

# BROADWATER COUNTY AIRPORT LEASE AGREEMENT

This BROADWATER COUNTY AIRPORT LEASE AGREEMENT ("Lease") is effective \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), among the Broadwater County Airport Board of Broadwater County, Montana ("Airport Board" or "Lessor"), and \_\_\_\_\_ ("Lessee").

## BACKGROUND

Lessor operates the Broadwater County Airport ("Airport") situated just outside the city of Townsend ("City"), county of Broadwater ("County"), Montana.

Lessee desires to engage in certain

- commercial
- non-commercial

aviation or aeronautical related activities and proposes to lease a parcel of land described herein.

Lessor desires to lease to Lessee said parcel according to the terms of this Lease.

Lessor and Lessee, intending to be legally bound, agree as follows:

## SPECIFIC TERMS

1. Background. The background stated above is true, correct, and to the extent necessary to effectuate or interpret this Lease, incorporated into this Lease.
2. Incorporation. The Rules and Regulations and Minimum Standards for the Airport, as they now exist or may be subsequently amended, are incorporated into this Lease.
3. Leased Premises Description. Lessor shall lease to Lessee, and Lessee lets from Lessor for Lessee's exclusive use, that certain parcel of real property specifically described as: Lot # \_\_\_\_\_ and/or Hangar # \_\_\_\_\_, hangar square footage totaling \_\_\_\_\_ ft<sup>2</sup> at the Airport ("Premises"). (The lease rate is based on the footprint of the hangar.)
4. Term.
  - 4.1 Initial Term. Twenty (20) calendar years from the Effective Date.
  - 4.2 Renewal Terms. Lessee may renew this lease for up to four (4) additional five (5) year terms at the then current rental rates, conditioned upon Lessor's review and acceptance of Lessee's compliance with this Lease. Lessee shall provide written notice of renewal to Lessor no less than sixty (60) calendar days prior to the end of the initial term or any renewal thereof.
  - 4.2 Extension after Suspension. If this Lease is suspended pursuant to Section 12, the current term shall be extended by the same amount of time of suspension.

5. Construction of Improvements.

- 5.1 General Requirements. Lessee may construct a hangar building on the Premises pursuant to plans approved by the Airport Board and County Commissioners. Any such improvement shall comply with all applicable building codes, permits, county, or state requirements. The building must be set back at least twenty-seven and one-half feet (39½') feet from the center of the taxiway and the twenty-foot (27') set back area between the building, and the taxiway shall be paved with either concrete or asphalt paving materials by Lessee on all parcels situated at the Airport. Necessary ramps and parking areas as specified by the Airport Board will also be constructed by Lessee.
- 5.2 Deadlines. Within ninety (90) calendar days after the Effective Date, Lessee shall submit a written application for construction and all the supporting documents to the Airport Board. Within one hundred eighty (180) calendar days after the Airport Board and County Commissioners approve the application, Lessee shall start construction. Within one hundred eighty (180) calendar days after Lessee starts construction, Lessee shall complete to the satisfaction of the Airport Board all construction, including, without limitation, all structures, paving, ramps, and parking areas. The terms for construction of improvements may be extended upon application to and approval by the Airport Board.
- 5.3 Return of Premises. If Lessee defaults on any deadline established pursuant to Section 5.2 and Lessor terminates this Lease pursuant to Section 13.2, Lessee shall return the Premises to their original condition, or a condition acceptable to the Airport Board, within ninety (90) calendar days of written notice. If, in the opinion of the Airport Board, Lessee fails to return the Premises to their original condition or a condition acceptable to the Airport Board, then ownership of any improvement made or constructed by Lessee shall revert to Lessor. All costs necessary to return the Premises to its original condition or a condition acceptable to the Airport Board shall be the sole and entire responsibility of Lessee.

6. Use of Airport. Lessee is granted the use of the Airport, for aviation or aeronautical related activities and purposes, in common with others similarly authorized, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at, or in connection with, the Airport from time to time, including, without limitation, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, sewage and water facilities, and all other conveniences for flying, landings and takeoffs. During the term of this Lease and any renewals, Lessee shall always have free and full right of ingress to and egress from the premises and facilities described herein for itself, its guests and other invitees subject to all applicable federal, state and local statutes, rules, regulations, ordinances, standards, policies and notices.

7. Rental Agreement.

- 7.1 Rent. Lessee shall pay Lessor for the use of the Premises, facilities, rights, services, and privileges granted under this Lease an annual rental of \$ \_\_\_\_\_ per square foot per annum for all grounds included in this Lease. Each year, this amount shall be reviewed and adjusted as necessary by the Airport Board.
- 7.2 Terms. The rental year shall be from July 1 to June 30 annually. Lessor will invoice the rent payment for the following year on or before July 1 of each year and the full amount of the annual rent shall be paid by Lessee no later than July 31 of the year in which it is invoiced. The rent for any lease beginning after July 1 and ending before June 30 shall be prorated for the first and last years. The rent for the first year of any new lease shall be due upon execution of the Lease. Failure of Lessee to pay the annual rent within thirty (30) calendar days of its due date shall constitute a default.
- 7.3 Annual Review and Adjustment. In the first quarter of each calendar year, the Airport Board will research the prior year's CPI increase and calculate the new base rate to be used for all leases in the current calendar year using the following procedures. This base rate is the basis for the next year's cost adjustments.

The Airport Board will use the Consumer Price Index (CPI) (US Department of Labor, Bureau of Labor Statistics, West Region Urban Consumer Price Index, 12-month percent change not seasonally adjusted). For example:

Using the last year's (January 2023) price per square foot of \$0.115 and one-year percent change of the prior year (January 2023 to January 2024) of 4.3%, you would simply multiply the last years price \$0.115 by  $1 + 0.043$  to determine the CPI increase to the cost per square foot. [ $\$0.115 \times 1.043 = \$0.119945$ ]. Then the upper limit of the current year's base rate would be \$0.12. The Airport Board may consider the adjusted amount equal to, but not to exceed, the limit calculated with the CPI. This figure will then become the current year base rate when approved by the County Commissioners and will be the lease rate for all renewals and leases in that current calendar year (CY).

The first full calendar month of the first lease year of this Lease is January 20 \_\_\_\_.

8. Lessor Obligations.

- 8.1 Operation as Public Airport. During the term of this Lease, Lessor shall operate and maintain the Airport and its public facilities above 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.

8.2 Condition and Maintenance of Common Facilities. Lessor has no responsibility for the condition of the Premises after delivery of Premises to Lessee under this Lease. Lessor shall maintain the common facilities including, without limitation, all roadways, runways, aprons, and taxiways and other such appurtenances and services as are now or hereafter connected with the operation of the Airport.

9. Lessee Obligations.

9.1 Condition and Maintenance of Premises. After Lessor delivers the Premises to Lessee, Lessee shall develop, construct, keep, maintain, and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. Lessee accepts the Premises in its condition as of said delivery and will keep the Premises and any improvements constructed thereon in safe and presentable condition, free of refuse and debris, and consistent with good business practices as determined by the Airport Board.

9.2 Improvements and Use. Subject to the terms of Section 5 or other prior written approval of the Airport Board, Lessee may make improvements to the Premises including construction of buildings, hangar facilities, and other improvements on the Premises for the purpose of carrying out any of the activities set forth in this Lease. Lessee shall use any improvements constructed on the Premises for aeronautical purposes only. Lessee shall not use any buildings, hangars, or other improvements constructed upon Airport property for storage of predominately non-aviation related items without prior written approval from the Airport Board. Lessee shall not at any time use the Premises, or allow the Premises to be used, for either permanent or temporary residential purposes or as a hanger home. Upon termination or earlier cancellation of this Lease, Lessee shall return the Premises to Lessor pursuant to the same requirements set forth in Section 5.3.

9.3 Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee regardless of provider during the Lease term, including the cost of connecting to the nearest point of access to available utilities.

9.4 Trash, Garbage, etc. Lessee shall arrange for adequate sanitary handling and disposal of all trash, garbage, sewage, and other refuse occurring as a result of Lessee's occupation 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 Department of Sanitation or other entity specified by the Airport Board for removal. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner as determined by the Airport Board or designee on or about the Premises is prohibited.

9.5 Signs. Lessee shall not maintain any billboards on the Premises. Signs advertising aviation related businesses situated on Airport premises may be installed upon application to and approval by the Airport Board.

- 9.7 Federal, State and Local Regulations. Lessee shall use Airport facilities and the Premises subject to and in accordance with the laws of the United States, the State of Montana, and the County together with any rules, regulations, or ordinances of the Airport Board now in force or hereafter prescribed or promulgated by authority of law. In addition, Lessee shall not use the Airport facilities or the Premises in any way that is contrary to the policies or grant assurances of the Federal Aviation Administration.
- 9.8 Inspection. Lessee agrees to permit inspection of the Premises by the Airport Board or its designee at a mutually acceptable date and time, or in case of exigent circumstances upon immediate demand to determine compliance with or performance of any obligations, covenants, conditions or the like required under this Lease.
10. Indemnification and Insurance.
- 10.1 Indemnification. During the term of this Lease, Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that it is not the agent or representative of Lessor. In the use of the Airport, the erection or construction of any improvements thereon, and in the exercise or enjoyment of any privilege granted under this Lease, Lessee shall indemnify, defend, and hold harmless Lessor from any and all losses resulting from any act or omission of Lessee and shall indemnify and defend Lessor against any and all claims resulting from Lessee's occupation of the Premises including Lessor's costs and attorney fees incurred thereby.
- 10.2 Insurance. In addition to any insurance that Lessee shall maintain for damage to its own property, Lessee shall maintain comprehensive general liability insurance coverage of at least \$300,000 single limit per year. Lessor shall be named as an additional insured for liability arising out of activities performed by or on behalf of Lessee. Lessee shall furnish Lessor with a certificate from its insurance carrier showing that such insurance is in full force and effect annually. Lessee will ensure that the insurance company notifies Lessor in writing of cancellation of insurance coverage within 10 days of said cancellation.
11. Expiration. This lease shall expire at the end of the initial term, or any permitted renewals thereof, without any notice by either party. A holding-over by Lessee, its assigns, or any sublessees beyond the Lease expiration, without the prior written consent of Lessor and on such terms as Lessor may specify, is prohibited. Within ninety (90) calendar days after expiration of the Lease, Lessee, as its sole expense, shall remove from the Premises all of Lessee's personal property Lessee intends to keep, including anything installed to or on the Premises by Lessee.
12. Suspension. During any time of war or declared state or national emergency, Lessor shall have the right to lease the landing area, taxiway, apron or any other such area or part thereof to the United States Government for military use. If any such lease is executed, any provision of this Lease which is inconsistent with the provisions of such lease shall be suspended.

13. Termination Before Expiration of Lease Term. Either party may terminate this Lease before the expiration set forth in Section 11 by providing to the other party written notice of termination including the basis of termination as set forth in Sections 13.1 and 13.2, with such termination being subject to the additional provisions set forth in Section 13.3

13.1 Termination by Lessee. Lessee may terminate this Lease if any of the following events occur:

13.1.1 The permanent abandonment of the Airport as an air terminal.

13.1.2 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 manner that substantially restricts Lessee's use or occupation of the Premises for a period of at least ninety (90) calendar days.

13.1.3 Issuance of an injunction by any Court of competent jurisdiction which prevents or restrains the use of the Airport for a period of at least ninety (90) calendar days.

13.1.4 A material breach or failure by Lessor in performance of its obligations under this Lease, if Lessee provides to Lessor written notice of the breach and demand to cure and Lessor fails to cure such breach within ninety (90) calendar days of Lessor's actual or constructive receipt of the notice.

13.2 By Lessor. Lessor may terminate this lease if any of the following events occur:

13.2.1 A material breach or failure by Lessee in performance of its obligations under this Lease, if Lessor provides to Lessee written notice of the breach and demand to cure and Lessee fails to cure such breach within thirty (30) calendar days of Lessee's actual or constructive receipt of the notice.

13.2.2 Lessee's bankruptcy, the appointment of a receiver or a general assignment for the benefit of Lessee's creditors.

13.2.3 Lessee entering into a buy/sell agreement or similar contract for the sale of Lot # \_\_\_\_\_ and/or Hangar # \_\_\_\_\_, to a third party. Prior to the closing of the sale, Lessee shall inform Lessor of the potential sale and obtain the written permission of the Lessor, pursuant to Section 15 of this Lease. The new owner shall execute a new lease with the Lessor.

13.3 Additional Termination Provisions.

13.3.1 Possession and Personal Property. If Lessor terminates this Lease, Lessor may take immediate possession of the Premises and remove all of Lessee's personal property at Lessee's sole expense, forcibly if necessary.

13.3.2 No Waiver. Lessor's failure to provide written notice pursuant to Section 13.2.1, to reenter or retake possession of the Premises pursuant to Section 13.3.1, or otherwise exercise Lessor's termination rights under this Lease shall not operate as a waiver by Lessor of any breach or default by Lessee.

14. Title to Improvements. Title to any improvements constructed by Lessee shall remain in Lessee's name until the expiration or earlier termination of this Lease. Subject to Lessor's consent required under Section 15, Lessee may sell or otherwise convey ownership of any

building or other improvements to a third party prior to the expiration or earlier termination of this Lease. It shall be the responsibility of the owner of such building(s) or other improvements to maintain continuity of the Lease. Otherwise, after the expiration or earlier termination of this Lease, Lessee's return of the Premises to Lessor, including removal of such improvements and the reversion of ownership thereof, shall follow the same requirements set forth in Section 5.3.

15. Sublease or Assignment. Lessee shall not sell, sublease, assign, or transfer this Lease or any part of the Premises without the express, prior, written consent of Lessor, which consent shall not be unreasonably withheld. Lessor may consider, without limitation, the conditions existing at the Airport at the time of the request for approval, and all applicable federal, state, and local statutes, rules, regulations, ordinances, standards, policies, and notices in effect at the time, as to whether to provide consent. Any such sub-lessee, assignee, or transferee shall be subject to the same conditions, obligations, and terms as set forth herein and Lessee shall not be relieved of its primary responsibility for compliance with and performance of obligations under this Lease. Any potential new owner of property within the Premises shall execute a new lease with the Lessor prior to taking possession of the Lot # \_\_\_\_\_ and/or Hangar # \_\_\_\_\_. Failure to act in accordance with this section shall constitute a material breach of this Lease.

16. Liens and Encumbrances. During the term of this Lease, Lessee shall not allow any lien or encumbrance to attach to any portion of the real estate which is the subject of this Lease and shall indemnify and hold Lessor harmless from any claim made by any third party on account of any debt incurred by Lessee in connection with the construction, maintenance, or alteration of any improvement thereon. Any entity holding a security interest in any improvement located upon the Premises shall have the right to cure any default on the part of Lessee in payment of rent hereunder and, in the event of default, to assume Lessee's position under this Lease. In no event shall Lessor, its agents, representatives, or successors in interest become liable for indebtedness secured by such lien nor for any expenses incurred in connection thereto. Any such lien or encumbrance shall expressly provide that the lien holder will seek no money judgement against Lessor and that the lien holder shall provide Lessor by certified mail a true copy of any notice of breach of covenant, default, or foreclosure.

17. Notice. Any notices required or allowed under this Lease shall be in writing and shall be given by the following methods of delivery: certified mail; email, or personal/hand delivery. Notice by certified mail and email shall be deemed effective if sent or provided to the respective addresses set forth below, or such other address as may be furnished in writing by one party to the other. Receipt of any notice given shall be deemed to be: the earlier of receipt or three days from the date of postmark, for certified mail; the date of email transmission, for emails; and the date of delivery, if delivered in person.

Lessor:  
Broadwater County Airport Board  
515 Broadway St  
Townsend, Montana, 59644  
commissioners@co.broadwater.mt.us

Lessee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

In addition, a party giving notice shall also provide a written copy to the County at:

County:  
Broadwater County Board of  
Commissioners  
515 Broadway St  
Townsend, Montana 59644

### **MISCELLANEOUS PROVISIONS**

18. Attorney Fees. If either party to this Lease is required to retain the services of an attorney to enforce any of its provisions, each party shall be responsible for its own litigation costs, expenses, and attorney's fees, regardless of the outcome of the process or litigation.
19. Choice of Law & Venue. This Lease is governed by and shall be interpreted in accordance with the laws of the State of Montana. Any disputes arising under this Lease shall be resolved in the First Judicial District Court, Broadwater County, in the State of Montana.
20. Entire Agreement. This Lease contains all the terms, conditions, and representations upon which the parties have agreed to in connection with the sale and purchase of the Property and related matters. No prior, subsequent, or additional terms, conditions, or representations are to be considered as a part of the contract between the parties. This Lease may be modified only upon the written consent of all parties hereto. No oral modifications are authorized or valid.
21. Force Majeure. A party shall not be held responsible if the fulfillment of the party's obligations hereunder are delayed or prevented by revolutions, wars, acts of enemies, strikes, fires, floods, other natural disasters, acts of God, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, the party is unable to prevent, whether of the class of causes enumerated above or not.
22. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.
23. Legal Counsel. All parties have had the opportunity to consult with legal counsel.
24. Nondiscrimination. Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that no person, on the grounds of race, color, national origin, creed, sex, age or disability shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination in the use of airport facilities, or the exercise of its rights and privileges under this Lease and that, in the construction, maintenance or alteration of any improvement on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, national origin, creed, sex, age or disability. Lessee shall use the airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A; Office of Secretary, Part 21, Nondiscrimination in Federally Assisted



Programs of the Department of Transportation, Effectuation of Title VI of the Civil rights Act of 1964, and any such regulations or amendments adopted pursuant thereto.

25. Paragraph Headings. The paragraph headings contained herein are for convenience and reference only and shall not define or limit the scope of any provisions of this Lease or the particular paragraphs.

26. Severability. The invalidity, in whole or in part, of any term of this Lease does not affect the validity of the remainder of the Lease. A court shall enforce all provisions of this Lease which are not invalid.

27. Subordination of Lease. This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States of America or the State of Montana 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 state or federal funds for the development of the Airport.

28. Taxes. Lessee is responsible for, and shall timely pay, all taxes and assessments lawfully levied against Lessee's property or improvements situated on or located upon the Premises.

**THE PARTIES EXECUTE THIS LEASE AS OF THE EFFECTIVE DATE.**

LESSOR:  
BROADWATER COUNTY AIRPORT BOARD OF  
BROADWATER COUNTY, MONTANA

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: Chairman

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: Member

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: Member

COUNTY:  
BROADWATER COUNTY, MONTANA

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: Commissioner

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

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Its: \_\_\_\_\_

Revised 3/26/2024  
Revised 6/19/2024