



MEMORANDUM

TO: Airport Board

FROM: Patrick Dame, CM, Executive Director

DATE: February 9, 2016

RE: **T-Hangar Lease Agreements & Public Hearing**

As required by state statute, a public hearing needs to be held on the leases between the airport and the T-hangar tenants.

Attached are the lease agreements for the following individuals:

Unit #3 – Timothy Stuen
Unit #4 – Wayne Hartman
Unit #7 – Don Shinabarger
Unit #8 – Jon Glassford

This leaves two smaller units and the two larger units available for lease.

STAFF RECOMMENDATION: Staff recommends approval of the lease agreements with Wayne Hartman, Timothy Stuen, Don Shinabarger, and Jon Glassford.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

HANGAR LEASE AND USE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND WAYNE HARTMAN

This Lease and Use Agreement ("Agreement") is made and entered into this 1st day of April, 2016 by and between the City of Rapid City, South Dakota ("City") by and through the Rapid City Regional Airport Board ("Lessor") and Wayne Hartman ("Lessee"). Lessor and Lessee may hereinafter be referred to as the "Parties."

WHEREAS, the City is the owner and operator of the Rapid City Regional Airport ("Airport") which is governed by and through Lessor;

WHEREAS, Lessee desires to lease from Lessor and use certain Airport land and Improvements and engage in certain Non-Commercial Aeronautical Activities at the Airport;

WHEREAS, Lessor desires to lease certain Airport land and Improvements to Lessee and allow Lessee to engage in certain Non-Commercial Aeronautical Activities at the Airport.

NOW, THEREFORE, for and in consideration of the rents, fees, other charges, covenants, conditions, obligations, and agreements contained herein, and for other good and valuable consideration, Lessor hereby leases the Leased Premises to Lessee and Lessee hereby leases the Leased Premises from Lessor, and the Parties hereby agree as follows:

1. **Definitions.** The words or phrases defined (and identified by use of a capital letter) in the Airport's Primary Guiding Documents (including, but not limited to, General Provisions, General Aviation Leasing/Rents and Fees Policy, General Aviation Minimum Standards, and Rules and Regulations), whenever used in this Agreement, shall be construed as defined therein unless (from the context) a different meaning is intended or unless a different meaning is specifically defined and more particularly ascribed to the use of such words or phrases.
2. **Leased Premises.** The Leased Premises ("Hangar") consists of T-Hangar # 4. (See attached Exhibit "A"). Lessee warrants and represents that Lessee has carefully and completely examined and inspected the Leased Premises and that Lessee fully understands its responsibilities and obligations with respect to the Leased Premises and this Agreement. Lessee accepts the Leased Premises in an "AS IS," "WHERE IS" condition without representation or warranties from Lessor as to the condition, suitability, or sufficiency of the Leased Premises for engaging in the Non-Commercial Aeronautical Activity described or contemplated by this Agreement.
3. **Term.** The original term of this Agreement shall commence on the 1st day of April, 2016 ("Commencement Date") and ending on the 31st day of January, 2017 ("Original Term"), unless sooner terminated in accordance with this Agreement.

Notwithstanding any provision to the contrary, subject to the mutual agreement of the Parties and the covenants, conditions, obligations, and agreements contained herein (or unless otherwise mutually agreed upon in writing in advance between the Parties), upon the expiration of the



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

Original Term of this Agreement, Lessor may extend this Agreement for an additional period of two years (“Renewal Term”), provided that Lessee, in the opinion of Lessor, has been (and is currently) in good standing and not in default or breach of this Agreement and the Improvements are in a good repair and serviceable condition. If Lessee desires to renew this Agreement beyond the Original Term or any Renewal Term, Lessee shall, no later than 180 days prior to the expiration of the Original Term or any Renewal Term, give written notice to Lessor to such effect. Lessor is not bound, however, to extend this Agreement beyond the Original Term or any Renewal Term or enter into a new agreement with Lessee.

4. Rent. Rent may be paid annually, quarterly (installments of $\frac{1}{4}$ the annual rent), or monthly (installments of $\frac{1}{12}$ the annual rent), at the option of the Lessee. Regardless of frequency, the rent for the Hangar shall be due in advance of the period for which it is paid at the Lessor’s address below. The annual rent for Hangar for the first year of the Original Term of this Agreement is stipulated in Exhibit B. Rent. Rent shall be increased each following year based on the percentage change in the Consumer Price Index (CPI). The term “CPI” as used herein shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the Midwest Region, published monthly by the United States Department of Labor, Bureau of Labor Statistics (1982-84=100). If CPI is discontinued or modified during the duration of this Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if CPI had not been discontinued or modified.

If rents, fees, or other charges are not received by Lessor by the first day of the month due and owing, Lessor shall be entitled to collect interest on the past due amount in accordance with the Airport’s Rates and Charges Schedule. Lessor shall also be entitled to recover all costs associated with collection of past due amounts, including without limitation, attorneys’ fees and expenses and court costs. Interest and other fees and expenses associated with the collection of past due amounts shall become part of the rents, fees, and other charges due and owing to Lessor.

5. Deposit. Prior to occupancy, Lessee shall pay to Lessor an amount equal to one month’s rent as a damage deposit for the Hangar. At the termination of this Agreement, Lessor shall inspect the Hangar. Any damages identified by the Lessor shall be itemized, repaired and funded from the deposited funds. The remaining costs shall be billed to the Lessee or the remaining funds shall be returned within thirty days of the inspection.

6. Fees and Other Charges. Lessee shall pay to Lessor when due and owing the fees and other charges identified in the Airport’s Rates and Charges Schedule, which is subject to change from time to time.

7. Use. The Hangar shall be used primarily for the storage of active and operational aircraft. Active and operational aircraft shall be defined to mean all aircraft currently licensed and flyable which are flown to and from the Rapid City Regional Airport periodically during the year. Lessee’s private vehicle shall be allowed to be placed in the Hangar when the aircraft is removed for a trip. Parking on the apron or alongside the Hangar will not be permitted. All non-aeronautical items to be stored in the Hangar must have the written approval of the Airport



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

Executive Director prior to storage in the Hangar. Hangar doors shall not be left open and/or unattended for an extended period of time to prevent rodents and birds from entering the facility. In the event a door is found open and unattended, the Airport Executive Director or his/her designee shall have the right to close the Hangar door and notify the Lessee, in writing, of the violation. Multiple violations may result in termination of the Agreement.

Lessee agrees not to engage in any other Aeronautical Activities on the Hangar or at the Airport other than those Non-Commercial Aeronautical Activities specifically permitted under this Agreement without the prior express written consent of Lessor. Lessee shall not use and/or occupy the Hangar for any other purpose or in any manner contrary to the Airport Master Plan, the Airport Layout Plan (ALP), the Airport's Primary Guiding Documents, any applicable Regulatory Measure. In addition to the prohibited Aeronautical Activities outlined in the Airport's Primary Guiding Documents, the following products, services, and/or facilities (or uses, occupancy, and/or purposes) are expressly prohibited on the Leased Premises:

- a. The provision of non-aeronautical products, services, or facilities (or any non-aeronautical uses, occupancy, and/or purposes).
- b. The provision of Commercial products, services, or facilities (or any Commercial uses, occupancy, and/or purposes).
- c. The provision of any products, services, or facilities (or uses, occupancy, and/or purposes) prohibited by (or against the) law.

8. Utilities and Services. Electricity is currently available in each unit, and as of the commencement of this Agreement, shall be provided to Lessee without cost. The Lessor reserves the right to install individual meters to each unit, and the cost of the electricity for each unit may then be billed to Lessee by the Lessor on a periodic basis. Lessee shall provide all janitorial services within its leased Hangar. Lessor shall furnish a lock and key for the Hangar, and no other locking device shall be permitted on the Hangar.

The Lessor shall be responsible for providing snow removal within eight (8) feet of the Hangar and on the taxiway adjacent to the approach apron. Lessee may not deposit snow on the Lessor's apron, on adjacent aprons or in areas already cleared by the Lessor

The Lessor shall not be required to furnish heat, sewer, water, telephone, or any other utilities or services to Lessee in conjunction with the lease of said Hangar, unless specifically provided for herein.

9. Heaters. Engine heaters shall be of such size as to not overload the electric system. Fuel-fired, hot-air type heaters are permitted if attended on a continuous basis while in use. Electric space heaters are prohibited.

10. Storage. Lessee agrees that there will be no outside storage of equipment, materials, or supplies on the leased premises. Lessee shall not store or maintain on the leased premises any fuels, or other hazardous materials, and agrees not to dispose of same on the Airport premises.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

Disposing of any such petroleum products on any portion of the Airport shall be cause for immediate termination of the Agreement at the Lessor's discretion. Lessee is permitted, however, to store lube oil and cleaning solvents in closed containers. Such containers shall be kept in an approved steel storage locker to be labeled "FLAMMABLE". The Airport Executive Director may, in his/her discretion, prohibit or impose restrictions on the storage of said material if, in the Airport Executive Director's opinion, the storage is deemed a safety hazard. Lessee agrees not to transport fuel on Airport property. In the event Lessee fails to comply with this paragraph, the Airport Executive Director or his/her designee may notify Lessee in writing that such maintenance, cleaning, repair or replacement shall be done by Lessee. In the event that Lessee fails to correct the condition within fifteen (15) days of the Airport Executive Director's written notice, the Lessor may enter the Hangar of Lessee and provide the necessary custodial service and bill the Lessee for the expense thereof

11. Compliance. Lessee's use of the Hangar and the Airport is subject to all applicable laws, ordinances, rules, and regulations. Additionally, Lessee shall comply with all of the following:

- a. Airport Primary Guiding Documents;
- b. Airport policies, standards, and directives;
- c. Airport Sponsor Assurances and all other federal (including FAA and TSA) regulations and/or directives; and
- d. Zoning, building, fire, health, safety, and other codes, ordinances, statutes, and measures of any government agencies having jurisdiction.

If any provision of this Agreement is found to be in conflict with any existing or future Regulatory Measures, the Airport Sponsor Assurances or other federal regulations and/or directives, Airport Primary Guiding Documents, Airport policies, standards, or directives, or any zoning, building, fire, safety, or other codes, he provision that establishes the higher or stricter standard shall prevail, or Lessor may modify or terminate this Agreement, in whole or part, to resolve the conflict.

12. Improvements. Lessee shall obtain prior written approval from the Airport Executive Director before making any changes or improvements to the Hangar and shall refrain from attaching any device, work bench, shelving or cabinets to any part of the building or floors. Any approved Improvements shall be subject to the conditions placed on such approval by Lessor. Lessee shall be liable to Lessor for any damages caused by the installation or construction of Improvements.

13. Lessee's Rights and Privileges. Lessee is allowed to use the Airport and its appurtenances together with all public use areas and facilities, in common with others, on a non-exclusive basis, and subject to and for the purposes authorized in this Agreement. Lessee shall be solely liable for and shall reimburse Lessor for all costs and expenses incurred by Lessor, for the repair of any damage caused by Lessee to the Airport and its appurtenances and/or public areas or facilities at the Airport, excluding ordinary and reasonable wear and tear. Lessee, its agents, guests, and invitees shall have the right of ingress and egress to and from the Hangar. However, if the



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

privileges granted by this provision adversely affect or conflict with others, Lessor shall have the right to restrict and/or limit the hours of and/or the manner in which such ingress and/or egress may be exercised.

Subject to Lessee's payment of rents, fees, and other charges when due and owing and the performance of the covenants, conditions, obligations, and agreements to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Hangar for the term of this Agreement free from hindrance or interruption by Lessor. Lessee agrees temporary inconveniences such as noise, disturbances, traffic detours and the like, resulting from, caused by, arising out of, or connected (or associated) with the construction of Airport Improvements, or other Airport events, shall not constitute a breach of quiet enjoyment of the Hangar

14. Lessor's Rights and Privileges. All acts performable under this Agreement by Lessor may, at the option of Lessor and without right of objection by Lessee, be performed by a representative of Lessor. Lessor shall have the right to enter the Hangar (including all buildings, structures, and improvements located thereon) at any time and for any purpose connected with the performance of Lessee and/or Lessor's obligations under this Agreement. Lessor shall provide advanced notice (and a reason) prior to entering the Hangar except when Lessor determines emergency circumstances require immediate entry without prior notice. No exercise of any rights reserved by Lessor shall be deemed or construed as an eviction of Lessee or others nor shall such exercise be grounds for any abatement of rents, fees, or other charges nor serve as the basis for any claim or demand for damages of any nature whatsoever.

15. Lessee's Obligations. Lessee shall maintain the on-going Non-Commercial Aeronautical Activity authorized in this Agreement at the Hangar throughout the term of this Agreement. Lessee shall be responsible for the conduct, demeanor, and appearance of its agents, guests, and invitees. Upon receipt of a complaint concerning conduct, Lessee shall take all reasonable steps to immediately resolve any complaint.

Lessee shall cooperate with Lessor or its representatives as well as representatives of government agencies or entities including police, fire, and other emergency services personnel, the military, and others (e.g., lessees and users of the Airport) in dealing with emergencies at the Airport and on the Hangar.

Lessee shall conduct its Non-Commercial Aeronautical Activities in an orderly and proper manner so as to not annoy, disturb, or interfere with (or be a nuisance or menace to) others. Lessee agrees it will not in any manner interfere with the landing and taking off of Aircraft at the Airport or otherwise constitute or allow a hazard to Aircraft or others to exist. Lessee agrees that it will not disturb others by creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission, or other undesirable condition. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission, or otherwise that would adversely affect the environment or do anything or permit others to do anything on the Hangar that would violate any Regulatory Measure.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

16. Maintenance. Lessor will conduct regular preventative maintenance checks on the Hangar. Lessee shall, at its sole risk, cost, and expense, diligently, properly, and promptly maintain, repair or restore (or replace), and clean, in a good and workmanlike manner, the Hangar, any Improvements thereto or located (or situated) thereon including its personal property (fixtures, equipment, tools, and machinery) in good repair and serviceable condition and in a clean, neat, and orderly state. The replacement of interior lighting and regular maintenance and repair of hangar doors are the responsibility of the Lessor. Any repairs necessitated by damages caused by the Lessee over and above normal wear and tear will be borne by the Lessee.

17. Based Aircraft Report. Lessee shall maintain and furnish on or before the 10th of January each year (or upon request of Lessor) a current Hangar Owner Information Sheet. Lessee shall possess proof of ownership of the aircraft being stored in leased hangar and aircraft must be properly registered and certified for flight. Prior to placing any aircraft in the Hangar and prior to 10th of January each year, Lessee shall provide Lessor, in writing, the following information: (See attached Exhibit C)

- a. Aircraft Type (Single Engine, Twin Engine, Helicopter...)
- b. Serial Number
- c. Registration Number
- d. Present Condition of Aircraft (e.g. Is the aircraft presently airworthy?)
- e. Present Market Value of Aircraft
- f. Insurance Carrier (including coverage, limits and policy number)

18. Operational Status. Lessee shall notify Lessor of any changes or modifications to Lessee's operational status. If Lessee sells the aircraft, the Lessor must be notified in writing within ten (10) days of the sale, and Lessee has sixty (60) days in which to replace said aircraft. One thirty (30) day extension may be allowed, if requested in writing from Lessee.

19. Required FAA Clauses.

- a. Non-Exclusive Use.
 - i. Lessor hereby grants Lessee the non-exclusive use of the Airport (together with all Improvements, runways, ramps, conveniences and appurtenances thereunto) in common with Lessor and other present and future lessees of Lessor, except such Improvements specifically leased herein and as may be leased by Lessor to other lessees presently or in the future.
 - ii. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States Government during the time of war or national emergency.
 - iii. If any such agreement is executed, the provisions of this instrument shall be subordinate to the provisions of any existing or future agreement between Lessor and



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

the United States Government, relative to the maintenance, operation or development of the Airport.

- iv. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating Aircraft on the Airport from performing any services on its own Aircraft with its own regular Employees (including but not limited to, maintenance and repair) that it may choose to perform.
- b. Non-Discrimination.
 - i. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar benefits, Lessee shall maintain and operate such Improvements in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
 - ii. Notwithstanding any other provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration of this Agreement does hereby covenant and agree, as a covenant running with the land, that: (1) No person on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Hangar; (2) In the construction of any Improvements on, over or under the Hangar, no person on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, or denied the benefits of, such activities, or otherwise be subjected to discrimination; (3) In the breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Leased Premises and hold the same as if this Agreement had never made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21 have been followed and completed, including expiration of appeal rights; (4) Lessee for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event Improvements are constructed, maintained, or otherwise operated on the Hangar for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar benefits, Lessee shall maintain and operate such Improvements in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
 - iii. Lessee assures it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Lessee or its transferee for the period during which Federal assistance is to provide, or is in the form



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

of personal property or real property or interest therein or structures or Improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: the period during which the Property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar benefits, or the period during which Lessor or any transferee retains ownership or possession of the Property.

- iv. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.
 - v. Lessee agrees it will practice non-discrimination in its activities and will provide Disadvantaged Business Enterprise (DBE) participation as required by the sponsor, in order to meet Lessor's goals, or required by the FAA in order to obtain an exemption from the prohibition against long-term exclusive leases.
- c. Reservations. Lessor reserves the following rights:
- i. Nothing contained within this Agreement shall be construed to limit the use of any area of the Airport by Lessor or to prevent any FAA, Department of Homeland Security, Transportation Security Administration, Police Department, other law enforcement officers, code enforcement officers, or Airport Emergency Services personnel from acting in official capacities.
 - ii. Lessor reserves the right for the use of the Airport by others who may desire to use the same pursuant to applicable Regulatory Measures pertaining to the Airport and such use.
 - iii. Lessor reserves the right to designate specific Airport areas for activities in accordance with the currently adopted Airport Layout Plan (ALP). Such designation shall give consideration to the nature and extent of current and/or future activities and the land and/or Improvements that may be available and/or used for specific activities and shall be consistent with the safe, secure, orderly, and efficient use of the Airport.
 - iv. It is the policy of Lessor that any occupancy, use, and/or development (construction or modification) of land and/or Improvements which is inconsistent with the ALP is undesirable. Any development that is substantially different than that depicted on the ALP could adversely affect the safe, secure, orderly, or efficient use of the Airport. Nothing contained in this Agreement shall require obligate Lessor to apply to the FAA for approval of the revision of the ALP on half of a current or prospective Operator, Lessee, Sublessee, or user of the Airport.
 - v. Lessor reserves the right to develop and make any Improvements and/or repairs on, at, or to the Airport it deems necessary. Lessor will provide advance notice of the date and time to impacted parties that such development, improvements, and/or repairs will be made. Lessor shall not be obligated to reimburse or compensate any Operator, Lessee, or other entity for any cost and/or expense incurred, loss of revenue, or inconvenience that may result from such development, improvement, and/or repair.
 - vi. Lessor (and its representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors, and volunteers) shall not be responsible for loss, injury, or damage to persons or property at the Airport related in any way to any natural disaster or illegal activity.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

- vii. Lessor reserves the right to prohibit any entity from using the Airport or engaging in activities at the Airport (and/or Lessor may suspend and/or revoke any privileges granted to any entity) upon determination by Lessor that such entity has not complied with the Airport's Primary Guiding Documents, applicable Regulatory Measures, directives issued by Lessor, or has otherwise jeopardized the safety or security of entities utilizing the Airport or the land and/or Improvements located at the Airport.
- viii. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military use of part or all of the landing area, the publicly owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, any agreement between Lessor and Lessee, insofar as it is inconsistent with the agreement between Lessor and the United States Government, shall be suspended, without any liability on the part of Lessor to Lessee.
- ix. Lessor will not relinquish the right to take any action Lessor considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent a person from erecting or permitting to be erected any facility or other structure which might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- x. Lessor will not waive any sovereign, governmental, or other immunity to which Lessor may be entitled nor shall any provision of any Agreement be so construed.
- xi. Lessor will not submit to the laws of any state other than those of the State of South Dakota.
- xii. Lessor is under no obligation to provide financing and/or make any improvements to Airport land and/or Improvements to facilitate any development or consummate any Agreement proposed by a current or prospective Operator, Lessee, or Sublessee. Lessor is under no obligation to: (a) pursue federal, state, or other available funds to contribute to such development or (b) provide matching funds to secure such funding.
- xiii. Lessor reserves the right to take such actions as it may deem necessary, appropriate, and/or in the best interest of Lessor including preserving the assets of Lessor and the Airport, protecting the safety and security of the people who work at and/or use the Airport, and maintaining the integrity of Lessor's and/or Airport's mission, vision, and values.

20. **Default.** In addition to the defaults and breaches identified in this Agreement, the occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Lessee:

- a. The filing by Lessee of a voluntary petition in bankruptcy;
- b. The assignment of substantially all of Lessee's assets for the benefit of Lessee's creditors;
- c. A court making or entering any decree or order
 - i. adjudging Lessee to be bankrupt or insolvent;
 - ii. approving a properly filed petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof;



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

- iii. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its property; or
- iv. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of 60 days;
- d. The filing of any lien against the Hangar resulting from any act, error, or omission of Lessee which is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within 30 days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien;
- e. The voluntary abandonment by Lessee of the Hangar or Lessee's failure to maintain the on-going Non-Commercial Aeronautical Activity authorized in this Agreement at the Leased Premises for a period of 30 days or more;
- f. The transfer of Lessee's interest herein by other operation of law;
- g. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed to be paid for a period of 30 days after the time such payments become due and owing;
- h. The falsification by Lessee of any of its records so as to deprive Lessor of any of its rights, privileges, rents, fees, or other charges under this Agreement or any other agreement between the Parties;
- i. The failure by Lessee to perform any of the covenants, conditions, obligations, and agreements contained herein or in any other agreement between the Parties where the failure continues for a period of 30 days after written notice from Lessor;
- j. If Lessee is an entity (not a natural person), the sale of stock, membership interest, or partnership interest in Lessee which divests the present stockholders/members/partners of controlling interest; or
- k. The sale, assignment, or transfer or the attempted sale, assignment, or transfer of this Agreement by Lessee. Negotiations by Lessee for the sale, assignment, or transfer of this Agreement shall not be construed as "attempted transfer."

21. Remedies.

- a. In the event a default or breach of this Agreement by Lessee is not cured within 30 days of receiving notice from Lessor, Lessor may, in addition to any other remedies available to Lessor, terminate this Agreement.
 - i. However, if the default or breach concerns a failure to make payments to Lessor, of rent, fees or other charges, no written or other notice of default or breach shall be required. In such case, Lessor may terminate this Agreement upon Lessee being in arrears for a period of 30 days.
 - ii. If the default or breach concerns a failure to comply with Section __ entitled "Use," Lessee shall have 15 days following the date of notice to cure the default. If not cured, Lessor may terminate this Agreement.
- b. If this Agreement is terminated for any default or breach by Lessee, any payments made to Lessor shall be forfeited to Lessor, and Lessee shall have no right to recover any other payments. This forfeiture shall not diminish nor limit Lessor's right to recover such damages resulting from the default or breach by Lessee. In addition, the Lessor shall have the following rights and remedies upon the default of Lessee:



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

- i. the recovery of any unpaid rent, fees, and other charges due and owing at the time of termination, plus any unpaid rent, fees, or other charges that would have been earned or made if Lessee had not defaulted or breached this Agreement;
- ii. the recovery of any damages, costs, fees, and expenses incurred by Lessor as a result of the default or breach of this Agreement by Lessee, including attorneys' and court fees, costs, and expenses;
- iii. the removal, storage, and/or disposal of fixtures, equipment, tools, machinery, or other items of personal property from the Hangar, at Lessee's sole risk, cost, and expense and without liability to Lessor for resulting damage in which case Lessee shall pay Lessor the costs and expenses thereof within 15 days upon receipt of an invoice;
- iv. placing a lien on (or against) the Hangar; and
- v. any other right or remedy, legal or equitable, that Lessor is entitled to under applicable law including, but not limited to, injunctive relief.

22. Termination. In the event of termination, Lessor shall have the right, at once and without further notice to Lessee, to enter and take full possession of the Leased Premises and any and all Improvements thereto or located (or situated) thereon including pavements and utilities. Upon the termination of this Agreement, Lessee shall surrender the Hangar and any and all Improvements thereto or thereon to Lessor in the same condition as when received, with the exception of ordinary and reasonable wear and tear. Termination shall not relieve Lessee of the duty to perform all outstanding obligations and requirements.

23. Termination by Lessee. Lessee may terminate this agreement for any reason upon sixty (60) days written notice to Lessor. If this Agreement is terminated for any default or breach by Lessor, any payments made to Lessor pursuant to this Agreement shall be prorated to the date of termination.

24. Condemnation. In the event of the acquisition by condemnation or the exercise of the power of eminent domain, of any interest in all or a portion of the Hangar, Lessee shall not institute any action or proceeding or assert any claim against Lessor for Compensation or consideration of any nature whatsoever. Nothing herein shall be construed to preclude Lessee from recovering or asserting claims against the condemning agency for any claims that it may have. Condemnation shall act to terminate this Agreement as of the date the title of the Hangar is transferred to the condemning agency.

25. Licenses, Certificates, and Permits. At Lessee's own cost and expense, Lessee shall obtain any and all licenses, certificates, and permits from all agencies having jurisdiction that may be necessary to construct, use, and/or occupy Improvements on the Hangar.

26. Insurance. Lessee shall, at its sole risk, cost, and expense, procure, keep, and maintain the insurance required by Regulatory Measures and the Airport's Primary Guiding Documents at all times during its tenancy. Such insurance shall name Lessor as additional insured. Such insurance shall not act to limit Lessee's liability for any obligations contained herein.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

27. Damage. If any part of the Hangar, the Airport, or associated Property is damaged or destroyed by Lessee, its representatives, agents, guests, or invitees, Lessee shall diligently, properly, and promptly repair or restore (or replace) to the condition and character of the Hangar, the Airport, or associated Property immediately prior to damage. If Lessee fails to diligently, properly, and promptly repair or restore (or replace) the damaged or destroyed part of the Hangar, the Airport, or the associated property, Lessee shall pay to Lessor, upon demand, the amount that Lessor determines is necessary to properly repair or restore (or replace) the damaged or destroyed part of the Hangar, the Airport, or associated property and upon receipt of said payment, Lessor will repair or restore (or replace) the damaged or destroyed part of the Hangar, the Airport, or associated property. Lessor shall be under no obligation to repair or restore (or replace) the damaged or destroyed portion of the Hangar unless Lessor is responsible for such damage or destruction.

28. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

Rapid City Regional Airport
Attn: Executive Director
4550 Terminal Road, Ste 102
Rapid City, SD 57701

Wayne Hartman

29. Indemnity. Lessee agrees to indemnify, defend and hold the Lessor harmless from and against any and all liability, losses, claims, damages, suits, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the Lessor may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Lessee and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Lessee or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Lessee.

30. Sublease, Sale, Assignment or Transfer. Lessee shall not sublease, sell, assign, or transfer its interest in the Hangar of this Agreement in whole or in part. Any attempt to sublease, sell, assign, or transfer shall be null and void, and at Lessor's option shall constitute a default of this Agreement.

31. Encumbrances. Lessee shall have no authority, express or implied, to create (or consent to the creation of) any lien, claim, charge or encumbrance upon the Hangar and Lessee shall not permit the Hangar or any part thereof, any Improvements thereto or located (or situated) thereon, or any other part of the Airport to be or become subject to any lien (including mechanic's liens), charge, claim, or encumbrance whatsoever without the prior express written consent of Lessor.



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

Further, Lessee shall not mortgage, pledge, assign as collateral, voluntarily or otherwise, its interest in the Hangar or this Agreement without the prior express written consent of Lessor.

32. Relocation. Lessee understands Lessor has the right to replace the Hangar, in whole or part, with equivalent premises similarly situated at the Airport.

33. Holdover. In the event Lessee should hold over and remain in possession of the Hangar after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement, but shall, instead, create a month-to-month tenancy, which may be terminated at any time by Lessor by providing not less than 30 days' written notice. The rents, fees, and other charges paid during the holding over period shall be equal to the monthly rents, fees, and other charges that were being charged by Lessor at the time this Agreement expired, subject to adjustment by Lessor with 30 days' written notice. The holdover period shall not exceed 180 days after which time, this Agreement shall be terminated.

34. Independent Entities. Nothing in this Agreement is intended to nor shall it be construed in any way as creating or establishing the relationship of partners between the Parties or as constituting Lessee as a representative, officer, official, employee, agent, or volunteer of Lessor for any purpose or in any manner whatsoever.

35. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

36. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

37. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

38. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

39. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

40. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

41. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this ____ day of _____, 20__.

RAPID CITY REGIONAL AIRPORT BOARD

Dick McConnell, President

ATTEST:

Shawn Gab, Secretary



NON-COMMERCIAL HANGAR LEASE AND USE AGREEMENT

Wayne Hartman

State of _____)
) ss.
County of _____)

On this the ____ day of _____, 20____, before me, the undersigned officer, personally appeared Wayne Hartman, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that s/he executed the same for the purposes therein contained.
In witness whereof I hereunto set my hand and official seal.

(seal)

Notary Public
My Commission Exp _____

EXHIBIT A
4001 Holsworth Hangar Lane
Rapid City, SD 57703

North			
Available #5 - Large (\$300)	Wayne Hartman #4 - Regular (\$250)		
Available #6 - Regular (\$250)	Timothy Stuen #3 - Regular (\$250)		
Don Shinabarger #7 - Regular (\$250)	Available #2 - Regular (\$250)		
John Glassford #8 - Regular (\$250)	Available #1 - Large (\$300)		
South			
		West	East