

**FIXED BASE OPERATOR
AGREEMENT**

Between

Bye UAS, Inc. DBA Silent Falcon

And

The City of Lee's Summit, Missouri

FIXED BASE OPERATOR AGREEMENT

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FIXED BASE OPERATOR AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is made this ____ of _____, **2022**, between the City of Lee’s Summit, Missouri, a municipal corporation and Charter City (“City”) and Bye UAS, Inc. DBA Silent Falcon organized and existing under the laws of the State of Missouri and authorized to do business in the State of Missouri (“Operator”). City and Operator are sometimes referred to herein individually as the “Party” or collectively as the “Parties.”

W I T N E S S E T H

WHEREAS, City operates the Lee’s Summit Municipal Airport (“Airport”), located in the City of Lee’s Summit, Jackson County, Missouri; has the right, title and interest in and to the real property comprising the Airport; and has full power and authority to enter into this Agreement;

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

WHEREAS, Operator agrees to comply with the Minimum Standard Requirements for Airport Aeronautical Services adopted by the City for fixed based operators at the Lee's Summit Municipal Airport, the Lee's Summit Municipal Airport Rules and Regulations, and all applicable local, state and federal rules and regulations for so long as this Agreement is in effect.

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

SECTION 1. LEASED AREA

Subsection 1.01 Description of Leased Area

A. The term “Leased Area, as referenced to in this Agreement, includes the following located at the Lee’s Summit Municipal Airport, 2721 NE Douglas, Lee’s Summit, Missouri, 64064: Office space consisting of Suite D & E (the Northwest and Northeast Offices) in the Airport Modular Building, as depicted on Exhibit 1 attached hereto and incorporated herein by reference (“Office Area”).

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

C. .The parties agree that the Operator may, upon written approval by the Airport Manager, substitute the Office Area for other such office space. The Operator may also rent additional office

space. No formal action will need to be taken by either party besides the approval of the Airport Manager. Any additional or substituted office space will be subject to the terms of this Agreement, and the rental rate shall be the hangars current retail rate (“Posted Rate”).

SECTION 2. PURPOSE OF AGREEMENT

Subsection 2.01. Use of Leased Area.

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

1. The Office Area shall only be used for general business office purposes;

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

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

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

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

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

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

C. Aeronautical Services. Upon execution of this Agreement, the Operator is authorized to undertake and provide the following proposed Aeronautical Services: *Unmanned Aircraft System (“UAS”)* Services an UAS Technologies Company.

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

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

- A. Operator will not paint, dope or spray paint UAS aircraft, or any other items, other than minor repairs, within the Leased Area unless specific modifications or additions have been made to the Leased Area which provide an approved, suitable environment for such operations and only after approval in writing from the Airport Manager. All minor repair painting will be in accordance with appropriate safety and ventilation guidelines for materials used.
- B. Operator agrees not to use the Leased Area or permit the use thereof in such manner as to make void or increase the rate of insurance thereon.
- C. Operator is prohibited from selling or dispensing aircraft fuels. Any violation by the Operator of this subsection shall constitute a material breach of this Agreement, and shall constitute cause for immediate termination of the Agreement and repossession of the Leased Area by the City.

SECTION 3. TERM

Subsection 3.01. Term. The Initial Term of this Agreement is two (2) years, commencing on the _____, and terminating _____ (“Initial Term”). The Operator may renew this Agreement as often as desired, with the written consent of the City Manager, in increments of two (2) year (24 month) terms (“Renewal Term”). The Operator shall give the City written notice of the Operator's intention to renew this Agreement not later than sixty (60) calendar days prior to the expiration of the Initial Term or any subsequent Renewal Term, and the City shall give written response to same within sixty (60) calendar days thereafter.

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

SECTION 4. RENTALS, FEES AND RECORDS

Subsection 4.01 Rentals for Leased Area.

A. The monthly rental payment for the Office Area is based on a rate of \$500.00 per month for Suites D & E in the Airport Modular Building. Suite-D and office of approximately 205 sq. ft. is rented at the rate of two hundred eighty-seven (\$287.00) per month. Suite-E and office of approximately 152 sq. ft. is rented at the rate of Two hundred thirteen (\$213.00) per month.

B. 1. Rental fees shall be adjusted following the Initial Term of this Agreement, and then for every Renewal Term thereafter, with each such adjustment to become effective upon commencement of the subsequent term. The rental rates shall be adjusted by the total change in the Consumer Price Index for All Urban Consumers, (CPI-U) all items, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 equals 100) or a successor index appropriately adjusted. This shall be measured by finding the difference between the CPI-U figure for the month immediately prior to the commencement date of the Agreement or of the previous two year measuring period, and the CPI-U index figure for the same month immediately prior to the commencement of the next measuring period, as described in the example below.

2. The percent increase in the Consumer Price Index during the measuring period shall be multiplied by the annual square footage rental rate to determine the annual rent to be paid for the next two year Renewal Term. The annual rent increases shall be cumulative. For example:

| FORMULA | EXAMPLE |
|---------------------------|--------------------|
| NEW CPI (9/99) | 156.91 |
| - OLD CPI (9/94) | 149.44 |
| CPI CHANGE+ | 7.47 |
| CHANGE IN CPI = % CPI | 7.47 = (5.00%) |
| OLD CPI | 149.44 |

(% CPI + 1) X CURRENT RATE = (0.05 + 1) X \$0.25 = \$0.26
NEW RATE

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

Subsection 4.02. Delinquent Payments, Collection and Attorney's Fees. The Operator agrees to

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

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

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

SECTION 5. OBLIGATIONS OF OPERATOR

Subsection 5.01. Operations by Operator: Operator agrees:

- A. To promote aviation activity on the Airport and to conduct operations on the Leased Area in a proper, efficient and courteous manner.
- B. That all services shall be furnished on a fair, equal, and nondiscriminatory basis to all users, and that only fair, reasonable and nondiscriminatory prices for each unit of sale or service will be charged. Operator may, however, make reasonable and nondiscriminatory discounts, rebates or other similar price reductions to volume purchasers.
- C. To furnish those Aeronautical Services listed heretofore and to receive written approval from the Airport Manager of all Operator's operations, signs, etc. thirty (30) calendar days before start-up of any additional Aeronautical Services or cessation of any or all approved Aeronautical Services.
- D. To supply the Airport Manager with a list of its employees or associated personnel names, job titles and duties, and their emergency telephone numbers and addresses.
- E. To not execute an agreement with any subcontractor to perform the Operator's Aeronautical Services without written approval of the City and to insert in all subcontracts a provision requiring the subcontractors to comply with applicable provisions of this Agreement and further provide in each subcontract a statement "that nothing contained in these conditions shall create any contractual relationship between the subcontractor and the City."

- F. To follow the procedures of National Fire Protection Association when draining residual fuel from aircraft tanks incidental to aircraft fuel system maintenance, testing, manufacturing, salvage, or recovery operations
- G. To store any paints, cleaners or other flammable liquids in an approved storage locker.
- H. Follow all United States Department of Homeland Security requirements and Transportation Security Administration, or their successors recommendations, as amended, as they pertain to registering and recording new student pilots and pilot rating upgrades.

Subsection 5.02 Nondiscrimination. Operator, for itself, it's personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (A) no person on the grounds of race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Area; (B) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof no person on the grounds of race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (C) that Operator shall use the Leased Area 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 and Title VII of the Civil Rights Act of 1964, as amended (42 USC 2000d and 2000e, et seq.), as well as any applicable titles of the Americans with Disabilities Act, including employment practices and as said Regulations may be amended, to the extent that said requirements are applicable, as a matter of law, to Operator.

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

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

resulting from Operator's activities hereunder.

SECTION 6. OBLIGATIONS OF THE CITY

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

SECTION 7. CITY'S RESERVATIONS

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

Subsection 7.02. Subordination to U.S. Government. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States or any agency thereof, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the City for Federal funds for the development of the Airport.

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

replacement Airport Administrative Building, the City will use its best efforts to secure office space for Operator, subject to the terms of this Agreement, in: 1) the replacement Airport Administrative Building; and 2) any temporary office space made available by the City during the construction of the replacement Airport Administrative Building.

Subsection 7.04. Inspection of Leased Area. The City, through its duly authorized agent, shall have at any reasonable time, the full and unrestricted right to enter the Leased Area and Office Area for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

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

SECTION 8. INDEMNITY AND INSURANCE

Subsection 8.01. Indemnification. Operator agrees to protect, defend, indemnify, and hold harmless the City, and its officers employees, elected or appointed officials in their official and personal capacities, and agents (referred to collectively in this Section as “City”) for, from, and against any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands and expenses (including but not limited to investigation costs, attorneys fees and appellate costs) (referred to collectively in this Section as “Claims”) arising by reason of injury or death of any person or damage to any property of any nature whatsoever resulting from, arising out of, or incident to (i) this Agreement; (ii) the use or occupancy of the Leased Area, or (iii) the acts, errors, or omissions of Operator's officers, agents, employees, contractors, subcontractors, licensees, invitees, or any person from whom Operator may be liable, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused solely by the negligence or willful misconduct of the City, or its officers and employees.

This duty shall also extend to claims of damages to the environment caused by Operator, including but not limited to the investigation, field study, and clean up costs assessed by any federal, state or local agency against the City of Lee's Summit or any of its agents or employees, as well as any civil fine or penalty. The City shall give to the Operator reasonable notice of any such claims or actions. The provisions of this Section shall survive the expiration or early termination of this Agreement. The duties of the Operator specified herein shall not be limited by the amount of any insurance coverage required to be provided by the Operator herein, but shall extend to the full amount of any such claim or liability. This duty shall also not be limited by the provision of any workers' compensation coverage.

Subsection 8.02 Insurance Requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Operator, Operator shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Operator. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Operator from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
4. Coverage Term. All insurance required herein shall be maintained in full force and effect until the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
5. Primary Insurance. Operator's insurance shall be, or endorsed to be, primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the six-year period.
7. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the Work or Services of Operator. Operator shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Operator shall be solely responsible for any such deductible or self-insured retention amount.
9. Use of Subcontractors. If any portion of this Agreement is subcontracted in any way,

Operator shall execute written contract(s) with its Subcontractors containing the indemnification provisions set forth above and insurance requirements set forth herein protecting the City and Operator. Operator shall be responsible for executing any contracts with its Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

10. Notice of Claim. The Operator shall upon receipt of notice of any claim in connection with this Agreement promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Operator shall also promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate(s) of insurance in an amount such that the policy aggregate becomes less than the current statutory waiver of sovereign immunity regardless of whether such impairment is a result of this Agreement. A breach of this provision is material breach of the Agreement.
11. Evidence of Insurance. Prior to commencing any Work or Services under this Agreement, Operator will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Operator's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Operator's responsibility to forward renewal certificates and declaration page(s) to the City 30 calendar days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
 - i. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - a. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 and CG 20 37 07 04 or their equivalents.
 - b. Auto Liability - Under ISO Form CA 20 48 or equivalent.
 - c. Excess Liability - Follow Form to underlying insurance.
 - ii. Operator's insurance shall be primary insurance with respect to performance of the Agreement.
 - iii. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its

agents, representatives, officers, officials and employees for any claims arising out of Operator's performance under this Agreement.

- iv. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
12. Endorsements. Operator shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Subsection.
13. Additional Coverages. Operator further agrees to increase its insurance coverage, if necessary, to ensure coverage for all approved Aeronautical Services and if Operator adds any Aeronautical Services not identified in Subsection 2.01(C) of this Agreement, as determined by the City.

B. Required Insurance Coverage.

14. Airport Liability Insurance: Without limiting its liability, Operator 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 \$2,000,000 per occurrence, \$2,000,000 products and completed operations annual aggregate and a \$2,000,000 general aggregate limit.
15. Aircraft Liability Insurance: Without limiting its liability, Operator 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 \$1,000,000 per occurrence and \$100,000 per passenger seat for applicable claims. The policy shall include coverage on all aircraft owned, non-owned, leased, and/or operated by Operator. The policy shall also cover Airport operations with a minimum of \$1,000,000 per occurrence.
16. Vehicle Liability. If Operator drive any automobile other than in roads and automobile parking areas at the Airport, (including but not limited to if Operator parks an automobile in Operator's hangar when permitted by this Agreement), Operator 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 Operator's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than \$1,000,000 single combined limit "per accident" for bodily injury and property damage. Such policy and shall name and endorse the City, its agents, representatives, officials, officers and employees, as an additional insured, and contain, or be endorsed to contain, a waiver of subrogation against the City, its agents, representatives, officials, officers and employees. 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.
17. Property Insurance: Operator shall maintain not less than \$1,000,000 Fire Legal liability on all real property being leased, including improvements and betterments owned by the City, and shall name the City as a loss payee. Operator shall also provide fire insurance

on all personal property contained within or on the Leased Area. The policy must be written on an “all risks” basis, excluding earthquake and flood. The contract shall insure for not less than ninety percent (90%) of the actual cash value of the personal property, and Operator shall name and endorse the City, and its agents, representatives, officials, officers and employees as an additional insured.

18. Interruption of Business Insurance: Operator 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 area 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.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 calendar days’ prior written notice to the City.

SECTION 9. TERMINATION OF AGREEMENT BY OPERATOR

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

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

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

operation, control, or use of the Airport and facilities or any substantial part or parts thereof, in a manner as substantially to restrict Operator for a period of at least sixty (60) calendar days from full use of its Leased Area, and in that event, a just and proportionate part of the rent hereunder shall be abated.

SECTION 10. TERMINATION OF AGREEMENT BY CITY

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

- A. The completion of the initial or any subsequent term without written notice of Operator's intention to enter into a subsequent term extension.
- B. The failure to pay all installments of fees then due (with interest) within thirty (30) calendar days after receipt by Operator of written notice from the City to pay such rent.
- C. The filing by Operator of a voluntary petition in bankruptcy or the making of any assignment of all or any part of Operator's assets for benefit of creditors.
- D. The filing of an involuntary bankruptcy petition against the Operator as a bankrupt pursuant to any involuntary bankruptcy proceedings.
- E. The taking of jurisdiction by a court of competent jurisdiction of Operator or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act.
- F. The appointment of a receiver or a trustee of Operator's assets by a court of competent jurisdiction or a voluntary agreement with Operator's creditors.
- G. The breach by Operator of any of the covenants or agreements herein contained, and the failure of Operator to remedy such breach within 30 calendar days after receipt of written notice of such breach from the City.
- H. The abandonment of the Leased Area.
- I. The breach of any one of the covenants contained in Subsection 2.03.C., in which case the provisions of Subsection 10.02 concerning notice to the Operator of the breach and time to cure said breach shall not apply.
- J. The Operator, its principles, directors, owners or agents, transfers, sells or otherwise conveys an ownership interest in the Operator greater than 50%.

K. The City's discontinuation of use of the Airport as an airport.

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

SECTION 11. ASSIGNMENT AND SUBLETTING

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

Subsection 11.02 Subletting. The Operator shall have the right to sublease all or part of the Leased Area subject to the following conditions:

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

SECTION 12. GENERAL PROVISIONS

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

Subsection 12.02. Attorney's Fees. In any action brought by either party for the enforcement or the construction of the terms of this Agreement, the City, if it is a prevailing party in the

action, shall be entitled to recover interest and its reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses.

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

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

Subsection 12.06. Non-Exclusive Rights. It is hereby specifically understood and agreed between the parties that nothing contained hereby shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, its successor or as amended; and the City reserves the right to grant to others the privilege and right of conducting any one or all of the Aeronautical Services listed herein or any other activity of an aeronautical nature.

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

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

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

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

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

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

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

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

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

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

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

forgoing, termination of the Agreement under this subsection shall not preclude the negotiation of a new agreement for alternate area.

Subsection 12.18. Maintenance. City will keep the exterior of the Leased Area in repair, provided that Operator shall give City written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by the carelessness or negligence of Operator, its agents, employees, or servants, in which event Operator shall be responsible therefore. Operator will keep the interior of the Leased Area in good repair and will surrender the Leased Area at the expiration of the term or at such other time as it may vacate the Leased Area in as good condition as when received, excepting depreciation caused by ordinary wear and tear.

Subsection 12.19 Utilities. Included in the rental rate for the Office Area is the cost of the electricity, and trash removal.

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

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

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

Notices to Operator shall be addressed to:

Bye UAS, Inc. DBA Silent Falcon
8411 Firestone Lane NE, Suite A
Albuquerque, New Mexico 87113

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

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

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

CITY OF LEE'S SUMMIT,

William A. Baird, Mayor

ATTEST:

Trisha Fowler Arcuri, City Clerk

Approved as to form:

Scott Ison, Chief Counsel of Infrastructure and Recreation

OPERATOR: Bye UAS, Inc. DBA Silent Falcon

Signature: _____

Title: _____

[The remainder of this page is intentionally left blank.]

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, the _____ of Bye UAS, Inc. DBA Silent Falcon who is personally known to me to be the same person who executed the within instrument on behalf of Bye UAS, Inc. DBA Silent Falcon, and such person duly acknowledged the execution of the same to be the free act and deed of Bye UAS, Inc. DBA Silent Falcon.

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

NOTARY PUBLIC

My Commission Expires:

[SEAL]

