

**Recorder's Office Cover Sheet**

**Recording Requested By:**

**Name:** ERIN EICHHORST

**Department:** MINDEN-TAHOE  
AIRPORT



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KAREN ELLISON, RECORDER

**Type of Document: (please select one)**

- Agreement
- Contract
- Grant
- Change Order
- Easement
- Other

specify: \_\_\_\_\_

04/09/2020  
DATEDOUGLAS COUNTY CLERK  
MINDEN, NV

## SETTLEMENT AND RELEASE AGREEMENT

BY  DEPUTY

**THIS SETTLEMENT AND RELEASE AGREEMENT** ("Settlement Agreement") is entered into as of the 3rd day of April, 2020, by and between DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA ("County"), and HUTT AVIATION, INC., A NEVADA CORPORATION ("Hutt"). County and Hutt are collectively referred to herein as the ("Parties.")

## RECITALS

**WHEREAS**, the County owns and operators the Minden-Tahoe Airport ("Airport") and is authorized to enter into contracts for the use of the Airport premises and facilities and the provision of products and services thereon;

**WHEREAS**, on September 4, 1986, the County and Hutt entered into a written lease agreement (LL035), in which Hutt leased premises on the Airport to operate as a full service fixed base operator;

**WHEREAS**, the County and Hutt amended Hutt's lease on May 3, 1990, and again June 4, 1992. On September 15, 2005, the amended lease (LL035) was assigned by the County (LL088) on the purchase of Hutt by Alan T. Gangwish and Don F. Ahern, who subsequently agreed to realign the leasehold and further amend the lease (the "Lease");

**WHEREAS**, County and Hutt entered into that certain Commercial Operator Agreement for Full Service Fixed Base Operator, effective October 1, 2005 and identified as Douglas County Recorder's Document Number 0655756 ("2005 Agreement");

**WHEREAS**, various disputes have arisen between the Parties regarding the interpretation of the 2005 Agreement and the Lease and the respective rights and obligations of the Parties as set forth therein;

**WHEREAS**, the Parties desire, without any concession or admission of liability, fault, or wrongdoing, to affect a full, complete, final, and binding settlement and compromise of any and all disputes that have been raised by the Parties, or which could have been raised by the Parties, arising out of or related to the 2005 Agreement and/or the Lease;

**WHEREAS**, the Parties have negotiated a mutual compromise, resolution, and settlement of all disputes that have been raised by the Parties, or which could have been raised by the Parties, arising out of, or related to the 2005 Agreement and/or the Lease; and,

**WHEREAS**, the Parties have agreed that the mutual compromise, resolution, and settlement that was reached should be memorialized in writing and signed by both Parties.

**NOW THEREFORE**, in consideration of the foregoing Recitals, the mutual understandings contained in this Settlement Agreement, and other good, valuable, and sufficient consideration, the Parties agree as follows:

1. Audit Report: On or about July 1, 2018, the County engaged Steve Lee, NAFF Aviation, to conduct a financial audit of Hutt for the period of January 1, 2015, to December 31, 2017. On October 3, 2018, Mr. Lee submitted his Audit Report to the County, a copy of which was provided to Hutt. After reviewing Mr. Lee's Audit Report, a dispute arose between the Parties regarding the accuracy of Mr. Lee's findings and the adequacy of his qualifications. After a series of negotiations, and in consideration of the totality of this agreement, the parties agree that a payment of \$10,000 by Hutt to the County will constitute full and fair payment of the amounts owing between the parties under the Commercial Operator Agreement through March 1, 2020. Hutt agrees to tender and the County agrees to accept the sum of Ten Thousand Dollars and 00/100 (\$10,000.00) as full, complete, and final payment for any and all alleged underpayments through March 1, 2020 as set forth in the Audit report, or otherwise claimed by either party. Within 30 days of the full execution of this Settlement Agreement, Hutt shall provide the County with a check made payable to the Minden-Tahoe Airport in the amount set forth above.

2. Termination of the 2005 Agreement/New Commercial Operator Agreement: County and Hutt mutually agree to the termination of the 2005 Agreement and agree that all rights, responsibilities, obligations, and claims arising from or related to the 2005 Agreement are hereby terminated, released, and/or waived except as follows: Paragraphs 9 and 15 of the 2005 Agreement shall survive the termination. Simultaneous with the execution of this Agreement, the County shall enter into a new Commercial Operator Agreement for Full Service Fixed Based Operator with Hutt in the form attached hereto as Exhibit A.

Following the execution of this Agreement, the new Commercial Operator Agreement for Full Service Fixed Based Operator with Hutt shall be placed on the same or next Douglas County Board of County Commissioner's Agenda for approval.

3. FAA Policy on Non-Aeronautical Use of Airport Hangars: On July 1, 2017, the FAA's new, revised Policy on Non-Aeronautical Use of Airport Hangars went into effect ("Policy"). [Federal Register Vol. 81, No. 115, p. 38909-11]. The County will impose and enforce consistent rules regarding non-aeronautical use of airport hangars at the Airport. If Hutt is (or becomes) aware of any Airport tenant, which utilizes Airport property that is designated for aeronautical use, in a manner that is inconsistent with the Policy or the Airport Rules and Regulations, then Hutt is encouraged to provide a detailed, written statement about the violation to the Airport.

4. Minimum Standards: Section 4.6(F)(3) of the Minimum Standards currently provides as follows:

***Ensure that Hangar is occupied only by Aircraft***, and provide a listing, to include aircraft type, tail number, and aircraft owner, of all Aircraft stored within the FBO's or sublessee's hangar facilities to the Airport Manager semiannually. (Emphasis added).

Within one (1) year of the full execution of this Settlement Agreement, the County Agrees

to revise the Minimum Standards to remove the requirement to “Ensure that Hangar is occupied only by Aircraft.”

If, in accordance with Section 3 above, the County implements rules and restrictions prohibiting and/or limiting the storage of non-aeronautical items in airport hangars, such rules and restrictions will be made part of the Airport Rules and Regulations.

5. Rules and Regulations: Within one (1) year of the full execution of this Agreement, the County will revise the Airport Rules and Regulations to include a provision pertaining to the orderly parking of aircraft, as follows:

The County’s designated transient tie downs will be reserved for use by aircraft under 9,500 lbs Maximum Takeoff Weight (MTOW). Aircraft with MTOW greater than or equal to 9,500 lbs may park on designated “Heavy” parking areas, if available.

In an effort to facilitate this new regulation, the County will ensure that Transient Aircraft Parking areas and Heavy Aircraft Parking areas will be clearly depicted on the County’s website. (<http://mindentahoeairport.com/general-aviation/pilot-information/>). The County will further update the Minden Tahoe Airport website to state that large, transient aircraft are encouraged to contact commercial operators so authorized (FBOs or LFBOs) to arrange for line services at the Airport prior to their arrival and shall provide any authorized commercial operator’s contact information.

6. Hutt’s Development Application/Storage Building-DA-17-015: In or around April/May 2017, Hutt submitted a Development Application to the County for the construction of a 16,000 square foot storage building to be located at 1151 Airport Road, Minden, Nevada. The storage building was intended to remedy disputes that had arisen between the County and Hutt under the 2005 Agreement. The storage building was to be constructed on a portion of Hutt’s leasehold that is located outside the Airport perimeter fence, but within the Airport Community Plan. On June 22, 2017, the County conditionally approved Hutt’s Development Application. A copy of the June 22, 2017, letter is attached hereto as Exhibit D. One of the conditions of approval provides as follows: “[t]he proposed building is only approved for storage of aeronautical uses. Storage of any vehicles or boats is **not allowed**, items not associated with an aeronautical use are prohibited.” Hutt did not appeal the conditions within the time required in the conditional approval.

The County has extended the conditional approval for DA 17-015 for an additional 2-year period. The County agrees to revise the conditional approval for the purpose of removing the aforementioned aeronautical use condition.

The Parties acknowledge and agree that the storage building will be used for the storage of non-aeronautical items. As such, the revised conditional approval will not contain any conditions or language prohibiting and/or restricting such use.

Additionally, to the extent that the Douglas County Code provisions pertaining to Airport Related Facilities (Currently Section 20.668.020) would otherwise prohibit the storage of non-aeronautical items in the accessory storage building, the County agrees to provide a waiver, special use permit, or otherwise accommodate Hutt's ability to utilize the building, which is located entirely outside of the fenced airport area, for accessory storage purposes

Paragraph 6 is subject to FAA approval, which the parties will work cooperatively to obtain. The parties acknowledge that the proposed location of the storage building is in an area that is currently designated for "Airport Support" instead of "Non-Aeronautical Revenue Generating" in the Airport Layout Plan. Should the FAA object, fail to approve, or refuse to re-designate the location to accommodate non-aeronautical storage, then the parties agree that Hutt will not be permitted to utilize the storage building for non-aeronautical purposes.

7. Fiber Optic Cable: In 2017, the County installed a fiber optic line and other underground facilities on Hutt's leasehold in connection with the Airport's fence project. The fiber optic line and other underground facilities were installed on Hutt's leasehold.

The Parties acknowledge and agree that the fiber optic line and other underground facilities were inadvertently installed on Hutt's leasehold. Therefore, within sixty (60) days of the full execution of this Agreement, the Parties will enter into an easement agreement. The parties further agree there will be no ongoing costs associated with the easement and the County will be responsible for any surveys needed in connection with the same.

8. No Admission of Liability: The Parties acknowledge and agree that this Settlement Agreement pertains to a disputed claim and does not constitute an admission of liability or responsibility for any damages that result from the dispute or any transaction or event related thereto.
9. Mutual Releases: Upon execution of this Settlement Agreement and subject to its terms, except those obligations arising out of it, the Parties, on behalf of themselves and their predecessors, direct and indirect subsidiary corporations, affiliates, officers, directors, employees, attorneys, agents, and any other person claiming through or in their right, do hereby release, discharge, and acquit each other, their partners, officers, directors, agents, employees, successors, assigns, and insurers, any parent, subsidiary, or affiliated entity, (past, present, or future) from any and all claims, demands, costs, contracts, liabilities, objections, actions, and causes of action of every nature, whether in law or equity, known or unknown, suspected or unsuspected, that any of the Parties ever have had, now have or may claim to have against another party to this Settlement Agreement of any type, nature, or description related to the enumerated disputes raised in Paragraphs 1 through 8 of this Settlement Agreement.
10. Agreement Binding on Successors: The Parties expressly acknowledge and agree that this Settlement Agreement, together with its mutual releases, is binding upon and inures to the benefit of the heirs, executors, administrators, personal representatives, successors-in-interest, successors-in-title and assigns of the Parties.

11. Covenant Regarding Assignments: Each of the Parties represent and warrant to the other Parties that they have not heretofore assigned, transferred, or hypothecated or purported to assign, transfer, or hypothecate or will in the future assign, transfer, or hypothecate to anyone any debt, judgment, claim, liability, demand, action, or cause of action or any interest therein, based upon or arising out of or pertaining to or concerning or connected with any of the matters, facts, events, circumstances, or things released by this Settlement Agreement.
12. Warranty of Capacity to Execute Agreement: Each of the Parties represent and warrant that they have all authority necessary or advisable to enter into this Settlement Agreement and no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.
13. Mediation/Arbitration: Any controversy or claim arising out of or relating to this Settlement Agreement, or breach thereof, shall be settled by mediation. If a party fails to respond to a written request for mediation within thirty (30) days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute. If the mediation does not result in settlement of the dispute within thirty (30) days after the initial mediation conference, or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to this Settlement Agreement, or breach thereof, then litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court.

\_\_\_\_\_  
County

*A.T.H.*  
Hutt

14. Attorney's Fees: If either of the Parties must resort to legal action in order to enforce the provisions of this Settlement Agreement or must defend such a suit, the prevailing party will be entitled to recover from the other party, all reasonable attorney's fees and all costs and expenses incurred in such a suit, which costs and expenses shall not be limited to statutory costs and expenses.
15. Entire Agreement: This Settlement Agreement embodies the entire understanding among the Parties as to the subject matter herein, and none of the Parties will be bound by any definition, condition, warranty, or representation, other than those expressly stated in this Settlement Agreement.
16. Captions - Pronouns/construction: The titles, captions, and subheadings in this Settlement Agreement are for convenience only and are not intended, to any extent or purpose, to limit or define the text of any action or subsection, and they will not be deemed a part of the context or considered in any interpretation or construction of the Settlement Agreement. Whenever the singular or plural numbers are used or the present or past tense is used, they will be deemed to be the other as required.

17. Rule of Construction: The Parties acknowledge that they and their counsel have reviewed and approved this Settlement Agreement and that the normal rules of construction of any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Settlement Agreement or any of its exhibits or amendments.
18. Consideration: The Parties expressly acknowledge and agree that this Settlement Agreement is supported by adequate consideration that includes, without limitation, the mutual exchange of promises as set forth in this Settlement Agreement.
19. Severability: In the event any provision or any part of any provision of this Settlement Agreement becomes void or unenforceable for any reason whatsoever, then that provision will be stricken and of no force and effect. The remaining provisions, however, will continue in full force and effect, and to the extent required, will be modified to preserve their validity.
20. Modifications: This Settlement Agreement may only be changed or modified by a writing signed by the party against whom enforcement of any waiver, change, or modification is sought. This Settlement Agreement may only be amended in a writing signed by all of the Parties.
21. Counterparts: The Parties may execute this Settlement Agreement in counterparts and all will constitute one agreement that will be binding on all the Parties.
22. Copy/Facsimile/Emailed Signatures: A copy, facsimile, or emailed signature on this Settlement Agreement shall be effective the same as an original ink signature, but the party submitting a copy, facsimile, or emailed signature agrees to replace each such signature with an original ink signature within ten (10) days after a request for an original ink signature by any of the other Parties.
23. Further Actions: The Parties agree they will perform all necessary acts, execute and deliver all documents necessary to effectuate the terms and provisions of this Settlement Agreement.
24. Representations and Warranties: The Parties represent, warrant, and agree as follows:
- a. They have received or had the opportunity to receive legal advice from an attorney(s) of their choosing with respect to the advisability of entering into this Settlement Agreement, the mutual releases provided in this Settlement Agreement, and the advisability of executing it.
  - b. Except as expressly stated in this Settlement Agreement, none of the Parties have made any statement or representation to any of the other Parties regarding any fact that has been relied upon by any other party in entering into this Settlement Agreement. In connection with executing this Settlement Agreement and making the settlement provided for in it, none of the Parties have relied upon any statement, representation, or promise by any of the other Parties or their attorney(s) not expressly contained in this Settlement Agreement. This Settlement Agreement is

intended to be final and binding upon the Parties and effective as a full and final accord and satisfaction among them regardless of any claims of fraud, misrepresentation, concealment of fact, mistake of fact or law, duress or any other circumstance whatsoever. Each of the Parties relies upon the finality of this Settlement Agreement as a material factor inducing that party's execution of it. Each of the Parties agree that from the date of this Settlement Agreement, all rights and/or liabilities existing between or among them will arise solely out of the terms, provisions, representations, and warranties contained in this Settlement Agreement

- c. The terms of this Settlement Agreement are contractual and are the result of negotiations among the Parties. Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Therefore, if any construction is to be made of this Settlement Agreement, it will not be construed against any party.
- d. Each of the Parties has carefully read this Settlement Agreement and they understand and know its contents. Each of the Parties has freely signed this Settlement Agreement.

25. Governing Law/Venue: This Settlement Agreement and the rights and duties of the Parties will be construed in accordance with and governed by the laws of the State of Nevada. Proper and exclusive venue for any dispute arising out of or relating to this Settlement Agreement, or in which any of the Parties asserts this Settlement Agreement in connection with any claim or defense, will be adjudicated by the Ninth Judicial District Court in and for the County of Douglas.

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement as of the date set forth above.

ON BEHALF OF AND WITH AUTHORITY TO SIGN FOR HUTT AVIATION, INC.:

Alan T. Gangwish  
ALAN T. GANGWISH, PRESIDENT

04-03-20  
DATE

ON BEHALF OF THE DOUGLAS COUNTY BOARD OF COMMISSIONERS:

Patrick Cates  
PATRICK CATES, COUNTY MANAGER

4/8/20  
DATE



COPY

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

9th day of APRIL, 2020

By

Deputy