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**Airport Leases-Best Practices**

**UNIQUE CONCERNS FOR LEASES OF AIRPORT PROPERTY**

Safety

Noise

Conflicts between Airport and Commercial Interests.

FAA Regulations: Many Airports receive funds from the FAA to pay for airport maintenance, improvements and expansion. In exchange for this funding, the FAA places restrictions upon how some or all of the airport property may be used.

Zoning. Zoning for Airport Classifications may limit other uses for the property.

**TYPES OF LEASES**

Ground Leases

Building Leases

Fixed Base Operator Lease

Licenses

**LEASES: ISSUES TO BE CONSIDERED**

**1. Identification of tenant.**

Not only must the lease correctly identify the name of the tenant, but it should state what type of entity we are dealing with. "Woe-is-me Aviation". Is this an individual doing business as? Is it a partnership, limited partnership, corporation or limited liability company? The landlord's rights may be limited depending upon the nature of the tenant.

If the tenant is an artificial entity, you need to decide whether you will require the individual owners to personally guarantee the entity's performance. Usually, the assets owned by the entity are very limited and creditors can not get to the owners personal assets. This is the reason for creating the artificial entity.

If you elect not to require a personal guarantee, then the discussion below about insurance and risk allocation

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allocation are particularly significant.

**2. Identification of property.**

For a lease of a term of more than one year a full legal description is usually necessary to create a binding agreement. There are ways to get around this, but why put yourself in a position in which you need to get creative to enforce Lease.

**3. Deed restrictions.**

Before you enter into a lease, you should review the documents by which you received title to the property to determine whether there are any restrictions or covenants which might impact the tenant. If there are then the Lease should refer to those provisions and put the tenant on notice. The deed to the Richland Airport has provisions which allow the United States to take over the Airport in the event of a national emergency. We put a provision in the Lease which states there are restrictions, that the tenant is responsible for reviewing those restrictions, and the tenant will not use the property in any way which will violate the terms of the deed.

**4. Airport Rules and Regulations.**

The Port of Benton has adopted Rules and Regulations applicable to the use of the Richland and Prosser Airports. Our Lease contains and acknowledgement by the tenant that it has received a copy of the Rules and that it agrees to abide by the Rules as they now exist or may hereafter be amended.

This gives the Port the ability to deal with changing Airport use or problems which have generally arisen. If there are matters of general application at the Airports which need regulated or clarified, then the Rules can be amended and upon delivery of the Amended Rules, the tenant must comply. This allows the Port to manage the Airport without the necessity of amending each affected lease.

**5. FAA Requirements.**

If an Airport owner receives funding from the FAA for the maintenance or expansion of its Airport there are restrictions what uses can be made of portions of the Airport. Certain areas must be used solely for aircraft-related uses. The Lease should explicitly state uses which conform to the restrictions placed on the property by the FAA.

**6. Property condition.**

The Lease can provide that the tenant is responsible for inspecting the property to ascertain the condition and to be sure the condition is acceptable to the tenant. The Lease can explicitly state that the tenant takes the property in its current condition without warranty or representation. The Lease can also provide that it is the tenant's responsibility to make sure the property is appropriate for the tenant's proposed use.

**7. Zoning.**

The Airport property may have several different zoning classifications and this may be considered to be an element of the "property condition". However, the permitted uses in the Lease should coincide with the

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applicable zoning for the property with the tenant having the ultimate responsibility for determining if its use complies with the zoning.

**8. Assignments.**

In order to retain control of the property, the Lease should restrict the tenant's right to assign the Lease. The Lease will require the landlord consent to the assignment and give the landlord the right to review the proposed assignee to make sure the assignee can fulfill the terms of the Lease. If the landlord consents to the assignment, the consent should provide that the original tenant is not released from its obligations under the Lease. This will insure that the original tenant will be cautious about who it assigns the Lease to since the original tenant could be responsible for any defaults under the Lease.

**9. Allocation of Risks.**

The Lease contains a number of provisions which allocate the risk of loss between the parties. Who is responsible for the maintenance of which portions of the property? Who is responsible for the damage to property or injury to persons? At an Airport damage or injury can be a major risk. Even after those risks are allocated to the parties, usually with the tenant assuming the risk for any damages which it may cause, the risk must be covered by appropriate insurance coverage. Many tenants at a General Aviation Airport do not have deep pockets and therefore the Port can not rely upon their resources to protect the Port from liability. Therefore, the tenant should provide insurance coverage for all risks which is sufficient to protect the landlord from exposure. The Port must be named as an additional insured and the tenant should deliver insurance certificates to the Port.

**10. Term-Rent adjustments.**

If the term of the Lease is longer than ten years, there should be a provision to adjust the rent on a periodic basis. If the rent is not adjusted periodically, the Department of Revenue can make its own adjustment for the purpose of collecting Leasehold Excise Tax. And it can go back up to six years and collect interest.

Lease can have a provision that provides the rent will be adjusted to reflect the change in the Consumer Price Index. This should be done every 3, 4, or 5 years.

**11. Leasehold Excise Tax; other taxes.**

The tenant is responsible for the payment of the Leasehold Excise Tax, either at the current rates or as those may be adjusted in the future. We also provide the tenant is responsible for any other taxes which may be assessed against the tenant's use or occupancy of the property. This will cover any changes in the LET or other taxes which may be imposed. The Lease should make it clear the tenant is responsible for any taxes which are imposed upon tenant's property on the premises, including any improvements constructed by the tenant.

**12. Ownership of Improvements.**

Usually, the landlord retains ownership of all improvements on the property at the outset of the Lease. The Lease should describe what will happen to improvements which the tenant constructs during the term of the Lease. We provide that during the term of the Lease, the tenant retains ownership of improvements and those

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and those improvements are then taxed to the tenant. At the end of the Lease, the tenant has the option to remove the improvements which it constructed and to restore the property to its original condition. In addition, we include an option for the Port to require the improvements to be removed if the Port determines the improvements are not useful to the Port or there is no economic interest in the improvements.

**13 Hazardous Materials.**

Most leases have language which provides that the tenant must remediate any pollution or contamination on the property. We use a Hazardous Materials Communication Policy which is referred to in the Lease. This policy requires the tenant to notify the Port if hazardous materials, other than normal office supplies, are transported to the property. This allows the Port to be aware of materials which may cause a risk of contamination to the property.

**FIXED BASE OPERATORS**

FBOs are hard to recruit and hard to keep. At General Aviation Airports, they operate on thin margins.

An Airport needs an FBO, in order to attract other Airport users.

Need to provide incentives for them to stay and to continue to provide services, without incurring problems with gifts of public property.

In the Port's FBO leases, we have begun to recite the need for an FBO and the problems with retaining them.

PURPOSE. The Port owns the Richland Airport which is a general aviation airport. To serve persons using the Richland Airport or basing aircraft at the Richland Airport and to attract businesses which need to be located at a general aviation airport, the Port needs a fixed base operator at the Richland Airport to provide aviation services. Fixed base operators who are able to maintain a viable business operation are difficult to retain at a general aviation airport and it is necessary for the Port to provide facilities for use by a fixed base operator in order to provide aviation services to the parties using the Richland Airport. The Tenant shall provide the services set forth in Section 7 as required by the users of the Richland Airport to the extent it is economically feasible for the Tenant to provide these services.

If an Airport has a Master Plan, it generally designates areas at the Airport which are reserved for certain aviation-related uses. These areas are not available for commercial uses.

If the Airport Master Plan has areas reserved for FBOs, we know the rent for those restricted areas will be lower than for comparable commercial property, because there is a very limited demand for that property. This is property which is not compatible with general commercial uses.

To determine the appropriate rent for these areas, the appraiser should take into account the limitations upon the use and fix the rents accordingly. This allows the Port to set rent at level the FBO can afford and not have concerns raised about gifts of property.

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Have them manage the tie-downs. An FBO is usually available to help the aircraft owner and can deal with any issues more economically than the Port. It would be preferable for the FBO to pay a flat fee for the tie-down area and keep the fees. Then you do not have the concern about the FBO handling Port funds.

The FBO can also manage the fueling facilities. The FBO can provide personnel to dispense fuel or it can be a card lock system. Make the FBO responsible for monitoring the leakage detection equipment and to immediately report any problems.

The Port receives a gallonage fee for providing the system. This reimburses the Port for the use of the system, but the FBO only pays based upon volumes. This protects the FBO from paying rent if the system is not being utilized.

**LICENSES:**

Licenses are similar to leases because they permit the licensee to use some portions of the Airport for specific purposes or services. Licenses are usually terminable on short notice, unless the license specifies a longer notice.

For instance, we have licenses for a fuel supplier to locate a fuel truck at the airport for the purpose of supplying aviation fuel. They have permission to go upon certain areas at the Airport to accomplish this and they are required to pay a gallonage fee to the Port for fuel sold at the Airport.

Even though the license may be cancelled on short notice, it is important to make sure that insurance coverage and the other lease requirements are considered. The license may go on indefinitely and, in addition to covering the risks, it is a matter of parity with the tenants that the licensee meets the same standards.