



## MEMORANDUM

TO: Airport Board  
FROM: Patrick Dame, C.M., Executive Director  
DATE: April 13, 2021  
RE: Public Hearing and Airline Use and Agreement – Open Trip dba Boutique Air

The Resolution of Intent to enter an airline use and lease agreement with Open Trip dba Boutique Air was approved by the Airport Board on March 9, 2021. A public hearing is required prior to the execution of the lease, which is attached.

**STAFF RECOMMENDATION:** Staff recommends approval of the airline use and lease agreement with Open Trip dba Boutique Air.



**RAPID CITY REGIONAL AIRPORT BOARD  
CITY OF RAPID CITY**

**and**

**Open Trip dba Boutique Air**

**AIRLINE USE AND  
LEASE AGREEMENT**

**Effective: February 1, 2021**

**Rapid City Regional Airport  
Rapid City, South Dakota**

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**AIRLINE USE AND LEASE AGREEMENT**  
**RAPID CITY REGIONAL AIRPORT**

This Agreement made and entered into by and between the City of Rapid City, a municipal corporation of the State of South Dakota, by and through the Rapid City Regional Airport Board, hereinafter called "BOARD" and Open Trip dba Boutique Air hereinafter called "AIRLINE".

**RECITALS**

The BOARD is authorized by the Constitution and laws of the State to enter into lease agreements in furtherance of its governmental or proprietary purposes. The BOARD has determined that it is necessary and desirable to lease the premises as described hereinafter to AIRLINE for use primarily as a passenger terminal for its air transportation system.

AIRLINE desires to lease the premises from the BOARD, so that it may operate and maintain its air transportation system thereon.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

The following words, terms and phrases, or any derivations thereof wherever used in this Agreement, shall for the purpose of this Agreement have the meanings respectively ascribed to them in this Article.

"Affiliate Airline" shall mean any (i) contract regional Air Transportation Company that operates flights under the designator code of AIRLINE, as designated in writing by AIRLINE from time to time, (ii) party that operates under essentially the same trade name, or uses essentially the same livery, as AIRLINE at the Airport, or (iii) party controlling, controlled by, or under common control with AIRLINE. Affiliate Airline shall have the rights afforded AIRLINE without payment of any additional charges or premiums provided AIRLINE (i) remains a Signatory Airline, and (ii) agrees and shall be obligated to serve as a financial guarantor for all charges incurred by Affiliate Airline while doing business as

AIRLINE at the Airport. All Affiliate Airlines must enter into an Operating Agreement with the BOARD prior to commencing service at the Airport in order to be considered an Affiliate Airline under the terms of this Agreement. If an Affiliate Airline operates at Airport for AIRLINE without an executed Operating Agreement, AIRLINE shall assume full responsibility for the actions of such unauthorized Affiliate Airline until such time as an Operating Agreement is executed. In the event of termination of this Agreement by AIRLINE or the BOARD, each designated Affiliate Airline must enter into an Airline Use and Lease Agreement with the Airport substantially similar to this Agreement and meet all other requirements to become a Signatory Airline as defined herein in order for the Affiliate Airline to maintain its rights as a Signatory Airline.

“Air Transportation” shall mean the transportation by air of persons, property, cargo, mail, or express mail to or from the Airport and all other activities directly related thereto.

“Air Transportation Company” shall mean any entity engaged in Air Transportation.

“Airport” shall mean the Rapid City Regional Airport.

"Airport Executive Director" shall mean the Airport Executive Director for the Airport or such other individual designated as having the authority of the Airport Executive Director by the BOARD.

“Amortization” shall mean shall mean the principal and interest cost on Capital Expenditures. Amortization shall be calculated using (i) a four percent (4%) interest rate, (ii) the economic useful life of the Capital Expenditure, as determined by the Board in accordance with generally accepted accounting principles and (iii) the substantial completion date of the Capital Expenditure.

“Capital Expenditure” shall mean either (i) a single item purchased or constructed or (ii) any airport development study, analysis, review or master planning effort, economic or operational at a cost net of grants, Passenger Facility Charges, or other Federal funding, that, in either case, is more than Twenty Five Thousand Dollars (\$25,000.00) and has a useful life in excess of two (2) years, as determined by governmental accounting policies.

“Capital Outlay” shall mean either (i) a single item purchased or constructed or (ii) any airport development study, analysis, review or master planning effort, economic or operational at a cost net of grants, Passenger Facility Charges, or other Federal funding, that, in either case, is Twenty Five Thousand Dollars (\$25,000.00) or less or has a useful life of two (2) years or less, as determined by governmental accounting policies.

“Certified Maximum Landing Weight” shall mean the maximum gross certificated landed weight, in thousand (1,000) pound units, that an aircraft arrival operated by an Air Transportation Company is authorized by the FAA to land at the Airport, as recited in each Air Transportation Company’s flight manual governing that aircraft type.

“Enplanement” shall mean any revenue passenger boarding an aircraft at the Airport, even if such passenger previously disembarked from a different aircraft of the same or a different Air Transportation Company.

“Exclusive Conditioned Ground Storage Space” shall mean, at any time, the space leased by the BOARD to AIRLINE on an Exclusive Use basis as more fully set forth on Exhibits A and A-3, attached and incorporated herein by reference, as the same may be amended from time-to-time by mutual agreement of the parties in writing.

“Exclusive Use” shall mean a power, privilege or other right, authorized under this Agreement, excluding others from enjoying or exercising a like power, privilege or right.

"Exclusive Use Space" shall mean, at any time, the space leased by BOARD to AIRLINE on an Exclusive Use basis as more fully set forth on Exhibits A, A-1, and A-3, attached and incorporated herein by reference; as the same may be amended from time-to-time by mutual agreement of the parties in writing. Exclusive Use Space shall be leased from the BOARD and charged monthly on a cost per square foot basis.

“Fiscal Year” shall mean calendar year, such twelve (12) month period beginning on January 1 of any year and ending on December 31, of the same year.

“Ground Handler” shall mean any employees or contractors, not employees of AIRLINE, who perform ground handling services on behalf of AIRLINE at the Airport. Services include, but are not limited to, the processing of passengers, mail, cargo, and servicing of the aircraft. All Ground Handlers must execute a Ground Handling Operating Agreement with the BOARD in order to be authorized to perform service at the Airport. Ground Handlers must remain in compliance with the terms and conditions of the Ground Handling Operating Agreement in order to be authorized to perform services on behalf of AIRLINE at the Airport. AIRLINE, after written notification by the BOARD, shall be responsible for all obligations of any Ground Handler who has not executed an Operating Agreement or any Ground Handler who continues to operate at the Airport following a default.

“Joint and Preferential Use Formula” shall mean the method used to apportion the total expenses for Joint and Preferential Use Space amongst Air Transportation Companies operating at the Airport. The total expenses for the Joint and Preferential Use Space shall be calculated as (i) the product of the Terminal Rental Rate by the total square footage of Joint and Preferential Use Space less (ii) Revenue Sharing and apportioned. The total expenses for the Joint and Preferential Use Space shall be apportioned on a monthly basis amongst the Signatory Airlines based on each Signatory Airline, including each Signatory Airline’s designated Affiliate Airline(s) and handled Air Transportation Company(s), based on its percentage share of one hundred percent (100%) of Signatory Airline Enplanements plus one hundred twenty five percent (125%) of Non-Signatory Airline Enplanements at the Airport during the most recent calendar month for which such information is available.

"Joint Use Space" shall mean, at any time, the Premises leased and used jointly by AIRLINE and one or more other Air Transportation Companies for the processing of passengers, as more particularly set forth on Exhibits A, A-1 and A-2, attached and incorporated herein by reference, as the same may be amended from time-to-time.

“Landing Fees” shall mean those amounts payable by AIRLINE which shall be calculated with respect to each 1,000 pounds of Certified Maximum Landing Weight as certified by the FAA, for actual landings of aircraft type operated by AIRLINE and/or AIRLINE’s designated Affiliate Airline(s) when flying on behalf of AIRLINE at the Airport; provided, however, that Landing Fees shall not be payable when an aircraft returns to the Airport after take off from the Airport due to adverse weather conditions, mechanical problems, or other emergency or precautionary reasons.

“Landed Weight” shall mean the product obtained by multiplying the Certified Maximum Landing Weight for each aircraft operated by the number of landings such aircraft makes at the Airport expressed in one thousand (1,000) pound units.

“Net Revenues” shall mean the Operating Revenues of the Airport, minus the Operation and Maintenance Costs, minus any Capital Outlays, and minus any Amortization for a given Fiscal Year.

“Non-Signatory Airline” shall mean any Air Transportation Company operating at the Airport which has not executed an Airline Use and Lease Agreement on the same or similar terms and conditions as are set forth herein. BOARD shall cause all Non-Signatory Airlines to be charged one hundred twenty five percent (125%) of all rates and charges applicable to Signatory Airlines for operating at the Airport. Non-Signatory Airlines will be required to enter into an Operating Agreement with the BOARD prior to commencing service.

“Operating Agreement” shall mean an agreement that will define all operating requirements and applicable financial terms and conditions between a Non-Signatory Airline, Affiliate Airline, or Ground Handler and the BOARD.

“Operating Revenues” shall mean income accrued by BOARD in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the operation of the Airport or any part thereof, or the leasing or use thereof, all as further defined in any other financing document(s) of BOARD. For purposes of this Operating Agreement, Operating Revenues shall not include PFCs, federal, state or local grants, or investment earnings on these funds.

“Operation and Maintenance Costs” shall mean the current expenses (other than Capital Expenditures and Outlays) of the BOARD, paid or accrued in administering, operating, maintaining and repairing the Airport.

“Passenger Facility Charge” or “PFC” shall mean any Passenger Facility Charge which BOARD may impose upon passengers enplaning at the Airport pursuant to 14 CFR Part 158, as it may be amended or superseded from time-to-time.



“Preferential Use Space” shall mean, at any time, the Premises leased and used jointly by AIRLINE and one or more other Air Transportation Companies for the processing of passengers, for which AIRLINE has priority use over other Air Transportation Companies, as more particularly set forth on Exhibits A, A-1 and A-2.

"Premises" shall mean AIRLINE's Exclusive Use Space, Preferential Use Space, Joint Use Space, and Exclusive Conditioned Ground Storage Space.

“Revenue Sharing” shall mean (i) in the event the Net Revenues of the BOARD for a given Fiscal Year are equal to or less than one million two hundred and fifty thousand dollars (\$1,250,000) the lesser of (a) one dollar (\$1.00) per Signatory Airline enplaned passenger for such Fiscal Year or (b) the amount over five hundred thousand dollars (\$500,000) in net operating revenues for the Fiscal Year or (ii) in the event the Net Revenues of the BOARD for a given Fiscal Year are more than one million dollars two hundred and fifty thousand dollars (\$1,250,000), one dollar and twenty five cents (\$1.25) per Signatory Airline enplaned passenger for such Fiscal Year.

“Signatory Airline” shall mean any Air Transportation Company who has executed an Airline Use and Lease Agreement with the BOARD.

## **ARTICLE II**

### **EFFECTIVE DATE AND TERM OF THE LEASE**

A. Effective Date. The Lease shall become effective February 1, 2021. As of this date, AIRLINE agrees to occupy the premises and to commence paying rates, costs, fees and charges in accordance with the terms of this Agreement.

B. Term. Subject to earlier termination as hereinafter provided, the term of this Agreement shall be for the period commencing on the effective date set above, and ending on December 31, 2022.

C. Option. This Agreement can be renewed for two (2) consecutive two (2)-year terms by mutual agreement of the BOARD and fifty percent (50%) or more of the Signatory Airlines. The BOARD will provide AIRLINE written notice at least one hundred eighty (180) days prior to the expiration of the then

current term. AIRLINE will have thirty (30) days to provide the BOARD a written response of agreement or disagreement. The absence of a response from the AIRLINE shall be considered agreement with the BOARD's notice. Any Signatory Airline exercising the Option shall have the ability to adjust Exclusive Use Space, space permitting, effective on the commencement date of the Option. All space adjustments reverting back to the BOARD must be able to be subsequently leased as a stand-alone functional unit. Rates, fees, and charges for each Option will be adjusted in accordance with the terms contained in this Agreement. AIRLINE may elect not to exercise the Option of this Agreement and the AIRLINE will thereby terminate its Agreement with the BOARD and have no further obligations under this Agreement as of the commencement of the new Option period for which it did not execute. If the AIRLINE continues to operate at the Airport, it will do so as a Non-Signatory Airline.

### **ARTICLE III** **PREMISES**

A. Use of Airport. The BOARD agrees that in consideration for the payment of rates, fees and charges, which are to be determined under the rate making methodology hereinafter provided, AIRLINE, its employees, agents, authorized contractors, Ground Handler contractors, sublessees, and designated Affiliate Airlines shall receive and be entitled to use in common with other duly authorized users the airside area, passenger terminal building and public areas of said Airport, and all appurtenances, facilities, improvements, equipment and services which will be provided at, or in connection with the foregoing. Such use, without limiting the generality thereof, shall include the following rights, licenses, and privileges:

1. The operation of an air transportation system by AIRLINE for the carriage of persons, property, cargo and mail; the repairing, maintaining, conditioning, servicing, temporary parking or storage of aircraft or other equipment; the sale, disposal, or exchange of AIRLINE'S aircraft engines, accessories, gasoline, oil, greases, lubricants, propellants, fuel, and other equipment and supplies pertaining to AIRLINE'S operations, provided it shall not be construed as authorizing the sale of petroleum products as a separate business; the servicing by AIRLINE, its employees, agents, authorized contractors, authorized Ground Handler contractors, and sublessees of aircraft and other equipment, including the right to install and maintain on leased space on said Airport, approved storage for authorized active equipment for a fee, including rights of way necessary therefore; the

landing, taking off, parking, and loading and unloading of aircraft and other equipment; the provision of complimentary food or beverages to passengers during irregular operations; and the right to load and unload persons, cargo, property, and mail at said Airport by such means of conveyance as AIRLINE may desire, with the right to designate the carriers who shall transport AIRLINE'S charter, tour, or inconvenienced passengers and/or their baggage to and from the Airport; the full, free and unrestricted access and ingress to and egress from the Premises identified herein for all purposes contemplated for AIRLINE, its employees, agents, authorized contractors, authorized Ground Handler contractors, servants, passengers, guests, patrons, invitees, or suppliers; the structural support to install and operate AIRLINE branding signs, the general type and design of such signs to be subject to the written approval of the Airport Executive Director which approval shall not be unreasonably withheld or delayed; the right to install, maintain, and operate radio, communications, meteorological, aerial navigation, and such other equipment and facilities in, on, and about the Exclusive Use Space herein leased as may be necessary or convenient for AIRLINE'S operations; and the conduct of any other related business activity or operations reasonably necessary to the conduct and operation by AIRLINE of its business, subject to the Airport Executive Director's prior written approval, such approval not to be unreasonably withheld or delayed.

2. The rights, licenses and privileges granted AIRLINE and its designated Affiliated Airline(s) under this Article with respect to the performance of ground handling services and activities in connection with its scheduled or charter air transportation operation at the Airport may be exercised by AIRLINE for and on behalf of any other Air Transportation Company which has an Airline Use and Lease Agreement or Operating Agreement with the BOARD for the use of the Airport or on behalf of AIRLINE by such company or companies. Without limitation, such rights and privileges shall be deemed to include all activities incidental to the handling of reservations, the ticketing of passengers, the receipt, dispatch, loading, and handling of passengers and their baggage, property, cargo, mail, and all ramp repair, maintenance, communication and dispatching services incidental to the operation of aircraft at the Airport; provided, however, that the BOARD reserves the right to designate the locations within which all the activities authorized hereunder shall be conducted except as to those portions of the Premises exclusively leased

by AIRLINE. AIRLINE shall notify the Airport Executive Director in writing of all ground handling services that it performs. All ground handling not performed by AIRLINE employees may be contracted with third party Ground Handler contractors provided such third party Ground Handler contractors must enter into and remain in compliance with a Ground Handling Operating Agreement with the BOARD in order to be authorized to operate at the Airport.

B. Premises: AIRLINE'S Exclusive Use Space, Joint Use Space, Preferential Use Space, and Exclusive Conditioned Ground Storage Space.

1. Exclusive Use Space: Airline Office Space. Certain space in the passenger terminal building designated as Airline Office Space shall be used by AIRLINE for such Exclusive Use as AIRLINE may desire to make thereof, with the location and square footage of such space as more specifically set forth in Exhibit A-3. AIRLINE shall pay the BOARD for use of this space in accordance with the current Rates and Charges approved by the BOARD. The Exclusive Use Space rent shall be calculated by multiplying all of the square footage rented in this category times the Terminal Rental Rate. AIRLINE shall be responsible, at its sole cost and expense, to maintain all Exclusive Use Space in accordance with the requirements in Exhibit B. AIRLINE shall be responsible, at its sole cost and expense, for making any desired improvements to its Exclusive Use Space in accordance with the requirements of Exhibit C, attached hereto and incorporated by reference. Any improvement or remodeling of such area by AIRLINE is subject to prior written approval by the Airport Executive Director, which approval shall not be unreasonably withheld or delayed. Any unauthorized improvements made will constitute a default under the terms of this Agreement and be cause for termination. All space shall, upon expiration or earlier termination of this Agreement, revert to the BOARD in its original condition, normal wear and tear and any approved improvements and approved remodeling excepted. AIRLINE will retain ownership only of trade fixtures, equipment and other personal property installed and paid for by AIRLINE.

2. Joint Use Space: Freight Area, Baggage Claim Area, Baggage Makeup Tunnel, Passenger Hold Rooms, and Passenger Loading Bridges. Certain space in the passenger

terminal building used in the processing of passengers and designated as the Freight Area, Baggage Claim Area, Baggage Makeup Tunnel, Passenger Hold Rooms, and Passenger Loading Bridges that is used by the AIRLINE for Joint Use, along with other Air Transportation Companies, with the location and square footage of such space as more specifically set forth in Exhibits A-1 and A-2. AIRLINE shall pay the BOARD for use of this space in accordance with the current Rates and Charges approved by the BOARD. Joint Use Space rent shall be calculated using the Joint Use Formula. The BOARD shall furnish podium shells and backwalls of uniform construction at all hold room passenger access point locations determined by BOARD upon consultation with AIRLINE. The BOARD shall provide power and conduit to the exact locations, and AIRLINE is responsible for making all connections at its sole expense. The podium shell insert shall be provided by and remain the property of AIRLINE at its sole cost. The Airport Executive Director will consult with the AIRLINE to designate primary gate locations (including passenger loading bridges, aircraft parking positions, and ground service equipment parking areas) for the Joint Use holdrooms so that the AIRLINE may install flight informational signage, computer systems, and inserts in the gate podiums. The Airport Executive Director reserves the right to adjust such primary allocations in order to better utilize the facilities available and to respond to aircraft gauge needs, schedule changes, and new service to the Airport. The Airport Executive Director will provide notice and consult with AIRLINE prior to any such contemplated reallocation and will cooperate with AIRLINE to provide comparable alternative facilities to the greatest degree possible.

3. Preferential Use Space: Ticket Counter and Passenger Queuing Space. Certain space in the passenger terminal building designated as Ticket Counter and Passenger Queuing Space shall be used by AIRLINE for Preferential Use, with the location and square footage of such space as more specifically set forth in Exhibit A-1. The Preferential Use Space shall be included in the rent calculated using the "Joint and Preferential Use Formula" identified in this Agreement. Passenger Queuing Space includes the area from the front of the Ticket Counter to twenty-five (25) feet out into the ticketing lobby. Passenger Queuing Space and queue lines shall be managed by AIRLINE so as not to interfere with common circulation space and Passenger Queuing Space adjacent to AIRLINE. AIRLINE shall be responsible for managing its Passenger Queuing Space

within an approved layout plan that must be submitted to the Airport Executive Director and approved in writing; which approval shall not be unreasonably withheld or delayed. Stanchions shall be positioned in accordance with the plan and removed daily by AIRLINE in order for the BOARD to clean the space.

AIRLINE shall be responsible, at its sole cost and expense, to maintain all Ticket Counter Space in accordance with the requirements in Exhibit B. AIRLINE shall be responsible, at its sole cost and expense, for making any desired improvements to its Ticket Counter Space in accordance with the requirements of Exhibit C, attached hereto and incorporated by reference. Any improvement of Ticket Counter Space by AIRLINE is subject to prior written approval by the Airport Executive Director, which approval shall not be unreasonably withheld or delayed. Any unauthorized improvements made will constitute a default under the terms of this Agreement and be cause for termination. All Ticket Counter Space shall, upon expiration or earlier termination of this Agreement, revert to the BOARD in its original condition, normal wear and tear and any approved improvements and approved remodeling excepted. AIRLINE will retain ownership only of trade fixtures, equipment and other personal property installed and paid for by AIRLINE.

4. Exclusive Conditioned Ground Storage Space. Certain enclosed space on the ramp level of the passenger terminal building designated as Exclusive Conditioned Ground Storage shall be used by the AIRLINE for Exclusive Use for ramp operations, maintenance, and storage, with the location and square footage of such space as more specifically set forth in Exhibit A-3. AIRLINE shall pay the BOARD for use of this space in accordance with the current Rates and Charges approved by the BOARD. The Exclusive Conditioned Ground Storage Space rent shall be calculated by multiplying all of the square footage rented in this category times fifty percent (50%) of the Terminal Rental Rate. This space shall be designated by the Airport Executive Director who reserves the sole right to adjust the location of the designated area as needed to better utilize the facilities. In the event that space must be re-designated, the Airport Executive Director will use "best efforts" to provide comparable space.

AIRLINE is authorized to repair or cause its Ground Handler or contractor to repair ground service equipment in this space provided that AIRLINE complies with all rules and regulations, NFPA requirements, and all environmental rules and regulations. Any fines, violations, or remediation required or assessed as a result of non-compliance by AIRLINE, its employees, its agents, Ground Handler contractors, contractors or sublessees of aircraft and other equipment shall be at the sole cost and responsibility of the AIRLINE and due and payable upon demand.

C. Other Premises: Public Space in Passenger Terminal Building, Public Address System and Flight Information Display System (FIDS), Ramp Storage Space and Unenclosed Terminal Overhang, Ramp Aircraft Parking Positions, Glycol Truck Storage Space, Glycol Storage Tank Space, and Employee Parking Spaces.

1. Public Space in Passenger Terminal Building. The BOARD grants AIRLINE, its employees, agents, contractors, passengers, guests, patrons and invitees the use in common with others, of all “public space” in the passenger terminal building as more specifically set forth in Exhibits A-1 and A-2.

2. Public Address System and Flight Information Display System (FIDS). The BOARD agrees to furnish and maintain a public-address system that generally serves the passenger terminal building. It is further agreed that the AIRLINE shall have the privilege of using said non-proprietary public-address system in accordance with the terms as identified by the Airport Executive Director and it is mutually understood that AIRLINE shall have no responsibility for maintenance resulting from normal wear and tear except to the extent it arises from AIRLINE’s or anyone under its control’s negligence or willful misconduct. The BOARD agrees to provide a building wide telephone system for use by AIRLINE for a fee, in addition to rents charged for use of the Premises, in accordance with the current Rates and Charges approved by the BOARD. The BOARD shall also provide a Flight Information Display System (FIDS) at no cost to AIRLINE for use by AIRLINE.

3. Ramp Storage Space and Unenclosed Terminal Overhang. The BOARD grants AIRLINE, its employees, agents, and authorized Ground Handler contractor the use, jointly

with other Air Transportation Companies, of the Ramp Storage Space and Unenclosed Terminal Overhang Area as designated in Exhibit A-1 for the storage of active ground service equipment used by AIRLINE in the daily processing of flights; provided equipment is parked in the designated area when not in active use. The size and location of Ramp Storage Space will be determined by the Airport Executive Director and may be adjusted at the discretion of the Airport Executive Director.

All ground service equipment that requires repair may be temporarily staged in this area for a maximum of fifteen (15) calendar days to arrange for repair. No ground service equipment maintenance shall be performed in the Ramp Storage Space. If repair cannot be accommodated in AIRLINE's Exclusive Conditioned Ground Storage Space, it must be removed to an Airport GSE Repair Area designated by the Airport Executive Director or off Airport for maintenance. In addition to rents paid for use of the Premises, AIRLINE shall pay the BOARD a fee for use of a GSE Repair Area in accordance with the current Rates and Charges approved by the BOARD.

4. Ramp Aircraft Parking Positions. The BOARD will identify, based upon engineering provided by AIRLINE at AIRLINE's sole cost, ramp markings that will serve as a safety envelope for the parking of aircraft and for the guiding in of aircraft. The cost of painting the markings shall be charged back to the Air Transportation Company making the request. The Board will not be responsible or held liable for damages or claims resulting from such markings and shall be indemnified against any claims resulting therefrom as long as the markings are consistent with the engineering drawings provided by AIRLINE.

5. Glycol Truck Storage Space. AIRLINE shall be allowed to park glycol trucks in the designated area identified in Exhibit A-1 when not in active use servicing aircraft or when being recharged. In addition to rents paid for use of the Premises, AIRLINE shall pay the BOARD a fee for use of this space in accordance with the current Rates and Charges approved by the BOARD. The Airport Executive Director reserves the sole right to adjust the location of the designated area to better utilize the facilities.



6. Glycol Storage Space. AIRLINE shall be granted the right to store glycol in tanks or totes in the space designated in Exhibit F, attached hereto and incorporated herein by reference. In addition to rents paid for use of the Premises, AIRLINE shall pay the BOARD a fee for use of this space in accordance with the current Rates and Charges approved by the BOARD. The BOARD will set such fees to encourage the use of tanks versus totes for glycol storage. The Airport Executive Director reserves the sole right to adjust the location of the designated area to better utilize the facilities.

7. Employee Parking Spaces. The BOARD agrees to designate a parking area to be used by AIRLINE, its employees, agents, authorized Ground Handling contractors and authorized parties on the Airport property, with the location more specifically set forth in Exhibit F. In addition to rents paid for use of the Premises, AIRLINE shall pay the BOARD a fee per employee for the use of the vehicle parking spaces in accordance with the current Rates and Charges approved by the BOARD. Fees shall be applied equally to all Rapid City based users of the employee parking location. The BOARD reserves the right to adjust the fee for non-Rapid City based employees. The BOARD may allow additional parking for non-Rapid City based employees on a "space available" basis at the sole discretion of the Airport Executive Director. The Airport Executive Director reserves the sole right to adjust the location and size of the designated area to better utilize the facilities.

#### **ARTICLE IV** **COST CENTERS**

For the purposes of the establishment of a rate making methodology under this Agreement, the following cost centers of the Airport are to be used in determining rates, costs, fees and charges:

A. Terminal. This shall include the passenger terminal building, passenger loading bridges, and adjacent sidewalks and associated landscaping identified in Exhibit F.

B. Runways, Taxiways, and Aprons. This shall include all areas inside the security fence, including but not limited to all security and boundary fencing, runways, taxiways, infield areas, approach and safety zones, navigational aids, visual glideslope guidance equipment, airfield signs, markings and lighting, drainage works, the aircraft parking ramp adjacent to the passenger terminal building, all Airport owned airfield maintenance and related facilities, and other incidental equipment or facilities located

inside or outside of the security or boundary fencing related to aircraft taxiing, landing and takeoff, all as generally described and located in Exhibit F.

C. Other Facilities. All areas outside of the security fence, except for the Terminal, including but not limited to public and airport employee parking areas, sidewalks accessing such areas, access and circulation driveways and rights of way, rental car service, pickup and return areas, staging areas for taxicabs, buses, and limousines, all undeveloped land under the ownership and/or control of the BOARD, and related landscaping, as located in Exhibit F. Any hangar, leased maintenance building, or other facility or structure acquired, constructed or located at the Airport for the use of and/or used by one or more Airport tenants to which the BOARD shall have entered into a separate lease agreement not adversely affecting AIRLINE'S rates, fees and charges, whether inside or outside of the security fence. All general aviation facilities including but not limited to the general aviation terminal(s), associated aircraft parking apron, general aviation hangars located on the general aviation leased premises, taxi lanes associated with general aviation hangars, and the Fixed Base Operator (FBO) fuel farm and storage facilities located on the Airport. All cargo structures located on the Airport and the ramp area designated by the BOARD for the parking, servicing, loading, unloading, and maintenance of cargo airplanes.

## **ARTICLE V** **RATES, FEES, CHARGES AND PAYMENTS**

A. General. In return for the use of the Premises and the Airport, the rights granted in this Lease, and the undertakings of BOARD in this Agreement, AIRLINE agrees to pay BOARD during the term of this Agreement, certain rentals and fees as set forth in this Article V, adjusted annually and/or mid-year if needed and approved by the BOARD, with a minimum annual guarantee of twenty five thousand dollars (\$25,000), adjusted annually by the greater of the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics or the percentage change in the Terminal Rental Rate . The current Rates and Charges for 2018 are attached and incorporated herein by reference as Exhibit D.

The BOARD will provide annual updated Rates and Charges schedules for each subsequent year of this Agreement and any exercised Options without the need to amend the Agreement. The BOARD covenants that rates, charges, rentals, and fees, shall be sufficient to produce net revenues, PFCs, and a balance in the Airport Capital Fund collectively which shall equal at least one hundred thirty percent (130%) of the bond principal and interest requirements for such Fiscal Year. The BOARD further

covenants that, in the event the BOARD has not complied with the covenant in the preceding sentence of any current or future bond issuance, the BOARD will revise and adjust its rates, charges, rentals and fees to such extent as to ensure the payments and accumulations as so required to be in compliance.

The BOARD further covenants that, if it enters into use agreements with Air Transportation Companies or other private entities, it will at all times enforce the provisions of such agreements and take all reasonable and proper steps to enforce collection of rates, charges and fees under those agreements.

The Signatory Airlines, including AIRLINE, and the BOARD agree to use a consultation process in order to adopt a Terminal Rental and Landing Fee rate. During the third quarter of each Fiscal Year, all Signatory Airlines, including AIRLINE, shall, upon the written request of the BOARD, submit in writing to the BOARD an annual landing weight forecast for the succeeding Fiscal Year; which forecast shall be reasonably calculated in good faith. From such data, as well as other relevant forecast data, the BOARD shall determine the Terminal Rental and Landing Fee rates for the succeeding Fiscal Year. During the fourth quarter of each Fiscal Year, the BOARD shall make available to all Signatory Airlines, including AIRLINE, its budgetary forecast for (i) the Terminal Rental and Landing Fee rates, (ii) the Terminal Cost Center and Runways, Taxiways, and Apron Cost Center for the succeeding Fiscal Year and the year-to-date actual and projected year-end expenses for the current Fiscal Year, and (iii) Airport wide revenues and expenses for the succeeding Fiscal Year. After receipt of such, AIRLINE will have ten (10) working days to request a conference call to discuss the budgetary forecast. The BOARD agrees that, in advance of the foregoing call, it shall make available to the Signatory Airlines any reasonable additional information requested by Signatory Airlines regarding the budgetary forecasts forwarded hereinabove. If no such request for a conference call is received, the BOARD will set the Terminal Rental and Landing Fee rate as projected.

1. Terminal Rental Rate. AIRLINE shall annually pay the Terminal Rental Rate times its square footage of Exclusive Use Space. The Terminal Rental Rate, and other inputs, shall be used to calculate payments under the Joint and Preferential Use Formula and for Exclusive Conditioned Ground Space. The Terminal Rental Rate shall be calculated on an annual basis for the Term of this Agreement in the following manner.

a. Annual Adjustment. During each Fiscal Year of the Term hereof, the Terminal Rental Rate shall be adjusted annually in the following manner. Each year BOARD shall calculate the "Terminal Requirement" for the succeeding Fiscal Year by totaling the following budgeted amounts: (i) direct and allocated indirect Operation and Maintenance Costs allocable to the Terminal Cost Center; (ii) plus the costs of any Capital Outlays made by the BOARD allocable to the Terminal Cost Center; and (iii) plus the Amortization of Capital Expenditures made by BOARD allocable to the Terminal Cost Center. The Terminal Rental Rate shall be calculated by dividing the Terminal Requirement by (i) the usable square footage of the Terminal less (ii) fifty percent (50%) of the square footage of the Exclusive Use Conditioned Ground Storage Space. An example of the methodology used to calculate Terminal Rates is provided in Exhibit D for Fiscal Year 2018.

b. Terminal Rental Annual Reconciliation. Following the completion of the annual audit, the BOARD will reconcile the actual results of the year against the currently adopted Terminal Rental Rate charged to the AIRLINE. In the event that the budgeted Terminal Rental Rate paid by the Signatory Airlines differs from the gross calculated rate, any overpayment or underpayment will be credited or debited to the Signatory Airlines, including AIRLINE, based on: (i) a credit or debit per square foot for Exclusive Use Space and Exclusive Conditioned Ground Space and (ii) on AIRLINE's annual enplaned passenger market share of all Signatory Airlines for Joint and Preferential Use Space. For underpayment by AIRLINE, an invoice will be issued to the Signatory Airlines. Invoice will be due and payable within thirty (30) days of the invoice date. For overpayment by AIRLINE, a credit will be applied to future invoice(s). If there are no future invoices due to the termination of the lease or otherwise, a check will be issued to the AIRLINE. A copy of the reconciliation will be sent to all Signatory Airlines, including AIRLINE, upon completion comparing the projected calculation with the final results.

2. Landing Fee. All Air Transportation Companies, including AIRLINE, shall pay the BOARD a landing fee for each landing of aircraft per one thousand (1,000) pounds of FAA Certified Maximum Gross Landing Weight.

a. Landing Fee Annual Adjustment. During each Fiscal Year of the Term hereof, the Landing Fee Rate shall be adjusted annually in the following manner. Each year BOARD shall calculate the total "Airline Landing Fee Requirement" for the succeeding Fiscal Year by totaling the following budgeted amounts: (i) direct and allocated indirect Operation and Maintenance Costs allocable to the Runways, Taxiways, and Apron Cost Center; (ii) plus the costs of any Capital Outlays made by the BOARD allocable to the Runways, Taxiways, and Apron Cost Center; (iii) plus the Amortization of Capital Expenditures made by BOARD allocable to the Runways, Taxiways, and Apron Cost Center; (iv) less all other revenues allocable to the Runways, Taxiways, and Apron Cost Center, except Signatory Airline Landing Fees and Non-Signatory Airline Landing Fees; and (v) less additional revenue applied at the BOARD's sole discretion to reduce the Landing Fee. The Landing Fee rate for Signatory Airlines shall be calculated by dividing the Airline Landing Fee Requirement by the sum of (i) estimated total Landed Weight of all Signatory Airlines and (ii) 125% estimated total Landed Weight of all Non-Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by the BOARD. An example of the methodology used to calculate Landing Fee Rates is provided in Exhibit D for Fiscal Year 2018.

b. Landing Fee Mid-Year Adjustment. In the event that estimated Landing Fee rate is projected to vary from the established Landing Fee rate by ten percent (10%) or more as of June 1st of any Fiscal Year of this Agreement, the BOARD has the authority to implement a mid-year adjustment to the Landing Fee rate on July 1 based on the projection. The BOARD will notify AIRLINE of any such projected adjustment with a summary of the projections and the proposed change prior to June 15th. The

BOARD will consider input from the Signatory Airlines and will issue final notice of any mid-year adjustment on or before June 30th with implementation effective July 1.

c. Landing Fee Annual Reconciliation. Following the completion of the annual audit, the BOARD will reconcile the actual results of the year against the currently adopted Landing Fee rate charged to the AIRLINE. In the event that the budgeted Landing Fee rate paid by the Signatory Airlines exceeds the gross calculated rate, any overpayment will be credited to the Signatory Airlines, including AIRLINE, based on the annual Landed Weight market share of all Signatory Airlines. For underpayment by AIRLINE as compared to the actual net requirement, an invoice will be issued to the Signatory Airlines, including AIRLINE, based on the annual Landed Weight market share of all Signatory Airlines. Invoice will be due and payable within thirty (30) days of the invoice date. A copy of the reconciliation will be sent to all Signatory Airlines, including AIRLINE, upon completion comparing the projected calculation with the final results.

3. Passenger Facility Charges. The BOARD reserves the right to assess and collect Passenger Facility Charges subject to terms and conditions and such methods of collection set forth in 49 U.S.C 40177 and 14 C.F.R 158, as may be amended from time to time.

4. Other Charges: Exclusive Use Conditioned Ground Storage Rate, Security Badge Fees, Conference Room Rental, Telephone Equipment, Long Distance, Miscellaneous Rentals & Services, Electricity, and Security Violations.

a. Exclusive Use Conditioned Ground Storage Rate. The Exclusive Use Conditioned Ground Storage Rate shall be fifty percent (50%) of the Terminal Rental Rate per square foot per year.

b. Security Badge Fees. The BOARD agrees to furnish Identification Badges to all authorized employees, contractors, Ground

Handler contractors, and agents for AIRLINE to operate at the Airport. The cost of issuing such badges will be fully recovered through a fee charged to the AIRLINE or authorized Ground Handling contractor. The fee may be adjusted annually and will be in accordance with the current Rates and Charges approved by the BOARD.

c. Conference Room Rental. The BOARD agrees to allow AIRLINE and/or its authorized Ground Handling contractors to utilize the conference rooms available on a “space available” basis on Airport property for business associated with its operation at the Airport. Rental of such rooms will be recovered through a fee charged to the AIRLINE or authorized Ground Handling contractor. The fee may be adjusted annually and will be in accordance with the current Rates and Charges approved by the BOARD.

d. Telephone Equipment & Long Distance. The BOARD agrees to furnish telephone equipment and long distance service to the AIRLINE and/or its authorized Ground Handling contractors for operation at the Airport for a fee. The fees may be adjusted annually and will be in accordance with the current Rates and Charges approved by the BOARD.

e. Miscellaneous Equipment Rentals, Maintenance Bay Use, and Maintenance Services. The BOARD will establish rates for the use of Airport owned equipment and facilities and for labor performed by Airport personnel or contractors. The fees may be adjusted annually and will be in accordance with the current Rates and Charges approved by the BOARD.

f. Electricity. AIRLINE shall pay for electricity it uses in its Exclusive Use Space which shall be determined through separate meters provided by the utility company.

g. Security Violations. AIRLINE shall pay any actual fines or penalties for security violations of the Airport Security Plan (ASP) or any other fines or penalties levied against the BOARD due to any noncompliance actions of the AIRLINE, or designated Affiliate Airline(s), and its employees, agents, and sublessee(s). AIRLINE shall be secondary payer of any unpaid fines or penalties for security violations of the Airport Security Plan (ASP) or any other fines penalties levied against the BOARD due to any noncompliance actions of the AIRLINE's Ground Handler contractor(s). BOARD imposed ASP violation fines or penalties may be adjusted from time to time and will be in accordance with the current Rates and Charges approved by the BOARD.

B. Place and Manner of Payments. In all cases where AIRLINE is required by this Agreement to pay any rates, fees, or charges or to make other direct payments to the BOARD, such payments shall be made at the Office of the City Finance Officer, City of Rapid City, the Airport Administrative offices, or at such other place as the BOARD may hereafter designate by notice in writing to the AIRLINE and shall be made in legal tender of the United States. Any check received by the BOARD shall be subject to collection, and the AIRLINE agrees to pay any bank charges made for the collection of any such check.

AIRLINE shall pay the BOARD all rates, fees, and charges on a monthly basis. For Exclusive Use Space and Exclusive Use Conditioned Ground Storage Space, payment is due and payable on the first day of the month for which the rent is due. AIRLINE, its authorized Affiliate Airline, or its Ground Handler contractor, as appropriate, shall report all activity related to landings, passenger enplanements and deplanements, including revenue and non-revenue passengers, flight operations, and other information requested by the BOARD as identified in Exhibit E, attached hereto and incorporated herein by reference, within ten (10) days following the end of the month. Landing Fees, Joint and Preferential Use Formula payments, employee parking, and any other charges for the preceding month in which said rates, costs, fees and charges accrued shall be due within thirty (30) days of invoice.

C. Failure to Pay Rents, Fees, or Charges and Security for Payment. It shall be the duty of the AIRLINE to pay all rents, fees, and charges when due for AIRLINE and any designated Affiliate Airlines. Failure to pay for any of the amounts due including but not limited to all fees provided for under the terms



of this Agreement shall be considered a breach of contract and can be cause for the Agreement to be cancelled following a written notice and cure period. Failure to comply with any of the AIRLINE'S or Affiliated Airline's financial obligations to the BOARD under this Agreement shall entitle the BOARD to re-enter and take possession of the Premises upon giving the AIRLINE twenty (20) days' advance written notice of its intention to do so, if said monetary default has not been remedied within said twenty (20) day period. However, the BOARD may extend the time period to correct the default if, in its sole discretion, due diligence is shown by the AIRLINE or Affiliated Airline in curing the default. All amounts not paid by the AIRLINE or Affiliated Airline when due shall accrue interest according to the current Rates and Charges approved by the Board commencing the date after the due date.

No security for payment shall be required if, AIRLINE has (i) provided regularly scheduled passenger flights to and from the Airport for the twelve (12) months prior to the Effective Date of this Agreement (or the date of any assignment), and (ii) has not been materially delinquent with respect to the payment of any and all rentals, fees, and charges payable by AIRLINE to the BOARD during said period. For purposes of this section, no security payment shall be required solely as a result of a merger or consolidation involving a Signatory Airline that has provided regularly scheduled passenger flights for the twelve (12) months prior to the Effective Date of this Agreement.

When required by this section to provide security for the rentals, fees, and charges due hereunder, AIRLINE shall be required to provide security for three (3) months of projected rents (Exclusive, Joint and Preferential Use Space), Landing Fees, and any rentals/charges for additional spaces rented and shall comply with any one of the following two options within thirty (30) days following the Effective Date of this Agreement, or by the BOARD's notice:

1. Post with the BOARD a surety bond, to be maintained for the twelve (12) month period. Such bond shall be issued by a surety company acceptable to the BOARD and shall be in a form and content satisfactory to the BOARD.

2. Deliver to the BOARD an irrevocable letter of credit drawn in favor of the BOARD upon an entity that is satisfactory to the BOARD. Said letter of credit shall be kept in force for a twelve (12) month period and shall be in a form and content satisfactory to the BOARD.

For purposes of this Section, any surety bond or letter of credit shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the Term of this Agreement. In the event the BOARD draws funds from any such security during the Term of this Agreement, such funds shall be replenished to the total required amount within five (5) working days of written notice of such draw down.

D. Liability. The BOARD's agents or employees shall not be liable for any civil or criminal claim or cause of action because of entering the Premises and improvements at reasonable times and in a reasonable manner to carry out the provisions of this Article except to the extent caused by such person's or entity's gross negligence or willful misconduct.

#### **ARTICLE VI** **CAPITAL EXPENDITURES**

A. General. Upon request, BOARD will present to the AIRLINE the proposed plan for Capital Expenditures and Capital Outlays with a funding source and use plan. The BOARD will give consideration to AIRLINE input in determining the final plan for Capital Expenditures and Capital Outlays.

B. Special Facility. With reference to any special facility desired and leased by any Air Transportation Company or other Airport tenants, such special facility shall have no detrimental financial impact upon the rentals, fees, and charges of any non-participating Air Transportation Company and the BOARD shall have full authority to enter into any such arrangements at its sole and absolute discretion.

#### **ARTICLE VII** **CONDUCT OF BUSINESS**

A. Taxes. AIRLINE shall pay all taxes or assessments that may be levied against its property situated at the Airport, excluding fuel taxes not levied against the public generally. AIRLINE shall have the right to contest in good faith the legality of such taxes and assessments without being considered in breach hereof as long as such contest is diligently commenced and prosecuted by AIRLINE.

B. Laws and Regulations. AIRLINE, its Affiliate Airline(s), employees, agents, contractors, Ground Handler contractors, and servants, shall at all times comply with all laws, rules and regulations of the United States of America, the State of South Dakota, Pennington County, and the City of Rapid City

and shall observe and obey all local rules and regulations governing the conduct and operation of the Airport promulgated from time to time which are reasonably required for the prudent and efficient operation of the Airport and are not inconsistent with the reasonable exercise by AIRLINE of any right or privilege granted to it hereunder or under any other amendment or agreement between AIRLINE and the BOARD relating to the Airport or any part thereof, nor inconsistent with safety, nor inconsistent with the rules and regulations of any federal or state agency having jurisdiction with respect thereto, nor inconsistent with the procedures prescribed or approved from time to time by the Federal Aviation Administration, the Department of Homeland Security, or any other governmental authority having jurisdiction over flight operations at the Airport. AIRLINE shall have the right to contest in good faith the legality of such laws, rules and regulations without being considered in breach hereof so long as such contest is diligently commenced and prosecuted by AIRLINE. AIRLINE shall, in the exercise of any rights under this Agreement, comply with all applicable local, state, and federal environmental rules and regulations, as may be amended from time to time, and shall be solely responsible for any fines or remediation actions required as a result of such non-compliance due and payable upon demand. AIRLINE shall have the right to contest in good faith the legality of such any fines or remediation actions without being considered in breach hereof so long as such contest is diligently commenced and prosecuted by AIRLINE.

C. Right to Establish Policies. The BOARD shall at all times have the right to establish policies governing the conduct and operations of the Airport which are neither inconsistent with the reasonable exercise by AIRLINE of any right or privilege granted to AIRLINE hereunder, nor inconsistent with the rules, regulations or orders of any federal, state, county, or local agency having jurisdiction with respect thereto. AIRLINE shall have the right to contest in good faith any such policies without being considered in breach hereof so long as such contest is diligently commenced and prosecuted by AIRLINE.

D. Graphics. AIRLINE shall install only such graphics as are previously approved, in writing, by the Airport Executive Director in Exclusive Use Space (which approval shall not be unreasonably withheld or delayed), and in accordance with AIRLINE standard specifications for corporate identification utilized in other comparable airports and other specifications reasonably adopted by the BOARD.

E. Assignment and Subletting. AIRLINE shall not assign this Agreement or sublet any space or Premises occupied by it hereunder, or any part thereof, or any of the privileges recited herein without the

prior written consent of the BOARD, such consent shall not be unreasonably conditioned, delayed, or withheld. No subleasing of Airline Office Space or Exclusive Conditioned Ground Storage Space will be authorized unless all such space is already under lease. Any subleasing must have prior written approval of the BOARD. AIRLINE shall have the right to assign all or any part of its rights and interest under this Agreement to any successor to its business through merger, acquisition, consolidation or reorganization or voluntary sales or transfer of substantially all of its assets, and the consent of the BOARD thereto shall not be required but due notice of any such assignment shall be given the BOARD within sixty (60) days after such assignment is executed. In the event of any sublease or assignment hereunder it is understood and agreed that the BOARD does not release AIRLINE from any of its obligations with respect to the terms hereof. Notwithstanding the foregoing, Affiliate Airline(s) and Ground Handler contractors shall have the right to use AIRLINE's space as permitted hereunder.

F. Inspection Rights. The Airport Executive Director or duly authorized representative shall have the right to enter the Premises at all reasonable times and upon reasonable notice for the purpose of inspecting or protecting such areas, and of doing any and all things which the BOARD is obligated to do as set forth herein or as reasonably necessary. AIRLINE shall have the right to contest in good faith any such action by the Airport Executive Director or duly authorized representative without being considered in breach hereof so long as such contest is diligently commenced and prosecuted by AIRLINE and AIRLINE is not in default of any provisions of this Agreement.

G. Relocation. In order to accommodate any construction, remodeling, or improved utilization of the Premises, it is agreed that the BOARD may require the partial or complete relocation of AIRLINE or the partial or complete substitution of other Premises than those demised. In the event of such relocation or substitution, the BOARD will provide as comparable a location and facility as possible and as reasonably contiguous to the unaffected Premises as possible. The cost of any such relocation or substitution shall be borne by: (i) AIRLINE for relocations in Joint Use Space and (ii) the BOARD for relocations in Exclusive Use Space or Preferential Use Space. No party shall be liable for any loss of business resulting from such relocation or substitution. Rental square footage will be adjusted commensurate with the new space occupied if the square footage is reduced in the relocation. If the square footage is increased in the relocation, the rental square footage will not be adjusted for the purposes of the payment of the Terminal Rental Rate for Exclusive Use Space. There will be no abatement of rent if comparable space is provided during a temporary relocation.

H. Accommodation of New or Existing Carriers. The parties hereto agree that every reasonable effort will be made to accommodate any other new or existing airline who intends to offer additional service or new service at the Airport, such airline to be referred to hereinafter as "Requesting Airline". The parties agree that the BOARD will make every effort to accommodate such Requesting Airline through direct lease of available Premises or utilization of Joint Use Space between the BOARD and Requesting Airline. In the event no available Premises which will reasonably accommodate the Requesting Airline are available for lease directly from the BOARD or through use of Joint Use Space, the parties hereto recognize that it may become necessary to share the use of the AIRLINE Exclusive Use and Preferential Use Space demised herein with other Signatory Airlines so as to reasonably accommodate new or existing air transportation service at the Airport, and to afford Requesting Airline the opportunity to share use of AIRLINE'S Exclusive Use and Preferential Use Space, including but not limited to, ticket counters, ticket offices, and passenger queuing space. All Joint Use Space will be allocated to all Air Transportation Companies using the Airport at the discretion of the Airport Executive Director. In determining whether the use by Requesting Airline is reasonable and possible, AIRLINE will have the right to consider the compatibility of the proposed operations of the Requesting Airline with those of AIRLINE and designated Affiliate Airline(s), the operations of those with whom AIRLINE has an authorized executed sublease or Ground Handling Operating Agreements, AIRLINE'S existing and proposed flight schedules posted in the reservation system for the next three (3) months, the need for labor harmony, and the availability of other Premises at the Airport. Should Requesting Airline's requirements not be reasonably accommodated by the Signatory Airlines, the BOARD shall convene a meeting of the Signatory Airlines, including AIRLINE, at the Airport in an effort to reasonably accommodate the Requesting Airline. In the event such efforts as outlined above fail to provide reasonable accommodations and facilities for the Requesting Airline, the following provisions will be enacted by the BOARD.

1. Exclusive Use Space and Preferential Use Space. The BOARD reserves the right to provide Exclusive Use Space and Preferential Use Space as defined herein to the Requesting Airline; such accommodation(s) to be provided by sub-dividing AIRLINE space, remodeling, and/or new construction. Such decision shall be made after consultation with all Signatory Airlines, including AIRLINE.

2. Remodeling. Remodeling will be treated as a tenant improvement, and as such, the sole cost will be borne by Requesting Airline in addition to square footage rent which

will be assessed at the same rate as that paid for similar space under lease by other Signatory Airlines, including AIRLINE, at the Airport. If, as a result of such remodeling, the square footage of AIRLINE's Exclusive Use Space, AIRLINE's Preferential Use Space, or Airport-wide Joint Use Space is reduced, such reduction will be reflected in the rent paid by all Signatory Airlines at the Airport, including AIRLINE. In the event that AIRLINE's space is increased as a result of the remodeling to accommodate the Requesting Airline, AIRLINE will not be charged for any more space as was leased prior to the remodeling.

3. New Construction. In the event of new construction, all construction related costs, less federal funding, grants, or PFCs, involving additions or building modifications will be included in the calculation of the Terminal Rental Rate calculation and the additional square footage will be factored into the calculation. Requesting Airline shall pay the applicable per square foot rate for such Premises rent.

During the period of use of AIRLINE's Premises by a Requesting Airline pursuant to this Article, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless BOARD, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Requesting Airline's use of AIRLINE Premises, except to the extent such damage or injury is caused by AIRLINE, its officers, directors, employees or agents who have come upon AIRLINE Premises in connection with AIRLINE's occupancy hereunder. In any instance in which AIRLINE is required to or permits a Requesting Airline to utilize any of AIRLINE's Premises, BOARD shall require such Requesting Airline to agree in writing to indemnify BOARD and AIRLINE in the manner and to the extent required of AIRLINE, pursuant to Article XVI hereof and to provide proof of insurance of the types and with the limits of coverage required to be carried by AIRLINE under Article XVI hereof.

#### **ARTICLE VIII** **OTHER CHARGES OR FEES**

The BOARD agrees that no rates, fees, or charges, other than as expressly provided for herein or elsewhere in this Agreement or amendments thereto, shall be charged or collected by it directly or indirectly from AIRLINE or any other persons, including, without limitation, suppliers of materials or

furnishers of service, for the privilege of transporting, loading, unloading, or handling persons, property, cargo or mail to, from, into or on said Airport in connection with AIRLINE. However, the foregoing notwithstanding, the above shall not prohibit the BOARD from charging other Ground Handling concession fees after consultation with Signatory Airlines.

## **ARTICLE IX** **MAINTENANCE AND OPERATION OF AIRPORT**

The BOARD agrees to maintain and operate with adequate and efficient personnel or contractors and to keep in good repair said Airport and passenger terminal building, and the appurtenances, facilities, and services now or hereafter connected therewith, and to keep said Airport free from obstructions for the safe, convenient and proper use thereof by AIRLINE, and to maintain and operate the Airport in all respects equal to the highest rating issued by the Federal Aviation Administration for comparable airports and in accordance with all rules and regulations of any federal, state, or local governmental agency having jurisdiction thereof.

The BOARD agrees to keep the public and Joint Use Space in the passenger terminal building attractively furnished, and to provide and supply adequate light, electricity, heat, water, sewer and janitor service for same.

The BOARD agrees to operate the Airport in a reasonable and prudent manner and to maximize such concession revenue to the extent reasonably practicable.

The BOARD shall provide only such services and such maintenance as is indicated in Exhibit B, attached and incorporated herein by reference, and shall bear the costs thereof in consideration for the payments to be made pursuant to the provisions of Article V. The AIRLINE will at all times maintain its Exclusive Use Space in a neat, clean, safe and orderly condition, in keeping with the general decor of the area in which it is situated, and that it will perform those maintenance or services shown on said Exhibit B as AIRLINE'S responsibility at its own cost. AIRLINE shall have primary responsibility to remove snow and ice from the apron area immediately adjacent to the aircraft to create a safe condition for all operations. If aircraft is ground loaded, AIRLINE shall have the responsibility to clear the pathway between the terminal door and aircraft door.

**ARTICLE X**  
**BUILDING BY AIRLINE**

Any and all permanent improvements erected or installed by the AIRLINE during the term of this Agreement or any renewal thereof, may be retained by the BOARD at the sole discretion of the Airport Executive Director, on a case by case basis, upon the termination of the Agreement or any extension or renewal thereof. If upon final termination of the Agreement, any improvements hereinafter erected or installed by AIRLINE are removed, the AIRLINE shall surrender the Premises in substantially the same condition as they were before the improvements were erected or installed normal wear and tear excepted.

**ARTICLE XI**  
**TERMINATION BY BOARD**

In the event that AIRLINE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against the AIRLINE, AIRLINE thereafter is adjudicated bankrupt pursuant to such proceedings, or that the Court shall take jurisdiction of AIRLINE and its assets pursuant to any proceeding brought under the provisions of any federal reorganization act, or that the receiver of AIRLINE'S assets shall be appointed, or that AIRLINE shall be divested of its estate herein by other operation of law, or that AIRLINE fails to provide scheduled service for thirty (30) days, or that AIRLINE shall fail to perform, keep and observe any of the terms, covenants or conditions herein contained, on its part to be performed, the BOARD shall give the AIRLINE written notice to correct such condition or cure such default and, if any such condition or default shall continue for thirty (30) days after the receipt of such notice by the AIRLINE, then the BOARD may after the lapse of said thirty (30) day period and prior to the correction or curing of such condition or default, declare AIRLINE in default and terminate the Agreement. In the event of termination as called for in this Agreement, all space shall revert to the BOARD in its original condition, normal wear and tear excepted, and AIRLINE shall immediately vacate the space upon written notice by the Airport Executive Director. In the event that improvements have been erected or installed by the AIRLINE during the term of this agreement or any renewal thereof, said improvements may be retained by the BOARD at the sole discretion of the Airport Executive Director.=

**ARTICLE XII**  
**AIRLINE'S RIGHT OF TERMINATION**

In addition to all other remedies available to the AIRLINE under the Agreement, the Agreement shall be subject to termination by AIRLINE should any one or more of the following occur:



A. The permanent abandonment of the Airport as a scheduled air carrier airport with one hundred twenty (120) days written notice;

B. The issuance of any order, rule or regulation by the Federal Aviation Administration, or its or their successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation, provided that none of the foregoing has been the fault of, initiated, caused or contributed to by the AIRLINE;

C. The breach by the BOARD of any covenants, terms or conditions of the Agreement to be kept, performed and observed by the BOARD without a good faith attempt by the BOARD to remedy such breach or have under contract a remedy for such breach within a period of thirty (30) days after receipt of written notice from AIRLINE of the existence of such a breach;

D. The assumption by the Federal Government or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict AIRLINE from conducting its air transportation business, if such restriction be continued for a period of ninety (90) days or more;

E. The inability of AIRLINE to conduct its business at the Airport in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof, without fault, initiation, cause or contribution by or of the AIRLINE;

F. The taking of the whole or any part of the demised Premises by the exercise of any right of condemnation or eminent domain;

G. In the event any of the contingencies described above under B, C, D, and E occur, the rates, fees and charges shall be abated for those portions of AIRLINE'S Premises which are rendered untenable from the time of such happening until the affected Premises are returned for AIRLINE'S

use. If the Premises are not returned to AIRLINE within one hundred eighty (180) days of the such happening, AIRLINE may terminate this Agreement.

### **ARTICLE XIII** **COVENANT NOT TO GRANT MORE FAVORABLE TERMS**

The BOARD shall not enter into any lease, contract or agreement with any other Air Transportation Company containing materially more favorable terms than this Agreement nor grant to any other Air Transportation Company rights or privileges with respect thereto which are not accorded to AIRLINE under this Agreement. The provisions contained in this Article shall not apply to any Small Community Air Service Development Grant Program or Air Carrier Incentive Program that are in accordance with FAA Guidelines as may be amended from time to time.

### **ARTICLE XIV** **DAMAGE OR DESTRUCTION OF PREMISES**

A. Leased Premises. If the AIRLINE's Premises, excluding AIRLINE's leasehold improvements or trade fixtures, are partially damaged by fire or other casualty, but not rendered untenable, the same shall be repaired with due diligence by the BOARD. The Premises shall be repaired or restored at BOARD's expense to essentially the same condition as that which existed prior to such damage. In the event such damage is caused by the negligence of the AIRLINE, its officials, agents, contractors, or employees, it shall be the responsibility of AIRLINE to pay all costs to repair or restore the Premises and AIRLINE's rent obligations shall not be abated. Should a portion of the Premises be untenable, excluding damage caused by negligence of AIRLINE, its officials, agents, contractors, or employees, rent for the affected portions of Premises shall be abated for the period from the occurrence of the damage to the completion of the repairs.

If the AIRLINE's Premises, excluding AIRLINE's leasehold improvements or trade fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenable for more than sixty (60) days, the BOARD shall be under no obligation to repair or reconstruct such Premises. The rent for the affected portions of AIRLINE's Premises shall be abated for the period from the date of such occurrence until such space is temporarily replaced with other space sufficient to allow the AIRLINE to operate. The BOARD shall notify AIRLINE within sixty (60) days of the occurrence of such casualty

whether it intends to repair or reconstruct the damaged Premises. If the BOARD elects to repair or reconstruct, it shall do so with due diligence and at its expense, unless such damage was caused by the negligence of the AIRLINE, its officials, employees, or agents, in which case it shall be the responsibility of the AIRLINE to pay all loss, damage and costs not covered by the insurance proceeds. Should the BOARD elect not to repair or reconstruct, this Agreement, as to the destroyed or damaged Premises, shall terminate on the date of notification by BOARD as specified in this Section. In such event, the BOARD agrees to use its best efforts to obtain adequate substitute space for AIRLINE.

B. Other Airport Property. In the event of damage or destruction of Airport property caused by the AIRLINE, its agents, employees, contractors, aircraft, or other equipment, AIRLINE agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction; provided, however, BOARD shall make available to AIRLINE in connection with same any insurance proceeds its receives on account of such damage or destruction. To the extent that the costs of any such repairs or replacements shall exceed the amount of any insurance proceeds payable to BOARD by reason of such damage or destruction, AIRLINE shall be responsible for such additional costs. AIRLINE further agrees to cause such repair, reconstruction or replacement of affected property with due diligence.

In the event of damage or destruction of Airport property caused by an Air Transportation Company, its agents, employees, contractors, aircraft, or other equipment, and no specific Air Transportation Company identifies itself as the cause of the damage, the BOARD reserves the right to include the cost of any such repairs that exceed the amount of any insurance payable to BOARD by reason of such damage in the rates, fees or charges. On damage directly attributable to AIRLINE or another Air Transportation Company, negligence will be charged directly to AIRLINE or such Air Transportation Company, and due and payable upon notice.

## **ARTICLE XV** **QUIET ENJOYMENT**

The BOARD agrees that, on payment of the rates, fees and charges, and performance of the covenants, terms, conditions and agreements on the part of the AIRLINE to be performed unto the Agreement, AIRLINE shall peaceably hold and enjoy the leased Premises and all the rights and privileges of said Airport, its appurtenances and facilities granted herein.

**ARTICLE XVI**  
**INDEMNITY AND INSURANCE**

A. Indemnity and Liability Insurance. AIRLINE shall indemnify and hold harmless the BOARD and the City of Rapid City against all claims, losses, costs, expenses and liability arising out of injury to persons and damage to property, resulting from the negligence or willful misconduct of the AIRLINE or any of its employees, agents or servants, with regard to its use and occupancy of the premises at the Airport, except to the extent caused by the negligence or willful misconduct of the BOARD, or any of its employees, agents or servants, or by the negligence or willful misconduct of the City of Rapid City, or any of its employees, agents or servants. Without limiting its liability as aforesaid, AIRLINE agrees to maintain liability insurance in a company or companies as approved by the BOARD, whose approval shall not be unreasonably withheld, delayed, or conditioned, for the protection of the City of Rapid City, naming the City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers as additional named insured to the extent such liability is assumed by AIRLINE above, and to carry and keep in force such insurance with limits of liability for personal injury, death or property damage in a sum of not less than One Hundred Million Dollars (\$100,000,000.00) single limit liability for any one accident or occurrence, not less than Twenty-Five Million (\$25,000,000.00) with respects to personal injury to non-passengers. AIRLINE shall furnish evidence to the BOARD of the continuance in force of such policy or policies, which shall contain a provision to ensure ten (10) days' notice to the City after any non-payment of premium, any adverse material change, cancellation or non-renewal of such policy or policies. The aforesaid dollar amount and coverage may be adjusted by the BOARD if it reasonably determines additional coverage is needed.

B. Worker's Compensation Insurance. AIRLINE shall furnish to the BOARD satisfactory evidence that it carries adequate Worker's Compensation insurance as per statutory requirements in the state of South Dakota.

**ARTICLE XVII**  
**FORCE MAJEURE**

Neither the BOARD nor AIRLINE shall be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of terrorism, riots, rebellion, sabotage or any other circumstances for which neither is not responsible or which are not within their control, provided, however, that these

provisions shall not excuse AIRLINE from payment of the rates, costs, fees and charges specified hereinabove.

**ARTICLE XVIII**  
**GOVERNMENT AGREEMENTS**

The BOARD agrees that it will not voluntarily enter into any agreement or arrangement with the Federal Government or any authorized agency thereof for the use, maintenance or operation of the Airport or its facilities, or any substantial part or parts thereof, which substantially interferes with AIRLINE'S use of the Airport and its facilities without the written consent of AIRLINE; provided, that such consent shall not be withheld in the event the arrangements made reasonably protect AIRLINE from all loss or damage. Subject to the preceding sentence, in the event any government agreements or bond ordinances are in conflict with this Agreement, the Agreement will be modified so as to cause the BOARD to be in compliance.

**ARTICLE XIX**  
**NOTICES**

All notices to the parties required herein shall be in writing and shall be sent by registered mail, return receipt requested, postage prepaid, addressed as follows:

**BOARD:**

RAPID CITY REGIONAL AIRPORT BOARD  
4550 TERMINAL ROAD, SUITE 102  
RAPID CITY, SOUTH DAKOTA 57703  
FAX NUMBER: (605) 394-6190

**AIRLINE:**

OPEN TRIP DBA BOUTIQUE AIR  
5 3<sup>RD</sup> STREET, SUITE 925  
SAN FRANCISCO, CA 94103  
702-759-9486  
bkondrad@boutiqueair.com

The parties may designate another address from time to time by notice to the other party. All notices required in this Agreement shall be deemed given when so mailed, unless otherwise stated.

**ARTICLE XX**  
**STATE AND FEDERAL LAW, FORUM AND CHANGE OF LAW**

This Agreement, its terms and conditions, and interpretation of same shall be governed at all times by the laws of the State of South Dakota and of the United States and it is hereby agreed that the forum for any legal proceedings or litigation hereunder shall be in a court of competent jurisdiction in Pennington County, South Dakota in the Circuit Court of the Seventh Judicial Circuit for the State of South Dakota

or in the District of South Dakota, United States District Court. Substantial changes in state law, federal law and FAA Rules and Regulations thereunder shall be grounds for either party to request opening of negotiations with respect to parts of this Agreement affected thereby.

**ARTICLE XXI**  
**MANDATORY CONTRACT PROVISIONS**

A. The AIRLINE, 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 facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15)

B. The AIRLINE, for itself, its personal representatives, contractors, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the AIRLINE shall use the Premises in compliance with Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15)

C. The AIRLINE agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, PROVIDED, that the AIRLINE may be allow to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

D. The AIRLINE assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated from time to time to assure that 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 the AIRLINE or its transferee for the period during which Federal Assistance is extended to the airport program, except where Federal Assistance is to provide, or is in the form 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: (i) 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 services or benefits; or (ii) the period during which the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract. (AAIA of 1982, Section 520 - AC 150/1500-15)

E. The AIRLINE agrees that it will practice nondiscrimination in its activities and will provide for participation in its leases as required by the sponsor, in order to meet the sponsor's goals, or required by the FAA in order to obtain an exemption from the prohibition against long-term leases. (49 CFR Part 23 - AC 150/5100-15)

F. The AIRLINE agrees that it shall insert the above five provisions, or substantially similar provisions, in any agreement (agreement, contract, ground handling contracts, etc.) by which said AIRLINE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased or owned. (See the documents referenced for the above clauses.)

G. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the BOARD reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Federal Aviation Act of 1958 Section 308(a) - AC 150/5100-16)

H. The BOARD reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the AIRLINE and without interference or hindrance. (FAA Order 5190.6 - AGL-600)

I. The BOARD reserves the right, but shall not be obligated to the AIRLINE to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the AIRLINE in this regard. (FAA Order 5190.5 - AGL-600)

J. This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreement between the City of Rapid City and the United States, relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6 - AGL-600)

K. The AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises. (FAA Order 5190.6 - AGL-600)

L. This Agreement and all the provisions hereof shall be subject to whatever right this United States Government now has or in the future may have or acquire affecting the control, operation, regulations, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency. (Surplus Property Act of 1944 - FAA Order 5190.6 - AGL-600)

M. It is clearly understood by the AIRLINE 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. (Assurance 22 - FAA Order 5190.6 - AGL-600)

## **ARTICLE XXII** **SECURITY**

AIRLINE recognizes its obligations for security on the leased Premises as prescribed by the Federal Aviation Administration (or its successors) Regulations and the Department of Homeland Security (or its successor) Regulations and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles on its leased Premises and the aircraft operations area.



AIRLINE further agrees to abide by reasonable rules and regulations adopted by the BOARD in carrying out the BOARD's obligations under the Federal Aviation Administration (or its successor) Regulations, the Department of Homeland Security (or its successors) Regulations, and other security measures the BOARD deems necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area.

AIRLINE agrees to comply with the Airport's established Security Plan. AIRLINE further agrees to pay any fines or related fees associated with noncompliance by AIRLINE with the Airport's Security Plan. AIRLINE shall have the right to contest in good faith such fines or related fees without being considered in breach hereof so long as such contest is diligently commenced and prosecuted by AIRLINE.

AIRLINE shall reimburse the BOARD in full for any fines or penalties levied against the BOARD or security violations as a result of any actions or omissions on the part of the AIRLINE, its agents, suppliers, or employees for any violation occurring at any airfield access point under the control of the AIRLINE. Payment for any fines or penalties shall be due thirty (30) days following receipt of invoice.

#### **ARTICLE XXIII** **ENVIRONMENTAL REQUIREMENTS**

AIRLINE shall comply with the following environmental requirements:

A. AIRLINE shall not cause or permit any Hazardous Materials, as defined below, to be stored or used on or about the leased Premises by AIRLINE, its agents, employees, licensees, contractors, or Ground Handler contractors except in compliance with Environmental Laws as hereinafter defined.

B. AIRLINE shall comply with all applicable local, state, and federal laws, ordinances, regulations, and orders relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials (collectively, "Environmental Laws") on or about the leased Premises.

C. AIRLINE shall, at its expense, procure, maintain, and comply with any necessary permits, licenses, and other governmental and regulatory approvals required for AIRLINE's use of the Premises, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer

serving the leased Premises. AIRLINE shall in all respects handle, treat and manage any and all Hazardous Materials on or about the leased Premises in conformity with all applicable Environmental Laws and prudent industry practices regarding the management of such Hazardous Materials. Except for lawful discharges, emissions, or releases of Hazardous Materials, AIRLINE shall cause any spent or waste Hazardous Materials it generates to be removed from the Premises and to be properly managed in compliance with Environmental Laws. Upon the expiration or earlier termination of this Agreement, except for lawful or de minimus releases of Hazardous Materials, AIRLINE shall cause all Hazardous Materials it owns, possesses, controls or is otherwise responsible for to be removed from the leased Premises in compliance with all applicable Environmental Laws; provided, however, that AIRLINE shall not enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to such Hazardous Materials in any way connected with the leased Premises, without first notifying the Airport Executive Director of AIRLINE's intention to do so and affording the Airport Executive Director opportunity to appear, intervene, or otherwise appropriately assert and protect the BOARD's interest with respect thereto.

D. If at any time AIRLINE shall become aware, or has reasonable cause to believe, that any Hazardous Material used, owned, possessed or controlled by AIRLINE, or for which the AIRLINE is responsible for, has come to be located on or about the leased Premises or has been released or discharged into the environment in violation of Environmental Laws, the AIRLINE shall, as promptly as possible upon discovery of the presence or suspected presence of the Hazardous Material at or above reportable quantity under applicable Environmental Laws, provide the Airport Executive Director with verbal notice of that condition. In addition, AIRLINE shall notify the Airport Executive Director in writing within five (5) business days of (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against AIRLINE concerning its unlawful use or release of any Hazardous Material on the leased Premises pursuant to any Environmental Laws, (2) any written claim or threatened claim received from any person against AIRLINE relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from the unlawful use of any Hazardous Materials on the Premises by the AIRLINE, and (3) any reports made by the AIRLINE to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials used on, or removed from, the leased Premises by the AIRLINE, including any complaints, notices, warnings, or asserted violations in connection therewith. AIRLINE shall also supply to the Airport Executive Director as promptly as possible, and in any event within ten (10) business days after AIRLINE first receives

written copies or sends the same, of all claims, reports, complaints, notices, warnings, settlement agreements, or asserted violations in connection therewith. At the request of BOARD, AIRLINE shall promptly deliver to the Airport Executive Director copies of hazardous waste manifests concerning its lawful disposal of all Hazardous Materials generated and removed from the leased Premises by the AIRLINE that are maintained to the extent required under Environmental Laws.

E. Except to the extent caused or contributed to by the Airport, AIRLINE shall indemnify, and hold harmless the City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, its representatives, officers, officials, employees, agents, contractors, and volunteers from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages, costs, or expenses (including reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the leased Premises or any property whatsoever, arising from the AIRLINE's failure to comply with any Environmental Laws or any of AIRLINE's environmental obligations under this Agreement. AIRLINE's obligations herein shall include any and all reasonable investigation costs incurred in connection with any unlawful release of Hazardous Materials on the leased Premises by the AIRLINE, and any associated costs of any required repair, cleanup, decontamination or remediation of the Premises and the preparation and implementation of any required closure, remediation, or other required action in connection therewith. AIRLINE's obligations herein shall survive the expiration or earlier termination of the term of the Agreement concerning the leased Premises for a period of three (3) years. Airport shall indemnify and hold harmless the AIRLINE, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages, costs, or expenses (including reasonable attorney's fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the leased Premises or any property whatsoever arising from the Airport's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters in this Agreement. Airport's obligations under this paragraph shall include any and all reasonable investigation costs or any associated cost or any repair, cleanup, decontamination or remediation of the leased Premises which is determined to be caused by the Airport. The Airport's obligation under this paragraph shall survive the expiration or earlier termination of the AIRLINE's lease period for three (3) years.

F. Notwithstanding any provisions to the contrary, the Airport Executive Director or duly authorized representative, in its sole discretion, shall have the right to enter and inspect the leased

Premises, including AIRLINE's business operations thereon, upon reasonable notice and in a manner so as not to unreasonably interfere with the conduct of AIRLINE's business, to investigate the presence of potential presence of Hazardous Materials on the leased Premises in violation of Environmental Laws.

G. "Hazardous Materials" shall mean, to the extent present in quantities in excess of those permitted by law, any hazardous or toxic substances, materials, or wastes, that are or become regulated under applicable Environmental Laws during the term of this Agreement, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such other substances, materials, and wastes that are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is petroleum or petroleum distillate, asbestos, polychlorinated biphenyls, defined as a "hazardous waste" pursuant to the Resource Conservation and Recover Act, 42 U.S.C. ss6901, et seq. Or defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. ss9601, et seq.

IN WITNESS WHEREOF, the parties have executed these presents by their duly authorized officers.

RAPID CITY REGIONAL AIRPORT BOARD

AIRLINE

BY: \_\_\_\_\_

BY: Brian Kondrad

Darren Haar

Brian Kondrad

ITS: President

ITS: Vice President

TITLE

TITLE

DATE: \_\_\_\_\_

DATE: 3/2/2021

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF PENNINGTON )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the President of the Rapid City Regional Airport Board, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Rapid City Regional Airport Board by himself as President.

In witness whereof I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned officer, personally appeared Brian Kondrad, who acknowledged himself to be the Vice President of Open Trip dba Boutique Air, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Open Trip dba Boutique Air by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_