

Prepared by:
Justin M. Johnson
City Attorney
Mitchell, SD 57301
(605) 990-7940

Lease Agreement

THIS LEASE AGREEMENT, hereinafter “Lease”, is entered into as of the date signed below, hereinafter “Effective Date”, by and between the City of Mitchell, a South Dakota municipal corporation, hereinafter “Landlord”, and Dakota Flight Center, LLC, a South Dakota limited liability company, hereinafter “Tenant”, and Landlord and Tenant may also be referred to herein individually as a “party” or collectively as the “parties”; and

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord and Tenant agree as follows:

1. LEASED PREMISES. Landlord hereby leases to Tenant certain City-owned real property commonly known as the Airport Terminal Building located at 5971 Airport Road, Mitchell, South Dakota, 57301, including all buildings, structures, and other improvements currently existing or hereafter constructed, hereinafter collectively referred to as the “Premises.” Tenant is granted a leasehold in government property under this Lease with the land, buildings, structures, and other improvements being retained by Landlord as a leased fee. All buildings, structures, and other improvements to real property (including those improved, built, or otherwise added by Tenant) shall be owned by Landlord from the outset and remain government property throughout the Term of this Lease and all Renewal Terms.

2. TERM AND RENEWAL.

(a) The term of this Lease shall be approximately **Four (4)** years from **February 1, 2017** through **January 31, 2022**, hereinafter the “Term.” Landlord and Tenant may by mutual agreement in writing renew this Lease for additional terms, hereinafter “Renewal Term(s).” All Renewal Terms of this Lease shall be for **Four (4)** year terms and upon the same provisions and conditions as such exist at the end of the effective term immediately preceding such renewal. The Lease shall automatically renew for all Renewal Terms unless Landlord or Tenant provides written notice of non-renewal to the other party at least One Hundred Eighty (180) days but not more than Three Hundred Sixty (360) days prior to the end of the effective Term.

(b) **Right of First Refusal.** For and in consideration of the separate sum of One Dollar (\$1.00) and other good and valuable consideration paid by Tenant to Landlord, the receipt and sufficiency of which is hereby acknowledged by Landlord, Landlord hereby grants Tenant a right of first refusal which may be utilized in the event that the Landlord considers leasing the Premises to a potential third party lessee upon termination of this Lease. Such right shall be waived if this Lease is terminated for cause. This right of first refusal shall be to accept terms and conditions no less beneficial to Landlord as may then have been negotiated with a potential

third party lessee. This right of first refusal shall be effective only as to a potential lease to a third party and shall not be effective as to Landlord re-assuming control over the Premises.

3. RENT, TAXES, AND OTHER CHARGES. Total rent for the initial Term of this Lease shall be x (\$x) Dollars per year payable to Landlord on or before the first day of each month in equal installments of y (\$y) Dollars per month. Such rent shall be nonrefundable should early termination of this Lease occur. Tenant shall pay the rent and all other charges required to be paid under this Lease by cash, valid check, money order, or cashier's check. No diminution or abatement of rent or offset shall be claimed or allowed for any reason whatsoever without further written agreement. Rent amounts for Renewal Terms shall be subject to an increase negotiated between the parties but in no event greater than **Five (5%) Percent**. Tenant shall pay to Landlord with the rent all taxes legally imposed on the rent by taxing authorities. Should Tenant claim an exemption from payment of taxes imposed on rent by any taxing authority, Tenant shall provide to Landlord and keep on file with Landlord current proof of such exemption. In addition to the foregoing payments, Tenant shall be solely responsible for and pay to the appropriate authority by the due date all other taxes, fees, assessments, and other charges legally imposed or accruing against the Premises or Tenant's leasehold, which, for purposes of example only, may include but are not limited to ad valorem taxes and non-ad valorem assessments. Dispute of any such taxes, fees, assessments, or charges shall be solely the responsibility of Tenant at Tenant's sole cost and expense and Tenant shall indemnify and hold Landlord harmless for any and all such taxes, fees, assessments, and charges imposed as well as all costs and expenses arising from non-payment or late payment thereof or otherwise from any such dispute, including but not limited to penalties, interest, attorneys' fees, and experts' fees.

4. UTILITIES. Tenant shall be solely responsible for establishing and maintaining all utilities and other services needed to serve the Premises and for Tenant's operations and activities. Tenant shall promptly pay on or before the due date all charges for electric, water, sewer, communications, solid waste removal, and all other utilities and services serving the Premises. Tenant shall hold Landlord harmless from payment of charges for any and all such utilities and services and for any interruption in the use or services of such commodities.

5. USE OF PREMISES.

(a) Limitations and Conditions on Use. Tenant understands, acknowledges, and agrees that Tenant's occupation and use of the Premises is strictly limited to aviation related purposes only. Landlord shall have the sole authority to determine if any proposed or actual use is sufficiently related to aviation purposes and engaging in any non-aviation related uses on the premises shall be a material breach of this Agreement which may, at the sole discretion of Landlord, serve as grounds for immediate termination of this Lease. At the time of entering this Lease, Landlord understands that Tenant intends to engage in flight instruction and aerial imaging operations and Landlord authorizes the same. Tenant shall be solely responsible for the operation, management, and maintenance of the Premises consistent with this Lease.

Tenant shall not engage in the sale of fuel on the Premises or other such Fixed Base Operator (FBO) type activities which have not been specifically authorized by this Lease or subsequently approved by the Airport Supervisor. Tenant shall not engage in or permit the long term (greater

than seven (7) days) storage of vehicles, equipment, supplies, etc. on leased exterior property areas.

(b) Supervision by Tenant; Control of Premises. Tenant shall instruct, monitor, supervise, and manage its members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, sub-contractors, and other invitees in use of the Premises consistent with this Lease and all limitations, restrictions, laws, and regulations. Tenant and not Landlord shall have the right and duty to control access to the Premises by such persons and other third parties, subject to any applicable security policies for the airport complex as a whole. Tenant shall be deemed for all purposes to be solely in possession and control of the Premises. Tenant's activities shall be primarily confined within the Premises except for such flight related activities which necessarily involve use of the airport complex as a whole.

(c) Non-discrimination. Tenant expressly agrees for Tenant and Tenant's successors and permitted assigns, that no person, on the grounds of race, color, religion, national origin, age, marital status, gender identity, sexual orientation, disability, or any other characteristic protected by Federal, State, or local law, will be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in the use of the Premises or Tenant's programs or activities; and that in the construction of any improvements on, in, over, or under the Premises and the furnishing of services on the Premises, no person, on any of the foregoing grounds, shall be excluded from participation therein, denied the benefits thereof, or be otherwise subjected to discrimination.

(d) Security Policies and Procedures. Tenant shall be responsible for ensuring that Tenant's members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, sub-contractors, and other invitees shall comply fully with any and all security policies and procedures adopted or implemented by Landlord from time to time as Landlord deems necessary and appropriate for protecting the public health, safety or, welfare or for compliance with any Federal, state, or local law or regulation. Landlord will provide Tenant with notice of any such adopted or implemented security policies and procedures affecting the Premises or its occupation or use.

6. COMPLIANCE WITH LAWS. Tenant shall not occupy, use, or maintain or permit the occupation, use, or maintenance of the Premises or any part thereof for any unlawful, immoral, or improper purpose, or in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of this Lease or any existing or future code, law, rule, requirement, order, ordinance, or regulation.

7. PERMITS AND LICENSES. Tenant shall be solely responsible for obtaining, maintaining, and paying for the expense of all governmental and regulatory approvals, permits, and licenses necessary for Tenant's occupation, use, and operation of the Premises and access thereto, including but not limited to any required zoning and site plan approvals, building and other permits, and applicable licenses, as such are now or in the future required. Should Tenant be unable to obtain and maintain all approvals necessary for Tenant's intended use or operation of the Premises or other necessary areas, this Lease shall terminate unless agreed otherwise in writing by the parties.

8. IMPROVEMENTS.

(a) In General. Except for required general maintenance, repairs, and replacements, Tenant shall not make or cause to be made or allow any construction, alterations, installations, or improvements to or on the Premises without prior approval of Landlord's City Council. Any and all construction, alterations, installations, and improvements shall be at Tenant's sole cost and expense and at no cost or expense to Landlord. Such costs shall include but are not limited to costs of planning, design, engineering, surveying, permitting, site preparation, construction, and installations. All work shall be performed in a good and workmanlike manner by a qualified contractor and consistent with Tenant's plans and specifications as approved by Landlord, and in compliance with all applicable laws, rules and regulations, including but not limited to applicable building code, Federal and state regulations, and disabilities laws (e.g., the Americans with Disabilities Act), and payment and performance bond requirements for capital improvements on government real property. In the event any governmental authority directs, or any applicable Federal or state law or regulation requires, any modification or alteration to the Premises or any buildings, structures, or other improvements thereon or therein, whether now existing or constructed during the Term or any Renewal Term, Tenant shall be solely responsible for prosecution and completion of and payment for such modifications and alterations.

The parties recognize that any and all construction, alterations, installations, or improvements are capital improvements made to enhance the use of the Premises for the benefit of the general public. The costs of such improvements are not rent, they are not payments in lieu of rent, and they are not made for the right to occupy the Premises, except as otherwise provided by this Lease.

Except as otherwise agreed in writing by the parties, at the termination of this Lease Tenant, at Tenant's sole expense, shall pay for removal from the Premises any installations or improvements added to the Premises during the Term or any Renewal Term that are not found acceptable by Landlord. Notwithstanding any installations and improvements that are to remain on the Premises, Tenant shall be otherwise responsible and pay for restoration of the Premises.

(b) Construction of Improvements. In furtherance of Tenant's proposed use of the Premises, and notwithstanding any general limitation otherwise contained in this Lease, it is specifically contemplated that Tenant shall engage in restoration and remodeling of the Premises (hereafter "Improvements") in an effort to make the Premises suitable for Tenant's operations. Tenant shall engage in and complete the proposed Improvements consistent with the terms of this Lease, including but not limited to the following additional provisions:

- (1) Tenant's remodeling efforts are expected to involve the following: HVAC repair/replacement, door and window repair/replacement, restoration of restrooms, fixtures, and plumbing, electrical updates. In addition, updates to flooring and fixtures, landscaping and signage, as well as security and cameras are expected. All remodeling efforts and Improvements shall be pre-approved by and completed to the satisfaction of the Landlord through the Director of Public Works.

- (2) Tenant has provided an initial cost estimate, for the time, labor, and materials needed to complete the above referenced work, in the total amount of \$32,000.00. Tenant has also indicated that said work would likely be completed in 90 to 120 days after approval has been granted, in Tenant's hope to begin business operations by May 1st, 2017. In the event that Tenant undertakes and completes said work to the satisfaction of Landlord, Tenant shall be entitled to a dollar for dollar credit, upon presentation of approved expenses, against rent due under this Lease during the Term or Renewal Terms. Tenant may withhold rent payments due pending application of such credit towards any rent due. Rent shall be paid normally when credits no longer cover the rent amount accrued.
- (3) Tenant, after receiving conceptual plan approval, shall diligently pursue any further site plan approvals or other construction related approvals applicable under federal, state, or local law and shall proceed and continue through construction only if all applicable approvals have been granted.
- (4) As further provided by this Lease, Tenant shall be responsible for maintaining the condition of the building and shall ensure the building suffers from no major defects at any time, except for normal wear and tear.
- (5) Tenant shall maintain a commemorative sign in the building discussing the history of the McGovern Terminal Building.

9. LOANS AND LIENS. Landlord's interest in the Premises shall not be subject to any loans, security interests, or liens for any construction, alterations, installations, improvements, or work. Tenant shall notify all persons and entities loaning money, constructing improvements, or performing work on the Premises, or supplying materials, equipment rental, or other services for the improvements or work, that this Lease does not allow any loans, security interests, or liens to attach to Landlord's interest. If, notwithstanding the foregoing, any loan, security interest, mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Premises or any part thereof or against Tenant's leasehold interest or otherwise asserted against Landlord's interest (whether or not legally effective), then Tenant shall, at Tenant's own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold Landlord harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and experts' fees, through trial and appeal, resulting there from or by reason thereof.

10. LANDLORD RIGHT OF ENTRY. Landlord retains a general right of ingress, egress, and regress across the Premises as reasonably needed for Landlord's employees, contractors, and agents in performance of their duties at all reasonable times. Landlord shall also have the right to enter the Premises for inspection, protection, or preservation of the Premises, including but not limited to inspection of the Premises to determine whether Tenant is complying with the terms of this Lease, applicable laws, orders, or regulations of any lawful authority having jurisdiction over

the Premises or any activities conducted thereon or therein. Landlord's retained rights hereunder also include the right of ingress, egress, and regress for the installation, replacement, and maintenance of utilities and related facilities on, across, and under the Premises as may be deemed necessary by Landlord. Landlord shall, to the extent possible in Landlord's determination, locate such utilities and related facilities in such a manner as not to disturb Tenant's operations and use of the Premises. Entry by Landlord shall not constitute or be deemed an eviction of Tenant or any deprivation of Tenant's rights under this Lease; nor shall such entry alter in any manner Landlord's obligations hereunder.

11. ASSUMPTION OF RISK; RELEASE AND INDEMNIFICATION. For and in consideration of the separate sum of One Dollar (\$1.00) and other good and valuable consideration paid by Landlord to Tenant, the receipt and sufficiency of which is hereby acknowledged by Tenant, Tenant agrees as follows:

(a) **Premises "As Is."** Tenant accepts the condition of the Premises "as is" and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of the Premises or access to the Premises. Tenant acknowledges and agrees that Landlord has not made and makes no warranty of any kind whatsoever as to the condition of the Premises or fitness of the Premises for any particular purpose. This assumption of risk by Tenant is made for and on behalf of Tenant and Tenant's successors, permitted assigns, and Tenant's officers, directors, members, employees, volunteers, agents, representatives, participants, guests, contractors, subcontractors, and all other invitees.

(b) **Release and Indemnification (Premises).** Tenant hereby releases and forever discharges Landlord and Landlord's elected officials, officers, employees, and agents, cumulatively the "Released Parties," and agrees to indemnify and hold harmless the Released Parties, from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including but not limited to costs of investigation, attorneys' fees, experts' fees, and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition, maintenance, or use of the Premises, access to the Premises, the condition, maintenance, or use of any installation, improvement, or equipment on, in, or serving the Premises, or otherwise arising under this Lease. TENANT UNDERSTANDS AND AGREES THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON THE NEGLIGENCE, ACTIONS, OR INACTION OF LANDLORD OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.

(c) **Indemnification (Use).** Tenant shall indemnify and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to costs of investigation, attorneys' fees, experts' fees, and costs through trial and appeal, arising out of, incidental to, or in any way connected with Tenant's possession, use, occupancy, operation, or maintenance of the Premises, and any act or omission of Tenant or Tenant's

members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, subcontractors, and other invitees.

(d) Release and Indemnification (Public Improvements and Utilities). Tenant's release and agreement to indemnify and hold the Released Parties harmless shall also include any claim for damage that any utility (whether publicly or privately owned) or public entity may sustain or receive by reason of Tenant's possession, use, occupancy, operation, or maintenance of the Premises, or any installations or improvements thereon or made by or for Tenant. Tenant waives all claims of any kind or nature whatsoever against the Released Parties for damages that Tenant may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, facility, or utility, whether presently in place or which may in the future be constructed or installed, including but not limited to any water or sewer mains, lines, pipes, structures, or other facilities; storm water structures, pipes, or other facilities; electric or communication lines, structures, conduit, or other facilities.

(e) Claims Under Disabilities Laws. Should a regulatory agency, private party, organization, or any other person or entity make a claim under the Americans with Disabilities Act or other Federal or state law against Tenant or Landlord, or both Tenant and Landlord, for an alleged violation of or noncompliance with any such law as to the Premises or any improvements thereon or therein, or as a result of Tenant's occupancy or use of the Premises or operation of Tenant's programs or services, Tenant shall defend, save, and hold harmless Landlord from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors or experts, court costs, and costs incurred for correcting any such violation or noncompliance found to exist.

(f) Intent and Effect. It is the intent and effect of the provisions contained in this section 11 and a material inducement for Landlord to enter into this Lease with Tenant, that Tenant's obligations hereunder shall be and include a full and total release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of Landlord having granted a leasehold to Tenant to possess, occupy, use, improve, operate, and maintain the Premises, and that any and all risks of loss and responsibility for claims shall be borne by Tenant and not by Landlord, the public, or Landlord's taxpayers. Tenant acknowledges and agrees that the provisions of this section 11 are provided as separate consideration and inducement for this Lease and such Lease would not have been entered into by Landlord absent the giving of such consideration by Tenant. Tenant's obligations under this section 11 shall survive the termination of this Lease for any matter arising prior to the effective date of the termination or the date Tenant no longer possesses, occupies, uses, operates, or maintains the Premises, whichever is later. Notwithstanding any other provision of this Lease, should any claim or litigation by any person or entity arise against Landlord as to liability for any injury, death, or property damage due to the condition of the Premises or Tenant's possession, occupancy, use, operation, or maintenance of the Premises or Tenant's activities, Tenant shall be responsible for, and promptly reimburse Landlord for, all costs of Landlord's defense of such claim or litigation, including but not limited to fees for Landlord's attorneys and experts.

12. INSURANCE. During the Term and all Renewal Terms, and so long as Tenant occupies, uses, operates, or maintains the Premises, Tenant shall procure and maintain insurance at Tenant's sole cost and expense, as follows:

(a) **Commercial General Liability Insurance.** Commercial general liability insurance providing all risks coverage which protects Tenant and Landlord and all other Released Parties from and against any and all claims and liabilities for bodily injury, death, and property damage arising from operations, premises liability, fire, and all other risks. Such insurance shall provide minimum coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Tenant shall be and remain liable for and pay all deductibles and other amounts not covered, paid, or reimbursed under the insurance policies.

(b) **Property Casualty Insurance.** Property casualty insurance for the Premises and any buildings constructed shall be added to Landlord's existing property casualty insurance policy in such amounts as Landlord deems appropriate in its sole discretion but not to exceed one hundred fifty (150%) of the property and building value. Tenant shall reimburse Landlord for the expense attributable to such coverage. Tenant may choose, at its option, to obtain renter's insurance at Tenant's sole expense for any of its personal property.

(c) **Flood Insurance.** Flood insurance, at the option of Tenant, for all buildings, structures, and other improvements now existing or constructed or installed during the Term or any Renewal Term on or in the Premises. Said flood insurance coverage shall be for the lesser of the total insurable value of such buildings, structures, and other improvements or the maximum amount of flood insurance coverage available under the national Flood Insurance Program.

(d) **Workers' Compensation Insurance.** Tenant shall maintain workers' compensation insurance if and to the extent required by law, with coverage amounts that meet or exceed the statutory mandatory minimum.

(e) **Builder's Risk.** Tenant shall provide and maintain, or shall require Tenant's contractor to provide and maintain, builder's risk insurance coverage for construction of the buildings, structures, and improvements on the Premises. Such builder's risk insurance shall meet or exceed the following requirements:

- (1) The form shall be all risks coverage and the amount of insurance coverage shall be 100% of the completed value of work, including the buildings, additions, and structures.
- (2) The policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty for representation that the buildings, additions, or structures in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the builder's risk coverage will continue to apply until final acceptance of the buildings, additions or structures by Tenant and Landlord (as owner).

- (3) The maximum deductible shall be no more than \$5,000.00 each claim. A higher deductible may be permitted subject to Landlord's written approval.
- (4) The policy must be endorsed to provide machinery/equipment coverage during transit, storage and installation, including any directly purchased by the Tenant.
- (5) The policy must be endorsed to provide coverage for tangible property, materials, machinery/equipment, and supplies directly purchased by Tenant for which the risk of loss has transferred to Tenant. Such endorsement shall provide for reimbursement for loss or damage directly to Tenant as an additional insured if the insurance is provided by Tenant's contractor.

(f) Landlord Additional Insured; Policy Endorsements. The policies of insurance required herein for commercial general liability insurance, property casualty insurance, flood insurance (if elected by Tenant), and builder's risk insurance, including all renewals, shall be written to specifically name and include Landlord as additional insured or be endorsed to name and include Landlord as additional insured, and provide for at least thirty (30) days advance notice to Landlord by the insurer prior to any policy change, amendment, termination, or expiration of coverage. Tenant's property casualty insurance shall also provide for or be endorsed to make any loss payments payable jointly to Tenant and Landlord for losses covered under such policies. Tenant shall cause its insurance agent(s) or carrier(s) (or its contractor in the case of builder's risk) to provide Landlord with a copy of such policies, additional insured endorsements, and certificates of insurance stating that the coverage as required herein is in force and effective: no later than the Effective Date of this Lease for commercial general liability insurance; no later than commencement of construction work on the improvements for builder's risk; and no later than completion of the improvements for property casualty insurance. No occupancy of any structure on the Premises shall take place unless proof of insurance has been provided therefore by Tenant to Landlord. Tenant shall cause insurance policies, policy endorsements, and certificates of insurance in conformance with the requirements hereof to be promptly provided to Landlord for each subsequent policy renewal. For any new or replacement insurer, Tenant shall cause a copy of the new or replacement insurance policy and corresponding additional insured endorsement and certificate of insurance to be promptly provided to Landlord.

(g) Tenant Insurance Primary; Approval of Insurer. Tenant's insurance in all instances shall be primary and any insurance that may be maintained by Landlord shall be in excess of and shall not contribute with Tenant's insurance. All insurance policies shall be issued by a company licensed to do business in the state of South Dakota and be otherwise satisfactory to Landlord and subject to Landlord's approval.

(h) Modification of Insurance Requirements. Recognizing the extended Term of the Lease, Landlord shall have the right to periodically review the adequacy of the required insurance, its form and type, and the amount of coverage and, notwithstanding any other provision of this Lease, unilaterally modify the insurance requirements of this section by written notice of such amendment to Tenant. Such modifications shall be as found reasonably necessary in the sole discretion of Landlord. Factors which may be considered by Landlord include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes

in use of the Premises, changes in risk exposure, measurable changes in local and national economic indicators, and changes in Landlord's policies and procedures.

(i) Failure to Maintain Insurance. Tenant understands and acknowledges that the responsibility and obligation to provide and maintain insurance in the forms, type, and coverage required herein and to maintain proper Landlord additional insured policy endorsements and certificates of insurance is solely Tenant's responsibility and obligation which continues during the entire Term, all Renewal Terms, and until such time as Tenant no longer occupies the Premises, whichever date is later. Tenant further understands and acknowledges that failure to provide and maintain all insurance coverage as and in the manner required herein will be deemed detrimental to the public interest, an increased and unnecessary risk to the public and to Landlord's taxpayers, and a material breach of this Lease which can result in termination of this Lease and in Tenant being liable for the full amount of all losses incurred due to the failure to maintain insurance.

In the event that Tenant should fail for any reason to procure or maintain insurance in the forms, type, or minimum coverage required and maintain the Landlord additional insured policy endorsements and certificates of insurance, Tenant shall cure such material breach within fifteen (15) calendar days after service on Tenant of a written notice of such breach and demand for cure or possession of the Premises. Should Tenant fail to cure the breach within said period or such other time as may be agreed to by the Parties in writing, Landlord in Landlord's sole discretion may, but is not obligated to do so, secure replacement insurance coverage at Tenant's sole expense. Should Landlord elect to secure replacement insurance, Tenant shall thereafter reimburse Landlord within fifteen (15) calendar days of Landlord sending an invoice for the costs and premiums incurred by Landlord for the replacement insurance coverage plus an administrative charge of ten percent (10%) or \$250.00, whichever is greater. Tenant shall continue to be responsible for the payment of all deductibles applicable to the insurance policies and all losses incurred during any lapse in coverage. Should Tenant subsequently obtain the required insurance, endorsements, and certificates, Tenant shall remain responsible for and reimburse Landlord for all costs and expense to Landlord for the insurance premiums earned and administrative charges.

13. MAINTENANCE AND REPAIRS.

(a) In General. During the Term and all Renewal Terms, and until Tenant has surrendered possession of the Premises to Landlord, Tenant, at Tenant's sole cost and expense, shall maintain the Premises, including but not limited to all buildings, structures, landscaping, installations, fixtures, betterments, equipment, and other improvements (collectively "Improvements") in good order and repair and in a safe, clean, secure, sanitary, and presentable condition, and in conformance with the provisions of this Lease and all applicable codes, ordinances, laws, regulations, and approved site plans. Tenant and not Landlord shall have the continuing duty to inspect the Premises and repair defects. Notwithstanding any right of Landlord to enter the Premises for its purposes provided herein, Landlord shall have no duty or responsibility to inspect, repair, or maintain the Premises or any part thereof. Tenant shall also be responsible for maintenance of all exterior property areas of the leased Premises and Landlord shall have no duty to mow, remove snow, or otherwise maintain exterior leased property areas

or, in the case of inclement weather, to ensure that roads or parking lots are sufficiently cleared of snow or debris to allow access to the Premises. Any such activities performed by Landlord shall be at Landlord's discretion and shall not be deemed a condition, term, or duty of this Lease.

(b) Destruction of Improvements/Force Majeure. If an unforeseeable incident beyond the control of the Parties which prevents a Party from complying with any of its obligations under this Contract, or which makes compliance unreasonable for either party, or if the Premises have become wholly untenable due to the destruction of the facility, either party may choose to terminate this agreement, upon Thirty (30) days written notice, without being held in default of any obligation hereunder to the extent that the failure to perform such obligation is due to such an incident, or alternatively, may agree to modify this Lease. If Landlords' federal funding is jeopardized at any time due to this Lease, or activities relating thereto, this clause shall be triggered.

In the event that the facility is deemed a total loss, Landlord shall be entitled to receive all applicable property insurance proceeds relating to the structure but not as to Tenant's personal property within the structure which may have been simultaneously destroyed, less the amount paid by Tenant arising from Improvements or maintenance of the facility which was not reimbursed through credited rents. For example, if Tenant pays for \$32,000.00 in Improvements and only receives rental credits for \$10,000.00, then the proceeds from the insurance for total loss will first reimburse the amount of \$22,000.00. Landlord shall not be bound to repair or replace the facility but may elect to do, with input from the Tenant, utilizing all or a portion of such insurance proceeds.

In the event that the facility is not deemed a total loss, Tenant shall, as soon as is reasonably possible but no later than Nine (9) months after such damage and/or destruction, make or cause to be made all necessary repairs at Tenant's sole expense to the satisfaction of Landlord. Tenant shall be entitled to receive all applicable property insurance proceeds relating to said repairs, less any outstanding amount under this Lease which may be unpaid by Tenant to Landlord.

In either case, Tenant shall be and remain liable for and pay all insurance policy deductibles and all amounts not covered, paid, or reimbursed under Tenant's insurance policies for the cost and expense to fully repair and/or replace the damaged or destroyed Improvements. All monies paid by Tenant to Landlord may be used by Landlord in Landlord's sole and absolute discretion.

14. SIGNS. For and during such time as this Lease remains in effect, Tenant may install and display signage on the Premises for the purpose of denoting Tenant's on-site business subject to approval by the Airport Supervisor and, where applicable, shall comply with federal, state, or local law.

15. STORM PREPARATIONS. In the event of approaching severe weather, Tenant, at Tenant's sole expense, shall remove or cause the removal of all personal property from the exterior of the Premises and secure and provide for protection of the buildings and structures on the Premises and all personal property located thereon in advance of the severe weather.

16. ENVIRONMENTAL RESTRICTIONS; REMOVAL OF REFUSE. Tenant shall not store, discharge, or dispose of any industrial or hazardous materials or wastes on, in, or adjacent to the Premises whatsoever or allow such storage, discharge, or disposal, with exception made only for proper storage and use as is necessary in conjunction with construction of improvements or repairs. Tenant shall utilize, store, and dispose of all such industrial, hazardous, and solid wastes in accordance with applicable Federal, state, and local laws, rules and regulations. Tenant shall be solely responsible for and indemnify Landlord for all costs and expenses, including but not limited to costs of remediation, fines, penalties, attorneys' fees, experts' fees, and costs through trial and appeal, that arise in any manner out of environmental contamination caused by Tenant, Tenant's agents, officers, members, employees, contractors, subcontractors, or invitees, or otherwise from Tenant's occupancy, use, or maintenance of the Premises or improvements thereto, which responsibilities, obligations, and liabilities shall survive the expiration or early termination of this Lease. Tenant shall be solely responsible at its own expense for regular removal and disposal of all refuse, garbage, debris, trash, and other discarded materials and shall not allow an accumulation thereof on, in, or adjacent to the Premises.

17. DEFAULT AND REMEDIES. Except as otherwise provided in this Lease, and in addition to breaches of any other term of this Lease, the following shall be deemed to constitute a default and material breach of the terms of this Lease:

- (a) Failure by Tenant to pay any obligation or amount of money due under this Lease.
- (b) Failure by Tenant or Landlord to comply with any provision or condition of this Lease.
- (c) Abandonment by Tenant of the Premises or any part of the Premises without the written agreement of Landlord.

This Agreement may be terminated by either party, due to a failure of the other party to fulfill its obligations under this Agreement, by providing written notice of termination to the breaching party stating the grounds of the breach. The breaching party shall have the right to cure the breach within fourteen (14) days prior to termination becoming effective. In the event the party receiving the notice cures the alleged failure within said fourteen (14) day period, the notice of termination shall be deemed to be suspended. Landlord and Tenant shall additionally have all other remedies for any default by the other party as provided for at law or in equity.

18. SURRENDER ON TERMINATION; RESTORATION. Tenant shall surrender the Premises to Landlord or Landlord's designee quietly and peaceably upon expiration or termination of this Lease. Within 30 days before the expiration or termination, Tenant shall restore the Premises to a clean and usable condition acceptable to Landlord, with exception made for reasonable and ordinary wear and tear.

19. HOLDOVER TENANCY. If Tenant remains in possession of the Premises after this Lease expires or terminates for any reason:

(a) Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month at the sufferance of Landlord. Tenant will continue to be subject to and comply with all of the provisions of this Lease, except that, at Landlord's discretion, the rent will be at a monthly rate up to an amount equal to 1/12th of the fair market annual rental value of the Premises, including all improvements, calculated at the time of the expiration or termination, and paid by Tenant on the first day of each month subsequent to the expiration or termination.

(b) Tenant shall reimburse Landlord for any and all additional losses and damages which Landlord suffers by reason of Tenant's continued occupancy.

(c) Tenant shall indemnify Landlord from and against all claims made by any successor Tenant insofar as such delay is occasioned by Tenant's failure to surrender possession of the Premises.

20. MISCELLANEOUS PROVISIONS.

(a) Amendment and Modification. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change, or addition to this Lease or any exhibit or attachment hereto shall be binding on Landlord or Tenant unless in writing and signed by them and made a part of this Lease by direct reference. Any amendment shall require the approval of Landlord's City Council.

(b) Waiver of Compliance; Consents. Any term or condition of this Lease may be waived by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Lease, in any one or more instances, shall not invalidate this Lease, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Lease. Except as otherwise provided herein, the failure of a party to assert any of its rights under this Lease or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this Lease, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

(c) Third-Party Beneficiaries. Notwithstanding the public nature of Tenant's intended use of the Premises, the terms and provisions of this Lease are intended solely for the benefit of the parties and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

(d) Notices. Any notices that are required to be served or that may be served pursuant to this Lease shall be in writing, addressed to the party's address below, and shall be deemed served either: (1) on the date hand delivered; (2) on the date delivered by courier service; (3) on the date delivered by First Class U.S. Mail, as evidenced by a return receipt; or (4) on the fifth day after the date sent by First Class U.S. Mail, as evidenced by an affidavit of mailing.

To Tenant:

Dakota Flight Center, LLC
Attn: Scott Dorwart
Address
Mitchell, SD 57301

To Landlord:

City of Mitchell
Attn: City Attorney
612 North Main Street
Mitchell, SD 57301

Any notice or request the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent. A party may change their foregoing address by providing written notification to the other in the manner provided herein.

(e) Assignment. Tenant shall not assign, sublease, or transfer all or any part of this Lease or the Premises without prior written consent of Landlord's City Council, which shall be in Landlord's sole discretion. Tenant shall not mortgage or otherwise encumber the leasehold, the Premises, or any installation or improvement thereon. Subject to this subsection (e), this Lease is binding upon, inures to the benefit of, and is enforceable by the parties and their respective successors and permitted assigns.

(f) Tenant Organization. Tenant's status as a legal entity shall continuously be in good standing, active, and current with the state of its incorporation or registration and with the State of South Dakota, and Tenant shall keep its status active and current throughout the Term and all Renewal Terms. Tenant shall keep Landlord apprised of all changes in its designated officers, directors, and other officials.

(g) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of South Dakota as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies.

(h) Venue. Venue for resolution of any dispute arising from or under this Lease or its performance shall be in Mitchell, Davison County, South Dakota and all actions and proceedings arising from or under this Lease or Tenant's possession, occupancy, use, or maintenance of the Premises or otherwise related to the subject matter of this Lease shall be in the circuit court of the State of South Dakota in Davison County, South Dakota, which court shall have exclusive jurisdiction for such purpose.

(i) Waiver of Jury Trial. Each of the parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Lease or Tenant's occupancy or use of the Premises or otherwise related to the subject matter of this Lease. This provision is a material inducement for the parties hereto to enter into this Lease, and shall survive the termination of this Lease.

(j) Attorneys' Fees. Except as otherwise provided in this Lease, in the event there arises between the parties any dispute or litigation, each party shall be responsible for its own attorneys' fees, experts' fees, consultants' fees, and costs.

(k) Entire Agreement. This Lease and its exhibits and attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties.

(l) Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.

(m) Exhibits. Except as otherwise provided in this Lease, all exhibits and attachments referred to herein are intended to be and hereby are specifically made a part of this Lease.

(n) No Joint Venture or Agency. Nothing in this Lease or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the parties. Neither party is nor shall be deemed the agent or representative of the other party in any instance whatsoever.

(o) Landlord Agent. Except as otherwise provided herein, Landlord's Airport Supervisor shall be Landlord's agent and shall have the authority to administer this Lease on behalf of Landlord, including but not limited to the authority to cause notices to be served on Tenant; enforce or terminate the Lease upon default of any terms by Tenant; and to enforce Landlord's right to enter the Premises as provided herein.

(p) Severability. If any provision of this Lease is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any party under this Lease will not be materially and adversely affected thereby, such provision shall be fully severable; this Lease will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Lease will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Lease a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

(r) Captions. The captions, paragraphs, sections, or letters appearing in this Lease are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections and paragraphs of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the dates entered below and each party's respective signatory whose signature appears below hereby warrants and represents that such signatory has been and is on the date of execution of this Lease duly authorized to execute this Lease on behalf their respective party.

Dated this _____ day of February, 2017 (Effective Date).

LANDLORD,

CITY OF MITCHELL, SD

(seal)

Attest: _____
Jerry Toomey, Mayor

Michelle Bathke, Finance Officer

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

Jerry Toomey and Michelle Bathke, being first duly sworn on oath, depose and say that each is the Mayor and Finance Officer respectively of the City of Mitchell, South Dakota, a South Dakota municipal corporation, and, being duly authorized to do so, have hereto executed this Lease on behalf of the City of Mitchell, SD in their official capacity.

Subscribed and sworn to before me this _____ day of February, 2017.

(seal)

Notary Public
My Commission Expires: _____

TENANT,
DAKOTA FLIGHT CENTER, LLC

By _____
Its: _____

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

_____, being first duly sworn on oath, deposes and says that he

is the _____ of Dakota Flight Center, LLC, a South Dakota limited liability company, and, being duly authorized to do so, has hereto executed this Lease on behalf of Mitchell Baseball Association in their official capacity.

DAKOTA FLIGHT CENTER, LLC

By _____
Its: _____

Subscribed and sworn to before me this _____ day of February, 2017.

(seal)

Notary Public
My Commission Expires: _____