

CONCURRENT USE GROUND AGREEMENT BY AND BETWEEN

THE MINOT INTERNATIONAL AIRPORT OF

THE CITY OF MINOT, NORTH DAKOTA

AND

AEROPORT HOBBY SHOPPE AND MINOT AVIATION FOR

LOT 1, BLOCK 1

(Westside S 40' Lot 4, N 60' Lot 5)

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## CONCURRENT USE GROUND AGREEMENT

THIS CONCURRENT USE GROUND AGREEMENT ("Agreement"), made this 1<sup>st</sup> day of February, 2020 the "Effective Date", by and between **THE MINOT INTERNATIONAL AIRPORT OF THE CITY OF MINOT, NORTH DAKOTA**, a North Dakota municipal corporation part of the first part, hereinafter called the "CITY", whose address is P.O. Box 5006, Minot, ND 58702-5006 and the **AEROPORT HOBBY SHOPPE** and **MINOT AVIATION**, whose address is 2112 North Broadway, Minot, ND 58703, parties of the second part, hereinafter collectively referred to as the "LESSEE",

### **WITNESSETH:**

**WHEREAS**, the CITY is the owner and operator of the Minot International Airport (the "Airport"), located in the County of Ward, State of North Dakota, and operates the Airport for the promotion, accommodation, and development of air commerce and air transportation; and

**WHEREAS**, LESSEE and CITY entered into certain Agreements that have been terminated, wherein LESSEE leased from the CITY certain real estate, namely LOT 1, BLOCK 1 (Westside S 40' Lot 4, N 60' Lot 5), described and defined more particularly herein as the "Premises"; and

**WHEREAS**, LESSEE owns a building constructed on the Premises;

**WHEREAS**, the Parties now desire to enter into a new Agreement for the Premises for such purposes and under the terms and conditions hereinafter contained;

**NOW, THEREFORE**, in consideration of the premises provided herein, the rights and privileges and the mutual covenants and agreements hereinafter contained and other valuable consideration, the sufficiency of which is acknowledged by all parties, their successors and assigns, as follows:

1. Premises and Base Term.
  - a. Premises. The "Premises" is defined as that parcel of land designated on the plot plan attached hereto as Exhibit "A" and more particularly described in the attached Exhibit "B". Exhibits A and B are hereby made a part of this Agreement and incorporated herein by reference.
  - b. Base Term. The CITY, for and in consideration of the covenants and agreements hereinafter to be kept and performed by the LESSEE, HEREBY leases the Premises to the LESSEE for and during the term of TWELVE (12) MONTHS (the "Base Term") commencing on the 1<sup>st</sup> day of FEBRUARY 1, 2020, and ending on JANUARY 31, 2021 (the "Expiration Date"). Said parcel of land is hereinafter referred to as the "Premises".

2. Base Term Rent. In consideration thereof, the LESSEE, joint and severally, agrees that it will pay an annual rent of forty cents (\$0.40) per square foot per annum for a total square footage of TEN THOUSAND (10,000) square feet for a total amount of FOUR THOUSAND DOLLARS (\$4,000.00) per year for the Base Term commencing on the date identified in Section 1 above, in equal monthly installments, payable on or before the first (1<sup>st</sup>) day of each month of this Agreement. All amounts not paid by the Lessee when due shall bear interest at 1.5% per month.

3. Renewal Option. Unless CITY has notified the LESSEE in writing at least one hundred twenty (120) days prior to the expiration of the Base Term or the previously renewed term that it elects not to renew or extend this Agreement, LESSEE and CITY agree, that upon the prior mutual agreement of land rental rates, that LESSEE may be granted an OPTION TO RENEW THIS AGREEMENT ON A YEAR-TO-YEAR BASIS, which shall hereinafter be referred to as the "Renewal Option". The term of each Renewal Option shall be referred to as a "Renewal Term". All amounts not paid by the Lessee when due shall bear interest at 1.5% per month. The parties must mutually agree to the land rental rate and execute the Renewal Option a minimum of ninety (90) days prior to the expiration of the Base Term. In the event that the Renewal Option is not executed in the timeframe identified, the Renewal Option provision will be cancelled and the Agreement will expire at the end of the Base Term, or present Renewal Term, under the terms and conditions identified herein.

4. Holding Over. Should LESSEE remain in possession of the Premises after the expiration of this Agreement, without having executed a new Agreement, such holding over shall be subject to obligations of the Agreement applicable to a month-to-month tenancy, and to all applicable federal, state, and local laws. Monthly rent will be equal to existing rent at that time of expiration and during holding over period.

5. Use of Premises. The LESSEE hereby covenants and agrees that the LESSEE shall maintain the structure presently existing on said property (collectively, the "Improvements"). Attached and incorporated herein as Exhibit C are photographs and/or diagrams illustrating the Improvements and identifying the portion of the Improvements to be used as an airport hangar, and the portion of the Improvements to be used for commercial retail activities. LESSEE agrees that portion of the Improvements consisting of an airport hangar shall be separated and distinct, with security restricted access from the commercial retail portion of the Improvements in accordance with all applicable Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) regulations and fire and building codes. It is specifically understood and agreed that any concrete or asphalt ramp areas located on the driveway adjacent to the Premises that are included in the description of the leased Premises may be used by LESSEE for short term airplane parking and for ingress and egress to the Premises. This permission does not extend to the tie-down aircraft parking on the GA Ramp, or any location where the CITY charges for parking or that is not included in the leased Premises.

- a. Airport Hangar. The portion of the Improvements containing the airport hangar shall be used by Minot Aviation only for the purpose of conducting aeronautical activities as defined by the FAA and confirmed by the Minot Airport Director.

- b. Commercial Retail Space. The portion of the Improvements containing the commercial retail space shall be used only for commercial retail activities as approved by the Minot Airport Director and for no other purpose whatsoever, unless LESSEE shall have first obtained prior written authorization from CITY for any change in such specific use, which authorization may be withheld completely at the discretion of the CITY.

This “concurrent use” is contingent upon the approval of the Minot Airport Director and the Federal Aviation Administration (FAA) for this proposal, and in the event any additional requirements for a concurrent use agreement are required by the Airport Director or the FAA, the parties hereto agree and stipulate that the LESSEE shall be granted ninety (90) days in which to bring their operation into compliance with any specific FAA requirements for the concurrent use agreement as outlined. It is understood that the airside portion of the premises must be utilized for aeronautical purposes in accordance with the most current FAA guidance on the subject and as interpreted by the Airport Director.

6. Minimum Standards. For the conduct of its business on the Airport, the LESSEE covenants that it is at the time of execution of this Agreement, and will be throughout the duration of this Agreement, in compliance with the Airport Minimum Standards ("Minimum Standards") as approved by the City. The Minimum Standards are incorporated herein by reference and a copy of the current Minimum Standards may be obtained from Airport Administration. The LESSEE agrees to comply with the provisions of amendments to the Minimum Standards as may be amended by the CITY from time to time during the Term of this Agreement. Notwithstanding any other provision set forth herein, non-compliance with the Minimum Standards as they exist at the time of execution or as they may be amended from time to time, shall constitute grounds for termination of this Agreement by the CITY following written notice and a reasonable cure period.

7. Sales Commission from Lessee’s Gross Revenues in addition to rent. The Lessee shall, on or before the fifteenth day of each calendar month, pay to the City, without further demand an amount equal to two percent (2%) of the Gross Revenues received by Lessee in the operation of the Aeroport Hobby Shoppe and Minot Aviation.

- a. Together with its sales commission payment, Lessee shall submit to City a statement, in such form as City may reasonably require, and signed by an authorized representative of the Lessee, which sets forth the total amount of Gross Revenues so derived, the concessionable and the net amount to the City. Lessee also agrees, upon written request by the City and within five (5) business days, to make available the appropriate documents in Lessee's possession that are reasonably required to conduct an audit of the information provided.
- b. For purpose of calculating any fees and charges payable to the City, the term "Gross Revenues" shall mean all income or receipts from any source whatsoever, derived by Lessee or any agent, or authorized subcontractor,

sublessee, or sub-licensee of Lessee from business activities described in the Use of Premises and Additional Use of Premises set forth above. Gross Revenues shall not include:

- i. The amount of any separately stated federal, state or local sales or use taxes imposed upon the Lessee, its agents, or authorized subcontractors or sub-licenses or their customers and collected by Lessee, its agents or authorized subcontractors or sub-licensees; and
- ii. The amount of any landing fees, apron tie-down fees, or other fees collected for or on behalf of the City by Lessee or its agents or authorized subcontractors and sub licensees and paid by Lessee to the City.

All computations in the determination of Gross Revenues shall be made in accordance with the provisions of this Agreement.

8. Ownership of Building. Removal or Renegotiation with Subsequent Lessee. The structures and improvements, including fixtures, constructed and installed by LESSEE on the Premises shall remain the property of the LESSEE until the termination of this agreement. Upon termination of this agreement, whether at the expiration of the term or earlier in the event of default or purchase, CITY may require LESSEE to either:

- a. Remove the structures, including all fixtures and the like attached thereto and any other improvements installed by LESSEE within one hundred twenty (120) days after termination at LESSEE's expense. After the expiration or termination of this agreement, LESSEE shall restore the Premises to its original condition, or to a condition acceptable to the CITY. Payment of rent shall be made during such period of removal and restoration; or
- b. Leave the structures on the premises which any and all structural property will automatically revert to the CITY should it remain on the premises one hundred twenty (120) days after termination; or
- c. Sell the structures and improvements to an interested buyer in which the buyer and CITY will negotiate a new Agreement.

9. Building Plans. Building plans and specifications for the building to be constructed by LESSEE on the Premises shall require approval of the CITY prior to the commencement of construction. Any modifications or alterations in such building plans or specifications shall require the LESSEE to request and obtain the written approval of CITY.

10. Assignment or Subletting. This Agreement shall not be assigned nor the Premises nor any part thereof sublet or re rented by LESSEE except with the written permission of the CITY.

11. Use by LESSEE Only. The Premises, or any part thereof, shall not be used, nor will LESSEE permit it to be used, by any person, agency, group, or corporation other than LESSEE without the prior permission of the CITY which consent will not be unreasonably withheld.

12. LESSEE's Obligation for Utilities, Taxes, and Special Assessments. It is expressly understood that CITY is under no obligation, nor will at any time be under any obligation whatsoever, to furnish any labor, materials, work, heat, electricity, water, gas or services, utility, or otherwise, to LESSEE and the LESSEE shall be solely responsible for the payment of all utility charges. In addition, LESSEE shall be responsible for and shall pay any and all taxes imposed on the Leasehold interest pursuant to North Dakota law. Payment of any special assessments attributable to the Premises shall be LESSEE'S responsibility.

13. Quiet Enjoyment. The CITY covenants with the LESSEE that upon performing the obligations herein provided on its part to be performed, the LESSEE shall have quiet enjoyment and peaceful possession of the Premises during the Base Term of this Agreement and any Renewal Terms.

14. Law Governing/Compliance with Laws. All provisions hereof, and words and phrases used herein, shall be governed and construed under the laws of the state of North Dakota; LESSEE shall comply with all applicable laws, ordinances, rules, and regulations of the Federal Aviation Administration, the Department of Homeland Security, the City of Minot, and any other governmental entity or agency having jurisdiction over the Premises.

15. Insurance, Liability, Indemnity, and Waiver of Subrogation.

- a. LESSEE agrees to indemnify and save forever harmless the CITY from any and all claims for damages of any kind or nature which may hereafter be made against CITY on account of any personal injuries or property damage arising out of or resulting from LESSEE's use of the Airport or the Premises, and for this purpose LESSEE hereby agrees to carry and keep in force Worker's Compensation coverage as required by the laws of North Dakota and public liability and property damage insurance, all policies to be acceptable to CITY who shall be named as an additional insured (with the sole exception of "workers compensation insurance") and furnished a copy of each policy or policies, as follows:
  - i. Airport Premises Liability: Combined single limit bodily injury and property damage, \$1,000,000 for each occurrence;
  - ii. Products/Completed Operations Liability: Combined single limit bodily injury and property damage, \$1,000,000 for each occurrence and in the annual aggregate;
  - iii. Owned, Hired, and Non-Owned Liability: \$1,000,000 for each occurrence;

- iv. Ground Hangar Keepers Liability: \$1,000,000 each aircraft and \$1,000,000 for each occurrence; with a maximum deductible of \$10,000 each and every loss;
  - v. Workers Compensation Insurance: statutory, in compliance with North Dakota law; and
  - vi. Pollution Liability: \$1,000,000 for each occurrence.
- b. CITY hereby expressly disclaims any and all liability for any and all losses, damage, and/or claims to the aircraft, vehicles, and/or personal possessions of the Lessee or for aircraft vehicles, and/or personal possessions of other which are in the care, custody, and control of LESSEE, including but not limited to the loss of use and/or diminishment of value. CITY shall not be required to carry insurance on any of LESSEE'S property or to replace in whole or in part any of LESSEE'S property.
  - c. For and in consideration of the execution hereof, the parties hereto do each herein and hereby release and relieve the other and waive their entire claim of recovery for loss or damage to property arising out of or incident to fire, lightning and other perils included in the All Risk property insurance coverage endorsement to the extent that said claims, actions, damages liability and expense are covered by insurance of either party, whether due to negligence of any said parties, their agents, or employees or otherwise so coverable by insurance. The parties agree to cause such release and to endorse such provisions in insurance policies issued for the respective properties or parties which are the subject of this Agreement.

16. Rules and Regulations. LESSEE hereby agrees to observe and obey all rules and Regulations promulgated, from time to time, by CITY governing conduct on and operations at the Airport and use of its facilities except that CITY agrees that any such rules and regulations so promulgated shall not be inconsistent with any legally authorized rule or regulation of the FAA that may be binding on the CITY. This will include, but not be limited to, any rule or regulation concerning the ground rent provided herein being credited by any percentage paid by a fixed-base operator.

17. CITY Operates Airport. Nothing in this Agreement shall be construed to prevent CITY from taking any action it considers necessary to protect the aerial approaches to its Airport from obstructions, or to keep CITY from preventing LESSEE from erecting, or permitting to be erected on the leased premises, any building, structure or obstruction which, in the opinion of CITY, would limit the usefulness of the Airport or constitute any kind of a hazard to aircraft.

18. LESSEE'S Personnel and Invitees. It is expressly understood that the operations of LESSEE, its personnel and invitees shall be conducted in an orderly and proper manner and so as not to annoy or be offensive to others at the Airport, and CITY shall have the right to complain to LESSEE as to the demeanor, conduct and appearance of LESSEE's personnel and

those doing business with them, whereupon LESSEE will take all steps necessary to remove the cause of the complaint.

19. Condition of Premises - Acceptance and Vacation. LESSEE acknowledges that the Premises is accepted as complete, and in good order by the LESSEE, in the condition in which it now is, and that the LESSEE will not do or permit anything to be done which would deface, damage or deteriorate the value thereof, and LESSEE agrees that it will leave the Premises in a condition satisfactory to CITY if and when it vacates said Premises. LESSEE shall keep the Premises clean and shall dispose of all debris and other waste matter which may accumulate in acceptable containers, with proper covers, for waste within the building or buildings, on said Premises.

20. Remedies Cumulative. No remedy herein or elsewhere in this Agreement or otherwise by law, statute, or equity, conferred upon or reserved to CITY or LESSEE shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

21. Material Breach. A material breach of this Agreement includes, but shall not be limited to, the occurrence of any of the following events:

- a. LESSEE's Failure to Make Payment. Failure to pay any and all rent, fees, and charges when due, or failure to comply with any other financial obligation of the LESSEE to the CITY under this Agreement shall be considered a material breach that subjects this Agreement to termination at the CITY's election.
  1. If the CITY provides notice of payment default more than two (2) times within any twelve (12) month period, the CITY reserves the right to require the Lessee to prepay an amount equal to one hundred fifty (150%) percent of twelve (12) months' rent payments upon thirty (30) days' written notice from which LESSEE's future payments of rent, fees, and charges shall be deducted until the balance is exhausted at which time LESSEE shall resume making all payments pursuant to the terms of this Agreement.
- b. LESSEE's Failure to Utilize the Premises for an Aeronautical Purpose. LESSEE's failure to use the facility on the Premises for an aeronautical use as defined by the FAA and approved by the Airport Director shall be considered a material breach that subject this Agreement to termination.
- c. LESSEE's Failure to Maintain the Property. LESSEE's failure to maintain the property in compliance with all federal, state, and local building code requirements, keep the Premises in good working order, and maintain a clean, orderly appearance shall be considered a material breach that subjects this Agreement to termination.

- d. Falsification of Reports. If LESSEE or an agent of LESSEE shall falsify any report required to be furnished to CITY pursuant to the terms of this Agreement, the same shall be considered a material breach that subjects this Agreement to termination.
- e. Bankruptcy/Insolvency. If LESSEE or any guarantor of this Agreement shall become bankrupt or insolvent; or file any debtor proceedings such as a petition for bankruptcy, insolvency, or reorganization; or be subject to the appointment of a receiver or trustee of all or a portion of LESSEE's businesses and assets, including the structures located on the Premises; or allows this Agreement to be taken under any writ of execution, the same shall be considered a material breach that subjects this Agreement to termination.
- f. Abandonment of the Structures and Premises. If LESSEE shall effectively abandon its assets on the Premises, the same shall be considered a material breach that subjects this Agreement to termination. Abandonment for purposes of this Agreement shall be considered to have occurred if CITY does not receive rent or commissions from LESSEE for three (3) consecutive months and there is evidence showing an intention on behalf of LESSEE to relinquish all rights and interests in the Premises such as removing personal property from the Premises, and effectively quitting the Premises by ceasing business and aeronautical activities on site.

22. CITY Entitled to Compensation for Material Breach. In the event suit shall be brought for recovery of possession of the demised premises, for the recovery of rent or any other amount due under the provisions of this Agreement or because of the breach of any other covenant herein contained on the part of LESSEE to be kept or perform and a breach shall be established, LESSEE shall pay to CITY an expenses incurred therefor, including a reasonable attorney's fee, together with interest on all such expenses at the rate of 18% per annum from the date of such breach of the covenants of this Agreement.

23. City May Cure Default On Behalf of LESSEE. LESSEE may, at its option, instead of exercising any other rights or remedies available to it in this Agreement or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of LESSEE herein and the amount so spent, and costs incurred, including attorney's fees in curing such default, shall be paid by LESSEE as additional rent, upon demand.

24. Termination.

- a. Mutual Agreement: This Agreement may be terminated by mutual consent of both Parties executed in writing.
- b. Termination for Cause/Material Breach: Either Party may terminate this Agreement for cause in the event of a material breach of this Agreement. Upon any material breach of this Agreement, the non-breaching party shall have the right to terminate this Agreement by delivering written notice to the

breaching party of the material breach and affording the breaching party thirty (30) days in which to cure their breach. If the breaching party cures the material breach within the thirty (30) day period, the notice of breach shall be automatically withdrawn. If the breaching party fails to cure the material breach within the thirty (30) days period, the non-breaching party shall have the right to terminate this Agreement, effective with not less than ten (10) days further written notice to the defaulting party and such notice of termination, if by CITY, shall contain its direction to LESSEE as to how to dispose of the structures and improvements as set forth in paragraph 10 of this Agreement. In the event the material breach, by its nature, is incurable, the non-breaching party is entitled to terminate this Agreement immediately upon giving any written notice to the LESSEE and delivering its direction to LESSEE as to how to dispose of the structures and improvements as set forth in paragraph 10 of this Agreement.

25. Right of Re-Entry. In addition to other rights of remedies it may have in the event of a Material Breach, the CITY shall have the immediate right of re-entry and may remove all persons and property from the demised premises and any personal property located on the Premises may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of LESSEE, all without service of notice or resort to legal process, without being guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

- a. Upon Re-Entry, City May Terminate Agreement or Make Arrangements to Relet the Premises. Should CITY elect to re-enter the demised premises, as herein provided, or should it take possession of the demised premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Agreement or it may from time to time, without terminating this Agreement, make such alterations and repairs as may be necessary in order to relet the demised premises at such rental or rentals and upon such other terms and conditions as CITY, in its sole discretion, may deem advisable.
  - i. Re-Entry and Reletting the Premises. Upon each subletting all rentals received by the CITY from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from LESSEE to CITY; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third to the payment of residue and unpaid hereunder, and the rent due, if any, shall be held by CITY and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by LESSEE hereunder, LESSEE, upon demand shall pay such deficiency to CITY. No such re-entry or taking possession of the demised premises by CITY shall be construed as an election on its part to terminate this Agreement unless a

written notice of such intention is given to LESSEE or unless the termination thereof be decreed by a court of competent jurisdiction.

- ii. Re-Entry and Termination. Notwithstanding any such reletting without termination, CITY may at any time after such re-entry and reletting elect to terminate this Agreement for such previous breach. Should CITY at any time terminate this Agreement for any such breach, in addition to any other remedies it may have, it may recover from LESSEE all damages it may incur by reason of such breach, including the cost of recovering the demised premises, reasonable attorney's fees, and including the worth at the time of such termination the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Agreement for the remainder of the stated term over the then reasonable rental value of the demised premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from LESSEE to CITY.

26. Airport Development. CITY reserves the right to further change, develop or improve CITY property at the Airport as it sees fit, regardless of the desires or view of the LESSEE, and without interference or hindrance.

27. Airport Maintenance and Snow Cleaning. CITY reserves the right, but shall not be obligated to LESSEE to maintain and keep in repair CITY property at the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LESSEE in this regard. CITY agrees to use reasonable efforts to keep the aircraft landing and parking areas reasonably clear of snow and within ten feet (10') of any leased structure. Without limiting the foregoing obligations, LESSEE shall not store any inoperable equipment unless undergoing maintenance or reconstruction. Unsightly materials not being used or creates a hazard shall be discarded or removed.

28. Event of War or National Emergency. During time of war or national emergency CITY shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if any such Agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the Agreement with the United States Government, shall be suspended.

29. Agreement Subordinate to United States Government Requirements. This Agreement shall be subordinate to the provisions of any existing or future agreement between CITY and the United States, relative to the development, 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 funds for the development of the Airport.

30. LESSEE'S Business on Airport. The LESSEE, on the Premises, shall be diligent in the prosecution of the LESSEE'S business on the said Premises, and will do those things necessary and proper to serve the public fairly in the fields of commercial activities engaged in by the LESSEE, and the LESSEE will conduct its business in such a manner as will not reflect discredit upon the CITY or cause the CITY loss or damage. The CITY will conduct its business

in such a manner as to not reflect discredit upon the LESSEE or cause the LESSEE loss or damage. However, no provision of this Agreement shall be construed to give the CITY power to determine charges or prices to be charged by the LESSEE for goods or services delivered or sold by the LESSEE, but it is understood and agreed that said charges and prices shall not be dissimilar to generally accepted good practice on similar Airports in this area. LESSEE agrees to furnish good, proper and efficient service adequate to meet all the demands for its service at the Airport, to furnish said service at fair, reasonable and non-discriminatory prices as to each unit of sale or service; provided, however, that LESSEE may make reasonable and non-discriminatory discounts, rebates, or other similar type of price reduction to volume purchasers.

31. LESSEE'S Business Records - Public Records. The CITY and its agents shall use due care to treat confidentially all matters pertaining to the LESSEE's business except those things which, by law, must become part of a public record, it being specifically understood that CITY is a public body under North Dakota law and thus is subject to the open records and open meeting laws

32. Federal Aviation Regulations – Discrimination. It is expressly understood by LESSEE and agreed between the parties that:

- a. Nondiscrimination Regarding USOOT Programs. LESSEE for itself, personal representatives, successors in interest, 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 property described in this Agreement for a purpose for which a U.S. 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 applicable requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
- b. Nondiscrimination Regarding Facilities, Improvements, and Federally-Funded Activities. LESSEE for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities and Premises or any activity conducted with or benefiting from Federal assistance, (2) 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, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49 Code of Federal

Regulations, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended, and in compliance with all other applicable Laws and Regulations, and shall obtain such compliance from any sub lessees or other parties holding lower tier agreements.

- c. Affirmative Action. LESSEE assures that it, and/or sub-tenant, will undertake an affirmative action program as required by 14 Code of Federal Regulations Part 152, Subpart E- Nondiscrimination in Airport Aid Program, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered.

Human Rights Law. LESSEE agrees to comply with Section 296, and all other pertinent provisions of Article 15 of the Executive Law (also known as the Human Rights Law) and all other Federal and State statutory and constitutional non-discrimination provisions and agrees to comply with all pertinent provisions of the Americans with Disabilities Act of 1990, and all pertinent regulations pursuant thereto.

- d. Enforcement. In this connection, the CITY reserves the right to take whatever action it might be entitled by law to take in order to enforce these regulations.
- e. Non Exclusive Rights. It is hereby specifically understood and agreed between the parties that nothing herein contained shall be construed as granting or authorizing the granting of exclusive rights to LESSEE or others, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.
- f. Agreement Preserves Compliance. This Agreement shall be interpreted to preserve CITY's rights and powers to comply with Federal and other governmental obligations.
- g. Subordination to Authority's Government Commitments. This Agreement is subordinate to the provisions of any agreements between CITY and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of LESSOR entering into any agreement or participating in any program applicable to the Airport, LESSEE agrees to consent to any such regulated modification.

33. Notices.

- a. All payments, demands and notices required herein shall be deemed to be properly served if sent in writing by regular, certified or registered mail, postage prepaid, to the last address previously furnished by the parties hereto

or through electronic payment or confirmed electronic notification. Until hereafter changed by the parties in writing, notice shall be addressed as follows:

CITY: The Minot International Airport  
305 Airport Road  
Minot, ND 58703

LESSEE: Aeroport Hobby Shoppe, and  
MINOT AVIATION  
2112 North Broadway  
Minot, ND 58703

- b. The date of service of such notice shall be the date such notice is deposited in a post office of the U.S. Post Office Department.
- c. Any substitute address will be the address furnished by each party to the other by giving notice in the manner proscribed herein.
- d. LESSEE waives any demand for possession of the demised premises, and any demand for payment of rent and any notice of intent to re-enter the demised premises, or of intent to terminate this Agreement, other than the notices provided in this Agreement, and waives any and every other notice or demand prescribed by any applicable statutes or laws.

34. Paragraph Headings. Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement

35. Approval or Consent by CITY. Where consent or approval is required (except where clearly stated otherwise), such consent or approval shall not be unreasonably withheld by the CITY

36. Final Agreement. This Agreement supersedes any and all prior understandings of the Parties, oral or written, in connection with the subject matter hereof and is intended by both Parties to be a complete and exclusive statement of their commitments and responsibilities with respect to the subject matter hereof.

37. Amendments. This Agreement may be changed, amended, or modified only with the written consent of both Parties.

38. Severability. If any paragraph of this Agreement, or the application thereof shall, for any reason and to any extent, be found invalid or unenforceable, the invalid or unenforceable provision shall be deemed severed from the remainder of the Agreement, and the remaining paragraphs shall remain in full force and effect to the fullest extent of the law.

39. Termination for Material Breach. Either Party may terminate this Agreement with immediate effect by delivering notice of termination to the other party, if:

- a. The other Party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations under this Agreement and/or
- b. The failure, inaccuracy, or breach continues for a period of five(5) business days after the injured party delivers written Notice of Breach to the breaching party reasonably detailing the breach.

40. Attorneys' Fees. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal, and legal assistant fees, costs and expenses and other professional fees, costs, and expenses whether suit be brought or not, and whether in settlement, declaratory or injunctive action, at trial, or on appeal.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the day and year first above written.

THE MINOT INTERNATIONAL AIRPORT, a public body corporate and politic.

CITY OF MINOT

By: \_\_\_\_\_  
Shaun Sipma, Mayor, City of Minot

Attest \_\_\_\_\_

Its \_\_\_\_\_

AREOPORT HOBBY SHOPPE AND MINOT AVIATION

By: \_\_\_\_\_  
Stewart Lucke, Owner

By: \_\_\_\_\_  
Eva Lucke, Owner

Attest \_\_\_\_\_

Its \_\_\_\_\_



