

## AIRPORT GROUND LEASE AGREEMENT- COMMERCIAL USE

THIS AIRPORT LEASE AGREEMENT (“Lease”) is made effective October 12, 2022, by and between the **CITY OF TWIN FALLS, IDAHO, AND TWIN FALLS COUNTY, IDAHO**, hereinafter referred to as “Lessor”, and **KEVIN AND SHERRY OWINGS** and hereinafter referred to as “Lessee”.

The parties hereto agree as follows:

**1. Description of Property.** In consideration of the rental payments specified below, the Lessor hereby leases to the Lessee the below-described property, hereinafter called the “Premises”:

Block 3 Lot 1 consisting of 11,648 square feet at Joslin-Field – Magic Valley Regional Airport (“Airport”).

**2. Inspection of the Premises.** Lessee acknowledges and agrees that Lessee has inspected the Premises, is thoroughly familiar with its condition and accepts the Premises in its present condition, and further acknowledges and agrees that Lessor has not made, and does not hereby make, any representations, warranties, or covenants of any kind or character whatsoever with respect to the condition of the Premises, either express or implied, and, in addition, Lessee hereby represents that Lessee is not relying on any warranties, promises, guaranties, or representations made by Lessor or anyone acting or claiming to act on behalf of Lessor in leasing the property. Lessee is satisfied with the condition of the property and leases the Premises “AS IS” for all purposes, including all unknown environmental problems and latent defects.

**3. Use of Premises.** The intent of this Lease is to promote aviation uses within the aircraft operating areas of the airport. At all times during the term of this Lease, the property shall be used and operated by Lessee for Hangar Leasing for Aircraft Storage and Specialized Commercial Services to provide such goods and services and conduct such activities as permitted by Lessor, and the Rules and Regulations and Minimum Standards of the Airport and Twin Falls City and County Ordinance, as currently in existence or as hereafter adopted.

Lessee is prohibited from developing residential living quarters on the Premises. The unauthorized development of residential living quarters on the Premises shall be an event of default and Lessor may declare this Lease and/or any noncomplying subleases null and void.

Premises are to be operated for aeronautical purposes only. Aeronautical uses include, but are not limited to storage of active aircraft, final assembly of aircraft under construction, maintenance, repair, or refurbishment of aircraft, and storage of aircraft handling, equipment tools and materials necessary to support aeronautical uses. (See FAA Hangar Use Policy)

**4. Right of Access.** Lessee shall have the right of ingress and egress to the Premises by way of access roads, runways, taxiways, and aprons in common with others, pursuant to applicable FAA rules and regulations and rules and regulations promulgated by Lessor. Lessee hereby agrees not to use the runways, taxiways, and aprons or access roads in such a manner as to obstruct or prevent others from the right of use or travel.

**5. Term of Lease.** The initial term of this Lease shall commence on the first day of October 1, 2022, and end on the September 30, 2047. At the expiration of the initial term, Lessee may extend this Lease for one (1) additional fifteen (15) year term on such terms and conditions as the parties may agree, after giving written notice to the Lessor three hundred sixty-five (365) days prior to the expiration of the initial term. If no agreement is reached as to terms and conditions prior to the expiration of the initial term, this Lease shall terminate as provided herein.

In the event Lessee shall continue to occupy the leased Premises beyond the initial term of the Lease or any extension thereof and/or the parties are unable to agree as to the terms and conditions of any renewal, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month to month on the same terms and conditions of the expired initial term, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

**6. Rent.**

(a) Rent. The parties agree that rent for the period October 1, 2022, through September 30, 2023 shall be at the rate of \$0.176 per sq. ft. for an annual amount of \$2,050.05.

(b) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2022, shall be \$0.176 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Average Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2022, was calculated as follows:

Rent Escalation Calculation		
Current Year CPI-U (2021)	-	270.970
Previous Year CPI-U (2020)	-	258.811
Current Year - Previous Year = Change	-	12.159
Change / Previous Year x 100 = % Change	-	4.70%
Previous Rent Per SqFt (2021)	-	\$0.168
Current Rent Per SqFt (2022)	-	\$0.176

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for approval prior to increase.

In the event that the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

**7. Outside Storage.** Lessee is prohibited from storing any personal property outside the buildings on the Premises except personal property necessary to Lessee’s commercial aviation activity. Storage of such permitted personal property shall comply with all city, county and state codes and National Fire Protection Association Standard 409, shall not interfere with utility easements and shall not constitute an unattended obstacle as defined in the Airport Rules and Regulations.

**8. Signage.** Lessee shall not erect, maintain, or display upon the outside of any improvements on the leased Premises any signs unless permitted by Twin Falls City Code.

**9. Utilities.** Throughout the Term, Lessee agrees to pay for all water, gas, electricity, power and other utilities used in or about said Premises.

**10. Premises Improvements.**

**A. Maintenance.** Lessee shall have sole responsibility for maintenance of the Premises. All personal property, including buildings and structures, on the Premises, shall be at the risk of Lessee. Lessee shall keep and maintain the Premises and all improvements thereon, in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto.

Lessee shall provide proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, litter and weeds. In the event that Lessor determines that Lessee has failed to comply with the terms of this Section, Lessor may, but shall have no obligation to, take such action as is required by this Section, and may charge Lessee the actual cost incurred to bring the Premises into compliance with this Section or a reasonable fee for such services.

Snow removal on the Premises is the sole responsibility of Lessee. Snow removal may be performed by Lessor as a courtesy to Lessee on a fee or non-fee basis unless Lessee instructs Lessor in writing that Lessee does not desire to have Lessor remove snow. Lessor may cease to provide snow removal to Lessee or snow removal may not be provided on a particular occasion at Lessor's sole discretion.

Lessee shall not permit parking on the Premises unless the parking areas have been excavated to the proper sub grade and backfilled with an amount of gravel as specified by Lessor. Lessee shall keep the Premises in good maintenance and repair, and shall repair at Lessee's sole cost and expense, all property, ground, runways, taxiways, and any and all property belonging to Lessor that is damaged or altered by Lessee in maintaining or operating on the Premises.

Lessee shall also have sole responsibility for the maintenance of the access apron adjacent to the Premises, if any, that provides the Premises with access to airport taxiways. Lessee shall be liable for any claim, liability, loss, or damage arising by reason of the injury to or death of any person or persons or by reason of damage to any property, caused by the condition of the access apron, or the acts or omissions of Lessee, its agents, invitees, licensees, subtenants, assignees, occupants and users of the Premises or any person in or on the access apron with the express or implied consent of the Lessee. Lessee shall indemnify and hold the Lessor harmless from all such liability.

In the event that Lessee's personal property is damaged by Lessor's equipment or personnel, Lessor agrees to reimburse Lessee reasonable replacement or repair costs for any such damages incurred.

**B. Construction.** Lessee shall not alter, replace, demolish or add to existing facilities or construct new facilities on the Premises, or make any contract therefor, without first demonstrating compliance with the Airport Development Guidelines in effect or as hereinafter adopted and procuring Lessor's written consent.

In the event that Lessee desires to alter, replace, demolish, or add to existing improvements or construct new improvements on the Premises, all alteration, replacement, demolition, addition or new improvement final plans and specifications, site-use plans and architectural renderings thereof shall be submitted to and approved by Lessor and the Federal Aviation Administration, if applicable, prior to the commencement of any construction. All new construction, demolition and construction of alterations, replacements or additions to existing improvements must be substantially completed within one (1) year of the date of Lessor's approval and fully completed within eighteen (18) months of the date of Lessor's approval. The demolition of existing buildings and all alterations, replacements, additions and new facilities shall

comply with all laws and ordinances relating thereto. All work with respect to any alterations, additions, or new improvements must be done in a good and workmanlike manner and diligently prosecuted to completion. Lessee shall see to it that such construction shall not cause dust outside the Premises or be a nuisance to any other Lessees.

**C. Damage or Destruction of Premises Improvements.** If any improvement upon the Premises is damaged or totally destroyed, Lessor shall give Lessee written notice of such damage or destruction within 30 days. Lessee shall commence repair or restoration of the improvement within six (6) months from the date of such notice and complete the repair or restoration within one (1) year from the date of such notice. If Lessee fails to comply with the terms of this paragraph, Lessor shall have the option of demolishing the damaged or destroyed improvement at the expense of Lessee.

**D. Relocation or Removal of Improvements.** Lessor, in its sole discretion, reserves the right to further develop or improve the Airport facilities and property, including the right to cause any structure or improvement to be removed or relocated on the Airport, as Lessor sees fit, to take any action Lessor considers necessary to protect the instrument approaches of the Airport against obstructions, to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event Lessor elects to have a structure or improvement owned by Lessee removed or relocated, Lessor shall give Lessee six (6) months prior notice and offer Lessee an alternate site if, in the opinion of Lessors, a suitable site is available on Airport property. If no alternate site is offered or Lessee chooses not to relocate, this Lease may be terminated by either party.

If Lessor exercises its right under this paragraph to cause Lessee to remove his hangar from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the hangar. If Lessor causes Lessee to remove its hangar from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee's hangar, at which time the hangar shall become the property of Lessor.

**11. Liens.** Lessee shall keep the Premises free and clear of any and all liens in any way arising out of the construction, improvement or use of the Premises by Lessee.

**12. Taxes and Assessments.** Lessee shall pay all taxes and assessments of any kind levied against the Premises during the term of this Lease and any extension thereof. Further, Lessee shall promptly pay any personal property taxes and assessments of any kind levied against Lessee's personal property as the same becomes due.

**13. Fire Hazards.** Lessee shall not do anything on the Premises or bring or keep anything thereon that will increase the risk of fire, or which will conflict with the regulations of the Twin Falls City Fire Department.

**14. Waste Prohibited.** Lessee shall not commit any waste or damage to the Premises hereby leased nor permit any waste or damage to be done thereto.

**15. Taxes and Assessments.** Lessee shall pay all taxes and assessments of any kind levied against the Premises during the term of this Lease and any extension thereof. Further, Lessee shall promptly pay any personal property taxes and assessments of any kind levied against Lessee's personal property as the same becomes due.

**16. Compliance With Law.** Lessee agrees to comply with all city, county, state and federal laws, rules, regulations and ordinances. Lessee further agrees to comply with all current Joslin Field, Magic Valley Regional Airport Rules, Regulations and Standards, now in existence,

or as may be amended during the term of this Lease. By signing this Lease, Lessee acknowledges receipt of a current copy of the airport's Rules and Regulations.

**17. Indemnity - Hazardous Substances.** Lessee shall not engage in, and shall not permit its agents, subtenants, assignees or others under its control to engage in, an operation on the Premises or related airport facilities that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of "hazardous substances" or "hazardous wastes" without the prior written consent of Lessor, which may be withheld or granted in Lessor's sole discretion.

As used herein, the term "hazardous substance" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of Idaho or the United States government, including but not limited to: (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)]; (B) any element, compound, mixture, solution, or substance designated pursuant to 42 U.S.C 9602; (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress); (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)]; (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412]; (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]; and (G) any substance that may in the future be defined as "hazardous" by amendment to existing federal, state and local laws and regulations. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The term "environmental law(s)" as used herein shall include, without limitation, the foregoing listed laws, regulations and ordinances and state analogs of such laws.

Lessee shall indemnify, defend and save Lessor harmless from all cleanup costs, investigation and monitoring costs, costs of providing alternative sources of drinking water to neighbors, property damage costs, injury/health-related costs, litigation costs (including, but not limited to attorney's fees, accountant's fees, consultant's fees, costs on appeal, expert witness costs), losses and damages related to third parties, all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes by Lessee, its employees, agents, invitees, licensees, subtenants or assignees and others under its control, in or about the Premises and related airport facilities or arising under or on account of any environmental law or similar applicable laws or regulations that occur during the term of this Lease, and from all fines, suits, procedures, claims and actions of any kind arising out of Lessee's failure to provide all information and take all actions required by any Federal, state or local authority, or arising out of Lessee's failure to cause its employees, agents, invitees, licensees, subtenants, assignees or others under its control to do the same. Lessee's obligations and liabilities under this paragraph shall survive the expiration or early termination of this Lease and continue so long as Lessor remains responsible for any spills or discharges of hazardous substances or wastes in or about the Premises that occur during the Term.

**18. Care of Petroleum Products and Other Material by Lessee.** Lessee shall handle, use, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the Airport in accordance with all applicable federal, state, local and Airport Rules and Regulations. Lessee shall, at Lessee's own expense, comply with, and cause all its employees, agents, invitees, licensees, subtenants, assignees and others under its control on the Premises and related airport facilities to comply with all local and state environmental laws, rules and regulations, the Comprehensive Environmental Response, Compensation & Liability Act (42 U.S.C. § 9601 *et seq.*), and all other applicable federal laws, rules and regulations, and any and all amendments thereto or hereafter promulgated.

Lessee shall not cause or suffer to occur a release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substance as defined in Paragraph 17 at, upon, under or within the Premises, or related airport facilities, including the storm sewer or any contiguous real estate. Lessee shall not permit its employees, agents, invitees, licensees, subtenants, assignees or others under its control on the Premises and related airport facilities to engage in any activity that could lead to the imposition of liability under any environmental laws or similar applicable laws or regulations. Should "hazardous substances" and/or "hazardous wastes" be released, spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, its employees, agents, invitees, licensees, subtenants, assignees or others under its control on the Premises or related airport facilities, Lessee shall be responsible for the cleanup, containment and abatement of such contamination at Lessee's sole cost and expense. Should the Lessee fail to do so within a reasonable time frame, Lessor, at its option, but without obligation, may take any reasonable and appropriate action in Lessee's stead. Lessee shall pay the cost of such remedial action upon delivery to Lessee of an itemization of the costs incurred.

Lessee shall comply strictly and in all respects with the requirements of all applicable environmental laws and with all similar applicable laws and regulations and shall notify appropriate governmental agencies, Lessor and the Airport Manager promptly in the event of any spill or release, or hazardous substance upon the Premises or related airport facilities and shall promptly forward to the Lessor and the Airport Manager copies of all orders, notices, permits, applications, or other communications and reports in connection with any such spill or release, or any other matters relating to environmental laws or related regulations or any similar applicable laws or regulations, as they may affect the Premises.

**19. Hold Harmless.** Lessee shall indemnify and hold the Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's occupation and use of the Premises and related Airport facilities and Lessee's business operations conducted at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's business operations at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Lessee's improvements or personal property in or on the Premises or Airport related facilities, or the acts or omissions of any person in or on the Premises or Airport related facilities with the express or implied consent of the Lessee, including but not limited to the Lessee, its employees, agents, invitees, licensees, subtenants, assignees, concessionaires, occupants and users of the Premises. Provided however,

Lessee shall have no obligation to indemnify and hold the Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in Paragraph 20. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee, its employees, agents, customers or other persons, that occurs on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee, its employees, agents, invitees, licensees, subtenants, assignees, concessionaires, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises or related Airport facilities for purposes of Lessee's business arising from physical damage to the Airport real property. Further, the parties agree that Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

**20. Insurance.** At all times during the term of this Lease, Lessee shall, at its expense, keep property insurance in force insuring all the improvements on the Premises against loss and damage (including but not limited to coverage for damage due to fire, windstorm, hail, or other weather-related cause) in an amount of the replacement cost of all the improvements, with Lessor designated as loss payee, as Lessor's interests may appear.

Lessee shall also maintain, at its expense, a policy of public liability insurance covering Lessee's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Lessor as an additional insured and protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Lessee's occupation and use of the Premises, with limits of at least \$1,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense, subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this paragraph, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor. Lessee is responsible to maintain the insurance requirements for the operations of Lessee stated within the airport's Minimum Standards for Commercial Aeronautical Activities. The above required insurance shall be maintained with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Lessor.

**21. Right of Inspection.** Lessor shall have the right to enter the Premises at any reasonable time to examine the same and to ensure compliance with this Lease.

**22. Security.** Throughout the Term of this Lease and any extension or renewal thereof, Lessee shall have the use of, and access to, the Air Operations Area and agrees to comply with all federal security regulations.

**23. Licenses, Fees and Permits.** Lessee shall purchase and maintain all licenses and permits, and pay all fees required of Lessee, under any federal, state and local law or regulation to conduct Lessee's operation at Joslin Field-Magic Valley Regional Airport.

**24. Lessee's Default.** Time and the strict and faithful performance of each and every one of the terms, covenants and conditions of this Lease is expressly made the essence of this agreement.

**A. Events of Default.** The following shall constitute a default of the Lease.

- i. Failure of Lessee to pay rent or any other charge within thirty (30) days after the same is due.
- ii. Failure of Lessee to comply with any term, covenant or condition of the Lease, other than as specified in Paragraph i. above, within thirty (30) days after written notice by Lessor to Lessee specifying the nature of the term, condition or obligation breached.
- iii. Abandonment of the Premises for a period of ninety (90) consecutive days and Lessee's failure to reoccupy the Premises within ten (10) days after written notice by Lessor to Lessee of the abandonment.

Lessors shall be entitled to recover from Lessee the reasonable amount of attorney's fees and costs incurred by Lessors in determination of a breach and Lessors' notification of that breach to Lessee, which fees and costs shall be paid to Lessors within thirty (30) days after Lessee's receipt of Lessors' written demand therefor.

**B. Remedies upon Default.** If there is a default by Lessee under this Lease, Lessors may, at Lessors' election, either in law or equity, seek performance of the term, condition or obligation of this Lease or without further notice or demand, declare this Lease terminated and re-enter the Premises to repossess and enjoy the same.

**C. Damages.** In the event of termination, Lessor shall be entitled to recover as damages the reasonable costs of re-entry and reletting, including without limitation the reasonable attorney's fees and costs incurred to regain possession of the Premises, the cost of any clean up, refurbishing, removal of Lessee's improvements, fixtures and personal property, and to pay all other reasonable and necessary expenses or commissions paid by Lessor in re-leasing the Premises.

**D. Cure.** In the event of notification of a breach of any term, condition or obligation by Lessee and Lessee does in fact cure such breach, then and in that event, Lessee shall pay all reasonable attorney's fees and costs incurred by Lessor in determination of the breach and notification of the breach to Lessee. If Lessee shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any five-year-period during the term or any renewal thereof, then such conduct shall, at the election of the Lessor, represent a separate event of default which cannot be cured by Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Lessor and deprive it of timely performance by Lessee hereunder.

**25. Termination.** In addition to the right to terminate this Lease as provided in Paragraph 24, Lessor shall have a right to terminate this Lease upon thirty (30) days written notice for any of the following reasons:

A. If Lessor determines that the Premises is necessary or required for developing or maintaining the Airport or Lessor determine in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, to construct, repair, alter, develop or improve Magic Valley Regional Airport – Joslin Field, including but not limited to the buildings, parking, lighting,



runways, airspace designation, which alteration, development or improvement requires Lessee to remove any structure from the leased Premises. If Lessor exercises its right under this paragraph to cause Lessee to remove his hangar from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the hangar. If Lessor causes Lessee to remove its hangar from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee's hangar, at which time the hangar shall become the property of Lessor.

B. If any federal, state or local court or authority mandates a change in the operations of the Airport facility which necessitates the removal of any structure on the leased Premises.

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

D. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to interfere with Lessee's use and enjoyment of the Premises for a period of at least ninety (90) days.

E. To terminate or amend this Lease to bring it into compliance with any requirements of the state of Idaho or the federal government to obtain or retain eligibility for government loans, grants, aid or funding.

F. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

G. Lessee's failure to replace any improvements which may have been destroyed within the time allowed in Paragraph 10C.

The parties agree that Lessor shall have no liability to Lessee for damages or costs incurred by Lessee if termination of this Lease occurs under paragraphs B through G.

**26. Lessee's duties upon Termination or Expiration.** Upon the termination or expiration of this Lease, Lessee agrees to do the following:

**A. Lessee's Personal Property.** Upon the termination or expiration of this Lease, Lessee agrees to remove all of Lessee's personal property at Lessee's sole cost and expense, including but not limited to:

- i. All fuel storage tanks used by Lessee or under its control in accordance with all applicable statutes or regulations shall be removed prior to the termination or expiration of this Lease;
- ii. All personal property, including trade fixtures, owned or leased by Lessee and used upon the Premises shall be removed prior to the termination or expiration of this Lease.

**B. Lessee's Improvements.** All improvements, including but not limited to all structures and buildings, shall be removed and the real property restored to a condition acceptable to Lessor within one hundred eighty days of the termination or expiration of this Lease. During this period, Lessee shall continue to pay Lessor rent for the Premises on a prorated daily basis which rent shall be due and payable on the 1<sup>st</sup> day of each month for the previous month.

**C. Removal or Sale.** Prior to and within this one hundred eighty-day-period, Lessee shall have the right to sell its personal property, including improvements, to a third party, however, the personal property must be removed from the Premises or a new Lease executed with Lessor within the one hundred eighty-day-period. If Lessee fails to remove all personal property, including improvements, and restore the Premises within (180) days of the termination or expiration of this Lease, Lessor shall have the right, but not the obligation, to purchase the personal property, including improvements, for the sum of One and No/100 (\$1.00) Dollar.

Lessee agrees to execute all documents necessary to transfer title to the personal property from Lessee to Lessor and thereafter Lessee shall have no further right, title or interest in the above-described personal property and Lessor shall be entitled to possession and ownership of the personal property, including improvements. In the alternative, Lessor may remove the same and restore the Premises, at Lessee's sole cost and expense, which amount shall be immediately due and payable to Lessor upon completion of the removal.

**D. Environmental Condition.** Lessee further agrees to surrender the Premises free from environmental contamination of any kind caused by Lessee, its employees, agents, invitees, licensees, concessionaires, subtenants, assignees, occupants and users of the Premises during the term of this Lease.

**27. Lessee's Right To Terminate.** Lessee shall have the right to terminate this Lease upon the following events:

A. default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and Lessor's failure to cure said default within sixty (60) days after Lessee having first given Lessor written notice of the default;

B. permanent abandonment of the Airport; or,

C. a final court order prohibiting Lessee from conducting all of the permitted uses of the Premises described in this Lease.

**28. Condemnation.** In case of a taking by eminent domain ("Taking") by the United States of America, other than for temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the uses to which the Premises was put prior to the Taking, this Lease shall terminate as of the date of the transfer of possession to the United States of America. In the event of a Taking of a portion of the Premises that is not a Total Taking, then and in that event this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Taking and rent shall be reduced on a square footage basis at the then applicable rental rate provided for in Paragraph 6 of this agreement. In no event shall Lessor be liable to Lessee for any damages sustained by Lessee as a result of a taking by eminent domain by the United States of America.

Neither the execution of this Lease, nor any provision of this Lease shall affect in any way Lessor's right to condemn the Premises herein granted under its power of eminent domain.

**29. Future Construction by Lessor.** Lessor reserves the right to enter upon that portion of the leased Premises outside of the structures and perform whatever construction is necessary to provide a concrete or asphalt surface at no cost to the Lessee. The Lessor also retains that portion of the leased Premises, outside the structures, as a general utility easement and any surface disturbed by the Lessor in constructing a utility shall be restored to its original condition by the Lessor.

**30. Inconvenience during Construction.** Lessee recognizes that from time to time during the term of this Lease it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and/or repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconveniences or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages,

including but not limited to lost profits, or other consideration therefore, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from Lessor's negligence or willful misconduct.

**31. Non-exclusive Right.** Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public, and Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.

**32. Nondiscrimination.**

(a) Lessee, its successors in interest and assigns, hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Lessee, its successors in interest and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Lessee shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the 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 as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants, Lessor shall have the right to terminate this Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Lessee hereby authorizes Lessor to take such action as the federal government may direct to enforce this covenant, and Lessee also authorizes the federal government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

Further, with respect to the leased Premises, Lessee agrees to undertake any corrective action or affirmative action required of Lessor or Lessee by the Federal Aviation Administration because of Lessee's actions or inactions.

**33. Subordination.** This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement of Lessor for federal funds for the development of the Airport.

**34. No Partnership.** Nothing contained in this Lease shall create or be construed as creating a partnership, joint venture, or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise expressly provided in this Lease, for any obligations or liabilities incurred by the other. Lessee expressly agrees to indemnify and hold Lessor, and the property of the Lessor, including the Premises, free and harmless from any and all

obligations and liabilities incurred by Lessee in conducting aviation-related activities or any other activities on the Premises.

**35. Assignments and Subleases.** Lessee may sublease the Premises or assign this Lease for the uses described in Section 3 after first obtaining Lessor's written consent. Said consent will not be unreasonably withheld.

A. After any permitted assignment the assignee shall be considered the lessee and accorded the rights conferred upon the assignor by this Lease. However, the assignor shall not be released from any past, present or future obligations under the terms of this Lease resulting from Lessee's occupation and use of the Premises and related Airport facilities prior to the effective date of the assignment.

B. Any sublease or assignment permitted must comply with the following terms and conditions:

- (i) all subleases and assignments must comply with the terms of this Lease;
- (ii) all subleases of hangars or hangar space for private hangar use, including each bay of multiple-bay structures, must be used primarily for aviation purposes, with other uses occurring concurrently;
- (iii) all subleases for private uses must comply with the terms of the standard lease agreement for private hangars approved for use at the Airport at the time of the sublease,
- (iv) no construction of additional facilities is allowed by a sublessee; and
- (vii) subleasing by a sublessee is prohibited.

**36. Attorney's Fees.** In the event that any controversy relating to this Lease is brought in a court of law, including any bankruptcy or appeal proceeding, the prevailing party shall be awarded its attorney fees and costs.

**37. Waiver.** Waiver of a breach of any provision of this by any party in any particular instance shall not be deemed a waiver of any other breach of this Lease.

**38. Notices.** All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and certified, return receipt requested, to the respective parties hereto at the following addresses:

Lessor: Joslin Field, Magic Valley Regional Airport  
c/o City of Twin Falls  
P.O. Box 1907  
Twin Falls, Idaho 83303 1907

Lessee: Kevin and Sherry Owings  
3351 E. 3275 N.  
Kimberly, Idaho 83341

or to such other address as may be designated in writing and delivered to the other party. All notices given by certified mail shall be deemed completed as of the date of mailing.

**39. Survival of Obligations.** In the event of early termination of this Lease by either party as permitted under this Lease, neither party shall accrue any further obligations under this Lease as of the effective date of such early termination; provided, however, the obligations of a

party that are expressly stated in a provision of this Lease as surviving expiration or sooner termination thereof shall continue in accordance with the terms of that Lease provision.

**40. Entire Agreement.** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter. Any modifications or amendments to this agreement must be made in writing and signed by both parties.

**41. Binding Effect.** The provisions and stipulations hereof shall inure to the benefit of and bind the assigns and successors in interest of the respective parties hereto.

IN WITNESS WHEREOF, the Lessor and Lessee execute this Airport Lease Agreement-Commercial Use, as of, but not necessarily on, the day and year first above written.

**LESSOR:**

**CITY OF TWIN FALLS, IDAHO, a Municipal Corporation,**

\_\_\_\_\_  
**RUTH PIERCE, MAYOR**

**TWIN FALLS COUNTY**

\_\_\_\_\_  
\_\_\_\_\_, **COMMISSIONER**

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**LESSEE:**

\_\_\_\_\_  
**KEVIN OWINGS**

\_\_\_\_\_  
**SHERRY OWINGS**