



**LEE'S SUMMIT**  
M I S S O U R I

**AIRPORT LAND LEASE AGREEMENT FOR HANGAR "V"**  
**BETWEEN**  
**SALLEE REAL ESTATE INVESTMENTS, LLC**  
**AND**  
**THE CITY OF LEE'S SUMMIT**

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**LAND-LEASE AGREEMENT  
CORPORATE HANGAR**

THIS LEASE AGREEMENT ("Lease"), made this \_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), between the City of Lee's Summit, Missouri, a constitutional charter city and Missouri municipal corporation, hereinafter called the "City", and Sallee Real Estate Investments, LLC, (organized and existing under the laws of, and in good standing with, the State of Missouri,) hereinafter called "Lessee".

WHEREAS, the City operates the Lee's Summit Municipal Airport hereinafter called "Airport", located in the City of Lee's Summit, Jackson County, Missouri; and has the right, title, and interest in and to the real property on the Airport, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and the City has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, upon the terms and conditions herein stated, Lessee desires to lease certain property offered by the City and to construct a corporate hangar thereon, and the City is willing to lease said property to the Lessee for this purpose;

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and Lessee agree as follows:

**SECTION 1. LEASED PREMISES**

Pursuant to the terms and conditions of this Agreement, the City leases to Lessee and Lessee takes from City the certain real property located at the Airport and legally described in Exhibit "A", attached and incorporated herein by reference, and any existing and future improvements (such as, without limitation, buildings, structures, and fixtures) thereon, together with the access and privileges appurtenant thereto or as may be hereafter separately granted to effectuate the purposes of this lease, including ingress thereto and egress therefrom. Such real property shall hereafter be referred to the "Leased Premises".

**SECTION 2. RENTS, FEES, AND CHARGES**

**Subsection 2.01. Rentals for Leased Premises.**

**A. Initial Rent.** From **September 1, 2020**, through **August 31, 2040**, a period of Twenty (20) years (the "Initial Lease Period"), Lessee shall pay to the City rent for the Leased Premises and encompassing approximately Thirty-six thousand four hundred nineteen (36,419) Square Feet sq. ft., at thirty eight cents (\$0.38) per square foot per annum, for an initial total annual rent of Thirteen thousand eight hundred thirty-nine dollars \$13,839.

**B. Rent Escalation.**

The first annual anniversary after the expiration of first year of the Initial Lease Period, and on each annual anniversary of the Effective Date thereafter, Lessee's annual rent shall increase by an amount equal to three percent (3%) annually for the term of the 20-year lease. Such annual adjustment shall also take place annually for any renewal terms exercised by the Lessee.

**Subsection 2.02. Field Use Charge.** Lessee does not lease and is prohibited from using any aircraft parking apron or taxiway for its exclusive use. Any commercial use of aircraft operational areas by Lessee shall be by separate agreement and payment of appropriate fees. Nothing in this Section, however, shall prohibit Lessee from the joint use with others of the Airport interior and exterior roadways serving the Leased Premises in accordance with Airport rules, regulations, restrictions, fees, and charges now, or hereafter, promulgated.

**Subsection 2.03. Payment Time and Place.** The above fixed rental payment is due and shall be paid annually in advance, on or before the first business day of each year during the lease term, including renewal terms, at the office of the City of Lee's Summit Collector's Office, 220 S.E. Green, Lee's Summit, Missouri 64063,.

**Subsection 2.04. Delinquent Rentals.** There shall be added to all sums due the City and unpaid, as may be established by the City, an interest charge of five percent (5%) of the principal sum for every thirty (30) days of delinquency computed as simple interest. No interest shall be charged upon that portion of any debt which, in good faith, is in dispute. No interest shall be charged upon any account until payment is thirty (30) days overdue, but such interest when assessed thereafter shall be computed from the due date.

**Subsection 2.05. Performance Security.**

- A. Concurrent with Lessee's submission of this Agreement to the City for consideration and approval, Lessee shall deliver to the City a surety bond or irrevocable letter of credit in an amount equal to twenty-five percent (25%) of the construction costs. The City may collect on such bond or letter credit if Lessee fails to break ground by **November 1, 2020**, unless Lessee does not proceed with construction due to an environmental condition that the Airport fails to cure within ninety (90) days from notice of said condition.
- B. Project schedule:
1. Lessee shall submit, to the City, construction plans for the City's review and acceptance. The City shall accept or reject the plans within Ten (10) business days. Lessee shall submit the notice of proposed construction to the Federal Aviation Administration and the request for a building permit with the City of Lee's Summit, Missouri, within Five (5) business days of the City's acceptance of the plans.
  2. Within sixty (60) days of approval by the Federal Aviation Administration or the issuance of the building permit, whichever occurs last, Lessee shall begin construction, on site, of the facility.
  3. By **November 1, 2020**, Lessee shall break ground on the construction of the hangar and proceed in the construction of such in a commercially reasonable manner.

**SECTION 3. TERM**

**Subsection 3.01. Term.** This Agreement shall be effective as of the Effective Date first set forth above and shall remain in full force and effect until October 1, 2040 (the 20 year Term"), unless terminated as otherwise provided in this Agreement.

**Subsection 3.02. Options to Renew.**

- A. After the expiration of the Initial Term, Lessee may renew this Agreement for up to Four (4) additional Five (5)-year periods (each a "Renewal Term"). Lessee shall be deemed to have exercised its option to renew this Agreement for each additional Five-year term unless Lessee shall give the City written notice, at least one hundred eighty (180) days prior to the expiration of the then current Term, of Lessee's intention not to renew the term of this Agreement.
- B. Rent for the renewal term(s) shall be established as described in Section 2 of this Agreement.
- C. At the end of the full Forty (40)-year term (Initial plus Renewal Terms) of this Agreement, or, if Lessee does not exercise all of the Renewal Term options, at the end of the Initial Term or any exercised Renewal Term thereafter, Lessee shall have no further right, possessory or otherwise, to the Leased Premises or to extend the Agreement.

**Subsection 3.03. Holding Over.**

- A. If Lessee shall continue to occupy the Leased Premises beyond the Initial Term, plus any Renewal Term, without 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 that either party may terminate at any time by giving thirty (30) days written notice to the other party. Said month-to-month tenancy shall be under the same conditions as provided in this Agreement, except as modified within this subsection. During the holdover period, Lessee shall pay rent, in advance, on the first day of each month, an amount equal to one twelfth (1/12) of the established annual rent for the immediately preceding term or renewal term. Both parties shall perform and maintain their other obligations under this Agreement during any holdover period.
- B. Upon the expiration of the Term of this Agreement or sooner cancellation thereof, Lessee agrees to deliver the Leased Premises (which, by definition, includes any and all improvements) to the City in good condition, reasonable wear and tear excepted. If the City and Lessee cannot agree on what constitutes reasonable wear and tear, the City and Lessee shall appoint a mutually acceptable third party to decide what constitutes reasonable wear and tear; such decision by said third party shall be binding upon the City and Lessee.

**SECTION 4. OBJECTIVES AND PURPOSE OF LEASE**

**Subsection 4.01. Use of Leased Premises.** Lessee shall use the Leased Premises only for the construction of a corporate hangar (hereinafter "Facility") to be used for the storage of Lessee's aircraft. After construction of the aircraft storage hangar, the Lessee must use the leased premises only for continuing flight operations. Lessee may not use the facility for any purpose not authorized by this Agreement or by a separate Use-and-Operating Agreement with the City.

**Subsection 4.02. Prohibited Uses.** The following activities are included among, without limitation, the activities that are expressly prohibited:

- A. Lessee will not perform on the Leased Premises any aviation-related services for others, or rent or sublease any portion of the Leased Premises to others for any such purposes; provided, however, Lessee may rent or sublease part or all of its hangar space to others only for storing of that party's owned aircraft, without prior consent of the City. In addition, any aircraft stored in

the facility may not be aircraft being used for 14 C.F.R. Part 121 or Part 135 operations, unless Lessee has entered into a Fixed Based Operator Agreement or General Services Provider Agreement with the City for performance of aviation-related services or operations on the leased premises. .

- B. Lessee shall not conduct, rent, or sublease all or any part of the Leased Premises or the improvements located thereon for any activity or purpose other than the storage of aircraft. In this regard, the Lessee stipulates that its aircraft use, or that of any sub-lessee, is incidental to its primary business activity and is not a major source of income for its business, and that any aircraft owned or leased by Lessee and stored in the hangar are for its exclusive use only.
- C. Automobiles, trucks, and vehicles are prohibited from parking on the ramps or taxiways.
- D. Lessee shall not sell or dispense fuels and lubricants except in accordance with Section 7 of this Agreement.
- E. Lessee shall not park aircraft in excess of 30,000 pounds gross weight except in areas and on surfaces specified by the Airport Manager.
- F. Lessee shall not park or store aircraft except in hangars or designated aircraft parking tie down locations.

## **SECTION 5. BOARD'S REPRESENTATIONS AND WARRANTIES**

**Subsection 5.01. Title and Authority.** The City represents and warrants that it has good and merchantable fee simple title to the real estate for the Leased Premises and authority to enter into this Agreement.

**Subsection 5.02. Condition of Leased Premises.** The City makes no representations or warranties concerning the existence or absence of any surface or subsurface conditions above, on, under, or about the Leased Premises, or regarding the suitability of the Leased Premises for the construction of the improvements proposed by Lessee. Lessee shall perform, at its own expense, all inspections, surveys, and tests necessary to satisfy it and City concerning these matters, and City shall make the Leased Premises reasonably available to Lessee for the conducting of all such activities. The discovery of the presence or absence of any such unforeseen conditions upon the Leased Premises affecting the construction of the improvements by Lessee shall not be considered grounds for termination or rescission of this Agreement by Lessee after the issuance of a notice to proceed with construction to Lessee by City; although the discovery of such unforeseen conditions prior to the issuance of the notice to proceed may be considered grounds for termination of the Agreement by either party.

## **SECTION 6. LESSEE'S CONSTRUCTION REQUIREMENTS**

**Subsection 6.01. Requirement for Improvements on Leased Premises.** Lessee shall, at its sole expense, construct on the Leased Premises, as provided in this Section, such buildings, structures, roadways, utility facilities and lines, additions, spill containment, and improvements in furtherance of the purposes set forth in Section 4, and Lessee shall install therein and thereon such equipment and facilities as Lessee may deem necessary or desirable. Provided, however, that no building, structure, roadway, utility facilities and lines, addition or improvement of any nature shall be made or installed by Lessee

without the prior written consent of the City as herein provided. Lessee can make internal improvements to the Leased Premises without City consent as long as said changes meet the City of Lee's Summit code requirements in effect at the time of such proposed change, including any requirement to obtain permits.

**Subsection 6.02. Construction Dates.** Construction of improvements shall begin as soon as reasonably practicable after the City provides written notice to proceed. This notice to proceed with the commencement of construction shall be delivered following approval by the City of final detailed plans, as described in the following Subsection 6.03, and the readiness of the Leased Premises for the commencement of the project.

Construction shall be completed within three hundred sixty five (365) days from the date the notice to proceed is issued. If a notice to proceed is not issued by the City within ninety (90) days from the date of the Effective Date of this Agreement, whether it be because of the actions or omissions of the Lessee or of the City, either the City or the Lessee, at its option, may declare the Agreement terminated, without fault, liability, or further obligation to either party.

**Subsection 6.03. Approval of Plans.** Lessee covenants and agrees that prior to the preparation of detailed construction plans, specifications, and architectural renderings of any such building, structure, roadway, addition, or improvement, it shall first submit to City for approval two sets of plans showing the general site plan, design and character of improvements, and their locations, including drainage and roadways. Lessee's plans shall meet City of Lee's Summit design standards for the type of development proposed. Lessee covenants and agrees that prior to the installation or construction of any such building, roadway, structure, facility, addition, or improvement of any kind on, in, or under the Leased Premises, Lessee shall first submit to the City for approval two sets of final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications. Approval of any general or detailed plans or specifications shall not relieve or excuse the Lessee from compliance with any applicable Federal, state, county, municipal or other statutes, ordinances, regulations, rules, or codes regarding any building, safety, or environmental matter related to the construction.

Lessee agrees to submit to the Federal Aviation Administration FAA Form 7460-1, Notice of Proposed Construction or Alteration, and receive a favorable determination prior to any commencement of any construction or alteration, as required by Part 77 of the Federal Aviation Regulations.

**Subsection 6.04. Extension of Utilities or Special Facilities.** Lessee shall construct, at its expense, all necessary utility facilities and lines for the Leased Premises. The City shall allow Lessee access across City property at locations approved by City, if necessary, to connect to the existing utilities at their nearest suitable locations to the Leased Premises as determined by the City. Lessee, at its expense, shall construct for the Leased Premises roadways and taxiways connecting to the existing roadway and taxiway system.

**Subsection 6.05. Construction of Additional Facilities.** Lessee may construct additional buildings or facilities on or under the Leased Premises with the prior written and signed approval of the City, which approval may be given or withheld at the City's sole discretion. Prior to such construction, Lessee agrees to submit to the City for approval, final plans, specifications, and architectural renderings prepared by registered architects and engineers, and comply with all other requirements of Subsection 6.03 of this Section.

**Subsection 6.06. Alterations or Repairs to Premises.** Lessee shall not remove or substantially or significantly modify any improvements to the Leased Premises constructed pursuant to this Agreement, or hereafter constructed, without prior written approval of the City. Lessee shall submit for approval by the City its plans and specifications for any such proposed project and comply with any other conditions considered by the Director of Aviation or City to be necessary. Lessee may make internal improvements to the Leased Premises without Director of Aviation or City consent as long as said changes meet the City of Lee's Summit building code requirements.

**Subsection 6.07. Lien Indemnification.** In the event any person or corporation shall attempt to assess against the Leased Premises a Mechanic's Lien arising from or connected with any of the Lessee's uses of or activities upon the Leased Premises, Lessee shall indemnify, defend and hold the City harmless from such claim, including attorneys' fees and litigation expenses.

**Subsection 6.08. Cost of Construction and Alterations.** Within thirty (30) days of completion of the initial construction or any subsequent alterations, Lessee shall present to the City for examination and approval a sworn statement of the construction and/or alteration costs. Construction and/or alteration costs, for the purpose of this Subsection, are defined as all money paid by Lessee for actual site preparation, construction, or alteration, including architectural and engineering costs plus pertinent fees in connection therewith. With this sworn statement, Lessee shall present to the City, for its examination, supporting itemized-documentation of the cost of each item of construction, materials, and design, including all change orders made after City approval of final detailed plans for the construction or alteration. If Lessee makes further improvements or alterations on the Leased Premises, Lessee shall enjoy the use thereof during the term of this Agreement without payment of additional Rental Fees therefor, but such additions, alterations, or improvements shall become the property of the City upon the completion of the term.

**Subsection 6.09. As-Built Drawings.** Within ninety (90) days following completion of the initial construction and any subsequent additions, alterations, or improvements, Lessee shall present to the City two complete sets of "as-built" drawings, including, but not limited to, architectural renderings, specifications, utility locations, and plumbing and electrical plans.

**Subsection 6.10. Mortgage of Leasehold Interest.** Lessee shall have the right to place a first mortgage lien upon its leasehold interest and, in such event, all lease obligations owing to the City shall be binding on the lender, or any assignee of its interest. The terms and conditions of any such mortgage loan shall be subject to the prior written approval of the City, and if the conditions set forth in Subsections A-D below are met, the City will not arbitrarily withhold such approval. Lender's duties and rights are as follows:

- A. Lender shall have the right, in case of default, to assume Lessee's rights and obligations herein, with the further right to assign the Lessee's interest to a third party. However, any assignee proposed by Lender shall be subject to the prior written approval of the City.
- B. As a condition precedent to the exercise of the right granted to Lender by this subsection, the Lender shall notify the City of all actions taken by it if payments on such loans shall become delinquent. Lender shall also notify the City, in writing, of any change in the identity or address of the Lender.



- C. Lender shall have the same rights as Lessee to correct any default of Lessee.
- D. Following any assignment under this subsection, Lessee shall remain responsible to the City for performance of all requirements under this Agreement.

**Subsection 6.11. Ownership of Improvements.** During the term of this Agreement, but excluding any holdover tenancy period, as defined in Subsection 3.03, ownership and title to buildings, fixtures, and improvements constructed by Lessee shall reside in Lessee. Upon completion of the Agreement term, but excluding any holdover tenancy period, or upon the earlier termination of the Agreement, any and all building, fixture, structure, addition, or improvement, excluding personal property as defined in Subsection 13.02, on the Leased Premises shall immediately become the property of the City, as owner, and shall remain the property of the City thereafter with the sole right, title, and interest thereto with the City. However, the City shall have the right to refuse to accept ownership upon written notice to Lessee within five days of the end of any term or holdover period, and if City does not accept ownership, any improvement not accepted by City shall be removed at Lessee's sole expense.

## **SECTION 7. OBLIGATIONS OF LESSEE**

**Subsection 7.01. Net Lease.** Lessee's use and occupancy of the Leased Premises will be without cost or expense to the City. Lessee, at Lessee's sole cost and expense, has the sole responsibility to maintain, repair, and operate the entirety of the Leased Premises and any improvements and facilities constructed thereon.

**Subsection 7.02. Maintenance and Operation.**

- A. At all times, Lessee shall maintain the Leased Premises in a safe, neat, clean and attractive condition and shall not permit the accumulation of any trash, paper, or debris on any Airport property. Lessee shall repair all damages to the Leased Premises caused by its employees, patrons, invitees, trespassers, or its operation thereon; shall maintain and repair all equipment on the Leased Premises, including any buildings and improvements; and shall repaint the buildings as necessary.
- B. Lessee shall be responsible for and perform all maintenance on the Leased Premises, including but not limited to the following items:
  - 1. Janitorial services and supplies; window washing; rubbish and trash removal.
  - 2. Supply and replacement of light bulbs in and on all buildings and obstruction lights; replacement of all glass in buildings, including plate glass.
  - 3. Cleaning of stoppages in plumbing fixtures, drain lines, and septic system to the first manhole outside the Leased Premises.
  - 4. Replacement of floor covering.
  - 5. Maintenance of all building and overhead doors and door operating systems including weather stripping and glass replacement.

6. Building interior, exterior, and structural maintenance, including painting, repairing, and replacement.
7. Repair or replacement of equipment and utilities to include electrical, mechanical, and plumbing in all buildings, including but not limited to air conditioning and heating equipment. All repairs to electrical and mechanical equipment are to be made by licensed personnel. Other repairs are to be made by craftsmen skilled in work done and performing such work regularly as a trade.
8. Lessee is responsible for all snow and ice removal, including deicing, on the Leased Premises and shall do so in a manner that does not interfere with airport operations or cause property damage.
9. Lessee shall perform all maintenance, repairs and replacements (including structural) on Lessee-constructed structures, pavements, walkways, sidewalks, driveways, and equipment and on utilities to the main supply source or the first manhole outside the Leased Premises.
10. Lessee shall advise the City and obtain the City's consent in writing before making changes involving structural changes to building or premises, or modifications or additions to plumbing, electrical, or other utilities. Any penetration of the roof shall be considered a structural change.
11. Lessee shall maintain electric loads within the designed capacity of the system. Prior to any change that would exceed such capacity, Lessee shall obtain written consent from the City.
12. Lessee shall maintain and re-lamp all lights in and on the building and on the Leased Premises.
13. Lessee shall provide and maintain hand fire-extinguishers on the Leased Premises according to applicable safety-codes.
14. Lessee shall maintain and replace all landscaping and grounds as originally approved and installed, and will not allow the removal of trees without the written permission of the Airport Manager.
15. Lessee shall comply with all applicable federal, state, and local architectural standards and building codes, as may now, or hereafter, be in effect or enacted and further shall comply with any such requirements as may be imposed by any such authorities as a requirement or prerequisite for the City to obtain funding. Lessee also shall comply with all codes, regulations, laws, and architectural standards relating to access to or use of the leased premises by persons with physical disabilities, including but not limited to the requirements of the Federal Americans with Disabilities Act, and any such state or local laws or ordinances.
16. Lessee shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and those rules and policies of the City, as may now, or hereafter, be in

effect or enacted, in its handling, use, storage, transportation, and disposal of any materials or substances deemed under any such authority to be dangerous or hazardous substances or wastes, or to otherwise constitute a threat of harm to the environment (including but not limited to all fuel, lubricants, and other petroleum products). Lessee shall comply with and conform its activities in all respects to any applicable requirements of any such entities with respect to the protection of the environment.

- C. Subject to Subsection 16.13 of this Agreement, the City, in the City's sole discretion, shall be the sole judge of the quality of maintenance; and upon written notice by the City to Lessee, Lessee shall perform whatever maintenance the Director deems necessary. If said maintenance is not undertaken by Lessee within thirty (30) days after receipt of written notice, the City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee. No waste shall be committed or damage done to the property of the City.

**Subsection 7.03. Utilities.** Lessee's connection to and use of any and all storm and sanitary sewers and water, electricity, gas, telephone, and other utilities shall be at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor.

**Subsection 7.04. Trash, Garbage, Etc.** Lessee shall pick up, and provide for, a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse. No contract trash service vehicles will be allowed inside the Airport Operations Area (AOA). Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted.

**Subsection 7.05. Signs.** Lessee shall not erect, maintain, or display upon the outside of any improvements on the Leased Premises any billboards or advertising signs. However, Lessee may maintain, on the outside of said buildings, its name(s) on signs, the size, location, and design of which shall be subject to prior written approval by Director of Aviation.

**Subsection 7.06. Discrimination.** Lessee agrees in the performance of this Agreement not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Lessee or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and

requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**Subsection 7.07. Observance of Statutes.** Lessee's use of Airport facilities will be in common with others. Lessee shall observe and comply with all current and future Federal, State, and Local (including City) statutes, ordinances, regulations, rules, requirements, and standards (herein "Standards") applicable to Lessee for use of Leased Premises, including but not limited to rules and regulations promulgated from time to time by Airport Manager which will be provided to Lessee in writing. Lessee shall defend, reimburse, indemnify, and hold harmless City, including costs of defense, from any claims, demands, fines, judgments, penalties, or liability which may accrue to it because of any actual or alleged violation or noncompliance with any such Standard by Lessee or Lessee's activities.

**Subsection 7.08. Hazard Lights.** Lessee shall, at its expense, provide and maintain hazard lights on any structure erected by Lessee on the Leased Premises, if required by City, State or Federal Aviation Administration (FAA) regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

**Subsection 7.09. Airport Security.** Lessee recognizes City's required compliance with Federal Aviation Regulations and Transportation Security Regulations concerning airport security and agrees to comply with City and Airport Manager current and future directives concerning airport security.

**Subsection 7.10. Nonpublic Self-Fueling.** Lessee is prohibited from selling or dispensing aircraft fuels to any other airport users, including locally based and transient aircraft. Any violation by Lessee of this subsection shall constitute a material breach of, and cause for termination of, this Agreement in accordance with Section 12. If at any time the City changes its fueling policy to permit airport tenants to sell or dispense aircraft fuels to other airport users, such dispensing of fuels would require a separate agreement with City.

**Subsection 7.11. Minimum Fuel Purchase Program.** Each based aircraft are subject to the Airport's minimum annual purchase of 50 gallons per fiscal year (July 1 – June 30). A fee of \$500.00 will be assessed to each aircraft based in the hangar which does not meet the minimum amount in this twelve month period.

**Subsection 7.12. Based Customer Discount.** Aircraft permanently stored in Hangar V are eligible for the Based Customer Discount program. This program covers both self-service and full service.

## **SECTION 8. OBLIGATIONS OF THE CITY**

**Subsection 8.01. 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, the City shall operate and maintain the Airport as a public Airport consistent with and pursuant to the Sponsor's Assurances given by the City to the United States Government under the Federal Aviation Act.

**Subsection 8.02. Ingress and Egress.** Upon paying the rent and performing the covenants of this Agreement, Lessee shall have ingress to and egress from the Leased Premises for the Lessee, –and its sublessees, and each of their respective officers, employees, agents, servants, customers, vendors, suppliers, patrons, and invitees over the roadway serving the area of the Leased Premises. Airport

roadways shall be used jointly with other tenants on the Airport, and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such restrictions as the City deems necessary.

## SECTION 9. THE CITY'S RESERVATIONS

### Subsection 9.01. Improvement, Relocation, or Removal of Structures.

- A. 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 the right to remove or relocate any structure on the Airport, as it sees fit. The City's taking of Lessee's improvements on the Leased Premises is controlled by Subsection 9.01.B. In addition, the City, at its sole discretion, reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting, or permitting to be erected, any buildings or other structures on the Airport which, in the opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- B. In the event the City requires the Leased Premises for expansion, improvements, or other development of the Airport, the City reserves the right, upon one-hundred eighty (180) days' prior written notice, to terminate this Agreement, in which case the City will compensate Lessee for its remaining interest under this Agreement in the leased premises and improvements thereon by paying Lessee a proportionate share of the total cost of construction, as limited herein, in the same ratio as said proportionate share is to the total cost of construction as the number of years remaining in the then current term is to the total number of years of the term. Said allowable construction costs shall include the cost items defined in Subsection 6.08 comprising the total cost of the initial design and construction of the improvements in accordance with the final detailed plans approved by the City under Subsection 6.03 hereinabove. Said allowable costs shall not include any increases in costs due to any changes in construction or design of the improvements made by the Lessee after the City's detailed plan approval, unless specifically agreed to be included in writing by the City prior to the time of the change, although changes resulting in decreases in the total cost shall be included. Said allowable costs shall also not include the cost of any improvements or alterations to the premises made by the Lessee after the commencement of this Agreement term, unless otherwise agreed to by the City in writing. Payment shall be made according to the formula set out below:

Compensation due = (remainder of term left ÷ [insert total initial term + all available renewal terms]) x fair-market value.

The parties understand and agree that said payment shall be considered compensation in full to Lessee for any and all of its actual or potential claims, losses, or damages arising out of, resulting from, or related to the City's termination of this Agreement under this Subsection and upon receipt of the payment Lessee releases and forever discharges the City from any and all claims, liabilities, damages, including loss of business, it has or may have arising out of, resulting from, or related to the City's termination of this Agreement. Upon such termination and delivery of the payment described in this Section, the City has no obligation to relocate or replace Lessee's improvements at any other location on Airport premises, or to offer Lessee another site for relocation.

- C. The City reserves the right to further develop, improve, repair, alter, remove from, and add to the airport, including but not limited to all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability, including but not limited to negligence, to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned during the making of or by such activities. During such improvements, repairs, alterations, and additions, the City shall endeavor to provide reasonable ingress and egress for aircraft, personnel, employees, agents, customers, vendors, suppliers, patrons, and invitees.

**Subsection 9.02. 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 and maintenance, and to investigate compliance with the terms of this Agreement.

**Subsection 9.03. Subordination to U.S. Government.** This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States, the terms and execution of which have been or may be required as a condition precedent to the expenditure of, or reimbursement to the City from, Federal funds.

**Subsection 9.04. War or National Emergency.** During time of war or national emergency, City shall have the right to lease the Airport or any part thereof to the United States Government. If any such lease is executed, any provisions of this Agreement that are inconsistent with the provisions of the lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

## SECTION 10. INDEMNITY AND INSURANCE

### Subsection 10.01. Indemnification.

- A. To the fullest extent permitted by law, Lessee shall defend, indemnify, and save harmless the City, and its respective duly elected or appointed officials, agents, and employees (all referred to collectively as "City") from and against all demands, claims, damages (including, but not limited to, death), liabilities, losses, costs, fines, penalties, judgments, and expenses (including but not limited to, reasonable attorney fees) (all referred to collectively as "demands") arising out of, incident to, or resulting from acts, errors, or omissions of Lessee or any person directly or indirectly employed or contracted by Lessee; or a defect of a product or design supplied by Lessee; or an act, error, or omission of any person for whom Lessee may be liable; or use or occupancy of the Leased Premises; or this Agreement. This duty also shall extend to claims of damages to the environment caused by Lessee, including, but not limited to, the investigation, field study, and clean-up costs assessed by any federal, state, or local agency against the City, as well as any civil fine or penalty.
- B. In no event shall City be liable to Lessee for special, indirect, consequential, or any other damages, except those direct damages caused by City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract.
- C. Lessee assumes full responsibility for its contractors and shall defend, indemnify, and save harmless City from all claims and demands made against City by any such contractor, any agent

or employee of such contractor, or any other person as the result of any of its contractor's act, error, or omission that arises out of, results from, or is connected with the performance of this Agreement and is not otherwise subject to indemnification under subparagraph "A" above.

- D. Lessee shall defend, indemnify, and hold harmless City from any and all demands relating to wages, overtime compensation, or other employee benefits for work performed in connection with this Agreement, or required by state or federal law, including but not limited to Fair Labor Standards Act and Missouri Prevailing Wage Law.
- E. The indemnification obligations of Lessee shall not be limited in any way by any limitation on the amount or type of damages, compensations, or benefits payable by or for Lessee under any federal or state law. The indemnification obligations of Lessee herein shall not negate, abridge, or reduce in any way any additional indemnification rights of City and its elected or appointed officials, agents, and employees, which rights are otherwise available under statute or in law or equity.
- F. The provisions of this section shall survive the expiration or early termination of this Agreement. In addition, the City shall give Lessee reasonable notice of any such claims or actions listed in this Subsection.

**Subsection 10.02 Insurance.** Lessee shall, at its expense, procure and keep in force at all times during the term of this Agreement, and during the construction of any improvements upon the Leased Premises, the insurance coverages listed below from a financially sound and reputable company that has an A.M. Best Company rating of at least an "A" rating, or similar rating by another insurance rating company, and is authorized to conduct business in the State of Missouri. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- A. **Public Liability Insurance.** Lessee shall maintain "occurrence" form Public Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 03 97 and CG 20 37 07 04, or their equivalents.
- B. **Aircraft Liability Insurance.** Shall carry and keep in force, for the duration of this Agreement, Aircraft Liability Insurance on an "occurrence" basis, and such policy shall include property damage and bodily injury with unimpaired limits of no less than \$5,000,000 per occurrence and \$500,000 per passenger seat for applicable claims. The policy shall include coverage on all aircraft owned, non-owned, leased, and/or operated by Lessee.
- C. **Hanger keepers Liability.** If the Lessee subleases all or any part of its hangar space to others for the storage of aircraft not owned or leased by Lessee, the Lessee shall carry and keep in force

for the duration of this Agreement Hanger keeper's Liability insurance coverage of not less than \$1,000,000 per aircraft and not less than \$3,000,000 per occurrence. shall obtain and keep in force at all such times appropriate hangar keepers liability coverage, in a minimum amount of not less than \$500,000 per person and \$3,000,000 per occurrence with the City and the City of Lee's Summit as additional insured parties.

- D. Airport Liability Insurance. Without limiting its liability, Lessee shall carry and keep in force, for the duration of this Agreement, Airport Liability Insurance on an "occurrence" basis, and such policy shall include and cover premises liability with a minimum of \$3,000,000 per occurrence, \$3,000,000 products and completed operations annual aggregate and a \$3,000,000 general aggregate limit \$3,000,000.
- E. Automobile Liability. If Lessee drives any automobile at the Airport, other than on roads and automobile parking areas at the Airport, including but not limited to if Lessee parks an automobile on the Leased Premises when permitted by this Agreement, Lessee shall carry and maintain business automobile liability insurance coverage for claims and damage due to bodily injury or death of any person or property damage arising out of Lessee's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than \$3,000,000 single combined limit "per accident" for bodily injury and property damage. Such policy and shall name and endorse the City as an additional insured, and contain, or be endorsed to contain, a waiver of subrogation against the City.
- F. Property Insurance. Lessee shall maintain insurance on all real property being leased, including improvements and betterments, in at least an amount equal to the outstanding balance of the mortgage or fair-market value of such property, whichever is greater, and shall name the City as a loss payee, except as provided in Section 10.03. Such policy shall cover against loss and damage by fire, tornado, wind, earthquake, natural disaster, or aircraft and extended coverage perils. The policy must be written on an "all risks" basis, excluding earthquake and flood. The policy shall cover not less than ninety percent (90%) of the actual cash value of the personal property, and Lessee shall name and endorse the City as an additional insured.
- G. Interruption of Business Insurance. Lessee shall, at its sole cost and expense, maintain business interruption insurance by which the minimum monthly rent will be paid to the City for a period of up to one (1) year if the Leased Premises is destroyed or rendered inaccessible by a risk insured against by a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements.
- H. Automatic Escalator. The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence. If the City's current limitations upon tort liability are abolished entirely, the City may require the Lessee to provide such coverage to protect the City and the City of Lee's Summit's interests as may be reasonable and prudent for the risks associated with the activities allowed under this Agreement.



- I. Miscellaneous. Lessee recognizes that the required amounts of coverage set forth above are the minimum limits, and may not reflect the Lessee's actual risk. Lessee 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.
- J. Endorsements and Primary Coverage. All policies required herein shall, or be endorsed to provide such status, be primary, non-contributory and shall be endorsed to name the City, its agents, representatives, officials, officers and employees as an **additional insured and waive of subrogation** against the City, its agents, representatives, officials, officers and employees.

**Subsection 10.03. Application of Insurance Proceeds.** If the fixed improvements placed upon the Leased Premises are totally destroyed or extensively damaged and if Lessee elects not to restore the same to their previous condition, the proceeds of insurance payable by reason of such loss shall be apportioned between the City and Lessee, with the City receiving the same proportion of such proceeds as the then expired portion of the Agreement term bears to the full Agreement term, and Lessee receiving the balance. The Agreement shall then be canceled. If the damage results from an insurable cause and the Lessee shall elect to restore the same with reasonable promptness, it shall be entitled to receive and apply the entire proceeds of any insurance covering such loss to said restoration, in which event this Agreement shall continue in full force and effect, with no abatement in any payments due hereunder. However, if the improvements are damaged in such manner as to render them wholly or partially unusable for over one hundred twenty (120) days, the rent provided to be paid under the terms of this Agreement shall be abated or reduced proportionately during the period from a date starting one hundred twenty (120) days after the date of such damage or destruction until the work of repairing, restoring, or reconstructing the improvements is completed; provided that the period of abated or reduced rent shall not exceed more than one year (365) days.

**Subsection 10.04. Performance and Payment Bonds.**

- A. Prior to the date of commencement of construction, Lessee shall, at its own cost and expense, cause to be made, executed, and delivered to the City, prior to the date of commencement of construction, a performance bond with Lessee's contractor or contractors as principal and in a sum equal to the full amount of the construction contract awarded. Said bond shall be drawn in a form and from such company as approved by City, and shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall indemnify, defend and hold harmless the City against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to perform completely, the work described herein provided.
- B. Prior to the date of commencement of construction, Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to the City a payment bond with Lessee's contractor or contractors as principal and in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract. Said bond shall expire no sooner than ninety (90) days from the completion of the construction or on the date when Lessee has paid all wages for labor and services engaged and all bills for materials, supplies, and equipment used in the performance of said construction contract, whichever is later.

- C. In addition, at any time that Lessee undertakes construction of any additional facilities, Lessee shall, at its own cost and expense, cause to be made, executed, and delivered to the City, prior to the date of commencement of construction, a payment bond with Lessee's contractor or contractors as principal and in a sum equal to the full amount of the construction contract awarded. Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

## **SECTION 11. TERMINATION OF LEASE BY LESSEE**

**Subsection 11.01. Termination.** This Agreement shall terminate at the end of the Initial Term, or optional Renewal Term(s) if exercised, and Lessee shall have no further right or interest thereafter in any of the ground improvements, except as provided in Subsection 3.03.

**Subsection 11.02. Termination by Lessee.** Lessee, in addition to any other rights it has under the law, may terminate this Agreement and terminate its obligations hereunder at any time that Lessee is not in default in the payment of rent to the City hereunder by giving the City sixty (60) days advance written notice to be served as hereinafter provided, and by surrender of the Leased Premises and its improvements, 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 Lessee's use of the system at the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days; provided, however, that such injunction is not due to Lessee'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 ninety (90) days after receipt of Lessee's written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Lessee's notice of termination. For City's said default, unless otherwise limited, compensation allowed to Lessee for Lessee's improvements on the Leased Premises shall be the amount as determined by the formula in Subsection 9.01. Upon payment of said amount, title to all improvements vests in City.
- 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 to substantially restrict Lessee from full use of the Leased Premises for a period of at least ninety (90) days, and in that event, a just and proportionate part of the Rental Fees hereunder shall be abated.

## **SECTION 12. TERMINATION OF LEASE BY THE CITY**

**Subsection 12.01. Termination by 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, subject to and in the manner provided in Subsection 12.02 hereof, and subject to the rights of the Lender contained in Subsection 6.10 herein to assume the rights and obligations of the Lessee, 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.

- A. The failure to pay all installments of rent then due (with interest) within thirty (30) days after said rent is due, and the failure of Lessee to remedy said failure to pay within fifteen (15) days after receipt of written notice of said failure to pay.
- B. The filing by Lessee of a voluntary petition in bankruptcy or the making of any assignment of the majority of Lessee's assets for benefit of creditors.
- C. The adjudication of Lessee as a bankrupt pursuant to any involuntary bankruptcy proceedings.
- D. The exercise of jurisdiction by a court of competent jurisdiction of Lessee or its assets pursuant to proceedings brought under any Federal reorganization act.
- E. The appointment of a receiver or a trustee of Lessee's assets by a court of competent jurisdiction or a voluntary agreement with Lessee's creditors.
- F. The abandonment of the Leased Premises.
- G. The failure to promptly and diligently replace any improvements that have been destroyed by fire, explosion, wind, flood, or similar condition, within a reasonable period after the date of such destruction.
- H. The breach of any one of the covenants contained in Subsection 7.10 and Lessee's failure to remedy said breach promptly upon receipt of written notice of such breach.
- I. The failure of Lessee to begin construction of the proposed facilities on the Leased Premises by [INSERT DATE].
- J. The breach by Lessee of any of the other covenants or agreements herein contained, and the failure of Lessee to remedy such breach within thirty (30) days after receipt of written notice of such breach from the City.

**Subsection 12.02. Waiver of Statutory Notice to Quit.** In the event the City exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in this Section, the City shall send Lessee a written notice of termination and this Agreement shall be terminated as of on the date of the notice of termination. Upon City's issuance of the notice of termination, Lessee shall surrender, forthwith, possession of the Leased Premises to City. At least thirty (30) days prior to City's issuance of the notice of termination, City shall send Lessee written notice of its intent to issue a notice of termination; except, however, termination for any of the events described in Subsections 12.01A and 12.01H shall not require such prior notice of intent but the City may terminate, immediately, this Agreement upon the occurrence of any of those events.

**Subsection 12.03. Possession by City.**

- A. If any of the events set forth in Subsection 12.01 occur and the City gives Lessee a notice to terminate as set forth in Subsection 12.02, the City may take immediate possession of the Leased Premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty

of trespassing. Upon said default, all rights of Lessee shall be forfeited. However, the City shall have and reserve all of its available remedies at law as a result of said breach of this Agreement. Lender shall exercise its right to assume the rights and obligations of Lessee within ninety (90) days of receipt of the cancellation notice or, if prohibited from assumption by an order of a court of law, within ninety (90) days of receipt of an order allowing such assumption.

- B. Failure of the City to declare this Agreement terminated upon default of Lessee for any of the events set forth in Subsection 12.01 shall not operate to bar, destroy, or waive the right of the City to terminate this Agreement by reason of any subsequent violation of the terms hereof.
- C. In the event this Agreement is terminated, or the premises abandoned, and whether or not the premises can be subsequently leased, the entire amount of rent which would be paid to the expiration date of this Agreement shall become due and payable. In the event of such termination or abandonment, the City shall be obligated to use its best efforts to mitigate any damages it may have against Lessee. If the premises are re-let by the City, the City shall be entitled to recover from Lessee, and Lessee shall pay to the City, in addition to any other damages becoming due hereunder, an amount equal to the amount of all rents and additional rent reserved under this Agreement, less the net rent, if any, collected by the City on re-letting the demised premises, which shall be due and payable by Lessee to the City on the several days on which the rent and additional rent reserved in this Agreement would have become due and payable; that is to say, upon each of such days Lessee shall pay to the City the amount of deficiency then existing. Such net rent collected on re-letting by the City shall be computed by deducting, from the gross rents collected, all reasonable expenses incurred by the City in connection with the re-letting of the premises or any part thereof, including court costs, attorney fees, and litigation expenses incurred in connection with the termination of Lessee's tenancy, enforcement of this Agreement, and the repossession of the premises, brokers' commission, and the cost of repairing, renovating, or remodeling said premises.
- D. The obligation of the City to use its best efforts to mitigate any damages it may have against Lessee shall not preclude the City's right to obtain by judicial process a judgment for the entire amount of rent which would be paid to the expiration date of this Agreement, plus court costs and attorney fees incurred. If the City obtains a judgment in such manner, the City shall use its best efforts to mitigate, in accordance with the provisions of this paragraph, any damages it may have incurred.

**Subsection 12.04. Destruction of Premises - Termination.** In the event of damage to or destruction or loss of the improvements to the Leased Premises by an insured or uninsured risk, Lessee shall exercise reasonable due diligence to repair, restore, replace and rebuild said improvements as nearly as possible to conditions existing immediately prior to such damage or destruction. However, if the City and Lessee mutually agree not to restore the improvements in the event of total destruction or extensive damage, the provisions of Subsection 10.04 shall apply.

### **SECTION 13. RIGHTS UPON TERMINATION**

**Subsection 13.01. Fixed Improvements.** The intent of this Agreement is that the real estate is, and remains, the property of the City during the entire term of this Agreement and thereafter. However, title to the leasehold improvements constructed by Lessee, and any alterations thereto, shall vest in Lessee during the life of this Agreement. Upon expiration or termination of this Agreement, title to the

leasehold improvements shall automatically transfer to and vest in the City. However, the City shall have the right to refuse to accept ownership upon written notice to Lessee within five days of the end of any term or holdover period, and if City does not accept ownership, any improvement not accepted by City shall be removed at Lessee's sole expense.

**Subsection 13.02. Personal Property.** Within thirty (30) days of the termination of this Agreement, Lessee shall remove all personal property from the Leased Premises and restore the Leased Premises to its original condition, ordinary wear and tear except, with the fixtures, buildings, and fixed improvements to be left in place. If Lessee fails to remove said personal property, said property may be removed by the City at Lessee's expense and disposed of as the City sees fit.

#### **SECTION 14. ASSIGNMENT, SUBLETTING, AND SALE OF IMPROVEMENTS**

**Subsection 14.01. Successors and Assignment.** Lessee 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, Lessee shall remain liable to the City for the remainder of the term of the Agreement to pay to the City any portion of the rental and 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 Lessee herein, and any assignment by the Lessee shall contain a clause to this effect. The City shall not unreasonably withhold its consent to any assignment, transfer or delegation by the Lessee of its privileges and obligations under this Agreement to any successor, parent organization, wholly owned subsidiary or affiliate of the Lessee.

**Subsection 14.02. Subletting.** Lessee may sub-lease all or a portion of the Leased Premises to other persons or firms only for the storage of aircraft; however, neither the Lessee nor any sublessee may perform services, engage in any aviation-related commercial activity upon the Leased Premises, or rent or sublease the Leased Premises or portions thereof for any aviation-related commercial purposes prohibited by Subsections 2.02 or 6.02. Lessee shall be responsible to the City for the compliance by said sub-lessees with the terms of this Agreement, and with all Federal, State, and local (including City) laws, ordinances, rules, policies, and regulations. Such sub-leasing shall not relieve Lessee of any of its obligations herein.

**Subsection 14.03. Right of First Refusal.** If the Lessee chooses to sell any or all improvements on leased premises, the City shall have right of first refusal for purchase of said improvements at the same terms and conditions as offered to any proposed buyer. Following notification of such intent, the City shall have ninety (90) days to accept or reject the offer. If the offer is not accepted within this period, the Lessee may offer the improvements, and assignment, if desired, as indicated in Subsection 14.01 above, upon the same terms and conditions as those offered to the City. However, the Lessee agrees that for ninety (90) days after receipt of written rejection by the City, the Lessee will not enter into an agreement with any other private party containing terms and conditions differing from those last submitted to the City. The City retains the right of first refusal if the Lessee changes the terms and conditions under which the improvements are offered for sale.

#### **SECTION 15. QUIET ENJOYMENT**

The City covenants that upon payment of all Rental Fees and other fees and the performance of all the covenants, agreements, and conditions this Agreement requires of Lessee, Lessee shall and may,

peaceably and quietly, have, hold, and enjoy the Leased Premises for the term aforesaid, free from molestation, eviction, or disturbance by the City. However, the City reserves the right to inspect the premises during business hours and during daylight hours on weekend days to determine if Lessee is in compliance with said lease terms.

## **SECTION 16. GENERAL PROVISIONS**

**Subsection 16.01. Non-Interference With Operation of Airport.** Lessee, by accepting this Agreement, expressly agrees for itself, and its successors and assigns, that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking-off of aircraft at Airport or which otherwise might constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the premises and cause the abatement of such interference at the expense of Lessee.

**Subsection 16.02. Airport Maintenance and Repair.** City shall have the right to direct and control all activities of the Lessee in regards to the City's maintenance and repair of the Airport landing areas, taxiways, aircraft ramps, and any other Airport facility.

**Subsection 16.03. Taxes.** Lessee shall pay all leasehold interest, personal property, and all other taxes assessed against Lessee or upon Lessee's activities thereupon.

**Subsection 16.04. Right to Contest.** Lessee shall have the right to contest the validity or amount of any tax assessment, charge, lien, or claim in respect to the Leased Premises. Lessee shall, if the City requires the same in writing and if the taxes or other taxing-authority assessments have not been paid under protest or otherwise escrowed or provided for, furnish reasonable security for the payment of all liability, costs, and expenses at the end of the litigation, and, so long as the matter shall remain undetermined by final judgment, Lessee shall not be considered in default hereunder by the nonpayment thereof; provided, however, that Lessee shall not, under these provisions, permit the Premises, or any buildings or improvements situated thereon, to be sold or forfeited, and failure by Lessee to do what is necessary to prevent any such sale or forfeiture within ten (10) days from the publication or receipt of notice for sale or forfeiture, shall be deemed to be a default hereunder, and City, at its option, may pay any such sum as may be required to avoid the sale or forfeiture and seek reimbursement for its cost from Lessee.

**Subsection 16.05. License Fees and Permits.** Lessee 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 16.06. Non Exclusive Rights.** Nothing contained herein shall be construed as granting or authorizing the granting to Lessee or others exclusive rights, as defined in Section 308 of the Federal Aviation Act of 1958, as amended.

**Subsection 16.07. Headings.** The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision of this Agreement.

**Subsection 16.08. Applicable Law; Venue.** This Agreement shall be interpreted in accordance with, and governed by, the laws of the State of Missouri. Should any part of this Agreement be adjudicated,

jurisdiction and venue shall be at the Independence courthouse in the Circuit Court of Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

**Subsection 16.09. 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 16.10. Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, 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 16.11. 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 16.12. No Partnership.** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The City does not have the authority to supervise or control the actual work of Lessee, its employees or contractors.

**Subsection 16.13. Duty to be Reasonable.** Wherever in this Agreement, the City or the Director of Aviation is to give consent, approval, or otherwise exercise discretion, such consent, approval, or discretion shall not be exercised or withheld unreasonably.

**Subsection 16.14. Airport Manager.** The City Manager shall be considered the agent and representative of the City with respect to all notices, approvals, and matters contained herein; the Manager's authority to act for and on behalf of the City in connection with all matters occurring under this Agreement shall not be questioned by Lessee.

**Subsection 16.15. Non-Liability of Individuals.** No director, officer, agent, or employee of either party 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 or the execution or attempted execution of this Agreement. This Subsection shall have no application to any independent guaranty or other written assumption of Lessee's obligations that the City may obtain relative to this Agreement. This Subsection shall not apply to Lessee if Lessee is an entity other than a corporation in good standing and authorized to conduct business in the State of Missouri.

**Subsection 16.16. Notices.** Whenever any notice, consent, approval, or payment is required by this Agreement to be made, given, or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, first class, or by any private delivery service, addressed to:

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

R. Tyler Sallee  
Member  
Sallee Real Estate Investments, LLC  
PO Box 6437  
1951 NE Rice Road  
Lee's Summit, MO 64064

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

**Subsection 16.17. Required Federal Clauses.** This Agreement is subject to, and Lessee must comply with, the required Federal clauses attached hereto as Exhibit B, which is incorporated into this Agreement by reference.

**Remainder of page intentionally left blank.**



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above mentioned.

**CITY OF LEE'S SUMMIT**

\_\_\_\_\_  
Stephen A. Arbo, City Manager

**ATTEST**

\_\_\_\_\_  
Trisha Fowler Arcuri, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney's Office

**LESSEE**



Sallee Real Estate Investments, LLC

~~REAL ESTATE INVESTMENTS LLC~~

R. Tyler Sallee

Member



## EXHIBIT A

### Legal Description of the Leased Premises

Containing 36,419 square feet more or less.

All that part of the Northeast Quarter of Section 19, Township 48 North, Range 31 West being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 19; thence North  $87^{\circ}20'30''$  West along the North line thereof a distance of 1219.07 feet; thence South  $02^{\circ}39'30''$  West a distance of 594.87 feet to the POINT OF BEGINNING; thence South  $86^{\circ}40'29''$  East a distance of 175.79 feet; thence South  $03^{\circ}18'15''$  West a distance of 207.18 feet; thence North  $86^{\circ}40'29''$  West a distance of 175.79 feet; thence North  $03^{\circ}18'15''$  East a distance of 207.18 feet to the POINT OF BEGINNING.

**REQUIRED FEDERAL CLAUSES  
Leases for Aviation Activities  
(Federal Aviation Administration  
Policy and Procedures Memorandum – Airports Division  
No. 5190.6B dated September 2009)**

1. The Lessee for itself, and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does 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 other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)

2. The Lessee for itself, and its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree 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, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, 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; and (3) that the lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)

3. The Lessee agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and no unjustly discriminatory prices for each unit or service, PROVIDED, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

4. The Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid Solicitation period through the completion of the contract. (ANA of 1982, Section 520 - AC 150/5100-15A)

5. The Lessee agrees that it will practice nondiscrimination in its activities and will provide DBE participation in its leases as required by the sponsor, in order to meet the sponsor's goals, or required

## EXHIBIT B

by the FAA in order to obtain an exemption from the prohibition against Long-term exclusive leases. (49 CFR Part 23 - AC 150/5100-15A)

6. The Lessee agrees that it shall insert the above five provisions in any agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased or owned.

7. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Federal Aviation Act of 1958 Section 308(a) - AC 150/5100-16A)

8. The City reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance. (FAA Order 5190.6B - AGL-600)

9. The City reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard. (FAA Order 5190.5A - AGL-600)

10. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between the City and the United States, relative to the development, operation, or maintenance of the airport. (FAA Order 5190.6B - AGL-600)

11. The Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the (leased) premises. (FAA Order 5190.6B - AGL-600)

12. It is clearly understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. (Assurance 22 - FAA Order 5190.6B - AGL-600)