RAPID CITY REGIONAL AIRPORT BOARD
CITY OF RAPID CITY

and

DEAN KLAPPERICH

AGRICULTURAL LEASE AGREEMENT
Pasture - Lease
Area E

Approved: December 19, 2017
Effective: January 1, 2018 – December 31, 2022

Rapid City Regional Airport
Rapid City, South Dakota
AIRPORT PASTURE LEASE AGREEMENT

Agreement made this 19th day of December, 2017, by and between the RAPID CITY REGIONAL AIRPORT BOARD, 4550 Terminal Road., #102, Rapid City, SD 57703, Pennington County, South Dakota, hereinafter referred to as “Lessor”, and DEAN KLAPPERICH, 14870 Longview Rd., Rapid City, SD 57703, hereinafter referred to as “Lessee”.

WHEREAS Lessor owns and desires to lease land consisting of approximately 247.5 acres, more or less, located at the Rapid City Regional Airport, in the County of Pennington, State of South Dakota, described, to wit:

A 247.5 ACRE TRACT LOCATED IN THE S ½ NE ¼ & E ½ SE¼ OF SECTION 7, THE S ½ NW ¼ & SW¼ OF SECTION 8, THE NW ¼ OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 9 EAST, B.H.M, PENNINGTON COUNTY, SOUTH DAKOTA

WHEREAS Lessee represents he is in position to undertake the leasing of the above described land for pasturing livestock.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION I.
TERM OF LEASE

Lessee agrees that the term of this lease is five (5) years commencing January 1, 2018, and expiring December 31, 2022. This Lease shall be subject to cancellation upon ninety (90) days notice to the Lessee by the Lessor. The Lessee shall have thirty (30) days to respond to the notice of cancellation. In the event of cancellation, the unused portion of the lease payment will be returned to the Lessee. This Lease shall terminate at the end of the term, and Lessor is under no obligation to renew Lease with Lessee. Lessee agrees to surrender and vacate the premises at the termination of this Lease.

SECTION II.
PRICE AND PAYMENT

1. As consideration for the use of the pasture land, Lessee agrees to pay to the Lessor a yearly rental of seven dollars and eighteen cents ($7.18) per acre of leased space as shown on Exhibit “A” attached hereto; which totals 247.5 acres. As such, the yearly rental amount shall be one thousand eight hundred fifty-six dollars and twenty-five cents ($1,856.25). The yearly rent shall be payable on or before February 1st of each year during the term of this agreement.

2. Payment of rents will be delinquent if not paid prior to the 10th day of February. Late or unpaid rents will bear a fee of 1 1/2% per month from the 1st of each month.

3. Payment of rent will be in legal tender and submitted to the Rapid City Regional Airport, Airport Administration Office.
SECTION III.
INGRESS AND EGRESS

Lessor reserves, on behalf of itself and its contractors, employees, agents, and assigns, the right of ingress and egress on and over the leased pasture property herein described for the purpose of erecting and maintaining any and all fences, access roads, utilities, and/or any other activities connected with operation of the Rapid City Regional Airport.

Further, Lessor specifically reserves the right of ingress and egress over and across the leased area on behalf of Lessor’s other tenants, concessionaires, and lessees, as such ingress and egress may be necessary for such tenant, concessionaire, or lessee to access the properties, facilities, or other improvements it has a contractual or other lawful right to access.

SECTION IV.
USE AND POSSESSION

Lessee shall be entitled to non-exclusive possession of the leased area during the term of this Lease. Lessee shall have use of the leased area during the term of this Lease for the purposes of pasturing and grazing livestock. Lessee shall make no use of the property inconsistent with such purpose, and Lessee shall comply with all laws and regulations in carrying out said use. At the expiration of the term, the Lessee shall remove its effects and yield possession of the Leased Premises to Lessor in as good a condition as when the Lessee’s occupancy began, ordinary wear and tear excepted.

The Lessee shall not commit any waste upon the Airport property, nor cause any public or private nuisance or other act that may disturb the quiet enjoyment of the Airport or of any other tenant, nor shall Lessee allow the leased area to be used for any improper, immoral, unlawful, or unsafe purpose, including, but not limited to, the storage or disposal of any hazardous materials.

SECTION V.
EXPANSION OF AIRPORT FACILITIES

Lessor reserves the right to take any portion of the leased area for purposes of expansion or construction of airport facilities or for any other reasons the Airport Board deems necessary or proper. Lessor agrees to reimburse Lessee for any lease payment or portion of such lease payment paid for the lease of said appropriated area on an equitable basis.

SECTION VI.
RELEASE FROM LIABILITY

1. The Lessee shall keep and maintain an insurance policy in a minimum amount of coverage of One Million Dollars ($1,000,000.00) single limit liability for any one accident or occurrence. Lessee agrees to provide insurance coverage as such may be required of all airport Lessees by
Airport Board policy, which may be amended from time to time. The City of Rapid City agrees that insurance required by the Airport Board will not be unreasonable or arbitrary.

2. The policy shall name 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.

3. A certificate covering conditions described shall be filed at the Rapid City Regional Airport within thirty (30) days from the date of this Agreement. Notice of certificate renewal is required prior to policy expiration, and a new certificate shall be filed within fifteen (15) days.

4. The Lessee shall, during the term hereof, or any part hereof, hold the City harmless, defend and indemnify it from any and all damages and demands that may result from negligence of Lessee, including specifically, but not limited to, personal injury and property damage claims arising out of or incidental to the use, maintenance or operation by Lessee or his employees or agents, of any of the structures, appliances, equipment or operations referred to in this Agreement.

5. Claims for injury and/or property damage arising from an accident or occurrence will be handled in a prompt manner.

**SECTION VII. ASSIGNMENT OR SUBLETTING OF AGREEMENT**

Lessee agrees not to assign this Agreement or any rights or obligations due hereunder without express written approval of the Lessor. Lessee shall not sublet the Agreement as a whole or a part, without the written consent of the Lessor.

**SECTION VIII. FENCES AND CONTROL OF NOXIOUS WEEDS AND PRAIRIE DOGS**

All partition fences shall be installed and maintained by the Lessee in accordance with SDCL 43-23. Furthermore, Lessee agrees not to erect or remove any fences without the written permission of the Airport Executive Director. Lessee will maintain or replace as necessary all interior fences so that livestock remain fenced. Further, Lessee agrees to keep all livestock off the active airport property (AOA), and if Lessee is unable to remove straying livestock for any reason, Lessor will perform the necessary duty and bill the Lessee for the costs incurred, which cost shall be paid within ten (10) days.

Lessee agrees to control noxious weeds and prairie dogs in a bona fide manner in accordance with sound pasturing practices in an attempt to eradicate them from the leased premises. Lessee will be required to treat the prairie dog area as required in order to reduce the population. Airport Manager will be notified prior to treatment time. In no event shall the Lessee allow the population to increase or expand beyond the current area limits.
SECTION IX.
TERMINATION

Failure to control noxious weeds and prairie dogs, inadequate maintenance of fences, and repeated failure to remove stray animals shall be cause for termination of this agreement with no refund of rent. Failure to make prompt payments shall be cause for termination.

SECTION X.
CONDITION OF PREMISES – AS IS

The taking of possession of the premises by the Lessee shall be conclusive evidence that the Lessee (i) accepts the premises as suitable for the purposes for which same are leased; (ii) accepts the premises and each and every part and appurtenance thereof as being in a good and satisfactory condition, and (iii) waives any defects in the premises and its appurtenances. IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED HEREUNDER “AS IS,” WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE CITY OF RAPID CITY OR THE RAPID CITY REGIONAL AIRPORT. Lessor has not made any representations or warranties of any kind or character whatsoever, express or implied, with respect to the premises, its condition (including without limitation any representation or warranty regarding suitability, habitability, quality of construction, workmanship, merchantability, or fitness for a particular purpose), environmental condition or compliance with environmental or other applicable laws, and the Lessee acknowledges that it is entering into this Lease without relying upon any such statement or representation or warranty.

SECTION XI.
FEDERALLY MANDATED LEASE CLAUSES

1. The Lessee, for himself, his 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 lease, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee 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 150/5100-15A)

2. The Lessee, for himself, his heirs, his personal representatives, 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 lessee, 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 150/5100-15A)

3. The Lessee 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 Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

4. The Lessee assures that it will comply with pertinent statues, Executive Orders and such rules as are promulgated 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 lessee or it 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: (a) 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 (b) 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 150/1500-15A)

5. The Lessee agrees that it will practice nondiscrimination in their activities and will provide DBE participation in their 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 150/5100-15A)

6. The Lessee agrees that it shall insert the above five provisions in any lease (agreement, contract, etc.) by which said Lessee (licensee, contractor, etc.) 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)

7. 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 Lessor 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 150/5100-16A)

8. The City of Rapid City 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 Lessee, and without interference or hindrance. (FAA Order 5190.6A - AGL-600)
9. The City of Rapid City reserves the right, but shall not be obligated to the Lessee, 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 Lessee in this regard. (FAA Order 5190.5A - AGL-600)

10. This lease 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 5190.6A - AGL-600)

11. The Lessee 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 5190.6A - AGL-600)

12. This lease 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 5190.6A - AGL-600)

SECTION XII.
MISCELLANEOUS

1. Integration. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

2. Binding Agreement. This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

3. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

4. Severability. If any provision of this Lease Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Lease Agreement, which shall remain in full force and effect.

5. Headings. The headings and numbering of the different paragraphs of this Lease Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

6. Construction and Venue. This Lease Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation relating to this Lease Agreement shall be resolved only in the Seventh Judicial Circuit Court of Pennington County, South Dakota.
IN WITNESS WHEREOF the parties have executed this Agreement at Rapid City, South Dakota.

Dated this 19th day of December, 2017.

RAPID CITY REGIONAL AIRPORT BOARD

Shawn Gab, President

Dean Klapperich

LESSOR

ATTEST:

Michelle Thomson, Secretary

State of South Dakota)
County of Pennington )

On this the _______day of ________________, __________, before me, the undersigned officer, personally appeared Dean Klapperich, who acknowledged himself to be the Lessee, and that he, as such Lessee, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing his name as Lessee.

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

___________________________
Notary Public, South Dakota

My Commission Expires:

(SEAL)