



**LEE'S SUMMIT**  
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**FIXED BASE OPERATOR AGREEMENT**

**Between**

**Legacy Aviation, Inc. dba Flying KC**

**2016**

**And**

**The City of Lee's Summit, Missouri**

FIXED BASE OPERATOR AGREEMENT

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## FIXED BASE OPERATOR AGREEMENT

THIS LEASE AGREEMENT is made this \_\_\_\_ of \_\_\_\_\_, **2016**, between the City of Lee's Summit, Missouri, hereinafter called "City," and Legacy Aviation, Inc. dba Flying KC, a corporation incorporated and existing under the laws of the State of Missouri and authorized to do business in the State of Missouri, hereinafter called "Operator".

### WITNESSETH

WHEREAS, City operates the Lee's Summit Municipal Airport, hereafter called "Airport," located in the City of Lee's Summit, Jackson County, Missouri; has the right, title and interest in and to the real property comprising the Airport; and has full power and authority to enter into this Agreement;

WHEREAS, the Operator is desirous of leasing from the City certain premises located at the Airport; and

WHEREAS, Operator agrees to comply with the Minimum Standard Requirements for Airport Aeronautical Services adopted by the City for fixed based operators at the Lee's Summit Municipal Airport and the Lee's Summit Municipal Airport Rules and Regulations, and as may be amended from time to time, which are hereby incorporated by reference as if fully set forth herein, for so long as this Agreement is in effect.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, City leases to Operator and Operator leases from City the following described premises and rights, subject to the following:

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### SECTION 1. LEASED PREMISES

#### Subsection 1.01 Description of Leased Premises

A. The term "Leased Premises", as referenced to in this Agreement, includes 154 square feet total space available in the following premises located at the Lee's Summit Municipal Airport, 2721 NE Douglas; Office Suite C, Lee's Summit, Missouri, 64064 for a period of two (2) years from and after the date of this Agreement after which time consideration will be giving for the rental of the entire building.

B. The above referenced facilities are included as part of the Leased Premises in their present condition, and any improvements, together with the easements and rights thereto or as may be hereafter separately granted to effectuate the purposes of this lease, including the right of ingress thereto and egress therefrom.



C. The Operator may also use up to five (5) paved tie-downs, on an as needed basis and when available, to be used only for those aircraft that are owned, operated or under the control of the Operator. Such tie-down spaces are not specific as to location and are not for exclusive use by the Operator.

D. Upon request from the Operator and approval by the Airport Manager, the Operator may lease additional aircraft tie-downs or additional aircraft storage hangars on a daily or monthly basis for those aircraft that are owned, operated, or under the control of the Operator. Such additional tie-downs or hangars will be leased subject to the terms of this Agreement.

E. The parties agree that the Operator may, upon approval by the City Manager, substitute the above referenced open or enclosed aircraft storage hangars for other such hangars. The Operator may also rent additional open or enclosed aircraft storage hangars at rates based on the City's schedule of fees. If substitution or addition of hangars takes place, the parties shall execute an addendum to this agreement reciting such substitution or addition. The City Manager is hereby authorized to execute any such addendum to this Agreement relating to substitution or addition of hangars. Any additional or substituted hangars will be subject to the terms of this Agreement, and the rental rate shall be the hangars current retail rate (the "Posted Rate").

## SECTION 2. PURPOSE OF AGREEMENT

### Subsection 2.01. Use of Leased Premises.

A. Purpose of Agreement: The purpose of this Agreement is to lease the Leased Premises to the Operator and to enable the Operator to perform Aeronautical Services as a Fixed Base Operator (FBO) at the Airport. In addition to other limitations and restrictions contained in this Agreement, the Operator agrees to the following limitations on the permitted uses of the Leased Premises:

1. The operation of a Flight School, Aircraft rental, Aircraft Management/Consulting and aircraft sales under the control of the Operator.

B. Conditions of Granting Fixed Base Operator Status: Granting Operator the status of Fixed Based Operator is conditioned upon the following covenants:

(1) That the right to use the public airport facilities as well as all of Operator's rights as a fixed Base Operator shall be exercised subject to and in accordance with the laws of the United States of America including regulations promulgated by the Federal Aviation Administration (FAA), the State of Missouri, and the City of Lee's Summit, now in force or afterwards ordained or promulgated including environmental legislation and regulations.



(2) That Operator shall obtain a business license from the City prior to commencement of its Aeronautical Services.

(3) That Operator shall provide the City with appropriate certificates of insurance in accordance with Subsection 8.02 and all relevant FAA certificates for types of services provided.

(4) That the Operator shall comply with the Minimum Standard Requirements for Airport Aeronautical Services (“Requirements”) as adopted and revised by the City. The Operator understands that this requirement is ongoing and continuing in nature, and that the Requirements are subject to future modification.

(5) That the Operator shall comply with Lee’s Summit Municipal Airport Rules and Regulations.

C. Aeronautical Services. Upon execution of this agreement, the Operator is authorized to undertake and provide the following proposed Aeronautical Services: Flight school, Aircraft Rental, Aircraft Management/Consulting and Aircraft Sales. The rights granted by this agreement will be exercised in such a way as to not interfere with or adversely affect the use, operation, maintenance or development of the Airport.

Subsection 2.02. No Exclusive Right. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

Subsection 2.03. Prohibited Activities. The following activities are expressly prohibited:

- A. Operator agrees not to use the Leased Premises or permit the use thereof in such manner as to make void or increase the rate of insurance thereon.
- C. The Operator is prohibited from selling or dispensing aircraft fuels. Any violation by the Operator of this subsection shall constitute a material breach of this Agreement, and shall constitute cause for immediate termination of the Agreement and repossession of the Leased Premises by the City.

### SECTION 3. TERM

Subsection 3.01. Term. The Initial Term of this Agreement is one (1) year, commencing on the August 31, 2016, and terminating August 30, 2017 for Office Suite C



located in the Airport Modular Building located at 2521 NE Douglas. The term of the Lease will automatically renew for one (1) additional year under the same conditions as set forth herein, unless either party provides notice not less than thirty (30) days in advance of its intent to terminate. Any time during the first twelve month period the Operator wishes to lease additional office space in the Modular Unit, the City will entertain the additional rentals at the posted rates of the Airports schedule of fees.

Subsection 3.02 Holdover. In the event Operator shall continue to occupy the Leased Premises beyond the initial Agreement term, or any extension thereof, without the City's written consent thereto, such holding over shall not constitute a renewal or extension of this Agreement but shall create a tenancy from month to month which may be terminated at any time by either party giving thirty (30) days written notice to the other party. The Operator shall perform and maintain its obligations under this Agreement during any holdover period, including the payment of rent in accordance with Subsection 4.01 of this Agreement.

#### SECTION 4. RENTALS, FEES AND RECORDS

##### Subsection 4.01 Rentals for Leased Premises.

- A. The rental rate for Suite C in the Modular Building located at 2521 NE Douglas is based on a rate of \$1.727 per square foot rounded up to the nearest dollar, resulting in a rental payment of \$266.00 dollars per month for 154 square feet of space. Suite B will be provided for one-year at no charge. After the first twelve month term a rate will be established for Suite B.
- B.
  1. Rental fees shall be adjusted following the Initial Term and first Renewal of this Agreement, and then after every Renewal Term thereafter, with each such adjustment to become effective upon commencement of the subsequent term. The rental rates shall be adjusted by the total change in the Consumer Price Index for All Urban Consumers, (CPI-U) all items, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 equals 100) or a successor index appropriately adjusted. This shall be measured by finding the difference between the CPI-U figure for the month immediately prior to the commencement date of the Agreement or of the previous two year measuring period, and the CPI-U index figure for the same month immediately prior to the commencement of the next measuring period, as described in the example below.
  2. The percent increase in the Consumer Price Index during the measuring period shall be multiplied by the annual square footage rental rate to determine the annual rent to be paid for the next Renewal Term. The annual rent increases shall be cumulative. For example:



FORMULA	EXAMPLE
NEW CPI (9/99)	156.91
- OLD CPI (9/94)	149.44
CPI CHANGE+	7.47
 CHANGE IN CPI = % CPI	 7.47 = (5.00%)
OLD CPI	149.44
 (% CPI + 1) X CURRENT RATE =	 (0.05 + 1) X \$0.25 = \$0.26
NEW RATE	

3. Notwithstanding the adjustment calculation methodology stated above, at no time during the term of this Agreement, including any renewals thereof, will the annual square feet rental rate decrease. In the event the adjustment calculation methodology described above would result in a decrease in the annual rental rate, the Operator shall, for that measuring period under the said Renewal Term, pay an annual rental rate in the same amount as that assessed for the Renewal Term or measuring period immediately prior to the period or renewal term involving the calculated or appraised decrease. In the event that the City causes a decrease in the total square feet of the Leased Premises, the total rental amount would decrease proportionately.

Subsection 4.02 Fuel Purchase Rates:

A. Operator agrees to pay fuel pricing, per gallon, established each Monday based on the most recently delivered Wholesale Price + Federal Excise Tax (+ State Excise Tax for 100LL) + (any other federally or state mandated taxes or fees) + City Fee. The City Fee shall be according to the following table, based on Operator’s total annual fuel volume purchased from City.

<u>City Fee</u>			
Gallon	Volume	Fee Per Gallon	Fee Per
		Self Service	Full- Service
	0-49,999	\$ 0.45	\$0.55
	50,000 – 99,999	\$ 0.37	\$0.47
	100,000 – 199,999	\$ 0.35	\$0.45
	200,000 +	\$ 0.30	\$0.40



The fee per gallon for the City Fee shall be assessed incrementally on the respective volumes listed in the above table, such that the fee per gallon for each gallon purchased in the first range shall be \$ 0.45 per gallon for full service and \$0.55 per gallon for self service, the fee per gallon for each gallon purchased in the second range shall be \$ 0.37 per gallon for full service and \$0.47 per gallon for self service and so forth. The above fuel pricing shall apply to and be calculated based on all aircraft owned or operated by the Operator or permanently hangared at the Airport. Per gallon fuel prices shall be rounded up or down to the nearest half cent.

B. The Airport shall provide fuel invoices on a weekly or bi-weekly basis based on Operator's Preference. Operators wishing to pay monthly shall deposit with the City \$5,000 or an amount equal to the average cost for two weeks worth of total fuel usage, whichever is greater. Fuel use will not be charged against this deposit. During each renewal of this Agreement, average fuel use will be reviewed to determine appropriate deposit amount required. Upon such review, the Operator agrees to adjust the deposit as required. Upon termination of this agreement, said deposit shall be returned to the Lessee, minus any amount for unpaid invoices.

Subsection 4.03. Delinquent Payments. The Operator agrees to pay all invoices within ten (10) days after receipt. The City may establish an interest charge computed as simple interest, to be collected on the principal of all sums due and unpaid for more than ten (10) days, but such interest when assessed thereafter, shall be computed from the 11<sup>th</sup> day after invoice date. The City reserves the right to refuse to provide services, including fuel, or require payment in advance for any fuel or services at any time Operator is thirty (30) days or more delinquent on any payment. Upon payment of any delinquent amounts, the decision to provide services on an advance payment or invoice basis is at the sole discretion of the Airport Manager. In the event that collection activities, including litigation, are used in order to recover past due amounts owed, the City shall be entitled to recover its collections costs, including its reasonable attorney's fees.

Subsection 4.04. Review and Adjustment of Fuel Fees. Fuel fees listed in Subsection 4.02 above shall be in effect for one (1) year from the effective date. Operator and City agree to review fuel fees and re-negotiate, if mutually deemed appropriate for the remainder of the term of this agreement. Upon notification of request for renewal of the agreement per Subsection 3.01, fuel fee shall be reviewed and re-negotiated as appropriate.

Subsection 4.05 Fees for Ramp Tie-Downs and Other Services. Open ramp aircraft tie-downs shall be charged at a rate of fifty percent (50%) of the retail rate (the "Posted Rate") for flight school training, rental aircraft, or on consignment to the Operator. The charge for towing services shall be at the Posted Rate. Any special services not available





or required by other airport patrons will have rates determined on a case by case basis.

Subsection 4.06. Books and Records of Operator. There are no books and records requirements under this Agreement.

Subsection 4.07. Audit. There are no audit requirements under this Agreement.

Subsection 4.08 Fees for Ramp Tie-Downs and Other Services. Open ramp aircraft tie-downs shall be charged at a rate of fifty percent (50%) of the retail rate (the “Posted Rate”) for any aircraft under the care of the Operator that exceed the five tiedowns provided. The charge for towing services shall be at the Posted Rate. Any special services not available or required by other Airport patrons will have rates determined on a case by case basis.

Subsection 4.09 Fuel Purchase Rates:

- B. Operator agrees to pay fuel pricing, per gallon, established each Monday based on the most recently delivered Wholesale Price + Federal Excise Tax (+ State Excise Tax for 100LL) + (any other federally or state mandated taxes or fees) + City Fee. The City Fee shall be according to the following table, based on Operator’s total annual fuel volume purchased from City.

**City Fee**

Gallon	Volume	Fee Per Gallon	
		Self Service	Full- Service
	0-49,999	\$ 0.45	\$0.55
	50,000 – 99,999	\$ 0.37	\$0.47
	100,000 – 199,999	\$ 0.35	\$0.45
	200,000 +	\$ 0.30	\$0.40

The fee per gallon for the City Fee shall be assessed incrementally on the respective volumes listed in the above table, such that the fee per gallon for each gallon purchased in the first range shall be \$ 0.45 per gallon for full service and \$0.55 per gallon for self service, the fee per gallon for each gallon purchased in the second range shall be \$ 0.37 per gallon for full service and \$0.47 per gallon for self service and so forth. The above fuel pricing shall apply to and be calculated based on all aircraft owned or operated by the



Operator or permanently hangared at the Airport. Per gallon fuel prices shall be rounded up or down to the nearest half cent.

B. The Airport shall provide fuel invoices on a weekly or bi-weekly basis based on Operator's Preference. Operators wishing to pay monthly shall deposit with the City \$5,000 or an amount equal to the average cost for two weeks worth of total fuel usage, whichever is greater. Fuel use will not be charged against this deposit. During each renewal of this Agreement, average fuel use will be reviewed to determine appropriate deposit amount required. Upon such review, the Operator agrees to adjust the deposit as required. Upon termination of this agreement, said deposit shall be returned to the Lessee, minus any amount for unpaid invoices.

Subsection 4.10. Delinquent Payments. The Operator agrees to pay all invoices within ten (10) days after receipt. The City may establish an interest charge computed as simple interest, to be collected on the principal of all sums due and unpaid for more than ten (10) days, but such interest when assessed thereafter, shall be computed from the 11<sup>th</sup> day after invoice date. The City reserves the right to refuse to provide services, including fuel, or require payment in advance for any fuel or services at any time Operator is thirty (30) days or more delinquent on any payment. Upon payment of any delinquent amounts, the decision to provide services on an advance payment or invoice basis is at the sole discretion of the Airport Manager. In the event that collection activities, including litigation, are used in order to recover past due amounts owed, the City shall be entitled to recover its collections costs, including its reasonable attorney's fees.

Subsection 4.11. Review and Adjustment of Fuel Fees. Fuel fees listed in Subsection 4.02 above shall be in effect for one (1) year from the effective date. Operator and City agree to review fuel fees and re-negotiate, if mutually deemed appropriate for the remainder of the term of this agreement. Upon notification of request for renewal of the agreement per Subsection 3.01, fuel fee shall be reviewed and re-negotiated as appropriate.

Subsection 4.12. Books and Records of Operator. There are no books and records requirements under this Agreement.

Subsection 4.13. Audit. There are no audit requirements under this Agreement.

## SECTION 5. OBLIGATIONS OF OPERATOR

Subsection 5.01. Operations by Operator: Operator agrees:



- A. To promote aviation activity on the Airport and to conduct operations on the Leased Premises in a proper, efficient and courteous manner.
- B. That all services shall be furnished on a fair, equal and nondiscriminatory basis to all users, and that only fair, reasonable and nondiscriminatory prices for each unit of sale or service will be charged. Operator may, however, make reasonable and nondiscriminatory discounts, rebates or other similar price reductions to volume purchasers.
- C. To furnish those Aeronautical Services listed heretofore and to receive written approval from the Airport Manager of all Operator's operations, signs, etc. thirty (30) days before start-up of any additional Aeronautical Services or cessation of any or all approved Aeronautical Services.
- D. To supply the Airport Manager with a list of its employees or associated personnel names, job titles and duties, and their emergency telephone numbers and addresses.
- E. To not execute an agreement with any subcontractor to perform the Operator's Aeronautical Services without written approval of the City and to insert in all subcontracts a provision requiring the subcontractors to comply with applicable provisions of this agreement and further provide in each subcontract a statement "that nothing contained in these conditions shall create any contractual relationship between the subcontractor and the City."
- F. To provide the City with a list by "N" number and type of all aircraft owned or operated by Operator and to provide a written revision of said list within seven (7) days of any aircraft changes.
- G. To follow the procedures of National Fire Protection Association when draining residual fuel from aircraft tanks incidental to aircraft fuel system maintenance, testing, manufacturing, salvage, or recovery operations
- H. To store any paints, cleaners or other flammable liquids in an approved storage locker.
- I. Follow all Homeland Security requirements and Transportation Security Administration recommendations, as amended, as they pertain to registering and recording new student pilots and pilot rating upgrades.

Subsection 5.02 Nondiscrimination. Operator, for itself, it's personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) 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 leased premises; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (C) that Operator shall use the Leased Premises in compliance 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, to the extent that said requirements are applicable, as a matter of law, to Operator.

Subsection 5.03. Fair Service. The Operator agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Operator may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

Subsection 5.04. Observance of Statutes, etc. The granting of this Agreement and its acceptance by Operator is conditioned upon the right to use the Airport facilities in common with others authorized to do so. The Operator shall observe and comply with any and all requirements of the constituted public authorities and with all Federal, State or Local statutes, ordinances, regulations and standards applicable to Operator for its use of the leased premises, including but not limited to, rules and regulations promulgated from time to time by the City for the administration of the Airport. The Operator shall also defend, reimburse, indemnify and hold harmless the City, its agents, employees and elected officials, including costs of defense, from any claims, demands, penalties or liability which may accrue to it because of any alleged violation or noncompliance with any such statute, ordinance, rule or standard by the Operator or resulting from Operator's activities hereunder.

## SECTION 6. OBLIGATIONS OF THE CITY

Subsection 6.01. Operation as a Public Airport. The City reserves the right to discontinue use of the Airport as an airport. The City covenants and agrees that as long as the City continues to use the Airport as an airport it will operate and maintain the Airport consistent with and pursuant to the Sponsor's Assurances given by the City to the United States Government under the Federal Aviation Act, subject to the City's Reservations set forth in this Agreement.



## SECTION 7. CITY'S RESERVATIONS

Subsection 7.01. Free and Unrestricted Flight. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises herein leased, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or thereafter used for navigation of or flight in the air using said airspace or landing , taking off from, or operating on or about the Airport.

Subsection 7.02. Subordination to U.S. Government. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States or any agency thereof, 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 to the City for Federal funds for the development of the Airport.

Subsection 7.03 Improvement, Relocation, or Removal of Structures. The City, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport (including, without limitation, the Leased Premises), including the right to remove or relocate any structure on the Airport as it sees fit, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent the Operator from erecting or permitting to be erected, any buildings or other structures on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft. The City further reserves the right to take any of the aforementioned actions regardless of the desire or views of the Operator, without interference or hindrance by the Operator and without obligation to abate rent or otherwise provide relief of be liable to the Operator for any harm or inconvenience from disruption of Airport operations resulting from such actions. Notwithstanding the forgoing, in the event that the City closes the Airport Administrative Building, the Office Premises shall cease to be a part of the Leased Premises as of the date of such closing and this Agreement shall be deemed to be terminated, as to the Office Premises only, as of the date of such closing. In the event that the City closes the Airport Administrative Building because of the construction of a replacement Airport Administrative Building, the City will use its best efforts to secure office space for Operator, subject to the terms of this Agreement, in: 1) the replacement Airport Administrative Building; and 2) any temporary office space made available by the City during the construction of the replacement Airport Administrative Building.

Subsection 7.04. Inspection of Leased Premises. The City, through its duly authorized



agent, shall have at any reasonable time, the full and unrestricted right to enter the Leased Premises for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

Subsection 7.05. War or National Emergency. During the time of war or national emergency, the City shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the lease to the Government shall be suspended.

## SECTION 8. INDEMNITY AND INSURANCE

Subsection 8.01. Indemnification. Operator agrees to protect, defend, indemnify, and hold the City of Lee's Summit, and its officers employees, elected officials in their official and personal capacities, and attorneys, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement or the use or occupancy of the Leased Premises, or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused solely by the negligence or willful misconduct of the City, or its officers and employees. This duty shall also extend to claims of damages to the environment caused by Operator, including but not limited to the investigation, field study, and clean up costs assessed by any federal, state or local agency against the City of Lee's Summit or any of its agents or employees, as well as any civil fine or penalty. The City shall give to the Operator reasonable notice of any such claims or actions. The provisions of this Section shall survive the expiration or early termination of this Agreement. The duties of the Operator specified herein shall not be limited by the amount of any insurance coverage required to be provided by the Operator herein, but shall extend to the full amount of any such claim or liability. This duty shall also not be limited by the provision of any workers' compensation coverage.

Subsection 8.02 Insurance Requirements. Operator shall, at its expense, procure and keep in force at all times during the term of this Agreement, from a financially sound and reputable company acceptable to the City, all types of insurance required pursuant to the City's Minimum Standard Requirements for Aeronautical Services, Appendix 1, *Minimum Insurance Policy Requirements*, as revised January 8, 2015, in amounts at least equal to the minimum amounts specified therein, unless specified otherwise in this subsection, insuring Operator for bodily injury and property damage, and such other



insurance necessary to protect the Operator from all such claims and actions described in the preceding section 8.01. Without limiting its liability, Operator also agrees to carry and keep in force insurance with single limit liability for bodily injury or death and property damage in a sum not less than \$1,000,000 per occurrence, together with the following specific limitations per occurrence: 1) Airport operations- minimum of \$1,000,000 per occurrence; and 2) Products and Completed Operations- minimum of \$100,000 per occurrence. Operator also agrees to carry and keep in force Hangarkeeper's Liability insurance coverage of not less than \$100,000 per aircraft and not less than \$250,000 per occurrence. Operator recognizes that the required amounts of coverage set forth above are the minimum limits, and may not reflect the Operator's actual risk. Operator shall furnish the City with a certificate of insurance as evidence of coverage. Said insurance policies shall not be canceled or materially modified or non-renewed except upon thirty (30) days advance written notice to the City. Coverage is to be written on the broadest liability form which is customarily available at reasonable cost. Operator further agrees to name the City as an additional insured on all applicable policies, with the exception of the policy endorsement covering hired and non-owned automobiles, and workers compensation. Operator further agrees to increase its insurance coverage, if necessary, to ensure coverage for all approved Aeronautical Services and if Operator adds any Aeronautical Services not identified in Subsection 2.01(C).

Subsection 8.03 Insurance Notification. Operator shall file a certificate of insurance with the City evidencing that Operator has procured all required insurance coverage and that said insurance coverage will not be canceled without thirty (30) day advance written notice to the City. This agreement will not be executed or renewed by the City until such proof of coverage has been received, reviewed and accepted by the City.

## SECTION 9. TERMINATION OF AGREEMENT BY OPERATOR

Subsection 9.01. Termination. Unless renewed by the Operator as described in Subsection 3.01, this Agreement shall terminate at the end of the term, or at such time as written notice of termination is provided by either party as provided in Subsection 9.02 or Subsection 10.02.

Subsection 9.02. Termination by Operator. Operator, in addition to any other rights it has under the law, may terminate this Agreement and terminate its obligations hereunder (excluding such obligations that survive the expiration or termination of this Agreement) at any time that Operator is not in default in the payment of rentals and/or fees to the City by giving the City sixty (60) days advance written notice to be served as hereinafter upon or after the happening of any one of the following events:





- A. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, so as to substantially affect Operator's use of the system at the Airport, and the remaining in force of such injunction for a period of at least sixty (60) days; provided, however, that such injunction is not due to Operator's operation at the Airport.
- B. The default by the City in the performance of any covenant or agreement herein required to be performed by the City, and the failure of the City to undertake and be continuing to remedy such default for a period of sixty (60) days after receipt from Operator of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the City shall have remedied the default prior to receipt of Operator's notice of termination.
- C. The assumption by the United States Government or any authorized agency thereof of the operation, control, or use of the Airport and facilities or any substantial part or parts thereof, in a manner as substantially to restrict Operator for a period of at least sixty (60) days from full use of its leased premises, and in that event, a just and proportionate part of the rent hereunder shall be abated.

#### SECTION 10. TERMINATION OF AGREEMENT BY CITY

Subsection 10.01. Termination by the City. The City, in addition to any other rights to which it may be entitled by law, may declare this Agreement terminated in its entirety as provided in Subsection 10.02 upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry upon the Leased Premises. These events are as follows:

- A. The completion of the initial or any subsequent term without written notice of Operator's intention to enter into a subsequent term extension.
- B. The failure to pay all installments of fees then due (with interest) within thirty (30) days after receipt by Operator of written notice from the City to pay such rent.
- C. The filing by Operator of a voluntary petition in bankruptcy or the making of any assignment of all or any part of Operator's assets for benefit of creditors.
- D. The filing of an involuntary bankruptcy petition against the Operator as a bankrupt pursuant to any involuntary bankruptcy proceedings.
- E. The taking of jurisdiction by a court of competent jurisdiction of Operator or its





assets pursuant to proceedings brought under the provisions of any Federal reorganization act.

- F. The appointment of a receiver or a trustee of Operator's assets by a court of competent jurisdiction or a voluntary agreement with Operator's creditors.
- G. The breach by Operator of any of the covenants or agreements herein contained, and the failure of Operator to remedy such breach within 30 days after receipt of written notice of such breach from the City.
- H. The abandonment of the Leased Premises.
- I. The breach of any one of the covenants contained in Subsection 2.03.C., in which case the provisions of Subsection 10.02 concerning notice to the Operator of the breach and time to cure said breach shall not apply.
- J. The Operator, its principles, directors, owners or agents, transfers, sells or otherwise conveys an ownership interest in the Operator greater than 50%.
- K. The City's discontinuation of use of the Airport as an airport.

Subsection 10.02. Termination Notice. In the event the City exercises its option to cancel this Agreement upon the happenings of any or all of the events set forth in this Section, a notice of cancellation shall be sufficient to cancel this Agreement; and, upon such cancellation, Operator hereby agrees that it will forthwith cease all FBO services defined and approved herein. The City shall provide written notice of its intent to terminate the Agreement to the Operator a minimum of sixty (60) days prior to the date of termination, except for termination as described in Subsection 10.01I. Failure of the City to declare this Agreement terminated for any of the reasons set out shall not operate to bar, destroy, or waive the right of the City to cancel this Agreement by reason of any subsequent violation of the terms hereof.

## SECTION 11. ASSIGNMENT AND SUBLETTING

Subsection 11.01. Assignment. Operator shall not assign this Agreement or any part thereof in any manner whatsoever or assign any of the privileges recited herein without the prior written consent of the City. In the event of such assignment, Operator shall remain liable to the City for the remainder of the term of the Agreement to pay to the City any portion of the rentals or fees provided for herein upon failure of the assignee to pay the same when due. Said assignee shall not assign said Agreement except with the prior written approval of the City and the Operator herein, and any assignment by the Operator shall contain a clause to this effect. The City shall not unreasonably withhold its consent to any assignment, transfer or delegation by the Operator of its



privileges and obligations under this Agreement to any successor, parent organization, wholly owned subsidiary or affiliate of the Operator.

Subsection 11.02 Subletting. The Operator shall not have the right to sublease all or part of the Leased Premises subject to the following conditions:

- A. No sublease or rental for the performance of FBO or Special Aviation Services Operator (SASO) services, the engagement of any aviation-related commercial activity upon the Leased Premises, or for any aviation-related commercial purposes shall be valid unless the sublessee has executed a separate Fixed Based Operator Agreement with the City; and
- B. No sublease or rental for the performance of non aviation-related services or operations on the Leased Premises shall be valid unless the sublessee has executed a General Services Provider Agreement with the City.

Subsection 13.02. Subletting. The Lessee shall have the right to sublease all or part of the leased premises

## SECTION 12. GENERAL PROVISIONS

Subsection 12.01. The City shall maintain and keep in repair the Airport landing areas, including taxiways and aircraft parking apron and shall have the right to direct and control all activities of the Operator in this regard.

Subsection 12.02. Attorney's Fees. In any action brought by either party for the enforcement or the construction of the terms of this Agreement, the City, if it is a prevailing party in the action, shall be entitled to recover interest and its reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses.

Subsection 12.03. Taxes. Operator shall pay any personal property taxes and other taxes which may be assessed against equipment, merchandise, or other personal property belonging to Operator located on the Leased Premises, or other permitted portions of the Airport, or upon Operator's activities thereupon.

Subsection 12.05. License Fees and Permits. Operator shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under Federal, State or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

Subsection 12.06. Non-Exclusive Rights. It is hereby specifically understood and agreed between the parties that nothing contained hereby shall be construed to grant or



authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended; and the City reserves the right to grant to others the privilege and right of conducting any one or all of the Aeronautical Services listed herein or any other activity of an aeronautical nature.

Subsection 12.07. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.

Subsection 12.08. Applicable Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of Missouri. Should any part of this Agreement be adjudicated, jurisdiction and venue shall be proper only in the Circuit Court of Jackson County, Missouri.

Subsection 12.09. Non-Waiver. No waiver of any condition or covenant contained in this Agreement or of any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

Subsection 12.10. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Subsection 12.11. Binding Effect. This Agreement, including all of its covenants, terms, provisions, and conditions, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

Subsection 12.12. No Partnership. Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of partnership or joint venture or any relationship between the City and Operator other than the relationship of the City and Operator.

Subsection 12.13. Duty to be Reasonable. Wherever in this Agreement the City is to give its consent, approval or otherwise exercise discretion in judgment, such consent, approval or judgment shall not be unreasonably exercised or unreasonably withheld.

Subsection 12.14. City Agent. The City Manager shall be considered the agent and representative of the City with respect to all notices, approvals and matters contained hereunder, and his authority to act for and on behalf of the City in connection with all matters occurring under this Agreement shall not be questioned by the Operator.



Subsection 12.15. Non-Liability of Individuals. No director, officer, agent, elected official or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. This Subsection 12.15 shall have no application to any independent guaranty or other assumption of the obligations of Operator which may be obtained by the City relative to this Agreement. This Subsection 12.15 shall also not apply to the Operator if the Operator is an entity other than a corporation in good standing and authorized to conduct business in the state of Missouri.

Subsection 12.16. Personal Property. Operator shall maintain the Leased Premises in a clean and orderly condition. Upon termination of this Agreement, Operator shall remove all personal property from the Leased Premises within thirty (30) days after said termination, unless otherwise agreed to, in writing, by the parties, and restore the leased premises to its original condition. If the Operator fails to remove said personal property within the aforementioned time frame, the City may take immediate possession of any property remaining on the Leased Premises and shall, at the City's sole option, become the property of the City or same may be removed and/or disposed of in any manner deemed appropriate by the City. The City shall not be liable in any manner for such removal and/or disposal; and the cost and expense of such removal and/or disposition shall be paid by the Operator.

Subsection 12.17. Casualty. If either part of the Leased Premises (i.e. the Office Premises or Building-P) is damaged by fire or other insured casualty, the rent payable hereunder for such damaged premises shall not abate provided that the damaged premises are not rendered untenable by such damage. If the damaged premises are rendered untenable and the City elects to repair the damaged premises, the rent shall abate for the period during which such repairs are being made, provided the damages were not caused by the acts or omissions of the Operator, its employees, agents or invitees, in which case the rent shall not abate. If the damaged premises are rendered untenable and the City elects not to repair the damaged premises, this Agreement shall terminate upon written notice from the City. If this Agreement is terminated by reason of fire or other insured casualty as herein provided, rent shall be apportioned and paid to the day of such fire or other insured casualty. Notwithstanding the forgoing, termination of the Agreement under this subsection shall not preclude the negotiation of a new agreement for alternate premises.

Subsection 12.18. Maintenance. City will keep the exterior of the Leased Premises in repair, provided that Operator shall give City written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by the carelessness or negligence of Operator, its agents, employees, or servants, in which event Operator shall be responsible therefore. Operator will keep the interior of the



Leased Premises in good repair and will surrender the Leased Premises at the expiration of the term or at such other time as it may vacate the Leased Premises in as good condition as when received, excepting depreciation caused by ordinary wear and tear.

Subsection 12.19 Utilities. In addition to the rental rate for the Office Premises and the Operator shall pay a monthly fee of twenty-five dollars (\$25.00) for the use of various City provided services, including water, sewer, electricity, and trash. This fee may be increased at the City's discretion and any such increase shall become effective upon 30 days written notice to Operator.

Subsection 12.20. Notices. Whenever any notice is required by this Agreement to be made, given or transmitted to the City, it shall be enclosed in an envelope with sufficient postage attached to insure delivery and deposited in the United States Mail, first class, addressed to:

Airport Manager  
Lee's Summit Municipal Airport  
2751 NE Douglas  
Lee's Summit, Missouri 64064

with a copy to the City Attorney, City of Lees Summit, 220 SE Green St., Lee's Summit, MO 64063.

Notices to Operator shall be addressed to:

Legacy Aviation, Inc. dba Flying KC  
600 EE Kirby Road  
Grain Valley, Missouri 64029  
Attn. Taylor Hill

or such place as either party shall designate by written notice to the other. Said notices may also be personally hand delivered by each party to the other, at the respective addresses listed above, or in the case of delivery by the City to the Operator, by posting said item conspicuously on the leased premises. If hand delivered, the date of actual completion of delivery shall be considered the date of receipt. If mailed, or posted on the leased premises, the item shall be considered received the third day after the date of posting.

Subsection 12.21. Prohibition against Interference. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned at Lee's Summit, Missouri.

**CITY OF LEE'S SUMMIT,**

\_\_\_\_\_  
Stephen Arbo,  
City Manager

Approved as to form:

\_\_\_\_\_  
Office of the City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Office of the City Attorney

OPERATOR: Legacy Aviation, Inc. d/b/a  
Flying KC

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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Legacy Aviation, Inc. dba Flying KC  
STATE OF MISSOURI            )  
                                                  ) ss.  
COUNTY OF JACKSON        )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, the \_\_\_\_\_ of Legacy Aviation, Inc. dba Flying KC who is personally known to me to be the same person who executed the within instrument on behalf of \_\_\_\_\_ of Legacy Aviation, Inc. dba Flying KC , and such person duly acknowledged the execution of the same to be the free act and deed of Legacy Aviation, Inc. dba Flying KC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

[SEAL]



City of Lee's Summit

STATE OF MISSOURI  
COUNTY OF JACKSON

ON THIS THE \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me \_\_\_\_\_, a Notary Public in and for said state, personally appeared Randall L. Rhoads, Mayor of the City of Lee's Summit, Missouri, known to me to be the person who executed the within Agreement and acknowledged to me that he executed the Agreement for the purposes therein stated and as the free act and deed of the City of Lee's Summit, a municipal corporation.

WITNESS my hand and official seal in the County and State aforesaid, the day and year first above written.

/s/ \_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed or Typed Name

(Seal)

My Commission Expires:  
\_\_\_\_\_

