

**WILLISTON BASIN INTERNATIONAL
AIRPORT FIXED BASE OPERATOR LAND
LEASE AND DEVELOPMENT AGREEMENT**

DRAFT

This Fixed Base Operator Land Lease and Development Agreement (“Lease” or “Agreement”) is entered into by and between the **CITY OF WILLISTON** (“Lessor” or “City”), a municipal corporation, and _____, **dba** _____ (“Lessee”), a _____ authorized to do business in North Dakota, acting by and through its duly authorized officers. The initial addresses of the parties are as follows:

Lessor or City
City of Williston

Lessee

WHEREAS, the parties hereto desire to have the Lessee enter into a Land Lease and Development Agreement to lease from the City the land identified as Parcel __ and have Lessee design, plan, finance, and develop the Premises outlined in this Agreement

NOW, THEREFORE, the following Amended and Restated Hangar and Fixed Base Operator’s Lease is hereby entered into by and between the parties hereto in complete substitution for the previous lease agreement and all amendments and modifications thereto, as heretofore amended:

**ARTICLE 1.
DEFINITIONS**

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 Affiliate. “Affiliate” is any corporation or other entity which directly or indirectly controls or is directly or indirectly controlled by or is under common control with Lessee; "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

1.02 Airport. “Airport” means the Williston Basin International Airport.

1.03 AOA. “AOA” means Aircraft Operating Area.

1.04 Aviation Director. “Aviation Director” means the Airport Director as appointed by the City of Williston.

1.05 Capital Improvement. “Capital Improvement” means an expenditure for a project or improvement at the Leased Premises that increases the value of the Leased Premises or extends its life expectancy by (i) returning the Leased Premises to its originally efficient operating condition if it has deteriorated to a state of disrepair and is no longer functional for its intended use, (ii) rebuilding Leased Premises to a like-new condition after the end of its economic useful life, or (iii) replacing or adding a major component or substantial structural part of the Leased Premises.

1.06 DOT. “DOT” means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.

1.07 FAA. "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.

1.08 FBO. "FBO" is an abbreviation for Fixed Base Operator, which is further defined in the General Aviation Minimum Standards.

1.09 Fiscal Year. "Fiscal Year" means a period of twelve (12) consecutive months commencing on January 1 and ending on December 31.

1.10 General Aviation Minimum Standards "Minimum Standards" shall mean the standards establish by the City, as may be amended from time to time, that define the standards that must be adhered to in order to conduct aeronautical activities at the Airport.

1.11 Leased Premises. "Leased Premises" means those certain premises at Airport more particularly described in Article 2.

1.12 Maintenance. "Maintenance" means a repair of less than \$___ that keeps the Leased Premises in proper working condition but does not add to the value or extend the life expectancy of the Leased Premises. Maintenance merely keeps the Leased Premises in an operating condition over its probable useful life for which it was designed.

1.13 Sign. "Sign" means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.

1.14 Subsidiary. "Subsidiary" shall mean any corporation or other entity not less than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) shall, at the time, be owned directly or indirectly by Lessee or the entity owning directly or indirectly 50% or more of Lessee, as applicable.

1.15 Trade Fixtures. "Trade Fixtures" shall mean, but shall not be limited to, any signs (electrical or otherwise) used to identify Lessee's business; all shelves, bins, racking, machinery and equipment used in connection with Lessee's required or permitted activities pursuant to this Lease, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous office equipment, furnishings, and personal property.

1.16 TSA. "TSA" means the Transportation Security Administration, and any federal agency succeeding to its jurisdiction.

ARTICLE 2. DESCRIPTION OF LEASED PREMISES

2.01 Lessor, for and in consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, the property, located at_____, identified in Exhibit 1, attached hereto and incorporated into this Lease.

ARTICLE 3. RENTAL RATES

3.01 Lessee agrees to pay Lessor for the first five (5) years of this Agreement the rental rate of thirty five cents (\$0.35) per square foot for the land contained in the Leased Premises of ___ square foot as outlined in Exhibit 1, annually in advance (without notice or demand, both of which are expressly waived) on the first day of the Fiscal Year for the use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided. During the Term, and Option Term, if exercised, the rental rate will be increased seven percent (7%) every five (5) years.

If the commencement date is other than the first day of any calendar year, then the rent will be prorated for the first year as the case may be.

3.04 All rent payments that become due and payable by the Lessee shall be made to the City of Williston _____ unless otherwise notified in writing. All rent and payments unpaid for ten (10) calendar days after the date due and following a written notice By Lessor and a five (5) calendar day cure period shall bear interest at the rate of eighteen percent (18%) per annum from that date.

ARTICLE 4. USE OF LEASED PREMISES

Lessee shall use the Leased Premises solely for operating an FBO as defined the General Aviation Minimum Standards dated ___ for Commercial Aeronautical Service Providers and as the same may be amended from time to time, which includes performing and/or subleasing to qualified tenants to perform full aircraft servicing facilities including but may not be limited to the sale of aircraft and aircraft parts; aircraft maintenance and repair; servicing of aircraft engines, instruments, propellers and accessories in connection with said business, aircraft storage, aircraft training, aircraft charter and rentals, aviation school instruction, classroom and flight simulator instruction, and other flight instruction provided only to those persons already holding an aircraft pilot license and seeking a certification towards an aircraft being manufactured or sold on the Leased Premises, and such other activities reasonably incidental thereto and such business directly related thereto or as may be set forth in the Minimum Standards as amended from time to time. Such use may also include any other activity or services normally performed or offered by an FBO at the Airport, as adopted in the Minimum Standards, as they may be amended from time to time, and such other aviation related uses as may be included in the Minimum Standards as amended from time to time. Provided Lessee is in compliance with the fueling requirements contained in the Minimum Standards, qualifies as an FBO under the requirements of the Minimum Standards, and not in default of any other provision of this Lease, Lessee may conduct commercial fueling operations for the sale and dispensing of fuel to the public.

In connection with such use and occupancy, Lessee shall have the right to occupy and maintain, as required by this Lease, all buildings, shops, hangars and other improvements developed by Lessee on the Leased Premises as of the Commencement Date of this Lease or any future improvements that may be developed by Lessee under a Lease Agreement with the City.

The City reserves the right to replace or repair portions of the concrete apron included in the Leased Premises during the Term of this Agreement and Option term, if exercised. During any such replacement or repair work, if Lessee cannot use portions of the concrete apron due to the work being done, the City will provide Lessee alternate space of substantially the same size of said portions and as close to the Leased Premises as is practical. Prior to the award of any contract for such replacement or repair, the City shall consult with Lessee on alternative space options and use its best efforts to provide an alternative that has the least impact on Lessee’s operations. Following the completion of any such replacement or repair, Lessee’s Leased Premises will be restored to its original layout. Lessee waives any claims for compensation for loss caused by such temporary relocation provided the steps identified herein are followed.

The Lessee shall not at any time leave the Leased Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Leased Premises the type of business for which the Leased Premises are leased, except during periods in which the Leased Premises may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations, all such

repairs and alterations to be diligently pursued to completion.

All services performed by Lessee shall be in compliance with all applicable state and federal environmental rules and regulations at Lessee's sole expense.

No other activities shall be conducted on the Leased Premises unless authorized in writing by the Airport Director provided, however that such other activities be aeronautical in nature.

ARTICLE 5. BASE LEASE TERM AND OPTION TERM

5.01 The Base Term of this Lease shall be twenty (20) years that shall commence on the first day of operation at XWA ("Commencement Date") and shall terminate at midnight of the last day of the Base Term unless earlier terminated in accordance with this Lease or extended for the Option Term as provided in section 5.02 below. Together the Base Term and any extension through an executed Option Term shall collectively be referred to as the Term of this Lease.

5.02 Lessee shall have the option to extend the Term for one (1) additional twenty (20) year Option Term, with the maximum term of the Lease not to exceed forty (40) years. If Lessee desires to exercise the Option Term, written notice must be provided to the City a minimum of three hundred sixty five (365) calendar days prior to the expiration of the Base Term. The Lessee and Lessor must execute the Option Term amendment within ninety (90) days of the date of the written request.

ARTICLE 6. DEVELOPMENT RIGHTS

6.01 Development of Improvements: All plans and specifications for Lessee's Improvements and all renovations, remodeling, refurbishing and construction upon the Premises must meet all City fire, building, and other applicable City, state and federal regulations and code requirements, including obtaining required building permits. Upon final completion and acceptance of the Improvements by City, Lessee must provide one (1) set of Mylar as-built plans and one electronic copy of the record documents to the Airport Director, who will keep one set of plans on file at the Aviation Director's office.

Lessee must keep said as-built documents current by providing one (1) set of Mylar "as-built" plans and one electronic copy of all record documents showing any alteration in excess of \$100,000 to the Premises during the term of this Lease to Airport Director, which plans are to be attached to this Lease as a supplement in the same manner as provided for the original plans and specifications. No substantial changes or alterations shall be made to said plans or specifications after initial approval by Airport Director without further written approval by Airport Director.

Lessee will be responsible for arranging and paying for, at its sole cost, all utility connections to the Premises. Utility usage will be billed directly to the Lessee and paid for by the Lessee unless and until Lessee has delegated the responsibility for utility payments to Sublessee.

The Lessee will coordinate design and construction of the Improvements with the Airport and Airport Director. All plans and specifications must be submitted to the Airport Director and the Airport Director must provide written approval of all plans prior to the commencement of work. Failure to comply will be considered a breach of contract and all rights and remedies shall vest with the City. Lessee shall comply with the Airport Development Standards.

Lessee will be required to adhere to all landscaping requirements as required by the City. Lessee shall be responsible for causing the Premises to be maintained and kept in good order and condition during

construction and upon completion of the Improvements in accordance with commercially reasonable standards at no cost to the City.

During development, Lessee will coordinate all construction traffic with the Airport so as to not inhibit regular Airport traffic and to keep roadways safe and clean. The Airport has no objection to the use of construction trailer arrangements on Airport property during construction subject to the requirements of the United States, and the North Dakota Departments of Transportation.

Lessee will enter into a construction contract with a reputable contractor and the Airport reserves the right to approve the contractor, which approval shall not be unreasonably withheld, conditioned or delayed.

All construction parking and staging will occur on the Premises unless agreed to by the Airport in writing. Lessee, at its sole expense, shall obtain all licenses and permits required prior to performing any maintenance, repairs, construction on, or use of the Premises. The costs of developing all plans and specifications as provided herein and the construction of Improvements and facilities upon the Premises shall be paid solely by the Lessee, without any cost or expense to City whatsoever.

Upon termination of this Lease, ownership of the Improvements constructed by Lessee on the Premises shall revert to the City, free and clear of all liens, claims and other encumbrances or adverse interest in the Premises or the Improvements thereon.

During the construction of the Improvements, the Airport Director or designee may, after providing reasonable notice to Lessee, enter upon the Premises during the Airport's normal business hours and make inspections as may be necessary to ensure that the construction of the Improvements is performed in accordance with the requirements of this Lease.

During this Lease, Lessee shall, subject to the other terms and conditions of this Lease, have the continuing right to remodel, renovate and refurbish the Premises and Improvements, or any part thereof, and to build and construct new additions and Improvements thereon and thereto; provided, however, that changes costing more than one hundred thousand dollars (\$100,000) shall require the prior written consent of Airport Director, whose consent to the modifications will not be unreasonably withheld, conditioned or delayed.

The City will promptly approve in writing all plans and design related change orders through completion of the Project.

Lessee shall not allow a lien to attach to the Premises or Lessee's leasehold interest without the prior written approval of the City Commission. Notwithstanding the City Commission's approval, the City's fee simple interest in the surface estate burdened by Lessee's leasehold estate must be exempt from said lien. Any lien of a lender shall contain the following language, or such other similar language as may be approved by City Attorney:

"Lender agrees that the lien created by this instrument is effective only as to Lessee's leasehold estate created by the Lease, dated _____, 2018, executed by the City of Williston, as City, and _____, doing business as _____, as Lessee, and does not affect City's interest, being the fee simple estate burdened by Lessee's leasehold estate."

In the event of any foreclosure by any lender, financing agency, or guarantor of its lien or liens on the Improvements constructed by Lessee located on the Premises, said lender, financing agency, or guarantor succeeds hereunder to all rights, privileges, and duties of Lessee, including without limitation paying rent, as if said lender, financing agency, or guarantor was originally named Lessee herein, and said lender, financing agency, or guarantor will have a reasonable time after the date of foreclosure [not less than three

hundred sixty (360) calendar days] to sublease any available Improvements to those parties that are pre-approved by Airport Director in writing.

Lessee covenants that all construction, including all workmanship and materials, will be of first-class quality. As used herein, the term "first-class quality" means of the same quality as materials used to construct other buildings used for the same or similar purposes already constructed on the Airport property.

After completing construction of Improvements on the Premises, Lessee must certify to Airport Director that the improvements were completed according to the approved plans and specifications and that Lessee has complied with all applicable federal, state, and local laws, rules, ordinances, and regulations.

Lessee must include in all construction contracts entered into a provision requiring the contractor, or in the alternative, Lessee, to indemnify, hold harmless, defend and insure City, including its officers, agents, contractors, and employees, against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of the construction work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of City, its officers, agents, contractors, or employees. Lessee must furnish or, in the alternative, require the contractor to furnish, insurance as required in Section 8 herein.

6.02 Repair and Maintenance: Lessee, at its own expense, shall make, or cause to be made, any and all repairs and replacements necessary to keep the Premises and Improvements in a first-class condition and in safe repair and shall make any and all repairs and replacements necessary to remedy defects of a structural nature. Lessee shall provide janitorial service and maintenance to keep the interior and exterior of the Premises and Improvements in a clean, attractive and sanitary condition at all times. The landscaping must be well-maintained and kept in a neat and tidy condition. Lessee shall repair any and all damage caused to real and personal property of City occurring on the Premises, including damage caused to the Improvements, or elsewhere on the Airport property as a result of the willful or negligent acts or omissions of Lessee its officers, employees, contractors or agents.

6.03 Security: Lessee, its officers, employees, agents, contractors, and invitees must comply with all federal and local security regulations adopted by City.. Lessee covenants to indemnify and hold harmless City, its officers, employees, and contractors from any charges, fines, or penalties that may be assessed or levied by the FAA or Transportation Security Administration by reason of the negligent or intentional failure of Lessee its officers, employees, agents, contractors, or invitees to comply with security regulations, regardless of whether the fine, charge or penalty is levied against the City or the Lessee.

6.04 CFR Part 77 Requirements: Lessee covenants to comply with the notification and review requirements set out in Part 77 of the Federal Aviation Regulations [14 CFR Part 77], as amended, if Lessee plans to construct or modify any structure, antenna, or building located on the Premises or to be constructed as an Improvement.

6.05 Control of Structures: Lessee shall not erect nor permit the erection of any structure, antenna, or building, nor permit the growth of any tree on the Premises, which has its highest point above a mean sea level elevation established by FAA and Airport as a height limitation on said structure, antenna, building, or object. Airport may enter the Premises and remove the encroaching structure, antenna, building, or object at Lessee's expense plus an administrative charge of 15%.

6.06 Aerial Approaches: The Airport Director may take any action necessary to protect the Airport's aerial approaches against obstruction, including the right to prevent lessee from erecting or permitting to be erected any building or structure on or adjacent to the Airport which, in Airport Director's opinion, would

limit the usefulness of the Airport or constitute a hazard to aircraft.

6.07 Hazardous Substances: Lessee shall comply, and shall require any sublessee to comply, with all environmental laws, rules, regulations, orders and permits applicable to the use of the Premises and Improvements including, but not limited to, required National Pollutant Discharge Elimination System Permits and all applicable laws relating to the use, storage, generation, treatment, transportation, or disposal of hazardous or regulated substances. Except for the hazardous substances governed by and transported in full compliance with the transportation laws of the state or federal government, Lessee must not knowingly use, store, generate, treat, transport, or dispose of any hazardous or regulated substances or waste on or near the Premises without the Airport Director's prior written approval and without first obtaining all required permits and approvals from all authorities having jurisdiction over the operations conducted on the Premises.

If Lessee determines that a threat to the environment including, but not limited to, a release, discharge, spill or deposit of a hazardous or regulated substance, has occurred or is occurring which affects or threatens to affect the Premises or the persons, structures, equipment, or other property thereon, Lessee must notify immediately by oral report in person or by telephone, to be promptly confirmed in writing, to the Airport Director as required by law or regulation. Lessee shall require any Sublessee to cooperate fully with the Airport Director in promptly responding to, reporting, and remedying a threat to the environment, including, without limitation, a release or threat of release of hazardous or regulated substance into the drainage systems, soils, ground water, waters, or atmosphere, in accordance with applicable law or as authorized or approved by any federal, state, or local agency having authority over environmental matters.

Lessee shall keep a readily accessible file of Materials Safety Data Sheets ("MSDS") for each hazardous substance on the Premises or transported, in accordance with federal and state transportation laws, which file must be posted and immediately available to any Airport employee who responds to a report of a discharge of a hazardous substance on the Premises. Lessee will require any operator of the facilities on the Premises to use best efforts to determine which hazardous substance was accidentally discharged and have that MSDS sheet available for the first responders to the Premises.

Lessee will cause prompt remediation and the payment of all costs associated with any action or inaction of Lessee that directly or indirectly prevents the City, acting through the Airport, from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits relating to the Premises. The rights and obligations set forth in this section shall survive the earlier expiration or termination of this Lease.

6.08 Nondiscrimination/Affirmative Action:

A. Nondiscrimination – General- Lessee for itself, and as a requirement for any sublessee, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof covenants that: (1) no person on the grounds of race, creed, color, religion, sex, age, national origin, handicap, or political belief or affiliation will be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of the Premises; (2) in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, national origin, handicap, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; (3) Lessee will cause to the best of its ability the Premises and Improvements to be in compliance with all other requirements imposed by or pursuant to 14 CFI(Part 152, Subpart E Non Discrimination in Aid Program and Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of

Transportation, and as said Title and Regulations may be amended, and with other applicable state or federal laws or regulations, as amended.

B. Nondiscrimination - Business Owner - This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Lessee for itself, and as a requirement for any sublessee, agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance or any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

C. Remedy for Breach - If the Lessee is found by a final verdict of a court of competent jurisdiction to have deliberately breached a non-discrimination covenant, or to have permitted any sublessee to deliberately breach a non-discrimination covenant, the City may immediately enforce the remedies directed by the Court's decision, which may include the City's right to reenter the Premises, retake possession thereof and terminate the Lease. This provision is not effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are completed, including exercise of any rights to appeal.

D. Affirmative Action - Lessee shall cause to be implemented an affirmative action program as required by 14 CFR Part 152, Subpart E, to provide (i) that no person on the grounds of race, creed, color, religion, sex, age, national origin, handicap, or political belief or affiliation is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; (ii) that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that subpart; (iii) that third parties otherwise retained by Lessee shall provide similar assurances to Lessee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E. Lessee, at no expense to the City, shall comply with any applicable requirements of the Americans with Disabilities (ADA) as it may be amended, with respect to the Premises and its Improvements.

6.09 Compliance with Laws:

A. General - Lessee covenants to promptly observe, comply with and execute, and shall cause any sublessee to promptly observe, comply with and execute, the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders and directions applicable to the use and occupancy of the Premises. A material breach of this covenant, which is not remedied within any permitted cure period, may be cause for City's exercising its rights under this Lease. During any period of Lessee's good faith challenge to any such laws, ordinances, rules, regulations, requirements, orders and directions in a court of competent jurisdiction, Lessee's inaction shall not be deemed a breach of this Lease.

B. Federal - Lessee shall comply and shall require any sublessee to comply with federal laws, rules, and regulations, including without limitation the Drug Free Workplace Act, the Violence in the Workplace Act, the Americans with Disabilities Act, and any other acts that the U.S. Congress passes that apply to the uses and operations at the Premises.

C. Disadvantaged Business Enterprises ("DBE") - Lessee acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), as said regulations may be amended, and such other similar regulations as may be enacted, may be applicable to the activities of Lessee and any sublessee under the terms of this Lease, unless exempted by said regulations, and Lessee hereby agrees to comply with the FAA and the U.S. Department of Transportation in reference thereto. Lessee understands and agrees to the following assurances: It is City's policy that DBEs

have the maximum practicable opportunity to be awarded contracts. Lessee agrees to use good faith efforts to promote this policy through its Lease of the Premises. Additionally, Lessee, as an equal opportunity employer, agrees to use good faith efforts to provide maximum opportunity for the consideration and use of DBEs in the contracting, subcontracting and purchasing activities associated with this Lease and to abide by all applicable provisions of the Airport's approved, and it's approved updates to, the DBE Program and this Lease. Lessee agrees and shall require any sublessee to agree that no person will be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any contract because of race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

D. State - Lessee shall comply with all applicable laws, rules, and regulations of the State of North Dakota.

E. Local - Lessee shall comply with all applicable City ordinances, and rules and regulations promulgated by Airport Director.

ARTICLE 7 INDEMNIFICATION

7.01 Lessee covenants and agrees to fully indemnify, defend and Hold harmless, the City and the elected officials, employees, officers, directors, contractors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Lessee's use or occupancy of the Lease Premises under this Agreement, including any acts or omissions of Lessee, any agent, officer, director, representative, employee, consultant, sub lessee, assignee or subcontractor of Lessee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement, all without however, the City waiving any governmental immunity available to the City under North Dakota Law and without waiving any defenses of the parties under North Law. It is further covenanted and agreed that such indemnity shall apply even where such costs, claims, liens, damages, losses, expenses, fees, fines, penalties, actions, demands, causes of action, liability and/or suits arise in any part from the negligence of City, the elected officials, employees, officers, directors, contractors, and representatives of City, under this Agreement. The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Lessee and the City shall promptly advise the other party in writing of any claim or demand against the City or Lessee which is made known to the disclosing party related to or arising out of Lessee's activities under this Agreement and Lessee shall see to the investigation and defense of such claim or demand at Lessee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Lessee of any of its obligations under this paragraph.

7.02 It is the express intent of the parties to this Agreement, that the indemnity provided for in this Article 7, is an indemnity extended by Lessee to indemnify, protect, and hold harmless, the City from the consequences of the City's own negligence, provided however, that the indemnity provided for in this Article shall apply only when the negligent act of the City is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Lessee further agrees to investigate, settle, and defend, at its own expense and on behalf of City and in name of the City, with counsel reasonably satisfactory to the City, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this

indemnity shall apply, as set forth above.

7.03 Neither party shall be liable to the other for any consequential, indirect, special, or punitive damages arising out of the performance of this Agreement.

ARTICLE 8. INSURANCE

8.01 General Requirements. Lessee shall not commence use or occupancy of the Leased Premises until Lessee has obtained the types and amounts of required insurance as indicated below and until such insurance has been reviewed by the City and a Certificate of Insurance is received indicating required coverage. If the coverage period ends prior to the end of the Term of this Lease, including any extensions thereof, Lessee must, prior to the end of the coverage period, forward a new Certificate of Insurance to City as verification of continuing coverage for the duration of the Term of this Lease. Lessee must submit certificates of insurance for all sublessees, assignees, and subcontractors to the City prior to commencing work.

Lessee and all sublessees', assignees, and subcontractors' insurance coverage shall be written by companies licensed to do business in the State of North Dakota at the time the policy is issued and shall be written by companies with an A.M. Best rating of A-VII or better. Hazardous materials insurance, if required, shall be written by companies with an A.M. Best rating of A-VII or better. Lessee, sublessees, assignees and subcontractors must obtain workers' compensation coverage through a licensed insurance company in accordance with North Dakota law. The contract for coverage must be written on a policy and with endorsements approved by the North Dakota Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred by the Operation will be promptly met.

The following conditions apply:

(a) Approval of insurance by City and the required minimums shall not relieve or decrease the liability or responsibility of the Lessee hereunder and shall not be construed to be a limitation of liability on the part of the Lessee.

(b) The Lessee, sublessees, assignees, and subcontractors must obtain and maintain in force insurance at all times during the Term of this Lease.

(c) All endorsements naming the City as additional insured, waivers of subrogation, and notices of cancellation, endorsements, as well as Certificates of Insurance shall indicate:

City of Williston

A copy of the insurance certificate shall be provided to the City's Risk Manager.

(d) It is intended that Policies required in the Minimum Standards, which may be amended from time to time, covering the City and Lessee shall be considered primary and non- contributory coverage, as applicable.

(e) If insurance policies are not written for the amounts specified below, the Lessee, sub lessees, assignees and subcontractors shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the Primary

Coverage.

(f) The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto.

(g) The City reserves the right to review insurance requirements set forth during the term of a Lease and to make reasonable adjustments to required types of insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial considerations of the insurance company as well as the Lessee, sublessees, assignees, and subcontractors.

(h) The Lessee, sublessees, assignees, and subcontractors shall not cause any insurance to be cancelled or permit any insurance to lapse during the Term of a Lease or as required in the Lease.

(i) The Lessee, sublessees, assignees and subcontractors shall provide all deductibles and self-insured retentions, if any, stated in the policies. All deductibles and self-insured retentions shall be disclosed on the Certificates of Insurance.

(j) Liability Insurance provided by the Lessee, sublessees, assignees and subcontractors pursuant to the Minimum Standards shall cover and protect the City, its officials, officers, agents, Personnel, contractors, successors, and assigns, as their interests may appear.

(k) The Lessee, sublessees, assignees and subcontractors are responsible for insuring their own interest.

8.02 Specific Insurance Requirements. The Lessee, sublessees, assignees and subcontractors shall obtain, and maintain throughout the Term of this Lease, the following insurance coverages and furnish certificates of insurance and policy endorsements as evidence thereof:

(a) Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined by the State of North Dakota and minimum policy limits for employers liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each Personnel. The following endorsements shall be added to the policy:

(i) A Waiver of Subrogation in favor of the City of Williston;

(ii) A thirty (30) day written notice of Cancellation/Material Change in favor of the City.

(b) Property insurance coverage on an "All Risk of Physical Loss" form for 100% of

the replacement value of all improvements constructed by or for Lessee on the Leased Premises. Coverage shall include, but not be limited to fire, wind, hail, theft, vandalism, and malicious mischief. The

coverage shall be written on a replacement cost basis. The proceeds from such insurance shall be used to restore the improvements to their original condition in the event of a covered loss. Lessee is responsible for insuring their own interests. Lessee is responsible for deductibles for any loss not arising from an act of nature.

(c) Liability insurance in the specific types and amounts specified in section 7.03 below as applicable for the proposed Commercial Aeronautical Service Operator, as defined in the Minimum Standards, as may be amended from time to time.

- (i) All Commercial General Liability Insurance policies shall contain:
 - (1) Waiver of Subrogation in favor of the City of Williston.
 - (2) Thirty (30) day written notice of Cancellation in favor of the City of Williston.
 - (3) City of Williston listed as additional insured, form CG 2010, or its equivalent.
 - (4) Independent Contractors coverage.
 - (5) Blanket contractual liability coverage for liability assumed under the Lease or Permit.
 - (6) Damage to Premises Rented to you in an amount not less than \$250,000.
 - (7) Medical Expense coverage with a limit of \$5,000 any one person.

(d) Environmental site Liability to include remediation and spill / leakage clean-up with minimum limits of \$2,000,000 each incident / \$2,000,000 policy aggregate limit issued on a claims made policy with extended reporting coverage of 24 months.

8.03 Lessee Requirements.

Environmental Impairment Liability (Broad Form Pollution Liability Coverage/Third party Clean up. AST/UST coverage)	Commercial General Liability (Bodily Injury and Property Damage / Personal and Advertising Injury)		Completed Operations	Hangar Keepers	Aircraft Liability (Bodily Injury and Property Damage / including Passengers)	Non Owned Aircraft
\$2MM each incident – limit /\$2MM policy aggregate; if claims made policy needs twenty four (24) month extension period post termination date	\$10MM / \$10MM	\$10,000,000	\$2,000,000	\$10MM / \$10MM	\$10MM	

8.04 Motor Vehicle Requirements. For vehicles operated in the AOA the following conditions apply:

- (a) Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$5,000,000 for bodily injury and property damage.
- (b) City of Williston named as additional insured, Form TE 9901B.
- (c) Thirty (30) calendar day written Notice of Cancellation in favor of the City of Williston, form TE 0202A.

ARTICLE 9. PERFORMANCE GUARANTEE & LANDLORDS LIEN

9.01 Lessee shall deliver to the City, on or before the Commencement Date of this Lease, but at a minimum must show written evidence of performance guarantee commitment no later than the date of execution of this Lease, and shall keep in force throughout the Term hereof, an irrevocable standby letter of credit (“ISLC”) in favor of Lessor, drawn upon a bank satisfactory to Lessor and payable to City of Williston, Airport. The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants, including maintenance requirements, contained herein during the Term hereof and shall stand as security for payment by Lessee of all amounts due by Lessee as a result of valid declarations of uncured default, as set forth herein, asserted by Lessor. The amount of the ISLC shall be adjusted, as necessary, so that it shall at all times equal at least one (1) year of the total estimated annual rentals, fees, and charges payable by Lessee to Lessor hereunder. The ISLC shall not be subject to reduction in coverage or cancellation. If the available balance on the ISLC falls below the amount required herein, Lessor agrees to replenish it to the full required amount within seven (7) calendar days of it falling below the full required amount. Failure to replenish the ISLC as stated herein constitutes default of the Lease. The surety on the ISLC must, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of this Lease in any way affects its obligations under the ISLC and consents to waive notice of any such matters.

9.02 Lessee hereby gives to Lessor a lien upon all of its property now, or at any time hereafter, in or upon the Leased Premises, to secure the prompt payment of charges herein stipulated to be paid for the use of said Premises; all exemptions of such property, or any of it, being hereby waived.

In the event that the amount of the performance guarantee provided by Lessee under the terms of this Lease, at all times during the term hereof, shall equal the greater of the rents, fees, and charges payable by Lessee to Lessor for the current calendar year, or double the amount of the performance guarantee set forth in Section 8.01 above, then the provisions set forth in Section 9.02 above, shall not apply hereto.

ARTICLE 10. MINIMUM STANDARDS

Lessor has adopted Minimum Standards (“Minimum Standards”) which shall govern Lessee in the use of the Leased Premises and all common facilities, a copy of each of which has been furnished to Lessee and are incorporated herein by reference. Lessee agrees to comply fully at all times with these governing documents. Lessor, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards from time to time in a reasonable manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience, and protection of property of Lessor, Lessee

and all other tenants and customers of the Airport; provided, however, that Lessor shall give Lessee reasonable advance notice of any such amendments, modifications or alteration of the Minimum Standards.

ARTICLE 11. FEES AND CHARGES

11.01 Fees and Charges.

(a) Fuel flowage fee: A fuel flowage fee shall be paid by Lessee to the Lessor for all fuel delivered to the Leased Premises for dispensing by the Lessee to all categories of customers, in the amount per gallon, subject to atmospheric adjustments, now or hereafter set by the Aviation Director, as may be adjusted periodically. Lessee agrees to keep accurate books, records and accounts of its purchase and sale of aircraft fuel delivered to its customers on the Airport premises. Lessee agrees to remit to the Airport Director payment and related delivery tickets provided by the various suppliers as to the amount of aircraft fuel delivered to the Leased Premises, ten (10) calendar days following the end of the month following such delivery. If no such delivery is made during a particular month, Lessee shall provide the Aviation Director with a written statement to that effect. The calculated fuel flowage fee shall be due and payable by the 20th of the month in the month reported.

(b) Ramp Fee: Any City controlled ramp related uses by Lessee that are not included in the Leased Premises shall be for public use and subject to a Ramp Fee, as established by the City. The Ramp Fee shall be set annually by the City for use of City controlled ramp. Lessee or sub lessee shall remit to the City seventy-five percent (75%) of all revenues received for use of City controlled ramp or equivalent charges within ten (10) calendar days following the end of the month in which the ramp was utilized, accompanied by an accounting of all City controlled ramp rental activity. Lessee shall retain the remaining twenty-five percent (25%) of such revenues as consideration for Lessee's management of said City controlled ramp rental and collection of resulting revenues. The City retains the right to enter upon City controlled ramp at any time and to take an inventory of any aircraft parked on the City controlled ramp, as well as a right to audit Lessee's or sublessee's accounting of City controlled ramp rental activity. Lessee or sublessee cannot charge any fees for use of the City controlled ramp other than the Ramp Fee set by the City for use of City controlled ramp and cannot waive any fees set by the City and due to the City for use of City controlled ramp without City's written approval. The calculated fuel flowage fee shall be due and payable by the 20th of the month in the month reported.

(c) Fees and charges for miscellaneous items and services provided by the City, including, but not limited to, employee badges, shall be assessed by the City in connection with the ordinary usage of Airport facilities. Miscellaneous fees and charges are due and payable within thirty (30) calendar days of the invoice date.

(d) All rentals, fees and charges payable by Lessee to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

11.02 Concession Fee.

(a) Lessee covenants and agrees to pay as additional Rent hereunder an amount equal to two percent (2%) of any Gross Revenues. The term "Gross revenues", for the purposes of this Agreement, shall include all monies paid or payable to the Operator for sales made and for services rendered at the Airport pursuant to this Agreement except from the rental of hangar space in hangars included on the Leased Premises; provided, however, that any sales taxes or similar taxes imposed by law which are separately stated and paid by the consumer or customer and which are directly payable to the Taxing Authority by Operator shall be excluded therefrom.

(b) Lessee shall provide a written report by the tenth (10th) of the month following the activity. The calculated concession fee shall be due and payable by the 20th of the month in the month reported.

ARTICLE 12. PRIVILEGES AND CONDITIONS

12.01 Lessor hereby grants to Lessee and any assignees and/or sublessees pursuant to Article 26 herein, the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

(a) The general use by Lessee, for commercial aviation activities, of all common aircraft facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to said Airport, except as hereinafter provided. "Common airport facilities" shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, taxiways, unleased aprons provided for in 11.01(b) of this Lease, public roadways, sidewalks, navigational and aviation aids, the airfield lighting facilities, terminal facilities or other common or public facilities appurtenant to said Airport.

(b) The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Lessee and sub lessees, its agents, contractors, employees, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.

(c) Lessee must remain in compliance at all times with all FAA, Department of Homeland Security and all other governmental organizations with jurisdiction over the Airport as well as all rules, laws and regulations as may be amended from time to time.

12.02 The granting and acceptance of this Lease is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of North Dakota and City of Williston, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of Lessor, now in force or hereafter prescribed or promulgated by charter authority or by law, as may be amended from time to time.

12.03 Lessor reserves the right to enter the Leased Premises at any reasonable time for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Lease are being adhered to by Lessee.

ARTICLE 13. CONSTRUCTION/CAPITAL IMPROVEMENT BY LESSEE

13.01 Lessee shall have the right to erect, alter, remodel and renovate buildings and make other improvements as Capital Improvements on the Leased Premises, provided that it shall submit to the Airport Director plans and specifications prepared by registered architects and engineers setting forth the renovations, construction, alterations or improvements that Lessee desires to perform, in such detail as may be required by the Airport Director, and provided that approval of such plans and specifications by said Director is obtained as set forth below.

13.02 Lessor agrees to examine and approve or disapprove plans and specifications submitted in accordance with the provisions above, within thirty (30) business days after receipt thereof, and to give Lessee written notification of same. The approval by Lessor of such plans and specifications refers only to the conformity of same to the general architectural plan for the Leased Premises, as opposed to their architectural or engineering design. Lessor, by giving its approval, assumes no liability or responsibility therefor or for any defect in any work performed according to such plans and specifications. Lessee agrees

not to commence any renovations, construction, alterations or improvements until Lessor, through the Airport Director, has given written approval regarding Lessee's plans and specifications.

13.03 Further, prior to the commencement of any construction, Lessee shall procure any and all additional approvals of the plans and specifications for its buildings and improvements required by any federal, state or municipal authorities, agencies, officers and departments having jurisdiction thereof and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Lessee specifically agrees that it shall hold Lessor completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction undertaken by Lessee hereunder.

13.04 The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Lessee. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Lease, other than the renting to Lessee of the Leased Premises which are the subject hereof for the term and consideration hereinbefore set forth.

13.05 In undertaking any such renovations, construction, alterations or improvements, it is expressly understood that, where applicable, unless otherwise agreed to in writing by the parties, Lessee shall be responsible, at its sole expense, for any and all construction and maintenance of taxiways and connections to the Airport's runway and taxiway system, along an alignment and in accordance with designs and plans approved in advance, in writing, by the Aviation Director. It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee on the Leased Premises shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

ARTICLE 14. LIENS PROHIBITED

14.01 Lessee shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Lessee's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Lessee or to anyone holding the Leased Premises, or any part thereof, through or under Lessee.

14.02 If any such mechanics' lien or materialmen's lien described in Section 14.01 above shall be recorded against the Leased Premises, or any improvements thereon, Lessee shall cause the same to be removed or, bonded around pursuant to the terms of the North Dakota Property Code. In the alternative, if Lessee, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

ARTICLE 15. MAINTENANCE AND REPAIR

15.01 Lessee shall pay or cause to be paid any and all usage charges for water, heat, gas, electricity, sewer, and any and all other utilities used on the Leased Premises, throughout the Term of this Lease, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair, and usage.

15.02 Lessee shall, throughout the Term of this Lease, assume the entire responsibility, cost and expense for all repair and Maintenance of the land and the improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural, or otherwise, normal wear and tear accepted. Additionally, without limiting the foregoing, Lessee shall:

- (a) at all times maintain the land, buildings, and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and
- (b) replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, or unsuitable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements and revert to City ownership at termination of this Lease, as provided for herein; and
- (c) at all times keep the Leased Premises, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and
- (d) provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including Lessor and Airport Director; and
- (e) observe all insurance regulations and requirements as required in Article 8 herein concerning the use and condition of the Leased Premises, for the purpose of reducing fire hazards and insurance rates on the Airport; and
- (f) repair any damage caused by Lessee to paving or other surfaces of the Leased Premises or the Airport, in connection with the scope of the Lease, caused by any oil, gasoline, grease, lubricants, flammable liquids, and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and
- (g) take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining, and replanting of any landscaped areas; the designing and constructing of improvements on the Leased Premises; and
- (h) be responsible for the maintenance and repair of all utility services lines serving the Leased Premises, including, but not limited to, water and gas lines, electrical power, and telephone conduits and lines, sanitary sewers and storm sewers; and
- (i) keep and maintain all vehicles and equipment operated by Lessee on the Airport in safe condition, good repair, properly licensed and insured, as required by this Lease; and
- (j) replace broken or cracked plate glass, repair roofing material as needed, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and
- (k) provide and use suitable covered metal receptacles for all garbage, trash, and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; promptly collect and remove all trash and foreign materials from parking lots and Leased Premises; provide a complete and proper arrangement, satisfactory to the Airport Director, for the adequate sanitary handling and disposal (away from the Airport), of all trash, garbage and refuse generated as a result of the operation of Lessee's business;
- (l) at the expiration or termination of this Lease, deliver the Leased Premises to Lessor clean and free of trash and in good repair and condition, with all fixtures and equipment situated in the Leased Premises in good working order, reasonable wear and tear excepted; and

15.04 Following consultation with Lessee, the adequacy of the performance of the foregoing maintenance and repair by Lessee shall be determined by the Airport Director, whose reasonably exercised judgment shall be conclusive. No more than thirty (30) calendar days after determining the inadequacy of such maintenance or repair, the Airport Director shall provide Lessee a written request that Lessee remedy such inadequate maintenance or repair. Should Lessee fail to undertake any such maintenance or repair within ten (10) calendar days of receiving written notice from the Airport Director, or if Lessor performs any maintenance or repair on behalf of and for Lessee necessitated by Lessee's failure to start or complete maintenance or repairs, then the costs of such maintenance or repair, plus any associated overhead reasonably determined by Lessor, plus a fifteen percent (15%) administrative fee, shall be reimbursed by Lessee to Lessor no later than ten (10) days following receipt by Lessee of written demand from Lessor for same. In cases not involving maintenance or repair requiring exigent action, Lessor shall provide Lessee a written request that Lessee perform such maintenance or repair, at least thirty (30) calendar days before Lessor affects such Maintenance or repair on behalf of Lessee.

ARTICLE 16.
TITLE

16.01 It is expressly understood and agreed that any and all fixtures, furniture, equipment, and improvements that may be reasonably removed, placed or maintained by Lessee in the Leased Premises during the Term hereof shall be and remain Lessee's property, and the Leased Premises returned to its original condition at the sole expense of Lessee, normal wear and tear excepted. Provided that Lessee is not in default under this Lease, it may remove or cause to be removed all such items from the Leased Premises, with any damage caused by such removal repaired at the Lessee's sole expense. At Lessor's sole election, any such items remaining on the Leased Premises more than ten (10) calendar days after the expiration or termination of the Term hereof, shall then belong to Lessor without payment of consideration therefor.

16.02 Unless otherwise provided, all foundations, buildings, alterations, additions or improvements ("Improvements") made upon the Leased Premises by Lessee are and shall be the property of Lessee during the Term hereof. During said Term, absent the City Commission's written approval, such Improvements shall be conveyed, transferred, or assigned, only to a person or entity to whom this Lease is being transferred or assigned, whereupon such Improvements shall become the property of the holder of the leasehold interest hereunder. Absent such written approval of the City Commission any attempted conveyance, transfer, or assignment of Improvements, to any person or entity, whether voluntary, by operation of law or otherwise, shall be void and of no effect.

16.03 Title to Improvements made upon the Leased Premises by Lessee, and fixtures annexed thereto, shall vest in and become the property of Lessor, at no cost to Lessor and without any instrument of conveyance, upon the expiration of the Term of this Lease or upon earlier termination thereof. Notwithstanding the foregoing, Lessee covenants and agrees, upon Lessor's demand, on or after termination of the Lease, to execute any instruments requested by Lessor in connection with the conveyance of such Improvements. Lessor shall notify Lessee whether or not Lessor intends take title to Improvements, or any portion thereof, as herein provided, at least one hundred eighty (180) calendar days prior to the expiration of the Term of this Lease or earlier termination thereof. Lessor's failure to provide such notice, however, shall not act as a waiver of its rights hereunder; provided that Lessor, within a reasonable time after receipt of Lessee's written request, advises Lessee of its election hereunder. No obligations under this section herein are waived by the termination of this Lease.

16.04 Should Lessor elect not to take title to Improvements, or any portion thereof, as provided in Section 16.03 above, same shall be removed by Lessee, at its sole cost and risk, no later than midnight of the expiration or termination date of the Lease, in compliance with all applicable laws and regulations and, to the degree reasonably possible, the Leased Premises shall be restored to the condition that existed

prior to the construction of same, provided however, that Lessee shall not be required to demolish or remove any building, structure or improvement that was the subject of a Capital Improvement Plan. Should Lessee fail to undertake such removal within ninety (90) calendar days following the expiration or termination of this Lease, Lessor may undertake such removal at Lessee's expense. The performance guarantee, required under this Lease, may not be applied towards any costs incurred by Lessor for such removal.

ARTICLE 17. ENVIRONMENTAL COMPLIANCE

17.01 Lessee agrees that it shall, at its sole expense, comply with all applicable federal, state and local statutes, laws, ordinances, rules and regulations concerning the use and operation of all fuel storage facilities upon the Leased Premises, including, but not limited to, regulations promulgated by the Environmental Protection Agency ("EPA") as well as all inspection, financial liability and inventory control recording requirements of the EPA.

17.02 During the Term of this Lease and any extensions thereof, should changes in applicable statutes, laws, rules or regulations regarding fuel storage facilities and/or dispensing equipment necessitate the removal, modification, or replacement of any component, piping, valves, or connections comprising part of the fuel storage facilities and/or dispensing equipment, potentially including the entire fuel storage facilities, in, on, upon or under the Leased Premises, then such removal, modification, or replacement shall be timely undertaken and performed by Lessee, at its sole cost and expense.

17.03 Lessee shall, in conducting any activity or business on the Leased Premises, including environmental response or remedial activities, comply with all environmental laws, including, but not limited to, those regarding the generation, storage, use, transportation, and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants, and all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Lessee shall not cause the release, or permit its employees, agents, permittees, contractors, subcontractors, sublessees, or others in Lessee's control, supervision, or employment, to release (whether by way of uncapping, pouring, spilling, spraying, spreading, attaching or otherwise), into or onto the Leased Premises or any other location upon or above the Airport (including the air, ground and ground water thereunder and the sewer and storm water drainage systems thereon), any quantity of hazardous substances (as defined or established from time to time by applicable local, state, or federal law and including, among other things, hazardous waste and any other substances that have been or may in the future be determined to be toxic, hazardous or unsafe). To the extent any such release may exceed quantities or volumes permitted by applicable federal, North Dakota or local law, Lessee shall immediately notify the Airport Director. The Lessee, or any occupant of Leased Premises, shall be responsible for compliance with said Act, in the event of any such release.

17.04 Lessee shall remedy any release or threatened release caused by Lessee's operations at the Airport, as described above and, whether resulting from such release or otherwise, remove any hazardous materials, special wastes and any other environmental contamination caused by Lessee on, under or upon the Leased Premises, as may be required by a governmental or regulatory agency responsible for enforcing environmental laws and regulations. Such work shall be performed, at Lessee's sole expense, after Lessee submits to Lessor a plan, approved in writing by the appropriate governmental or regulatory agency (ies) responsible for enforcing such environmental laws and regulations, for completing such work. Lessor shall have the right to review and inspect all such work at any time, using consultants and representatives of its choice, at Lessor's sole cost and expense. Specific cleanup levels for any environmental remedial work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate government or regulatory agency responsible for enforcing environmental laws and regulations.

17.05 Lessee agrees to defend, indemnify and hold harmless Lessor, its elected and appointed officials, officers, agents, contractors, and employees, from and against any and all reasonable losses, claims, liability, damages, injunctive relief, injuries to person, property or natural resources, costs, expenses, enforcement actions, actions or causes of action, fines, and penalties, arising as a result of action or inaction of Lessee, its employees, agents or contractors, in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Leased Premises or Airport, whether or not foreseeable. The foregoing indemnity includes, without limitation, all reasonable costs at law or in equity for removal, clean-up, remediation and disposal required to bring the Leased Premises or Airport to be in compliance with, all applicable environmental laws and regulations and all reasonable costs associated with claims for damages to persons, property or natural resources arising out of Lessee's use and occupancy of the Leased Premises or its operations at the Airport. In the event that Lessor is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Leased Premises caused by the action or inaction of the Lessee, Lessee shall defend Lessor and indemnify and hold harmless Lessor from any reasonable costs, damages, fines and penalties resulting therefrom.

Nothing in this Lease shall prohibit Lessee from pursuing contribution or indemnity for such cleanup costs or remediation by other responsible parties and the Airport Director shall provide reasonable cooperation and coordination in such endeavors.

17.06 In addition to any other rights of access herein regarding the Leased Premises, Lessor shall, upon reasonable notice, have access thereto in order to inspect and confirm that the Lessee is using same in accordance with all applicable environmental laws and regulations. Lessee shall, upon the Airport Director's reasonable demand and at Lessee's sole expense, demonstrate to said Director (through such tests, professional inspections, samplings, or other methods as may be reasonably required by said Director) that Lessee has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, Texas or local law. Qualified independent experts, chosen by Lessee, subject to Lessor's approval, which approval shall not be unreasonably withheld, shall conduct any such tests and assessments. Lessee shall provide copies of reports from any such testing or assessments to Lessor upon receipt. Should Lessee not provide same to Lessor, Lessor may conduct, or cause to be conducted, such tests, inspections, samplings, and assessments, and Lessee shall reimburse Lessor for all costs of such actions, no later than thirty (30) calendar days following receipt by Lessee of invoices therefor. Lessor reserves the right to conduct any of the above actions, at the Airport Director's discretion, when in the opinion of same, additional or supplemental assessments are in Lessor's best interest.

17.07 Lessee, at Lessor's request, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the non-privileged documents and materials Lessee has prepared pursuant to any environmental law or regulation, which may be retained by Lessor or submitted to any governmental regulatory agency; provided, such documents and materials relate to environmental regulatory compliance and pertain to the Airport or the Leased Premises. If any environmental law or regulation requires Lessee to file any notice or report of a release or threatened release of regulated materials on, under or about the Leased Premises or the Airport, Lessee shall promptly submit such notice or report to the appropriate governmental agency and simultaneously provide a copy of such report or notice to Lessor. In the event that any written allegation, claim, demand, action or notice is made against Lessee regarding Lessee's failure or alleged failure to comply with any environmental law or regulation, Lessee, as soon as practicable, shall notify Lessor in writing and provide same with copies of any such written allegations, claims, demands, notices or actions so made.

17.08 The parties to this Lease, including the tenants or sublessees who may enjoy a future right of occupation through Lessee, acknowledge a right and a duty in Lessor, exercised by the Airport Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance or

other activity of the Lessee and its sublessees. To this end, said Director shall have authority to disapprove an activity of the Lessee and/or any sublessee not otherwise expressly permitted under this Lease, on the basis of a risk assessment. The parties understand that Leased Premises are not intended for use involving refining, processing, manufacturing, maintenance (not already required by the Minimum Standards), overhaul, or similar heavy industrial activities entailing use, storage, manufacture, or transport of critical volumes of regulated or hazardous materials or toxic chemicals. For purposes of this Lease, "critical volumes" are those which pose or may pose an unreasonable risk to Airport property, its occupants, employees or the traveling public.

ARTICLE 18. SIGNS

Plans for any signs to be installed on the Leased Premises shall be submitted to the Airport Director for approval prior to installation. Lessee shall neither erect signs nor distribute advertising matter upon Airport Premises, without the prior written consent of the Airport Director. All signage must be in compliance with applicable Airport Development Standards.

ARTICLE 19. REGULATIONS

Lessee's officers, agents, employees, contractors, subcontractors, tenants, and subtenants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

ARTICLE 20. QUALITY OF SERVICES

Lessee shall, at all times, furnish good, prompt and efficient commercial aviation services, in compliance with the applicable Minimum Standards, as may be amended from time to time, adequate to meet demand for same at the Airport, furnish said services on a non-discriminatory basis to all users thereof, and charge non-discriminatory prices for each unit of sale or service; provided, however, that Lessee will be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

ARTICLE 21. TIME OF EMERGENCY

During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with those of the Government lease, shall be suspended.

ARTICLE 22. SUBORDINATION OF LEASE & RIGHT OF RECAPTURE

22.01 This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America and/or the State of North Dakota regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or state funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under lease, or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but, in such event, Lessee may cancel this Lease upon ten (10) calendar days' written notice to Lessor. Notwithstanding the foregoing, Lessor agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, Lessor shall utilize its best efforts to give the maximum possible notice thereof to Lessee. Any portion of the Leased Premises recaptured from Lessee under this provision shall result in a proportionate abatement of rent as of the date the recapture is effectuated.

22.02 Lessor shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for the City's development, improvement, and/or maintenance of the Airport's runways and taxiways; for protection or enhancement of flight operations; or for other development in compliance with any current or future Airport Master Plan and Airport layout plan. In the event of any such recapture, Lessee and Lessor shall execute a writing reflecting a corresponding adjustment to the Leased Premises and rent.

ARTICLE 23. SECURITY

23.01 Lessee shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States or State of North Dakota, regarding Airport security requirements or measures. Additionally, Lessee shall comply with the Airport Security Program, as may be amended from time to time, a copy of which will be provided by Lessor to Lessee request surveillance cameras at all points of access from public areas to security-restricted areas. Airport security officials must be able to access, inspect and monitor such access control system(s) and/or surveillance cameras.

23.02 Lessee shall comply with all current and future mandates of the Transportation Security Administration, of successor agency, for background investigations of its personnel.

23.03 Lessee shall indemnify and hold harmless Lessor, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of North Dakota, by reason of Lessee's failure to comply with any applicable security provision and/or requirement for compliance set forth herein. Lessee is responsible for payment of all such fines and penalties.

ARTICLE 24. DEFAULT AND REMEDIES

24.01 Each of the following shall constitute an event of default by Lessee or its parent company, successor company or related company(ies):

(a) Lessee shall fail to pay any rent as provided for in this Lease and such failure shall continue for a period of ten (10) calendar days after receipt by Lessee of written notice thereof.

(b) Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) calendar days after receipt by Lessee of written notice of same, or if more than thirty (30) calendar days shall be required because of the nature of the default, if Lessee shall fail within said thirty (30) calendar day period to commence and thereafter diligently proceed to cure such default.

(c) Lessee shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

(d) An Order of Relief shall be entered, at the request of Lessee or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

(e) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Lessee and shall not be dismissed within thirty (30)

calendar days after the filing thereof.

(f) Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee and such possession or control shall continue in effect for a period of fifteen (15) calendar days.

(g) Lessee shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter

(h) By operations of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceeding or occurrence described in Paragraphs c through g of this Section 24.01.

(i) Lessee shall voluntarily discontinue its operations at the Airport for a period of ninety (90) consecutive days.

(j) If Lessee sells, transfers or assigns this Lease to or is sold, transferred or assigned this Lease from any entity or organization that have an interest in any other FBO operating at the Airport.

24.02 In the event any default shall occur, Lessor then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, either to terminate this Lease and/or any sublease agreements that Lessee may have, by giving at least five (5) days written notice to Lessee, at which time Lessee will then quit and surrender the Leased Premises to Lessor, but Lessee shall remain liable as herein provided, or enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the Lessor's former estate, expelling Lessee and those claiming under Lessee, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of Lease.

24.03 Lessor's repossession of the Leased Premises shall neither be construed as an election to terminate this Lease and/or any sublease agreements that Lessee may have nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Lessee, or unless such termination is decreed by a court of competent jurisdiction.

24.04 Upon repossession, Lessor shall have the right, at its election, whether or not this Lease and/or any sublease agreements that Lessee may have shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Lessee and Lessor agree that Lessor's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable, and Lessee's and sub lessees' liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the Lessor uses objectively reasonable efforts to comply with said Property Code. Lessor and Lessee agree that any such duty shall be satisfied and Lessor shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate Lessor's damages by: (a) posting a "For Lease" sign on the Leased Premises; (b) advising Lessor's lease agent, if any, of the availability of the Leased Premises; and (c) advising at least one (1) outside commercial brokerage entity of the availability of the Premises.

24.05 In the event that Lessor elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee under this Lease;

second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs and expenses incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Leased Premises.

24.06 If Lessor shall terminate this Lease or take possession of the Leased Premises by reason of a condition of default, Lessee and those holding under Lessee, shall forthwith remove their goods and effects from the Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, Lessor may, without liability to Lessee or those claiming under Lessee, remove such goods and effects and store same for the account of Lessee or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving fifteen (15) days' written notice to Lessee of date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Lessor in its sole discretion may deem advisable. If, in Lessor's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.

24.07 Lessee shall be responsible for all costs of removal, storage and sale, and Lessor shall have the right to reimburse the Airport from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder and shall pay over to Lessee any remaining balance of such surplus sale proceeds.

24.08 If Lessor shall enter into and repossess the Leased Premises as a result of Lessee's default in the performance of any of the terms, covenants or conditions herein contained, then Lessee hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease, and Lessee hereby waives the right, and the right of any party claiming through or under Lessee, to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Lessee, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of the Lease and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.

24.09 All rights and remedies of Lessor herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as deemed desirable.

24.10 If proceedings shall, at any time, be commenced for recovery of possession, as aforesaid, and compromise or settlement shall be effected either before or after judgment whereby Lessee shall be permitted to retain possession of the Leased Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Lease.

24.11 Any amount paid or expense or liability incurred by Lessor for the account of Lessee may be deemed to be additional rental and the same may, at the option of Lessor, be added to any rent then due or thereafter falling due hereunder.

ARTICLE 25. HOLDING OVER

It is agreed and understood that any holding over by Lessee or sub lessee, with Lessor's written consent, at

sole discretion of Lessor, after the termination of this Lease, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, not to exceed six (6) months, upon all the terms and conditions set forth herein, except that rental shall be paid to Lessor by Lessee for all buildings on the Leased Premises at one hundred twenty-five percent (125%) the then current rents in effect as of the end of the Term of this Lease. Lessee shall be liable to Lessor for all loss or damage resulting from such holding over against Lessor's will after the termination of this Lease, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing rental by Lessor, in the event that Lessee fails or refuses to surrender possession, shall not operate to give Lessee any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by Lessor of its right to immediate possession thereafter.

ARTICLE 26. ASSIGNMENT AND SUBLET

26.01 Lessee shall not transfer or assign this Lease or Lessee's interest in or to the Leased Premises, or any part thereof, without having first obtained Lessor's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Commission of the City of Williston, North Dakota. Lessee may not assign or sublet this Lease to any other FBO operating at the Airport or to any entity or organization that has any financial, equity, or ownership interest in any other FBO operating at the Airport. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of Lessee's interest in the Lease shall be by instrument substantially in such form as shall have previously been approved by the City Commission, the consent of Lessor to such pledge or collateral assignment may be given by Lessor acting by and through the Airport Director.

26.02 Lessee shall not sublet the Leased Premises or any part thereof, excluding the leasing and subleasing of hangars under the control of Lessee, without having first obtained the Airport Director's written consent, which will be granted in the Airport Director's sole discretion, and co-signature to any sublease. Failure either to obtain Lessor's prior written consent or to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective. In the event Lessee requests permission to sublease, the request shall be submitted to the said Director prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history, and all other relevant information requested by said Director shall be specified. It is expressly understood and agreed that the storage of aircraft inside any hangar at the Leased Premises pursuant to what is commonly referred to as a "use and occupancy agreement" as part of the permitted FBO services offered at the Airport shall not constitute a sublease which would otherwise be subject to the terms and conditions of this section 26.02.

26.03 Should the subletting of the Leased Premises be approved by Lessor, however, Lessee agrees and acknowledges that it shall remain fully and primarily liable under this Lease, notwithstanding any such sublease and that any such sublessee shall be required to attorn to Lessor hereunder.

26.04 The receipt by the Lessor of rent from an assignee, subtenant or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Lessee from further observance or performance by Lessee of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by the Lessor, unless such waiver is in writing, signed by the Airport Director.

ARTICLE 27. FIRE AND OTHER DAMAGE

27.01 In the event the Premises shall be partially damaged by fire or other casualty through no fault of Lessee, Lessee shall give immediate notice thereof to Lessor and the same shall be repaired, at Lessee's expense, without unreasonable delay, unless Lessee determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until repair, monthly rents hereunder shall abate based on the proportion of the Premises destroyed, or rendered untenable, bears to the total Premises; provided, however, that if said Premises shall be so slightly damaged in any such way so as to be rendered unusable, the rent hereunder shall not cease or be abated during any repair period. In the event that the damage to the Premises, by fire or other casualty, is so extensive that the Premises is rendered wholly unusable, and such damage to the Premises, in the exclusive judgment of Lessor, makes occupancy and use to be impractical, then at the option of the Lessor, and upon notice to Lessee, this Lease, as it applies to said Premises, shall cease, and the rent hereunder shall be apportioned and paid up to date of such damage. If Lessee elects to restore the Premises, Lessee shall notify Lessor of such intention within thirty (30) calendar days of the date of the damage, otherwise the Lease, as applicable to said Premises, shall be deemed canceled and of no further force or effect.

27.02 Lessee's obligations to rebuild or repair under this Article shall, in any event, be limited to restoring said Premises to substantially the condition that existed prior to the commencement of improvements, if any, performed by Lessee and shall further be limited to the extent of the insurance proceeds available to Lessee for such restoration. Lessee agrees that if Lessee elects to repair or rebuild as set forth in this Article, then Lessee will proceed with reasonable diligence, at its sole cost and expense, to rebuild, repair and restore its improvements, signs, fixtures, furnishings, equipment, and other items provided or installed by Lessee in or about the Leased Premises in a manner and to a condition at least equal to that which existed prior to the damage or destruction.

ARTICLE 28. LAWS AND ORDINANCES

Lessee agrees to comply promptly with all laws, ordinances, orders and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, security, environmental, use and business operations. Lessee shall comply with all Federal, State, and local regulations concerning its operation on the Airport and shall indemnify and hold harmless Lessor, its officers, employees, and contractors from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States, the State of North Dakota, or any other governmental agencies, or their successor agencies, with jurisdiction over the Airport by reason of Lessee's failure to comply with the terms of this Article or with any other terms set forth in this Lease .

ARTICLE 29. TAXES AND LICENSES

Lessee shall, at its sole cost and expense, pay on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, which are now or may hereafter be levied upon the Lessee, Leased Premises, the business conducted thereon or upon any of Lessee's property used in connection therewith including, but not limited to, any possessory interest taxes. Lessee shall also maintain and provide to the City upon request, in current status, all Federal, State, and local licenses and permits required for the operation of its business.

ARTICLE 30. NONDISCRIMINATION & AFFIRMATIVE ACTION REGULATIONS

30.01 Any discrimination by Lessee, its sublessees, agents or employees, based on race, color, creed, sex, age, religion, national origin or handicap, in employment practices, use of or admission to the Leased Premises, is prohibited.

30.02 Lessee for itself, its heirs, representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the Leased Premises, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

30.03 Lessee for itself, its representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (a) no person, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, in the use of said facilities; (b) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex, age, religion, national origin or handicap shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination; and (c) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

30.04 Lessee agrees that it will comply with applicable statutes, Executive Orders, and such rules as are promulgated by applicable state, federal or municipal agencies to assure that no person shall be excluded from participating in any activity conducted with or benefiting from Federal assistance on the basis of race, creed, color, national origin, sex age, or handicap. Lessee, is successors and assigns, shall be obligated to comply with the provisions of this Section 30.04 for the period during which Federal assistance is extended to the Airport during the Term of this Lease, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures of improvements thereon. In these cases, this Section 30.04 shall apply to Lessee, its successors and assigns, through the later of: (a) the period during which such property is used by Lessor, its successors and assigns for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which Lessor, its successors or assigns, retains ownership or possession of the Leased Premises.

ARTICLE 31. WAGES and EMPLOYMENT

Lessee shall pay at a minimum the prevailing wage for the applicable Williston, North Dakota job market to employees of its operations hereunder. All employees must be legally employable in the United States.

ARTICLE 32. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the control of the party obligated (the financial inability of the party excepted), performance of such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this paragraph shall excuse Lessee from the prompt payment of any rental except as may be expressly provided otherwise in this Lease; and further provided that the party relying on this paragraph shall provide written notice to the other party notifying such other party of the force majeure event promptly after such force majeure event, and shall proceed with all diligence to complete the performance of the act upon the cessation of the force majeure event.

ARTICLE 33. ATTORNEYS' FEES

In the event that Lessor or Lessee brings an action under this Lease, each party shall be responsible for their own attorneys' fees incurred in the defense or prosecution thereof.

**ARTICLE 34.
SEVERABILITY**

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, it is the parties' intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Lease, a clause or provision, as similar in terms to such illegal, invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

**ARTICLE 35.
AMENDMENT**

This Lease, together with its authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Lease shall be binding, unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

ARTICLE 36. NOTICES

Notices to City provided for in this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

City of Williston
PO BOX 1306
Williston, ND 58802

And notices to Lessee shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

or to such other respective addresses as the parties may designate to each other in writing from time to time.

ARTICLE 37. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than one of Lessor and Lessee.

**ARTICLE 38. CUMULATIVE
REMEDIES NO WAIVER - NO ORAL
CHANGE**

The specific remedies of the parties under this Lease are cumulative and do not exclude any other remedies to which they may be lawfully entitled, in the event of a breach or threatened breach hereof. The failure of either party ever to insist upon the strict performance of any covenant of this Lease, or to exercise any option herein contained, shall not be construed as its future waiver or relinquishment thereof. Lessor's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach. Further, no waiver, change, modification or discharge by either party of any provision of this Lease shall be deemed to have been made or be effective, unless in writing and signed by the party to be charged. In addition to other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however, to other provisions herein.

ARTICLE 39. CONFLICT OF INTEREST

Lessee acknowledges that it is informed that the City of Williston and its Ethics Code prohibit a City officer or employee from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, Lessee warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City.

ARTICLE 40. GENERAL PROVISIONS

40.01 Incorporation of Exhibits. All exhibits referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

- EXHIBIT 1: Leased Premises
- EXHIBIT 2: Airport Development Standards
- EXHIBIT 3: Minimum Standards (June 2018 Draft)

40.02 Incorporation of Required Provisions. Lessor and Lessee incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

40.03 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Leased Premises.

40.04 Removal of Disabled Aircraft. Lessee shall promptly remove any disabled aircraft that is in the care, custody, or control of Lessee from any part of the Airport (other than the Leased Premises) (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such storage areas as may be designated by the Airport Director. Except as to aircraft subject to bailment and/or for which Lessee is owed money from a customer, Lessee may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by Lessor. If Lessee fails

to remove any of disabled aircraft promptly, the Airport Director may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, the obligation to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations and Lessee agrees to reimburse Lessor for all costs of such removal, and Lessee further hereby releases Lessor from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by Lessor unless caused by the negligence or recklessness of Lessor.

40.05 Airport Access License/Permit. Lessor reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas and to levy directly against Lessee or its suppliers a reasonable regulatory or administrative charge (to recover the cost of any such program) for issuance of such Airport access license or permit.

40.06 Compliance with 14 CFR Part 77. Lessee agrees to comply with the notification and review requirements covered in Part 77, Title 14, Code of Federal Regulations, FAA Regulations, in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

40.07 Reservations re: Airspace and Noise. There is hereby reserved to Lessor, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.

40.08 Inspection of Books and Records. Each party hereto, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours and such is not prohibited by the U.S. Government.

40.09 Independent Contractor. Lessee is not an employee or agent of City by reason of this Lease, or otherwise. Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Airport, or lease of property herein.

40.10 Authority of Agreement. Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Lease, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Lease by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Lease will constitute a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

40.11 Authority of the Airport Director. The Airport Director shall administer this Lease on behalf of Lessor. Whenever this Lease calls for approval by Lessor, such approval shall be evidenced, in writing, by either the Airport Director or the City Administrator of the City of Williston or their designee. In no event shall this language be considered a waiver by Lessee to object to decisions by the Airport Director which it considers to be arbitrary, capricious or inconsistent with any express obligations to act reasonably set forth herein.

40.12 Consent. Unless stipulated otherwise herein, whenever the consent or approval of either party hereto is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

40.13 Net Agreement. It is the intent and purpose of the City and Lessee that all rental payable by Lessee herein shall be absolutely net to the City so that this Lease shall yield to City the entire rent specified, in each year of this Lease, free of any charges, assessments, impositions or deductions of any kind or

character which may be charged, assessed, or imposed on or against Lessee or the Leased Premises, without abatement, deduction or set-off by Lessee.

40.14 Noise Control. Lessee, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Airport Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Lease Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

40.15 Time is of the Essence. Time shall be of the essence in complying with the terms, conditions and provisions of this Lease.

40.16 Vehicular Parking. Vehicular parking in the areas included in the Leased Premises shall be restricted to parking directly related to Lessee's operations on the Leased Premises by Lessee, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, and suppliers. Access to vehicular parking areas within the Leased Premises shall be coordinated through the Airport's overall parking management program.

ARTICLE 41. AUDIT

Lessee shall keep complete and accurate accounts, records and books pertaining to the lease of the Leased Premises and FBO services rendered in connection with the permitted uses under this Lease, including all expenses, costs and expenditures for the Leased Premises and other information reasonably necessary or pertinent to determine the amounts due and payable under this Lease. Such records may be kept by Lessee at its local office or at the management office for the Leased Premises for seven (7) years after each annual financial statement has been delivered to Lessor. Such books and records shall be made available to the City and its agents (or copies shall be furnished at the City's request) at all times, on not less than five (5) business days' notice, during regular business hours for examination and audit. If such books and records are located outside the City of Williston, Lessee shall make them available to the City within the City of Williston.

Lessor shall have the right during each calendar or fiscal year to authorize an audit of Lessee's records pertaining to its operation on the airport. Such audits shall be undertaken by the Lessor's staff or a firm of certified public accountants, satisfactory to Lessor. The cost of such audit shall be paid by Lessor, unless the results of such audit reveal a discrepancy of more than three percent (3%) between the amounts that should have been paid under this Lease and the amounts actually paid during any calendar or fiscal year. In case of such discrepancy, the full cost of the audit shall be paid by Lessee. Any additional auditing expense resulting from Lessee's inability or refusal to provide records as required by the auditor shall be paid by Lessee. The Lessee shall forthwith pay to the Lessor the full amount of fees due based upon the results of the audit if a discrepancy exists. This amount shall be paid within thirty (30) calendar days of written notice by Lessor.

ARTICLE 42. MOST FAVORED NATION

City covenants and agrees not to enter into any agreement with any FBO which (i) makes substantially similar use of the Airport as set forth in Article 4 herein, and (ii) utilizes substantially similar facilities to that of Lessee, which contains more favorable terms than this Lease, or to grant to any such FBO rights or privileges with respect to the Airport which are not afforded to Lessee hereunder unless substantially the same terms, rights, privileges and facilities are concurrently made available to Lessee.

ARTICLE 43. PARTIES BOUND

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

ARTICLE 44. NORTH DAKOTA LAW TO APPLY

All obligations under this Lease are performable in Williams County, North Dakota, and shall be construed pursuant to the laws of the State of North Dakota, except where state law shall be preempted by any rules, laws or regulations of the United States.

ARTICLE 45. GENDER

Words of either gender used in this Lease shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE 46. CAPTIONS

The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Lease.

ARTICLE 47. ENTIRE AGREEMENT

This Lease comprises the final and entire agreement, including all terms and conditions thereof, between the parties hereto, and supersedes all other agreements, oral or otherwise, regarding the subject matter hereof, none of which shall hereafter be deemed to exist or to bind the parties hereto. The parties intend that neither shall be bound by any term, condition or representation not herein written.

IN WITNESS WHEREOF, the undersigned have duly executed this Lease as of the dates set forth below.

City Of Williston

PO BOX 1306

Williston, ND 58802

