

## LAND LEASE AGREEMENT

THIS GROUND LEASE (the "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Lee's Summit, Missouri, hereinafter called "City", and BFRE, LLC, a Missouri limited liability company, currently residing at 401 NE Colbern Road, Lee's Summit, MO 64086, hereinafter called "Lessee".

### WITNESSETH

WHEREAS, the City owns certain property described in Exhibit 'A', and the Lessee desires to lease the undeveloped land located on said property upon the terms and conditions hereinafter stated, and the City is willing, upon the terms and conditions stated herein, to lease said property to the Lessee for the limited purposes recited below.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, City leases to Lessee and Lessee leases from City the following described Leased Premises, and all described rights incident thereto, subject to the following:

### SECTION 1. LEASED PREMISES

Subsection 1.01. Description of Leased Premises. The real estate upon which the Leased Premises (the "Real Estate") is located consists of one tract and is more particularly described in the attached Exhibit 'A' attached hereto and incorporated by reference as if fully set forth herein. The Leased Premises consists of the undeveloped land located on the Real Estate.

### SECTION 2. OBJECTIVES AND PURPOSE OF LEASE

Subsection 2.01. Use of Leased Premises. Lessee shall use the Leased Premises only for the development of a paved automotive parking lot for the Honda Dealership purposes related to the parking, storage and sale of automobiles, trucks and other motor vehicles sold, rented, or leased by Lessee, and for employee parking by Lessee to the extent allowed by the terms of the Special Use Permit #PL2015-197.

Subsection 2.02. Prohibited Uses. The following activities are expressly prohibited:

- A. Lessee will not use erect or permit to be erected on the Leased Premises any structure or building which impacts flight operations to Runway 18/36.
- B. Lessee will not make any alterations or improvements to the Leased Premises without the approval of the City of Lee's Summit.
- C. Lessee will not cut trees without the permission of the City.
- D. Lessee will only house automobiles, trucks and other motor vehicles sold by Lessee under the control of the Lessee on paved surfaces.

### SECTION 3. CITY'S REPRESENTATIONS AND WARRANTIES

Subsection 3.01. Title and Authority. The City represents and warrants that it has good and merchantable fee simple title to the Leased Premises and good authority to enter into this Agreement.

Subsection 3.02. 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 any particular use.

### SECTION 4. LESSEE'S CONSTRUCTION REQUIREMENTS

Subsection 4.01. Requirement for Improvements on Leased Premises. Lessee shall, at its sole expense, construct on the leased premises, as provided in this Section, those Lessee improvements necessary to complete "Lessee's Work" in accordance with the Plans attached hereto as Exhibit B ("Lessee's Plans") attached hereto and incorporated by reference as if fully set forth herein, and as approved by the City in Special Use Permit Application # PL2015-197. Lessee's Plans have been approved by both the City and Lessee. Except for Lessee's Work to be constructed in accordance with Lessee's Plans, no building, structure, roadway, utility 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 4.02. Construction Dates. Construction of improvements shall begin as soon as possible after the communication by the City to the Lessee of a notice to proceed with said construction. This notice to proceed with the commencement of construction shall be delivered following the City's approval of final detailed plans, as described in the following Subsection 4.03, and the readiness of the leased premises for the commencement of the project. The project shall be completed within three hundred sixty (360) days from the date of the issuance of the City's notice to proceed. Site Grading shall be completed within twelve (12) months of issuance of the special use permit associated with Exhibit B. In the event a notice to proceed is not issued by the City within one hundred twenty (120) days from the date of the execution 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 contract terminated, without fault, liability, or further obligation to either party.

In the event that construction of the improvements is not substantially completed within said three hundred sixty-day (360) period due to causes or conditions beyond the control of Lessee (hereinafter referred to as "Force Majeure"), as, by way of example but not limitation, strikes, acts of God, inability to obtain governmental permits or licenses or labor or materials, governmental restriction, enemy action, civil commotion, fire or other casualty, or failure of the

City to carry out its obligations, then the period for completion of construction shall be extended by the number of days of delay resulting from the Force Majeure.

Subsection 4.03. Approval of Plans. The parties hereto agree that so long as Lessee's Work conforms to Lessee's Plans, then said Lessee's Work is deemed approved, however shall still comply with all applicable federal, state, and local laws, regulations and ordinances. If there is a deviation to Lessee's Plans, then Lessee must obtain the City's consent to any such deviation. 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, rules or codes regarding any building, safety or environmental matters related to the construction.

Lessee agrees to submit to the Federal Aviation Administration ("FAA"), 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. In the event Lessee fails to obtain FAA approval, then Lessee shall have the right to terminate this Lease.

Subsection 4.04. Extension of Utilities or Special Facilities. Lessee shall construct, at its expense, all necessary utility lines for the leased premises. The City shall allow the Lessee access across City property, if necessary, to connect to the existing utilities at their nearest suitable locations to the leased premises. Lessee shall construct for the leased premises, at its expense, connecting roadways and taxiways to the existing roadway and taxiway system.

Subsection 4.05. Construction of Additional Facilities. Lessee may construct additional buildings or facilities on the leased premises with the prior written approval of the City, which may be given or withheld at its 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 4.03 of this Section.

Subsection 4.06. Alterations or Repairs to Premises. Lessee shall not remove or modify any of the buildings or improvements leased hereunder 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 City to be necessary. Lessee may make internal improvements to the leased premises without City consent as long as said changes meet the City of Lee's Summit building code requirements, including any requirement to obtain permits.

Subsection 4.07. Lien Indemnification. In the event any person or corporation shall attempt to assess a Mechanic's Lien against the leased premises arising from or connected with any of the Lessee's uses of or activities upon the leased premises, Lessee shall indemnify and hold the City harmless from such claim, including the cost of defense.

Subsection 4.08. Cost of Construction and Alterations. Within thirty (30) days of completion of the initial construction or any subsequent alterations, Lessee shall present to City for examination and approval a statement of the construction and/or alteration costs. Construction and/or alteration costs for the purpose of this Subsection, are hereby 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 the presentation to the City of the statement of construction and/or alteration cost referenced above, the Lessee shall also present to the City for its examination supporting itemized documentation of the cost of each item of construction, materials, and/or design, including all change orders made after City approval of final detailed plans for the construction or alteration.

In the event that Lessee makes further improvements or alterations on the leased premises, the use thereof shall be enjoyed by Lessee during the term hereof without payment of additional rental therefore, but such additions, alterations or improvements shall become the property of City upon the completion of the term.

Subsection 4.09. As-Built Drawings. Within ninety (90) days following completion of the initial construction and any subsequent additions, alterations or improvements thereafter during the lease term, Lessee shall present to the City two complete sets of "as-built" drawings including, but not limited to, architectural renderings, specifications, plumbing, and electrical plans.

Subsection 4.10. 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. The Lender shall have the right, in case of default, to assume the rights and obligations of Lessee herein, with the further right to assign the Lessee's interest to a third party, provided that, any assignee proposed by the 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 paragraph, the Lender shall notify the City of all action taken by it in the event 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. All notices required by Subsection 12.10 to be given by the City to Lessee shall also be given to Lender at the same time and in the same manner. Upon receipt of such notice,

Lender shall have the same rights as Lessee to correct any default.

- D. The Lessee shall also remain responsible to the City following any assignment of its interests or obligations hereunder for the performance of all requirements under this Agreement.

Subsection 4.11. Ownership of Improvements. During the term of this Agreement, including any renewal terms exercised, but excluding any holdover tenancy period, as defined in Subsection 5.03, ownership and title to the fixtures and improvements constructed by the Lessee shall reside in the Lessee. Upon completion of the Agreement term, including any renewal terms exercised, or upon the earlier termination of the Agreement, any 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.

## SECTION 5. TERM

Subsection 5.01. Term. The term of this Agreement is six (6) years (72 months), commencing upon the date of the last party to execute this Agreement (“Lease Effective Date”) and terminating in six (6) years thereafter, or the expiration of Special Use Permit #PL2015-197, whichever occurs first.

Subsection 5.02. Options to Renew.

- A. The Lessee shall have the option to renew this Agreement for two additional six-year (72-month) period. The Lessee shall be deemed to have exercised its option to renew this Agreement for the first additional six-year (72-month) term when the Lessee shall give the City written notice of Lessee's intention to renew the term of this Agreement not later than sixty (60) days prior to the expiration of the initial six (6) year (72-month) term.
- B. Should the Lessee renew the term of this Agreement for the first six-year (72-month) additional term, the Lessee shall be deemed to have exercised its option to renew this Agreement for the second additional six-year (72-month) term when the Lessee shall give the City written notice of the Lessee's intention to renew the term of this Agreement not later than sixty (60) days prior to the expiration of the first six-year (72-month) renewal.
- C. Should the Lessee renew the term of this Agreement for the second six-year (72-month) additional term, the Lessee shall be deemed to have exercised its option to renew this Agreement for any such additional one-year (12-month) term when the Lessee shall give the City written notice of the Lessee's intention to renew the term of this Agreement not later than sixty (60) days prior to the expiration of the second six-year (72-month) renewal term.

- D. Rentals for the renewal term(s) shall be established as described in Subsection 6.01.B. herein.
- E. All renewal terms shall be contingent on the parties agreeing to the six year re-appraisal rental amount as referenced in Subsection 6.01.B.

Subsection 5.03. Holding Over.

- A. In the event Lessee shall continue to occupy the leased premises beyond the initial lease 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 City or Lessee by either party giving thirty (30) days written notice to the other party. During the holdover period, Lessee shall pay, in advance, on the first day of each month, an amount of as rent 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. Lessee further agrees that upon the expiration of the term of this Agreement or sooner cancellation thereof, the leased premises will be delivered to the City in good condition, reasonable wear and tear and matters covered by insurance excepted.

SECTION 6. RENTALS, FEES AND RECORDS

Subsection 6.01. Rentals for Leased Premises.

- A. During the first six years of this Agreement, commencing upon the date referenced in Subsection 5.01, Lessee agrees to pay to the City annual rental for the leased premises which the parties hereto stipulate and agree contains One Hundred Twenty One Thousand Ninety Six point eight (121,096.80) square feet, at forty-seven cents (\$0.47) per square foot per annum rounded to the nearest whole dollar, for a total annual rent of Fifty Six Thousand Nine Hundred Fifteen and 50/100 dollars (\$56,915.50).
- B. Rental fees shall be adjusted two-percent (2%) following the first year of the initial term of this Agreement, and every year thereafter, for the first six year term. Prior to the first six-year renewal term commencing the leased area will be reappraised to establish a new lease rate. The leased area shall be reappraised every six-years to establish a new lease rate. Rental fees will also be adjusted at the beginning of each year of the anniversary of any optional extension term if renewed by Lessee. The rents 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 times the annual square footage rental rate to determine the annual rent or fees to be paid for the next two year period. This process shall be applied to affect all future increases in rents throughout the remainder of the term of this Agreement. 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

3. Notwithstanding the adjustment calculation methodology stated above, at no time during the term of this Agreement, including any options, renewals or extensions thereof, will the annual square feet ground rental rate decrease. In the event the adjustment calculation methodology described above would result in a decrease in the annual rental rate, the Lessee shall, for that measuring period under the initial Agreement term, or for 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 6.03. Time and Place of Payments. The foregoing fixed rental payments shall be payable annually, in advance, on or before the first business day of each year of the term of the lease, including renewal terms, at the office of the City of Lee's Summit Collector's Office, 220 SE Green, Lee's Summit, Missouri 64063.

Subsection 6.04. Audit. There are no audit requirements under this Agreement.

Subsection 6.05. 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 each full calendar month of delinquency computed as simple interest per City Policy 805.5.2.4. 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.

## SECTION 7. OBLIGATIONS OF LESSEE

Subsection 7.01. Net Lease. The use and occupancy of the Leased Premises by Lessee will be without cost or expense to the City. It shall be the sole responsibility of Lessee to maintain, repair and operate the entirety of the Leased Premises at Lessee's sole cost and expense.

Subsection 7.02. Maintenance and Operation. Lessee shall maintain the Leased Premises at all times in a safe, neat and attractive condition, and shall not permit the accumulation of any trash, paper, or debris. Lessee agrees to keep the premises in good order and condition, free from any nuisance, filth, or danger of fire; Lessee shall repair all damages to the Leased Premises caused by its employees, patrons, or its operation thereon.

Lessee agrees to be responsible for:

- A. Lessee will maintain the Leased Premises and keep it in good order, including but not limited to any paved surfaces and the mowing of any unpaved surfaces, and will not allow the removal of trees without permission of City.
- B. Lessee shall comply with all federal, state, and local laws, rules, regulations, and ordinances, and those rules and policies of the City, as may now be in effect or may hereafter be 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/or 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. Lessee will control soil erosion; keep in good repair all terraces, open ditches, inlets and outlets of tile drains, preserve all established watercourses or ditches including grassed waterways; and refrain from any operation or practice that will injure such structures.
- D. Lessee will not allow any lien or equitable interest to be placed on the Leased Premises.
- E. All construction activities will be in accordance with the City's Design & Construction Manual, UDO.

Subsection 7.03. Utilities. Lessee shall assume and pay for all costs or charges for utilities services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefore.

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 of all trash, garbage, and other refuse caused as a result of the operation of its activities on the Leased Premises. Lessee shall provide and use suitable covered receptacles for all such garbage, trash, and other refuse.



Piling of boxes, cartons, barrels, pallets, debris, or similar items on or about the Leased Premises, shall not be permitted.

Subsection 7.05. Signs. Lessee shall not erect, maintain, or display any billboards or advertising signs upon the outside of any improvements, buildings or structures on the Leased Premises without approval by the City .

## 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 it will operate and maintain the Airport facilities, as defined hereinabove, 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 Section 9 of this Agreement.

Subsection 8.02. Ingress and Egress. Upon paying the rental hereunder and performing the covenants of this Agreement, Lessee shall have the right of ingress to and egress from the leased premises for the Lessee, its 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 weight and type use restrictions as City deems necessary.

## SECTION 9. CITY'S RESERVATIONS

Subsection 9.01. 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 Lessee 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.

In the event the City reasonably requires the leased premises for expansion, improvements, or other development of the Airport, or if the City discontinues use of the Airport as an airport, or Federal or State Law, Rule or Order prohibits the use of the Leased Property as set forth herein, the City reserves the right, upon six (6) months prior written notice except where the use of the Property constitutes a violation of Federal or State Law, Rule or Order, to terminate this Agreement, in which case the City will compensate the Lessee for its remaining interest under this Agreement in the premises and improvements thereon by paying the Lessee a proportionate share of its total cost of construction, as defined in the preceding Subsection 4.08, and 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 term of this Agreement, including any optional renewal terms or portions thereof remaining at the time of the termination, is to the total number of years of the term of the Agreement, including the optional renewal terms. Said allowable construction costs shall include the cost items defined in Subsection 4.08 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 4.03 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 the 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/term +options) x allowed construction cost. Said payment shall be considered compensation in full to the Lessee for any and all of its actual or potential claims, losses, or damages resulting from or related to the termination of the Agreement by the City under this Subsection. In the event of such termination, the City would also have no obligation to relocate or replace the Lessee's improvements at any other location on Airport premises, or to offer the Lessee another site for relocation.

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 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(s) between City and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the City for Federal funds for the development of the Airport.

Subsection 9.04. 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 10. INDEMNITY AND INSURANCE

Subsection 10.01. Indemnification. Except to the extent any claims or causes of action caused by the negligence of the City, its employees, agents and/or invitees, Lessee agrees to protect, defend, indemnify, and hold the City, its employees, officers, elected official, attorneys and agents, completely harmless from and against any and all liabilities, losses, damages, 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 and/or the use or occupancy of the Leased Premises, or the acts or omissions of Lessee's officers, agents, representatives, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused 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 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 or any of its agents or employees, as well as any civil fine or penalty. The City shall give to the Lessee reasonable notice of any such claims or actions. The provisions of this Section 10 shall survive the expiration or termination of this Agreement. The duties of the Lessee specified herein shall not be limited by the amount of any insurance coverage required to be provided by the Lessee 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 10.02 Insurance. The Lessee shall be required to maintain and carry in force, for the duration of the contract, insurance coverage of the types and minimum liability as set forth below:

a. **COMMERCIAL GENERAL COMPREHENSIVE LIABILITY (Sections In Policy )**

Bodily Injury & Property Damage (Coverage H)	
Each Occurrence, including Products:	\$ 1,000,000
Personal & Advertising Injury (Coverage I):	\$ 1,000,000
General Aggregate:	\$ 2,000,000

Policy must include Contractual Liability and Additional Insured (FL 04 50 or similar) for the City of Lee's Summit, Missouri.

b. **AUTOMOBILE LIABILITY**

Policy shall protect the Lessee against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

Limits of personal auto liability insurance shall be a minimum of \$100,000 per person bodily injury; \$500,000 per accident bodily injury; \$100,000 per accident property damage or it may be included as the same as required in the Farm Liability section.

c. **WORKERS' COMPENSATION**

Workers' Compensation insurance shall be obtained to the extent required by state law. If

applicable, this insurance shall protect the Lessee against all claims under applicable State Workers' Compensation Laws. The Lessee shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation Law. The policy limits shall not be less than the following:

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$ 500,000 Each Accident
Bodily Injury by Disease:	\$ 500,000 Policy Limit
Bodily Injury by Disease:	\$ 100,000 Each Employee

Lessee shall furnish to City, at least five (5) days prior to the start of said lease, a certificate of insurance as outlined above. All policies of insurance shall provide for at least thirty (30) days prior written notice of cancellation or any changes of insurers to City.

Subsection 10.03. Contractor's Insurance Requirements. If Lessee contracts with a third party (the Contractor) to perform construction or modifications on the leased premises, the Contractor shall procure and maintain, at the Contractor's expense, insurance of such types and in no less than the minimum amounts as are required herein. Contractor shall provide certificate(s) of insurance confirming the required protection on standard ACORD forms. Said insurance must be in effect from the date of the Contractor's receipt of a Notice to Proceed until acceptance of the entire work by the Lessee, and apply to all partners and employees working on the project. The Contractor shall require all subcontractors to provide insurance for themselves, their partners and employees to be engaged in such work unless the subcontractor's employees are covered by the Contractor's coverage. The Contractor and all subcontractor's shall maintain a minimum of the following: Commercial General Liability in the amount of \$1,000,000 each occurrence and aggregate (including completed operations and explosion, collapse and underground if applicable), automobile Liability limit of \$500,000 Each Accident, bodily injury and property damage, combined single limit arising out of the ownership or use of any owned, hired, and/or non-owned vehicle; and Worker's Compensation applicable to the State's laws for Statutory limits including Employers Liability.

Subsection 10.04. Application of Insurance Proceeds. If the fixed improvements placed upon the leased premises shall be totally destroyed or extensively damaged and if the City and Lessee shall elect not to restore the same to their previous condition, the proceeds payable by reason of such loss shall be paid pursuant to the property insurance terms and conditions.

Subsection 10.06. Performance Bonds. Lessee shall deliver to the City a surety bond in the amount of 100% of the building construction costs, within thirty (30) days after the execution date first above mentioned. Said bond shall be conditioned on the faithful performance of all terms, conditions and covenants of this Agreement, and shall be kept in full force and effect through the complete construction of the hangar.

Prior to the date of commencement of construction, a payment bond with Lessee's contractor or contractors as principal, 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.

At Lessee's option, an irrevocable letter of credit may be deposited with the City in lieu of said Performance Bond.

In lieu of said surety bond or letter of credit, Lessee may deposit with the City, Bonds of the United States of America, or such other securities or bank certificate of deposit, acceptable to the City, in the name of the City or assigned to the City in the above amount, as security for faithful performance by Lessee as hereinabove provided, and Lessee may have the right to reserve to itself payable on said U.S. Bonds or such other securities.

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 separate bonds, as follows:

- A. Prior to the date of commencement of construction, a contract surety bond 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; shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall indemnify 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, a payment bond with Lessee's contractor or contractors as principal, 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 term, or optional renewal term(s), if exercised, and Lessee shall have no further right or interest thereafter in any of the ground improvements hereby demised, except as provided in Subsection 5.03 and 9.01.

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 rentals 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, 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 from Lessee 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 Lessee'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 Lessee for a period of at least ninety (90) days from full use of its leased premises, and in that event, a just and proportionate part of the rent hereunder shall be abated. In the event that this lease agreement is terminated by Lessee pursuant to this Section 11, Lessee shall be compensated in accordance with Section 9 hereof.
- D. Notice by the Federal or State (Missouri) government to the City that the use or uses for the Leased Premises, as set forth herein, are prohibited by Federal or State (Missouri) statutes or regulations.

## SECTION 12. TERMINATION OF LEASE BY CITY

Subsection 12.01. 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, subject to and in the manner provided in Subsection 12.02 hereof, and subject to the rights of the Lender contained in Subsection 4.10 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 Sixty (60) days after the original statement is due and owing by Lessee of written notice from the City

to pay such rent.

- B. The filing by Lessee of a voluntary petition in bankruptcy or the making of any assignment of all or any part 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 the provisions of 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 material breach by Lessee of any of the 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.
- G. The abandonment of the leased premises.
- H. The failure to promptly and diligently replace any improvements which have been destroyed by fire, explosion, wind, etc., from the date of such destruction, except as permitted herein.
- I. The breach of any one of the covenants contained in Subsection 7.10 hereinabove, in which case the provisions of Subsection 12.01.F. concerning notice to the Lessee of the breach and time to cure said breach shall not apply.

Subsection 12.02. Notice to Quit. In the event the City exercises its option to cancel this Agreement upon the happening of any or all of the events set forth in Subsection 12.01 hereof, a notice of cancellation shall be sufficient to cancel this.

The City shall provide written notice of its intent to terminate the Agreement to the Lessee thirty (30) days prior to the date of termination, except for termination as described in Subsection 12.01I., in which case no such prior notice of termination is required.

Subsection 12.03. Possession by the City. Upon a material breach of this lease agreement by Lessee after expiration of applicable cure period, lender's right to assume the rights and obligations of the Lessee shall be exercised within 30 days of receipt of the notice of cancellation; or, if prohibited from assumption by an order of a court of law, the right to assume the rights and obligations shall be exercised within thirty (30) days of receipt of an order allowing such assumption. Failure of the City to declare this Agreement terminated upon default of Lessee for any of the reasons set forth herein 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.

In the event that this Agreement is terminated by summary proceedings, or otherwise as provided herein, or if the leased premises shall have been abandoned and whether or not the leased premises are subsequently leased, the entire amount of rent which would be paid to the initial 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 the Lessee. In the event the leased premises are re-let by the City, the City shall be entitled to recover from the Lessee, and the 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 the 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 the 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 leased premises of 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, or the repossession of the leased premises, brokers' commission and the cost of repairing, renovating or remodeling said leased premises.

The obligation of the City to use its best efforts to mitigate any damages it may have against the Lessee shall not preclude the right of the City 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 said Agreement is terminated by summary proceedings or otherwise as provided herein. In the event the City obtains a judgment in such manner, the City shall be obligated to use its best efforts to mitigate any damages it may have recovered in accordance with the provisions of this paragraph.

Subsection 12.04. Destruction of Leased Premises - Termination. In the event of damage to or destruction or loss of the building, buildings or other improvements on the leased premises by an insured or uninsured risk, Lessee shall promptly repair, restore and rebuild said building, buildings or other improvements as nearly as possible to the condition they were in immediately prior to such damage or destruction; provided that, if the City and Lessee mutually agree not to restore the building, buildings or other improvements in the event of total destruction or extensive damage, the provisions of Subsection 10.04 shall apply.

If the building, buildings or other improvements shall be damaged in such manner as to render them unusable in whole or in part, for over one hundred twenty (120) days the rental provided to be paid under the terms of this Agreement shall be abated or reduced proportionately during the period from a date one hundred twenty (120) days after the date of such damage or destruction until the work of repairing, restoring or reconstructing said building, buildings or other improvements is completed.



## SECTION 13. RIGHTS UPON TERMINATION

Subsection 13.01. Improvements. The Leased Premises shall be and remain the property of the City during the entire term of this Agreement and thereafter.

Subsection 13.02. Personal Property. Upon termination or expiration of this Agreement, Lessee shall remove all personal property from the Leased Premises within thirty (30) days after said termination. Lessee shall have no obligation to restore the leased premises to its original condition. If Lessee fails to remove said personal property, the City may take immediate possession of the Leased Premises, forcibly if necessary, without being deemed guilty of trespassing. Under such action, all rights of Lessee shall be forfeited, and any property remaining on the Leased Premises shall, at the City's sole option, become the property of the City or same may be removed 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 Lessee. Additionally, the City shall have and reserve all of its available remedies at law as a result of said breach of this Agreement.

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

Subsection 14.01. Successors, Assignment, and Sub-leases. Lessee shall not enter into any subleases or 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; provided, however, Lessee may enter into a sub-lease agreement or assign this Agreement to any entity which is owned and/or controlled by Robert Balderston, provided that the Leased Premises is used for the same purposes as set forth herein. In the event of such sublease or 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 or sub-lessee shall not assign or sub-lease said Agreement except with the prior written approval of the City and the Lessee herein, and any assignment or sub-lease by the Lessee shall contain a clause to this effect. The City shall not unreasonably withhold its consent to any request to sublease, 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 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 retains the right of first refusal if the Lessee changes the terms and conditions under which the improvements are offered for sale.

(b) If the City wishes to sell the Leased Premises at any time during the term of this Lease, then the Lessee shall be notified of such intent to sell in sufficient time to allow Lessee to submit a bid or proposal in any public purchase process the City may undertake to sell the property. Any sale by the City of the Leased Premises shall contain terms obligating the buyer to honor this lease to the extent it still exists at said time.

#### SECTION 15. QUIET ENJOYMENT

The City covenants that Lessee, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements, and conditions on the part of Lessee to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the leased premises for the term aforesaid.

#### SECTION 16. GENERAL PROVISIONS

Subsection 16.01. Attorney's Fees. If either party is required to bring any action to enforce the terms of this lease or to recover money due under this lease, the prevailing party shall be entitled to reasonable attorney fees.

Subsection 16.02. Taxes. Lessee shall pay any leasehold interest tax assessed and all personal property taxes and other taxes which may be assessed against equipment, merchandise, or other personal property belonging to Lessee located on the Leased Premises or upon Lessee's activities thereupon.

Subsection 16.03. 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 16.04. 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 16.05. 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 16.06. 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 16.07. 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 16.08. No Partnership. Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent or of partnership or joint venture.

Subsection 16.09. City Manager. 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 Lessee.

Subsection 16.15. Non-Liability of Individuals. No director, officer, agent 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 16.15 shall have no application to any independent guaranty or other assumption of the obligations of Lessee which may be obtained by the City relative to this Agreement. This Subsection 16.15 shall also not apply to the Lessee if the 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 and Payments. Whenever any notice 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 insure delivery and deposited in the United States Mail, first class, addressed to: City of Lee's Summit c/o City Administrator, 220 SE Green, Lee's Summit, Missouri 64063 and notices, consents and approvals to Lessee addressed to:

BFRE LLC  
401 NE Colbern Road  
Lee's Summit, Missouri 64086

or such place as either party shall, by written notice to the other, may designate. 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 Lessee, 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.

## **Lease clauses required by FAA:**

### **Nondiscrimination**

"The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree 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 be otherwise subjected to discrimination, (3) that the Lessee shall use the 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.

That in the event of breach of any of the above nondiscrimination covenants, Airport Owner shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights."

### **Airport Protection**

"It shall be a condition of this lease, that the Lessee reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

That the Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.

That the Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard."

**Property Rights Reserved**

"This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the Airport

Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the Lee's Summit Municipal Airport."

**Exclusive Rights (required in aviation leases only)**

"Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport."

**Escalation Clauses.**

"Land less improvements will be appraised at the end of the first 6 years and the adjusted rental will be based on ten (10) percent of appraised value. If disputed, lessor obtains appraisal at his own expense and lessor/lessee equally share expense for review appraisal that establishes fair market value."

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

By: \_\_\_\_\_

Stephen Arbo,  
City Manager

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Trevor L. Stiles, Chief of Litigation

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**BFRE, LLC**

**By:** \_\_\_\_\_

**Printed Name:**

**Title:**

**Date:** \_\_\_\_\_

**STATE OF MISSOURI**

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) **ss.**

**COUNTY OF JACKSON**

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On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared Lee's Summit Honda who is personally known to me to be the same person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

In Witness Whereof I have hereunto subscribed my name and affixed my official seal.

\_\_\_\_\_  
**Notary Public**

**SEAL**

## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL ESTATE

#### **Lot 12 of Fields Farm Outside of the Runway Protection Zone:**

A tract of land being part of Lot 12 of Fields Farm a recorded subdivision located in the southwest quarter of section 29, township 48 North, Range 31 West, Jackson county, Missouri being described as follows: Beginning at the northwest corner of the southwest quarter of the said section 29, thence south  $88^{\circ}12'55''$  East along the North line of the Southwest Quarter of said Section 29, 600.82 feet to the Northeast corner of said Lot 12; thence leaving the said North line, South  $01'40'25'$  West along the East line of said Lot 12, 40.00 feet to a point of the Northerly Right-of-way line of Colbern Road and now located and the true point of beginning; thence continuing South  $01'40'25''$  West along the said East line 425.41 feet to a point on the Northerly Right-of-Way line of I-470; thence leaving the said East line, South  $87^{\circ}57'55'$  West along the said Northerly Right-o-way line 17.82 feet; thence North  $89'10'20'$  West along the said Northerly line 200.25 feet; thence South  $87^{\circ}57'55'$  West along the said Northerly line 38.33 feet to a point on the Easterly limits of the existing Northerly Right-of-way line, North  $05^{\circ}13'18'$  West along the Easterly limit of the said Runway Protection zone 435.63 feet to a point on the Northerly Right-of-way line of Colbern Road as now located, thence South  $88^{\circ}12'55'$  East along the said line being 40.00 feet South of and Parallel with the North line of the Southwest Quarter of said Section 29, 306.87 feet to the true point of beginning.