

## **PAYMENT IN LIEU OF PROPERTY TAX DEVELOPMENT AGREEMENT**

This payment in lieu of property tax development agreement (the “Agreement”), made and entered into this \_\_\_ day of \_\_\_\_\_, 2025, by and between **DAKOTA AIRCRAFT CORPORATION, d/b/a CIRRUS AIRCRAFT**, a North Dakota corporation, whose mailing address is 4515 Taylor Circle, Duluth, MN 55811 (referred to herein as the “Developer”), the **CITY OF GRAND FORKS**, a North Dakota municipal corporation whose principal office and mailing address is 255 North 4th Street, Grand Forks, ND 58203 (hereinafter the “City”).

### **RECITALS**

- 1.** The City and Developer entered into that certain Preliminary Memorandum of Understanding, which described the Developer’s intention to construct the Project.
- 2.** The Preliminary Memorandum of Understanding also provided the Developer would seek certain property tax incentives in the form of payment in lieu of property taxes under N.D.C.C. ch. 40-57.1 for the Project.
- 3.** On April 28, 2025, the City, pursuant to its policy for property tax incentives, had the Project reviewed by its Local Government Advisory Committee, which provided a consensus and non-binding recommendation to move forward with the Project, with the proposed property tax incentive as more particularly described herein.
- 4.** On April 24, 2025, the City Planning Department consulted and briefed the North Dakota Department of Commerce regarding the Project and the herein described property tax incentive for the Property.
- 5.** The City, pursuant to N.D.C.C. §§ 40-05-24 and 40-57.1-03(7), obtained the consent of the Grand Forks Public School District (on May 12, 2025) and Grand Forks County (on May 20, 2025) to fully participate in the property tax incentive that will be in the form of a payment in lieu of taxes under N.D.C.C. § 40-57.1-03(2) (“PILOT”) for the Project.
- 6.** The City has conducted public hearings on the Project, the proposed PILOT, and pursuant to the City’s policy and N.D.C.C. ch. 40-57.1 has made the necessary findings and determinations, including that the herein described PILOT is in the best interest of the City, and approved of the said PILOT and this Agreement.

**NOW THEREFORE, FOR A VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

## **SECTION 1 – DEFINITIONS**

- 1.1** The following defined terms and definitions apply to this Agreement:
- 1.2** “**Agreement**” means this Payment in Lieu of Property Tax Development Agreement.
- 1.3** “**Assessment Date**” means February 1 of each year, being the date property must be listed and assessed every year in reference to its value under N.D.C.C. § 57-02-11.
- 1.4** “**Certificate of Occupancy**” means a certificate of occupancy applied for under City Code § 18-0507 and to be subsequently issued to the Developer for the Project upon the City finding the terms, conditions and requirements under the City Code for such certificate of occupancy have been satisfied.
- 1.5** “**City**” means the City of Grand Forks, North Dakota.
- 1.6** “**City Assessor**” means the Person appointed and acting as the city assessor for the City pursuant to N.D.C.C. § 40-14-04 and City Code § 3-0601.
- 1.8** “**City Code**” means Grand Forks City Code of 1987, as may be amended.
- 1.9** “**City Inspector**” means the Person appointed and acting as the city inspector and head of the City inspection department.
- 1.10** “**City Planner**” means the Person appointed and acting as the city planner for the City.
- 1.11** “**Construction**” or “**Construction Services**” means erecting, building, assembling, constructing, installing, re-installing and/or performing any services or work to erect, build, assemble, construct and/or install all or any portion of the Project.
- 1.12** “**Developer**” means collectively Dakota Aircraft Corporation, d/b/a Cirrus Aircraft, a North Dakota corporation, and its employees, agents, representatives and contractors.
- 1.13** “**Effective Date**” means June 2, 2025.
- 1.14** **Existing Facility** means all buildings, structures, facilities, fixtures, infrastructure, improvements, erected, built, assembled, constructed, installed and operated for the Developer’s 170,000 square foot manufacturing facility existing on the Project Land as of the Effective Date and subject to property taxation under N.D.C.C. ch. 57-02. The Parties acknowledge and agree the Project is not part of the Existing Facility.
- 1.15** “**Good Industry Practice**” means the industry practices and standards that would be exercised by a prudent and experienced developer, designer, contractor, operator, or maintenance provider engaged in the same kind of undertakings or under similar circumstances.

**1.16 “Governmental Authority”** means (a) the United States of America, the State of North Dakota, the County of Grand Forks, the City and any agency, department, commission, board, bureau or instrumentality of said governmental bodies, and (b) any other federal governmental entity, state, county, city, political subdivision, agency, department, commission, board, bureau or instrumentality which may have, has or exercises any jurisdiction over the Developer, the City, the Existing Facility, the Project, the Project Land and/or the Developer’s business operations.

**1.17 “Governmental Requirements”** means any and all law, statute, code, ordinance (including the City Code), order, rule, regulation, judgment, decree, determination, award, injunction, franchise, permit, certificate, license, authorization, standard, policy, practice, guideline or other direction or requirement (including but not limited to any of the foregoing which relate to zoning and planning standards or controls, environmental standards or controls, engineering standards and codes, energy regulations and occupational, safety and health standards or controls) of any Governmental Authority.

**1.18 “Incremental Property Value”** means the true and full value of the Project, determined pursuant to and by applying N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax valuation purposes. The Incremental Property Value shall be determined as if this Agreement did not exist and therefore determined without regard to or consideration of any of the terms or conditions this Agreement. The Parties acknowledge and agree the Project Land and the Existing Facility shall be subject to property taxation, notwithstanding this Agreement, and accordingly the Incremental Property Value excludes the true and full value of the Project Land and the Existing Facility. The Incremental Property Value shall be determined on every Assessment Date occurring after the Project Improvement is Substantially Completed. The Parties anticipate the first Assessment Date after the Project is Substantially Completed will be February 1, 2027.

**1.19 “Original Property Value”** means the true and full value, determined pursuant to N.D.C.C. §§ 57-02-01(15) and 57-02-27.1 for property tax purposes of the Project as of the Effective Date. The Original Property Value shall be determined without regard to or consideration of any of the terms, conditions and/or PILOT under this Agreement. The Parties acknowledge and agree, the Project Land and Existing Facility shall be subject to property taxation, notwithstanding this Agreement and accordingly, are not included in the Original Property Value. As of the Effective Date, given the Project has not been constructed, the Parties agree the Original Property Value is zero dollars (\$0.00). Although not considered as part of the Original Property Value, as of the Effective Date, the true and full value of the Existing Facility is \$11,826,000.00 and the Project Land is 603,000.00 for a total of \$12,429,000.00

**1.20 “Other City Agreements”** means any and all other agreements or instruments now or hereafter entered into by and between the City and the Developer, or provided by the Developer to the City, (including the PILOT Application) and/or any other Person, as such agreements may be amended or supplemented from time to time.

**1.21** “**PILOT**” means the property tax incentive for the Project in the form of a payment in lieu of property tax pursuant to N.D.C.C. § 40-57.1-03(2), as determined, described and calculated under Section 3.2.2 below.

**1.22** “**PILOT Application**” means the application for property tax incentives for new or expanding businesses and any and all other information and documents submitted to the City by the Developer requesting the PILOT.

**1.23** “**PILOT Resolution**” means the Resolution of the City Council adopted June 2, 2025 approving the PILOT and this Agreement.

**1.24** “**PILOT True and Full Value**” means the amount calculated under Section 3.2.2.

**1.25** “**PILOT Value**” means the amount determined, described and calculated under Section 3.2.1 below for the Project.

**1.26** “**Project**” means a building, structures, facilities, fixtures, infrastructure, improvements, to be erected, built, assembled, constructed, installed and operated for a 30,000 square foot expansion of Developer’s existing aircraft manufacturing and sale business facility located on the Project Land and that are subject to property taxation under N.D.C.C. ch. 57-02. The Parties acknowledge and agree the Project excludes the Project Land and the Existing Facility.

**1.27** “**Project Land**” means the following described parcel of real property, located at 1400 South 48<sup>th</sup> Street, Grand Forks, ND 58201, and upon which the Project is to be constructed and developed:

Lots Two (2), Three (3) and Six (6), Block One (1), Maier’s Third  
Addition to the City of Grand Forks, County of Grand Forks, State of  
North Dakota

The Parties acknowledge and understand that the Project Improvements will be constructed and located on a portion of said parcel.

**1.28** “**Public Infrastructure**” means public streets, street lighting, sidewalks, street and street paving, water, sanitary, storm sewer improvements or any other public infrastructure.

**1.29** “**Substantially Completed**” means the date on which (i) the Project is physically and technically capable of operating for the purposes for which it is intended and (ii) the Project has received all necessary governmental approvals to operate as intended, including (without limitation) a Certificate of Occupancy. The City Administrator shall make this determination in good faith following consultation with the Developer and shall provide written notice to the Developer upon determining the Project is Substantially Completed.

**1.30** “**Targeted Property Value**” means \$11,840,000 (US Dollars), being the true and full of the Project determined under N.D.C.C. §§ 57-02-01(15) and 57-02-27.1, but without

regard to or consideration of any of the terms or conditions of this Agreement, the Developer estimates will be reached for the Project when Substantially Completed. The Targeted Property Value excludes the true and full value of the Project Land and the Existing Facility.

**1.31 “Usual and Customary”** means the reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the Developer or so well established, general, and uniform that they must be presumed to have acted with reference thereto.

## **SECTION 2 – DEVELOPMENT OF PROJECT**

**2.1 Development/Construction of Project.** The Developer, at the Developer’s sole cost and expense, shall be responsible for the design, Construction and installation of the Project pursuant to and in accordance with this Agreement.

### **2.2 Construction Timing**

**2.2.1** Unless otherwise agreed to by the City in writing, Construction of the Project shall commence by August, 2025; and

**2.2.2** Unless otherwise agreed to by the City in writing, the Project shall be Substantially Completed by April 2026.

### **2.3 General Development/Construction Requirements.**

**2.3.1** The following shall be applicable to and be complied with by the Developer for the Construction of the Project:

(a) Construction shall be in accordance with this Agreement and in compliance with the City Code and all applicable Governmental Requirements. Without in any way limiting the foregoing, but in addition thereto, Project and all Construction shall be constructed and performed in compliance with the applicable stormwater permits, which may include the City’s NDFPDES stormwater permit No. NDR04-0000.

(b) The Developer shall obtain, in a timely manner, and pay for all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of the City Code and all other applicable federal, state and local laws and regulations which must be obtained or met before the Construction on any part of the Project may be lawfully commenced. Without limitation to the foregoing, the Developer shall request and obtain from the City all necessary variances, conditional use permits, or zoning changes for the Construction.

(c) Each contractor or subcontractor performing any Construction Services and/or providing any materials, equipment or supplies for Construction shall be required to secure any and all required licenses, permits or similar authorizations necessary to perform Construction Services and/or to provide such materials, equipment or supplies.

**(d)** All Construction Services shall be performed in a competent and professional manner, in Good Faith, pursuant to Good Industry Practice and that is Usual and Customary. Each contractor or subcontractor performing any Construction Services shall employ or contract suitable and necessary employees, professionals, contractors and subcontractors, and to extent required, all such employees, professionals, contractors and subcontractors shall have a valid license for the services or work to be performed.

**(e)** All contractors and subcontractors performing any Construction Services shall be required to comply with any and all federal, state, county, local and municipal laws, statutes, codes, regulations, resolutions, rules, ordinances and policies effective when the Construction Services are being or are to be performed (inclusive of the City Code), and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any federal, state, county, local or municipal law, statute, code, regulation, resolution, rule or ordinance for any employment insurance, pensions, old age retirement funds or any similar purpose and to furnish all necessary reports and information to the appropriate federal, state, county, local and municipal agencies with respect to all of the foregoing.

**(f)** Construction of Public Infrastructure for any part of the Project shall be by the City, and the design, plans and specifications for such Public Infrastructure shall be prepared by the City and/or by an outside engineer selected and approved by the City. The City shall apply its cost share policy for the costs, expenses and fees of the design and Construction for each item of Public Infrastructure. The costs, expenses and fees of the design and Construction of any item of Public Infrastructure exceeding the City's cost share, as determined by the City through the application of the City's cost share policy, shall be paid by the Developer or by special assessment imposed upon each property benefitted by the respective item of Public Infrastructure, including the Existing Facility, the Project and the Project Land, as determined by the Special Assessment Commission and the City Council. All of Public Infrastructure shall be Constructed and installed on property platted as public right of way or easement to the City so as to allow the City to service said infrastructure. All of Construction of such Public Infrastructure shall be warranted by each contractor or subcontractor for a period of one (1) year commencing from the date said work is determined to be Finally Completed.

**(g)** All contractors and subcontractors performing any Construction Services shall adequately and properly protect the Construction Services to be performed by it, to be responsible for damages to persons and property occasioned by its failure to do so and to be responsible for any defective or improper work or material caused by its failure to do so. All contractors and subcontractors shall be required to acknowledge and agree that when and as required by the Developer and/or the City Planner or City Inspector, the contractor and/or subcontractor shall correct, replace and/or re-execute faulty or defective work done and/or materials furnished.

**(h)** All contractors and subcontractors performing any Construction Services shall be required to erect and maintain good and sufficient guards, barricades, signage and signals at or near the Project (including erecting and maintaining such guards, barricades, signage and signals as required under the Manual of Uniform Traffic Control Devices) and shall

in all cases maintain a safe passageway at all streets, road crossings, sidewalks, crosswalks and street intersections. In the event safe passageway at any street, road crossing, sidewalk, crosswalk or street intersection cannot be maintained, the respective contractor or subcontractor shall erect and maintain such guards, barricades and signals as required under the Manual of Uniform Traffic Control Devices for the temporary closure thereof. All contractors and subcontractors performing any Construction Services shall be solely responsible for initiating, maintaining and supervising all safety precautions and measures in connection with the performance of Construction Services, and shall take all safety precautions with respect to the Construction Services and shall comply with all applicable laws, ordinances, rules and regulations, and lawful orders of any public or governmental authority for the safety of persons or property. Without limiting the foregoing, but in addition thereto, all Construction Services shall be conducted and performed in such a manner as to not create any unsafe condition for pedestrians, bicyclists or motorists.

(i) All contractors and subcontractors performing any Construction Services shall be required: (1) to assume the entire risk, responsibility, payment and liability for all actions, claims, demands, liabilities, losses, damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, relating to or in any manner connected with, their respective Construction Services or occurring or resulting from the use of materials, equipment, instrumentalities or other property, and (2) to the extent of Construction Services for Public Infrastructure shall agree to indemnify, save and hold the City, and its respective agents, officers, employees, contractors and other sub-contractors harmless from all such claims and legal fees and disbursements paid or incurred to enforce such indemnity provisions, and such indemnification of the City shall include the obligation and duty to defend the City from and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the contractor's or subcontractor's indemnification obligations.

(j) All contractors and subcontractors performing any Construction Services shall be required to obtain, maintain, and pay for such workers' compensation insurance for all of its employees as may be required by law; comprehensive general liability insurance, builder's risk and comprehensive automobile liability insurance, in amounts that are meet Good Industry Practice for the Construction Services to be performed by the contractor or subcontractor and with reputable insurance companies to protect from and against claims for bodily injury or death, for damage to property occurring upon, in or about the area in which the work is to be performed. In connection, all contractors and subcontractors performing any Construction Services within or upon property owned by the City shall be required to have the City named as an additional insured under each of said insurance policies covering the City for all matters arising from or related to their respective Construction Services that may occur on or within any property owned by the City. All insurance required of a contractor or subcontractor performing Construction Services shall be continuously maintained until the Project is Finally Completed and a Certificate of Occupancy has been obtained for the Project.

**2.3.2** Nothing herein shall relieve the Developer from the obligation to have the Construction of the Project comply with the City's construction and building permitting processes, including without limit any process and approvals, authorizations and permits required under Chapters XVIII and XIX of the City Code. The Parties agree and acknowledge

that this Agreement does not constitute a review or approval of any permits, authorizations, approvals, or licenses required by the City.

**2.3.3** In the event Developer desires to make any material changes to any part of the Project after its approval by the City, including a substantial change order during Construction, the Developer, before initiating such change shall submit the proposed change to the City for its prior review and approval by and through the City Planner, City Inspector and City Assessor. If the City Planner, City Inspector and City Assessor determine such change (a) conforms to the requirements of this Agreement, (b) complies with the City Code and all applicable federal, state and other applicable local laws, and (c) does not materially reduce or increase the Targeted Property Value, the City shall approve the proposed change and notify Developer in writing of its approval. In the event the City does not respond to the proposed change within thirty (30) calendar days after it has been submitted to the City will be deemed to have been approved by the City.

**2.3.4** The City, by and through the City Planner, City Inspector, City Assessor and other officer, employee or agent of the City, shall have the right to access, at any time, to the Project, Existing Facility and/or the Project Land to inspect and/or review the Construction, including but not limited conducting an inspection or review to determine compliance with the terms of this Agreement, whether the Project is Substantially Completed and Finally Completed and whether a Certificate of Occupancy for the Project should be issued.

**2.3.5** Copies of the drawings, prints, plans, and field notes prepared by or for the Developer and other information pertinent to the Construction shall be furnished to the City and such copies shall be retained by the City.

**2.3.6** During Construction, the Developer shall make periodic reports, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of Construction. This reporting requirement by the Developer shall continue until both of the following events have occurred: (a) Project is Finally Completed and (b) a Certificate of Occupancy has been issued for the Project.

**2.4** The parties recognize and acknowledge that Construction of the Project is a complex undertaking and construction may be subject to delays based on many reasons. Therefore, the City will not unreasonably withhold agreement to modify the anticipated dates for Construction commencement, Substantial Completion, and a Certificate of Occupancy.

### **SECTION 3 – PAYMENT IN LIEU OF PROPERTY TAXES ON PROJECT IMPROVEMENTS**

**3.1** **PILOT Approval.** On June 2, 2025, the City Council, by and through the PILOT Resolution, approved the payment in lieu of property taxes for the Project pursuant to N.D.C.C. ch. 40-57.1-03(2), which shall be determined and calculated in accordance with this Agreement, provided the conditions precedent described in Section 3.3 below are satisfied.

**3.2** **Calculation of PILOT Value and PILOT - Payment in Lieu Taxes.**

**3.2.1 Pilot Value - 100% of Incremental Value.**

(a) Commencing on January 1 of the calendar year immediately succeeding the Calendar Day the Project is Substantially Completed and continuing each calendar year thereafter during the ten calendar year term of the PILOT under this Agreement, (as described in Section 3.2.4), the PILOT Value shall be equal to the product of 100% multiplied by the difference of the Incremental Property Value minus the Original Property Value.

(b) By way of example and illustration purposes only, if the Incremental Property Value on each Assessment Date for the entire ten year term described in Section 3.2.1(a) is \$11,840,000.00 (US Dollars) (which assumes no change in the true and full value during the entire ten-year period) the PILOT Value for the each year of the 10-year period shall be calculated as follows:

|                                |                        |
|--------------------------------|------------------------|
| Incremental Property Value:    | \$11,840,000.00        |
| Minus Original Property Value: | <u>(0.00)</u>          |
| Sub-Total:                     | \$11,840,000.00        |
| Multiplied by 100%:            | <u>x 100%</u>          |
| PILOT Value                    | <u>\$11,840,000.00</u> |

**3.2.2 PILOT - Calculation and establishment of the payment in lieu of taxes amount – annual certification.**

(a) Commencing on the first Assessment Date occurring after the Project is Substantially Completed and for each Assessment Date thereafter during the ten year term of PILOT (as described in Section 3.2.4), the annual PILOT, being the payment in lieu of taxes for the Project, shall be calculated and certified by the City Assessor to the Grand Forks County Auditor pursuant to N.D.C.C. § 40-57.1-03(4) as follows:

(1) The PILOT Value, calculated pursuant to Section 3.2.1 above, shall be used to determine the payment in lieu of taxes under N.D.C.C. § 40-57.1-03(4). The Parties acknowledge and agree the anticipated first Assessment Date after the Project is Substantially Completed will be February 1, 2027.

(2) The City Assessor shall deduct the PILOT Value, as calculated each year, from the the Incremental Property Value for such year, and the resulting amount shall be the PILOT True and Full Value.

(3) By way of example and illustration purposes only, if the PILOT Value, as calculated under Section 3.2.1(a) for each of the ten years is \$11,840,000.00

(US Dollars), and the Incremental Property Value for such years is \$11,840,000.00 (US Dollars), (which assumes no change in the true and full value during the entire ten-year period), then the PILOT True and Full Value shall be as follows:

|                             |                          |
|-----------------------------|--------------------------|
| Incremental Property Value: | \$11,840,000.00          |
| Minus PILOT Value           | <u>(\$11,840,000.00)</u> |
| PILOT True and Full Value   | <u>\$0.00</u>            |

(4) During the term of this Agreement, the PILOT and the amount due as the payment in lieu of taxes for the Project for each year and to be certified by the City Assessor to the Grand Forks County Auditor under N.D.C.C. § 40-57.1-03(4) shall be the amount that is equal to the property tax mill rate, for the applicable year, and applied to and using the PILOT True and Full Value. In the event the property tax mill rate is not finalized by October 31 in any given year during the term of this Agreement, then for such applicable year, the most recent property tax mill rate shall be applied to and using the PILOT True and Full Value for the City Assessor’s certification of the amount due as the PILOT and the payment in lieu of taxes for the Project Improvements.

(5) The City Assessor may report to the Grand Forks County Auditor the PILOT True and Full Value and as the true and full value of the Project for property tax assessment and levy purposes.

(6) The City and Developer acknowledge and agree the calculation and amount of the PILOT, being the payment in lieu of taxes for the Project under this Agreement, is based on actual annual levels of assessment during the 10-year period of this Agreement and will result in different annual amounts of payments in lieu of taxes each year of this Agreement

**3.2.3 *Project Land and Existing Facility– Subject to Property Taxation.***

Notwithstanding the terms of this Agreement, the Project Land and Existing Facility shall be subject to property taxation and the City and Developer acknowledge and agree nothing in this Agreement affects, alters or otherwise modifies the property taxation of the Project Land, the Existing Facility and/or the property tax valuation of the Project Land or the Existing Facility.

**3.2.4 *Term of PILOT.*** Subject to early termination under N.D.C.C. § 40-57.1-03(6) and Section 6.5, the PILOT shall commence on the first Assessment Date (and be applicable for said calendar year) occurring after the Project is Substantially Completed and for which the PILOT is calculated under Section 3.2.2 and shall terminate on the 10-year anniversary of the first Assessment Date. The Parties anticipate the first Assessment Date shall be February 1, 2027 (with the PILOT, PILOT Value and PILOT True and Full Value first being applicable for the 2027 calendar year) and the final Assessment Date will be February 1, 2036 (with the 2036 calendar year being the final year of this Agreement, the PILOT, PILOT Value and PILOT True and Full Value).

**3.2.5 Consent to PILOT.** The Developer requests, consents to, and approves the creation of the PILOT, as allowed under N.D.C.C. § 40-57.1-03(2). The Developer expressly waives any objection to any irregularity with regard to this Agreement and/or the creation or calculation of the PILOT, the PILOT Resolution, PILOT Value and the PILOT True and Full Value. Further, the Developer waives all rights to appeal such action of the City, whether pursuant to N.D.C.C. § 28-34-01 or under any other provision of law. This waiver is express, and the Developer acknowledges that it is waiving any and all rights of appeal regarding any irregularity with regard to this Agreement and/or the creation or calculation of the PILOT, the PILOT Resolution, PILOT Value and the PILOT True and Full Value.

**3.2.6 Project Subject to Property Tax Until Substantially Completed.** The Developer acknowledges and agrees that until the calendar year following the date the Project is Substantially Completed, the Project and that portion of the Project that is constructed shall be subject to property taxation and without regard to this Agreement. As noted, it is anticipated the first year the Project will be subject to the PILOT is the 2027 calendar year.

**3.3. Conditions Precedent for PILOT.** The granting and application of the PILOT is subject to the satisfaction of the following conditions precedent:

**3.3.3** The Project is Substantially Completed and a Certificate of Occupancy has been issued for the Project.

**3.3.4** There has been no event of default under this Agreement or the Other City Agreements by the Developer.

**3.3.5** On each Assessment Date for which the PILOT Value, PILOT True and Full Value and the PILOT is calculated under Section 3.2, there has been no event of default under this Agreement or the Other City Agreements by the Developer.

**3.3.6** On each Assessment Date for which the PILOT Value, PILOT True and Full Value and PILOT are calculated under Section 3.2, the representations and warranties of the Developer, described in Section 4 are true and correct.

## **SECTION 4 – DEVELOPER REPRESENTATIONS/INDEMNITY/RELEASE OF LIABILITY**

**4.1. Representations and Covenants of the Developer.** The Developer represents and covenants to the City, which the City has relied on in entering into this Agreement and shall continue to rely on in the execution of and performance of this Agreement:

**4.1.1** The Developer is North Dakota corporation duly organized and validly existing under North Dakota law, and is authorized to do business in the State of North Dakota.

**4.1.2** The Developer is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would

impair its ability to carry out its obligations contained in this Agreement, and/or the Developer, the Developer's operations or the Project or the Existing Facility is not and shall not become a threat to, conflict with or be contrary to the operation and security of any federal Governmental Authority, state Governmental Authority or the City.

**4.1.3** The Developer shall comply with, obtain and satisfy all applicable Governmental Requirements (including under N.D.C.C. §§ 11-11-70, 40-05-26, and 47-01-09, as may be amended) relating to ownership interests or investment in the Developer and/or financing of the Developer from (a) any person or entity from a foreign country or identified on the office of foreign assets control sanctions list and/or (b) a foreign governmental body or agency.

**4.1.4** The Developer is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

**4.1.5** This Agreement to which the Developer is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

**4.1.6** There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

**4.1.7** The Developer's undertakings pursuant to this Agreement are for the purpose of developing the Project.

**4.1.8** Developer further recognizes that, in view of (a) the importance of the development of the Project and Existing Facility to the general welfare of the City; and (b) the substantial financing and other public aids that were made available by the City for the purpose of making such development possible, the qualifications and identity of Developer are of particular concern to the City. Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with Developer, and, in doing so, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby to be performed.

**4.1.9** The Developer will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

**4.2** **Indemnity.** The Developer agrees to and shall indemnify, save and hold the City, its agents, officers, employees, contractors and other sub-contractors harmless from any and all

actions, claims, demands, liabilities, losses, damages, fines, penalties, expenses or fees, including attorneys' fees and disbursements, which arise out of, result from, relate to or are in connection with any acts or omissions of the Developer under this Agreement. Without limiting the foregoing, the indemnification obligation of the Developer shall include the obligation and duty to defend the City, for and against all claims, lawsuits, actions or other matters relating to or in any manner arising from the Developer's indemnification obligations as described in this Section 4.2.

**4.3. Release of Liability.** The Developer hereby releases and forever discharges the City from any and all claims or causes of which may result from a loss of the tax incentive as provided herein, whether by legislative action or judicial decision. The Developer understands and agrees that the tax incentive which is to be provided to the Developer pursuant this Agreement and Chapter 40-57.1 of the North Dakota Century Code is solely dependent upon the validity of said provisions and compliance with all of the provisions contained therein. The Developer has satisfied itself as to such validity and compliance and hereby waives any and all claims and causes of actions which it has or may have against the City in the event of loss of the tax exemption for any reason.

## **SECTION 5 - DEFAULT BY DEVELOPER / REMEDIES OF CITY**

**5.1. Default By Developer.** An event of default by Developer shall occur if any of the following occur:

**5.1.1** The Developer fails to act or otherwise observe or perform any term, condition, covenant or promise of this Agreement following written notice and a 30-day opportunity to cure such default.

**5.1.2** The Developer fails to observe or perform any term, condition, covenant or promise of under any Other City Agreements following written notice and a 30-day opportunity to cure such default.

**5.1.3** Any representation or warranty by the Developer in this Agreement and/or the Other City Agreements proves to have been incorrect in any material respect as of the date when made or on any Assessment Date.

**5.1.4** The occurrence of an event described in N.D.C.C. § 40-57.1-03(6) or Section 6.5.

**5.1.5** The Developer admits in writing the fact that its debts exceed a fair valuation of its property.

**5.1.6** The Developer commences a voluntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

**5.1.7** The Developer makes an assignment for the benefit of its creditors.

**5.1.8** The Developer consents to the entry of an order for relief in an involuntary proceeding under any applicable federal or state bankruptcy, insolvency or other similar law.

**5.1.9** The Developer has entered against it by a court of competent jurisdiction a decree or order granting relief in any involuntary case under any applicable federal or state bankruptcy law, or appointing, with or without the consent of the Developer or any Guarantor, as the case may be, a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for the Developer or any Guarantor or for any substantial part of its property, or approving a plan for reorganization of the Developer or any Guarantor, or ordering the winding up or liquidation of their affairs, and such decree or order shall not be vacated, set aside or stayed for a period of thirty (30) consecutive days.

**5.2. Remedies by City.** Without in any manner limiting the termination provisions under N.D.C.C. § 40-57.1-03(6) and Section 6.5, but in addition thereto, upon the occurrence of an event of default by the Developer, the City may terminate and declare null and void this Agreement and the PILOT.

**5.3 Remedies by City Cumulative.** All rights and remedies of the City from an event of default shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

**5.4. Non-Waiver of Remedy.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice except as may otherwise be provided by law

## **SECTION 6 – MISCELLANEOUS PROVISIONS**

**6.1. Future Special Assessments.** The Developer acknowledges and agrees nothing herein shall preclude special assessments for improvements benefitting the Project, the Existing Facility or the Project Land being levied and apportioned as special assessments against the Project, the Existing Facility or the Project Land.

**6.2. Payment of Taxes and Special Assessments.** Developer shall pay when due all property taxes and any future special assessments levied, assessed and/or payable with respect to the Project, the Existing Facility or the Project Land in accordance with the provisions of applicable laws of the State of North Dakota.

**6.3. No other property tax incentives.** The Developer acknowledges and agrees that during the term of this Agreement, the Project, the Existing Facility or the Project Land shall not be eligible for any other property tax incentive, including but not limited to exemptions described in N.D.C.C. § 57-02.2-03 or other incentive that serves to lower or reduce the value of any part of the Project, the Existing Facility or the Project Land.

**6.4. Assignment.** Except as otherwise permitted upon the prior written consent by the City, the Developer agrees, this Agreement and the rights, interests, and benefits hereunder shall not be assigned, transferred, pledged, or hypothecated in any way by the Developer or by any other Person claiming under it by virtue of this Agreement, and will not be subject to execution, attachment, or similar process. The Developer acknowledges and agrees that any such assignment, transfer, pledge or hypothecation (including the transfer or purchase of all or any party of the Project Land) shall require compliance with N.D.C.C. § 40-57.1-06 to retain the PILOT for the remainder of the term of this Agreement. Any assignment, transfer, pledge, or hypothecation or other disposition of the Project or the Project Land without prior approval from the City may, at the sole discretion of the City, result in the early termination of this Agreement and the rights and benefits associated therewith.

**6.5. Discontinued Business Operation.** In the event the Developer discontinues its business operations on or within the Project, the Existing Facility or the Project Land, except for periods of remodeling/renovation or in the event of damage caused by fire, flood, natural disaster or any general strike, pandemic or health-related closure, declaration of war, or other matter wholly beyond the control of Developer, this Agreement and the PILOT shall immediately terminate, become void and be of no force or effect.

**6.6. Severability.** If any of the provisions contained herein shall for any reasons be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions contained herein.

**6.7. Entire Agreement.**

**6.7.1** This Agreement constitutes the entire understanding of the parties with respect to the PILOT and property tax incentive as provided for herein and supersedes any previous agreements and understanding between the parties with respect to the subject matter hereof, provided, however, nothing herein supersedes, alters, modifies, changes, limits or enlarges any term, condition or obligation under the Other City Agreements.

**6.7.2** This Agreement and the Other City Agreements are to be read together and *in pari materia* but to the extent of any inconsistency between any term of this Agreement and any term of the and the Other City Agreements, the terms of this Agreement shall prevail.

**6.8. Amendments.** Neither the Agreement nor any term or provision hereof may be changed, waived, discharged, or terminated, except by a written instrument signed by both Parties hereto.

**6.9. Change in the Law.** If a Change of Law occurs or will occur within one-hundred eighty (180) Calendar Days, any Party may notify the other Party and include in such notification: (i) an opinion on its likely effects; (ii) any necessary changes to the Project or implementation of this Agreement, including the full detail of the procedure for implementing such changes; and (iii) amendments (if any) required by this Agreement. After either Party delivers a notice of a Change in Law, the Parties shall meet and discuss the issues referred to in

such notice and any ways in which the Developer can mitigate the effect of the relevant Change in Law.

**6.10. Legislative and Tax Law Disclosure.** The Developer acknowledges and agrees that the authority of the City to create, impose, and administer the PILOT is derived from North Dakota statutory authority and the North Dakota Legislature has the power to amend, repeal, and replace any and all laws relating to property tax exemptions, payments in lieu of taxes, tax increment financing, property tax valuation, and collection.

**6.11. Authority.** The Parties to this Agreement acknowledge, warrant and represent that each has the full right, authority and power to enter into this Agreement. The Parties to this Agreement further acknowledge, warrant and represent that the execution by the individuals noted below for such Party, and the delivery and performance by the Parties of this Agreement has been and/or shall be duly authorized by all necessary action of the Parties and no other action on the part of the respective Parties is required in connection therewith and that this Agreement and each agreement, document and instrument executed and delivered pursuant to this Agreement constitutes, or when executed and delivered will constitute, valid and binding obligations of the respective Parties enforceable in accordance with their terms.

**6.12. Non-Merger.** None of the provisions of this Agreement shall be merged by reason of any deed or other instrument transferring any interest in any part of the Project Land or any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**6.13. Headings.** All titles or headings to articles, sections, subsections or other divisions of this Agreement or exhibits hereto are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties hereto.

**6.14. Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota and the City Code and any action or claim related thereto shall be brought in the District Court for Grand Forks County, North Dakota. The Parties acknowledge and agree that nothing in this Agreement is intended, nor shall this Agreement be construed or interpreted, to supersede or expand the provisions of N.D.C.C. § 40-57.1-03, including but not limited to the provisions of N.D.C.C. § 40-57.1-03(6).

**6.15. Waivers.** One or more waivers by either Party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either Party with respect to any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such Party.

**6.16. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

**6.17. No Third-Party Beneficiary.** This Agreement is intended for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns. No other person or entity shall have any right to rely on this Agreement or to claim or derive any benefit therefrom absent the expressed written consent of the Party to be charged with such reliance or benefit.

**6.18. Relationship of Parties.** The Parties shall perform as independent contractors under this Agreement. Each Party, its employees, agents, and representatives are not employees of the other Party for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Compensation Act, and the North Dakota Workers' Compensation Act. No part of this Agreement shall be construed to represent the creation of an employer/employee relationship. Each Party will retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

**6.19. Cooperation.** The Parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to accomplish the purposes of this Agreement.

**6.20. Singular and Plural.** Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

**6.21. References.** The words “herein,” “hereof,” “hereunder” and other words of similar import when used in this Agreement refer to this Agreement as a whole, and not to any particular article, section or subsection. Any reference herein to a Section or Subsection shall be deemed to refer to the applicable Section or Subsection of this Agreement unless otherwise stated herein. Any reference herein to an Exhibit shall be deemed to refer to the applicable Exhibit attached hereto unless otherwise stated herein.

**6.22. Notices.** Any notice required or desired to be served by either Party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

To the City:  
255 North 4<sup>th</sup> Street  
Grand Forks, ND 58201

To the Developer:  
Dakota Aircraft Corporation, d/b/a Cirrus Aircraft  
4515 Taylor Circle  
Duluth, MN 55811

The provisions of this Section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

**6.23. Time of the essence.** Time is of the essence for all matters and obligations under this Agreement and all documents and agreements referenced herein.

**6.24. Performance of Additional Acts.** The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, or stipulations requested by each other to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

**6.25 Binding Effect.** This Agreement will inure to the benefit of and is binding upon the City and the Developer, and their respective successors and assigns.

**DAKOTA AIRCRAFT CORPORATION,  
d/b/a CIRRUS AIRCRAFT**  
a North Dakota corporation

**CITY OF GRAND FORKS,**  
a North Dakota municipal  
corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
By: Brandon Bochenski  
Its: Mayor  
Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
By: Maureen Storstad  
Its: City Auditor  
Dated: \_\_\_\_\_

“Developer”

“City”