

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: _____

**Minden-Tahoe Airport
COMMERCIAL OPERATOR AGREEMENT
for
Full Service Fixed Base Operator
with
HUTT AVIATION, INC.**

FILED

NO. 2020.074

5-22-20
DATE

DOUGLAS COUNTY CLERK
MINDEN, NV

BY [Signature] DEPUTY

THIS COMMERCIAL OPERATOR AGREEMENT FOR FULL SERVICE FIXED BASE OPERATOR (“Agreement”) is entered into and effective this 3 day of April, 2020 (“Effective Date”) by and between DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA (“County”), and HUTT AVIATION, INC., A NEVADA CORPORATION (“Permittee”), who is a tenant of the Minden-Tahoe Airport. County and Permittee are, at times, herein referred to individually as the “Party” or collectively as the “Parties.”

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, County and Permittee entered into that certain Commercial Operator Agreement for Full Service Fixed Base Operator, effective October 1, 2005 (“2005 Agreement”);

WHEREAS, County and Permittee hereby agree to terminate the 2005 Agreement with the understanding that this Agreement shall supersede, control, and repeal any inconsistent provisions set forth therein;

WHEREAS, Permittee has indicated a willingness to continue to operate in accordance with the rules, regulations, and standards established by the Minden-Tahoe Airport, Douglas County, and Federal Aviation Administration (FAA); and

WHEREAS, the County further deems it advantageous to enter into this Agreement with Permittee upon the terms and conditions set forth herein below.

NOW, THEREFORE, and in consideration of the promises, mutual covenants, and agreements herein contained, and other valuable consideration hereby acknowledged, the County and Permittee agree as follows:

Preliminary Matters

1. **Definitions:** unless otherwise explicitly set forth herein, the words and phrases contained in this Agreement shall have the meanings ascribed to them in the Minimum Standards for Commercial Aeronautical Activities for the Minden-Tahoe Airport, as written and approved by the Douglas County Board of Commissioners, and as may be, from time-to-time, amended, or replaced hereafter (“Minimum Standards”); or within the Minden-Tahoe Airport Rules and Regulations, as written and approved by the Douglas County Board of Commissioners, and as may be, from time-to-time, amended or replaced hereafter (“Rules and Regulations”).

2. **Term:** The Term of this Agreement shall be effective through the term of the First Amended Lease between Douglas County and Hutt Aviation, Inc., recorded with the Douglas County Recorder on April 17, 2007, as Document 0699393, in Book 0407, on Page 5656, which shall include the Option to Renew provided therein. This Agreement can be terminated early by Permittee, provided that Permittee is not in default of the terms of this Agreement, without cause and upon sixty (60) days' notice to the County. This Agreement can be terminated early by the County in accordance with Paragraph 26 of this Agreement.
3. **Headings:** The headings contained herein have been written for convenience and ease of navigating the document, they shall have no independent contractual significance.
4. **Airport Manager:** The Minden-Tahoe Airport Manager ("Airport Manager") shall be the County's representative for the purpose of this agreement.

Commercial Operations and Use of Airport

5. **Use:** This Agreement permits Permittee to operate in a commercial capacity as a full service Fixed Base Operator at the Minden-Tahoe Airport. Permittee agrees to provide the minimum required services under the Minimum Standards and may, by way of illustration and not limitation and without the need to seek any additional approvals from the Airport Manager or County, provide additional services listed below and allowed under the Airport Minimum Standards and in compliance with any zoning or use requirements as provided for in Title 20 of the Douglas County Code:
 1. Corporate aircraft management;
 2. Commuter aviation operations if authorized by, and in accordance with, federal Regulations;
 3. Air charter operations and related commercial flight activities;
 4. Executive aircraft services, including arrival and departure lounge separate from flight school operation;
 5. Flight instruction;
 6. Aircraft rental;
 7. Ground school services for student pilots and refresher course for those holding airman certificates;
 8. Rental cars;
 9. New and used aircraft sales;
 10. Aircraft maintenance facility which may include:
 - a. An aircraft engine shop;
 - b. Airframe repair;
 - c. A propeller shop;
 - d. An avionics shop;
 - e. A paint shop; and
 - f. An upholstery shop.
 11. Aircraft storage;
 12. Management of sales of 80 and 100 octane aviation fuel and jet fuel and all other aviation fuels and products;
 13. Research and development operations;
 14. A coffee shop on the premises; and

15. All other lawful allied services and uses.

ADDITIONAL SERVICES:

Line Service: Permittee may offer line services including, but not limited to, fueling or starting assistance for aircraft on County owned transient tie-downs, however, Permittee must disclose all fees and rates to the aircraft operator in advance, and Permittee may not charge any fee for the use of the County owned transient tie-downs. This provision shall not be deemed as County granting Permittee an exclusive right to provide line service to aircraft upon county-owned transient tie-downs.

6. **Airport Access and Staging Areas:** The Airport Manager shall designate the route and method of ingress and egress to and from airside Airport facilities. Permittee and Permittee's guests, visitors, clients, and students must use the route designated by the Airport Manager. The Airport Manager will designate areas for all staging and parking activities that utilize Minden-Tahoe Airport public facilities.
7. **Operations and Space:** The Permittee shall arrange and maintain, at its own expense, for adequate space, as required under the Minimum Standards, for the conduct of business authorized hereunder.
8. **Responsibility for use:** Throughout the Term of the Agreement, Permittee shall retain sole responsibility for safeguarding persons and property and for the conduct of its activities on the Airport, at its sole cost, expense, and liability. Permittee shall, at all times, conduct its operations in a safe, prudent, professional, and lawful manner. Permittee agrees that its use hereunder will not interfere with or impede the operations of the Airport, other authorized users and tenants of the Airport, or the general public.
9. **Third Party Services and Supplies:** Should Permittee contract with a third party to provide services which might otherwise be performed by Permittee under this Agreement, such third party shall be deemed to be conducting business at the Airport, and prior to engaging therein, Permittee will ensure that such third party has an operating agreement with the County that pertains to the Airport. The County may impose charges, rentals, and fees upon such third parties for facilities used and for services provided. Notwithstanding the foregoing, Permittee shall be permitted to hire a third party to perform ad hoc services that are considered specialized repairs that occur on an irregular, as-needed basis, provided that third party has a license from the County to perform such services. Permittee may select suppliers, purveyors, and furnishers of materials, supplies, equipment, and services of its own choosing. Nothing in this Section shall be construed as in any way limiting the general powers of the County to fully exercise its governmental or proprietary functions or its obligations under any bond covenants or federal, state or local laws, rules, or regulations.
10. **Reporting Requirements and Fees:** Fees and reporting requirements are set by Resolution by the Douglas County Board of County Commissioners, and are subject to change throughout the term of this Agreement. The parties agree that any new fee set by the Board of County Commissioners will not be effective as to Permittee until thirty (30) days after the passage of the updated Resolution. Permittee agrees to timely pay the fees set by Resolution throughout the term of this Agreement. County will provide Permittee with

thirty (30) days advanced notice of any updates and/or proposed changes to fees that directly impact its business, and shall further provide Permittee and opportunity to meet with County Staff to discuss the same.

11. **Rules, Regulations, and Minimum Standards:** Permittee agrees to abide by and comply with all terms of the Rules and Regulations and the Minimum Standards. The Rules and Regulations and the Minimum Standards may be adopted and/or amended by the Douglas County Board of Commissioners from time-to-time throughout this Agreement. Failure to comply with the Rules and Regulations or Minimum Standards may result in fines, suspensions, or termination of this Agreement. Failure to cure or otherwise address violations may result in the termination of this Agreement as set forth in Paragraph 26, below.

Any proposed changes and/or updates to the Airport Rules and Regulations and/or Minimum Standards will be heard by the Airport Advisory Committee (AAC) and/or Board of County Commissioners, during public hearings, prior to adoption and implementation. County shall notify Permittee of any such meetings in advance. County shall also provide Permittee with an advance copy of the proposed changes at least 30 days prior to the pertinent meeting(s). County shall not preclude Permittee from the opportunity to meet with County Staff to discuss the changes prior to the meeting(s).

12. **Permits and Approvals:** Permittee is responsible for obtaining any necessary permits or approvals from any agency having jurisdiction. The Airport Manager is acting for the County solely in its proprietary capacity and not in any governmental capacity unless so stated.
13. **Waste and Hazardous Substances:** Permittee shall not commit, or suffer to commit, any waste upon the premises or any nuisance or other act or thing which may disturb the quiet enjoyment of the use of the Airport or the surrounding property. Permittee shall not, and shall ensure that all employees and agents of the Permittee do not, store or dispose of any hazardous materials which are, or during the term of the Permittee become, regulated by any local government authority, by the State of Nevada, or by the United States government.
14. **Right of Inspection:** In addition to any administrative search rights available at law, the County, through the Airport Manager or other designee, shall have the right to monitor the activities of Permittee at the Airport and to inspect Permittee's areas of operation, equipment, and conduct of business subject to the following:
 - a. County shall provide Permittee with at least 48 hours' notice prior to any inspection;
 - b. County's right to inspection under this provision shall be limited to the verification of Permittee's compliance with the Airport's Minimum Standards, Rules and Regulations, Douglas County Code, which includes building and fire codes, and any other applicable safety regulations, ordinances, and laws, local, state, or federal, which govern airport operations, and compliance with this Agreement and any other agreement between the Parties;
 - c. County may, but is not obligated to, gain access to Permittee's facilities to perform maintenance or other remedial work in any case where Permittee is obligated, but has failed to do so and has failed to comply with the County's notice directing such

remediation, in which case Permittee shall reimburse the County for the cost of such remediation promptly upon demand.

Insurance, Disputes and Litigation

15. **Insurance:** Permittee agrees to, at no cost to the County, obtain and maintain during the entire duration of this Agreement, an appropriate insurance policy or policies as specified in the Minimum Standards. Permittee shall provide proof of such insurance to the County. Such policy (or policies) shall be primary with respect to the Airport. All policies shall name, and Certificates shall show by separate endorsement that policies name the County and the Airport as Additional Insureds; however, any other insurance available to the County shall be excess and shall not contribute to this insurance. The County has and hereby reserves for all purposes of this Agreement the right to revise the insurance requirements, and all other requirements, set forth in the Minimum Standards. Permittee hereby agrees to comply with such revisions upon notice from the County.
16. **Verification:** At any time during the term of this Agreement, the Airport Manager may make a written request for Permittee to submit evidence of compliance with any or all terms of this Agreement, provided that both the frequency and scope of such requests are reasonable. Permittee's failure or refusal to provide responsive evidence within 10 business days of the Airport Manager's request, shall be construed as Permittee's acknowledgement that it failed to comply with the terms of this Agreement. All requests under this provision shall be either hand delivered to Permittee or sent via certified mail, return receipt requested.
17. **Hierarchy:** In the event that the requirements set forth in this Agreement conflict with the requirements set forth in the Rules and Regulations, Minimum Standards, or Douglas County Code, such conflict shall be resolved as follows: (1) to the extent possible, the documents shall be read as complementary to one another; (2) in no event shall this Agreement be construed as relieving Permittee of performing an obligation due under the terms of the Rules and Regulations, Minimum Standards, or Douglas County Code.
18. **Notice of Claims:** Permittee shall give the County prompt, timely written notice of any claim or demand, which in any way affects or might affect the County or the Airport, and may compromise such claim or a defense against such claim or demand to the extent of its interest therein.
19. **Hold Harmless:** Permittee shall defend, indemnify, save, and keep harmless County, its boards, officers, agents, and employees against all liabilities, judgments, costs, and expenses which may in any way accrue against County as a consequence of the granting of this Agreement or as a consequence of Permittee's use or operation at the Airport, except for claims or litigation arising from the negligence and/or willful misconduct of the County, its officers, agents, contractors, and/or employees.
20. **Notices:** Any and all notices, requests, consents, approvals or communication that either party desires or is required to give to the other party under this Agreement must be in writing and either served personally or sent by prepaid first class mail and shall be effective

from the date of service or mailing. Unless otherwise provided in writing by the parties, the address of the County and the proper party to receive any notices or communication is:

Minden-Tahoe Airport
1146 Airport Road
Minden, NV 89423

The address of the Permittee is:

Hutt Aviation
P.O. Box 2950
Minden, Nevada 89423

With a required copy to:

Alling & Jillson, Ltd.
Attn: Richard J. McGuffin, Esq.
Post Office Box 3390
Lake Tahoe, NV 89449

21. Applicable Law: This Agreement shall be governed and construed in accordance with the laws of the State of Nevada.

22. Decisions and Appeal:

- a. Airport Manager: The Airport Manager will act as the County's representative for this Agreement and shall make initial decisions and determinations related to the rights and obligations of Permittee as contained in this Agreement.
- b. Appeal to County Manager: In the event Permittee desires to appeal a decision made by the Airport Manager related to the rights and obligations contained in this Agreement, a written appeal shall be provided by Permittee to the County Manager within thirty (30) calendar days of the Airport Manager's decision. The County Manager will respond to the appeal within 30 days, and failure to respond within the 30-day period will constitute the County Manager's concurrence with the Airport Manager's determination and the denial of the appeal.
- c. Appeal to Board of County Commissioners: If Permittee is dissatisfied with the County Manager's decision, Permittee may appeal the County Manager's decision to the Board of County Commissioners. The appeal must be submitted, in writing, to the Chairman of the Board of County Commissioners within thirty (30) calendar days of the County Manager's decision. The Board of County Commissioners' decision on the appeal will be considered final. A fee may be required for an appeal to the Board of County Commissioners. Any fee will be set by the Board of County Commissioners by Resolution.

23. Waiver: the County's failure to insist upon Permittee's performance of any obligation hereunder shall not constitute a waiver of the County's right to enforce that obligation and the County may require compliance with that obligation or any other obligation at any time.

Governmental Conditions

24. **Grant Assurances and Other Requirements:** Permittee shall comply with the following terms and conditions, which may be modified by County from time to time:

A. ***Non-Discrimination (Provision of Services):*** Permittee shall have the right to conduct aeronautical activities as provided for in this Agreement and to provide those services to the public provided the Permittee agrees:

- i. To furnish said services on a fair, equal, and not unjustly discriminatory basis to all users, and
- ii. To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that the Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. ***Non-Discrimination (use):*** The Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration for this Agreement agree that:

- i. no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities,
- ii. that in the construction of any improvements on, over, or under the land and the furnishing of services, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination,
- iii. that the Permittee shall use the premises 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, and as said Regulations may be amended.

C. ***Affirmative Action:*** The Permittee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Permittee 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 subpart. The Permittee assures that it will require that it be covered sub organizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- D. **War-Time:** During any time of war or national emergency, the County shall have the right to lease the landing area or any part thereof to the United States Government for military use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.
- E. **Own Aircraft:** No right or privilege has been granted which would prevent any person, firm, or business entity operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform. Nothing herein shall be construed as authorization to violate the Airport's Rules and Regulations or other controlling authority.
- F. **No Exclusive Rights:** It is understood and agreed that nothing herein contained shall be construed to Grant or authorize the granting of an exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 or for aeronautical activities such as, but not limited to:
- i. Charter operations;
 - ii. Pilot training;
 - iii. Aircraft rental;
 - iv. Aerial photography;
 - v. Crop dusting;
 - vi. Sale of aviation petroleum products;
 - vii. Air carrier operations;
 - viii. Aircraft sales, and service incidental thereto;
 - ix. Any other activity, which, because of its direct relationship to the operation of aircraft, can be regarded as an aeronautical activity.
- G. **Further Development:** County reserves the right, but not the obligation, in a reasonable and Non-discriminatory manner, to further develop or improve the Airport as it sees fit, regardless of the desires or views of Permittee and without interference or hindrance. This right includes the County's ability to install utilities or other infrastructure upon any area of the Airport, as may be prudent or necessary for the functioning of the Airport, and provided that the County's improvements do not interfere with Permittee's current use of the premises.
- H. **Airport Repair:** The County shall have the right, but not the obligation to maintain and keep in repair the landing area, taxi ways, ramps, safety zones, and other public areas of the Airport and all publicly owned facilities of the Airport in accordance with all applicable regulations, ordinances, and laws, both state and federal, together with the right to direct and control all activities of Airport operations in this regard.
- I. **Condition of Permittee's spaces:** All hangars, buildings, properties, vehicles, or land leased or operated by Permittee on the Airport, shall be maintained in a clean, attractive, weed-free, well-painted, junk-free condition. If a Permittee has an area where it normally keeps damaged aircraft, aircraft parts, construction fixtures, jigs, barrels, containers, aviation service vehicles, or other

unattractive items, Permittee shall enclose such an area with a screen that will hide such area from public view.

- J. **Obstructions:** The County reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions together with the right to prevent the erection of any building or other structure on or adjacent to the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.
- K. **Priority of Agreement:** This Agreement shall be subordinate to the provisions of any existing or future agreement between the County and the government of the United States, relative to the operation or maintenance of the Airport.
- L. **Other Laws and Regulations:** Incorporated into this agreement, by reference and as though set forth herein verbatim, are the requirements of the Section 20.668 of Douglas County Code, as written and amended, and the Airport rules and regulations. Further, all Parties agree to comply with any and all laws and regulations, including those of the FAA, and will not permit the premises covered by this Agreement to be used for any unlawful or improper purpose.

Assignment and Termination

- 25. **Assignment, Transfer, and Subletting:** Permittee may not assign or otherwise transfer its rights or obligations under this Agreement without first obtaining the County's written consent, which consent shall not be unreasonably withheld. The Airport Manager will evaluate the transferee or assignee pursuant to the Minimum Standards, Policies and Procedures, and shall respond to any formal, written request under this section within thirty (30) days. The Airport Manager's response is subject to review by the Board of County Commissioners.
- 26. **Termination and Revocation:** In the event that Permittee uses the property for any unauthorized purpose or performs any commercial activity on the Airport which is not permitted by this agreement or otherwise violates any of the terms of this Agreement, the County may terminate and revoke this Agreement. Permittee shall be notified, in writing, of any violation and shall have forty-five (45) days to cure or reach an agreement with the Airport Manager to cure any violation or if the nature of any violation is not curable within forty-five (45) days, Permittee commences cure and diligently pursues the same. Violations that threaten the safety of Airport operations, patrons, or tenants shall be cured within ten (10) days written notice to Permittee or as soon as possible with the agreement of the Airport Manager. Failure to cure violations will result in the termination of this Agreement. The Airport Manager may immediately suspend this Agreement upon notice during objectively exigent circumstances.

Miscellaneous

- 27. **Entire Agreement:** This Agreement embodies the entire understanding among the Parties and none of the Parties will be bound by any definition, condition, warranty, or representation, other than those expressly stated in this Agreement.

28. **Modifications:** This Agreement may only be amended, altered, or modified in a writing signed by all of the Parties. However, the Parties understand and acknowledge that certain alterations and modifications may be made by the County from time to time (i.e. alterations to the Douglas County Code, Airport Rules and Regulation, and Minimum Standards). The Airport Manager, or his/her agent, will present any such proposed alterations and/or modifications to Permittee, in writing, prior to County consideration and approval, affording Permittee the opportunity to comment publicly on the same. Such modifications and alterations will become a part of this Agreement within thirty (30) days of County approval, unless otherwise specifically set forth herein.

29. **Authority:** The individuals signing on behalf of each Party to this agreement each represent and warrant that they have the right, power, legal capacity, and authority to enter into this Agreement.

30. **Counterparts:** This instrument may be executed via electronic or facsimile signatures and in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have executed this Agreement as of the date and year first above written.

Douglas County

By: [Signature] 4/3/20
Chris Johnson (Date)
Airport Manager

Attest: N/A See BOCC Meeting Minutes
Kathy Lewis, Douglas County Clerk

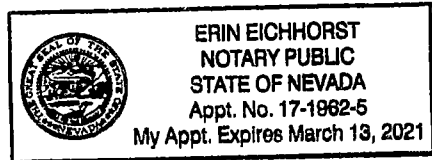
Hutt Aviation, Inc., a Nevada Corporation

By: [Signature] 4-3-20
Alan T. Gangwish, President (Date)

STATE OF NEVADA)
COUNTY OF DOUGLAS)

This instrument was acknowledged before me, a Notary Public, on the 3rd day of April, 2020, by Alan T. Gangwish.

[Signature]
Notary Signature



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

22nd day of May, 2020
By: [Signature] Deputy