

Appendix 2

AVIATION GROUND LEASE

This lease agreement made and entered into by and between Park County/City of Livingston Airport Board (hereinafter referred to as the BOARD), and, \_\_\_\_\_ (Hereinafter referred to as LESSEE), whose address, email and phone numbers is: \_\_\_\_\_

Park County/City of Livingston owns and the BOARD operates the Airport (hereinafter referred to as ("AIRPORT")) situated near \_\_\_\_\_, Montana. The Board desires to lease a portion of the AIRPORT hereinafter described to LESSEE under the terms and conditions contained in this Agreement and the LESSEE wishes to lease the LEASED LAND described herein from the BOARD.

1. DESCRIPTION OF LEASED LAND

The BOARD hereby lets to LESSEE and LESSEE hereby leases from BOARD that certain LEASED LAND of real property at the AIRPORT together and with any improvements contained on the LEASED LAND for LESSEE'S exclusive use specifically described as follows:

A portion of land measuring \_\_\_\_\_ feet by \_\_\_\_\_ feet designated

As Spot number \_\_\_\_\_ on the aviation ground lease plat (hereinafter

Referred to as Spot \_\_\_\_\_ of the AIRPORT, a copy of which is attached.

This LEASED LAND of land includes setbacks of 10' on all three sides (2 sides and the back) with the Apron setback of 27.5', unless specifically noted in this section.

Special Notes \_\_\_\_\_  
\_\_\_\_\_

Total Square Footage of LEASED LAND: \_\_\_\_\_

2. IMPROVEMENT CONSTRUCTION

LESSEE may construct improvements on the LEASED LAND only in accord with plans approved in advance in writing by the BOARD. Such improvements shall be subject to requirements as determined by the BOARD including, but not limited to, setback requirements and paving requirements for connection to the taxiway as well as for ramp and parking. LESSEE solely shall be responsible for the cost of all such improvements, together with all taxes and assessments upon the improvements.

All construction shall meet the requirements of the State of Montana building code and the design shall be harmonious with surrounding structures. No alteration, major repair or additional equipment/building installation shall be made without prior written approval from the BOARD.

Construction of improvements shall commence in a timely manner as outlined below and shall be finished completely within the timeline written below.

Start of Construction: \_\_\_\_\_

Final Completion: \_\_\_\_\_

3. LESSEE'S USES AND RIGHTS

Except where explicitly restricted by this lease, LESSEE may use the LEASED LAND for all aviation purposes as LESSEE may determine consistent with all law, regulations and covenants that apply to the LESSEE or the BOARD.

LESSEE shall have general non-exclusive use in common with all other members of the public of all public AIRPORT facilities and improvements now or hereafter in existence, including, but not limited to approach areas, runways, taxiways, aprons, aircraft and vehicle parking areas, roadways, sidewalks, navigational aids, lighting facilities, and terminal facilities, together with right of ingress and egress over and across public right of way.

4. TERM

The term of this lease shall be for a period of **20** years commencing on the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_\_, and terminating on the last day of \_\_\_\_\_, 20\_\_\_\_\_.

If the BOARD offers to lease the LEASED LAND to any third party prior to, or within ninety (90) days of, the expiration of this lease, then LESSEE shall have the right to renew this lease for an additional term of 20 years at the same rates that the LEASED LAND may be offered to any other person or entity. LESSEE shall give written notice of his desire to do so at least ninety (90) days before the end of the term. Absent such notice, the lease shall terminate without action by either party. LESSEE shall execute and perform the requirements of the new lease within thirty (30) days after the BOARD offers it.

In the event the BOARD determines not to lease the LEASED LAND for a renewal term, it may give notice to LESSEE at least ninety (90) days prior to the end of the term.

In the event LESSEE holds over beyond expiration of the term without written consent from the BOARD, such holding over shall continue only from day to day at will.

Upon termination of the lease, LESSEE shall have the right to remove all property and improvements he/she has made to the Spot including permanent improvements, however, LESSEE shall first advertise such improvements for sale in a commercially reasonable manner. In addition, LESSEE shall offer the improvements to the BOARD at the same price and terms offered to other buyers for a period of forty-five (45) days before removal.

In the event of war or declared National emergency, the Board shall have the right to lease the AIRPORT or any portion thereof to the United States government. In the event any portion of this lease are inconsistent with the lease with the United States Government, this lease shall be suspended during the period of the lease of the government provided that the term of this lease shall be automatically extend by the amount of the suspension.

In the event LESSEE'S rights and privileges under this agreement are suspended by action of the United States due to war or other national emergency, the term of this Agreement shall be extended by the amount of time of such suspension.

5. RENT

LESSEE shall pay to the BOARD an annual rental for the LEASED LAND of \$\_\_\_\_\_ per square foot per year. Rent shall be paid in advance without demand, on the first day of each annual or semi-annual period. The BOARD will adjust LESSEE'S rent every year based upon the Western States CPI index.

6. OBLIGATIONS OF BOARD

During the term of this agreement, the BOARD shall operate and maintain the AIRPORT for use by the public consistent with its commitment to the United States Government under the Federal Airport Act to operate the Airport for a period of twenty (20) years in exchange for assistance in constructing improvements. In the event the Board shall cease to operate and maintain the Airport after twenty (20) years, rent and fees paid by LESSEE shall be limited accordingly. Operation and maintenance by the Board includes providing access to the LEASED LAND for use by approved vehicles. Under no circumstances shall the BOARD have any responsibility for the condition of the LEASED LAND after delivery to LESSEE.

7. OBLIGATIONS OF LESSEE

LESSEE shall maintain and operate the LEASED LAND and all improvements placed thereon at LESSEE'S sole cost and expense. Under no circumstances shall the BOARD bear any cost or expense. LESSEE accepts the LEASED LAND in its present condition. LESSEE declares and hereby agrees that he is leasing and that he is not relying on any representations made by the BOARD or its agents as to location, value, future value, income therefrom or its production.

LESSEE shall pay any taxes levied against the LEASED LAND when due and shall not allow such taxes to become delinquent. If the LESSEE fails to pay any such taxes when due, then the BOARD may, but is not obligated to, pay any delinquent taxes on account for the LEASED LAND and may terminate this lease. If the BOARD pays any delinquent taxes on behalf of the LESSEE, then the LESSEE shall reimburse the BOARD in full, with interest at the highest rate allowed by law. The LESSEE's obligation to pay delinquent taxes, and its obligation to reimburse the BOARD for payment of delinquent taxes, survive the termination of this lease and remain binding on the LESSEE until paid in full.

LESSEE shall pay for all utility expenses on the LEASED LAND, including, but not limited to, electricity, water, sewerage, and garbage services.

LESSEE shall, at its sole cost and expense, maintain the LEASED LAND and improvements in good condition, free of refuse, debris, and in orderly fashion and shall control weeds and vegetation without allowing them to go to seed. LESSEE shall allow no hazardous waste on the LEASED LAND whatsoever. LESSEE shall provide a complete and proper arrangement for sanitary disposal of all refuse and shall adhere to all BOARD requirements. LESSEE shall not store or pile any wood, containers, or any item of personal property upon the LEASED LAND.

LESSEE shall not start or taxi aircraft within any aircraft hangar. LESSEE shall not maintain billboards or advertising signs except as approved in writing in advance by the BOARD.

LESSEE shall not use spray paint on the LEASED LAND exterior, except upon prior approval in writing by the Park County Commissioners.

LESSEE shall keep and maintain in good repair on the LEASED LAND fire suppression equipment consisting of an appropriate fire extinguisher.

LESSEE shall not use the LEASED LAND for livestock operations.

LESSEE shall not use the LEASED LAND for residential purposes.

LESSEE shall not permit any persons other than airman, airport personnel, aircraft passengers, or persons conducted by airman or airport attendants to be in loading areas, taxi-ways, aprons, aircraft and vehicle parking areas, roadways, sidewalks, navigational aids, lighting facilities, or terminal facilities unless supervised by the lessee.

LESSEE shall not park vehicles except in designated parking areas, or on the LEASED LAND in a manner that does not interfere with the ordinary operations of the AIRPORT. LESSEE shall not construct a parking lot on the LEASED LAND without prior written approval from the BOARD.

If the BOARD authorizes the LESSEE to perform any otherwise prohibited activities on the LEASED LAND, then the BOARD shall provide the LESSEE with written approval, and the LESSEE shall post the written documentation on the LEASED LAND. If the BOARD determines any unsafe condition exists on the LEASED LAND, then the LESSEE shall terminate, or require others to terminate, the unsafe condition as directed by the BOARD.

LESSEE shall allow inspection by Park County/City of Livingston and the BOARD at all reasonable times.

LESSEE shall conduct all activity in accord with the laws of the United States of America, the State of Montana, Park County, and rules and regulations and ordinances of the BOARD now in force or hereafter promulgated.

LESSEE covenants and agrees that no person shall be excluded from participation or denied the benefits of or otherwise subjected to discrimination in the use of AIRPORT facilities or the exercise of rights or privileges under this agreement or in the construction of any improvements for LESSEE or the furnishings of any services, and that no discrimination shall exist against any person on the grounds of race, color, creed, political affiliation or ideas, sex, age, or physical or mental handicap. LESSEE shall use the AIRPORT and LESSEE'S facilities in compliance with all other

requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21, Non-discrimination in Federally Assisted Programs of the Civil Rights Act of 1964, as amended from time to time.

8. INDEMNIFICATION

LESSEE and the BOARD have no relationship except as landlord and tenant. LESSEE shall be responsible in every respect for all of its acts or omissions and the acts or omission of its agents, guests, and representatives. In all of LESSEE'S activities in any way connected with this agreement, LESSEE shall hold harmless, and defend, and indemnify the BOARD and Park County/City of Livingston from and against any and all losses due to any act or omission of LESSEE.

9. INSURANCE

LESSEE, immediately after the execution of this lease, shall provide for liability insurance coverage in a minimum amount of **\$1,000,000.00** per occurrence for property damage, personal injury or death. Insurance shall be obtained from companies authorized to do business in the State of Montana. A certificate of insurance from the insurance carrier naming LESSEE and the BOARD and Park County/City of Livingston and its agents and employees as additional insured during the full term of this lease shall be furnished to the BOARD.

10. CANCELLATION BY LESSEE

LESSEE may cancel this by written notice to the BOARD, whereupon rent shall be prorated as of the date LESSEE vacates the LEASED LAND, upon occurrence of one of the following events:

- A. Abandonment of the AIRPORT by the BOARD
- B. Assumption of the operation, control or use of the BOARD by United States Government in such manner that substantially restricts LESSEE from operating in a normal manner for a period of ninety (90) consecutive days.
- C. Existence of an injunction by a Court of competent jurisdiction preventing or restraining use of the AIRPORT for a period at least ninety (90) consecutive days.
- D. Default by the BOARD continuing for at least thirty (30) consecutive days after receipt from LESSEE of written notice to remedy default.

11. CANCELLATION BY THE BOARD

This lease shall be subject to cancellation by the BOARD as follows:

- E. When LESSEE is in default of payment of rent.
- F. When LESSEE is in default on performance of any other covenant or condition required by this agreement for a period of sixty (60) days after written notice of the default.

In the event of cancellation, LESSEE shall immediately surrender possession of the LEASED LAND and any improvements thereon and shall execute any instruments necessary to record the termination of this agreement.

The right to obtain possession of the LEASED LAND and to cancel the Agreement as provided hereinabove shall not limit the BOARD'S right to obtain specific performance or to pursue any other remedy provided for by law or this Agreement. The BOARD'S right in the event of default shall be cumulative, subject only to such election of alternatives as the law may require.

In the event of LESSEE'S default, LESSEE shall hold the BOARD harmless from and shall pay all costs and expenses, including a reasonable attorney's fee, associated with removal of liens and encumbrances upon Park County/City of Livingston title not caused by any act or omission of the BOARD. This obligation shall survive beyond the termination of LESSEE'S rights under this agreement and shall continue to bind LESSEE in the event of default.

Upon termination or cancellation of this lease for any reason, LESSEE shall have ninety (90) days within which to remove property and improvements from the LEASED LAND. LESSEE shall return the LEASED LAND to the condition in which it was at the commencement of this lease. In the event LESSEE does not remove property and improvements within ninety (90) days, title shall automatically vest in the BOARD. The BOARD shall have the right to

retain the property and improvements and shall have a claim against LESSEE for the cost and expenses incurred in doing so. This condition shall survive the terms of the lease.

12. SUBLEASE AND ASSIGNMENT

LESSEE may sublease, assign or transfer rights and privileges under this lease only upon prior written consent of the BOARD. The BOARD shall not unreasonably withhold such consent. The BOARD may request an opportunity to re-negotiate any provisions of this lease with the LESSEE's assignee, sublessee, or transferee as a condition of consent.

13. SUBORDINATION

This lease shall be subordinate to the provisions of any agreements, now or in the future between the BOARD and the United States regarding the administration, operation or maintenance of the AIRPORT.

14. ENTIRE AGREEMENT

This lease contains all the terms of the contract between the BOARD and LESSEE and supersedes all prior negotiations and agreements, either written or oral.

15. SECURITY INSTRUMENTS

The LESSEE shall require any of their mortgagees or beneficiaries to provide within any security document for the LEASED LAND that the mortgagee or beneficiary shall seek no judgment against the BOARD. The LESSEE shall require any security document to require the mortgagee or beneficiary to give notice to the BOARD of each breach of covenant, default, or foreclosure given to the LESSEE.

16. NOTICES

Any notice given in connection with this agreement shall be served upon the parties to this agreement either personally or by certified mail and shall be directed to the following addresses:

BOARD: Park County/City of Livingston Airport Board

LESSEE: \_\_\_\_\_

Notice served by mail under the provisions of this section shall be complete upon deposit in the United States Mail with postage pre-paid. The address to which notice shall be sent may be changed by notification of such change in compliance with the provisions of this section and by sending such notice to the address contained herein.

17. ATTORNEY FEES AND COSTS

Should either party employ an attorney or incur costs to enforce any of the terms or conditions of this agreement against the other, the prevailing party shall recover all such costs, including reasonable attorney fees, costs of suit and costs of discovery.

18. PARAGRAPH HEADINGS

Paragraph headings contained in this document are for convenience and reference and shall not define or limit the scope of any provisions of this agreement.

19. WAIVER OF RIGHTS OR REMEDIES

The Parties understand that a failure by either Party to exercise a right or remedy provided by this lease does not constitute a waiver of that right or remedy on future occasions, unless such a waiver is explicitly made permanent in writing.

20. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon and inure to the benefit of the heirs, legal representatives and assigns of the parties hereto. This agreement contains all the terms of the contract between SELLERS and BUYER and supersedes all prior negotiations and agreements, either written or oral.

21. JURISDICTION AND VENUE

The Parties agree that jurisdiction and venue for any dispute regarding this lease shall be in the Montana Sixth Judicial District Court, Park County, Montana. The Parties shall not file any legal claims involving this lease in any other Court, unless the Sixth Judicial District Court has previously determined that it lacks jurisdiction over the dispute, or no reasonable good-faith argument can be made for jurisdiction in the Sixth Judicial District Court. The Parties waive any right they may have to remove proceedings involving this lease to Federal Court.

22. SAVINGS CLAUSE

Should any provision of this lease be held by a court of competent jurisdiction to be invalid, void or unreasonable, the remaining provisions shall continue in full force and effect.

23. MODIFICATION

This lease may be modified at any time by the express written consent of the BOARD and the LESSEE.

24. EFFECTIVE DATE

This lease shall be effective once signed by at least one representative of both the BOARD and the LESSEE.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

PARK COUNTY COMMISSIONER

LESSEE

By: \_\_\_\_\_

\_\_\_\_\_

ATTEST

By: \_\_\_\_\_

