



Driggs Reed Memorial Airport

City of Driggs

Airport Ground Lease

XXXXXX

Hangar: XX



208-354-2362 ext.2195
M-TH 8:30am - 5pm
F 8:30am - 1pm



mfox@driggsidaho.org
DRIGGSAIRPORT.ORG



60 South Main Street
PO Box 48
Driggs, ID 83422

SUMMARY PAGE

This Summary Page is attached to and made a part of that certain AIRPORT GROUND LEASE dated **XXX** ("Effective Date").

Landlord / City: The City of Driggs, Idaho, a municipal corporation of the State of Idaho.

Address for Notice: Driggs Reed Memorial Airport
City of Driggs
PO Box 48
Driggs, ID 83422
Attn: Driggs Airport Board

Tenant: **XXX**

Airport Board: The body of 5 persons appointed by the City to manage the Airport.

Description of Leased Premises: A **XXXX** s/f leased parcel size and location as more fully described in Exhibit "A" attached hereto and made a part hereof by this reference.

Annual Assessment: The Assessment is **\$.25** per square foot or **\$XXX** per year as may be adjusted annually by the Airport Board.

Common Services: All services provided by the City in accordance with the Airport Rules and Regulations to or for the common benefit of all or a majority of Airport tenants, including without limitation, water, sewer, fencing, paving, snow removal.

Addendum Attached:

Yes No

Exhibits Attached: **Exhibit "A"** - Description of Leased Premises

Legal Description:

XXXX



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AIRPORT GROUND LEASE

(Driggs, Idaho)

THIS LEASE is entered into as of **XXXX** ("Effective Date") by and between THE CITY OF DRIGGS, IDAHO, a municipal corporation of the State of Idaho ("City" and sometimes referred to as "Landlord") and **XXXX**, ("Tenant").

RECITALS

A. City is the legal owner of certain real property known as the Driggs Reed Memorial Airport (the "Airport") as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference.

B. City is willing to lease to Tenant a portion of said Airport premises, together with agreeing to allow Tenant to use, in common with other lessees and Airport users, other Airport facilities as they now exist or may exist for common use in the future.

NOW, THEREFORE, in consideration of the mutual promises and upon the terms and subject to the conditions set forth herein, the parties agree as follows:

AGREEMENT

1. **Incorporation of Summary Page and Recitals.** The terms set forth on the Summary Page attached hereto are intended to be defined terms and, together with the above recitals, are incorporated herein by this reference.

2. **Term of Lease.** City hereby leases to Tenant the "Leased Premises" as such term is defined in the Summary Page. This Lease shall be for an initial term of 60 months, with five additional 60-month options for renewal exercisable by the tenant for a total possibility of 30 years, subject to all applicable laws, including without limitation rules, regulations, ordinances, codes and other requirements now or hereafter imposed by the "Federal Aviation Administration" (FAA) or any other governmental agency, whether federal, state or local (including the City's "Airport Board"). To the extent that any provision of this Lease conflicts with any such laws. The Lease shall automatically be modified to conform thereto, and the remaining lease provisions shall remain in full force and effect.

3. **Permitted Use / Purpose of Lease.**

Refer to Rules and Regulations of the Driggs- Reed Memorial Airport.

4. **Use in Common with Others.** Tenant is hereby granted the right to use, in common with others similarly authorized, of the Airport common facilities, equipment, improvements, and services which may now or hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field and any extensions thereof or additions thereto,



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roadways, runways, aprons, taxiways, flood lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

5. **Conditions and Restrictions.** Tenant's right hereunder to occupy the Leased Premises and to construct, place, or install an airplane hangar and such other Improvements as are reasonably necessary for the purpose of conducting Tenant's activities shall be subject to the following conditions:

- a. Tenant shall comply with all applicable present and future;
 - (i) rules, regulations, minimum standards, and other requirements of the FAA or any successor or similar federal regulatory agency;
 - (ii) laws of the State of Idaho and of the United States of America, including without limitation, statutes, rules, regulations, ordinances and codes regarding environmental contaminants, and
 - (iii) County and City laws, rules regulations, ordinances, and codes, including without limitation, building and fire codes, and rules and regulations of the Airport Board.
- b. All plans, designs, and specifications for the Required Improvements to be Completed by Tenant as well as for all other Improvements requiring a building permit or similar permit or municipal authorization, shall be subject to the prior review and approval by the Airport Board and the City, and Tenant shall also obtain and submit to the City all approvals which may be required from the FAA from time to time; and
- c. Tenant shall be responsible for assuring that traffic and activities relating to completion of Improvements do not interfere with the normal day to day operations of the Airport, do not create a safety hazard, and do not result in unreasonable wear and tear on existing improved areas. Tenant and City shall cooperate in good faith to determine a reasonable means of access for construction purposes.
- d. Exterior lighting must comply with Driggs LDC 11-49. Ensure compliance with standard before exterior light installation.

6. **Payment of Assessment.**

Upon the "Effective Date" of this Lease, Tenant shall deposit with the Airport Board Base Rent for the year beginning on the Commencement Date, which deposit shall be returned to Tenant if this Lease is Terminated as permitted herein prior to the Commencement Date. Thereafter the Annual Assessment, as adjusted from time to time as hereinafter set forth, shall be due and payable on the first of January.

7. **Adjustment of Annual Assessment.**



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The Annual Assessment shall remain fixed for the first 12 months from the Commencement Date. Thereafter, the Assessment shall be adjusted each year (the "Adjusted Annual Assessment") on the first of January for the following calendar year. The Annual Assessment shall be determined by the Board of Directors. The Assessment will be based on the annual operating expenses of the airport and future budgeted improvements. The Assessment will not exceed an increase of 5% in any calendar year.

8. Late Charges.

All rent not paid within 30 days of the due date shall be deemed late and, in addition to the rent due, Tenant agrees to pay (i) a late charge equal to 10% of the rent then due, and (ii) interest on such rent at the rate of 10% per annum until paid in full. Any rent which is due and unpaid at the expiration, termination, or cancellation of this Lease shall continue to be an obligation of Tenant notwithstanding such termination or cancellation.

9. Utilities.

Tenant shall pay or cause to be paid before delinquent all claims or liens for water, gas, electricity, sewer, telephone service, and without limitation, any other commodities or services furnished to the Leased Premises or Improvements, or any part thereof, during the term of this Lease. Tenant shall arrange, at its own expense, for the installation and hookup of all required utilities including electric, water, and sewer, and City shall have no responsibility with respect to the furnishing or installation of such utilities.

10. Taxes and Assessments.

Tenant shall pay or cause to be paid any and all taxes or special assessments which may be levied or assessed against (i) any personal property or Improvements (including fixtures) placed on the Leased Premises by Tenant, or (ii) the real property comprising the Leased Premises.

11. Insurance.

Beginning by the Commencement Date and at all times thereafter during the term of this Lease, including any extensions thereof, Tenant shall procure and maintain insurance against the hazards and in the amounts hereinafter set forth and shall provide City with a certificate of such insurance naming City as an additional insured.

a. Fire Insurance. Hazard insurance against loss or damage to the Improvements by fire, vandalism, malicious mischief, and such other hazards as are covered by fire and all risk insurance policies in common use in the State of Idaho for similar improvements, in an amount equal to 100% of the full insurable replacement value of the Improvements.

b. All Risk Insurance in Connection with Construction. Before commencement of any work on or related to the Leased Premises, Tenant shall procure and shall maintain in force until the completion of the work "All Risk" insurance in a form satisfactory to City, covering all risks of physical loss or damage to any property in an amount of not less than \$1,000,000.



c. Public Liability Insurance. Comprehensive broad form general public liability and aviation liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Leased Premises or Tenant's use of the Airport, with personal injury, death and property damage combined single limit liability of not less than \$1,000,000 for each accident or occurrence.

d. Mandatory Insurance. Worker's compensation and all other insurance, if any, of whatsoever description and in such amounts as may be required by any ordinance, law or governmental regulation to be carried or maintained by the Tenant on all or any part of the Leased Premises or Improvements.

e. General Provisions. The insurance coverage required by the foregoing provisions may be provided by means of one or more blanket policies issued to Tenant (and naming City as an additional insured) with includes such coverage or greater coverage. In the event Tenant shall default in its obligation to procure or maintain any insurance required hereunder, then without limitation on City's other rights or remedies hereunder, City may at its option, but shall not be required to, procure or maintain such insurance and pay any or all of the premiums thereon and other costs and expenses in connection therewith, in which event all such premiums, costs and expenses shall be payable to City by Tenant immediately upon City incurring the same. The amount of coverage required in sections (b) and (c) shall be increased each five (5) years and upon each new option term exercised by Tenant to reflect the greater of (i) the then current economic conditions relating to insurance needs and availability of such insurance upon commercially reasonable terms as may be mutually agreeable to Tenant and City, or (ii) an increase by a percentage which is equal to the percentage change in the Consumer Price Index during the immediately preceding 5 years of insurance coverage. (By way of example only, if during the first 5 years of such coverage, the percentage change in the Consumer Price Index was 10%, the new minimum requirements would be 110% of the initial amounts required. Thereafter upon the commencement of each new option term, the amount would be adjusted for the change in the Consumer Price Index since the previous minimum amount of coverage was computed.)

12. "As Is" Condition of Leased Premises.

Tenant acknowledges that no representation of any kind or nature has been made by or on behalf of City as to any matter concerning the Leased Premises including, without limitation, the land, topography, climate, air, water, water rights, utilities, soil, subsoil, purposes to which the Leased Premises are suited, drainage, access to public roads, proposed routes or roads or extensions thereof, or environmental conditions whether known or unknown. Tenant shall have no claim or right of any kind or nature against City, the Airport Board or any successor or assignee of City, or under or with respect to this Lease, by reason of the physical condition of the Airport or any part thereof including the Leased Premises.



13. Tenant's Approval.

13.1 The following approvals by Tenant are conditions precedent to the Tenant's initial performance of this Lease, each of which may be waived by Tenant:

(a) Tenant's approval of a Preliminary Title Report (the "PTR") which Tenant shall have the right to cause to be issued, at Tenant's expense, including the legal description of the Leased Premises and supporting documents, which approval or disapproval shall be given to City in writing within ten (10) calendar days of Tenant's receipt of such items but in any event on or before the expiration of the Inspection Period set forth on the Summary Page.

(b) Tenant's approval of the soils condition, engineering and/or feasibility studies, any studies that Tenant causes to be performed in connection with its lease of the Leased Premises, and any requirements or regulations of the Department of Building and Safety, Health Department, the FAA, or any other City, county, state, or federal authority which Tenant deems are pertinent to Tenant's intended use of the Leased Premises, which approval or disapproval shall be given to City in writing on or before the expiration of the Inspection Period.

13.2 In the event that written disapproval of matters described in Paragraphs 13.1 (a) and 13.1 (b) is not received by City and the Airport Board on or before the date due as set forth in said paragraphs, it shall be conclusively presumed that Tenant has unconditionally approved or waived each such matter.

13.3 If Tenant disapproves any or all of the exceptions to title contained in the PTR, Tenant shall list, in the written notice of disapproval delivered to City and the Airport Board, those exceptions to title which it disapproves and the reasons for such disapproval. City may, but shall have no obligation to, elect to cure such disapproved items by delivering written notice thereof to Tenant within ten (10) calendar days of City's receipt of Tenant's disapproval notice. If City elects to cure such disapproved items, it shall be a condition precedent to the commencement of this Lease, in favor of Tenant, but not a covenant of City, that the disapproved items shall be cured prior to the Commencement Date. In such event, the Commencement Date shall be extended by the period of time reasonably required to cure such disapproved items, up to a maximum of 90 days.

13.4 If City does not elect to cure the disapproved exceptions to title within the time period provided above, or if Tenant delivers written notice of disapproval of any item described in Paragraph 13.1(b) before expiration of the Inspection Period, this Lease shall terminate and thereafter neither Tenant nor City shall have any further liability hereunder, except for Tenant's obligations under Paragraph 14.

13.5 If, after Tenant approves the PTR as called for above, either of the parties becomes aware of a change in facts or circumstances which materially and adversely affects any of the title matters approved by Tenant, the discovering party shall immediately notify the other party of such change. City shall have the right, but shall have no obligation to, elect to cure said change, by delivering notice to Tenant of its election to cure within ten (10) calendar days of the date City received notice of such change in title matters ("Cure Election Date"). If City elects to cure said



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change, the completion of such cure shall become a condition precedent to the commencement of this lease, in favor of Tenant, but not a covenant of City. If City does not deliver notice of its election to cure on or before the Cure Election Date, or if City notifies Tenant that it has elected not to cure said change, Tenant may elect to terminate this Lease by delivering written notice to City and the Airport Board of such election to terminate within ten (10) calendar days after the Cure Election Date. If Tenant does not deliver written notice of such election to terminate within the time period provided herein, Tenant shall be deemed to have waived any objections it may have to the facts or circumstances in question and shall be bound by the terms hereof.

14. **Right of Entry.**

During the Inspection Period specified on the Summary Page, Tenant and its authorized Agents, upon prior written notice to City, may enter on the Leased Premises during normal business hours to make tests, surveys, studies, and inspections in connection with the Leased Premises upon the following terms:

14.1 Prior to the exercise of said right and at all times while Tenant or its agents are present upon the Leased Premises, Tenant shall arrange for, keep, and maintain in full force and effect a policy of comprehensive general liability insurance with a combined single limit of not less than the amount specified as the Amount of Insurance Required in Connection with Soils Inspection set forth on the Summary Page, and shall furnish to City a certificate of such insurance which names City as an additional insured and provides that such policy shall not be canceled or amended without thirty (30) days prior written notice to City. Prior written notice shall describe the purpose for such entry and list the parties who will enter the Leased Premises. Such notice shall be delivered prior to each separate entry onto the Leased Premises. Tenant shall indemnify, protect, and defend (with counsel satisfactory to City) City against and hold City harmless from, any and all liability, cost and expense for loss of or damage to any property or injury to or death of any person, arising out of or in any way related to the exercise of the right to enter the Leased Premises granted hereunder or arising out of any discharge, leakage, or spillage of Environmental Contaminants caused directly or indirectly by any act or omission of Tenant or its employees, agents, contractors, or subcontractors, unless such liability, cost and expense is caused by the sole and exclusive negligence of City.

14.2 All costs incurred in connection with tests, surveys, studies, inspections, reviews, approvals, determinations, and applications made by or on behalf of Tenant under this Lease or in connection with Tenant's proposed use of the Leased Premises shall be paid by Tenant, regardless of whether the lease contemplated herein is terminated by Tenant as a result of such inspection. In the event of the recordation of any claim of lien for materials supplied or labor or professional services performed on behalf of Tenant, Tenant shall promptly satisfy and discharge such lien at Tenant's sole cost and expense.

14.3 Tenant shall provide to City free of charge a copy of each report, study, regulation or ordinance obtained by Tenant in connection with its tests. In addition, if the Lease is not consummated for any reason, Tenant shall deliver to City, at no cost or expense to City, all of the engineering, architectural, financial, and other studies, drawings, reports, surveys, and similar



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materials prepared by or on behalf of Tenant with respect to the Leased Premises and Tenant's proposed project to the extent Tenant is legally entitled to do so.

14.4 Within five (5) working days after the Effective Date of this Lease, Tenant shall submit to City for review and approval a work plan (the "Work Plan") describing any and all proposed environmental due diligence work ("Work") to be conducted on the Leased Premises by Tenant (such as collection of soil or groundwater samples). Within five (5) working days of receipt of the Work Plan, City shall have the right to disapprove of the Work Plan or request that it be modified. Tenant shall not enter the Leased Premises to conduct any Work prior to receipt of City's written approval of the Work Plan and failure of City to give written approval within the time so provided shall be deemed a disapproval of the Work Plan by City. Any material changes to, modification of, or deviation from the approved Work Plan shall require the prior written consent of City. Promptly following completion of the Work, Tenant shall, at its sole cost and expense, remove from the Leased Premises any and all wastes or drill cuttings generated from its activities and restore the Leased Premises to its condition as it existed immediately prior to Tenant's entry to the Leased Premises. A draft copy of the environmental due diligence report prepared by or on behalf of Tenant which describes the results of the Work shall be provided to City for review and comment at least five (5) working days prior to the report being finalized.

14.5 In the event Tenant disapproves of the condition of the Leased Premises or City disapproves the Work Plan as submitted or modified within the Inspection Period, Tenant shall have the right to unilaterally terminate this Lease, provided that the indemnification provisions of this paragraph shall survive such termination.

15. **Environmental Approval and Indemnification.**

15.1 In the event that Tenant shall cause an environmental study to be made of the Leased Premises, Tenant shall cause the environmental consultant who performs such study to deliver a copy of the report on the environmental condition of the Leased Premises to City concurrently with its delivery of such report to Tenant. In the event (i) such report indicates that the Leased Premises contains any toxic material, hazardous waste, hazardous substance, contaminant, pollutant, dangerous or noxious chemical, or other environmental defect (hereinafter collectively, "Environmental Contaminants"), or (ii) City is notified by the Environmental Protection Agency, or any other federal, state, or local governmental or quasi-governmental entity (collectively, "Environmental Agency") during the Inspection Period that the Leased Premises contains Environmental Contaminants, Tenant or City may elect to terminate this Lease by delivering written notice to the other party of such election to terminate within ten (10) calendar days of such party's receipt of the environmental consultant's report or notice from any Environmental Agency, and thereafter neither Tenant nor City shall have any further liability hereunder, except for Tenant's obligations to indemnify City relating to Tenant's entry onto the Leased Premises. City shall be under no obligation to Tenant to clean up or remove any Environmental Contaminants discovered on the Leased Premises.

15.2 In the event City does not elect to terminate this Lease pursuant to the provisions hereof and Tenant approves the physical condition of the Leased Premises and regardless of whether or not



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an environmental study has been made of the Leased Premises, Tenant shall be deemed to have approved City's title to the Leased Premises subject to any Environmental Contaminants discovered on the Leased Premises prior to or after the Commencement Date and to have waived and released its right to recover from City, and the affiliates, council-members, attorneys, employees, and agents of City, any and all damages, losses, liabilities, costs, or expenses whatsoever (including attorneys' fees and costs) and claims therefore, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or connected with the physical condition of the Leased Premises or any law, ordinance, or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 et seq.), the Clean Water Act (33 U.S.C. Sections 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), and any similar or applicable State law.

16. General Indemnification.

Tenant agrees to indemnify and hold City, its elected and appointed officials, including the members of City Council and the Airport Board, and its agents and employees harmless from and against all liability for injuries to persons or damage to property caused wholly or in part by the negligent use or occupancy of the Leased Premises by Tenant, Tenant's agents, or Tenant's employees or invitees.

17. Recording and Title Insurance.

Tenant shall have the right to record at any time during the term of this Lease a copy of the Lease, or a memorandum thereof in form reasonably acceptable to City. Tenant may, at its sole cost and expense, request and obtain at the time of such recording, a policy of title insurance to be issued to Tenant insuring Tenant's interest in the Leased Premises.

18. Inspections by City.

City reserves the right to enter upon the Leased Premises at reasonable intervals to inspect the Leased Premises, Tenant's Improvements, and Tenant's activities. Any such inspection shall be coordinated with Tenant (except in emergency situations) and shall be conducted in such a manner as to minimize interference with Tenant's activities and schedule.

19. Maintenance of Premises.

Tenant shall maintain the Leased Premises and all Improvements in a clean, orderly and sanitary condition at Tenant's sole cost and expense. Refer to Rules and Regulations of Driggs-Reed Memorial Airport for additional requirements.



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20. Sale of Fuel Prohibited.

Unless specifically authorized in writing by City, the sale of aviation or other fuel or lubricating oil on the Leased Premises is prohibited.

21. Default / Breach.

Each of the following events shall constitute a default and breach of this Lease:

21.1 If Tenant shall fail to pay any rent when said rent shall become due and shall not make the payment within 90 days after written notice thereof by City to Tenant;

21.2 If Tenant shall fail to perform or comply with any of the conditions or terms of this Lease and if the non-performance shall continue for a period of forty-five (45) days after written notice thereof by City to Tenant. In the event the cure cannot reasonably be accomplished within such 45-day period, the time for cure shall be extended by such time as is reasonably necessary provided Tenant promptly commences the cure and diligently pursues it to completion.

21.3 If Tenant shall vacate or abandon the Leased Premises or Improvements thereon. Without limiting the foregoing, and without limiting the City from proving earlier abandonment constituting a default and breach, any improvements left unattended and/or unused for 36 consecutive months shall be create a rebuttable presumption of abandonment; or

21.4 If the rights to the Lease shall pass or transfer to any person, entity, or party other than Tenant's rightful heirs, legal representatives, or entities owned or substantially and materially controlled by Tenant, except in the manner herein permitted.

22. Remedies Upon Breach.

In the event of any default by Tenant, City may terminate this Lease, and demand (and if such demand is refused, recover) possession of the Leased Premises. In such an event, the City shall give Tenant not less than forty-five (45) days advance written notice to Tenant of election of its right to terminate. Upon expiration of the time specified in the notice, this Lease shall thereupon terminate unless otherwise so ordered by a court of competent jurisdiction. Upon termination, Tenant shall not be entitled to a refund of any portion of the prior rent paid, even if such rent was paid in advance, said amount being determined by the parties to be the reasonable amount to be retained by City as liquidated damages. In the event of such termination, Tenant shall also remain liable to City for the entire unpaid rent during the remaining term of this Lease, calculated as of the date payment of such unpaid rent is actually made or as of the date of a judgment entered by a Court, whichever is earlier, by discounting the amount to a present value using the average prime interest rate then charged by banks in Driggs, Idaho. The amount thus calculated shall be reduced by the amount that Tenant proves could have been reasonably avoided by the City.



23. Breach by City.

Should City breach its duties hereunder and fail to cure such default within forty-five (45) days after written notice from Tenant to City specifying in detail the nature of City's alleged breach (such 45 days being extended by such additional time as may be necessary to cure if the cure cannot reasonably be completed within 90 days and the City undertakes the cure within said 45 days and diligently pursues the completion of such cure), Tenant may exercise and pursue all rights then available at law.

24. Hazardous Materials Use.

City and Tenant agree as follows with respect to the existence or use of "Hazardous Material" (as defined below) on the Leased Premises:

(a) Limitation on Use and Storage of Hazardous Materials. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Leased Premises by Tenant, its agents, employees, contractors or invitees, other than those expressly permitted by City and identified by the City in writing. If Tenant breaches the obligation stated in the preceding sentence or contamination of the Leased Premises occurs, or if the presence of Hazardous Materials on the Leased Premises caused or permitted by Tenant (including Hazardous Materials specifically permitted and identified in writing by the City) results in contamination of the Leased Premises, or if contamination of the Leased Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to City for damage resulting therefrom, then Tenant shall indemnify, defend and hold City, its agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation diminution in the value of the Leased Premises or any portion of the property surrounding the Leased Premises (the "Adjacent Property") and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as the result of such contamination. This indemnification of City by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Leased Premises or the Adjacent Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises or the Adjacent Property caused or permitted by Tenant results in any contamination of the Leased Premises or the Adjacent Property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Leased Premises and the Adjacent Property to substantially the same condition existing prior to the introduction of any such Hazardous Material to the Leased Premises or the Adjacent Property, provided that City's written approval of such action shall first be obtained, which approval shall not be unreasonably withheld provided Tenant's actions will not have any material adverse long-term or short-term effect on the Leased Premises or the Adjacent Property.

(b) "Hazardous Material" Defined. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Idaho or the United States Government.



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(c) Exceptions and Permitted Hazardous Materials Usage. Notwithstanding the foregoing, and without in any way waiving the rights of the City to, and obligations of Tenant for, indemnification as set forth in this Lease, City acknowledges that certain Hazardous Materials or potentially Hazardous Materials are inherent with respect to aviation related activities. Accordingly, City hereby gives its consent to Tenant's use and storage of such materials in such reasonable quantities as Tenant demonstrates are necessary to Tenant's aviation related uses and will be brought upon, used, kept and stored on the Leased Premises in a manner that complies with all laws, ordinances and regulations regulating any such Hazardous Material.

(d) Waste Discharge. Tenant shall comply with all federal, state, and local ordinances regarding the discharge or disposal of any hazardous material waste or waste water.

25. **Restriction on Signs, Art, and External Displays.**

Refer to Rules and Regulations of Driggs-Reed Memorial Airport.

26. **No Mechanics' Liens.**

Tenant covenants and agrees not to permit or suffer, and to cause to be removed and released, any mechanic', materialmen or other lien on account of supplies, machinery, tools, equipment, labor or material furnished or used in connection with any construction, improvements, or maintenance and repairs or changes to the Leased Premises by, through or under Tenant.

27. **Title to Improvements Upon Expiration or Termination.**

The following provisions shall govern ownership and removal of Improvements constructed or placed on the Leased Premises:

a. Leases of 25 Years or More. See Addendum A, 27.a.1.

b. Leases of Less than 25 Years. (i) Upon expiration of this Lease, if the total term of this Lease including all extensions exercised by Tenant is less than 25 years, Tenant shall have the right to remove, at Tenant's sole cost and expense, all Improvements on the Leased Premises and return the Leased Premises to their prior clean and unimproved condition, grading and utility hookups excepted. Tenant shall not be allowed to remove or otherwise alter, without prior written permission from the City, utility hookups, grading, paving, or similar Improvements. Except as may be otherwise agreed by the parties, all other Improvements, mobile equipment, and any other property bought, installed, erected, or placed by Tenant on or about the Leased Premises or Airport shall be deemed to be the Property of Tenant and shall be removed from the Leased Premises and/or Airport within 90 days after the date of expiration. Unless additional time is granted by City, any and all such other Improvements and property not removed by Tenant within such 90 days shall, at the sole and absolute discretion of City, become part of the land upon which it is located and title shall be thereupon vest in City. Should Tenant fail to complete timely removal and return the Leased Premises to a clean piece of useable land, Tenant shall continue to be liable for all clean-up costs incurred by City. If City determines, in its sole discretion that any property not timely removed from the Leased Premises has no remaining value, Tenant shall



cause such property to be removed from the Leased Premises, at Tenant's sole cost and expense, within a period of 90 days from the date of written notice from City electing to have Tenant so remove such items. In no event shall the City have the right to give such notice or make such election later than 90 days after expiration of the Lease. (ii) In the event of termination of this Lease for default by Tenant, Tenant's obligations shall be as set forth above in this paragraph, except that no Improvements or other property of Tenant shall be removed from the Leased Premises until such default has been cured by Tenant.

28. Removal of Tenant's Personal Property. Tenant covenants and agrees to remove prior to the expiration of the Lease Term ("Removal Deadline"), all of Tenant's Personal Property, as hereinafter defined. "Tenant's Personal Property" shall mean all readily moveable equipment, apparatus, machinery, furniture, furnishings and personal property installed by Tenant and used in the operation of the aviation activities of Tenant (as distinguished from the use and operation of the physical Improvements themselves). If such removal shall injure or damage the Leased Premises, Tenant covenants and agrees, at its sole cost and expense, at or prior to the Removal Deadline of the Lease Term, to repair such injury and damage in good and workmanlike fashion and to place the Leased Premises in the same condition as the Leased Premises would have been if such Tenant's Personal Property had not been installed, reasonable wear and tear excepted. If Tenant fails to remove any Tenant's Personal Property by the Removal Deadline, City may, at its option, keep and retain any such Tenant's Personal Property or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Tenant any costs or expenses of City in removing the same and in restoring the Leased Premises in excess of the actual proceeds, if any, received by City from disposition thereof.

29. Assignment or Subletting.

Refer to Rules and Regulations of Driggs-Reed Memorial Airport.

30. Damage or Destruction.

30.1 Tenant's Option to Terminate if Damage Substantial. If any portion of the Leased Premises shall be damaged or destroyed by fire or other casualty, Tenant shall promptly proceed to determine the nature and extent of the damage or destruction and to estimate the time necessary to repair or restore the Leased Premises. As soon as reasonably possible, but in no event longer than 60 days from the date of destruction, Tenant shall give written notice to City stating Tenant's estimate of the extent of the damage and the time necessary to repair or restore the Leased Premises ("Tenant's Notice of Damage"). If Tenant reasonably estimates that more than 50% of the Improvements were damaged, or that repair or restoration of the Leased Premises cannot reasonably be completed within 180 days after the date of Tenant's Notice of Damage, Tenant shall have the option to terminate this Lease by giving to City written notice of election to terminate within 30 days from the date of Tenant's Notice of Damage. Tenant shall have a maximum of 24 months from the date of damage or destruction to complete said repairs. Should Tenant fail or refuse to complete the repairs within such time, City shall have the option to terminate the Lease. In the event, however, that the damage or destruction was caused by the act or omission of Tenant or Tenant's Permitted Users or of anyone claiming by, through or under



Tenant, City shall have the option to terminate this Lease if City reasonably estimates that the repair or restoration cannot reasonably be completed within 180 days after the date of Tenant's Notice of Damage, but in such event Tenant shall not have the option to terminate this Lease. In the event either City or Tenant exercises its option to terminate this Lease, the Lease Term shall expire 30 days after the notice by either City or Tenant exercising such party's option to terminate this Lease. In the event of termination of this Lease under the provisions hereof, City shall refund to Tenant such amounts of rent therefore paid by Tenant as may be applicable to the period subsequent to the date of termination. In the event of termination, City may elect to either take possession and have title to the remaining Improvements vest with City, or may elect within 90 days of termination to have Tenant remove the remaining Improvements and restore the Leased Premises to clean, useable land, all at Tenant's expense.

30.2 Obligations to Repair and Restore. If this lease is not terminated by either City or Tenant pursuant to the foregoing provisions, this Lease shall continue in full force and effect and Tenant shall proceed forthwith to cause the Leased Premises to be repaired and restored with reasonable diligence and there shall be no abatement of rent for the period of time that Tenant is unable to use its Improvements.

30.3 Application of Insurance Proceeds. The proceeds of any casualty insurance maintained on the Leased Premises shall be paid to and become the property of Tenant, subject to any obligation of Tenant to cause the Leased Premises to be repaired and restored or demolished and the land cleared and cleaned up.

30.4 Cooperation in the Event of Loss. City and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

31. **Condemnation.**

31.1 Taking -- Substantial Taking -- Insubstantial Taking. A "Taking" shall mean the taking of all or any portion of the Leased Premises or other Airport property as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use or the sale of all or part of the Leased Premises under the threat of condemnation. A "Substantial Taking" shall mean a Taking of so much of the Leased Premises or other Airport property that the Leased Premises cannot thereafter be reasonably used by Tenant for carrying on, at substantially the same level or scope, the aviation activities theretofore conducted by Tenant on the Leased Premises. An "Insubstantial Taking" shall mean a Taking such that the Leased Premises can thereafter continue to be used by Tenant for carrying on, at substantially the same level or scope, the business therefore conducted by Tenant on the Leased Premises.

31.2 Termination on Substantial Taking. If there is a Substantial Taking with respect to the Leased Premises, the Lease Term shall expire on the date the condemning authority takes possession of the Property pursuant to such Taking. In the event of termination of this Lease under the provisions hereof, City shall refund to Tenant such amounts of rent therefore paid by Tenant as may be applicable to the period subsequent to the time of termination of this Lease.



31.3 Restoration on Insubstantial Taking. In the event of an Insubstantial Taking, This Lease shall continue in full force and effect, and there shall be no abatement of rent.

31.4 Right to Award. Any total award, compensation, damages or consideration received or receivable as a result of Taking of the Leased Premises ("Award") shall be paid to and belong to the City. Nothing herein shall give City any interest in, or preclude Tenant from seeking and recovering on its own account from the condemning authority any award or compensation attributable to the taking or purchase of, Tenant's Improvements or other property.

32. Non-responsibility of City for Airport Closures.

City shall not be responsible for airport closures or the inability to operate specific aircraft at any time. Notwithstanding the foregoing, and without in any way imposing upon City a financial obligation other than as may voted on and approved by the City Council from time to time as a part of its budgets, City shall use good faith efforts to keep the Airport open and generally accessible to the flying public and Tenant and to enter into agreements with Fixed Base Operators or others to assist in meeting such objectives.

33. Change in Airport Location.

In the event that a new airport with space allocated for private hangars, is constructed in Teton County, Idaho during the term hereof, including any options exercised by Tenant, City (or other governmental agency having jurisdiction of the new airport) shall have the right, but not the obligation, to relocate Tenant's hangar and facilities (or to build new, equivalent facilities) to the new airport at no additional cost or expense to Tenant, provided that City shall not be responsible for reasonable inconveniences caused in connection with such move and that Tenant's aircraft has adequate enclosed or otherwise protected tie down or storage space, and further provided that the other terms of this Lease, including rent, shall remain in effect. In the event City elects to move Tenant, City shall give not less than 180 days advance notice of the intended move. Further, Tenant shall have the right to terminate this Lease as opposed to having its facility moved, and may remove any Improvements made to the Leased Premises as if this were a Lease of less than 25 years in duration, all as more specifically set forth in Section 27 (b). In addition to the foregoing, Tenant shall have the right at any time for a period of five years from the opening of such new airport, to terminate this lease, regardless of whether or not Tenant elects to relocate at the new airport.

34. Common Services:

Refer to Rules and Regulations of Driggs-Reed Memorial Airport.

35. General Provisions.

The parties hereto agree to the following general provisions:

a. Further Documentation. The parties hereto agree to execute any and all documents advisable and/or necessary to effectuate the terms and intent of this Lease.



208-354-2362 ext.2195
M-TH 8:30am - 5pm
F 8:30am - 1pm



mfox@driggsidaho.org
DRIGGSAIRPORT.ORG



60 South Main Street
PO Box 48
Driggs, ID 83422

b. Binding. This Lease shall be binding upon and inure to the benefit of the parties and their successors and assigns.

c. Invalidity of Provisions. If any provision of this Lease as applied to either party or to any circumstance, shall be adjudged by a court to be void and unenforceable, the same shall in no way affect any other provision of this Lease, the application of such provision in any other circumstances, or the validity or enforceability of the Lease as a whole.

d. Modification. This Lease shall not be modified by either party by oral representation made before or after the execution of this Lease. All modifications must be in writing and signed by the parties.

e. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original Lease, and all of which shall constitute one Lease to be effective as of the Effective Date.

f. Time of the Essence. Time is of the essence for the performance of each and every covenant and the satisfaction of each and every condition contained in this Lease.

g. Attorneys' Fees. In the event any action is brought to enforce or interpret any of the terms and provisions of this Lease, the "prevailing party" in such action shall be entitled to recover, as an element of costs of suit and not as damages, reasonable costs and expenses, including but not limited to taxable costs and a reasonable attorneys' fee. The "prevailing party" shall be the party entitled to recover his costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover his costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining if a party is entitled to recover costs or attorneys' fees.

h. Construction. This Lease shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Lease, and in accordance with the laws of the State of Idaho. Jurisdiction shall be Teton County, Idaho.

i. Miscellaneous. All negotiations are merged into this Lease. This Lease constitutes the entire understanding of the parties. There are no oral or other written agreements between the parties concerning the subject of this Lease. This Lease shall constitute a binding obligation between the parties and shall be applicable beyond the term of this Lease.

j. Costs and Expenses. Each of the parties shall pay all cost and expenses incurred or to be incurred by it in negotiating and preparing this Lease and in closing and carrying out the transactions contemplated by this Lease.

k. Headings. The headings of the paragraphs and subparagraphs of this Lease are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.



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l. Authority to Execute. The individuals executing this Lease on behalf of a corporation, partnership, trust, or other entity hereby represent and warrant that they are duly authorized to do so on behalf of such entity, and that all corporate, partnership, trust or other entity requirements have been fully complied with including such resolutions, voting, or agreements as may be required to enter into this Agreement and to make this Lease a binding obligation of such entity.

m. Facsimile Copies. Facsimile executed copies of this Lease shall be deemed an original copy. Any party may rely upon the facsimile copy of the original executed Lease, which may be executed in counterparts. A Docu-sign executed Lease shall be deemed an original copy. The parties agree to exchange fully executed original copies by mail within 5 days after signing, provided that said exchange or the failure to exchange originals shall in no way be construed as voiding or negating use of the facsimile copies as originals. Notices. All notices permitted or required under this Lease shall be deemed given upon (i) personal delivery (ii) actual receipt of notice by the party to whom such notice was directed, or (iii) 48 hours after having been deposited in the United States mail, certified and postage prepaid, with a second copy sent by regular first class mail and addressed to the appropriate party at the address provided in the Summary Page (or at such other address as may hereafter be given in writing by one party to the other party).



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