

FBO LEASE AGREEMENT
SEELEY LAKE AIRPORT

THIS AGREEMENT is made effective July 1, 1998, by and between the DEPARTMENT OF TRANSPORTATION, AERONAUTICS DIVISION, hereinafter referred to as "DIVISION" and XXXXXXXXXXXX, with authority to do business in the State of Montana, hereinafter referred to as "FBO".

WITNESSETH:

WHEREAS, DIVISION now owns, controls, and operates the Seeley Lake Airport, hereinafter referred to as "Airport", located in Missoula and Powell Counties, State of Montana;

WHEREAS, Fixed Base Operation (FBO) services are essential to the proper accommodation of general aviation at the airport; and

WHEREAS, DIVISION deems it advantageous to itself and to its operation of the Airport to Lease unto FBO certain premises and to grant unto FBO certain rights, privileges and uses therein, as necessary to conduct its fixed base operation as hereinafter set forth.

NOW THEREFORE, for and in consideration of these premises and the mutual promises and covenants of the parties hereto, it is agreed as follows:

ARTICLE I

TERM

A. The term of this Agreement shall be for a period of one (1) year, commencing on XXXXXXXXXXXX, and ending on XXXXXXXXXXXX, unless earlier terminated under the provisions of this Agreement. This Lease Agreement will be automatically renewed from year to year in accordance with and acceptance of the terms and conditions herein specified. Such renewal of this Lease Agreement shall be conditional upon the satisfactory performance by it during the term of this Lease Agreement as determined by the DIVISION.

B. Both parties shall have the option to negotiate changes in this lease if FBO exercises its option to renew.

ARTICLE II

LEASED PREMISES

The DIVISION Leases to FBO and FBO leases from the DIVISION on a year-round basis, solely for the conduct of FBO'S business as a Fixed Base Operator at the Airport the following real property.

A. LEASEHOLD PREMISES: The leasehold premises shall consist of the Fuel and Airport Maintenance Equipment Storage Area which comprises XXX square feet, set forth, described and located on Exhibit "A" attached hereto and made a part hereof.

B. PURPOSE: The purpose of the Fuel and Airport Maintenance Equipment Storage Area shall be for the storage of FBO equipment and material related to the legal storage and dispensing of aviation fuels and lubricants. FBO may also store on leasehold premises motorized and non-motorized airport maintenance equipment and material. Further, the Airport Manager is authorized to store NON-DIVISION owned airport maintenance equipment only within leasehold premises.

The DIVISION shall also have the right to store DIVISION owned airport maintenance equipment only without charge by the FBO on leasehold premises for security purposes.

ARTICLE III

RIGHTS AND OBLIGATIONS OF LESSEE

A. REQUIRED SERVICES: FBO is hereby granted the non-exclusive privilege to engage in and FBO agrees to engage in the business of providing the following services:

1. FBO shall maintain vehicle mounted fuel storage and dispensing tank(s) upon the leased premises, which shall be adequate for the purposes herein described, and in accordance with the approval of DIVISION.

2. FBO shall maintain an adequate supply of aviation fuel and lubricants in the storage tanks located on leasehold premises to meet the reasonable demands for aviation fuels, lubricants.

B. AUTHORIZED SERVICES: In addition to the services required to be provided by FBO as described herein above, FBO is authorized, but not required, to provide the following services and to engage in the following activities:

1. Apron service's including loading and unloading of passengers, baggage, mail and freight; and providing of ramp equipment and ramp service's such as repositioning of aircraft on the ramp, aircraft cleaning and other services for commercial operators and other persons or firms.

2. Special flight services, including aerial sightseeing, aerial advertising, and aerial photography.

3. The sale of new and used aircraft.

4. Flight training,

5. Aircraft rental.

6. Aircraft charter operations, conducted by FBO or a subcontractor of FBO in accordance with applicable Federal Aviation Regulations.

C. OPERATING STANDARDS: In providing any of the required and/or authorized services or activities specified in this Agreement, FBO shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. FBO shall furnish service on a fair, reasonable and non-discriminatory basis to all users of the Airport. FBO shall furnish good, prompt and efficient service adequate to meet all reasonable demands for its services at the Airport. FBO shall charge fair, reasonable and non-discriminatory prices for each unit of sale or service provided, however, FBO may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

2. FBO shall meet all expenses and payments in connection with the use of the premises and the rights and privileges herein granted, including taxes, permit fees, license fees, registrations, and assessments lawfully levied or assessed upon the premises or property at any time situated therein and thereon. FBO may, however, at its sole expense and cost, contest any tax, fee or assessment as provided by Montana law.

3. FBO shall comply with all federal, state and local laws, rules and regulations which may apply for the storage and dispensing of aviation fuels and to the conduct of the business's contemplated, including rules and regulations promulgated by DIVISION and FBO shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.

4. FBO shall keep and maintain the leased premises in good condition and order, and shall surrender the same upon the expiration of this Agreement, in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by FBO'S negligence excepted.

5. FBO shall maintain and operate all facilities associated with the storage of FBO'S petroleum products, chemicals, or other products located only within the Fuel and Airport Maintenance Equipment Storage Area leased premises described by Article II, paragraph A of this agreement, in compliance with all Federal and State laws. Any new fuel tank installations installed on FBO'S leased Fuel and Airport Maintenance Equipment Storage Area shall require the permission of the Division and shall be above ground storage tanks and shall comply with Uniform Fire Code provisions as administered by State Fire Marshals Office and all applicable Federal rules.

6. In the event that soils or other materials are found on FBO'S leased Fuel and Airport Maintenance Equipment Storage Area as described by Article II, paragraph A. that are "Hazardous or Deleterious Substances" as defined by the Montana Comprehensive Environmental Cleanup and Responsibility act, 75-10-701 et. seq., Mont. Code Ann. ("CERCRA"), "Hazardous Substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. S9600, et.seq., ("CERCLA"), "Hazardous Waste" as defined by the Montana Hazardous Waste and Underground Storage Tank Act, S75-10-401, et. Seq., or the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery act,42 U.S.C. S6901 et.seq., or which require special remediation or disposal pursuant to any other applicable law, Lessee shall excavate, handle and dispose of such soils or other materials only in compliance with such statutes and regulations. In the event that the FBO leaves any of the above described materials on the property, the DIVISION may, at its option, have wastes properly disposed of at the cost of storage, transport and disposal.

All Hazardous Materials must be appropriately labeled and stored. In the event that a hazardous material spill occurs on the leased property or on DIVISION owned airport premises, it is the responsibility of the FBO to have the spill cleaned up according to State and Federal Laws and Regulations. FBO is aware that there are

significant penalties for improperly disposing of wastes or submitting false information, including the possibility of fine and imprisonment for knowing violations.

D. SIGNS: FBO shall not erect, construct or place any signs or advertisements pertaining to its business upon any portion of the Airport, other than upon the Fuel and Airport Maintenance Equipment Storage site. Prior to the erection, construction or placing of any signs or advertising matter upon the leasehold areas, FBO shall submit to the DIVISION for its approval, in writing, such drawings, sketches, designs, dimensions, type and character of advertising matter and proposed location. Notwithstanding any other provision of this Agreement, said sign(s) shall remain the property of FBO. FBO shall remove, at its expense, all lettering, signs and placards so erected on the Airport at the expiration of the term of this Agreement.

E. NON EXCLUSIVE RIGHT: It is not the intent of this Agreement to grant to FBO the exclusive right to provide any or all of the services described in this article at any time during the term of this Agreement. DIVISION reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which may be similar in part or in whole to those granted to FBO. However, DIVISION does covenant and agree that:

1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport;

2. Any other operator of aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, terms or conditions which are more favorable than those set forth in this Agreement;

3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease and operating agreement.

ARTICLE IV

APPURTENANT PRIVILEGES

A. USE OF AIRPORT FACILITIES: In connection with this Agreement, FBO shall have full access, together with its employees and invitees, its sub-lessees and their employees, without charge, to and from the leased premises, and to and from all public spaces and facilities on the airport including the use of landing areas, runways, taxiways, and aircraft parking areas designated by the DIVISION.

B. NON-COMPETITION: DIVISION shall not engage directly or indirectly in any of the activities described in Paragraphs A & B of ARTICLE III of this Agreement.

ARTICLE V

PAYMENTS

A. RENT & FEES: In consideration of the rights and privileges granted by this Agreement, FBO agrees to pay to DIVISION during the term of this Agreement the following:

1. RENT: The Division agrees to waive customary rental fee's charged for leasing unimproved ground for the Fuel and Airport Maintenance Equipment Storage Area in exchange for FBO to perform Seeley Lake Airport Management Duties and Responsibilities. These airport management duties are covered by separate written agreement.

2. FEES: FBO shall collect a fuel flowage fee and pay to the DIVISION the amount per gallon set by the DIVISION from time to time for all aviation fuels sold by FBO, including fuels used by FBO in its own operations except any fueling operations conducted XXXXXXXXXXXX. Fuel flowage fees shall be collected regardless of when such activity occurred during the calendar year and also with no regard to where the re-fueling operation occurred, for example on airport or off airport premises except at XXXXXXXXXXXX.

B. PAYMENTS:

1. The fees specified in ARTICLE VI, Paragraph A.2 above shall be paid to the DIVISION on or before the tenth (10th) day of each month following the month in which fees were paid to FBO. FBO shall keep true and accurate records, which shall show the total gallonage of aviation fuels used. With the payment of the charges specified in this paragraph, FBO shall submit a report of gallonage using Exhibit B.

C. RECORDS: In addition to records and reports required by Paragraph B.1 above, FBO shall provide and maintain accurate records of retail fuel sales and adjusted gross receipts derived under this Agreement, for a period of three (3) years from the date the record is made. The DIVISION or its duly authorized representative shall have the right at all reasonable times during business hours to audit the books, records, and receipts of FBO, and to verify FBO'S fuel sales and adjusted gross receipts and tie down fees collected.

D. DISPUTES: In the event that any dispute may arise as to fuel sales collected, the amount claimed due by the DIVISION shall be paid forthwith. The dispute shall be submitted to a Certified Public Accountant,

agreeable to both parties, who shall determine the rights of the parties hereunder to conformity with generally accepted accounting principles. The fees due said accountant for such service shall be paid by the unsuccessful party, or in the event the determination is partially in favor of each party, the fee shall be borne equally by the parties.

ARTICLE VI

UTILITIES

Except for utilities furnished for Airport security lighting by the DIVISION, FBO shall assume and pay for all costs or charges for utility services furnished to FBO during the term of this Agreement.

ARTICLE VII

INSURANCE

A. **REQUIRED INSURANCE:** FBO shall obtain and maintain continuously in effect at all times during the term of this Agreement, at FBO'S sole expense, Public Liability and Property Damage insurance with limits of not less than XXXXXXXXXXXX Dollars (\$XXXXXXXXXX) for injury to or death of any one person, subject to a limitation of not less than XXXXXXXXXXXX Dollars (\$XXXXXXXXXX) for all persons injured or killed in the same accident and with limits of not less than XXXXXXXXXXXX Dollars (\$XXXXXXXXXX) for damage to and destruction of property as the result of any injury or damage caused by FBO'S negligence in its operations under this Lease.

B. **NOTICE:** DIVISION agrees to notify FBO in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder of which DIVISION has knowledge, and to cooperate with FBO in the investigation thereof.

ARTICLE VIII

INDEMNIFICATION

FBO will indemnify and hold the DIVISION harmless from any loss, liability or expense for injury to or death to any person, or loss or destruction of any property caused by FBO'S negligent use or occupancy of the Leased Premises, except a loss, liability or expense caused by the sole negligence or sole willful misconduct of the DIVISION, its agents or employees. FBO hereby expressly waives any and all claims against the DIVISION for compensation for any and all losses or damage sustained by reasons of any defect, deficiency or impairment of any electrical service system, or electrical appliances or wires serving the Leasehold of FBO.

ARTICLE IX

LESSEE AS INDEPENDENT CONTRACTOR

In conducting its business hereunder, FBO acts as an independent contractor and not as an agent of DIVISION. The selection, retention, assignment, direction and payment of FBO'S employees, if any shall be the sole responsibility of FBO. FBO shall at all times during the term of this Agreement maintain Workers Compensation Insurance on it's employees directly related to the operation of the FBO. Copy of Workers Compensation Certificate of Insurance shall be provided to the DIVISION.

ARTICLE X

ASSIGNMENT

FBO shall not, in any manner, directly or indirectly, assign, transfer or encumber this Lease and concession agreement or any portion thereof, or interest therein, or sublet or sublease the whole or any part of the premises or facilities let to it, nor license the use of same, in whole or in part, by any other person, firm or corporation, without the written consent of the DIVISION; provided that the foregoing shall not prevent the assignment of this Lease and concession agreement to any corporation with which FBO may merge or consolidate, or which may succeed to the business of FBO, and which resultant or succeeding corporation shall continue the operation of the business authorized under the concession granted herein at the Airport.

This Lease and concession agreement shall be binding upon and shall inure to the benefit of the successors, heirs and assigns of the parties hereto.

ARTICLE XI

NON-DISCRIMINATION

FBO, its agents and employees shall not discriminate against any person or class of persons by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public, in any manner prohibited by the applicable Federal Aviation Regulations.

ARTICLE XII

DEFAULT AND TERMINATION

A. TERMINATION BY LESSEE: This Agreement shall be subject to termination by FBO in the event of any one or more of the following events:

1. The abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.
2. The default by DIVISION in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of DIVISION to remedy or undertake to remedy, to FBO'S satisfaction, such default within a period of thirty (30) days after receipt of written notice from FBO to remedy same.
3. Damage to or destruction of all or a material part of the premises or airport facilities necessary to the operation of FBO'S business.
4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control or use of the airport, or any substantial parts thereof, in such a manner to restrict FBO from conducting business operations for a period in excess of ninety (90) days.

B. TERMINATION BY LESSOR: This Agreement shall be subject to termination by DIVISION in the event any one or more of the following events:

1. The default by FBO in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of FBO to remedy, or undertake to remedy, to DIVISION'S satisfaction, such default within a period of thirty (30) days after receipt of written notice from DIVISION to remedy same.
2. FBO files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of FBO and such receivership is not vacated within thirty (30) days after the appointment of such a receiver.
3. Montana legislative of Division action which would cause the DIVISION to abandon, close, return to Missoula County Airport Authority, other legal airport sponsor, or otherwise discontinue operating the airport.

C. EXERCISE: Exercise of the rights of termination set forth in Paragraphs A and B above, shall be by notice to the other party within thirty (30) days following the event giving rise to the termination.

D. REMOVAL OF PROPERTY: Upon termination of this Agreement for any reason, FBO, at its sole expense, shall remove from the premises all signs, trade fixtures, furnishings, personal property, equipment and materials which FBO was permitted to install or maintain under the rights granted herein. If FBO shall fail to do so within thirty (30) days, then DIVISION may effect such removal or restoration at FBO'S expense, and FBO agrees to pay DIVISION such expense promptly upon receipt of a proper invoice therefor.

E. CAUSES OF BREACH; WAIVER:

1. Neither party shall be held to be in breach of this Agreement because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has no control; provided, however, that the foregoing provision shall not apply to failures by FBO to pay fees, rents, or other charges to DIVISION.
2. The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT: This Agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.

B. SEVERABILITY: If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

C. NOTICES: All notices shall be sent to:

XXXXXXXXXX and Montana Aeronautics Division, P.O. Box 5178, Helena, MT 59604

LESSOR

DEPARTMENT OF TRANSPORTATION

BY: Administrator, Aeronautics Division, Date

LESSEE Date

LEGAL REVIEW Date

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EXHIBIT B
MONTANA AERONAUTICS DIVISION
SEELEY LAKE AIRPORT
P.O. BOX 5178
Helena, MT 59604

XXXXXXXXXXXX

For month: _____, 19__

1. Fuel and Airport Maintenance Equipment Storage Area:

Tank farm, XXX sq. Ft. @ \$0.0X/sq ft/

Annum, payable July 1 of each contract year

\$ XXXX

2. Fuel Sales:

100 Octane = _____gallons

Total = _____gallons x \$.0X =

\$ _____

PAYMENT FOR MONTH:

\$ _____

CHECK # _____

By: _____

Title _____