

**GROUND AGREEMENT**

**BY AND BETWEEN**

**THE MINOT INTERNATIONAL AIRPORT  
OF THE CITY OF MINOT, NORTH DAKOTA**

**AND**

**DON BESSETTE AVIATION INC.**

**FOR**

**LOT 6, BLOCK 9**

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## GROUND AGREEMENT

THIS GROUND AGREEMENT (“Agreement”), made this \_\_\_\_ day of \_\_\_\_\_, 2016 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 **DON BESSETTE AVIATION INC.**, whose address is 2424 NORTH BROADWAY Minot, North Dakota 58703, party of the second part, hereinafter called 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 have previously entered into certain Agreements (the “Existing Agreements”) having varying commencement and expiration dates, which Existing Agreements are identified and described with particularity in the attached Exhibit “A” (LOT 6, BLOCK 9); and

**WHEREAS**, the parties now desire to enter into a new Agreement for the Premises (hereinafter defined) for such purposes and under the terms and conditions hereinafter contained and to terminate the Existing Agreements of the Effective Date hereof;

**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. The CITY, for and in consideration of the covenants and agreements hereinafter to be kept and performed by the LESSEE, HEREBY AGREEMENTS to the LESSEE for and during the term of FIVE (5) years (the “Term”) commencing on the 1<sup>st</sup> day of FEBRUARY, 2016, and ending on JANUARY 31, 2021 (the “Expiration Date”), that parcel of land designated on the plot plan attached hereto as Exhibit “A” and more particularly described in the attached Exhibit “B” legal description, which exhibits are hereby made a part here of and incorporated herein by reference. Said parcel of land is hereinafter referred to as the “Premises”.
2. Base Term Rent.
  - a. In consideration thereof, the LESSEE agrees that it will pay an annual rent of TWENTY SIX CENTS (\$.26) per square foot per annum for a total square footage of FIVE THOUSAND TWO HUNDRED SEVENTY FOUR (5,274) square feet for a total amount of ONE THOUSAND THREE HUNDRED SEVENTY ONE DOLLARS AND TWENTY FOUR CENTS (\$1,371.24) per year for the 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.

3. Renewal Option. 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 for one (1) additional FIVE (5) YEARS RENEWAL OPTION from the expiration of the Base Term granted herein. 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 under the terms and conditions identified herein.
4. Holding Over. Should LESSEE remain in possession of the Premises after the expiration of the Term 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 those structures presently existing on said property (collectively, the "Improvements"), all of which Improvements shall be used only for the purpose of conducting aviation related services and shall be used 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. It is specifically understood and agreed that any concrete or asphalt ramp areas adjacent to the Premises may be used by LESSEE for short term airplane parking and for ingress and egress to the Premises.
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. Ownership of Building, Reversion, or Removal. 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:

- i. 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 the original condition, or to a condition acceptable to the CITY. Payment of rent shall be made during such period of removal and restoration; or
  - ii. Leave the structures on the premises which any and all structural property reverts to the CITY; or
  - iii. Sell the structures and improvements to an interested buyer in which the buyer and CITY will negotiate a new Agreement.
8. 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 concerning such specifications shall similarly require further approval of CITY.
9. Assignment or Subletting. This Agreement shall not be assigned nor the Premises nor any part thereof sublet or re-rented except with the written permission of the CITY.
10. Use by LESSEE Only. The Premises, or any part thereof, shall not be used, nor will LESSEE permit them 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.
11. 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.
12. 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 term of this Agreement or an extension thereof.
13. 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.

14. 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 and furnished a copy of each policy or policies, as follows:
  - i. Hangar keepers liability of \$1,000,000 any one aircraft, \$1,000,000 for each occurrence.
- b. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Default and Overdue Payments of LESSEE.

- a. In the event of any failure of LESSEE to pay any rental due hereunder within ten days after the same shall be due, or any failure to perform any other of the term, condition or covenant of this Agreement to be observed or performed by LESSEE for more than 30 days after written notice of such failure shall have been given to LESSEE, or if LESSEE or an agent of LESSEE shall falsify any report required to be furnished to CITY pursuant to the terms of this Agreement, or if LESSEE or any guarantor of this Agreement shall become bankrupt or insolvent, or file any debtor proceedings or any person shall take or have against LESSEE or any guarantor of this Agreement in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency for the reorganization or for the appointment of a receiver or trustee of all or a portion of LESSEE's or any such guarantor's property, or if LESSEE or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if LESSEE shall abandon the demised premises or suffer this Agreement to be taken under any writ of execution, then in any such event LESSEE shall be in default hereunder, and CITY, in addition to other rights of remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the demised premises and such property 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.
- b. 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. 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 any 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. 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.

- c. 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.
- d. 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 performed, and a breach shall be established, LESSEE shall pay to CITY all 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.
- e. 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 above provided in this Article, and waives any and every other notice or demand prescribed by any applicable statutes or laws.
- f. 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.
- g. All monies due under this Agreement from LESSEE to CITY shall be due on demand, unless otherwise specified, and if not paid when due, shall bear interest at the rate of 18% per annum until paid.

20. 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.
21. 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. Unightly materials not being used or creates a hazard shall be discarded or removed.
22. Event of War or National Emergency. During time of war or national emergency CITY shall have the right to Agreement 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 to the government, shall be suspended.
23. 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.
24. 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 Airport 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.
25. 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.

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

- a. Nondiscrimination Regarding USDOT 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.
- d. 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.

- e. Enforcement. In this connection, the LESSOR reserves the right to take whatever action it might be entitled by law to take in order to enforce these regulations.
- f. 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.
- g. Agreement Preserves Compliance. This Agreement shall be interpreted to preserve LESSOR's rights and powers to comply with Federal and other governmental obligations.
- h. Subordination to Authority's Government Commitments. This Agreement is subordinate to the provisions of any agreements between LESSOR 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 any agreement or participating in any program applicable to the Airport, LESSEE agrees to consent to any such regulated modification.

27. Short Form of Lease. The parties hereby agree to execute a short form of Lease referring to this Lease and suitable for recording.

28. Notices.

- a. All payments, demands and notices required herein shall be deemed to be properly served if sent 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  
   25 Airport Road  
   Minot, ND 58703

LESSEE:                         DON BESSETTE AVIATION INC  
   2424 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.


29. 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.
30. 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.

**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.

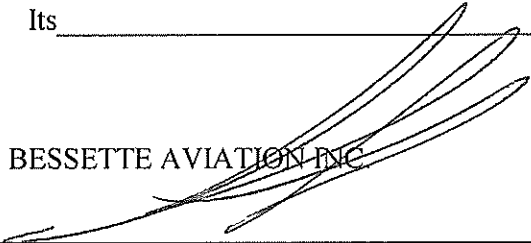
CITY OF MINOT

By   
Chuck Barney, Mayor, City of Minot

Attest 

Its \_\_\_\_\_

DON BESSETTE AVIATION INC

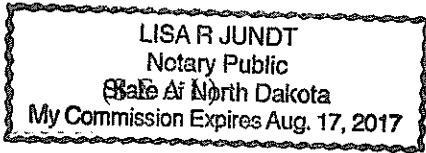
By   
Don Bessette, Owner

Attest \_\_\_\_\_

Its \_\_\_\_\_

STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF WARD )

On this 11<sup>th</sup> day of March, 2016, before me, a notary public in and for said county and state, personally appeared Kelly Mataika and CHUCK BARNEY, to me known to be the MAYOR, respectively, of THE CITY OF MINOT, the entity which is described herein and acknowledged to me that said entity executed the within and foregoing instrument and acknowledged to me that said entity executed the same.



Lisa R Jundt  
Notary Public  
Residing at: Minot, North Dakota  
My commission expires: 8/17/17

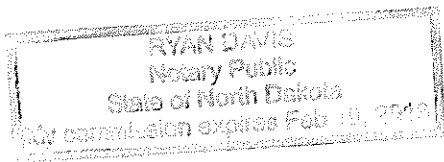
STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF WARD )

On this 15<sup>th</sup> day of FEBRUARY, 2016, before me, a notary public in and for said county and state, personally appeared:

Don Bessette, DON-BESSETTE

to me known to be OWNER of DON BESSETTE AVIATION INC., a CORPORATION which is described herein and acknowledged to me that said partnership executed the within and foregoing instrument and acknowledged to me that said partnership executed the same.

( S E A L )



[Signature]  
Notary Public  
Residing at: Minot, North Dakota  
My commission expires: \_\_\_\_\_

