lessor is under no obligation to provide financing, funding, and/or make any improvements to Airport land and/or Improvements to facilitate any development or consummate any agreement proposed by Lessee or others.
 - 9.1.1.12.1.1. Lessor is under no obligation to: (a) pursue federal, state, local, or other possible sources of funding and/or financing to contribute to such development or (b) provide matching funds to secure funding and/or financing.
- 9.1.1.13. Lessor reserves the right to take such actions as it may deem necessary, appropriate, and/or in the best interest of Lessor including preserving the assets of Lessor and the Airport, protecting the safety and security of the people who work at and/or use the Airport, and maintaining the integrity of the Airport's Primary Guiding Documents.
- 9.1.1.14. Lessor shall have no responsibility or liability to furnish any services to Lessee, but Lessee may request (and the Parties may negotiate) that Lessor provide certain services and Lessee shall pay Lessor for the provision of said services the amount of Compensation agreed upon by the Parties.
- 9.1.1.15. Nothing contained in this Agreement shall be construed, in any way, as limiting or restricting the powers of Lessor to fully exercise its governmental and proprietary functions or fulfill its obligations under any bond covenants or comply with any Regulatory Measures, Airport Sponsor Assurances, or any federal, state, or local laws, regulations, obligations, or guidance.

9.2. Privileges

- 9.2.1. Lessor shall have the following privileges:
 - 9.2.1.1. Access to the Leased Premises

9.2.1.1.1. Lessor shall the right to enter in, upon, or under the Leased Premises or any portion thereof (including all buildings, structures, and Improvements located thereon) at any time and for any purpose necessary, incidental to, or connected with the performance of Lessor's and/or Lessee's conditions, obligations, privileges, and agreements contained herein or in any other agreement between the Parties.

9.2.2. Performance of Acts

9.2.2.1. All acts performable under this Agreement by Lessor may, at the option of Lessor and without right of objection by Lessee, be performed by a representative of Lessor.

9.2.3. Exercising Rights

9.2.3.1. No exercise of any rights reserved by Lessor shall be deemed or construed, in any way, as grounds for any abatement of rents, fees, or other charges nor serve as the basis for any claim or demand for damages of any nature whatsoever.

10. LESSEE'S OBLIGATIONS

10.1. [COMMERCIAL ONLY] On-Going Business

10.1.1. [COMMERCIAL ONLY] Lessee shall maintain an on-going business on the Leased Premises and at the Airport during the term of this Agreement.

10.2. [NON-COMMERCIAL ONLY] On-Going Non-Commercial Aeronautical Activity

10.2.1. [NON-COMMERCIAL ONLY] Lessee shall maintain the on-going Non-Commercial Aeronautical Activity authorized in this Agreement on the Leased Premises during the term of this Agreement.

10.3. Conduct

10.3.1. Lessee shall be responsible for the conduct, demeanor, and appearance of its representatives, officers, officials, employees, agents, and volunteers on the Leased Premises and at the Airport. Lessee's personnel shall: (a) be neat, clean, and courteous, (b) not conduct operations in a loud, noisy, boisterous, offensive, or objectionable manner, and (c) shall wear suitable attire and identification badges which shall be prominently displayed. Upon receipt of a complaint, Lessee shall take action to immediately resolve the complaint.

10.3.2. Lessee's personnel shall cooperate with Lessor or its representatives as well as representatives of Agencies or entities including police, fire, and other emergency services personnel, the military, and others (e.g., Lessees, [COMMERCIAL ONLY] Sublessees, and users of the Airport) in dealing with emergencies on the Leased Premises and at the Airport.

10.4. Disturbance

- 10.4.1. Lessee shall conduct its authorized **Commercial/Non-Commercial** Aeronautical Activities in an orderly and proper manner so as to not annoy, disturb, or interfere with (or be a nuisance or menace to) others. Lessee agrees that it will not in any manner interfere with the operation (including the landing, taxing, and taking off) of Aircraft at the Airport or otherwise constitute or allow a hazard to Aircraft, Aircraft operations, or others to exist.
- 10.4.2. Lessee agrees that it will not disturb others by creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission, or other undesirable condition – in the opinion of Lessor.
- 10.4.3. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission, or otherwise that would adversely affect the environment or do anything or permit others to do anything on the Leased Premises that would violate any Regulatory Measure.
- 10.4.4. Lessee shall prevent escape of hazardous fumes, odors, smoke, gas, or other hazardous substances from the Leased Premises.

10.5. Taxes, Assessments, and Fees

- 10.5.1. Lessee shall pay and discharge all taxes, assessments, and other fees, without offset or abatement, whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating to the Leased Premises and/or the Improvements thereto or located thereon, and/or Lessee's Activities on the Leased Premises and at the Airport including, but not limited to, leasehold or possessory interest tax, personal Property, income, excise, or any other tax, assessment, or fee that is (or may be) levied, exacted, or imposed (or become due and owing) during the term of this Agreement.

10.6. Maintenance and Repair

- 10.6.1. Lessee shall keep the Leased Premises, the Improvements thereto or located thereon including pavements and utilities, and its personal Property (fixtures, Equipment, tools, and machinery) in good repair and serviceable condition and in a clean, neat, and orderly state.
- 10.6.2. Lessee shall, at its sole risk, cost, and expense, diligently, properly, and promptly maintain, repair, restore, replace, and clean (in a good and workmanlike manner) the Leased Premises, the Improvements thereto or located thereon including pavements and utilities, and its personal Property.
- 10.6.3. Lessee's responsibility shall encompass all maintenance and repair of the entire Leased Premises, all Improvements thereto or located thereon including pavements and utilities, and its personal Property including ordinary or extraordinary, minor or major, structural or non-structural, aesthetic or non-aesthetic, etc.

10.6.4. In the event Lessee fails to diligently, properly, and promptly maintain, repair, restore, replace, or clean (in a good and workmanlike manner) the Leased Premises and the Improvements thereto or located thereon including pavements and utilities, Lessor may notify Lessee and if Lessee fails to correct the condition within fourteen (14) calendar days of Lessor's written notice, Lessor may enter the Leased Premises and the Improvements thereto or located thereon and perform any necessary maintenance, repair, restoration, replacement, or cleaning and Lessee shall pay 125% of the costs and expenses thereof to Lessor within fourteen (14) calendar days upon receipt of an invoice from Lessor. Nothing in this Agreement shall be construed, in any way, that Lessor has an obligation or is required to perform any maintenance, make any repair or restoration (or replacement), or clean any portion of the Leased Premises or the Improvements thereto or located thereon including pavements and utilities.

10.7. Utilities

10.7.1. Lessee shall pay all fees and charges due and owing for all utilities (including connections) serving the Leased Premises. Such services shall include, but not be limited to: water, gas, electricity, sewer, telephone, internet, etc.

10.7.2. Lessee shall provide the Airport Director with a utility plan consistent with the Airport's Development Standards.

10.8. Costs, Expenses, and Other Charges

10.8.1. Lessee shall pay all other costs, expenses, and other charges of every kind and nature whatsoever relating to the Leased Premises, the Improvements thereto or located thereon, and/or Lessee's Activities taking place on the Leased Premises and at the Airport which may arise or become due and owing during the term of this Agreement.

10.9. Non-Discrimination

10.9.1. Lessee shall not discriminate in any manner against any employee or Applicant for employment because of political or religious opinion or affiliation, race, creed, color, national origin, sex, age, or disability and further, Lessee shall include a similar clause in all subcontracts. Lessee agrees Lessor has the right to take such action against Lessee as the government may direct to enforce this provision of this Agreement.

10.10. Based Aircraft Report

10.10.1. Lessee shall maintain and furnish on or before the 10th of January each year (or upon request of Lessor) a report identifying all Based Aircraft on the Leased Premises. The report shall identify the registration number, year, make, and model of the aircraft stored or based on the Leased Premises. Lessee shall provide written notice to Lessor within thirty (30) calendar days of any changes to the Based Aircraft report.

10.11. [COMMERCIAL ONLY] Business Status

10.11.1. [COMMERCIAL ONLY] Lessee shall notify Lessor immediately of any changes to Lessee's business or corporate structure or status or if Lessee's authorization to conduct business at the Airport, in the State of North Dakota, or in the United States will be (or has been) suspended or revoked.

10.12. [NON-COMMERCIAL ONLY] Operational Status

10.12.1. [NON-COMMERCIAL ONLY] Lessee shall notify Lessor immediately of any changes to Lessee's operations status.

10.13. Signage and Lighting

10.13.1. Lessee shall only erect, paint upon, attach, exhibit or display in, on, or about the Leased Premises any sign (or install or operate any light or lighting on the Leased Premises) after obtaining the: (a) appropriate permits and approvals from the Agencies having jurisdiction and (b) the prior express written consent of Lessor in accordance with the Airport's Development Standards.

10.14. Special Events

10.14.1. Lessee shall not conduct or hold Special Events on the Leased Premises and at the Airport without obtaining: (a) appropriate permits and approval from the Agencies having jurisdiction and (b) the prior express written consent of Lessor.

11. REQUIRED FAA CLAUSES

11.1. Non-Exclusive Use

11.1.1. Lessor hereby grants Lessee the non-exclusive use of the Airport (together with all appurtenances thereunto) in common with Lessor and others, except such land and/or Improvements specifically leased herein and as may be leased by Lessor to others.

11.1.2. This Agreement and all of the provisions hereof shall be subject to whatever right the United States Government has now or may have in the future or may 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.

11.1.2.1. If any such agreement is executed, the provisions of this Agreement shall be subordinate to the provisions of any agreement between Lessor and the United States, relative to the Airport.

11.1.3. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating Aircraft at the Airport from performing any services on its own Aircraft with its own Employees (including but not limited to, fueling and maintenance and repair) that it may choose to perform.

11.1.4. Nothing in this Agreement shall be construed, in any way, as Lessor granting Lessee an Exclusive Right to engage in any Aeronautical Activity at the Airport.

11.2. Non-Discrimination

- 11.2.1. Lessee, for itself, its heirs, successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such Improvements in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be promulgated or amended from time to time.
- 11.2.2. Notwithstanding any other provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, successors, and assigns, as part of the consideration of this Agreement does hereby agree, as a covenant running with the land, that: (a) no person on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises; (b) in the construction of any improvements on, over, or under the Leased Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, or denied the benefits of, such activities, or otherwise be subjected to discrimination; (c) in the breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Leased Premises and hold the same as if this Agreement had never made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21 have been followed and completed, including expiration of appeal rights; (d) Lessee, for itself, its heirs, successors, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
- 11.2.3. Lessee will comply with pertinent statutes, Executive Orders and such rules as are promulgated or amended from time to time to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Lessee or its transferee for the period during which federal assistance is provided, or is in the form of personal Property or real Property or interest therein or structures or Improvements thereon. In these cases, this provision obligates Lessee or any transferee for the longer of the following periods:

- 11.2.3.1. the period during which the Property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or
- 11.2.3.2. the period during which Lessor or any transferee retains ownership or possession of the Property.
- 11.2.4. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.
- 11.2.5. Lessee agrees it will practice non-discrimination in its activities and will provide Disadvantaged Business Enterprise (DBE) participation as required by the sponsor, in order to meet Lessor's goals, or required by the FAA.
- 11.2.6. **COMMERCIAL ONLY** Lessee shall insert **Section 11.2.1. through Section 11.2.5.** in any Sublease through which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations to the public on the Leased Premises.

12. DEFAULTS AND REMEDIES

12.1. Default

- 12.1.1. In addition to the defaults and breaches identified in this Agreement, the occurrence of any one or more of the following events shall constitute a default or breach of this Agreement by Lessee.
 - 12.1.1.1. The filing by Lessee of a voluntary petition in bankruptcy.
 - 12.1.1.2. The assignment of substantially all of Lessee's assets for the benefit of Lessee's creditors.
 - 12.1.1.3. A court making or entering any decree or order:
 - 12.1.1.3.1.1. adjudging Lessee to be bankrupt or insolvent,
 - 12.1.1.3.1.2. approving a properly filed petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof,
 - 12.1.1.3.1.3. appointing a receiver, trustee, or assignee of Lessee in bankruptcy or insolvency or for its Property, or
 - 12.1.1.3.1.4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of sixty (60) calendar days.
 - 12.1.1.4. The filing of any lien against the Leased Premises resulting from any act, error, omission, or negligence of Lessee which is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within fourteen (14) calendar days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.

- 12.1.1.5. The voluntary abandonment by Lessee of the Leased Premises or Lessee's failure to maintain [COMMERCIAL ONLY]an on-going business [NON-COMMERCIAL ONLY]the on-going Non-Commercial Aeronautical Activity on the Leased Premises or at the Airport for a period of fourteen (14) calendar days or more, notwithstanding circumstances beyond Lessee's control.
- 12.1.1.6. The transfer of Lessee's interest herein by other operation of law.
- 12.1.1.7. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed to be paid for a period of fourteen (14) calendar days after the time such payments become due and owing. In this event, no written or other notice of default or breach shall be required.
- 12.1.1.8. The falsification by Lessee of any of its records so as to deprive Lessor of any of its rights, privileges, rents, fees, or other charges under this Agreement or any other agreement between the Parties.
- 12.1.1.9. The failure by Lessee to perform any of the conditions, obligations, privileges, and agreements contained herein or in any other agreement between the Parties where the failure continues for a period of fourteen (14) calendar days after written notice from Lessor.
- 12.1.1.10. A sale of stock in Lessee's corporation which divests the present stockholders of controlling interest.
- 12.1.1.11. The sale, assignment, or transfer or the attempted sale, assignment, or transfer of this Agreement by Lessee. Negotiations by Lessee for the sale, assignment, or transfer of this Agreement shall not be construed as "attempted transfer".
- 12.1.1.12. Any default or breach of this Agreement by Lessee shall constitute a default or breach by Lessee of all other Agreements between the Parties.

12.2. Remedies

- 12.2.1. In the event a default or breach of this Agreement by Lessee is not cured within thirty (30) calendar days of receiving notice from Lessor, Lessor may, in addition to any other remedies available to Lessor, terminate this Agreement, in whole or in part.
- 12.2.2. If this Agreement is terminated for any default or breach by Lessee, any payments made to Lessor shall be forfeited to Lessor and Lessee shall have no right to recover any payments. This forfeiture shall not diminish nor limit Lessor's right to recover such damages resulting from the default or breach by Lessee.
 - 12.2.2.1. If this Agreement is terminated for any default or breach by Lessor (in accordance with Section 13 of this Agreement), any payments made to Lessor shall be prorated.
- 12.2.3. Notwithstanding the foregoing, no failure to perform or delay in performance which is caused by any war, national emergency, act of nature, or natural disaster shall be deemed an event of default or breach.

- 12.2.4. In addition to the termination and forfeiture right described in the preceding paragraph, Lessor shall have the following rights and remedies upon default or breach by Lessee:
- 12.2.4.1. the recovery of any unpaid rent, fees, and other charges due and owing at the time of termination, plus any unpaid rent, fees, or other charges that would have been earned or made if Lessee had not defaulted or breached this Agreement;
 - 12.2.4.2. the recovery of any damages, fees, costs, and/or expenses incurred by Lessor as a result of the default or breach of this Agreement by Lessee, including attorneys and court fees, costs, and expenses;
 - 12.2.4.3. the removal, storage, and/or disposal of fixtures, equipment, tools, machinery, or other items of personal Property from the Leased Premises, at Lessee's sole risk, cost, and expense and without any liability to Lessor for resulting damage in which case Lessee shall pay 125% of the costs and expenses thereof to Lessor within fifteen (15) calendar days upon receipt of an invoice from Lessor;
 - 12.2.4.4. placing a lien on or against the Leased Premises; and
 - 12.2.4.5. any other right or remedy, legal or equitable, that Lessor is entitled to under applicable law including, but not limited to, injunctive relief.
- 12.2.5. No termination shall relieve Lessee of the obligation to deliver and perform all outstanding requirements and agreements prior to the effective date of the termination and Lessee's liabilities under this Agreement shall continue.
- 12.2.6. In the event of any such termination enumerated herein, Lessor shall have the right, at once and without further notice to Lessee, to enter and peacefully take full possession of the Leased Premises. Upon termination of this Agreement for any reason, Lessee shall peacefully surrender the Leased Premises to Lessor in the same condition as when received, with exception of ordinary and reasonable wear and tear.
- 12.2.7. All of the rights and remedies given to Lessor in this Agreement are cumulative and no one is exclusive of any other. Lessor shall have the right to pursue any or all remedies available to Lessor, whether legal or equitable in nature, whether stated in this Agreement or not.

13. TERMINATION BY LESSEE

- 13.1.1. Lessee, if Current and not in default or breach of this Agreement and in Good Standing and if the Improvements on the Leased Premises are in good repair and serviceable condition and subject to providing written notice to Lessor, Lessee may terminate this Agreement after the occurrence of one or more of the following events:
- 13.1.1.1. permanent abandonment or closure of the Airport.

- 13.1.1.2. the lawful assumption by the United States Government, or any authorized Agency thereof of the operation, control, use, or occupancy of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Lessee from conducting the **Commercial/Non-Commercial** Aeronautical Activities authorized in this Agreement at the Airport for a period of at least ninety (90) calendar days.
- 13.1.1.3. the default or breach by Lessor of any conditions, obligations, privileges, and agreements contained herein required to be performed by Lessor and the failure of Lessor to remedy such default or breach for a period of sixty (60) calendar days after receipt from Lessee of written notice.

14. CONDEMNATION OR EMINENT DOMAIN

14.1. General

- 14.1.1. In the event of the acquisition by Condemnation or the exercise of the power of eminent domain (by any governmental or other permitted Agency to take Property for public use) of interest in all or a portion of the Leased Premises, Lessee shall not institute any action or proceeding or assert any claim against Lessor for Compensation or consideration of any nature whatsoever, and any provision contained herein contrary to the provisions of this Section shall have no force or effect.
- 14.1.2. All Compensation or consideration awarded or paid upon a total or partial acquisition of the Leased Premises (which for these purposes shall not include Compensation or consideration from Lessor) shall belong to and be the Property of Lessor without any participation by Lessee.
 - 14.1.2.1. Nothing contained herein shall be construed or preclude Lessee from recovering directly from the condemning Agency the value of any claim, that may exist, for loss of business, or depreciation, damage, or costs or expenses of removal, or for the value of Lessee's personal Property; provided, however, that no such claim shall diminish or otherwise adversely affect Lessor's award.

14.2. Total

- 14.2.1. In the event of the acquisition by Condemnation or eminent domain of all interest in the Leased Premises, Lessee's obligation to pay rent and the leasehold estate created shall cease and terminate as of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use.

14.3. Substantial and Partial

- 14.3.1. In the event of the acquisition by Condemnation or eminent domain of a portion of interest in the Leased Premises, Lessee's obligation to pay rent shall cease and terminate as it pertains to the specific portion of the Leased Premises taken as of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use.

14.3.1.1. In the event of substantial Condemnation or eminent domain which prevents or substantially impairs the conduct of Lessee's Activities and equates to 50% or more of the total Leased Premises, Lessee may, at Lessee's option, terminate this Agreement. If terminating this Agreement, Lessee shall notify Lessor of termination within thirty (30) calendar days of receiving notice of Condemnation or eminent domain.

14.3.1.1.1. If Lessee does not notify Lessor of termination, the Condemnation or eminent domain shall be considered a partial acquisition.

14.3.1.2. In the event of partial Condemnation or eminent domain, rent shall be adjusted accordingly.

15. FORCE MAJEURE

15.1.1. If either party shall be delayed, hindered in, or prevented from, the performance of its conditions, obligations, privileges, and agreements contained herein by reason of war, national emergency, act of nature, or natural disaster, or not the fault of such party ("Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay.

15.1.2. Notwithstanding the foregoing, any extension of time sought by Lessee for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to Lessor within fourteen (14) calendar days of the event causing the Permitted Delay.

15.1.3. In no event shall Lessee be relieved of its obligations to pay Lessor the rents, fees, or other charges due and owing, as set forth in this Agreement.

16. NO WAIVER

16.1.1. No failure on the part of Lessor to enforce any of the conditions, obligations, privileges, and agreements contained herein shall be construed as or deemed to be a waiver or a relinquishment of the right to enforce such conditions, obligations, privileges, and agreements.

16.1.2. The acceptance by Lessor of any payment shall not be construed as or deemed to be a waiver by Lessor of any default or breach by Lessee of any condition, obligation, privileges, or agreement contained herein and shall not be construed as or deemed to be a waiver of Lessor's right to terminate this Agreement.

16.1.3. Lessee waives any claims against Lessor for loss of anticipated profit in any suit or proceeding involving this Agreement or any part thereof.

17. LICENSES, CERTIFICATES, AND PERMITS

17.1.1. At Lessee's sole risk, cost, and expense, Lessee shall obtain any and all licenses, certificates, permits, or other authorizations from all Agencies having jurisdiction that may be necessary to use and/or occupy the Leased Premises, make improvements thereto or thereon, and/or conduct the **Commercial/Non-Commercial** Aeronautical Activities authorized in this Agreement on the Leased Premises or at the Airport.

- 17.1.2. Lessee shall not do or permit others to do anything on the Leased Premises which is in violation of, or prohibited by any, license, certificate, permit, or other authorization.
- 17.1.3. If the attention of Lessee is called to any such violation, Lessee will immediately notify Lessor and cease and desist from and immediately cause to be corrected such violation. Lessee shall pay all penalties, fines, costs, or expenses associated with any such violation or correction.

18. INSURANCE

- 18.1.1. Lessee shall procure, maintain, and pay all premiums throughout the term of this Agreement for the applicable insurance coverages and amounts required by the Airport's Primary Guiding Documents, other directives of the Airport Director and/or City, and Regulatory Measures.
 - 18.1.1.1. Such insurance shall be kept in full force and effect at all times during the term of this Agreement.
 - 18.1.1.2. Such insurance shall name Lessor as additional insured.
 - 18.1.1.3. Current Certificates of Insurance shall be provided to Lessor to this effect.
- 18.1.2. Liability policies shall contain, or be endorsed to contain, the following provisions.
 - 18.1.2.1. "City of Williston, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of entity; premises owned, leased, occupied, or used by entity; or vehicles, equipment, or aircraft owned, leased, hired, borrowed, or operated by entity. Such insurance shall provide primary coverage and shall not seek any contribution from any insurance or self-insurance carried by agent or the City of Williston."
 - 18.1.2.2. "Such insurance, as to the interest of the City of Williston only, shall not be invalidated by any act or neglect (or default or breach of contract) of entity. Any failure to comply with reporting or other provisions of the policies, including any breach of warranty, shall not affect coverage provided to the City of Williston, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers. Entity's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
 - 18.1.2.3. "Coverage shall not be suspended, voided, or cancelled by either party or reduced in coverage or in limits except after 30 calendar days prior written notice, 14 calendar days prior written notice for cancelation for non-payment of premium, by certified mail, return receipt requested, has been given to the City of Williston."
- 18.1.3. Companies issuing the insurance policies shall have no recourse against the Lessor for payment of premiums or assessments for any deductibles that are the responsibility of Lessee.

18.1.4. Lessee and Lessor each waives any and all rights of recovery against the other, or against the representatives, officers, officials, employees, agents, and volunteers of the other, for the loss of or damage to such waiving party or the Property of others under its control, where such loss or damage is insured against under any Property insurance policy in force at the time of such loss or damage. Lessee and Lessor shall give notice to respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

19. DAMAGE

19.1.1. If any part of the Leased Premises, the Airport, or associated Improvements is damaged or destroyed by Lessee, its representatives, officers, agents, employees, guests, patrons, suppliers, vendors, invitees, contractors, subcontractors, or [COMMERCIAL ONLY]Sublessees, Lessee shall diligently, properly, and promptly repair, restore, or replace to the condition and character of the Leased Premises, the Airport, or associated Improvements immediately prior to damage.

19.1.2. If Lessee fails to diligently, properly, and promptly repair, restore, or replace the damaged or destroyed part of the Leased Premises, the Airport, or associated Improvements, Lessee shall pay to Lessor, upon demand, 125% of the amount that Lessor determines is necessary to properly repair, restore, or replace the damaged or destroyed part of the Leased Premises, the Airport, or associated Improvements and Lessor will repair, restore, or replace the Leased Premises, the Airport, or associated Improvements.

19.1.3. If at any time during the term of this Agreement, any part of the Leased Premises is damaged or destroyed, Lessor shall be under no obligation to repair, restore, or replace the damaged or destroyed portion of the Leased Premises unless Lessor is responsible for such damage or destruction.

20. INDEMNIFICATION

20.1.1. Lessee shall defend, indemnify, save, protect, and hold harmless Lessor, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers from and against (and reimburse Lessor for) any and all actual or alleged claims, demands, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, environmental costs, and/or penalties (collectively referred to as costs) which may be imposed upon, claimed against or incurred or suffered by Lessor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, except to the extent resulting from Lessor's negligence or willful misconduct: (a) any act, error, omission, or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees, or contractors, (b) any use or occupation, management, or control of the Lessee's Leased Premises, whether or not due to Lessee or Lessee's own act, error, omission, or negligence (c) any condition created in, on, or about the Lessee's Leased Premises after the effective date, and (d) any breach, violation, or nonperformance of the Lessee or the Lessee's obligations under this Agreement or any other agreement between the Parties.

20.1.1.1. In the event a party indemnified hereunder is responsible, in part, for the loss, the indemnitor shall not be relieved of the obligation to indemnify; however, in such a case, liability shall be shared in accordance with the State of North Dakota's principles of comparative fault.

20.1.2. In the event of an environmental law violation or an environmental contaminating accident or incident caused by Lessee or Lessee's employees, vendors, suppliers, contractors, or any other entity associated with Lessee or in the event any of these entities violates any environmental law, the following shall apply:

20.1.2.1. Lessee shall accept total responsibility and shall defend, indemnify, save, protect, and hold harmless Lessor, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers.

20.1.3. Nothing herein shall constitute a waiver of any protection available to Lessor, individually and collectively, and its representatives, officers, officials, employees, agent, and volunteers under the State of North Dakota's sovereign, governmental, or other immunity acts or similar statutory provisions.

21. [COMMERCIAL ONLY] SUBLEASE

21.1.1. [COMMERCIAL ONLY] Lessee shall not Sublease any portion of the Leased Premises without the prior express written approval of Lessor.

21.1.2. [COMMERCIAL ONLY] Lessee shall submit the written agreement between Lessee and the Sublessee to Lessor for review and evaluation. Lessor may require that an application be completed and all relevant and applicable information relating to the requested Sublease be provided to Lessor for review and evaluation.

21.1.3. [COMMERCIAL ONLY] A Sublease made contrary to the requirements of this Section shall be null and void. Unless otherwise stated in the written consent, a Sublease is subject to all of the conditions, obligations, privileges, and agreements contained herein.

21.1.4. [COMMERCIAL ONLY] A Sublessee may not occupy the Leased Premises before Lessor consents to the Sublease in writing.

21.1.5. [COMMERCIAL ONLY] Lessee may not Sublease more than one-half of the Leased Premises (land or improvements).

22. [NON-COMMERCIAL ONLY] SUBLEASE

22.1.1. [NON-COMMERCIAL ONLY] Lessee shall not Sublease any portion of the Leased Premises.

23. SALE, ASSIGNMENT, OR TRANSFER

23.1.1. Lessee shall not sell, assign, or transfer its interest in the Leased Premises or this Agreement, in whole or in part, without the prior express written consent of Lessor.

23.1.1.1. Any such sale, assignment, or transfer without Lessor's prior express written consent shall be null and void and, at Lessor's option, shall constitute a default or breach of this Agreement.

- 23.1.2. Dissolution of Lessee or the transfer of 33% or more of its outstanding stock, equity, or certificates of membership or interest to any single entity or party shall be deemed a sale, assignment, or transfer under this Agreement.
- 23.1.3. In the event Lessee's interest in the Leased Premises or this Agreement is sold, assigned, or transferred, in whole or in part, Lessee shall remain liable to Lessor for the remainder of the term of this Agreement including paying to Lessor any portion of rents, fees, and/or other charges not paid by the assignee when due and owing.
- 23.1.4. The assignee shall not sell, assign, or transfer its interest in the Leased Premises or this Agreement without the prior express written consent of Lessor and any sale, assignment, or transfer by Lessee shall contain a provision to this effect. Any assignee of Lessee shall be bound by the conditions, obligations, privileges, and agreements contained herein.

24. ENCUMBRANCES

- 24.1.1. Lessee shall have no authority, express or implied, to create (or consent to the creation of) any lien, charge or encumbrance upon the Leased Premises and Lessee shall not permit the Leased Premises, or any Improvements thereto or located thereon, to be or become subject to any lien (including mechanic's liens), charge, or encumbrance whatsoever without the prior express written consent of Lessor.

25. MORTGAGE

- 25.1.1. Lessee shall not mortgage, pledge, assign as collateral, voluntarily or otherwise, its interest in the Leased Premises or this Agreement without the prior express written consent of Lessor.

26. RELOCATION

- 26.1.1. Lessee understands Lessor has the right to replace the Leased Premises, in whole or in part, with equivalent premises similarly situated at the Airport. If the change is solely for the benefit of Lessor, Lessor agrees to pay all reasonable relocation costs and expenses associated with relocating Lessee.

27. BOOKS AND RECORDS

27.1. Lessee's Obligations

- 27.1.1. Lessee shall maintain complete books and records containing the accounting and other financial records of Lessee's Activities on the Leased Premises and at the Airport including rents, fees, and other charges paid by Lessee for the current year and previous five (5) years.
- 27.1.2. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect all amounts due and owing to Lessor.
- 27.1.3. Lessee shall furnish to Lessor, within ninety (90) calendar days of the end of its Calendar Year/Fiscal Year or upon request of Lessor, financial statements for activities conducted on the Leased Premises and at the Airport.

27.1.3.1. The financial statements shall be prepared by an independent Certified Public Accountant (CPA) and shall include, but not be limited to, a balance sheet, income statement, and statement of changes in financial position.

27.1.4. In the event of an audit, Lessee shall provide the auditor access to and shall furnish the auditor with information, records, reports, or other documentation regarding financial transactions, conduct of Aeronautical Activities on the Leased Premises and at the Airport or any other information, records, reports, or other documentation that relates to the Aeronautical Activities being conducted by Lessee on the Leased Premises and at the Airport. Lessee shall also provide access for the auditor to inspect all Improvements, facilities, Vehicles, Equipment, and Aircraft used by Lessee on the Leased Premises and at the Airport.

27.2. Lessor's Rights

27.2.1. Lessor may, at all reasonable times, audit records to enable verification and/or confirmation of the amount of rents, fees, and other charges due and owing to Lessor.

27.2.2. If Lessor is not satisfied with the findings of any audit conducted by Lessor, Lessor shall serve notice to Lessee.

27.2.3. If Lessee agrees with Lessor's audit findings, Lessee shall, within thirty (30) calendar days after receipt of notice, make known Lessee's agreement with Lessor's findings in writing and pay 125% of all monies due and owing to Lessor. If Lessee does not agree with Lessor's findings, Lessee shall, within sixty (60) calendar days after receipt of notice from Lessor, furnish to Lessor, at Lessee's sole cost and expense, an audit made by an independent CPA mutually agreeable to both Parties.

27.2.4. All costs and expenses of Lessor's audit shall be paid by Lessee if the report of the independent CPA certifies Lessor's audit contained a finding prejudicial to Lessor's receipt of rents, fees, and/or other charges as described herein, in an amount equal to or greater than two percent (2%) of the amount of rents, fees, and/or other charges reported by Lessee.

27.2.5. The final audit of the independent CPA made under this Section shall be conclusive upon the Parties and Lessee shall pay to Lessor, within fourteen (14) calendar days after a copy of the independent CPA's final report has been delivered to Lessee, 125% of the amount, if any, identified as due and owing to Lessor. The failure of Lessee to make payment within fourteen (14) calendar days shall constitute a default under this Agreement and shall give cause to Lessor for immediate termination of this Agreement.

27.2.6. Any information, records, reports, or other documentation provided to or obtained by Lessor, or which Lessor otherwise comes into possession of pursuant to this Agreement, shall be subject to the provisions of the Freedom of Information Act.

28. HOLDOVER POSSESSION

28.1.1. In the event Lessee should hold over and remain in possession of the Leased Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement, but shall, instead, create a month-to-month tenancy which may be terminated at any time by Lessor or Lessee by providing not less than thirty (30) calendar days written notice. The rents, fees, and other charges paid during the holding over period shall be equal to 150% of the monthly rents, fees, and other charges that were being charged by Lessor at the time this Agreement expired. The holdover period shall not exceed 180 calendar days after which time, this Agreement shall be terminated.

29. INDEPENDENT ENTITIES

29.1.1. Nothing in this Agreement is intended to nor shall it be construed, in any way, as creating or establishing a relationship of partners between the Parties or as constituting Lessee as a representative, officer, official, employee, agent, or volunteer of Lessor for any purpose or in any manner whatsoever.

30. BINDING EFFECT

30.1.1. This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of the Parties. Whenever a reference is made to either party, such reference shall be deemed to include, wherever applicable, a reference to the heirs, successors, and assigns of such party, as if in every case so expressed.

31. SUBORDINATION

31.1.1. This Agreement is subject and subordinate to the provisions of any existing or future agreements between Lessor and the United States, the State of North Dakota, or any other entity pertaining to the planning, development, operation (including maintenance and repair), and management of the Airport.

32. GOVERNING LAW AND VENUE

32.1.1. This Agreement shall be deemed to have been made in, and shall be construed in, accordance with the laws of the State of North Dakota without regard to conflicts of law principles.

32.1.2. The Williams County District Court (Court) shall have exclusive jurisdiction and venue with respect to all disputes, actions, and proceedings arising from or under this Agreement, regardless of the nature or basis of the dispute.

32.1.3. Lessee consents to the jurisdiction and venue of the Court and waives personal service of any and all process upon Lessee in all such actions or proceedings, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to Lessee at the address herein stated, and service so made shall be completed two (2) calendar days after the same shall have been posted.

32.1.4. If any legal action is brought about by either party to enforce this Agreement or any part thereof, the prevailing party shall be entitled to recover attorney and court fees, costs, and expenses.

33. PARAGRAPH HEADINGS

33.1.1. All section, paragraph, and subparagraph headings contained in this Agreement are inserted only as a matter of convenience or reference only, and are not intended to define, limit, or describe the scope of this Agreement or any provision contained herein.

34. SEVERABILITY

34.1.1. If any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provisions in this Agreement, provided that the invalidity of any such provision does not materially prejudice either party with regard to the respective rights and obligations of each party contained in the valid provisions of this Agreement.

35. COUNTERPARTS

35.1.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

36. MODIFICATION

36.1.1. Any change or modification to this Agreement shall not be valid unless made in writing, agreed to, and signed by both Parties.

37. TIME OF ESSENCE

37.1.1. It is mutually agreed by the Parties that time is of the essence in the performance of all conditions, obligations, privileges, and agreements to be kept and performed under the terms of this Agreement.

38. ENTIRE AGREEMENT

38.1.1. This Agreement contains and embodies the entire understanding and agreement between the Parties and supersedes and replaces any and all prior understandings and agreements, written or oral, expressed or implied, relating to this Agreement.

39. NOTICES

39.1.1. Whenever any notice is required by this Agreement to be made, given or transmitted to the Parties, such notice shall be hand delivered or sent by registered or certified mail (postage prepaid), courier, or overnight carrier, and addressed to:

Lessor

with a copy to:

City of Williston
Airport Director
AIRPORT ADDRESS
CITY, STATE ZIP

NAME
POSITION
ADDRESS
CITY, STATE ZIP

Lessee

with a copy to:

NAME
POSITION
ADDRESS
CITY, STATE ZIP

NAME
POSITION
ADDRESS
CITY, STATE ZIP

39.1.2. The date of service of notice shall be the date such notice is actually delivered to the intended recipient or the date delivery is refused by the intended recipient.

39.1.3. The Parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

40. REPRESENTATIONS AND WARRANTIES OF LESSEE

40.1.1. Lessee represents and warrants to Lessor that:

40.1.1.1. It is duly organized and validly existing under the laws of its jurisdiction, incorporation, or establishment;

40.1.1.2. It has the power and the authority to enter into and perform its conditions, obligations, privileges, and agreements contained herein and to pay the rents, fees, or other charges required under this Agreement;

40.1.1.3. This Agreement has been duly authorized, executed, and delivered by Lessee and assuming the due authorization, execution and delivery hereof by the Parties hereto, constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with the conditions, obligations, privileges, and agreements contained herein, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;

- 40.1.1.4. Its execution and delivery of this Agreement and its performance of its conditions, obligations, privileges, and agreements contained herein do not and will not constitute or result in a default, breach, or violation of, or the creation of any lien or encumbrance on the Leased Premises under, its charter or by-laws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to it or the Leased Premises;
- 40.1.1.5. All consents, authorizations, and approvals requisite for its execution, delivery, and performance of this Agreement have been obtained and remain in full force and effect and all conditions, obligations, privileges, and agreements thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery or performance; and
- 40.1.1.6. There is no proceeding pending or threatened against Lessee at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair Lessee's ability to perform its conditions, obligations, privileges, and agreements contained herein and there is no such proceeding pending against Lessee which purports or is likely to affect the legality, validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth herein. This Agreement is effective as of the last date signed by either party.

City of Williston:

ATTEST:

[NAME], [TITLE]

[NAME OF SECRETARY], Secretary

NOTARY:

Date: _____

[NAME OF NOTARY]

Approved as to form and legality by:

Commission Expires: _____

SEAL

[NAME OF CITY ATTORNEY]
Attorney for the City of Williston

[NAME OF LESSEE]:

ATTEST:

[NAME], [TITLE]
[NAME OF LESSEE]

[NAME], [TITLE]

NOTARY:

Date: _____

[NAME OF NOTARY]

Commission Expires: _____

SEAL

41. EXHIBITS

41.1. *Exhibit A – Drawing/Graphic of the Leased Premises*

(INCLUDE DRAWING/GRAPHIC OF LEASED PREMISES)