MEMORANDUM

TO: Airport Board
FROM: Patrick Dame, C.M., Executive Director
DATE: November 10, 2020
RE: Westjet Air Center, Inc. Determination of Leasehold Boundary

The demolition of the final set of hangars on Westjet’s leasehold has been completed. However, Airport staff and Westjet have been unable to come to agreement regarding the amount of square footage to be released and final property boundary line. Therefore, this matter is being presented to the Airport Board for resolution and determination of said square footage and property boundary line.

Attached herewith is a memorandum from Carla Cushman, Assistant City Attorney, presenting Airport staff’s position. Also attached is correspondence from Westjet Air Center, Inc.’s attorney, Samuel D. Kerr, presenting its position.

**STAFF RECOMMENDATION:** Staff requests the Airport Board determine the amount of square footage to be released, the adjusted boundary lines, and to authorize Staff to proceed with an addendum and property boundary line exhibit in accordance with its determination for action at the December 22, 2020, Airport Board meeting.
MEMORANDUM

TO: Airport Board, Airport Director Patrick Dame
FROM: Carla Cushman, Assistant City Attorney
DATE: November 6, 2020
RE: Vacated area in Westjet leasehold

Westjet and Airport staff are in a dispute about area within Westjet’s leasehold that is to be returned to the Airport and removed from Westjet's leased area. The matter is now before the Board for resolution. I provide the following factual background and legal arguments in support of Airport staff’s position.

WESTJET’S LEASE PROVISION FOR HANGAR DEMOLITION

The relevant portions of Westjet’s lease provide that Westjet has five years to demolish three buildings. Specifically, Section 3.3.1.7 reads:

Lessee agrees to tear down the hangars/buildings located at 4150 and 4160 Airport Hangar Road, as shown on Exhibit A-Consolidated Map, as buildings 2, 3, and 4 within five (5) years from the commencement of this Agreement.

The next section discusses return of the “vacated area” to the Airport and is the source of the dispute between Westjet and Airport staff. It states:

Vacated area must be returned to the Lessor in its original condition and character, revegetated, and to the satisfaction of the Lessor; or it may be redeveloped by mutual agreement of the parties.

Section 3.3.1.7.1. The lease goes on to discuss the process for redevelopment of the site. Westjet did not propose any redevelopment of any of the vacated areas.
BUILDING 4 / AREA C

The exhibits to the original lease reflect that Area C included Building 4 as well as the surrounding pavement for a total square footage of 29,483 square feet. See Attachments A and B. In October 2019, the Airport Board approved the demolition of Building 4, and Westjet demolished the structure soon after. In December 2019, Westjet and the Airport amended the lease to remove the entirety of Area C from the leasehold – 29,483 square feet – both the building footprint and the adjacent pavement. See Attachment C. Westjet's conduct last year reflects its contractual obligation to return the entire vacated area – not just the hangar footprint or revegetated area – in the demolition of Building 4.

BUILDINGS 2 AND 3 / AREA A

Buildings 2 and 3 are included within Area A of the leased premises, along with a third building. See Attachment D. Westjet demolished Building 2 at some time prior to May 2017. The Airport Board approved the demolition of Building 3 at its June 9, 2020 meeting, and Westjet demolished the building thereafter.

Since the most recent demolition, Airport staff and Westjet have corresponded and met to discuss the amount of area to be returned to the Airport, per the lease agreement, for demolished buildings 2 and 3. During those discussions, Airport staff have argued that all adjacent pavement to the demolished buildings shall be returned to the Airport, including the pavement on the south side of the demolished hangars adjacent to Schinzel Hangar Lane. Westjet has expressed its position that the building footprint, plus the area behind / north of the demolished buildings, is what needs to be returned; the area between the demolished hangar and Schinzel Hangar Lane should remain in Westjet’s leasehold.

VACATED AREA TO BE RETURNED

Westjet’s position.

First, Westjet contended that only the revegetated areas shall be returned to the Airport. See Attachment E. Of course, in 2019 when Westjet returned Building 4 to the Airport, the area returned included pavement and not just revegetated areas. Attachment C. And Westjet’s position today includes the return of asphalt in addition to revegetated areas.

The lease does not state that the vacated area will be entirely revegetated. Instead, Section 3.3.1.7.1 provides: “[v]acated area must be returned to the Lessor in its original condition and character, revegetated, and to the satisfaction of the Lessor.” While this section could have been drafted more clearly, it cannot reasonably be read to say that the entire vacated area must be revegetated, or that any area that is not revegetated need not be returned to the Airport. The lease’s use of “revegetated” refers to an obligation of Westjet’s
to revegetate the area to the Airport’s satisfaction, not an entitlement of Westjet’s to limit the vacated area based on the boundaries of the revegetation. For good reason, the Airport does not wish to have Westjet remove good pavement in order to revegetate the entire vacated area, and the lease clearly defers to the Airport’s discretion about the condition of the vacated area upon its return.

Now, Westjet’s attorneys argue that the area removed from its leasehold should be the square footage of the footprints of the demolitions (as stated by its contractor) and as hand drawn on a Google maps image lacking any dimensions. See letter from Sam Kerr dated November 3, 2020, p. 4. Because Westjet’s lease area and rates are calculated based upon square footage, the Airport intends to have the vacated area surveyed and memorialized in a document incorporated into the lease. Both parties need to be certain of the area removed from, and retained in, Westjet’s leasehold, in order to accurately calculate the lease rent and determine the boundaries of the leasehold. See, e.g., Attachment F (exhibit prepared by KLJ to reflect the return of the vacated area). I would strongly urge the Airport not to rely on hand drawn “maps” without any dimensions to document the boundaries of any leases.

Finally, Westjet contends that the 20 foot strip alongside Schinzel Hangar Lane is necessary to ensure sufficient space to navigate aircraft around its maintenance hangar and adjoining areas. See letter from Sam Kerr dated November 3, 2020, p. 5. Westjet has been told that Schinzel Hangar Lane will be a public access taxilane that is available for Westjet (and others) to use as a taxilane to access various parts of its leasehold. See Attachment G. The Airport does not agree that Westjet must retain its exclusive access over the 20 foot area to ensure safe maneuverability of aircraft in its leasehold. Finally, Westjet’s justification related to their maintenance shed, located on one end of the disputed property, does not explain their need for the 20 foot disputed area located the entire length of the vacated area.

Airport’s Position

Airport staff have consistently stated that the Westjet must surrender to the Airport, per the lease, both the demolished hangar’s footprint and the pavement surrounding the demolished buildings. Specifically, the Airport believes that an area 81.6 square feet wide and 491.9 feet long in Area A should be returned to the Airport. See Attachment F. The Airport’s proposal today mirrors what Westjet agreed to last year with the demolition of Building 4.

The Airport’s position is supported first by the language in the parties’ agreement. As excerpted above, the lease provision uses the phrase “vacated area” (not revegetated area) to describe the area to be returned to the Airport. Thus, the entirety of the area that is vacated is to be returned to the Airport. When the buildings were standing, the pavement surrounding them was used and usable by Westjet and its customers for access to the (now demolished) buildings. Specifically, the 20 foot area in dispute was used as an approach to the demolished hangars, as the hangar doors faced Schinzel Hangar Lane. Once Westjet elected not to redevelop the area and to demolish the buildings, Westjet vacated its exclusive use of the pavement adjacent to the
demolished buildings. In the same way that someone who vacates a building also vacates one’s use of the driveway or adjacent parking area, Westjet’s surrender of the building footprint removes its need for (and expectation of) exclusive use of the adjacent pavement.

Additionally, this interpretation of the “vacated area” is appropriate and reasonable in light of the rest of Section 3.3.1.7, which ties the buildings’ demolition to redevelopment of the sites. The lease grants Westjet an option to redevelop the sites but holds that Westjet’s failure to redevelop results in its surrender of the area to the Airport. Redevelopment of the area can then occur by the Airport or a third party. However, Westjet’s interpretation that the vacated area be restricted to the building footprint on the south side would fatally frustrate the redevelopment purpose of the lease provision.

Redevelopment of these areas is significantly hampered if the pavement to access the new development remains in Westjet’s possession and part of its leasehold. If Westjet retains the 20 foot strip along Schinzel Hangar Lane, access to the redevelopment would be significantly restricted, limiting development possibilities. Additionally, Westjet’s proposal would reduce by approximately 20 feet the developable area, from 81.6 feet wide to approximately 61.6 feet (although a survey would be required to calculate the exact amount). Westjet’s demand that a smaller area be vacated significantly hampers any potential for redevelopment of the area with utilities, a taxiway, or nearby structures. It appears this may be the point – Westjet hopes to prevent any redevelopment of the returned property while no longer having to pay for its exclusive use as part of the leasehold. ¹

The lease is clear that redevelopment is the goal for the vacated area, either through installation of utilities, constructing a wider taxiway (which Westjet could utilize), or for other development that improves the airfield. Redevelopment of this area would benefit all Airport users, including Westjet. But for redevelopment to occur, the property needs to be within the Airport’s control. The entire area vacated by the demolition of Buildings 2 and 3 should be returned to the Airport for redevelopment for its highest and best use, for the benefit of the Airport and its GA users in the near future. For this reason, Airport staff and the City Attorney’s Office urge the Board to conclude that the entire vacated area, suitable for redevelopment, be removed from Westjet’s leasehold.

¹ Notably, one of the purposes in the Airport’s recently adopted leasing policy is to “ensure that leased parcels are actually developed for use and not leased for anticompetitive reasons to prevent development.” See General Aviation Leasing Policy effective August 1, 2020, at page 2.
WESTJET AIR CENTER, INC.
LEASED PREMISES

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**TOTAL IMPROVED:**
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/ 12 = $336.39 monthly

**TOTAL UNIMPROVED:**
275,525 X .01955 = $5,413.20 Annual
/ 12 = $451.10 / monthly

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EXHIBIT A - 4102 AIRPORT HANGAR RD. (AREA C)  
LEASE PROPERTY - WEST JET (DON & LINDA RYDSTROM)  
LOCATED IN THE SW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 9 EAST, B.H.M.  
PENNINGTON COUNTY, SOUTH DAKOTA  
OWNER: RAPID CITY REGIONAL AIRPORT  
SHEET 1 OF 1  

LEGEND  
BUILDING RESTRICTION LINE  ——— BRL ———  
GROUP 1 25' TAXILANE  ——— ——— ———  
GROUP 1 79' TOFA  ——— TOFA ———  
CHAINLINK FENCE  ——— ——— ———  

UNIMPROVED AREA  = 29,483 S.F.  

DRAWN BY: GCH  START DATE: 8/19/2014  
CHECKED BY: RAS  END DATE:  
PREPARED BY:  
KLJ, INC.  
330 KNOLLWOOD DRIVE  
RAPID CITY, SD 57701-0811  
(806) 721-5553  

© KLJ 2014
ADDENDUM #3
COMMERCIAL LEASE AND USE AGREEMENT BETWEEN RAPID CITY REGIONAL AIRPORT AND WESTJET AIR CENTER, INC.

The Rapid City Regional Airport Board City of Rapid City (Board) and Westjet Air Center, Inc., (FBO) entered into an Airport Commercial Lease and Use Agreement to operate as a Fixed Base Operator on August 26, 2014, and amended the agreement on August 25, 2015, and November 25, 2015, (as amended, heretofore known as the “Agreement”). The Parties agree that the Agreement remains in full force and effect, except as specifically modified by this Addendum.

WHEREAS, the Agreement requires the FBO to tear down certain hangars/buildings within their leasehold premises; and

WHEREAS, FBO has completed the demolition of the hangar/building identified as C-4 on Exhibit A-2 of the Agreement; and

WHEREAS, FBO and Board desire to release the additional square footage of the demolished hangars/buildings from the Agreement.

NOW THEREFORE, be it agreed by the Parties as follows:

The parties agree that the FBO’s leasehold is hereby reduced by 29,483 square feet of unimproved area, and the FBO releases this square footage from the Agreement. Therefore, the Parties agree that the leasehold contains 249,192 square feet of unimproved area and 85,198 square feet of improved area, as indicated on the attached Exhibit A, Westjet Air Center, Inc. Leased Premises, attached and incorporated herein by reference.

The effective date of this Addendum is December 1, 2019. All other terms of the Agreement shall remain the same and continue in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Addendum this 17th day of December, 2019.

RAPID CITY REGIONAL AIRPORT BOARD

[Signature]
Darren Haar, Board President

ATTEST:

[Signature]
Shawn Gab, Secretary

---SIGNATURE PAGE TO FOLLOW---
WESTJET AIR CENTER, INC.

Linda N. Rydstrom, Principal

State of South Dakota
County of Pennington

ss

On this 16 day of December, 2019, before me, the undersigned officer, personally appeared Linda N. Rydstrom, known to me to be a Principal of Wesjet Air Center, Inc., and that she, as such Principal, being authorized to do so, executed the foregoing instrument for the purposes therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Karen A. Olson
Notary Public
My Commission Expires 05-19-2024
EXHIBIT A-2

WESTJET AIR CENTER, INC.
LEASED PREMISES
Revised as Per Addendum #3

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**TOTAL IMPROVED based on 2019 Rates:**
85,198' X .07017 = $5,978.34 Annual
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**TOTAL UNIMPROVED:**
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EXHIBIT A - 4160 FIRE STATION ROAD (AREA A)
LEASE PROPERTY - WEST JET (DON & LINDA RYDSTROM)
LOCATED IN THE SW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 9 EAST, B.H.M.
PENNINGTON COUNTY, SOUTH DAKOTA
OWNER: RAPID CITY REGIONAL AIRPORT
SHEET 1 OF 1

SECTION 17
WEST 1/4 CORNER

SW CORNER
SECTION 17

IMPROVED AREA
28,544 SQ. FT.

UNIMPROVED AREA
102,376 SQ. FT.

TOTAL AREA
130,920 SQ. FT.

LEGEND
BUILDING RESTRICTION LINE BRL
GROUP 1 25' TAXILANE
GROUP 1 79' TOFA
CHAINLINK FENCE

DRAWN BY: GCH
CHECKED BY: RAS
DATE: 8/19/2014
DATE: -

PREPARED BY:
KLJ, INC.
330 KNOLLWOOD DRIVE
RAPID CITY, SD 57701-6611
(605) 721-5553
LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

311 N. 27TH STREET
SUITE 4
SPEARFISH, SD 57783-3213
605-722-9000
FAX 605-722-9001

909 ST. JOSEPH STREET, SUITE 800
RAPID CITY, SD 57701-3301
605-342-2592
FAX 605-342-5185

REPLY TO: Rapid City Office

From the offices of Aaron T. Galloway and Samuel D. Kerr

e-mail address: agalloway@lynnjackson.com
skerr@lynnjackson.com

September 11, 2020

VIA E-MAIL (toni.broom@regov.org)

Ms. Toni Broom
Deputy Airport Director
Rapid City Regional Airport
4550 Terminal Road, Suite 102
Rapid City, SD 57703

Re: Westjet Air Center, Inc. – Lease
Our File No. 890018-00003

Dear Toni:

These offices have been asked to assist Westjet Air, Inc. ("Westjet"), in connection with the above-referenced matter. We understand there have been ongoing discussions over the last several months. In reference to your letter of August 27, 2020, relative to the proposed lease square footage return, that analysis is beyond the scope of the ground lease and not acceptable. Westjet stands ready and willing to the return of the revegetated areas of Buildings 2 and 3 pursuant to the language of the ground lease, the addenda, and relevant exhibits thereto.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

[Signature]

Samuel D. Kerr
Aaron T. Galloway

SDK:ATG:jak

cc: Westjet Air Center, Inc.
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**TOTAL IMPROVED based on 2020 Rates***:
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**TOTAL UNIMPROVED**:
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*Unimproved Rent to be pro-rated as of August 1, 2020, when the hangars were demolished.
EXHIBIT A - 4160 WESTJET DRIVE (AREA A)
LEASE PROPERTY - WESTJET (DON & LINDA RYDSTROM)
LOCATED IN THE SW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 9 EAST, B.H.M.
PENNINGTON COUNTY, SOUTH DAKOTA
OWNER: RAPID CITY REGIONAL AIRPORT

Sheet 1 of 1

EXHIBIT E-2

LEGEND

GROUP 1 25' TAXILANE

CHAINLINK FENCE

DRAWN BY: GCH
CHECKED BY: RAS
DATE: 9/4/2020

PREPARED BY:
KLJ, INC.
330 KNOLLWOOD DRIVE
RAPID CITY, SD 57701-6611
(605) 721-5553
EXHIBIT E-3

WESTJET LEASE AREAS

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ATTACHMENT F
August 27, 2020

Don & Linda Rydstrom  
Westjet Air Center, Inc.  
4190 Westjet Drive  
Rapid City, SD  57703

Dear Don and Linda,

Thank you for taking the time to meet with us last week regarding your leasehold and the return of space related to the demolition of the hangars. We appreciate the open dialogue and hearing your concerns. Throughout our conversation, we all agreed that safety is of the highest concern to all of us.

While the main purpose of the meeting was to discuss the amount of square footage and the new adjusted lease boundaries, some other items were brought up that warrant additional response from the Airport. Outlined below are those responses.

1. Aircraft Runups. We all agreed that aircraft full power runups are very dangerous in that they can generate winds in excess of 100 miles per hour thereby potentially damaging property and/or people. We have grave concerns about Westjet doing these, or any aircraft runups, in areas where nearby buildings, cars, property, and people could potentially be harmed.

You stated that Westjet has been doing this for the past 45 years. This makes us question the practice having been done prior to the demolition of the federal building. The safety factor would have been even further compounded with that building in place.

Aircraft runups should never be done near a building area, parking area or public roads. The Airport Rules and Regulations, Sections 2.13.11. and 2.13.11.1. state: “The starting, positioning, or taxiing of any Aircraft shall be done in such a manner so as to avoid generating or directing any propeller slipstream or engine blast that may endanger or result in injury to persons or damage to Property. To avoid this situation, it may be necessary to tow the Aircraft to a location or position at or on the Airport where the propeller slipstream or engine blast will not endanger or cause injury to persons or damage to Property when the engines are started or operated.”

We appreciate you bringing your current procedures to our attention. It has allowed us to address an unsafe practice that may be occurring in other areas of the airfield as well. As such,
we have notified you separately via email from Chris Deitz dated August 27, 2020, as well as all
general aviation users, of Airport designated aircraft runup areas. These will be incorporated
into our official Rules and Regulations document. A copy of that correspondence and related
map are included herewith as Exhibit 5. Since these new guidelines are effective immediately,
aircraft runups within your leasehold boundaries are now prohibited.

2. **Taxi lane Designation.** You shared concern that if Schinzel Hangar Lane was a public
access taxi lane, what assurances could the Airport provide that would prohibit anyone from
parking here or building anything abutting up against it. As a designated taxi lane meeting FAA
standards, blocking or parking an aircraft for a longer period of time reasonably needed for
loading it would not be permitted. This is no different than any other taxi lane or taxiway.

One of the reasons for the Airport requiring the hangars to be removed was to meet FAA
Advisory Circular (AC) 150/5300-13A Design Standards Based on Airplane Design Group
(ADG) that addresses Object Free Areas (OFA). All future airport development will require
adherence to FAA standards set forth in Table 4-1 of the AC. Any deviation to these standards
requires approval from the FAA Airport’s District Office.

We fully agree that a large area is needed to meet the safety requirements of the aircraft
currently being maintained by Westjet. However, the spacing between Westjet’s remaining
maintenance hangar and the building removed was approximately 64 feet. Per the AC, the
taxi lane OFA for the smallest Aircraft Design Group size is 79 feet (aircraft wingspans less than
49 feet, ADG I). In order to bring the size of aircraft you referenced behind your maintenance
hangar, it would require an OFA of 115 feet (aircraft wingspans of 49 feet to 79 feet for ADG II).
Currently, there is inadequate OFA to safely accommodate aircraft accessing the rear or west
side of your maintenance hangar.

Therefore, based on the 115 feet standard identified in AC 150/5300-13A, please ensure that
this particular taxi lane OFA is cleared of any obstruction(s) from Westjet. We are willing to work
with you to achieve compliance with the standard and are initiating plans to eliminate the Airport
owned light pole within that OFA.

3. **Lease Language on Demolition.** The lease does not state that you have to return the
revegetated area but states that the “vacated area must be returned to the Lessor in its original
condition and character, revegetated,...” It does not specifically list the boundaries and
associated square footage but refers to the Exhibit A – Consolidated Map and buildings 2, 3,
and 4.

The individual exhibit of Building 4 is attached to the lease as Exhibit A – 4102 Airport Hangar
Rd (Area C). (Attached hereto as Exhibit 1.) This pertains to the first set of hangars that were
torn down and was used to determine the amount of square footage returned. It should be noted that this area included the hangar approaches on the south side of those hangars. In an effort to keep as much asphalt space in that area as possible, the Airport did not require you to tear out that approach and revegetate. However, it was included in the overall square footage released from your leasehold, to which you agreed.

The individual exhibit of Buildings 2 and 3 is attached to the lease as Exhibit A – 4160 Fire Station Road (Area A). (Attached hereto as Exhibit 2.) Using this exhibit, we come up with a total square footage of 34,060.65 removed from the leasehold. This includes the areas around the hangar consistent with the first demolition as well as our other hangar leaseholds. (Attached hereto as Exhibit 3.) Each tenant is responsible to connect to the taxi lane with its own approach which is included in their total leasehold boundary.

The individual exhibits do reflect a hatched line on the buildings. However, they do not represent the entire “vacated area” as referenced in your email from August 7, 2020. The hatched lines are drawn on the buildings by KLJ to identify a building when the aerial photo is not turned on.

We do not agree with your proposed boundary adjustment as reflected on the attached Exhibit 4 that you provided to us. It also doesn’t correctly reflect the boundaries the Airport originally submitted to you as the attached Exhibit 3. While the Airport recommended that you return Schinzel Hangar Lane to the Airport, that was not figured into our exhibit as you indicated wanting to retain it in your leasehold. Based on the south side of this drawing from the original lease executed in 2014, Exhibit 3 clearly lists the 81.6’ width for a total square footage removal of 34,060.65 as referenced above. And again, this is consistent with the calculation used for the first demolition.

4. Impeding Westjet’s Ability to Conduct Maintenance. It was mentioned a number of times that the Airport’s actions will prohibit you from doing maintenance, blocking access to your western doors, and taking aircraft to the tiedowns. We strongly disagree with this assumption. It is not the Airport’s intention to prevent or block access to any existing hangar doors or impede upon any aeronautical business. That would not be in the best interest of anyone. As the access to those hangar doors is within your leasehold, access to those doors would not be hindered by the Airport’s actions.

With safety being of the utmost importance to both Westjet and the Airport, we believe we have addressed your concerns, improved safety through our actions, and reduced your expense. With an FAA compliant taxi lane and designated runup areas, the returned space as represented on Exhibit 3 will not inhibit your operations and will provide improved safety. Whether you return the area identified as Schinzel Hangar Lane to the Airport is up to you. Releasing this area to
Westjet Air Center, Inc.
August 27, 2020
Page Four

Airport may potentially open up additional federal dollars for the redevelopment. Should you choose to keep the space, you will be responsible for the maintenance and upkeep of the area.

In summary, we are required by the FAA to maintain and make the best use of all space on the Airport. The current update to the Airport Master Plan will help provide guidance to us, to Westjet, and to all Airport users for future development. You stated many times during our meeting that you did not want anyone developing around your leasehold. Our conclusion, therefore, is that you are intentionally trying to prohibit Airport development by your refusal to release the square footage as identified by the Airport. Westjet has had more than sufficient time to redevelop its leasehold but has not done so. It is our responsibility to ensure that we keep moving forward with development of the entire Airport.

Sincerely,

Toni Broom
Deputy Airport Director
Finance and Administration

Enclosures: Exhibits 1-5
November 3, 2020

VIA E-MAIL: toni.broom@rcgov.org

Rapid City Regional Airport Board of Directors
Airport Administration Office
4550 Terminal Road, Ste. 102
Rapid City, SD 57703-8706

Re: Westjet Air Center, Inc. – Lease
   Our File No. 890018-00003

Dear Board of Directors:

By letter of October 9, 2020, Ms. Toni Broom provided our client with updated exhibits which reflect airport staff’s position on the amount of square footage Westjet is expected to release and what airport staff considers to be Westjet’s remaining leasehold. We trust you have been provided with a copy of that October 9 letter and attached exhibits, but as a convenience, we have attached that correspondence here as Exhibit 1.

As you have surmised by now, airport staff and our client disagree as to the square footage Westjet is required to release under its Commercial Lease and Use Agreement with Rapid City Regional Airport. As such, Ms. Broom has invited Westjet to provide a written statement to the Airport Board. This letter is intended as such a statement, and based upon this submission, we request that the Airport Board adopt Exhibit 2 as Westjet’s release area, which is attached hereto and incorporated herein. To understand Westjet’s position on the dimensions of the release area, it is important to review the factual underpinnings of its leasehold.

**ORIGINAL CL/UA**

**TOTAL = 337,410 square feet**

\[ (UI) 276,890 + (I) 60,520 \]

On August 26, 2014, Westjet entered into a Commercial Lease and Use Agreement ("CL/UA") with Rapid City Regional Airport ("RCRA") for a total of 337,410 square feet of airport property which consisted of 60,520 square feet of “improved” area and 276,890 “unimproved”
area. Subsections 3.1.1 and 3.1.2 of the CL/UA provided a written description of the property\(^1\) and Section 39 of the CL/UA referenced the exhibits that further defined the leasehold area by drawings.\(^2\) The CL/UA also contained a provision by which Westjet was required to tear down hangars/buildings located at 4150 and 4160 Airport Hangar Road within five years from the commencement of the CL/UA.\(^3\) Subsection 3.3.1.7 indicated that Westjet was to tear down the structures “as shown on Exhibit A-Consolidated map, as buildings 2, 3, and 4.” (emphasis added). Westjet was also required to return the “vacated area” to the RCRA in its original condition and character, “revegetated,” and to the satisfaction of the RCRA or redevelop the area pursuant to mutual agreement.\(^4\)

**ADDENDUM # 1**

**TOTAL = 348,379 square feet**

\[ [(UI) \ 278,675 + (I) \ 69,704] \]

On August 25, 2015, Westjet and RCRA executed Addendum # 1 to the CL/UA. In addition to modifying the lease term of the CL/UA, Addendum #1 modified the total leasehold to 348,379 square feet, comprised of 278, 675 square feet of unimproved area and 69,704 square feet of improved area as indicated on attached Exhibit A-1.\(^5\) All other terms of the original CL/UA were to remain the same and continue in full force and effect.

The parties appear to have attached “Exhibit A – 4170 Fire Station Road Lease Property” and “Exhibit A – Fuel Farm (Area E)” which modifies the corresponding exhibits in the original

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\(^1\) § 3.1.1. The Leased Premises consists of approximately 337,410 square feet, more fully described on Exhibits A and A-1, attached hereto and incorporated by reference. Exhibits may be amended from time to time by mutual agreement of the parties.

\(^2\) § 3.1.2. The following improvements, which are owned (and not being leased) by Lessee, were located (situated) on the Land at the time this Agreement was executed by the Parties, as shown on Exhibit A – Consolidated Map, attached hereto and incorporated here by reference: Area A-Buildings 1, 2, 3; Area C-Building 4; Area D-Buildings 5,6,7; and Area E-Fuel Tanks 8.

\(^3\) § 3.3.1.7. Lessee agrees to tear down the hangars/buildings located at 4150 and 4160 Airport Hangar Road, as shown on Exhibit A-Consolidated Map, as buildings 2, 3, and 4 within five (5) years from the commencement of this Agreement.

\(^4\) § 3.3.1.7.1. Vacated area must be returned to the Lessor in its original condition and character, revegetated, and to the satisfaction of the Lessor; or it may be redeveloped by mutual agreement of the Parties.

\(^5\) “The parties agree and acknowledge that the final improved square footage is 278,675 and final improved square footage is 69,704 as indicated on the attached Exhibit A-1, Westjet Air Center, Inc. Leased Premises, attached and incorporated herein by reference.”
CL/UA. Those modifications are as follows: the dimensions of “Exhibit A – 4170 Fire Station Road Lease Property in the original CL/UA were drawn as a 98’ x 82’ lot (8,036 sq. ft.) that delineates what appears to be a building footprint of smaller dimension, all of which is labeled 8,036 square feet. The revised Exhibit shows a lot of 112’ x 82’ (9,184 sq. ft.) which delineates a building footprint of smaller dimension, all of which is labeled 9,184 square feet. The revision to Exhibit A – Fuel Farm (Area E) consists of adding a lot drawn as 21’x 85’ (1,785 sq. ft.) to a previously existing lot drawn as 45’ x 70’ (3,150 sq. ft.).

ADDENDUM # 2
TOTAL = 363,873 square feet
[(UI) 278,675 + (I) 85,198]

On November 25, 2015, the parties executed Addendum # 2 to the CL/UA, which referenced the incorporation of 15,494 square feet of ground located at 4200 Fire Station Road. This modification added 15,494 square feet to the improved component and kept the unimproved component of the leasehold the same. This revision was also reflected in Exhibit A-2 in table format, which described the leasehold as 278, 675 square feet of unimproved area and 85,198 square feet of improved area. All other terms of the original CL/UA were to remain the same and continue in full force and effect.

ADDENDUM # 3
TOTAL = 334,390 square feet
[(UI) 249,192 + (I) 85,198]

On December 17, 2019, the parties executed Addendum # 3 to the CL/UA, which is attached hereto and incorporated herein as Exhibit 3. As stated in its recitals, the purpose of the Addendum was to memorialize the demolition of the hangar/building identified as C-4 and release that area from Westjet’s leasehold as provided in subsection 3.3.1.7 of the CL/UA. Following those recitals, the text of the Addendum provides:

NOW THEREFORE, be it agreed by the Parties as follows:

The parties agree that the FBO’s leasehold is hereby reduced by 29,483 square feet of unimproved area, and the FBO releases this square footage from the Agreement. Therefore, the Parties agree that the leasehold contains 249,192 square feet of unimproved area and 85,198 square feet of improved area, as indicated on the attached

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6 “The Parties agree and acknowledge that the final improved square footage is 278,675 and final improved square footage is 85,198 as indicated on the attached Exhibit A-2, Westjet Air Center, Inc. Leased Premises, attached and incorporated herein by reference.”
Exhibit A, Westjet Air Center, Inc. Leased Premises, attached and incorporated herein by reference.

The effective date of this Addendum is December 1, 2019. All other terms of the Agreement shall remain the same and continue in full force and effect.

(emphasis added). The parties attached “Exhibit A – Consolidated Map” and “Exhibit A-2/WESTJET AIR CENTER, INC./LEASED PREMISES/Revised as Per Addendum #3” to this document. No other “Exhibit A” exhibits were attached or contemplated by this Addendum to the CL/UA.

REMAINING OBLIGATIONS UNDER § 3.3.1.7 OF THE CL/UA

As referenced above, subsection 3.3.1.7 of the CL/UA requires Westjet to tear down hangars/buildings as shown on Exhibit A-Consolidated Map as buildings 2, 3, and 4. Westjet has fulfilled that obligation. Secondly, subsection 3.3.1.7.1 requires Westjet to return the vacated area to the RCRA “in its original condition and character, revegetated, and to the satisfaction of the [RCRA].” This obligation has been satisfied as to hangar/building 4, as memorialized by Addendum #3. As consequence, the remaining obligation pertains to that area which encompassed buildings 2 and 3 “as shown on Exhibit A – Consolidated Map.” In other words, the release area is delineated by Exhibit A – Consolidated Map. This fact was made clear by the parties in their execution of Addendum #3, the last modification of the CL/UA.

It is there that the parties agreed that the Westjet’s leasehold contained a total 334,390 square feet “as indicated on the attached Exhibit A, Westjet Air Center, Inc. Leased Premises,” which was attached to Addendum #3 and incorporated by reference into Addendum #3. It merits repeating that those attachments consisted solely of “Exhibit A – Consolidated Map” and “Exhibit A-2 (WESTJET AIR CENTER, INC./LEASED PREMISES/Revised as Per Addendum #3),” and no other drawings.

CONCLUSION

Westjet acknowledges that it has a remaining obligation under subsection 3.3.1.7.1 of the CL/UA. However, that remaining release area is defined by the Exhibit A – Consolidated Map as referenced in the CL/UA, subsection 3.3.1.7. The original CL/UA utilized the Consolidated Map to establish the obligation to demolish and release the structures shown as buildings 2, 3, and 4 in the first instance. No other drawings were referenced. Subsequently, Addendum #3 utilized the Consolidated Map to delineate the remaining leasehold upon Westjet’s release of the building 4 area. No other drawings were referenced. The release area proposed by airport staff in Exhibit 1 is not in accord with the CL/UA as revised by Addendum #3, or the language of
subsection 3.3.1.7. It is also of paramount importance that the airport staff’s proposed new Area A “footprint” running along Schinzel Hangar Lane will make it an impossibility for Wesjet to navigate aircraft around and along the southwest corner of its maintenance hangar while staying within its proposed leased footprint, and Westjet will not be able to maneuver aircraft to the tie-down area or stage for maintenance. While airport staff has stated that it is not the airport’s intent to block access or passage in that area, intent is simply not a certainty. As such, Westjet tenders Exhibit 2 as a release area and asserts that such area is in accord with the CL/UA subsection 3.3.1.7, and as revised by Addendum #3 and its attached map.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

[Signature]

Samuel D. Kerr

SDK:MFN, ATG
Encs.
c/encs: Westjet Air Center, Inc.
October 9, 2020

**VIA E-MAIL (JKortemeyer@lynnjackson.com)**

Mr. Samuel D. Kerr  
Lynn, Jackson, Shultz & Lebrun, P.C.  
909 St. Joseph Street, Suite 800  
Rapid City, SD 57701-3301

Re: Westjet Air Center, Inc. – Lease  
Your File No. 890018-00003

Dear Mr. Kerr,

In response to your letter dated September 11, 2020, we do not agree that our analysis is beyond the scope of the ground lease and stand by our analysis as presented in our correspondence to Westjet Air Center, Inc. on August 27, 2020. Attached are the updated exhibits that reflect our position on the amount of square footage to be released from the Westjet lease and its remaining leasehold.

As you mentioned, there have been some ongoing discussions on this matter between Westjet and Airport staff. Since we are not in agreement, it is our position that the next step is to take this item to the Airport Board of Directors at its November 10 meeting, for their review and consideration. If you would like to include any written statement to the Airport Board, please provide it to me by November 3, 2020.

Sincerely,

[Signature]

Toni Broom  
Deputy Airport Director  
Finance & Administration

Attachments: Lease Exhibits (3)

cc: Carla Cushman, Asst City Attorney
# WESTJET AIR CENTER, INC.
## LEASED PREMISES

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**TOTAL IMPROVED based on 2020 Rates**:  
85,198' X .07185 = $6,121.48 Annual  
/ 12 = $510.12 monthly

**TOTAL UNIMPROVED**:  
215,852 X .02105 = $4,543.68 Annual  
/ 12 = $378.64 / monthly

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*Unimproved Rent to be pro-rated as of August 1, 2020, when the hangars were demolished.*
8/7/2020

Linda Rydström
President
WestJet Air Center, Inc.
4190 Westjet Drive
Rapid City, SD 57703

Re: Building Demolition:

Dear Linda,

Per our demolition of the two General Aviation airplane hangers I have measured the footprints of our demolitions and they are as follows:

Building #1 or #4150 is \( \frac{24,440}{3,360} \) square feet
Building #2 or # 4160 is \( \frac{3,360}{3,360} \) square feet

Thank you again for the opportunity and work, call if you have any questions.

Respectfully,

David Gustafson
President
ADDENDUM #3
COMMERCIAL LEASE AND USE AGREEMENT BETWEEN RAPID CITY REGIONAL AIRPORT AND WESTJET AIR CENTER, INC.

The Rapid City Regional Airport Board City of Rapid City (Board) and Westjet Air Center, Inc., (FBO) entered into an Airport Commercial Lease and Use Agreement to operate as a Fixed Base Operator on August 26, 2014, and amended the agreement on August 25, 2015, and November 25, 2015, (as amended, heretofore known as the “Agreement”). The Parties agree that the Agreement remains in full force and effect, except as specifically modified by this Addendum.

WHEREAS, the Agreement requires the FBO to tear down certain hangars/buildings within their leasehold premises; and

WHEREAS, FBO has completed the demolition of the hangar/building identified as C-4 on Exhibit A-2 of the Agreement; and

WHEREAS, FBO and Board desire to release the additional square footage of the demolished hangars/buildings from the Agreement.

NOW THEREFORE, be it agreed by the Parties as follows:

The parties agree that the FBO’s leasehold is hereby reduced by 29,483 square feet of unimproved area, and the FBO releases this square footage from the Agreement. Therefore, the Parties agree that the leasehold contains 249,192 square feet of unimproved area and 85,198 square feet of improved area, as indicated on the attached Exhibit A, Westjet Air Center, Inc. Leased Premises, attached and incorporated herein by reference.

The effective date of this Addendum is December 1, 2019. All other terms of the Agreement shall remain the same and continue in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Addendum this 17th day of December 2019.

RAPID CITY REGIONAL AIRPORT BOARD

[Signature]

Darren Haar, Board President

ATTEST:

[Signature]

Shawn Gilb, Secretary

---SIGNATURE PAGE TO FOLLOW---
WESTJET AIR CENTER, INC.

Linda N. Rydstrom, Principal

On this 16th day of December, 2019, before me, the undersigned officer, personally appeared Linda N. Rydstrom, known to me to be a Principal of Westjet Air Center, Inc., and that she, as such Principal, being authorized to do so, executed the foregoing instrument for the purposes therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Karen A. Oleson
Notary Public
My Commission Expires 05-19-2024
EXHIBIT A-2

WESTJET AIR CENTER, INC.
LEASED PREMISES
Revised as Per Addendum #3

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**TOTAL IMPROVED based on 2019 Rates:**
85,198' X .07017 = $5,978.34 Annual
/ 12 = $498.20 monthly

**TOTAL UNIMPROVED:**
249,192 X .02056 = $5,123.39 Annual
/ 12 = $426.95 / monthly

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