

-COMMERCIAL AVIATION GROUND LEASE

THIS LEASE, made and entered into on _____, by and between
the following:

CITY OF BILLINGS, MONTANA, hereinafter
designated "Lessor"

and

STATE OF MONTANA, DEPARTMENT OF FISH,
WILDLIFE, AND PARKS, hereinafter
designated "Lessee"

W I T N E S S E T H

RECITALS

- 1) Lessor owns and operates BILLINGS LOGAN INTERNATIONAL AIRPORT (hereinafter called the Airport) situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the Airport to lease to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights, uses, and interests, and
- 3) Lessee wishes to engage in certain non-commercial aviation activities, and proposes to lease on a net basis from Lessor said parcel of land and to avail itself of the same privileges, rights, uses, and interests contemplated herein, and
- 4) Lessee has indicated a willingness and ability to properly keep, maintain, and improve said land in accordance with standards established by Lessor.

NOW THEREFORE, the parties hereto covenant and agree as follows:

ARTICLE I

PREMISES AND PRIVILEGES

A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain parcel of real property, together with improvements (hereinafter called the premises), for its exclusive use, specifically described as follows:

Main Parcel – 2471 Overlook Drive

Commencing at the Southeast Corner Section 25, T. 1 N., R. 25 E.; thence N 11°24'06" W a distance of 2,054.69 feet to the Point of Beginning; thence S 00°46'41" E a distance of 175.00 feet; thence S 89°13'19" W a distance of 125.00 feet; thence N 00°46'41" W a distance of 175.00 feet; thence N 89°13'19" E a distance of 125.00 feet to the Point of Beginning

Said parcel containing 21,875 square feet.

Premises is further depicted on attached Exhibit A, and by said reference made a part of this Lease.

B. General Privileges, Uses, and Rights. Lessor hereby grants to Lessee the following general privileges, uses, and rights, all of which shall be subject to the terms, conditions and covenants herein set forth. Said rights shall be subject to such Federal, State, or Local ordinances, rules and regulations as now or may hereafter have application at the Airport.

- 1) The general unrestricted use of all public airport facilities and improvements, which are now or may hereafter be connected with or appurtenant to said Airport, except as hereinafter provided, to be used by Lessee and its sublessees for non-commercial aviation activity as herein defined. For the purpose of this Lease, public airport facilities shall include all necessary landing area appurtenances

including, but not limited to, approach areas, runways, taxiways, aprons, aircraft and automobile parking areas, roadways, sidewalks, navigational aids, lighting facilities, Terminal facilities, or other public facilities appurtenant to said Airport.

2) The right of ingress to and egress from the premises over and across public roadways serving the Airport for Lessee, Lessee's agents, employees, patrons and invitees, suppliers of service and furnishers of material.

C. Specific Privileges, Uses, and Rights. In addition to the general privileges, uses, and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee and sublessees the right to engage in non-commercial aviation activity on the premises as defined in subparagraphs 1 through 5 below, subject to the conditions and covenants hereafter set out:

1) The maintenance, storing, and servicing of aircraft, which shall include minor repairs, inspection, and licensing of same, and the purchase of parts, equipment, and accessories therefore.

2) The right to use vehicles necessary for the servicing of aircraft.

3) The storage of non-commercial aircraft not owned by the Lessee.

4) The maintenance of an office on the premises necessary for the conduct of the activities defined herein.

5) The aforementioned rights shall apply to the persons, firms, or corporations having actual possession and occupancy of the hangars described herein, and the agents, employees, and invitees of such persons, firms, or corporations.

D. Concessions, Services, and Uses Excluded. The following concessions, services, uses, and the establishment thereof shall be specifically excluded from this Lease:

- 1) Ground and air transportation for hire.
- 2) Auto rental services.
- 3) Food sales (except the sale of tobacco, confections, and refreshments through coin-operated vending machines).
- 4) News and sundry sales.
- 5) Barber, valet, and personal services.
- 6) Fuel sales (aircraft or vehicle).
- 7) On site fuel storage and fuel storage facilities.
- 8) The buying and selling of aircraft, parts and accessories, and aviation equipment of all descriptions either for retail, wholesale, or as a dealer, except for use in Lessee's own aircraft or operations.
- 9) Flight schools and flight instruction, except that Lessee or Lessee's Chief Pilot shall have the right to give private instructions to employees of the Lessee.
- 10) Aircraft repair and servicing, except on Lessee's or sublessee's own aircraft.
- 11) Storage of vehicles, campers, boats, trailers, motor homes, or other recreational vehicles, or parts for such.
- 12) The maintenance, repairing, or restoring of motorized vehicles.
- 13) Storage of any household items.

14) Use of the premises in a residential capacity of any nature, whether temporary or otherwise.

15) Improper storage of any chemicals, solutions, solvents, or any potentially hazardous, explosive, or flammable materials or substances. Improper storage includes storage in violation of any applicable Federal, State, or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time.

16) Off-premise parking.

17) Storage of any items outside of the hangar structure.

E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement for access purposes over the above described leasehold together with other necessary rights-of-way over said leasehold for access purposes. Said reserved rights-of-way may be used by Lessor and all of Lessor's representatives, agents, employees, tenants, employees of said tenants, and persons or entities serving said tenants.

ARTICLE II

TERM OF LEASE

A. Term. The term of this Lease shall be for a period of ten (10) years, commencing on the 1st day of July 2024, and terminating on the 30th day of June 2034.

B. First Right of Refusal. At the end of the term hereof, the Lessee shall have the first right to accept a new lease of the premises at the same rates and charges that the premises may be offered to any other person or entity. Provided, that the Lessor shall have the sole discretion as to the

use of said premises and whether or not it will be relet at the end of said term. Provided further, that sixty (60) days prior to the end of the term, Lessee shall give notice in writing to Lessor of intent to exercise the first right of refusal. Lessor, upon election to relet said premises, shall give Lessee notice in writing of its decision and the proposed terms. Lessee shall have thirty (30) days in which to give Lessor notice in writing of acceptance.

C. National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE III

RENTAL AND FEES

A. Ground Rental. For the land described in Article I, Paragraph A., Lessee shall pay to Lessor \$0.36 per square foot per annum for all ground included in this Lease for an initial annual rental of \$7,875.00. Said rental shall be payable annually in advance, without billing, by the anniversary date of the Lease.

B. Interest Penalty. Without waiving any other right or action available to the Lessor, in the event of default in the payment of Lease rentals herein, or any other rentals, fees, or charges owed Lessor, the amount due shall accrue interest at the rate of one and one-quarter percent (1.25%) per month from the date such rentals, fees, or charges were due and payable, until paid in full. Said interest shall not apply with respect to items being contested in good faith by Lessee and which are resolved in Lessee's favor.

C. Annual Readjustment of Ground Rental. During the term of the Lease, the rental rate will be adjusted annually on the anniversary date of the Lease using the average of the monthly percentage increases of the previous calendar year, as determined by the Department of Labor Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics. In no case shall the rates be less than the previous year. For the purposes of this Lease, the anniversary date shall be July 1 of each year during the term of the Lease. The Lessor shall send Lessee a notice of the annual rental rate adjustment prior to each anniversary date of the Lease denoting the adjusted rental rates for the year.

D. Rental Adjustments to Market Value. On the fifth anniversary of the Lease, the Lessor may conduct an analysis of the then-current lease rental rates for other on-Airport properties to determine the current market value of the property. Should the analysis identify that the then current Lease rental rate is below market value for other on-Airport properties, the Lessor will notify Lessee of an impending Lease rate increase.

ARTICLE IV

OBLIGATIONS OF LESSOR

A. Lessor Warranties. Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and quiet enjoyment of the leased premises during the term hereof, upon performance of Lessee's covenants herein.

B. Operation as Public Airport. Lessor shall during the term hereof, operate and maintain the Airport and its public facilities, as defined hereinabove, as a public airport consistent with

and pursuant to the sponsor's assurances given by Lessor to the United States Government under the Federal Airport Act.

C. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the demised premises after delivery of premises to Lessee. Lessor shall maintain all existing roads on the Airport giving access to the leased premises and shall remove snow from the access roads as Lessor's resources permit.

D. Access to Records. Upon request, Lessor agrees to provide the Department of Administration, the Legislative Auditor or their authorized agents, access to any records concerning this Lease. A state agency may terminate a contract, without incurring liability, for the refusal of a non-state entity to allow access to records as required in M.C.A. 18-1-118. Lessor agrees to retain all records supporting the services rendered or goods delivered for a period of eight years after either the completion date of this Lease or the conclusion of any claim, litigation or exception relating to this Lease taken by either the State of Montana or a third party, whichever is later.

ARTICLE V

OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain, and operate the entirety of the premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. This Lease in every sense shall be without cost or expense to the Lessor. Lessee accepts the premises in its present condition and will repair and maintain any installations thereon, except as provided in Article IV, Paragraphs B. - C., and will remove or cause to be removed any debris to the extent required for its continuing use thereof .

B. Improvements. Lessee shall have the right to and shall provide for the construction, alteration, expansion, and maintenance of its own improvements, in any lawful manner, upon or in the premises, for the purpose of carrying out any of the activities provided for herein, but shall obtain the written approval of Lessor **prior** to any such construction, alteration, update, or expansion.

C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises, improvements, and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice, and acceptable to Lessor. Lessee's maintenance responsibility shall include snow removal on the premises, and maintenance of all ramps and access to the hangar.

D. Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term thereof; provided, however, that Lessee shall have the right to connect to any available storm and sanitary sewers, water, electrical, or other utilities at Lessee's own cost and expense; and Lessee shall pay for any and all service charges incurred therefore. Lessee shall also provide an external water meter reading device in an external location of the leasehold structure; said meter reading device type shall be specified by Lessor. All utility services shall be installed underground. Invoices for utilities will be sent to Lessee by the Airport and payment shall be made directly to the Airport.

E. Trash, Garbage, Etc. Lessee shall provide, at Lessee's expense, a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse occurring as a result of Lessee's occupancy of the premises. Lessee shall provide and use Lessor approved receptacles for all garbage, trash and other refuse and shall place them on the premises in a location acceptable to the Lessor for their removal. Piling of boxes, cartons, barrels,

pallets, crates, or other similar items in an unsightly or unsafe manner, or open storage of materials, personal property, salvage, unused or surplus equipment, junk, or refuse on or about the premises, is forbidden. All disposal costs shall be paid by the Lessee. Invoices for garbage fees will be sent to Lessee by the Airport and payment shall be made directly to the Airport.

F. Signs. Lessee shall not maintain any billboards or advertising signs on the premises; provided, however, that Lessee may maintain on the outside of its buildings its name(s) or signs, the size, location, and design of which shall be subject to prior written approval of Lessor.

G. Federal, State, and Local Regulations. Lessee acknowledges that the right to use said Airport facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws, rules, regulations, and ordinances of the United States of America, the State of Montana, and the City of Billings now in force or hereafter prescribed or promulgated by authority or by law and shall be closely observed during the full term of this Lease.

H. Hazardous Substances. Lessee assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed in Lessee's occupancy or the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, fuel or petroleum-based products, hazardous or toxic or radioactive substance, or other similar term by any Federal, State, or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee shall hold Lessor harmless from and indemnify Lessor against and from any damage,

loss, expenses or liability resulting from any breach of these representations and warranty including all attorneys' fees and costs incurred as a result thereof.

I. Taxiways. Lessee shall ensure that Lessee's and/or sublessee's aircraft, vehicles, or other equipment do not block the public use taxiway that passes the front of the Lessee's premises. Ramp area included in the premises shall not be used for the tiedown of aircraft for any extended period of time.

J. Access to Records. Upon request, Lessee agrees to provide the Lessor or their authorized agents, access to any records concerning this Lease. Lessee agrees to retain all records supporting the services rendered or goods delivered for a period of eight years after either the completion date of this Lease or the conclusion of any claim, litigation or exception relating to this Lease taken by either the Lessor or a third party, whichever is later.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor and Lessor's officers, directors, agents, representatives, and employees shall stand indemnified by Lessee as herein provided. It is expressly understood and agreed that Lessee is and shall be deemed an independent contractor and operator responsible to all parties for its respective acts or omissions and that Lessor shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall indemnify, save harmless, and defend the Lessor and Lessor's officers, directors, agents, representatives, and employees from any and all losses that may result to the Lessor and Lessor's

officers, directors, agents, representatives, and employees because of any negligence, act, or omission on the part of the Lessee or Lessee's agents, representatives, and employees and shall indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

Lessee expressly agrees that Lessor shall not be liable to Lessee, for personal injury, bodily injury, or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or negligence of Lessor, its officers, directors, agents, representatives, or employees.

B. Insurance. Lessee shall provide and keep in force for the entire term of this Lease the insurance coverages identified below. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana, and that are satisfactory to the Lessor. At the time of execution of this Lease, and annually thereafter, Lessee shall furnish a Certificate of Insurance along with all associated and required policy endorsements showing that required insurance is current and in force. Required evidence of insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days prior to expiration or termination of the existing policy. Lessee shall provide notice to Lessor of any changes to insurance or cancellation of any or all insurance at least thirty (30) calendar days in advance of such change or cancellation. The Certificate of Insurance must include the following certificate holder identification: City of Billings Logan International Airport, 1901 Terminal Circle, Room 216, Billings, MT 59105. If, in the Lessor's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Lease, Lessee agrees that it will increase such minimum limits by

reasonable amounts upon request of the Lessor.

1) Breach of Lease. The continuous maintenance by Lessee of all types of required insurance under this Lease is mandatory. Failure of the Lessee to maintain such insurance is a material breach of this Lease, and does not amend this Lease, nor release the Lessee from any other obligations in this Lease.

2) Commercial General Liability Insurance. Commercial General Liability Insurance on a standard occurrence form, providing coverage for personal injury, bodily injury, death, and property damage, in amounts not less than \$1,500,000 per occurrence; \$3,000,000 General Aggregate; the General Aggregate shall apply separately to each location. The required limits may be provided by a combination of Commercial General Liability Insurance and Excess or Commercial Umbrella Liability Insurance. The commercial general liability policy shall be endorsed to name the City of Billings, and City's officers, directors, agents, representatives, and employees as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy will be excess and noncontributory. The policy shall be endorsed to include a written waiver of insurer's right to subrogate against the City.

3) Automobile Liability. Automobile Liability insurance will be required for all owned and non-owned vehicles in an amount not less than \$1,000,000 combined single limit. If Lessee is providing the coverage amount with an automobile policy that provides full coverage for all of the Lessee's vehicle uses, the policy shall be endorsed to include a written waiver of insurer's right to subrogate against the City.

4) Workers' Compensation and Employers' Liability Insurance. Workers'

Compensation and Employers' Liability Insurance is required if Lessee has employees. Workers' Compensation insurance limits are required to be in accordance with the State of Montana and administered by the Montana Department of Labor and Industry.

ARTICLE VII

TERMINATION OF LEASE, CANCELLATION, AND TRANSFER

A. Termination. This Lease shall terminate at the end of the full term hereof without any notice by either party, except as indicated in Article II, Paragraph A. A holding over by the Lessee, its assigns or sublessees beyond the expiration of the term shall not be permitted without the written consent of the Director of Aviation and Transit and then only on a month-to-month basis.

Lessor acknowledges, understands, and agrees that the Lessee, as a State agency, is dependent upon State and Federal appropriations for its funding. In the event State or Federal government funds available for this purpose are either reduced, not appropriated or otherwise not made available to support continued performance of this Lease in subsequent fiscal periods, the Lessee may cancel this Lease by giving thirty (30) days written notice to the Lessor.

Lessee shall have the right to remove all moveable furniture, fixtures, machinery and equipment and all other personal property owned or installed by Lessee on the premises, and all expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within thirty (30) days after termination of Lease.

In addition, Lessee has the right to remove, at Lessee's expense, all buildings and other structures owned by Lessee located upon the premises within thirty (30) days upon the termination of this Lease. Lessee shall remove from the premises all debris resulting from the removal

of the building or structures, and Lessee shall generally leave the premises in a clean and orderly condition acceptable to the Lessor.

This right to remove personal property, buildings and structures does not extend to pavement, water lines, sewer lines, electrical lines, utility poles, fencing, exterior light poles, which improvements shall remain the property of the Lessor and shall not be removed.

In the event the Lessee elects not to remove the buildings and other structures, personal property, fixtures, machinery and equipment, and other improvements upon termination of the Lease, the disposition of the buildings and structures, personal property, fixtures, machinery and equipment, and other improvements will be left to the sole discretion of the Lessor. If Lessor elects to remove the buildings and structures, personal property, fixtures, machinery and equipment, and other improvements because of failure of Lessee to do so, the cost of removal, demolition, and other related actions shall be at Lessee's expense.

At the expiration or termination of this Lease or any extension thereof, the Lessee will vacate and surrender the premises to the Lessor in good condition and repair and in a condition acceptable to Lessor.

B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee after the happening of one or more of the following events:

- 1) The permanent abandonment of the Airport as an Air Terminal.
- 2) The lawful assumption of the United States Government or any other authorized agency thereof, of the operation, control or use of the Airport, or any

substantial part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating in a normal manner.

3) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

4) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or written notice to remedy same.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods of time and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event which results in said termination. Upon termination under the provisions of this Paragraph, Lessee shall have the same rights as described in Article VII, Paragraph A. herein.

C. Cancellation by Lessor.

1) This Lease shall be subject to cancellation by Lessor in the event Lessee shall:

a) Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after payment is due.

b) File a voluntary petition of bankruptcy.

c) Make a general assignment for the benefit of creditors.

d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.

2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said entry, this Lease shall terminate.

3) It is agreed that failure of Lessor to declare this Lease terminated or to reenter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

D. Suspension of Lease. During the time of war or declared national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this instrument which are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of the Lease shall be automatically extended by the amount of the period of suspension.

E. Subleasing, Assigning, and Transferring. The Lessee shall have the right to sublease, assign, or transfer all or any part of Lessee's leasehold interest in the premises for the same purpose established in Article I, Paragraph D., provided prior written approval of the Lessor is

obtained. As a condition of said approval, Lessor reserves the right to alter this Lease in any manner deemed necessary by Lessor. Any sublease, assignment, or transfer shall be subject to the same conditions, obligations, and terms as set forth herein and as may be subsequently amended. Lessee shall be responsible for the observance by its tenants and sublessees for the terms and covenants of this Lease, and any subsequent lease amendments. Lessee shall provide Lessor with a copy of any sublease and keep current any copies of subleases on the premises provided to Lessor.

ARTICLE VIII

NONDISCRIMINATION

A. General. In the use and occupation of the Airport, Lessee shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or disability. Additionally, for the services provided during the use and occupation of the Airport, Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit of service, provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. Civil/Human Rights Laws. In the operation and use of the Airport, Lessee shall not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as may be applicable.

Without limiting the generality of the foregoing, Lessee agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or disability. Lessee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Lessee agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

C. Lessee, for itself, its heirs, personal representatives, successors in interest, and assignees, as part of the consideration of this Lease, does hereby covenant and agree as a covenant running with the land that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

D. Lessee, for itself, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration of this Lease, does hereby covenant and agree as a covenant running with the land that:

1) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements.

2) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under such land and the furnishing of services thereon.

3) Lessee shall use the facilities in compliance with all other requirements imposed by, or pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in any applicable State or Local law. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Article VIII.

E. During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 6) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, § 47123) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or

activities of the Federal aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

9) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, which addresses discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Federal Regulations at 74087 – 74100);

12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

ARTICLE IX

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Lease, the nonprevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Governing Law. This Lease and all disputes arising hereunder shall be construed and enforced by the laws of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

C. Taxes. Lessee shall pay any taxes or assessments that may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee as independent contractor reserves the right to contest the levy of any tax or assessment that it feels is unjust.

D. Subordination of Lease.

1) This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the administration,

operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Notwithstanding any other prohibition or limitation of Lessee's right to sublease or assign its interest under this Lease, Lessor acknowledges and agrees that Lessee shall have the right to grant a security interest in its rights and interest under this Lease, with Lessor's written consent. Any mortgagee or beneficiary shall have the right to cure any default on the part of Lessee in the payment of rent hereunder and, in the event of default, to assume the Lessee's position under this Lease. Lessor, in no event, shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no monetary judgment against Lessor. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to Lessor by certified mail a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee to Lessee under such mortgage or deed of trust.

E. Modification and Amendments. Changes or modifications to this Lease shall be done in the form of a lease amendment prepared by the Lessor, and to be agreed upon and signed by both Lessee and Lessor.

F. Right to Inspect. Lessor shall have the right to enter premises to inspect for compliance with the terms and conditions of this Lease.

G. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

H Effect of Invalid Provision. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

I. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105

and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

State of Montana
Dept. of Fish, Wildlife and Parks
Land Section
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
Telephone: (406) 444-0538
Local Contact: Joe Rahn
Phone: (406) 444-7700_
E-mail: JRahn@mt.gov

or to such other addresses as the parties may designate to each other in writing from time to time.

I. Successors and Assigns. All of the terms, covenants, and agreements herein contained, or as subsequently amended from time to time, shall be binding upon and shall inure to the benefit of successors, assignees, and sublessees of the respective parties hereto.

IN WITNESS WHEREOF, this document has been duly executed by or on behalf of the parties hereto as of the date indicated below.

DATE: _____

LESSOR:

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

LESSEE:

BY

DUSTIN TEMPLE, DIRECTOR
DEPARTMENT OF FISH, WILDLIFE
AND PARKS

DATE

APPROVED BY:

BY

SCOTT MCHUGH, SENIOR LEASING
OFFICER
DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION

DATE

BY

JULIA W. SWINGLEY,
AGENCY LEGAL COUNSEL
DEPARTMENT OF ADMINISTRATION

DATE

BY

OFFICE OF BUDGET AND PROGRAM
PLANNING

DATE

BY

MISTY ANN GILES, DIRECTOR
DEPARTMENT OF ADMINISTRATION

DATE
