

# Townsend City-County Airport Lease Agreement

This lease agreement, made and entered into this 1 day of May, 2005, shall be by and between the City/County Airport Board of Broadwater County, Montana, hereinafter referred to as "Lessor" and Al Irvin hereinafter referred to as "Lessee".

## Recitals

1. The City/County Airport Board operates the Townsend City/County airport situated in the city of Townsend, in the County of Broadwater, Montana, which shall hereinafter be referred to as "the airport".
2. Lessee desires to engage in certain commercial/non-commercial (*strike that which is not relevant*) aviation or aeronautical related activities and proposes to lease a parcel of land described herein.
3. The Rules and Regulations and Minimum Standards for the Townsend City/County airport now in existence and any such regulations or amendments adopted in the future are hereby incorporated and made part of this agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

Item 1. Description of the premises. Lessor hereby leases to Lessee and Lessee lets from Lessor for Lessee's exclusive use, that certain parcel of real property specifically described as Lot 3, 2496 sq. ft. Hangar at the Townsend City/County airport. (Townsend City-County Airport charges the lease rate based on the footprint of the hangar.)

Item 2. Construction of Improvements. Lessee may construct a hangar building on the above-described parcel pursuant to plans which shall be as specifically approved by the appropriate governing bodies and upon successful application for such approval to the Airport Board. Any such improvement shall comply with all applicable building codes, permits, and other city, county or state requirements. The building must be set back at least thirty-nine and one-half (39 1/2) feet from the center of the taxiway and the twenty foot set back area between the building and the taxiway shall be paved with either concrete or asphalt paving materials by the Lessee on all parcels situate at the Townsend City/County airport. Necessary ramps and parking areas as specified by the Airport Board will also be constructed by the Lessee. Failure to complete the structure and all paving, ramps and parking areas to the satisfaction of the Airport Board within 180 calendar days following the date of the beginning of construction shall constitute a default. The 180 calendar day term may be extended upon application to and approval by the Airport Board. Lessee agrees to return the leased premises to their original condition or an acceptable condition as determined by the Airport Board in the event of default under this section within ninety (90) calendar days of notice of default and subsequent cancellation of this lease. If Lessee fails to return the leased premises to their original condition in the opinion of the Airport Board, or



an acceptable condition as determined by the Airport Board, then ownership of any improvement made or constructed by Lessee shall revert to Lessor. Any and all costs necessary to return the premises to its original condition or an acceptable condition as determined by the Airport Board shall be the sole and entire responsibility of the Lessee.

Item 3. Use of Airport. Lessee is granted the use of the Townsend City/County 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 but not limited to, 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 or any renewal hereof Lessee shall have at all times 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.

Item 4. Term The term of this lease shall be for a period of twenty calendar years commencing on the 1 day of MAY 2018, and terminating on the 1 day of MAY, 2038. In the event that 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 period of suspension.

A. Five Year Renewals. At the written request of Lessee submitted no less than 60 calendar days prior to the end of the initial term or any renewal thereof, the lessee shall have the right to renew this lease for up to four(4) additional five (5) year terms at the then current rental rates following a review of lessee's compliance with this lease.

Item 5. Rental. Lessee agrees to pay the Lessor for the use of the premises, facilities, rights, services and privileges granted herein an annual rental of \$ .11 per square foot per annum for all grounds included in this lease. Each year, the rental shall be reviewed and adjusted as necessary by the Airport Board.

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 years (January 2007) price per square foot of \$0.10 and one year percent change of the prior year (January 2006 to January 2007) of 3.4%, you would simply multiply the last years price \$0.10 by  $1 + 0.034$  to determine the CPI increase to the cost per square foot. [ $\$0.10 \times 1.034 = \$0.1034$ ]. Then the upper limit of the current year's base rate would be \$0.1034. 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 the City Council, and will be the lease rate for all renewals and leases in that current calendar year (CY).

In the first quarter of each calendar year, the board will research the prior years CPI increase and calculate the new base rate to be used for all leases in the current calendar year using the above procedures and limits. This base rate is the basis for the next year's cost adjustments.

The first full calendar month of the first lease year of this agreement is January 2007.

- A. 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 agreement. Failure of Lessee to pay the annual rent within thirty (30) calendar days of its due date shall constitute a default.

Item 6. Obligations of Lessor.

- A. Operation as Public Airport. Lessor shall, during the term hereof operate 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 the Lessor to the United States Government under the Federal Airport Act.
- B. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the premises after delivery of premises to Lessee. Lessor shall maintain the common facilities including, but not limited to all roadways, runways, aprons and taxiways and other such appurtenances and services as are now or hereafter connected with the operation of the airport.

Item 7. Obligation of Lessee.

- A. Condition of Premises. It shall be the sole responsibility of the Lessee to 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 present condition



and will construct, repair and maintain any improvements or alterations thereon at its expense and will remove or cause to be removed any debris to the extent required by the Airport Board for its continuing use thereof.

- B. Improvements. Lessee shall have the right to make such 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 provided for herein. With respect to the three previously approved existing residential hangars situate at the Townsend City/County airport, Lessee agrees to use, keep and maintain such residential facilities in a fashion which shall not interfere with the general purposes of the airport or use by others of the airport facilities. Lessee agrees that use of any buildings, hangars and other improvements constructed upon airport property for residential purposes (excluding the existing housing portions of the residential hangars at the Townsend City-County Airport) or storage of predominately non-aviation related items without prior approval from the Airport Board shall constitute a default. Lessee agrees to return the leased premises to their original condition or an acceptable condition as determined by the Airport Board in the event of default under this section within ninety (90) calendar days of notice of default and subsequent cancellation of this lease. If Lessee fails to return the leased premises to their original condition in the opinion of the Airport Board, or an acceptable condition as determined by the Airport Board, within ninety (90) calendar days, then ownership of any improvement made or constructed by Lessee shall revert to Lessor. Any and all costs necessary to return the premises to its original condition or an acceptable condition as determined by the Airport Board shall be the entire and sole responsibility of the Lessee.
- C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises and any improvements constructed thereon in a safe and presentable condition, free of refuse and debris and consistent with good business practices as determined by the Airport Board.
- D. Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee regardless of provider during the term hereof including the cost of connecting to the nearest point of access to available utilities.
- E. 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.

- F. Signs. Lessee shall not maintain any billboards on the premises. Signs advertising aviation related businesses situate on airport premises may be approved and installed, upon application to and approval by the Airport Board
- G. Federal, State and Local Regulations. Lessee acknowledges that the right to use airport facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States, the State of Montana, the City of Townsend and the County of Broadwater together with any rules, regulations or ordinances of the City/County Airport Board now in force or hereafter prescribed or promulgated by authority of law.
- H. Inspection. Lessee agrees to permit inspection of premises by Airport Board or 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 of the covenants and conditions required herein. Failure of the Lessee to comply with the requirements of this Item shall constitute a default on the part of the Lessee.

Item 8. Insurance and Indemnification.

- A. Indemnification. It is acknowledged that Lessee is and shall be, during the term of this lease, 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 the Lessor. It is further agreed that in the use of the airport, the erection or construction of any improvements thereon, and in the exercise or enjoyment of any privilege granted herein, the Lessee shall indemnify and defend and hold harmless the Lessor from any and all losses resulting from any act or omission of the Lessee and shall indemnify and defend the Lessor against any and all claims resulting from Lessee's occupation of the premises including its costs and attorney fees incurred thereby.
- B. 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 the 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. Failure of the Lessee to comply with the requirements of this Item shall constitute a default on the part of the Lessee.

Item 9. Termination. This lease shall terminate at the end of the term hereof without any notice by either party. A holding over by the Lessee of assigns or subleases beyond the expiration of the term shall not be permitted without the written consent of Lessor and on such terms as Lessor may specify. Upon termination Lessee shall have the right to remove all moveable furniture, fixtures, machinery and equipment and all personal property installed by it on the premises within a period of ninety (90) calendar days at Lessee's own expense.

Item 10 Cancellation Prior to Expiration of Term.

A. By Lessee. This lease shall be subject to cancellation by Lessee on the occurrence of any 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 manner that substantially restricts Lessee's use or occupation of the premises for a period of at least ninety (90) calendar days.
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.
4. The default by the Lessor in the performance of the covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default within ninety (90) calendar days after receipt by Lessor from Lessee of written notice of the default.

B. By Lessor. This lease shall be subject to cancellation by Lessor in the event of the occurrence of any of the following events:

1. The default in performance of any of the covenants and conditions required herein by Lessee including but not limited to rental payments if such default continues for a period of thirty (30) calendar days after such notice to Lessee of such default.

2. Lessee's bankruptcy, the appointment of a receiver or a general assignment for the benefit of Lessee's creditors.
3. In the event of termination by Lessor, Lessor may take immediate possession of the premises and remove Lessee's effects, goods and chattel at Lessee's full expense, forcibly if necessary.
4. The failure of Lessor to terminate this lease or reenter or retake possession of the premises upon the default of Lessee shall not operate as a waiver of any default by Lessee.

C. Title to Improvements. Title to any improvements constructed by Lessee shall remain in Lessee until termination or cancellation of this lease as provided for hereunder. Lessee shall have the right to sell or otherwise convey ownership of any building or other improvements to another party prior to termination or cancellation 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 upon notice of termination or cancellation to Lessee, Lessee shall have ninety (90) calendar days to remove any such improvement from the leased premises and shall return the premises to the condition that they were in at the commencement of this lease, or such other condition as specified by the Airport Board, at Lessee's whole, sole and entire expense. If Lessee does not remove such improvements within ninety (90) calendar days then title thereto shall revert to Lessor and Lessee shall have no further interest therein.

D. Suspension of Lease. 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 instrument which is inconsistent with the provisions of such lease shall be suspended, provided that the term of the lease to Lessee shall be automatically extended by the period of any such suspension.

E. Sublease or Assignment. Lessee shall not sell, sublease, assign or transfer this agreement or any part of the premises that are the subject of this agreement without the express, prior, written consent of Lessor which consent shall not be unreasonably withheld. Without limitation, it shall be reasonable to withhold such consent in light of the conditions existing at the airport at the time of the request for approval and in light of all applicable federal, state and local statutes, rules, regulations, ordinances, standards, policies and notices in effect at the time. Any such sub lessee, assignee or transferee shall be subject to the same conditions, obligations and terms as set forth herein and the Lessee named herein shall not be relieved of its



primary responsibility for compliance with the terms of this lease.

- Item 11. 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 leased property 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 the Lessee's position under this lease. In no event shall the Lessor, its agents, representative, or successors in interest become liable for indebtedness secured by such lien nor for any expenses incurred in connection with it. Any such lien or encumbrance shall expressly provide that the lien holder will seek no money judgement against the Lessor and that the lien holder shall provide Lessor with a true copy of any notice of breach of covenant, default or foreclosure, which shall be provided to Lessor by certified mail.
- Item 12. Attorney Fees. In the event either party to this agreement 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.
- Item 13. Taxes. Lessee shall be responsible for the payment of all taxes or assessments which may be lawfully levied against Lessee's property or improvements situated or located upon the subject premises.
- Item 14. 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.
- Item 15. 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 agreement and that, in the construction, maintenance or alteration of any improvement on behalf of the 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 further agrees to 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.

Item 16. Paragraph Headings. The paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provisions of this lease or the particular paragraphs.

Item 17. Notice. Notices to the parties as required by this agreement shall be sufficient if sent by either certified mail return receipt requested, or first class mail, postage prepaid, or by hand delivery, addressed as follows:

City/County Airport Board  
515 Broadway  
Townsend, Montana, 59644

(Insert Lessee's name and address here)

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In addition, copies of any such notices to either party shall be provided also to

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

City of Townsend  
110 Broadway  
Townsend, Montana, 59644

IN WITNESS WHEREOF, the parties have set their hands on the day and year first above written.

LESSOR;  
CITY/COUNTY AIRPORT

By: [Signature]  
(Airport Board Chairman)

By: [Signature]  
(Airport Board Member)

By: [Signature]  
(Airport Board Member)

LESSEE;

By: [Signature]  
ALBERT E. IRVIN  
(Print Name)

By: \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

COUNTY OF BROADWATER

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

CITY OF TOWNSEND

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)