

**Minot International Airport Ground Lease and
Hangar Development Agreement**

Between

The City of Minot

and

Galen Marsh

For

Lot 5, Block 9

of Minot International Airport 2nd Addition

Effective Date: August 1, 2020

GROUND LEASE AND HANGAR DEVELOPMENT AGREEMENT

THIS GROUND LEASE AND HANGAR DEVELOPMENT AGREEMENT (“Lease” or “Agreement”) was made effective on this **1st day of August, 2020** (“Effective date of this Lease”), is by and between the City of Minot as lessor (“City” or “Lessor”) and Galen Marsh as lessee (“Lessee” or “Tenant”).

WITNESSETH:

WHEREAS, the City is a public body charged with the operation of the Minot International Airport (“Airport”), located in the City of Minot, North Dakota;

WHEREAS, the parties hereto wish to enter into **this Ground Lease and Hangar Development Agreement** for ground/land on which Lessee constructed a building to support Lessee’s aeronautical activities (see Section 8.), as depicted on **Exhibit A - Development and Leased Premises** (“Premises”);

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

- 1. Premises:** City hereby leases to the Lessee the land located and more particularly described in the attached and incorporated **Exhibit A**. The Premises includes approximately 5,714 square feet of land, together with easements for ingress and egress, and parking areas. Lessee, in addition to the Premises, shall be entitled to the general use, in common with others, of all airport facilities made available for use to the general public. For purposes of this Agreement, “airport facilities” shall include runways, taxiways, public ramps, roadways, sidewalks, navigation and terminal aids, lighting facilities, terminal facilities, or other public use facilities that have been constructed by the City and are the direct control of the City.
- 2. Base Term:** The base term of this Lease shall be for a period of twenty (20) years commencing on **August 1, 2020** and expiring on **July 31, 2040**.
- 3. Option Term:** Upon the expiration of the Base Term of this Lease, Lessee must notify the City in writing of its desire to exercise an Option Term for an additional twenty (20) years. Provided the Lessee is in compliance with the terms and conditions of the Lease, and the Lease has not been terminated by either Party, Lessee may request the execution of the Option Term a minimum of twelve (12) months but no more than eighteen (18) months prior to the expiration of the Base Term. Written approval or disapproval will be provided by the City within thirty (30) calendar days of the receipt of such written request. If the request to exercise the Option Term is not made at least twelve (12) months prior to expiration of the base term, the option to exercise the Option Term shall cease and the Lease will expire at the end of the Base Term.
- 4. Improvements:** Lessee shall provide the City with "as built" drawings of any and all new construction (“Improvements”) within thirty (30) days following completion of

construction. City's representative will verify Improved Area and Unimproved Area dimensions of the Premises within thirty (30) days following notice from the Lessee of completion to reconcile the final rental rate pursuant to Paragraph 6.

5. **Project Costs:** Lessee shall be solely responsible for all costs associated with any development and/or construction completed by Lessee on the Premises.
6. **Base Ground Rent and Rental Adjustments:** Rent shall be established at a rate of **twenty-six (\$0.26) per square foot for the square footage of the site of 5,714 square feet.** The Base Rent will be subject to adjustment commencing on the anniversary date of beneficial occupancy every five (5) years with the adjustment being the total of the Consumer Price Index for the Minot region for the previous five-year period aggregated, or an increase of seven percent (7%) whichever is greater.

Rent payment shall be due monthly and payable in advance on the date of issuance of occupancy and on each anniversary date of occupancy through the Term of the Agreement. Rent will be assessed for the gross square footage of the Premises included in the approved site plan identified in Exhibit A. Rent shall be paid to the City at the following address, which address may be changed from time to time upon ten (10) days written notice:

Minot International Airport
305 Airport Road, Suite 216
Minot, ND 58703

Base Rent for the period commencing August 1, 2020 through July 31, 2025 will be: \$0.26 per square foot per year for the hangar footprint, fire code set back, and remainder of the Premises (as shown on Exhibit A).

7. **Agent:** The City appoints the Airport Director, or designee, as its authorized representative and agent to receive all Rent, notices, and reports under this Lease.
8. **Use of Premises:** Lessee shall have the full and free right to ingress and egress from the Premises and use the Premises for the purposes as defined in this Paragraph and for no other purpose without the express prior written consent of the Airport Director or designee.

Lessee may only use the building constructed on the premises for aeronautical activities as defined by the FAA and confirmed by the Minot Airport Director. This shall include the storage of active aircraft and the maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of inactive or nonoperational aircraft. The determination as to whether aircraft is active or operational, or whether it is being stored for an indefinite period of time, shall be made by the Minot Airport Director. The use of the Premises must, at all times, be in compliance with the City's Minimum Standards for Commercial and Aeronautical Operations ("Minimum Standards") as adopted by the City and as may be amended from time to time.

As of the date of the execution of this Agreement, Lessee plans to use this Premises for the following aeronautical activities:

- a. Storage and maintenance of active aircraft, but not the indefinite storage of inactive or nonoperational aircraft, all of which must be either owned, leased, or in the care of the Lessee;
- b. Administrative functions related to Lessee's aeronautical activities;
- c. Pilot and crew operations related to Lessee's aeronautical activities;
- d. Storage of aeronautical parts and related equipment, but not the indefinite storage of parts and equipment; and
- e. Staging area for vehicles/equipment needed for emergency operations.

If Lessee plans to use this Premises for any aeronautical activities other than the ones listed above, they must first receive permission to do so in writing from the Airport Director. If Lessee plans to use the Premises for aeronautical activities other than those listed above for a period longer than 60 days, they must first receive permission to do so from the City Council. If Lessee uses the premises for activities other than the aeronautical activities listed above without first obtaining permission in writing from the City in accordance with this paragraph, their failure to obtain permission shall be considered a material breach of this lease.

Aircraft must be removed from any structure if fueling and/or defueling operations are conducted on the Premises. Aircraft maintenance conducted on the Premises shall be accomplished in accordance with Minimum Standards, City Building and Fire Codes, and adopted rules and regulations.

The City and Lessee will cooperate in developing appropriate plans in the event a future change in the Minimum Standards requires a change to the Premises.

City may, at any reasonable time, contact the Lessee to conduct an inspection to confirm compliance with the terms of this lease, including an inspection to confirm they are using the Premises for an aeronautical purpose.

- 9. Parking:** The Premises may be used for vehicle parking of business-related automobiles, trucks, vans, trailers and similar vehicles without the payment of any additional fees to the City.
- 10. Signs:** Lessee may install ordinance compliant signs or other corporate identification of the business on the Premises at its sole cost, provided, however, that the Lessee or its designee has obtained both the City's permit approval and the Airport Director or designee's prior written approval as to the size, type, design and location of these signs or other corporate identification prior to installation.
- 11. Right to Amend:** If the Federal Aviation Administration ("FAA") or its successor, requires modifications or changes in this Lease as a condition precedent to granting funds for

Airport improvements, Lessee may either: (A) consent to the amendments, modifications, or changes of this Lease as may be reasonably required and to incorporate such required changes into an amendment to this Lease; provided that Lessee will not be required to pay increased Rent or change the use of the Premises or accept a relocation or reduction in size of the Premises until Lessee and the City have fully executed an amendment to this Lease that is mutually satisfactory to all parties; or (B) terminate this Lease as of the effective date of the modifications or changes to this Lease, with no further obligations to City. Lessee shall have thirty (30) days from the date they receive notice of the FAA required modifications or changes in this Lease to advise the City in writing of its election of either A or B as set forth in the preceding sentence. If Lessee fails to deliver notice of its election within thirty days, the City may terminate this Lease as of the effective date of the modifications or changes to this Lease and give notice of termination to the Lessee.

12. Subordination to U.S.A./Federal Aviation Administration/Department of Homeland Security Requirements: This Lease shall be subject and subordinate to the provisions of any existing or future agreement between City and the United States of America, or the State of North Dakota, or any agency thereof, relating to the 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 or operation of the Airport. Lessee shall remain compliant with current and future security rules and regulations and policies of the FAA, the Department of Homeland Security, or any other governmental body having jurisdiction over the Airport.

13. Development of Premises: All plans and specifications for Lessee's development of Premises and all renovations, remodeling, refurbishing and construction upon the Premises must meet all fire, building, and other applicable City, state and federal regulations and code requirements. Lessee shall be solely responsible, without any cost or expense to the City, for obtaining required approvals and permits and City building permits, and for paying all approval and permit fees associated with the development. Upon final completion and acceptance of the Improvements by the City, Lessee must provide one set of 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 Airport Director's office. Lessee shall also provide compliant as-built plans to the City.

Lessee must keep said documents current, by providing one set of "as-built" plans and one electronic copy of all record documents showing any alteration in excess of twenty five thousand dollars (\$25,000) to the Premises during the term of this Lease to the Airport Director, which plans are to be attached to this Lease 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 the City without further written approval by the Airport Director.

Lessee will be responsible for arranging and paying for, at its sole cost all utility connections to the Premises, including but not limited to electricity, natural gas, propane, water, sewer, telecommunications and/or refuse service use associated with the development of the Premises and subsequent operations. Utility usage will be billed directly to the Lessee and payment will be the sole responsibility of the Lessee. Moreover, charges for said

utilities, services and installation thereof shall be paid by Lessee promptly and before any penalty is assessed against Lessee due to non- or late payment.

The Lessee and contractor will coordinate placement of the facility, design, and construction with the City prior to the commencement of construction.

Lessee shall be responsible for causing the Premises, adjacent properties, and the Airport infrastructure to be maintained 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 the construction of the Improvements, the Airport Director or designee may enter upon the Premises during 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 and in accordance with the submitted plans and specifications.

During this Lease, Lessee shall, subject to the terms and conditions of this Lease, have the continuing right to remodel, renovate, and refurbish the Premises subject to the submission of a written request and a complete set of plans to the City and after obtaining the appropriate building permits and approvals and the prior written consent of the City, which consent shall not be unreasonably withheld.

In the event a lien is attached to the Premises or Lessee's leasehold interest, Lessee shall satisfy and remove any such lien within ten (10) calendar days of notice of such lien. Lessee shall notify the City in writing immediately upon the receipt of such notice of a lien being filed and within twenty-four (24) hours of the removal of such lien.

In the event of any foreclosure by any lender, financing agency, or guarantor of its lien or liens on the Improvements constructed by Lessee, fixtures, or trade fixtures 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 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 five (365) calendar days] to sublease any available Improvements.

Lessee covenants that all construction, including all workmanship and materials, will be 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 the 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, 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, elected officials, 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 contractor's or its agents' presence on the Premises or the Airport and performance of any or all of the construction work thereon, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of City, its officers, agents, or employees. Lessee must furnish or require the contractor to furnish insurance as required in Paragraph 21 herein.

14. 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 in a commercially reasonable 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 maintenance to keep the interior and exterior of the Premises in a clean, attractive and sanitary condition at all times. Lessee is responsible to maintain all concrete and asphalt within the Premises. The Lessee shall develop a Snow/Ice Removal Plan for the Premises in conjunction with the City and review and submit it annually to the City. The City will remove snow from the taxi lane accessing the site.

Lessee agrees to remedy any repair and maintenance concerns raised by the Airport Director in writing within thirty days receipt of any such notice of repair. If Lessee disputes any repair and maintenance concerns raised by the Airport Director, he must deliver a written dispute of the same in writing to the City Manager, who shall place the topic on the next regular City Council agenda for discussion and direction from the City Council. If the City Council determines that the repairs and maintenance concerns raised by the Airport Director are warranted, Lessee shall either make arrangements to address the repairs and maintenance concerns or, in the alternative, make arrangements to surrender the Premises to the City within 90 days or such other time frame as can be negotiated in writing by the Parties.

15. 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, 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 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 within twenty four (24) hours to the Airport Director or designee as required by law or regulation.

Lessee shall keep a readily accessible file of Materials Safety Data Sheets (MSDS) for each

Hazardous Substance on site or transported, in accordance with federal and state transportation laws, which file must be posted and immediately available to any City employee or Airport tenant who responds to report of a discharge of a Hazardous Substance on 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 Airport from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits. In the event Lessee fails to fulfill this obligation following written notice and a reasonable cure period, City may perform any such remediation and the direct and indirect cost of such action shall be invoiced to the Lessee plus a fifteen percent (15%) administrative fee. Payment of such charges is due and payable upon demand. The rights and obligations set forth in this Paragraph shall survive the earlier expiration or termination of this Lease.

16. Nondiscrimination/Affirmative Action/Americans with Disabilities Act (ADA):

- a.** Nondiscrimination – General- Lessee for itself, its hangar construction contractor and subcontractors, and as a requirement for any sublessee, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof covenants that:
 - i.** no person on the grounds of race, creed, color, religion, sex, age, national origin, sexual orientation, marital status, disability, 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;
 - ii.** 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, sexual orientation, marital status, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.
- 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 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 – If the Premises are used for a commercial activity, 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, disability, 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 or its designee shall provide similar assurances to Lessee or its designee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E.
- e.** Lessee or its designee at no expense to the City shall comply with any applicable requirements of the ADA as it may be amended, with respect to the Premises.

17. 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 following written notice and a reasonable cure period, may be cause for City's exercising its rights under Paragraph 18 of the Lease. During any period of Lessee's or any sublessee's good faith challenge to any such laws, ordinances, rules, regulations, requirements, orders and directions in a court of competent jurisdiction, as long as Lessee or sublessee is in compliance with the terms and conditions of this Agreement, any such challenge shall not be deemed a breach of this Lease.
- b.** Federal - Lessee shall comply and shall require any sublessee to comply with all applicable 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.** State - Lessee shall comply with all applicable state laws, rules, and regulations of the State of North Dakota.

- d. Local - Lessee shall comply with all applicable City of Minot ordinances, and rules and regulations promulgated by the City and the City's Minimum Standards.

18. Termination:

- a. Termination By Lessee – Subject to Subparagraph 18D, and without limiting any other rights and remedies to which Lessee may be entitled by common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by Lessee at any time after the happening, and during the existence, of one of more of the following events:
 - i. The City's permanent abandonment of the Premises at the Airport;
 - ii. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, that substantially restricts any sublessee from operating for at least one hundred fifty (150) calendar days;
 - iii. The issuance by any court of competent jurisdiction of an injunction that prevents or restrains the use of the Airport or the Premises, that continues for at least one hundred fifty (150) calendar days;
 - iv. The default by the City in the performance of any covenant or obligation on the part of the City to be performed, and the failure of the City to remedy the default for sixty (60) calendar days after receipt from Lessee of written notice to remedy the same; or
 - v. Lessee's decision to terminate the Lease as provided in Paragraph 11(B) of the Lease.
- b. **Termination by City:** Subject to Subparagraph 18D, and without limiting any other rights and remedies to which City may be entitled at common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by City if Lessee:
 - i. Is in arrears in paying the Rent, fees, or other charges due under this Lease for thirty (30) calendar days after written notice, or such other time as may be provided herein;
 - ii. Makes a general assignment for the benefit of creditors;
 - iii. Abandons the Premises. "Abandon" shall mean failing to use the Premises for a period in excess of one (1) year without notice to or coordination with the City. "Failure to Use the Premises" shall be interpreted as failure to conduct the agreed upon aeronautical uses as set forth in Paragraph 8 of this Lease. Failure to furnish utilities to the building in excess of one (1) year will be considered prima facie

evidence of abandonment by the Lessee.

- iv. Otherwise defaults in the performance of any of other material covenants of this Lease and continues the default for thirty (30) calendar days, or such other time as may be provided herein, after receipt of written notice from the City of the default. If the default cannot reasonably be cured within said thirty (30) calendar days or within any other time as set out in the notice of default, Lessee shall be deemed to have cured the default if it commences the remedy process within the applicable period and thereafter diligently prosecutes the same to completion.
- c. **City's Right to Entry Upon Termination:** If City terminates this Lease or if Lessee abandons the Premises, the City may enter upon the Premises. In the event of termination by the City, the Airport Director or designee may enter onto the Premises to remove any and all persons or property from the Premises and place any property in storage for the account of and at the expense of Lessee. In the case of default, if Lessee fails to remove any of its property on the Premises within thirty (30) calendar days following the written notice of default, City may sell the property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Lessee, with the surplus, if any, to be mailed to Lessee at the address herein designated. If City terminates the Lease and re-enters the Premises, the City may relet the Premises and if a sufficient sum is not realized, after paying expenses of the reletting, to pay the Rent and other sums agreed to be paid by Lessee, Lessee agrees to pay any deficiency within thirty (30) calendar days after City's written demand therefore. Lessee further agrees to hold harmless and indemnify City including its officers, agents, elected officials, and employees against, from any loss or damage or claim arising out of City's action in collecting monies owed to it under this paragraph, except for any loss, damage, or claim caused by the negligence or willful misconduct of City or its employees.
- d. **Notice of Termination:** If an event of material default occurs, and after due written notice identifying the default, the defaulting party has failed to cure or failed to commence to cure as called for in the notice of default, the complaining party may at any time after the expiration of any such cure period terminate this Lease by providing written notice of termination to the defaulting party. The Lease will be terminated on the date specified in the notice but not sooner than thirty (30) business days after the postmarked date of the notice.
- e. **Partial Destruction:** If the Premises, the Airport facilities, or the facilities reasonably necessary to operate Lessee's business are partially damaged, due to acts of God or other acts outside the control of the Lessee or City, to the extent that Lessee cannot use the Premises for its intended use, then, at Lessee's option, this Lease may be terminated or instead may be suspended until the damage is repaired. If the Lease is suspended, Lessee and City will mutually agree on a time period for Lessee to repair the damages to the Premises or Improvements, or on a time period for the City to repair the damages to the airport facilities. If the Lease is terminated

or suspended, as provided for herein, the Rent will be abated from the date of the casualty until the effective date of termination or the repair of the Premises, Improvements, or airport facilities, as applicable; provided however, Lessee as the case may be, must use its insurance proceeds to either replace the Improvements or remove all traces of the improvements and return the Premises to a state of raw land. All remaining insurance proceeds will be paid to Lessee, as the case may be. The Airport Director is the sole judge of the extent of damage to the Airport Facilities.

19. Property Rights upon Expiration or Termination:

- a. **Removal of Building and Equipment:** Upon the expiration or earlier termination or expiration of this Lease, City shall, by written notice to the Lessee, permit any Lessee to remove the building and any and all removable furniture, fixtures and equipment and other personal property installed or furnished by the Lessee, so long as it removes same within the time period set forth in the notice, but in no event more than seven (7) calendar days after termination or expiration of the Lease. The City may require any damage to the Premises caused by any Lessee's removal of its property to be repaired at the Lessee's expense within fifteen (15) calendar days after termination or expiration of the Lease. Such repairs must be made to the reasonable satisfaction of the Airport Director. Any fuel storage facilities installed by Lessee must be removed and any required remediation completed prior to vacating the Premises, regardless of circumstances. In the event Lessee does not perform such removal and remediation in compliance with this Agreement, City may contract for such removal and remediation and the direct and indirect cost of such, plus a fifteen percent (15%) administrative fee, will be the sole responsibility of the Lessee and shall be due and payable upon demand.

Notwithstanding the foregoing, if any Lessee fails to remove its building or any removable furniture, fixtures and equipment within seven (7) calendar days after the date determined in the notice, the Airport Director, may at its option, take title to the said property and sell, lease or salvage the same, as permitted by law. Any net expense City incurs in disposing of the any Lessee's personal property shall be billed to the Lessee. The City will provide a written itemized breakdown of the costs recaptured, if any, by the sale, lease or salvage of the property, and the balance due, which is expected to be paid by the Lessee upon receipt of said itemized breakdown.

- b. **Renewal or New Lease - Do Not Remove Equipment:** If City and Lessee exercise Option Terms or negotiate a new Lease after the expiration or earlier termination of this Lease, there shall be no requirement to remove its building, furniture, fixtures and equipment from the Premises.
- c. **Improvements Revert to City:** Except for the right of any Lessee to remove its building or personal property (subject to this Paragraph 19), at the termination of the Lease as called for herein, all permanent buildings and improvements placed or constructed on the Premises by Lessee may be removed in accordance with **Paragraph 19 subparagraph A and subparagraph E** or the buildings and improvements will revert to City. If any of the buildings and improvements are in a

derelict condition and the City must spend taxpayer funds to either remove or repair the same, the Lessee shall be liable for and must compensate the City for any removal or repair fees to either remove or repair the derelict conditions within 30 days of their receipt of a written invoice detailing such fees.

- d. Holdover:** Any holding over by Lessee of the Premises after the expiration or other earlier termination of this Lease shall be on a month-to-month tenancy at sufferance, at a monthly Rent determined at the sole discretion of the City, and subject to surrender upon thirty (30) calendar days' prior written notice.
- e. Removal of Improvements and Redelivery of Premises:** Upon the expiration or earlier termination of this Lease, Lessee shall deliver the Premises to City peaceably, quietly and in as good condition as the same now are or may be hereafter improved by the Lessee, normal use and wear thereof excepted. The Improvements thereon or at the discretion of the City shall be removed by the Lessee at its sole expense and the ground returned to its original condition within the timeframe as indicated in Paragraph 19 subparagraph A. In addition to a landlord's lien provided by the law of the State of North Dakota, the City has a contractual lien on all property of the Lessee on the Premises as security for nonpayment of Rent.

20. City Obligations:

- a.** To operate the Airport as a public airport during the Lease Term, subject to the assurances given by City to the United States Government.
- b.** To make water, gas and wastewater service available to the Premises property on the same basis as it is made available to all business operating at the Airport. Lessee must promptly pay in full all utility usage charges for water, gas, wastewater, electricity and other utilities supplied to the Premises during the Lease Term as the charges become due and payable.

21. Insurance:

- a.** During the term of this Lease, Lessee shall maintain General Liability, Aviation and other required coverages as described herein, with limits equal to the City's current base insurance requirements as shown below, or as the same may be amended from time to time, against liability arising out of this Agreement, or the use, occupancy, or maintenance of the Premises and all areas appurtenant thereto, for property damage, bodily injuries, or deaths of persons occurring in or about the Premises, not necessarily caused by aircraft, or in or about the Airport if caused by the act or omission of Lessee or those for whom Lessee is responsible. In addition, any independent contractor(s) that Lessee may hire shall have limits at least equal to the City's then current base insurance requirements as shown below, or as the same may be amended from time to time. City will provide Lessee with a six (6) month notice as well as a mutually agreed upon length of time within which to comply if the City's base insurance requirements are amended. Lessee shall provide copies of its current Certificates of Insurance for the General Liability, Aviation and other

required coverages prior to execution of the Lease, and again annually as the Certificates are renewed through the term(s) of the Lease.

i. Workers' Compensation (If employees of Lessee are present at Premises):

Medical	Statutory Coverages with "all states" endorsement
Employers' Liability	\$1,000,000 each accident \$1,000,000 Disease Policy Limit \$1,000,000 Disease Each Employee

ii. General Liability:

Includes: Premises, Completed Operations, Product Liability, XCU coverage and Independent Contractors coverage, Contractual Liability (covering the indemnity included in this Agreement) and apply on a per occurrence basis.

Generate Aggregate	\$1,000,000
Products and Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Legal Liability for each occurrence	\$300,000
Property Insurance	TBD Based on Building Value

iii. Automobile Liability:

Combined Single Limit Liability	\$1,000,000
To Include Hired and Non- Owned autos	

iv. Aviation Liability Insurance (recommended) \$100,000 per occurrence

v. Excess or Umbrella Liability:

General Aggregate	\$1,000,000
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vi. Hull Insurance (each aircraft) - current value of aircraft, instruments and accessories

b. Lessee must cause certificate(s) of insurance to be provided to the Airport Director prior to the initial execution of this agreement and annually, thirty (30) calendar days prior to the annual anniversary date of the Effective Date of the Lease, which shows the level and type of insurance. The issuer of the certificate of insurance must provide the City thirty (30) calendar days written notice, by certified mail, prior to cancellation, non-renewal, or material change in the insurance policy(ies) as it relates to this agreement.

c. Both parties will annually assess the level and types of insurance required by the Lease. The City can reasonably increase or decrease the level or types of insurance by giving Lessee notice no less than sixty (60) calendar days prior to the annual anniversary date of the Effective Date of the Lease. Lessee shall have thirty (30)

calendar days to procure the changed insurance and provide written proof of insurance to the Airport Director.

- d. All insurance required by this Lease must be primary insurance and not in excess of or contributing with other insurance which Lessee or its designee may carry. All policies must name City as an additional insured. Lessee shall execute a waiver of subrogation in favor of the City and the Lessee shall name the City as loss payee on the property policy. The applicable insurance policies required by this Lease, must apply separately to City as if separate policies had been issued to Lessee and the City. The amounts of all required insurance policies must not be deemed a limitation of Lessee's covenant to indemnify City, and if Lessee or City becomes liable in an amount in excess of the amount(s) of said policies, then Lessee must indemnify City from the whole thereof, except in the event of negligent or willful misconduct on the part of City, its officers, or employees.

22. Indemnification:

- a. **General:** To the fullest extent permitted by law, Lessee shall indemnify, hold harmless, defend and insure the City, its officers, agents, elected officials, contractors, and employees from and against any and all claims and causes of action, administrative proceedings, judgments, penalties, fines, damages, losses, demands, liabilities, or expenses whatsoever (including reasonable attorney's fees and costs of litigation, mediation and/or administrative proceedings) for reason of damage to property, or bodily injury or death of any persons, which may be brought, alleged, or imposed against the City, its officers, agents, contractors, or employees arising directly or indirectly from or in any way connected with
 - i. Lessee's or Lessee's guests', agents' or employees' presence on the Premises or the Airport;
 - ii. Lessee's or Lessee's guests', agents or employees' performance of services authorized under any agreement with City; or,
 - iii. In any way arising out of Lessee's occupation of the Premises or from its operations on the Premises and on the Airport generally, excepting only that liability as may result from the negligence or the willful misconduct of the City, including its officers, agents, and employees. Lessor shall also be held harmless for damage to the Lessee's property for any loss occasioned by fire, theft, rain, windstorm, hail, or from any other cause whatsoever, whether said cause be the direct, indirect, or merely a contributing factor in producing the loss to any aircraft, automobile, personal injury, parts, or surplus that may be located or stored in hangars, aprons, field, or any other location at the airport,; and Lessee agrees that the aircraft and contents are to be stored, whether on the field or in the hangar, at Lessee's risk. The rights and obligations set forth in this Paragraph shall survive the termination of this Lease.

- b. **Special Claims:** Lessee agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, the City, including its officers, agents, elected officials, contractors, and employees (including but not restricted to the posting of bond and release of attachment) from and against any and all claims in any way arising out of or in connection with the construction, repair, or maintenance work undertaken hereunder by, through or on behalf of Lessee, including but not restricted to attachments, liens or levies, and whether or not the claim is asserted by any party other than Lessee against the City, including its officers, agents, and employees or the Premises or improvements thereon or part thereof, or monies owing to the City.
- c. **Notice:** Lessee shall take commercially reasonable steps to provide the Airport Director with reasonable communication of and updates respecting any matter under which Lessee is currently indemnifying Lessor or any matter that would reasonably be expected to qualify for indemnification as set forth in this Paragraph 22.
- d. Lessee shall defend, indemnify and hold the City harmless from any claim or liabilities as a result of Lessee's failure to procure and to keep in force the insurance required in this Lease.
- e. Nothing in this Lease shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under federal or North Dakota law.
- f. The provisions of this Paragraph shall survive expiration or earlier termination of this Lease. The furnishing of the required insurance shall not be deemed to limit Lessee's obligation under this Paragraph.

23. Rights to Sublease and Assignment: Lessee has the right to sublease any or all of the Premises; however, Lessee must ensure that any sublessee abides by the terms and conditions of this Lease.

The Lessee shall not assign or transfer this Lease or any right of leasehold interests granted to it by this Lease, or sublet or otherwise transfer any interest in or to the Premises, without the prior written consent of the City, except the Lessee may assign and transfer this Lease without such consent in its entirety to a parent corporation, a subsidiary corporation, or a successor corporation. The consent to subleasing any or all of the Premises or for assignment or transfer of this Lease will not be unreasonably withheld.

24. Notice: Notices are sufficient if in writing and sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery service with proof of delivery, or by facsimile (followed by written notice confirmed by mail or other delivery service, as addressed below:

If to the City:
 Airport Director
 Minot International Airport
 305 Airport Road, Suite 216

If to the Lessee:
 Galen Marsh
 4500 10th St NE
 Minot, ND 58703

Minot, ND 58703
Office: (701) 857-4724

Or to any other address that may be designated in writing from time to time.

25. GENERAL PROVISIONS:

- a. **Mineral Rights:** City expressly reserves all water, gas, oil and mineral rights in and under the soil beneath the Premises, but testing for and/or removal of any such gas, oil, or minerals shall be done in a manner so as not to disturb the Premises or disrupt the operation of the business being conducted thereon.
- b. **No Waiver of Forfeiture:** Any failure or neglect of City or Lessee at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder does not waive City's or Lessee's right thereafter to declare a forfeiture for like or other or succeeding breach or default.
- c. **Force Majeure:** Neither City nor Lessee will be deemed to be in breach of this Lease if either is prevented from performing any of its obligations hereunder by reason of Force Majeure. Force Majeure means any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather and/or periods of rain or snow, inability to obtain labor or materials, or reasonable substitutes therefore, governmental restrictions or requirements, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. All of the foregoing events excuse the performance by either party for a period equal to any prevention, delay, or stoppage, including the obligations imposed with regard to commencement or payment of rental and other charges to be paid by Lessee pursuant to this Lease and the obligation of City to deliver the Premises.
- d. **Quiet Enjoyment:** City covenants that it has the City to execute this Lease, that at commencement of the Lease, City has good title to the Premises and that throughout the term hereof, Lessee will have peaceful and uninterrupted possession of the Premises subject to Lessee's payment of Rent and other charges and to its performance of the covenants of this Lease. City agrees to remedy any violation of quiet enjoyment caused by City or one of the other tenants and to honor Lessee's tenancy for the term of the Lease.
- e. **Minimum Standards and Rules and Regulations:** The City has adopted and will enforce Minimum Standards and reasonable rules and regulations to be uniformly applied to similar uses and users of similar space, which Lessee agrees to observe and obey with respect to the use of the Premises and the, and the health, safety and welfare of those using the Premises and the health, safety, and welfare of those using the Premises. The Minimum Standards and rules and regulations may be amended from time to time following notice to Lessee.

- f. Law and Venue:** This Lease shall be construed and enforced in accordance with the laws of the State of North Dakota. Any lawsuit filed to interpret any of the terms and conditions of this lease shall be filed in a District Court located in Ward County, North Dakota.
- g. No Third-Party Benefit:** No provision of this Lease creates a third-party claim against the City, the City, or the Lessee beyond that which may legally exist in the absence of any such provision.
- h. Taxes and Licenses:** Lessee must cause to be paid any and all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Premises, leasehold improvements, or operations hereunder and upon Lessee's rights to use the Premises, whether the taxes are assessed against Lessee or City, prior to the past due date. Lessee shall cause to be paid any and all sales taxes arising in connection with the occupancy or use of the Premises whether the taxes are assessed against the Lessee, any sublessee or City. Lessee must obtain and pay for all licenses or permits necessary or required by law for the construction of improvements and must require any sublessee to must obtain and pay for all licenses and permits necessary or required by law for the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. If Lessee or any sublessee wishes to contest any tax or charge, that contest will not be a default under the Lease so long as Lessee or sublessee diligently prosecutes the contest to conclusion and promptly pays whatever tax is ultimately owed. Further, Lessee shall cause any taxes not being contested to be paid prior to the past due date.
- i. Trash and Refuse:** Lessee must: arrange for the collection and lawful disposal of all trash and other refuse resulting from operations on the Premises either by Lessee itself or by an authorized licensed hauler authorized by the City of Minot; provide and use suitable sealed fireproof receptacles approved by City for all trash and other refuse generated by the use of the Premises; prohibit piling of boxes, barrels or other similar items in or within view from a public area; comply with all applicable laws and regulations relative to trash disposal; and pay or cause to be paid the costs associated with trash removal and disposal.
- j. Terms Binding on Successors and Assigns:** All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of Lessee and City.
- k. Estoppel:** Both parties agree that at any time and from time to time at reasonable intervals, within fifteen (15) business days after written request by the other party, said party will execute, acknowledge and deliver to the party designated by the other party, a certificate in a form as may from time to time be provided, certifying to the extent true and correct the following, as well as any other provision reasonably requested by the other party: (a) that Lessee has entered into occupancy of the Premises and the date of said entry if requested; (b) that this Lease is in full force and effect, and has not been assigned, transferred, modified, supplemented, or

amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same); (c) that this Lease represents the entire agreement between City and Lessee as to the subject matter hereof (or if there has been any assignment, modification, supplement or amendment, identifying the same); (d) the date of commencement and expiration of the term; (e) to the knowledge of the signor of said writing, all conditions under this Lease to be performed by City, if any, have been satisfied (and if not, what conditions remain unperformed); (f) that to the knowledge of the signor of said writing, no default exists in the performance or observance of any covenant or condition in this Lease and there are no then existing defense or offsets against the enforcement of this Lease by City, or instead specifying each default, defense or offset of which the signor may have knowledge; and (g) the amount of Rent or other charges, if any, that has been paid in advance and the amount of security, if any, that has been deposited with City.

- l. Radio Antenna:** Subject to the City's prior written approval as to height and location, which will not be unreasonably withheld, conditioned or delayed, Lessee or any sublessee, as the case may be, may furnish and install at its own expense, a radio antenna either adjacent to the Improvements or on the roof of the Improvements on the Premises subject to:
 - i.** Any and all federal, state and local laws, ordinances, statutes, rules, regulations and orders applicable thereto;
 - ii.** Lessee, as the case may be, obtaining any and all building and other permits, licenses and other approvals with respect thereto;
 - iii.** The antenna and building both must be structurally sound and not adversely affect the soundness of, or the condition of, the roof and/or other parts of the building; and
 - iv.** Any and all costs of maintaining and operating the same must be paid entirely by the Lessee.

Upon the expiration or earlier termination of this Lease as identified herein, Lessee shall cause the removal of the antenna(s) and the restoration of any damage to the Improvements and Premises caused by the installation and/or removal thereof. Lessee shall be responsible for all costs for the repair and maintenance of said installation of the antenna.

- m. Severability:** Each provision, paragraph, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, paragraph, section, sentence, clause, phrase, and/or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Lease.
- n. Voluntary and Knowing Action:** The parties, by executing this Lease, state that

they have carefully reviewed this Lease and understand fully the contents hereof; that in executing this Lease they voluntarily accept all terms described in this Lease without duress coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

- o. Authorized Signatories:** The parties each represent and warrant to the other that (1) the persons signing this lease are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Lease against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- p. Open Records Statutes:** The City and Lessee agree to comply with North Dakota's Open Records Statutes as it applies to all information created, collected, received, stored, used, maintained, or disseminated regarding this Lease.
- q. No Partnership, Joint Venture, or Fiduciary Relationship:** Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Lessor and Lessee, it being understood that the sole relationship created hereby is one of landlord and tenant.
- r. Records - Availability and Retention:** To the extent applicable, the Lessee agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Lessee and involve transactions relating to this Lease. The Lessee agrees to maintain these records for a period of six (6) years from the date of termination of this Lease.
- s. Attorney Fees:** In the event litigation is required to enforce any term or condition of the Lease, the non-prevailing party shall reimburse the prevailing party for the reasonable cost incurred in the enforcement of the Lease, including reasonable attorney fees.
- t. Amendment or Modification:** This Lease may be amended or modified by an instrument of equal formality signed by the duly authorized representative of the respective parties. This Lease constitutes the entire Lease of the City and Lessee on the subject matter thereof, and notwithstanding any previous leases or amendments thereto which may have been in effect between the parties prior to the date of this Lease.

EXECUTED IN DUPLICATE ORIGINALS by the authorized representative of the parties.

Attest:

City Clerk

City of Minot (Lessor)

Name: _____

Title: _____

Date: _____

Galen Marsh (Lessee)

Name: _____

Title: _____

Date: _____