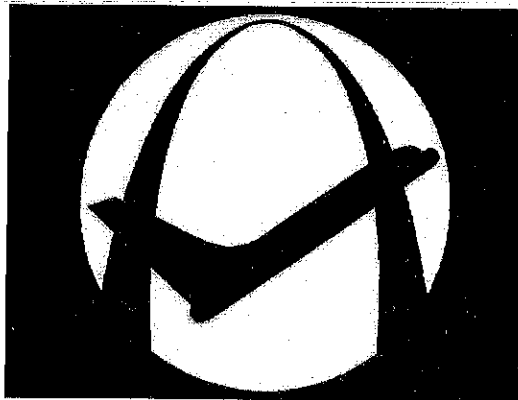


# **AIRLINE COMPETITION PLAN UPDATE**

Submitted for the

**Lambert-St. Louis International Airport**



On behalf of

**City of St. Louis**

November 30, 2003

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## INTRODUCTION

This periodic update to the Airline Competition Plan, as required by the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21), will: 1) address significant changes in the Lambert-St. Louis International Airport's Airline Competition Plan and in the air service situation facing the Airport since the previous update of March 1, 2002; 2) respond to the requests for information provided in FAA's May 30, 2002 letter commenting on that update; and 3) address the additional items requested by FAA in Program Guidance Letter 03-01.

### **SIGNIFICANT CHANGES TO THE LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT'S AIRLINE COMPETITION PLAN AS UPDATED MARCH 1, 2002**

As we have previously reported, American Airlines (AA) acquired most of the assets of Trans World Airlines (TWA), St. Louis's previous major hub carrier, in TWA's bankruptcy proceeding in 2001. AA subsequently formed a wholly owned subsidiary airline, TWA Airlines, LLC (TWALLC) to operate as a transitional airline at least through expiration of the Airport Use Agreement (AUA) on December 31, 2005. TWALLC assumed TWA's AUA and other contracts and agreements with the City. Since 2001, TWA's livery has been phased out and all flights are now being operated as American Airlines flights or as American Airlines flights operated by TWALLC.

As DOT/FAA are well aware, the recent months have seen a sharp decline in airline activity at Lambert. American Airlines has reduced service in St. Louis, cutting some spoke cities and substituting regional jets for mainline aircraft in many other cities. STL has suffered a dramatic loss of service. As of November 1, 2003, American Airlines dropped service by 51% -- from 421 average daily departures to 214 average daily departures. Of those flights, 159 were mainline flights, and 55 were regional jet or turboprop flights. Further, since the City's last Competition Plan Update was filed on March 1, 2002, Southwest Airlines, the Airport's second largest airline, has gone from 71 average daily departures to 53 average daily departures, a loss of 18 average daily departures.

This reduction in service has been difficult for the City. We have stepped up our marketing and promotional efforts and have aggressively solicited additional air service. Our efforts have been somewhat successful; we have secured 25 additional flights from seven air carriers (including in some cases regional affiliates), including one air carrier (Frontier Airlines) not previously operating at the Airport (please see **Exhibit "A"** for a complete list of additional flights). From the standpoint of "competitive access," of course, American Airlines reduction in service provides the Airport with the potential of opening significant numbers of gates to use by other air carriers.

In the report that follows, for DOT/FAA's ease of reference we have addressed eight topics in the order set out in PGL 03-01. Where the Airport was requested to follow up on specific items, or where the PGL requests that we address particular matters, we have included those discussions within the topical sections.

To address one matter initially, the PGL requested that we appoint one individual on our staff as the Airport's liaison for competitive access. We have done so; that individual is Brian Kinsey, Airport Business and Marketing Manager. He may be reached at (314) 426- 8079.

1. Availability of Gates and Related Facilities

In FAA's May 30, 2002 letter approving the Competition Plan Update submitted on March 1, 2002, we were asked to report on the progress of discussions with Southwest Airlines regarding gate use monitoring for the East Terminal and, if those discussions were not successful, to describe "alternative methods [the airport] will use to monitor utilization of the PFC-financed gates." After discussion, Southwest has chosen to comply with the Airport's gate use monitoring system (please see **Exhibit "B"** for a copy of the report from Southwest Airlines). The City appreciates Southwest's voluntary participation in this pro-competitive process.

PGL 03-01 requests that airports providing Competition Plan Updates consider adopting certain specific practices that DOT/FAA feel will enhance competitive access. Regarding availability of gates and related facilities, those specific practices include communicating information on gate usage and on overnight parking usage to interested users. Air carriers serving STL generally overnight their aircraft on gate. In addition, there are four pads, Delta, Charlie, Hotel and Romeo, where additional aircraft parking is available. There is adequate space to park up to 12 MD-80 aircraft at once; understandably, given the size of STL's aircraft parking area, there has never been inadequate off-gate parking at the Airport.

In addition, the PGL also requested that DOT/FAA be informed in this update of any changes regarding a list of gate-related items. The items where there have been changes, or where the Airport has relevant information to provide, are as follows.

- a) Gate use monitoring system amended during the update period: Since the last Competition Plan Update and the FAA's ensuing PGL 03-01, the Airport added gate utilization reporting requirements to all of its Preferential Use Space Permits ("PUSP") (which is all the Airport now offers). Please see **Exhibit "C"** for a sample PUSP, reference Section 3.D. As discussed above, Southwest is now providing gate utilization information.
- b) Samples of the current gate use monitoring system: a sample of the Southwest Airlines' monthly gate utilization report is Exhibit "B".
- c) Number and identity of any air carriers that have begun providing or stopped service: Frontier Airlines has begun service, offering 2 daily flights to Denver with mainline jets. During a marketing visit to Frontier earlier this year, the airline was advised that facilities were available. Frontier Airlines followed up with a site visit and then entered into a Signatory Airport Use Agreement and a Preferential Use Space Permit

for a gate, ticket counter and support space on Concourse A. In addition, after American Airlines reduction in service, American Eagle started regional jet service to replace certain American Airline's mainline flights. Although other facilities were available for their use, American Eagle chose to be nonsignatory and to operate from American Airlines gates on Concourse B. Please reference Exhibit "A" for a complete list of additional flights since the July 2003 announcement of the American Airlines reduction in service.

- d) Description of the process for accommodating new service: Rather than passively preparing to accommodate new service, the Airport aggressively sought additional flights from both potential new entrant and incumbent air carriers. The Airport Business and Marketing Manager is traveling to industry conferences to make contact with air carrier planning personnel and meeting with air carriers one-on-one when possible to demonstrate opportunity existing at STL. We have adequate gate space available or potentially available at the Airport to serve any air carrier that chooses to add or expand service.
- e) Number of new gates that have been built or are now available; gate utilization; gate recapture: With the reduction in service of American Airlines, STL has significant unused and underused gates. Gate utilization is down significantly, with 1 gate on Concourse A unleased and idle and 21 gates within American Airlines leasehold currently unused. For financial reasons, the City intends to keep those gates under lease to American Airlines until such time as some other air carrier wants to use them. If approached by an air carrier seeking gates, the City would exercise its rights for their return from American Airlines for direct lease to the air carrier.

As of February 2004, STL will get back 6 additional gates now under lease to American Airlines. This would be a total of 1 gate available for immediate lease, and 27 unused or underused American Airlines gates.

- f) Gate allocation or assignments since the last competition plan update: Our 2002 Update attached our new gate assignment policy. Since that Update, we have used the gate assignment policy and have incorporated it into our process for notifying air carriers of gate availability. As part of the transaction wherein American Airlines acquired TWA, American Airlines released to the Airport its gates on Concourse A. Both incumbents and potential new entrants were contacted regarding gate availability; 27 letters were sent out including the selection criteria (gate assignment policy). **Exhibit "D"** to this 2003 Update is a sample of the letter sent out to announce gate availability.

Since American Airlines reduction in service was announced in July 2003, the Airport has shifted focus and, rather than concentrating on how to fairly allocate limited gate capacity, is now seeking users for an essentially unlimited (relative to demand) pool of available gates. We therefore have modified our Gate Assignment Policy to allow the Director of Airports to waive this procedure when the supply of gates exceeds the demand for gates. Please see **Exhibit "E"** for the modified

procedure reference Section II.D. Should we find ourselves again in the position of having more demand than facilities, we will again apply the Gate Assignment Policy.

- g) RON position allocation or assignments since the last competition plan update: As noted above, STL has an adequate amount of RON pad space available to meet demand and thus does not assign or allocate particular positions.
- h) Accommodation of new entrants and incumbent air carriers seeking to expand at the airport and resolution of any access disputes: During the 2003 Update period, we have accommodated all new entrants and all incumbents wishing to expand at the Airport, and we anticipate continuing to do so. We have had no access disputes.
- i) Methods for developing gate use monitoring charts and airport uses of the charts: We receive on a monthly basis gate usage reports from American Airlines and Southwest Airlines, the airport's two largest carriers, as well as other airlines that have entered into a PUSP since June, 2002. We have that information available in case we should need to seek to accommodate new or expanding air carriers using underutilized gates. However, as noted above, we currently have gate space available and anticipate that being the case for some time.

## 2. Leasing and Subleasing Arrangements

In FAA's May 30, 2002 letter approving the Competition Plan Update submitted on March 1, 2002, we were asked to adopt a timeline for completing the forced accommodation procedures in our preferential-use lease agreements. We are adopting a goal of 30 days as our timeline for completing the Airport's actions under that procedure.

FAA's May 30, 2002 response also requested that we consider adopting more formal policies governing "all facets of airline sub-lease arrangements, as well as more comprehensive monitoring procedures for subleasing." The pro-competitive practices identified in PGL 03-01 relative to leasing and subleasing arrangements include "overseeing a fair and transparent process for notifying users of availability of gates or blocks of time on gates ... sublease or sharing;" and "having a fair and transparent process for ... arranging subleases or gate sharing."

As discussed in the 2002 Update, the Airport has determined that it will use its leverage over approval of subleasing to control anti-competitive subleasing situations. This includes a policy of not approving subleases that include fees more than 15% over those charged to the air carrier by the Airport. Where there are conflicts regarding subleasing, we will make staff available to mediate between the air carriers. Regarding transparency and the idea that all potential subtenants should have an equal chance to sublease available space on incumbents' gates, our experience has been that in almost all cases subsidiaries, regional affiliates and codeshare partners seek sublease or handling arrangements at STL. That may be because the City's common use gates are available to all and offer a more attractive option for unaligned carriers. In addition, as noted throughout, the City has gates available for direct lease.

In addition, the PGL also requested that DOT/FAA be informed in this update of any changes regarding a list of sublease-related items. The items that have been changed, or where the Airport has relevant information to provide, are as follows.

- a) Contractual arrangements at the Airport, for example, disposition of any gate lease agreements that were renewed or changed: The gate utilization reporting requirement has been added to all PUSP's.
- b) Assuring access at the airport: As noted above, there is sufficient gate space at STL to assure access to all air carriers.
- c) Monitoring sublease fees and arrangements: Please reference Section 2. paragraph three for response to this item.
- d) Promoting use of third-party contractors: There is no restriction on the ability of air carriers leasing gates to secure services from any third-party contractor.
- e) Resolution of any disputes between air carriers relating to access: No disputes.

### 3. Patterns of Air Service

The PGL requested information regarding new markets served, new markets served by low fare carriers, or changes in the number of markets served by one carrier.

On November 1, 2003, American Airlines and its affiliate regional airlines (American Connection) cancelled non-stop service to 27 markets as follows:

Albuquerque, Anchorage, Cleveland, Detroit, Fort Smith AK, Fort Wayne IN, Honolulu, Houston Intercontinental, Kansas City, Lincoln NE, Little Rock, London-Gatwick, Louisville, Moline IL, New York City-JFK, Oklahoma City, Omaha, Portland, Sacramento, Salt Lake City, San Jose, Shreveport LA, Sioux Falls SD, South Bend IN, Toronto, Tulsa, and Vancouver

On November 1, 2003, Frontier Airlines started non-stop service between St. Louis and Denver with two departures per day.

### 4. Gate Assignment Policy

FAA's May 30, 2002 response also requested a status report on Gate Assignment Policy and on our efforts to develop, for inclusion on our website, the information that carriers would need to begin serving STL.

Regarding our use of the Gate Assignment Policy to allocate gates when gate capacity is limited, see the discussion at 1(f) above. Information for air carriers seeking to begin service at STL and the Gate Assignment Policy can be found on the Airport's web site

under the category Airlines, and then under Gate Assignment Policy and under Requirements for Airlines Interested in Signatory or Non-Signatory Agreements with the Airport.

The pro-competitive practices identified in PGL 03-01 relative to gate assignment include “overseeing a fair and transparent process for notifying users of availability of gates or blocks of time on gates for lease” and “having a fair and transparent process for assigning gates ... or gate sharing.” As noted in 1(f) above, our practice in notifying air carriers when the American Airlines gates on Concourse A became available demonstrates our commitment to fair and transparent notification processes.

#### 5. Gate Use Requirements

The pro-competitive practices identified in PGL 03-01 relative to gate use requirements include “justifying differences in fees and terms of use for gates between new entrant non-tenants and tenants.” Non-signatory airlines at STL pay landing fees 25% higher than those paid by signatory airlines, and terminal rental rates 15% higher than signatory rates. That increment is attributable to the greater commitment signatory airlines provide to the Airport. On the airfield, signatory airlines carry the burden of residual ratemaking. In the terminal, signatory airlines enter into long-term non-cancelable agreements. If signatory airlines stop providing service, they are still responsible for payment of terminal rents and joint use fees for the remainder of the term or until the City agrees to terminate the signatory agreement. Nonsignatory carriers have a 30-day, no fault cancellation clause, and can therefore enter and exit the market at will.

In addition, the PGL requested that the airport identify “major changes” a number of items (requirements for signatory status, lease requirements, common-use gate priorities, gate use monitoring, and calculation of rental rates and common use fees as well as disparities in fees). Other than the expansion of gate utilization discussed elsewhere in this Update, STL has had no changes in these items.

#### 6. Financial Constraints

The PGL asked that airports identify any additional financial constraints from the previous year, or the relaxation of any financial constraints. In general, St. Louis is facing increased financial constraints due to a decrease in airline landed weight, PFC revenues, concession revenues and increased pressure from the airlines to cut airport charges. The airport has responded by cutting 190 positions from its staff, eliminating or deferring \$90.1 million from the Capital Improvement Program, and deferring \$85-\$110 million in items from Phase I of the W-1W expansion program.

#### 7. Airport Controls Over Airside and Groundside Capacity

FAA’s May 30, 2002 response also requested that we continue considering modifying or removing the MII clause when a new Airport Use Agreement is negotiated. We are currently in the early stages of internal discussions regarding the new AUA, and



modification or elimination of the MII clause remains one of our goals in those negotiations.

The PGL also asked that the airport identify any major changes in its rates and charges policy and describe whether and why the MII clause has been invoked in the period covered by the update. There have been no major changes to STL's rates and charges policy. The air carriers disapproved ten (10) MII projects since the last update. The disapprovals were mainly driven by cost concerns of the air carriers.

8. Airport Intentions to Build or Acquire Gates That Would Be Used as Common Facilities

The PGL asked for an update on plans for additional gates to be used as common facilities. As noted above, American Airlines decision to reduce service at the airport leaves 21 gates within American's leasehold unused or underused. If American Airlines cuts flights to STL below 190 flights per day (on average) or 3.33 average daily departures per gate, the City has a contractual right to reclaim gates in proportion to the shortfall. In addition, even if flights are not cut below that threshold, it is likely that American Airlines would be willing or eager to return some gates back to the airport for use by others, in order to avoid lease payments otherwise due for those facilities. However, at this point, the City intends to leave those gates within American Airlines lease in order to continue receiving lease payments. If the City received a request to begin or expand service at the airport that could not be accommodated without taking gates back from American Airlines, the City would undertake to do so at that time.

**AVAILABILITY OF INFORMATION TO SUPPORT COMPETITIVE ACCESS**

FAA's March 30, 2002 letter asked that we provide the web address where our competition plans are made available to the public. The initial plan, filed in 2000, may be found at <http://www.lambert-stlouis.com/aircarrier/CompPlan1.pdf>. The first update, filed in 2002, may be found at <http://www.lambert-stlouis.com/aircarrier/CompPlan2.pdf>. When this update is posted, the City will add it to the webpage; it will be located at <http://www.lambert-stlouis.com/aircarrier/CompPlan3.pdf>.

Finally, we are attaching copies of the following documents:

**Exhibit "F"** – sample Airport Use Agreement (Signatory)

**Exhibit "G"** – the dispute resolution procedures in effect at STL

Exhibit "A"

**NEW COMMITMENTS FROM AIR CARRIERS SERVING**  
**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT**  
**AS OF NOVEMBER 5, 2003**

- 1) **Delta Air Lines (Main Line)** – 2 **Cincinnati** replacing 2 **Delta Connection (RJ)**
- 2) **Delta Connection (All RJ)** – 1 **JFK**, 1 **Atlanta** (both starting August 1, 2003),  
1 **Cincinnati** and 2 **Salt Lake City** ( both starting November 1, 2003)
- 3) **Air Canada (All RJ)** – 3 **Toronto** (starting September 1, 2003)
- 4) **United Airlines (Main Line)** – 1 **Chicago O'Hare** (starting November 1, 2003)
- 5) **United Express (All RJ)** – 2 **Denver** (starting September 19, 2003) and 3  
**Washington Dulles** (starting October 4, 2003), 2 **Chicago O'Hare** (starting  
November 1, 2003)
- 6) **Northwest Airlines (Main Line)** – 1 retained and 1 new **Detroit** (starting  
ASAP) and 1 **Minneapolis** (starting ASAP)
- 7) **Frontier Airlines (Main Line)** – 2 **Denver** (starting November 1, 2003)
- 8) **America West (Main Line)** – 1 **Phoenix** and 1 **Las Vegas** (starting November 1,  
2003)
- 9) **Continental Airlines (Main Line)** – 2 **Houston Intercontinental** and 1 **Newark**  
**NJ** (both starting November 1, 2003)
- 10) **Southwest Airlines (Main Line)** – 1 **Los Angeles International** and 1 **Fort**  
**Lauderdale** (both starting TBA)

**Total 27 New Flights, 1 Retained Flight, 2 Up-Graded Flights**

## East Terminal Gate Numbers

## SOUTHWEST AIRLINES

## Exhibit "B"

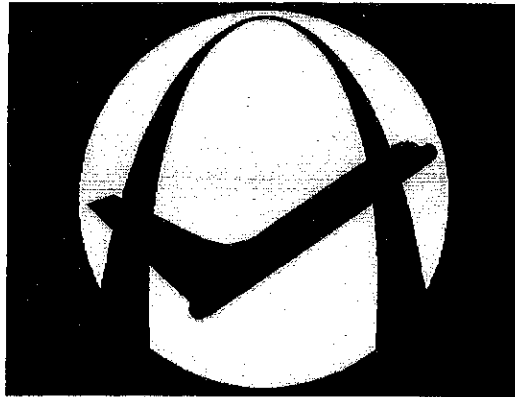
Oct-03	2	4	6	8	10	12	14	16	18	20	22	24	TOTAL
1				10	10	1	10	11		10	10		62
2				10	10		11	11		10	9		61
3				9	10		12	10		10	10		61
4				7	7		8	8		7	7		44
5				9	8	1	10	10	1	9	10		58
6				10	10		11	9	1	10	10		61
7				9	10	1	11	11		10	10		62
8				10	9		11	11		10	10		61
9				11	8	1	11	11		10	9		61
10				10	10	1	9	11	1	9	11		62
11				7	6	1	9	6	1	7	7		44
12				9	8	2	10	10	1	8	10		58
13				10	10	3	10	11		10	7		61
14				10	10	1	11	10		10	10		62
15			1	9	10	1	11	11		10	9		62
16				10	9	1	11	11		10	10		62
17				10	10	1	10	11		10	10		62
18				7	7	1	7	8	2	6	7		45
19				9	8	2	10	10	2	6	10	1	58
20				10	9	1	12	10		10	10		62
21				10	10		11	11	1	9	9		61
22			1	9	10		11	11		10	10		62
23				10	10		11	10	1	10	10		62
24				10	9		11	10	1	8	10	2	61
25				7	7		9	7		7	6		43
26				10	8		10	9		8	9		54
27				9	10		11	10	1	9	8		58
28				9	10	1	12	9		8	9		58
29				9	8		12	10		9	9		57
30				10	9		11	10		9	9		58
31				9	10		11	10		9	9		58
TOTAL	0	0	2	288	280	20	325	308	13	278	284	3	1801

GATE UTILIZATION REPORT

FAX TO: ROBERT BENNETT/AIRPORT PROPERTIES  
FAX NBR. 426-1221

Exhibit "C"

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT**



**FRONTIER AIRLINES, INC.**

**PREFERENTIAL USE SPACE PERMIT NO. AL-320**

AIRPORT NUMBER .....AL-320.....

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT  
PREFERENTIAL USE SPACE PERMIT  
(FRONTIER AIRLINES, INC.)

The City of St. Louis ("City") hereby grants to Frontier Airlines, Inc., ("Permittee") permission to occupy and use the space ("Space") described below at Lambert-St. Louis International Airport ("Airport") under the terms and conditions of this Preferential Use Space Permit ("Permit").

Section 1. SPACE. The Space for which occupancy and use is granted is shown on the attached **Exhibit "A"** (which is incorporated herein). Also included in the Space is the passenger loading bridge at Gate A10, serial number OG 2487. City may relocate, add, substitute or delete portions of the Space at its sole option as may be reasonably required in the opinion of the Director of Airports. Such changes will be made at the sole expense of Permittee and City will not be liable or responsible for any loss whatsoever including without limitation any inconvenience or loss by Permittee of work time, profit or business resulting from such changes, or any consequential, incidental, or special damages.

Permittee accepts the Space "**AS IS**" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. City without limitation expressly disclaims and negates, as to the Space: a) any implied or expressed warranty of merchantability, b) any implied or expressed warranty for a particular purpose, and c) any implied warranty with respect to the Space or any portion thereof.

Section 2. USE. The Space is to be used, subject to and in accordance with the terms, covenants, and conditions of this Permit, only for the conduct of activities which are reasonably necessary to airline passenger service and airline operations. This Permit does not grant the use of any parking area by Permittee unless specifically granted.

All deliveries to or pick-ups from the Airport Terminal Building by Permittee or its agents will be through the dock at the west end of the lower level.

No sale of any goods or services to the public or to employees of any Airport tenant is authorized other than those related to airline passenger service. Violation of this restriction may result in immediate termination of this Permit.

Section 3. PREFERENTIAL USE. Preferential Use means that Permittee has the first right to the use of Preferential Use Premises for uses authorized by this Permit, but that the Director may require Permittee to share the use of Preferential Use Premises under the following conditions:

- A. To facilitate air carriers initiating or seeking to increase service to the Airport ("Requesting Carrier") and to maximize the utilization of facilities at the Airport, Permittee agrees, upon request by the City in the event the City is otherwise unable to accommodate a Requesting Carrier with Airport facilities, to accommodate such Requesting Carrier on a temporary basis by permitting such Requesting Carrier to utilize Permittee's passenger holdroom and passenger loading bridge, at times when such facilities are not needed for Permittee's scheduled or

planned operations or those of other airlines whom Permittee is already accommodating. Permittee's obligations hereunder shall be subject to execution of a written agreement between Permittee and such Requesting Carrier setting forth mutually agreed-to terms and conditions governing such use. In the event such accommodation agreement involves a rental rate based upon square footage, such rental rate shall not exceed the current rental rate per square foot applicable to the facilities involved under this Permit with the City, plus a recovery of all direct and overhead costs associated with the accommodation, including a reasonable allocation of capital improvement costs, and a reasonable administrative fee.

Permittee further agrees to make all reasonable efforts to facilitate the temporary accommodation of such Requesting Carrier with the use of ticket counter area, use of Permittee's baggage facilities and the rendering of customary ground services, upon such carrier's request, if (1) Permittee has adequate capabilities, facilities, and personnel therefor, after taking into account Permittee's own requirements and contractual obligations, the compatibility of said carrier's proposed operations with those of Permittee, and the need for labor harmony, and (2) said Requesting Carrier enters into a written agreement with Permittee therefor and agrees to pay Permittee its established rates and charges for such services. Any accommodation of a Requesting Carrier hereunder must be pursuant to a sublease, handling agreement, or a combination thereof, mutually agreed upon by Permittee and Requesting Carrier and subject to the prior written consent of the City as set out in Section 30. below, which consent shall not be unreasonably withheld.

- B. In the event Permittee advises a Requesting Carrier that Permittee is unable to accommodate the proposed operations of such carrier, or the parties are unable to reach final agreement as to the terms and conditions of an accommodation agreement, and the Requesting Carrier is unable to find reasonable accommodations elsewhere at the Airport, the City, acting by and through its Director, shall determine whether Permittee should accommodate any or all of such Requesting Carrier's proposed operations, reasonably considering all pertinent factors, including Permittee's present and planned use of such facilities and those of other airlines Permittee is then accommodating, the compatibility of such Requesting Carrier's proposed operations with Permittee's operations and those of others already using such facilities, and the need for labor harmony. Upon request, Permittee shall immediately provide all information reasonably necessary to aid the Director in this determination. Should the Director determine that Permittee has the capability to accommodate such Requesting Carrier, he may direct Permittee, in writing, to accommodate such carrier with respect to passenger holdrooms and passenger loading bridge(s) to the extent and during those periods he deems reasonable, and will provide to Permittee and such Requesting Carrier a written statement specifying the terms and conditions, not otherwise resolved between Permittee and such carrier, of such accommodation.
- C. Any sublease, accommodation, or handling agreement pursuant to these procedures shall be for a period to which the parties mutually agree; provided, however, that such an agreement or accommodation may be terminated, at any time, by either party, if other facilities are made available by the City to such Requesting Carrier. In addition, any agreement or accommodation shall recognize that Permittee has the Preferential Use right with respect to the premises and facilities and that, upon 120 days' advance written notice from Permittee that Permittee will require the use of said premises and facilities in a manner that conflicts with

such Requesting Carrier's use, said Requesting Carrier will take whatever action is necessary to eliminate the conflict within the 120-day period, including the adjustment and cancellation of flights. Permittee will make its best good faith efforts to accommodate any schedules of said carrier that have to be adjusted, subject to the availability of time and space in Permittee's leased premises and facilities.

- D. To the extent that one or more Gates are included in Permittee's Preferential Use Space, Permittee shall submit to the City on or before the 5<sup>th</sup> day of each month for the preceding calendar month's activity, a written report certified by an authorized representative of the Permittee showing the Permittee's actual regularly scheduled flight departures (and other departures by Permittee shown separately) operated from each Gate. The Permittee shall also include on each said monthly report the same information for any other air carrier to whom the Permittee provides/shares use of its Gate(s) pursuant to this Section 3. or any other section of this Permit.

Section 4. MINIMUM GATE UTILIZATION. Notwithstanding any other provisions of this Permit including, without limitation, the provisions of Sections 3, 32, 33, 34, and 35 herein, City reserves the right, but not the obligation, to terminate this Permit in the event that the average daily regularly scheduled flight departures fall below two (2) departures per day for any calendar month for any Gate included in Permittee's Preferential Use Space. For the purposes of this Section 4., Permittee's departures shall **not** include, without limitation, the departures of any shared user, sublessee, permittee, or any other airline or affiliate. Calculation of said average daily regularly scheduled flight departures for the purposes of this Section 4. shall be derived from the required reports under Section 3. D. herein. City may exercise this termination right by giving ten (10) days written notice notwithstanding any other provisions of this Permit including, without limitation, Sections 32, 33, 34, and 35 of this Permit. Termination date shall be as stated on said ten (10) day advance written notice.

Section 5. ACCESS. Subject to the payments and the terms, covenants and conditions of this Permit, Permittee has the right of free access, ingress to and egress from the Space, for Permittee's employees, agents, guests, patrons and invitees.

Section 6. TERM. The term of this Permit shall begin on November 1, 2003 and shall end on December 31, 2005 unless sooner terminated in accordance with other provisions of this Permit.

In the event that Airport Use Agreement, AL-319, effective November 1, 2003, between City and Permittee is terminated prior to this Permit's expiration date of December 31, 2005, in accordance with the terms, covenants, and conditions therein, or as authorized by a court of competent jurisdiction, the parties to this Permit acknowledge and agree that this Permit shall immediately terminate concurrently with such termination, notwithstanding any other provisions of this Permit including, without limitation, Sections 32, 33, 34, and 35 of this Permit.

City or Permittee may terminate this Permit without cause by giving 30 days notice to the other party with no liability to the terminating party and such termination shall be deemed a no fault cancellation.

Section 7. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the term of this Permit shall be necessary. Permittee covenants and agrees that at the expiration date of the term of this Permit, or at the earlier termination hereof, it will peaceably surrender possession of the Space in good condition as that existing at the time of Permittee's initial entry upon the Space under this Permit or any preceding permits, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Space with or without due process of law.

Section 8. RENTAL PAYMENTS. Permittee shall pay in advance to City a monthly space rental of \$14,580.12. In addition, Permittee shall pay a pro-rata portion of common area cleaning, maintenance and operating costs for "A" Concourse, Lower Level, operations space adjoining common use space, based upon Permittee's percent of space adjoining the "A" Concourse, Lower Level, common use space in proportion to the total space adjoining this common use space. Permittee shall also pay in advance to City a monthly rental payment of \$3,000.00 for use of City's passenger loading bridge at Gate A10, serial number OG 2487.

All payments shall be paid on or before the first day of each month of the term of this Permit. Rental rates will be revised on July 1, or other date as the Director of Airports may specify, of each year of the term of this Permit. Permittee shall pay a per square foot rental rate that shall be equal to City's actual expense of providing and maintaining the Space as computed by City.

All unpaid rent and fee payments due City hereunder shall bear a service charge of 1½% per month if same is not paid and received by City on or before the 30th of the month in which said payments are due, and Permittee agrees that it shall pay and discharge all costs and expenses including, without limitation, attorneys' fees and litigation cost incurred or expended by City in collection of said delinquent amounts due including services charges.

Payments to City shall be made at the Office of the Director of Airports at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Permittee and shall be made in legal tender of the United States.

Section 9. ADDITIONAL FEES, CHARGES AND RENTALS. Permittee shall pay additional fees, charges and rentals under the following conditions:

- A. If City has paid any sum or sums or has incurred any obligation or expense for which Permittee has agreed to pay or reimburse City for, or
- B. If City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the terms, covenants or conditions of this Permit.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, as set forth herein.



For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by City for any work done or material furnished shall be prima facie evidence against Permittee that the amount of such payment was necessary and reasonable.

Section 10. PROMPT PAYMENTS OF TAXES AND FEES. Permittee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further warrants, covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent.

Section 11. MECHANICS' AND MATERIALMEN'S LIENS. Permittee warrants, represents, and agrees not to permit any mechanics' or materialmen's lien or any other lien to be foreclosed upon the Space or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 12. CONSTRUCTION BY PERMITTEE. Permittee may improve the Space subject to written approval of the Director of Airports. Permittee will submit to the Director of Airports detailed plans and specifications for all improvements to and equipping of the Space. Permittee will not begin any work until it receives the approval of its plans and specifications from the Director of Airports. Any changes in the plans or specifications after approval will require resubmission.

Permittee will provide the Director of Airports with a copy of all applicable permits as required by local municipalities prior to beginning any construction or alterations.

Upon the completion of the improvements hereunder, Permittee shall submit to the Director of Airports a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Permittee.

Permittee will provide the Director of Airports within 30 days of completion or occupancy of any construction or modification to the Space, reproducible as-built drawings on either Mylar or Sepia Mylar base, and in an electronic format acceptable to City.

Title to the Space and all Improvements constructed or placed in or on the Space by the Permittee including all alterations, modifications and enlargements thereof shall become part of the Space with title vesting in the City upon the expiration or earlier termination of this Permit, except that City reserves the right and Permittee agrees that the Director of Airports may require Permittee to remove any or all improvements and structures and restore the Space to their original condition. Permittee agrees to bear all costs of such removals and restorations.

Section 13. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving and equipping the Space, Permittee shall require the contractor to cause City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its

Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than \$2,000,000 as to any one person and \$2,000,000 as to any one occurrence, and with property damage limits of not less than \$2,000,000 as to any one occurrence. Said insurance shall be in a form acceptable to City.

Section 14. PERFORMANCE AND PAYMENT BONDS. Permittee shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 15. SIGNS. Permittee agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the areas of the Space exposed to the public without prior written approval of the Director of Airports and that such signs shall conform to standards established by said Director of Airports with respect to wording, type, size, design, color and location.

Section 16. COMPLIANCE WITH LAWS AND REGULATIONS. Permittee shall comply with all Rules and Regulations which the Director of Airports may establish from time to time. In addition, Permittee warrants, represents, and agrees that it shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Space or to any adjoining public ways, as to the manner of use or the condition of the Space or of adjoining public ways.

Section 17. SECURITY PLAN AND FACILITIES. Permittee hereby acknowledges that City is required by Federal Aviation Regulations, Part 107, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Permittee covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Permittee's exercise of the privileges granted to Permittee hereunder. Permittee will reimburse City for all fines imposed upon City by the FAA resulting from Permittee's negligence or failure to act in relation to Part 107 within thirty (30) days of the City's written request or notice.

Section 18. PASSENGER LOADING BRIDGES. City hereby permits Permittee preferential use of the City owned Passenger Loading Bridges at Gate A10, serial number OG 2487. Permittee, at its own cost and expense, shall service, repair, maintain, test, and overhaul the City's passenger loading bridge consistent with normal practices in the ordinary conduct of its business and in at least the same manner and the same care as used by Permittee with similar equipment owned by or operated by Permittee, which manner and care shall at all times be at or above the industry standard for similar equipment. The City shall be the sole judge of the adequacy of work performed by the Permittee, and may upon written notice require specific service, repair, maintenance, or overhaul work to be completed at Permittee's own cost and expense.

Permittee will submit within 60 days of the start of each Contract Year (one consecutive twelve (12) month period commencing on the first day of the term of this Permit, and one consecutive fourteen (14) month period commencing on November 1, 2004), a maintenance schedule for City's passenger loading bridge at A10, serial number OG 2487, for that Contract Year. Permittee will report to the Director of Airports, within 30 days following the close of each Contract Year of this Permit or at the earlier termination hereof, any service, repair, and maintenance completed on the passenger loading bridge and the costs expended for that service, repair, and maintenance. Permittee will pay all costs of operating and maintaining City's passenger loading bridge. Permittee may enter into agreements to recover a reasonable portion of the passenger loading bridge costs from secondary use operators if secondary use is designated and/or approved in advance by the Director of Airports in writing. Permittee shall submit to the Director of Airports a copy of such agreements with secondary use operator for the Director of Airports' prior written approval. Security requirements at this passenger loading bridge will be the responsibility of Permittee.

Section 19. REPAIRS AND MAINTENANCE. Permittee will provide and pay for all repairs and maintenance of the Space, except the following which shall be the responsibility of City:

- A. The structural components of the building.
- B. The utility system to, but not within, the Space except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

Permittee will perform the following functions as part of its responsibilities in the repair and maintenance of the Space. The following list includes certain functions but Permittee's responsibilities are not limited to those functions:

- A. Perform custodial services daily.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep the Space free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Space and the Airport when such damage results from the careless or negligent acts of Permittee or Permittee's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director of Airports applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Permittee agrees to promptly provide and install same and to abide by such standards.
- F. Confine all handling and holding of Permittee's property to the Space.
- G. Keep all papers and debris picked up daily from the Space.

H. Keep the Space free of all pests, providing such pest control services as required.

I. No storage will be permitted on the exterior areas of the Space.

J. Maintain all conveyors and baggage handling devices.

Section 20. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Permittee's operations as is reasonably practicable) to enter upon and in the Space for the following purposes:

A. To inspect such Space to determine whether Permittee has complied and is complying with the terms, covenants and conditions of this Permit.

B. To perform maintenance and make repairs in any case where Permittee is obligated, but has failed to do so, after City has given Permittee notice so to do, in which event Permittee shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

D. To perform inspections, testing, reporting, surveys, environmental inspections, studies, and assessments during normal business hours.

Section 21. UTILITIES. City will provide and pay for heated and chilled air to, but not into the Space. Permittee will provide and pay all other utilities it requires. City shall not be liable to Permittee for any damages, cost, or losses of any kind what so ever due to the interruption of any utility services, or any delay in the supplying or furnishing of any utility service including, without limitation any consequential, incidental, or special damages.

Section 22. INTERFERENCE WITH AIR NAVIGATION. Permittee warrants, represents, and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Space. Permittee warrants, represents, and agrees that any obstructions will be immediately removed by Permittee at its expense. Permittee warrants, represents, and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Permittee further warrants, represents, and agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

Section 23. LIABILITY INSURANCE. Permittee, will obtain, at its sole expense and at all times during the term of this Permit, liability insurance, on an occurrence basis, against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property

damage arising or alleged to arise out of the activities of Permittee, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors and invitees pursuant to this Permit on the Airport under the following types of coverage:

A. Comprehensive General Liability;

B. Comprehensive Automobile Liability (any vehicles, including hired and non-owned vehicles).

The minimum limits of coverage for the above classes of insurance shall equal a combined single limit of \$2,000,000 comprised of such primary and excess policies of insurance as Permittee finds it feasible to purchase during the term of this Permit.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Permittee, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors and invitees. In addition such insurance shall include contractual liability insurance sufficient to cover Permittee's indemnity obligation hereunder. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City and its Board of Aldermen, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Permittee in its operations hereunder.

Section 24. PROPERTY INSURANCE. Permittee will provide fire, lightning, extended coverage, or other casualty and hazards insurance and other related insurance coverages for the Space and all of its improvements and equipment or property existing or subsequently installed within the Space.

Section 25. WORKERS' COMPENSATION. Permittee at a minimum will obtain, at its sole expense and at all times during the term of this Permit for its employees working on Airport Premises Workers' Compensation insurance coverage at least at the statutory limits applicable to Permittee's operations in the State of Missouri.

Section 26. WAIVER OF SUBROGATION. Permittee, on behalf of itself and its insurers, hereby waives any claim or right of recovery from City, its Board of Aldermen, Airport Commission, officers, employees and agents for loss or damage to Permittee or its property or the property of others under Permittee's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "All Risk" physical damage property insurance policy. Permittee shall provide notice of this waiver of subrogation to its insurers.

Section 27. EVIDENCE OF INSURANCE. Certificates, or other evidence of insurance coverage and special endorsements required of Permittee in this Article, shall be delivered to the Director of Airports in form and content satisfactory to City.

At least 15 days prior to the expiration of any such policy, Permittee shall submit to the Director of Airports a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Permittee shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director of Airports, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director of Airports. Each such insurance policy shall also provide primary coverage to the City when any policy issued to the City provides duplicate or similar coverage and in such circumstances the City's policy will be excess over Permittee's policy.

Section 28. INDEMNIFICATION. Permittee shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Permit and/or the use or occupancy of the Space and/or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, licensees, independent contractors or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The Director of Airports or his/her designee shall give to Permittee reasonable notice of any such claims or actions. The Permittee shall also use counsel reasonably acceptable to the City Counselor of the City or his/her designee, after consultation with the Director of Airports or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Permit.

Section 29. OCCUPANCY OF SPACE. Permittee agrees that it will not permit any act of omission or commission or condition to exist on the Space which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 30. ASSIGNMENT AND SUBLETTING. Permittee shall not assign or transfer this Permit. Permittee shall not sublet the Space or any portion thereof without the prior express written consent of the Director of Airports.

Section 31. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested addressed to the Director of Airports, City of St. Louis Airport Authority, 10701 Lambert International Boulevard, St. Louis, Missouri 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Permittee shall be sent by certified mail, return receipt requested addressed to Frontier Airlines, Inc., 7001 Tower Road, Denver, Colorado 80249.

The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The

effective date of service of any such notice shall be the date such notice is mailed to Permittee or said Director.

Section 32. CITY'S RIGHT TO TERMINATE PERMIT BY REASON OF DEFAULT. City, acting by and through its Director of Airports, may declare this Permit terminated in its entirety, in the manner provided in Section 34 hereof, upon the happening of any one or more of the following events:

- A. If the fees, charges, or other money payments which Permittee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Permit, Permittee shall:
  - 1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
  - 2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
  - 3. Make a general assignment for the benefit of creditors;
  - 4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
  - 5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Permit an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Permittee a bankrupt or insolvent, or approving a petition seeking a reorganization of Permittee, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days.
- C. If Permittee shall have failed in the performance of any term, covenant or condition herein required to be performed by Permittee.

On the date set forth in the notice of termination, the term of this Permit and all right, title and interest of Permittee shall expire, except as otherwise provided in Section 34 hereof.

Failure of City to take any authorized action upon default by Permittee of any of the terms, covenants or conditions required to be performed, kept and observed by Permittee shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Permittee. The acceptance of monies by City from Permittee for any period or periods after a default by Permittee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Permittee shall not be deemed a waiver or estopping of any right on the part of City to terminate this Permit for failure by Permittee to so perform, keep or observe any of said terms, covenants or conditions.

Section 33. PERMITTEE'S RIGHT TO TERMINATE PERMIT BY REASON OF DEFAULT. Permittee, at its option, may declare this Permit terminated in its entirety, in the manner provided in Section 34 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes.
- C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport continuing for a period in excess of 60 days.
- D. If City shall have failed in the performance of any term, covenant or condition within the control of City and herein required to be performed by City.

Section 34. PROCEDURES FOR TERMINATION. Except as expressly provided for in this Permit, no termination declared by either party shall be effective and unless and until not less than 30 days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Permit is being terminated and no such termination shall be effective if such cause of default by its nature cannot be cured within such 30 day period, and if the party at default commences diligently to correct such default within said 30 days and corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Permittee agrees also to pay a reasonable attorneys' fee, court costs and expenses.

Section 35. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of City and Permittee specified in this Permit including, without limitation, Sections 4, 6, 32, 33 and 34 are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

Section 36. CONDITIONS OF DEFAULT. This Permit shall be considered in default when Permittee fails to fulfill any term, covenant or condition of this Permit and such default shall be considered a material breach of this Permit for which the City at its option may terminate this Permit and/or seek other remedies at law or in equity.

Section 37. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Permittee hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin



or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Permittee hereby agrees that its Space shall be posted to such effect as required by such regulation.

- B. Permittee agrees that in performing under this Permit, neither it nor anyone under its control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Permittee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Permittee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Permittee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Permittee shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Permittee agrees that should it be determined by Permittee or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Permittee to achieve the provisions of its program.
- E. Permittee will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Permittee further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Permittee in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Permit.
- G. Whenever Permittee is sued by a subcontractor, vendor, individual, group or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Permittee shall notify the City Counselor in writing of such suit or threatened suit within 10 days.
- H. In event of Permittee's noncompliance with nondiscrimination clauses of this Permit, or to furnish information or permit its books, records and account to be inspected within 20 days from date requested, this Permit may be canceled, terminated or suspended, in whole or in part,

and Permittee may be declared ineligible for further City contracts for a period of one year by option of City, provided, further, if this Permit is canceled, terminated or suspended for failure to comply with fair employment practices, Permittee shall have no claims for any damages or loss of any kind whatsoever against City.

- I. Permittee will establish and maintain for the term of this Permit an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Permittee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Permittee assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 38. NO PERSONAL LIABILITY. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Permit.

Section 39. FORCE MAJEURE. Neither City nor Permittee shall be deemed in violation of this Permit, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and for which is not within its control.

Section 40. QUIET ENJOYMENT. Subject to the terms, covenants and conditions of the Permit, City covenants that Permittee on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Space.

Section 41. GOVERNING LAW. This Permit shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter and its ordinances as they may be amended from time to time.

Section 42. WITHOLDING REQUIRED APPROVALS. Whenever the approval of the City, or the Director of Airports, or of Permittee is required herein, no such approval shall be unreasonably requested or withheld, conditioned, or delayed.

Section 43. WAIVERS. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. Any such waiver must be in writing and signed by the party waiving.

Section 44. PREVAILING WAGE. Permittee shall, as a condition of the Permit, include in all service contracts pertaining to the Space language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City of St. Louis Ordinance No. 62124.

Section 45. INVALID PROVISIONS. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either City or Permittee in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Permit.

Section 46. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Permit shall extend to and bind the legal representatives, successors, sublessees, permittees, and assigns of the respective parties hereto.

Section 47. OPERATION AND MAINTENANCE OF AIRPORT. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 48. AGREEMENTS WITH THE UNITED STATES. This Permit is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 49. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Permittee agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Permit, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes substantially impair the right of Permittee hereunder.

Section 50. AMERICANS WITH DISABILITIES ACT (ADA). Permittee shall be responsible for compliance with the Federal ADA, plus other federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Permittee's services.

Section 51. ADVERTISING. Permittee shall have no right to use the trademarks, symbols, trade names or name of the Airport or Space, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director of Airports.

Section 52. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Permittee and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director of Airports shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Permittee agrees to be bound by such decision. All determinations by the Director of Airports are final and binding.

Section 53. TIME IS OF THE ESSENCE. Time is of the essence in this Permit. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Permit.

Section 54. ACKNOWLEDGMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Permit. As such, the terms of this Permit shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Permit or any amendments, modifications or exhibits thereto.

Section 55. REQUIRED APPROVALS. When the consent, approval, waiver, or certification ("Approval") of other party is required under the terms of this Permit, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports or his/her authorized or designated representative. The City and Permittee agree that extensions of time for performance may be made by the written mutual consent of the Director of Airports and the Permittee or its designee.

Section 56. ENVIRONMENTAL NOTICE. Permittee shall promptly notify the Director of Airports of (1) any change in the nature of the Permittee's operations on the Space that will materially and/or substantially change the Permittee's or City's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Permittee's operations on the Space or the Space.

Section 57. ENTIRE AGREEMENT. This Permit, together with all exhibits attached hereto, constitutes the entire Permit between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Permit may be amended only in writing and executed by duly authorized representatives of the parties hereto.

The foregoing Permit was approved by the Airport Commission at its meeting on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

BY: \_\_\_\_\_  
Commission Chairman                      Date  
and Director of Airports

Comptroller, \_\_\_\_\_ Date  
City of St. Louis

Secretary, \_\_\_\_\_ Date \_\_\_\_\_  
Board of Estimate & Apportionment

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

## Exhibit "D"

March 25, 2002

Mr. Joe Leonard, C.E.O.  
Airtran Airlines  
9955 Air Tran Blvd.  
Orlando, FL 32827

SUBJECT: Gate A-14 and Associated Office and Operations Space

Dear Mr. Leonard:

The purpose of this letter is to inform you of gate availability at Lambert-St. Louis International Airport. On April 6, 2002, American Airlines Preferential Use Space Permit will expire for Gate A-14 and associated office and operations space (the "Premises"). The Premises include 4,098 s.f. of Mid Level, Concourse "A" space, including Gate A-14 and office space and 1,576 s.f. of Lower Level Concourse "A" operations/office space. Additional Lower Level Concourse "A" operations/office space may be made available. The current signatory rate per square foot/year is \$32.35. Please see the attached exhibit "A" defining the Premises.

It is the St. Louis Airport Authority's (the "Airport") intent to lease the Premises to another air carrier under a Preferential Use Space Permit or an Airport Use Agreement (signatory) with preferential use provisions.

In compliance with the Wendell H. Ford Aviation and Investment Reform Act for the 21<sup>st</sup> Century ("AIR-21"), the Airport prepared and submitted for approval an Airport Competition Plan (the "Plan") to the Federal Aviation Administration (the "FAA"). The original Plan was dated August 2, 2000, with an update dated March 1, 2002. As a result of the Plan's review by the FAA, the Airport was required to develop a Gate Assignment Policy (the "GAP"). The Airport will be using its GAP as a means by which to reassign the Premises. If Airtran Airlines is interested in leasing the Premises, please provide the following:

1. LETTER OF INTENT: A letter of intent stating that Airtran Airlines will enter into an agreement to acquire the Premises, along with the information requested below, no later than April 30, 2002. Letters of intent received after this date will not be considered.
2. AGREEING TO PREFERENTIAL USE AND REPORTING REQUIREMENTS: The Airport will only consider leasing Facilities under a Preferential Use Space Permit or Airport Use Agreement (signatory) with preferential use provisions. Air Carriers will be required to supply monthly reports of daily gate utilization by gate so that the Airport can identify gates that can accommodate new entrant Air Carriers. Airtran Airlines must agree in writing to the provisions of this section.

Page 2  
Mr. Joe Leonard  
March 25, 2002

3. DEMONSTRATE COMMITMENT AND UTILIZATION: Air Carrier must demonstrate a strong commitment to serve the St. Louis region's traveling public and make maximum utilization of Facilities. Air Carrier must submit proposed schedule and destinations, aircraft type, and frequency of flights (turns per gate). For incumbents this will include data for existing gates as well as additional gates.
4. DEMONSTRATE COMPETITION: In order to comply with the requirements and commitments contained in the Plan, the Air Carrier must demonstrate that the acquisition of the Premises will enhance the Airport's competitive position.
5. DEMONSTRATE NEED: If Air Carrier is an incumbent with inadequate facilities at the Airport, it must demonstrate that acquiring the Premises is essential to supporting its operations. Incumbent Air Carriers must also comply and submit information in accordance with paragraphs 1., 2., 3., and 4. above.

The Airport will select an air carrier that best meet the criteria of the GAP in the opinion of the Director of Airports.

Thank you for your interest in Lambert-St. Louis International Airport. If you have any questions or require clarification regarding the above, please contact me at (314) 426-8079.

Sincerely,

Brian Kinsey  
Airport Properties Division Manager

cc: Leonard Griggs  
Gerard Slay  
Ken Below  
Sam Waddle  
Robert Bennett

BK/sw

## **LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT GATE ASSIGNMENT POLICY**

### **I. INTRODUCTION:**

The purpose of the Gate Assignment Policy ("GAP") is twofold: 1. to establish procedures and qualification criteria for leasing gates, holdroom, ticket counters and bag make-up space ("Facilities") at Lambert-St. Louis International Airport ("Airport") in the event that Facilities are returned to the Airport or otherwise become available; and, 2. to establish procedures for new entrant or incumbent Air Carriers seeking subtenant accommodations in the event that no Facilities are available for direct lease.

### **II. PROCEDURES FOR NEW ENTRANT OR INCUMBENT AIR CARRIERS SEEKING AVAILABLE FACILITIES:**

The following procedures will be implemented upon Facilities becoming available at the Airport:-

- A. Airport advertises that certain Facilities will be available under a Space Permit or Airport Use Agreement (signatory) with preferential use provisions.
- B. Interested Air Carriers(s) will submit letter of intent, by a date certain established by the Airport, to acquire Facilities. The letter of intent shall comply with information requested by the Airport that responds to the established criteria for assignment of Facilities. Air Carriers that currently do not operate at the Airport will be required to enter into an Airport Use Agreement (signatory) or an Airline Operating Agreement (non-signatory) with the Airport.
- C. The Airport will evaluate requests based on compliance with the established criteria. The Director of Airports will select Air Carriers(s) based on compliance with the established criteria which best reflect the interests of the Airport and the St. Louis region as a whole.
- D. In the event that the Airport has gates in excess of demand, the Director of Airports reserves the right to waive these procedures, with the exception of the preferential use provisions requirement, until such time as demand can no longer be accommodated.



SELECTION CRITERIA:

The following criteria will be considered in the selection of Air Carrier(s) to enter into agreements to operate from the available Facilities:

- A. PREFERENTIAL USE: The Airport will only consider leasing Facilities under a Space Permit or Airport Use Agreement (signatory) with preferential use provisions. Air Carriers will be required to supply monthly reports of daily gate utilization by gate so that the Airport can identify gates that can accommodate new entrant Air Carriers
- B. COMMITMENT AND UTILIZATION: Air Carrier must demonstrate a strong commitment to serve the St. Louis region's traveling public and make maximum utilization of Facilities. Air Carrier must submit proposed schedule and destinations, aircraft type, and frequency of flights (turns per gate). For incumbents this will include the above data for existing gates as well as additional gates.
- C. COMPETITION: Airport has submitted a Competition Plan to the Department of Transportation ("DOT"). In order to comply with the requirements and commitments contained therein, the Air Carrier must demonstrate that the acquisition of additional Facilities will enhance the Airport's competitive position.
- D. NEED: If Air Carrier is an incumbent with inadequate Facilities, it must demonstrate that acquiring the Facilities is essential to supporting its operations. Incumbent Air Carriers must also comply and submit information in accordance with paragraphs A., B., and C. above.

**III. PROCEDURES FOR NEW ENTRANT OR INCUMBENT AIR CARRIERS SEEKING SUBTENANT STATUS IF NO FACILITIES ARE AVAILABLE FOR DIRECT LEASE:**

The following procedures will be implemented in the event that a new entrant or incumbent Air Carrier seeks subtenant status if no Facilities are available for direct lease:

- A. Air Carrier notifies the Airport that it wishes to arrange a sublease to enter the St. Louis market or expand existing operations and no Facilities are available for direct lease.
- B. Airport advises air carrier to contact City Agent operating common use City Gates for accommodation or prepare an RFP to incumbent Air Carriers for accommodation. Advise such Air Carriers to contact the Airport should reasonable subtenant accommodations not be reached within ninety (90) days after RFP is sent or contact made with City Agent.

## Exhibit "E"

- C. If contacted by Air Carrier after the ninety (90) day period and such Air Carrier states that reasonable subtenant accommodations could not be reached with an incumbent Air Carrier or City Agent, Airport will advise all incumbents with preferential use language in their Air Carrier Agreements to provide Airport with their current schedule of operations by gate. Airport will decide, within thirty (30) days, which incumbent Air Carrier with preferential use language can best accommodate Air Carrier seeking subtenant status.
- D. After identifying such incumbent Air Carrier that can best accommodate Air Carrier seeking subtenant status, Airport will contact same and advise that preferential use clause is being invoked and to provide access in accordance with the preferential use provisions.

Exhibit "F"

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT**



**FRONTIER AIRLINES, INC.**

**AIRPORT USE AGREEMENT NO. AL-319**

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT  
AIRPORT USE AGREEMENT  
(FRONTIER AIRLINES, INC.)

This Agreement made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the City of St. Louis, a municipal corporation of the State of Missouri, hereinafter called the "City", and Frontier Airlines, Inc., a corporation organized and existing under the laws of the State of Colorado, hereinafter called "Airline",

WITNESSETH:

WHEREAS, the City owns an airport known as the "Lambert-St. Louis International Airport" located in the County of St. Louis, State of Missouri, hereinafter called the "Airport".

WHEREAS, the Airline is engaged in the business of air transportation with respect to persons, property, cargo and mail; and

WHEREAS, the Airline presently desires to lease certain premises and facilities and obtain rights, licenses, services and privileges in connection with and on the Airport under the terms and conditions hereinafter stated; and

WHEREAS, the City is willing to lease certain premises and facilities and to grant rights, licenses, services and privileges in connection with and on the Airport to the Airline under the terms and conditions hereinafter stated.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the City does hereby lease to the Airline and the Airline does hereby lease from the City certain premises and facilities, rights, licenses, services and privileges in connection with and on the Airport as follows, to wit:

ARTICLE I

DEFINITIONS

"Airport Cost Centers" means the direct cost areas to be used in accounting for Airport costs for the purposes of calculating compensatory rates and charges hereunder, as depicted in Exhibit "A", Airport Layout and Airfield Cost Center Plan, and Exhibit "B", Terminal Area Cost Center Plan which are attached hereto and incorporated herein, as such areas now exist or may hereafter be modified or expanded and as more particularly described below:

- A. "Main Terminal" means the main terminal portion of the terminal complex, together with the upper level terminal roadway which forms the roof of the middle level facilities (baggage claim and administrative office areas).

- B. "Terminal Expansion" means the extended portion of the terminal complex, currently used as an airline club, constructed as part of the 1996 "Terminal Expansion and B/C Connector" project.
- C. "Concourses A/B/C" means Concourse A, Concourse B, and Concourse C (exclusive of the Concourse C extension).
- D. "Concourse C Extension" means the extended portion of concourse C constructed as part of the 1981 "East Concourse Extension" project.
- E. "Concourse D" means Concourse D constructed as part of the 1983 "Concourse Addition and Improvements" project.
- F. "East Connector" means the space in the connector concourse between the Main Terminal and Concourse D constructed as part of the 1975 "Concourse Improvements and Terminal Expansion" project.
- G. "East Terminal" means the new East Terminal building.
- H. "International Area" means the federal inspection services (FIS) area, Gates E29, E31, and E33 and associated office and operation space, which are operated for the City through an agency agreement.
- I. "Airfield" means the runways, taxiways, and apron areas, navigational aids, hazard designation and warning devices, airfield security roads and fencing, blast fencing, lighting, clear zones and safety areas for landing, taking off and taxiing of aircraft, aviation easements, including *land* utilized in connection therewith or acquired for such future purpose, and *facilities*, the acquisition, construction or installation cost of which is wholly or partially paid by the City, as depicted in Exhibit "A".
- J. "Airline Service Building" means that building apart from the Terminal Complex, used to service airline equipment.

"Amortization" means the level annual charge required to recover the Net Cost of a Capital Improvement over the Useful Life of such Capital Improvement at the City's Cost of Capital.

"Capital Improvement" means any improvement or capital asset acquired or constructed by City at the Airport which has a Net Cost in excess of \$10,000 and a Useful Life in excess of three years or a Net Cost in excess of \$25,000 with a useful life in excess of one year.

"Cost of Capital" means (a) for Capital Improvements financed with Airport System Revenue Bonds, the effective interest rate (the "true interest cost" or "TIC") on the Bonds used to finance the particular Capital Improvement and (b) for Capital Improvements financed with other Airport funds, the current Revenue Bond Index of 22-year+, "A" rated bonds published daily in the Wall Street Journal (or successor publication thereto), as of the date the Capital Improvement is placed

in service. However, for the purpose of developing annual rates and charges, the rate index nearest to the date of the rate setting will be used.

"Deferred Maintenance Charge" means the amount to be charged to the airline rate base to fund and replenish City's reserve for deferred maintenance, which charge shall be limited to \$150,000 per year and allocated sixty percent (60%) to the Airfield, thirty percent (30%) to the terminal building (and further allocated to individual terminal cost centers based on Gross Space), and ten percent (10%) to other buildings and facilities. City's reserve for deferred maintenance shall not exceed \$750,000 in the aggregate.

"Depreciation and Interest Charges" means annual depreciation charges associated with Airport assets placed in service on or before June 30, 1997, as determined from the Airport's Fixed Asset Database, unless otherwise excluded pursuant to any prior amendatory Agreements.

"Director" or "Director of Airports" means the Director of Airports of the City of St. Louis or his/her authorized or designated representative.

"Enplaned Passengers" means the total of originating and Interline departing connecting passengers.

"Federal Aviation Administration" or "FAA" means the entity created by the Federal Government, under the Federal Aviation Act of 1958, or such other Federal Governmental authority as may be the successor thereto or be vested with the same or similar authority.

"Fiscal Year" refers to City's fiscal year and means the twelve-month period commencing July 1 and extending through June 30 of the following calendar year, or such other fiscal year as City may establish by ordinance.

"Fixed Asset Database" means the database maintained by the Airport to record historical investments in Airport fixed assets, as documented in the report, *"Fixed Asset Database and Calculation of FY 1998-99 Depreciation and Interest Charges"* dated June 1, 1998, which report is incorporated herein by reference.

"Gates" means each concourse area from which passengers enplane or deplane aircraft, including the holdrooms and related tenant improvements.

"Gross Space" means every square foot of space, measured from the inside of perimeter walls and from the centerline of interior partitions, including but not necessarily limited to leasable, public, concession, City administrative, mechanical and janitorial areas.

"Interest on Assets Financed with Airport Funds" means interest charges associated with Airport assets placed in service on or before June 30, 1997, and financed with Airport funds (other than bond proceeds), as documented in the Fixed Asset Database. Such interest charges will be calculated based on the mid-life value (50%) of the City's investment in depreciable assets, unless otherwise excluded pursuant to the First Amendatory Agreement.

"Interest on Assets Financed with Bonds" means interest charges associated with Airport assets placed in service on or before June 30, 1997, and financed with bond proceeds (other than airport funds), as documented in the report, "*Analysis of the Impact of Bond Refinancings on Airline Rates and Charges*" dated March 17, 1995, as supplemented by letter dated April 4, 1995, which report and letter are incorporated herein by reference.

"Interline" means between airlines and refers to any airline other than Frontier Airlines, Inc. which operates as a different legal entity under a different Air Carrier Certificate regardless of code-share, marketing, or other affiliation.

"Maintenance and Operating Expenses" means all reasonable and necessary current expenses of City, paid or accrued, in operating, maintaining, repairing, and administering the Airport as depicted on Exhibit "D"; including, without necessarily limiting thereto, salaries and wages, fringe benefits, materials and supplies used for current operations, equipment purchases (items costing \$10,000 or less per item), contractual services, utilities, professional services, police protection services, fire protection services, administrative expenses, insurance premiums, charges of any paying agents and any other depository bank pertaining to the Airport, the payment to the City of 5% of the gross receipts of the Airport as required by Section 504(B) of the Airport's master revenue bond trust indenture, as well as charges by the City for administrative expenses of other City departments whose services are directly related or reasonably allocable to the administration of the Airport; provided, however, Maintenance and Operating Expenses shall not include any allowance for depreciation, payments in lieu of taxes, Capital Improvements, or any charges for the accumulation of reserves for capital replacements. Maintenance and Operating Expenses shall be fairly allocated among Airport Cost Centers in accordance with generally accepted cost accounting practices.

"Majority-in-Interest" means those scheduled airlines (but in no event less than fifty percent (50%) of the number of scheduled airlines who have executed agreements similar to or substantially the same as the 1965 Airport Use Agreement, as amended), who have on the date in question, more than fifty percent (50%) of the aggregate revenue aircraft weight landed at the Airport during the immediately preceding calendar year.

"Maximum Certificated Landing Weight" means the maximum approved weight of an aircraft at landing as determined or approved by the Federal Aviation Administration.

"Net Cost" means, with respect to a Capital Improvement, the total cost of the Capital Improvement (including actual construction costs; architectural and engineering fees, program management fees, testing and inspection fees, construction management fees, permit fees, and other direct or allocable fees; interest during construction; and allocable out-of-pocket financing costs) less any federal or state grants-in-aid or passenger facility charge resources used in financing the Capital Improvement.

"Off-Line Aircraft" means, any aircraft operated by an entity other than Airline.



"Terminal Support Facilities" means those areas of the Leased Premises which are reasonably related to the use, support and operation of the Gates for Airline operation at the Airport, including but not limited to ticket counters, passenger loading bridges, offices and fuel facilities.

"Useful Life" means the estimated period of time that a Capital Improvement is to be recovered through the Amortization process. Useful Lives will be assigned to Capital Improvements based on generally accepted airport accounting practices, as shown on the attached Exhibit "C".

## ARTICLE II

### LEASED PREMISES

Section 201. Use of Airport. The use by Airline, its employees, passengers, guests, patrons and invitees (in common with other duly authorized users) of the Airport and appurtenances thereto, the same being more particularly described on Exhibit "A", attached hereto and made a part hereof, together with all facilities, improvements, equipment and services which have been or may hereafter be provided for common use at or in connection with the Airport. Said use, without limiting the generality thereof, shall include:

- A. The operation of transportation system by aircraft for the carriage of persons, property, cargo and mail (hereinafter referred to as "air transportation");
- B. The repairing, maintaining, conditioning, servicing, testing, parking or storage of aircraft or other equipment of Airline, or of any other scheduled air transportation company, or, in emergencies, government owned aircraft; provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall permit Airline to perform such functions as an incident to its conduct of air transportation;
- C. The training on the Airport of personnel in the employ of or to be employed by Airline, or any other scheduled air transportation company, or, in emergencies, government personnel, provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall permit Airline to perform such functions incident to its conduct of air transportation;
- D. The sale, disposal or exchange of the Airlines' aircraft, engines, accessories, fuel, lubricants and other equipment or supplies inclusive, provided that such rights shall not be construed as authorizing the conduct of a separate business by the Airline, but shall permit the Airline to perform such functions incident to its conduct of air transportation;
- E. The servicing by Airline or others of Airline's aircraft and other equipment, by truck or otherwise, with gasoline, oil, greases, lubricants and any other fuel or propellant or other supplies required by Airline;
- F. The landing, taking-off, flying, taxiing, towing, parking, loading and unloading of Airline's aircraft or other equipment used in the operation of scheduled, courtesy, test, training, inspection, emergency, special, charter, and other flights, including, without limiting the

generality hereof, the right to load and unload Airline's aircraft convenient to passenger terminal facilities;

- G. The right to transport, load and unload persons, cargo, property and mail to, from and at the Airport by such loading and unloading devices, motor cars, buses, trucks or other means of conveyance as the Airline may choose or require in the operation of its air transportation systems;
- H. The right to install, maintain and operate without cost to the City, by the Airline alone, or in conjunction with any other air transportation companies who are users of the Airport, or through a nominee, a message tube system and other communications systems between suitable locations in the aircraft loading areas and suitable locations in or about the Airline's maintenance areas and between any or all of said locations and the Airline's offices;
- I. The right to install, maintain and operate without cost to the City, by the Airline alone, or in conjunction with any other air transportation companies who are users of the Airport, or through a nominee, suitable aircraft air conditioning equipment;
- J. The right to install and operate, at the Airline's expense, identification signs representing its business, which signs shall be substantially uniform in size, type and location with those of other air transportation companies, who are users at the Airport, the number, general type, size, design and location of such signs to be subject to the approval of the City, such approval not to be unreasonably withheld;
- K. The right to install, maintain and operate, at the Airline's expense, by the Airline alone, or in conjunction with any other air transportation companies who are users of the Airport, or through a nominee, such radio communications, meteorological and aerial navigation equipment and facilities in or on premises used exclusively by the Airline at such locations as the City shall approve;
- L. The right to use, in conjunction with other authorized users, the Public Address System which is installed by the City in the terminal buildings and concourses; and
- M. The conduct of any other operation or activity which is reasonably necessary to the conduct of air transportation.

Section 202. Leased Premises. Airline is granted:

- A. The Preferential Use of a ticket counter, associated back office space, an outbound baggage handling area, concourse operations areas, and gatehold areas (Preferential Use Premises).
- B. The Preferential Use (or non-exclusive use, in common with other Airlines) of any curb side baggage check-in system which shall be placed in use by Airline, provided that Airline shall be responsible for and shall assume all the cost of the installation, operation and maintenance of the said curb side baggage check-in system;

- C. The non-exclusive use, in common with other Airlines, of the inbound baggage handling and claim facilities now in use or which may hereinafter be placed in use, provided that Airline in common with other Airlines and/or Operators using such facilities shall be responsible for and shall pay the cost of the operation and maintenance of said inbound baggage handling and claim systems and the areas used for concourse security (Joint Use Premises).
- D. The use of all such space with respect to which it is granted the Preferential Use hereunder for any reasonable purpose in connection with or incidental to its business including, without limiting the generality hereof, the handling, checking, ticketing, billing and manifesting of passengers, baggage, cargo, property and mail, and the installation, maintenance and operation of radio and other communications equipment, club rooms and facilities and meteorological and navigation equipment and facilities;
- E. The Preferential Use of additional space which may from time to time become available and be added to the space covered by this agreement with the approval of the City. The rental rate for said space shall be identical to the rate provided for similar space herein leased to Airline as set forth in ARTICLE IV.
- F. The non-exclusive use in common with other Airlines of additional space which may from time to time become available and is added to the space covered by this Agreement with the approval of the City. The rental rate for said space shall be identical to the rate provided for similar space herein leased to the Airline as set forth in ARTICLE IV.
- G. The Preferential Use Premises as depicted on Exhibit "A-1" which is attached hereto and made a part hereof and the Joint Use Premises as depicted on Exhibit "A-2" which is attached hereto and made a part hereof are together referred to herein as the Leased Premises. Said Exhibits may be revised by the City to reflect agreed upon changes in the Airline's Leased Premises.
- H. The Preferential Use of certain space in the Airline Service Building.

Section 203. Occupancy of Premises. Airline accepts the Leased Premises "AS IS" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. City without limitation expressly disclaims and negates, as to the Leased Premises: a) any implied or expressed warranty of merchantability, b) any implied or express warranty for a particular purpose, and c) any implied warranty with respect to the Leased Premises or any portion thereof.

The Airline agrees that it will not permit any act of omission or commission or condition to exist on the Leased Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 204. Preferential Use. Preferential Use means that Airline has the first right to the use of Preferential Use Premises for uses authorized by this Agreement, but that the Director may require Airline to share the use of Preferential Use Premises under the following conditions:

- A. To facilitate air carriers initiating or seeking to increase service to the Airport ("Requesting Carrier") and to maximize the utilization of facilities at the Airport, Airline agrees, upon request by the City in the event the City is otherwise unable to accommodate a Requesting Carrier with Airport facilities, to accommodate such Requesting Carrier on a temporary basis by permitting such Requesting Carrier to utilize Airline's passenger holdroom(s) and passenger loading bridge(s), at times when such facilities are not needed for Airline's scheduled or planned operations or those of other airlines whom Airline is already accommodating. Airline's obligations hereunder shall be subject to execution of a written agreement between Airline and such Requesting Carrier setting forth mutually agreed-to terms and conditions governing such use. In the event such accommodation agreement involves a rental rate based upon square footage, such rental rate shall not exceed the current rental rate per square foot applicable to the facilities involved under this Agreement with the City, plus a recovery of all direct and overhead costs associated with the accommodation, including a reasonable allocation of Capital Improvement costs, and a reasonable administrative fee.

Airline further agrees to make all reasonable efforts to facilitate the temporary accommodation of such Requesting Carrier with the use of ticket counter area, use of Airline's baggage facilities and the rendering of customary ground services, upon such carrier's request, if (1) Airline has adequate capabilities, facilities, and personnel therefor, after taking into account Airline's own requirements and contractual obligations, the compatibility of said carrier's proposed operations with those of Airline, and the need for labor harmony, and (2) said Requesting Carrier enters into a written agreement with Airline therefor and agrees to pay Airline its established rates and charges for such services. Any accommodation of a Requesting Carrier hereunder must be pursuant to a sublease, handling agreement, or a combination thereof, mutually agreed upon by Airline and Requesting Carrier and subject to the prior written consent of the City as set out in Article IX below, which consent shall not be unreasonably withheld.

- B. In the event Airline advises a Requesting Carrier that Airline is unable to accommodate the proposed operations of such carrier, or the parties are unable to reach final agreement as to the terms and conditions of an accommodation agreement, and the Requesting Carrier is unable to find reasonable accommodations elsewhere at the Airport, the City, acting by and through its Director, shall determine whether Airline should accommodate any or all of such Requesting Carrier's proposed operations, reasonably considering all pertinent factors, including Airline's present and planned use of such facilities and those of other airlines Airline is then accommodating, the compatibility of such Requesting Carrier's proposed operations with Airline's operations and those of others already using such facilities, and the need for labor harmony. Upon request, Airline shall immediately provide all information reasonably necessary to aid the Director in this determination. Should the Director determine that Airline has the capability to accommodate such Requesting Carrier, he may direct Airline, in writing, to accommodate such carrier with respect to passenger holdrooms and passenger loading bridge(s) to the extent and during those periods he deems reasonable, and will provide to Airline and such Requesting Carrier a written statement specifying the terms and conditions, not otherwise resolved between Airline and such carrier, of such accommodation.

Any sublease, accommodation, or handling agreement pursuant to these procedures shall be for a period to which the parties mutually agree; provided, however, that such an agreement or accommodation may be terminated, at any time, by either party, if other facilities are made available by the City to such Requesting Carrier. In addition, any agreement or accommodation shall recognize that Airline has the Preferential Use right with respect to the premises and facilities and that, upon 120 days' advance written notice from Airline that Airline will require the use of said premises and facilities in a manner that conflicts with such Requesting Carrier's use, said Requesting Carrier will take whatever action is necessary to eliminate the conflict within the 120-day period, including the adjustment and cancellation of flights. Airline will make its best good faith efforts to accommodate any schedules of said carrier that have to be adjusted, subject to the availability of time and space in Airline's leased premises and facilities.

To the extent that one or more Gates are included in Airline's Preferential Use Premises, Airline shall submit to the City on or before the 5<sup>th</sup> day of each month for the preceding calendar month's activity, a written report certified by an authorized representative of the Airline showing the Airline's actual regularly scheduled flight departures (and other departures by Airline shown separately) operated from each Gate. The Airline shall also include on each said monthly report the same information for any other air carrier to whom the Airline provides/shares use of its Gate(s) pursuant to this Section 204. or any other section of this Agreement.

Section 205. Public Space in the Terminal Buildings and Concourses. The City agrees to permit the Airline, its employees, passengers, guests, patrons, invitees, agents and assigns in common with others, to make normal and reasonable use of the public space now in existence and that which hereafter may be provided during the term of this Agreement in said terminal buildings and concourses.

Section 206. Aircraft Ramps. The Airline is granted non-exclusive use, in common with other Airlines and other aircraft operators, of the aircraft parking ramps adjacent to the terminal buildings and concourses.

Section 207. Use of Sanitary Disposal Facilities. The Airline is granted the non-exclusive use, in common with others, of the sanitary disposal facilities and the equipment therein.

Section 208. Employee Auto Parking Lots. Employees of the Airline, subject to parking lot rules and regulations the City adopts and enforces from time to time and payments of reasonable fees, may use the airport employees auto parking lot.

Section 209. Access. Subject to the terms, covenants and conditions hereof, the Airline has the right of free access, ingress to and egress from the Leased Premises, for the Airline's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### TERM

Section 301. Term. The term of this Agreement shall begin on the 1<sup>st</sup> day of November, 2003 and shall end December 31, 2005 unless sooner terminated in accordance with other provisions of this Agreement.

Section 302. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Airline covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Leased Premises in as good condition as that existing at the time of Airline's initial entry upon the Leased Premises under this Agreement or any preceding agreements, contracts, leases, subleases, and/or permits, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Leased Premises with or without due process of law.

### ARTICLE IV

#### RENTALS & FEES

Section 401. Rentals & Fees. Airline agrees to pay City for the use of the premises, facilities, rights, licenses, services and privileges granted hereunder the following rentals, fees and charges, designated in the following paragraphs of this ARTICLE IV. In the event that the commencement or termination of the term with respect to any of the particular premises, facilities, rights, licenses, services or privileges as herein provided falls on any date other than the first or last day of a calendar month, the applicable rentals, fees and charges shall be paid for said month pro-rata according to the number of days in that month during which said particular premises, facilities, rights, licenses, services or privileges were enjoyed.

Section 402. Terminal and Concourse Rentals Other than East Terminal.

- A. Airline shall pay City, for its Preferential Use space in the Main Terminal, Terminal Expansion, Concourses A/B/C, Concourse C Extension, Concourse D, East Connector, and International Area, monthly rentals computed based on the annual compensatory rental rates calculated each Fiscal Year in accordance with Section 402 hereof.
- B. Airline shall pay City, for its share of non-exclusive use space (baggage claim, baggage makeup and security checkpoint areas) in the Main Terminal, monthly rentals computed based on the annual compensatory rental rates calculated each Fiscal Year in accordance with Section 402 hereof.
- C. For each cost center of the terminal complex other than the East Terminal (i.e., the Main Terminal, Terminal Expansion, Concourses A/B/C, Concourse C Extension, Concourse D, the East Connector, and the International Area) the Total Costs of the cost center will be calculated by adding together the following amounts:

1. Direct and indirect Maintenance and Operating Expenses allocable to the particular cost center
2. Amortization of the net cost of budgeted equipment purchases which cost \$10,000 or more per item and which are allocable to the particular cost center
3. Depreciation and interest charges associated with assets in service as of June 30, 1997, which are assigned or allocated to the particular cost center
4. Amortization of the net cost of each Capital Improvement placed in service in, or allocated to, the particular cost center on or after July 1, 1997
5. Deferred Maintenance Charges allocable to the particular cost center

Costs and expenses allocable to the terminal building but not assignable to any particular terminal cost center shall be allocated among the terminal cost centers based on Gross Space.

Section 403. East Terminal Rentals.

- A. Airline shall pay City, for its Preferential Use space in the East Terminal, monthly rentals computed based on the annual compensatory rental rates calculated each Fiscal Year in accordance with Section 403 hereof.
- B. Airline shall pay City, for its share of shared use space (baggage claim, inbound baggage and security checkpoint areas) in the East Terminal, monthly rentals computed based on the annual compensatory rental rates calculated each Fiscal Year in accordance with Section 403 hereof.
- C. The annual rental rate for the East Terminal will be calculated in accordance with the Second Amendatory Agreement to the Southwest Airlines Co. Airport Use Agreement dated August 4, 1998, which is incorporated herein by reference.

Section 404. Landing Fees.

- A. Airline shall pay City for its use of the Airfield, monthly landing fees based on the landing fee rate calculated each Fiscal Year in accordance with Section 404 hereof. Landing fees for each month shall be due and payable within 15 days of receipt of City's invoice, which invoice shall be based on the landed weights reported in Airline's statistical report for the applicable month.
- B. Airline shall furnish City, without demand therefore, on or before the 10<sup>th</sup> day of each month, a written report on forms provided by City showing Airline's actual revenue producing arrivals and departures, enplaned and deplaned passengers, and pounds of air freight, air cargo, and mail at the Airport during the preceding calendar month, which report shall include the number, the type of aircraft and the Maximum Certificated Landing Weight

of each aircraft type. The number of arrivals so operated at the Airport multiplied by the applicable Maximum Certificated Landing Weight for each type of aircraft shall determine the total landed weight for which monthly payment of landing fees shall be made. Airline shall also report the number and type of off-line aircraft serviced by it in order that City can make the appropriate billing.

C. The Total Costs of the Airfield cost center will be calculated by adding together the following amounts:

1. Direct and indirect Maintenance and Operating Expenses allocable to the Airfield
2. Amortization of the net cost of budgeted equipment purchases which cost \$10,000 or more per item and which are allocable to the Airfield
3. Depreciation and interest charges associated with assets in service as of June 30, 1997, which are assigned or allocated to the Airfield
4. Amortization of the net cost of each Capital Improvement placed in service in, or allocated to, the Airfield on or after July 1, 1997
5. Interest on the City's investment in Airfield land
6. Deferred Maintenance Charges allocable to the Airfield
7. All costs allocable to the sanitary disposal facilities (tritulators)

The Net Costs of the Airfield Area will then be calculated by subtracting revenues from nonsignatory operator landing fees, fuel flowage fees, and field use fees. The signatory airline landing fee rate will then be calculated by dividing the Net Costs of the Airfield Area by the total aircraft landed weight of all signatory airlines.

The nonsignatory landing fee rate will be set at 125% of the signatory airline landing fee rate.

Section 405. Airline Service Building. Airline shall pay City, for its Preferential Use space in the Airline Service Building, monthly rentals computed based on the annual compensatory rental rates calculated each Fiscal Year in accordance with Section 405 hereof.

The Total Costs of the Airline Service Building will be calculated by adding together the following amounts:

1. Direct and indirect Maintenance and Operating Expenses allocable to the Airline Service Building
2. Amortization of the net cost of budgeted equipment purchases which cost \$10,000 or more per item and which are allocable to the Airline Service Building



3. Depreciation and interest charges associated with assets in service as of June 30, 1997, which are assigned or allocated to the Airline Service Building
4. Amortization of the net cost of each Capital Improvement placed in service in, or allocated to, the Airline Service Building on or after July 1, 1997
5. Deferred Maintenance Charges allocable to the Airline Service Building

The annual rental rate for the Airline Service Building will then be calculated by dividing the Total Costs allocable to the Airline Service Building by the gross area of the Airline Service Building.

Section 406. Additional Fees, Charges and Rentals. Airline shall pay additional fees, charges and rentals only under the following conditions:

- A. If the City has paid any sum or sums or has incurred any obligation or expense for which Airline has agreed to pay or reimburse the City for, or
- B. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Airline to perform or fulfill any term, covenant, or condition of this Agreement, after City has given Airline notice to do so.
- C. Airline shall pay all charges which may be reasonably assessed by City for other services that may be provided by City to Airline from time to time.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rental, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against Airline that the amount of such payment was necessary and reasonable.

All other rentals, fees, and charges required hereunder shall be due and payable within twenty (20) days of the date of the invoice therefor.

Section 407. Joint Use Fees. Airline will pay to the City for the non-exclusive use of the Terminal Building space a fee computed in accordance with the following formula: Twenty percent portion will be allocated equally between all signatory carriers and/or operator(s)/agent(s) using joint use facilities. The 80 percent portion will be prorated in the ratio that the number of Airline's and/or operator(s)/agent(s) Enplaned Passengers bears to the total number of Enplaned Passengers. For the months of August through January, the portion will be determined on the basis

of the number of Enplaned Passengers during the months of January through June preceding said month of August. For the months of February through July, the portion will be determined on the basis of the number of Enplaned Passengers during the months of July through December preceding said month of February. Airline will pay this fee within 20 days of the date of an invoice from the City. City and Airline may agree to revise this formula and said revised formula will be used to calculate this fee.

Section 408. Concourse Security Fees. Airline will pay to the City a fee for all expenses incurred by the City in the providing of personnel for the Terminal security system. The fee for Airline will be prorated in the ratio that the number of airline's Enplaned Passengers bears to the total number of Enplaned Passengers. For the months of August through January, the portion will be determined on the basis of the number of Enplaned Passengers during the months of January through June preceding said month of August. For the months of February through July, the portion will be determined on the basis of the number of Enplaned Passengers during the months of July through December preceding said month of February. Airline will pay this fee within 20 days of the date of an invoice from the City. City and Airline may agree to revise this formula and said revised formula will be used to calculate this fee.

Section 409. Passenger Facility Charge. Nothing in this Agreement will be construed to preclude the imposition by the City of a passenger facility charge upon Airline's passengers.

Section 410. Notice, Place and Manner of Payments. Payments shall be made to the order of "Treasurer, City of St. Louis" and shall be mailed to the Airport Assistant Director of Finance, P.O. Box 10036, Lambert Station, St. Louis, Missouri, 63145 or such other place as may be designated by the Director from time to time. City and Airline may cooperate in the development of a procedure for the electronic transfer of funds as the preferred method of payment.

Section 411. Right of City to Verify Airline's Payment. The acceptance of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline, or preclude Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed and from recovering any such overpayment.

Section 412. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder shall bear a service charge of 1½% per month if same is not paid and received by the City on or before the 30th of the month in which said payments are due, and the Airline agrees that it shall pay and discharge all costs and expenses including attorneys' fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 413. Notification of Rates.

A. The methodology for the calculation of airline rentals and fees described in this Section is illustrated in the report entitled "*Calculation of Airline Rates and Charges—Fiscal Year 1998-99, Lambert-St. Louis International Airport*," dated December 4, 1998, which report is incorporated herein by reference.

- B. On or about March 1 of each year, City shall provide Airline with the Airport's draft operating budget for the ensuing fiscal year. Within thirty (30) days of providing Airline with the draft operating budget, City shall provide notice of a meeting, at which Airline shall have the opportunity to comment on the Airport's draft operating budget.
- C. On or about April 1 of each year, Airline shall provide the Airport with its estimate of its total landed weight for the ensuing Fiscal Year.
- D. On or about May 1 of each year, City shall provide Airline with the Airport's preliminary calculation of airline rates and charges for the ensuing Fiscal Year. For rate setting purposes, the calculations will be made on the basis of costs, expenses, and other factors estimated by City and estimates of total landed weight provided by the signatory airlines (or by City to the extent that certain signatory airlines fail to provide their estimates of landed weight).
- E. On or about June 1 of each year, City shall provide notice of a meeting for the purpose of City presenting the Airport's preliminary calculation of airline rates and charges for the ensuing Fiscal Year. City shall give due consideration to the comments and suggestions made by Airline and the other airlines at that meeting. Based on consideration of those comments and suggestions, and upon the Airport's final operating budget approved by the City's Board of Aldermen, City shall prepare a final calculation of airline rates and charges for the ensuing Fiscal Year and provide a copy to Airline no later than the last working day of the month preceding the start of the Fiscal Year. The rates and charges contained in City's final calculation of airline rates and charges shall become effective as of July 1—the first day of the ensuing Fiscal Year.

Section 414. Mid-Year Rate Adjustment. In the event that, at any time during a Fiscal Year, City estimates that the Total Costs of the Airfield Area or any of the terminal cost centers, or the aggregate Total Landed Weight of all airlines, will vary ten percent (10%) or more from the estimates used in setting the landing fee rate and terminal rental rates at the beginning of the Fiscal Year, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City. City shall provide Airline with notice of a meeting, for the purpose of presenting any such rate adjustment, along with a written explanation of the basis for such rate adjustment, thirty (30) days prior to putting such adjustment into effect. Unless extraordinary circumstances warrant additional adjustments, City will seek to limit such mid-year rate adjustments to no more than once each Fiscal Year.

Section 415. Year-end Adjustment to Actual and Settlement.

- A. On or about 180 days following the close of each Fiscal Year, City shall furnish Airline with an accounting of the costs and expenses actually incurred, revenues and other credits actually realized (reconciled to the audited financial statements of the Airport System), and actual enplaned passengers and landed weights during such Fiscal Year with respect to each of the components of the calculation of terminal rental rates, the landing fee rate, and other rental rates in this ARTICLE IV and shall recalculate the rates, fees, and charges required for the Fiscal Year based on those actual costs and revenues. City shall then provide notice

of a meeting, within 30 days after completion of audit, to discuss the calculation of the year-end settlement and shall give due consideration to the comments and suggestions made by the signatory airlines before finalizing the settlement calculations.

- B. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year were more than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such excess amount shall be credited to Airline in equal monthly installments over the next consecutive six (6) month period following the settlement meeting.
- C. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year were less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be paid by Airline in equal monthly installments over the next consecutive six (6) month period following the settlement meeting.
- D. For final settlement purposes all calculations will be made on the basis of actual costs and expenses incurred and will be provided to Airline as soon as possible following the completion of the annual audit of the Airport's financial statements.

Section 416. Prompt Payment of Taxes and Fees. Airline warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further warrants, covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent, provided, however, that Airline will have the right at its expense to contest any and every such levy or assessment.

Section 417. Interpretation of ARTICLE IV. Airline understands and agrees that the provisions of this ARTICLE IV will be interpreted in an identical manner as for all Airlines who are party to similar agreements.

## ARTICLE V

### CAPITAL IMPROVEMENTS

Section 501. Review of Proposed Capital Improvements. In conjunction with the submission of the draft operating budget in Section 413(B) hereof, City shall submit a list of proposed Capital Improvements for the ensuing Fiscal Year together with the estimated Net Costs of those Capital Improvements and shall request airline Majority-in-Interest approval of such proposed Capital Improvements. (This regular process will not preclude City from requesting Majority-in-Interest approval of other proposed Capital Improvements at other times during a Fiscal Year if circumstances warrant.)

Section 502. Approval of Capital Improvements.

- A. All Capital Expenditures, other than the phased rehabilitation of the passenger terminal apron area and the \$12,000,000 noise mitigation program affecting the terminal building, concourse, or the Airfield area rental rates must be approved by a Majority-in-Interest unless;
1. The Capital Expenditure is mandated by a federal or state agency having competent jurisdiction over Airport operations, or
  2. The Capital Expenditure is of an emergency nature which, if not done, would result in the closing of a substantial portion of the Terminal Building, Concourses, or airfield area, or
  3. In the Terminal Building or Concourse only, the Capital Expenditure is in an amount of less than \$100,000 for any single item, and the aggregate thereof does not exceed \$500,000 in any rate adjustment period. Said monetary limits shall be adjusted at the beginning of each rate adjustment period by the same percentage increase or decrease in the St. Louis Metropolitan Area Construction Price Index as reported by the F.W. Dodge Company using 1975 as the base year, or
  4. In the airfield area, Capital Expenditures, other than those listed hereinabove, shall be subject to Majority-in-Interest approval to the extent that they, in the aggregate, increase landing fees by more than 2¢ per thousand pounds of Maximum Approved Landing Weight in any calendar year.
  5. In the airfield area, a judgement related to a Capital Improvement exists against City rendered by a court of competent jurisdiction, provided that all reasonable (in the opinion of the City Counselor) appeals procedures have been exhausted.
  6. In the Airfield Area, the Capital Improvement in the opinion of City and a Majority-in-Interest, is financially self-sustaining and as such will not increase landing fees payable by the scheduled airlines.
- B. Airline shall be notified in writing of the proposed Capital Expenditure and the decision of the Airline whether or not to approve it shall be forwarded in writing to the City within 30 days of the mailing of the notification of the proposed Capital Expenditure.
- C. Should the City proceed with a Capital Expenditure after a Majority-in-Interest has disapproved it, no costs associated therewith may be included in the rate-making base for the rental rates.

ARTICLE VI

CONSTRUCTION

Section 601. Construction By Airline. Airline may construct additional facilities it requires to use the Leased Premises for the purposes set out in Section 201.

Section 602. Preparation of Plans and Specifications. The Airline shall develop detailed drawings, plans and specifications for improving and equipping the Leased Premises. Airline will begin work on proposed improvements only after it has received the written approval of its plans and specifications from the Director of Airports.

Section 603. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Leased Premises, Airline shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$2,000,000 for bodily injury and property damage. Said insurance shall be in a form acceptable to the City.

Section 604. Performance and Payment Bonds. Airline shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo as amended. Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 605. Certificates of Completion. Upon the completion of the improvements hereunder, the Airline shall submit to the Director of Airports a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Airline.

Airline will provide the Director of Airports within 30 days of completion or occupancy of any construction or modification to the Leased Premises, reproducible as-built drawings on either Mylar or Sepia Mylar base, and in an electronic format acceptable to the City.

Section 606. Signs. Airline agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the areas of the Leased Premises exposed to the public without prior written approval of the Director of Airports and that such signs shall conform to reasonable standards established by said Director of Airports with respect to wording, type, size, design, color and location.

Section 607. Title to Improvements. All improvements, except baggage conveyor equipment and passenger loading bridges installed by the Airline, shall become the property of the City upon termination of this Agreement. The City reserves the right and the Airline agrees that the Director of Airports may require the Airline to remove any or all improvements and structures and restore the Leased Premises to their original condition. The Airline agrees to bear all costs of such removals and restorations.

Section 608. Mechanics' and Materialmen's Liens. Airline warrants, represents, and agrees not to permit any mechanics' or materialmen's lien or any other lien to be foreclosed upon the Leased

Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

## ARTICLE VII

### USE OF LEASED PREMISES

Section 701. Compliance with Laws and Regulations. Airline shall comply with all Rules and Regulations which the Director of Airports may establish from time to time. Airline warrants, represents, and agrees that it shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways.

Section 702. Repairs and Maintenance. Airline will provide and pay for all repairs and maintenance of the Leased Premises, except the following which shall be the responsibility of the City:

- A. The structural components of the building.
- B. The utility system to, but not within, the Leased Premises except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

The Airline will perform the following functions as part of its responsibilities in the repair and maintenance of the Leased Premises. The following list includes certain functions but the Airline's responsibilities are not limited to those functions:

- A. Perform custodial services daily.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep Leased Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Leased Premises and the Airport when such damage results from the careless or negligent acts of Airline or Airline's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director of Airports applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Airline agrees to promptly provide and install same and to abide by such standards.

F. Confine all handling and holding of Airline's property to the Leased Premises.

G. Keep all papers and debris picked up daily from the Leased Premises.

H. Maintain all conveyors and baggage handling devices.

Section 703. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable) enter upon and in the Leased Premises for the following purposes:

- A. To inspect such Leased Premises to determine whether Airline has complied and is complying with the terms and conditions of this Agreement.
- B. To perform maintenance and make repairs in any case where Airline is obligated, but has failed to do so, after the City has given Airline notice so to do, in which event Airline shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 704. Utilities. City will provide and pay for heated and chilled air to, but not into the Leased Premises. City will provide and Airline will pay City for electricity used in the Leased Premises. The rate will be the rate charged to other users of similar service. Airline will provide and pay all other utilities it requires. City shall not be liable to Airline for any damages, cost or losses of any kind whatsoever due to the interruption of any utility services or any delay in the supplying or furnishing of any utility service including, without limitation, any consequential, special, or incidental damages.

Section 705. Interference to Air Navigation. The Airline warrants, represents, and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Leased Premises. Any obstructions will be immediately removed by the Airline at its expense. The Airline warrants, represents, and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. The Airline further warrants, represents, and agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

Section 706. Security Plan and Facilities. Airline hereby acknowledges that City is required by Federal Aviation Regulations, Part 107, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Airline covenants



and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Airline's exercise of the privileges granted to Airline hereunder. Airline will promptly (within 30 days of City's request) reimburse City for all fines imposed upon City by the FAA resulting from Airline's negligence or failure to act in relation to Part 107.

## ARTICLE VIII

### LOSS OF AND LIABILITIES PERTAINING TO LEASED PREMISES AND THE AIRPORT

Section 801. Liability Insurance. Airline, at his expense, at all times during the term hereof, shall cause the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Airline to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Airline its officers, agents, employees, contractors, subcontractors, licensees, invitees, and independent contractors pursuant to this Agreement both on the Leased Premises and the Airport under the following types of coverage:

- A. Comprehensive General Liability;
- B. Comprehensive Automobile Liability (all vehicles, including hired and non-owned vehicles).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$10,000,000 comprised of such primary and excess policies of insurance as Airline finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City and its Board of Aldermen, Airport Commission, officers, agents, and employees shall be named as an "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Airline, its officers, agents, employees, contractors, subcontractors, licensees, and independent contractors and invitees. In addition such insurance shall include contractual liability insurance sufficient to cover Airline's indemnity obligation hereunder. The City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of the City and its Board of Aldermen, Airport Commission, officers, employees and agents as an "Additional Insured" is not intended to, and shall not, make the City a partner or joint venturer with Airline in its operations hereunder.

Section 802. Property Insurance. Airline will provide fire, lightning, extended coverage, or other casualty and hazards insurance and other related insurance coverages for the Leased Premises and all of its improvements and equipment or property existing or subsequently installed within or on the Leased Premises.

In case of any material damage to or destruction of the Airline's improvements or any part thereof, Airline will give prompt notice thereof to the City, and the Airline will promptly commence and

complete with due diligence and in accordance with plans approved by Airline and the Director of Airports, the restoration of such property as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction (with alterations, at Airline's election, and with the prior consent and approval of the Director of Airports). In the event of such damage or destruction, the proceeds from all property insurance policy or policies shall be devoted exclusively to the restoration of the damaged property. To the extent of any loss or damage where the insurance proceeds are insufficient for such restoration, Airline assumes the risk of such uninsured loss or damage or insufficiency of the insurance proceeds, and shall be obligated to pay the costs or balance of costs of restoration.

Section 803. Workers' Compensation. Airline, at a minimum, will obtain, at its sole expense and at all times during the term of this Agreement for its employees working on Airport Premises, Workers' Compensation insurance coverage at least at the statutory limits applicable to Airline's operations in the State of Missouri.

Section 804. Evidence of Insurance. Certificates, or other evidence of insurance coverage and special endorsements required of Airline in this Article, shall be delivered to the Director of Airports in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Airline shall submit to the Director of Airports a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Airline shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director of Airports, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days prior written notice to the Director of Airports.

Section 805. Conditions of Default. If, at any time, Airline shall fail to obtain the insurance as required herein, the City may, without notice, effect such insurance by taking out policies in companies satisfactory to the City. The amount of the premium or premiums paid for such insurance by the City shall be payable by Airline to the City with the installment of rent thereafter next due under the terms of this Agreement with interest thereon at the rate of 1½% per month or at the lower legal maximum.

Section 806. Damage or Destruction of Terminal Building. The building in which the Leased Premises are located will be insured by the City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable the City may terminate this Agreement by written notice to the Airline. All rental payments will cease to accrue as of the date of the destruction or damage.

If the building is repairable the City will begin such repairs within 90 days of the determination of

repairability. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenable areas. The City will attempt to find temporary facilities during the repair and Airline will pay rental for the temporary facilities.

Section 807. Indemnification. Airline shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' 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 and/or the acts or omissions of Airline's officers, agents, employees, contractors, subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of City. The Director of Airports or his/her designee shall give to Airline reasonable notice of any such claims or actions. The Airline shall also use counsel reasonably acceptable to the City Counselor of the City or his/her designee, after consultation with the Director of Airports or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 808. Waiver of Subrogation. Airline, on behalf of itself and its insurers, hereby waives any claim or right of recovery from City, its Board of Aldermen, Airport Commission, officers, employees and agents for loss or damage to Airline or its property or the property of others under Airline's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "All Risk" physical damage property insurance policy. Airline shall provide notice of this waiver of subrogation to its insurers.

## ARTICLE IX

### ASSIGNMENT AND SUBLETTING

Section 901. Assignment. Airline shall not assign this Agreement without first obtaining written approval of the Director of Airports and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Airline shall submit a written request to the Director of Airports. This request must include a copy of the proposed assignment agreement. Airline shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of an airline on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless Airline shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement. In the event of any assignment consistent with the foregoing provisions of this Article, Airline upon consummation thereof shall be released and discharged from any and all obligations contained in this Agreement. No assignment shall be effective as it pertains to the City until such time as the Director of Airports receives a fully executed original of the assignment agreement approved by the Director of Airports as provided for herein.

It being agreed that the foregoing shall not prevent the assignment of this Agreement to any corporation with which the airline may merge or consolidate or which may succeed to the business of Airline.

Section 902. Subletting. Airline shall not sublet the Leased Premises nor any part thereof without first obtaining the prior written approval of the Director of Airports. At least thirty (30) days prior to any contemplated subleasing of all or any part of the Leased Premises, Airline must submit in writing a request to the Director of Airports. This request must include a copy of the proposed sublease. The sublease must require at a minimum: (1) strict compliance with all provisions of this Agreement, (2) a provision that the sublease is subject to the provisions of this Agreement, and (3) a provision that the subleasee will use the Leased Premises solely for the purposes authorized in this Agreement. No sublease shall be effective as it pertains to the City until such time as the Director of Airports receives a fully executed original of the sublease agreement approved by the Director of Airports as provided for herein. The parties understand and agree that the Airline is responsible for the performance of its subleasee(s) under this Agreement. Airline agrees to promptly initiate and take immediate corrective action should a subleasee fail to comply with the provisions of its contract with the Airline or any provision of this Agreement.

If Airline subleases a total of more than 50% of the Leased Premises, or Airline enters into any sublease for a term greater than 75% of the term remaining in the Agreement, the City shall have the right, but not the obligation, upon 30 days written notice, to recapture the space described in the sublease. In the event of any recapture, Airline's rental payments shall be adjusted on a pro rata basis.

Section 903. Handling Agreements. The Airline may enter into handling agreements with other airlines only with the advance written approval of the City.

## ARTICLE X

### TERMINATION OF AGREEMENT IN ENTIRETY

Section 1001. City's Right to Terminate. The City, acting by and through its Director of Airports, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof, upon the happening of any one or more of the following events:

- A. If the fees, charges, or other money payments which the Airline herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Agreement, Airline shall:
  - 1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
  - 2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;

3. Make a general assignment for the benefit of creditors;
  4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
  5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Airline a bankrupt or insolvent, or approving a petition seeking a reorganization of Airline, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days.
- C. If Airline shall have failed in the performance of any term, covenant, or condition herein required to be performed by Airline.
- D. The abandonment by Airline of its conduct of air transportation at the Airport. On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Airline shall expire, except as otherwise provided in Section 1003 hereof.

Failure of the City to take any authorized action upon default by Airline of any of the terms, covenants or conditions required to be performed, kept and observed by the Airline shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Airline. The acceptance of monies by the City from Airline for any period or periods after a default by Airline of any of the terms, covenants and conditions herein required to be performed, kept and observed by Airline shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Airline to so perform, keep or observe any of said terms, covenants or conditions.

Section 1002. Airline's Right to Terminate. Airline, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least 30 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive

decree or legislative action, of normal civilian traffic at the Airport, continuing for a period in excess of 60 days.

- D. If the City shall have failed in the performance of any covenant or condition within the control of the City and herein required to be performed by the City.

Section 1003. Procedures for Termination. No termination declared by either party shall be effective and unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated and no such termination shall be effective if such cause of default by its nature cannot be cured within such 45 day period, and if the party at default commences to correct such default within said 45 days and corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by the City upon the default of payment of charges and fees as provided herein, then Airline agrees also to pay, without limitation, reasonable attorneys' fees, court costs, and litigation expenses.

Section 1004. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Airline specified in this Agreement are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

Section 1101. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO, 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by the City to Airline shall be sent by certified mail, return receipt requested addressed to Frontier Airlines, Inc., 7001 Tower Road, Denver, Colorado 80249.

The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Airline or said Director.

Section 1102. Non-Discrimination and Affirmative Action Program.

- A. Airline hereto understands and agrees that City, in operation and use of Lambert-St. Louis International Airport, will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary

of Transportation. Airline hereby agrees that its premises shall be posted to such effect as required by such regulation.

- B. Airline agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Airline will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Airline will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Airline state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Airline shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Airline agrees that should it be determined by Airline or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Airline to achieve the provisions of its program.
- E. Airline will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Airline further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Airline in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Airline is sued by a subcontractor, vendor, individual, group or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Airline shall notify the City Counselor in writing of such suit or threatened suit within 10 days.
- H. In event of Airline's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within 20 days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Airline may be declared ineligible for further City contracts for a period of one year by

option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Airline shall have no claims for any damages or loss of any kind whatsoever against City.

- I. Airline will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Airline assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Airline assures that it will require that its covered suborganizations provide assurances to City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1103. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1104. Force Majeure. Neither the City nor Airline shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1105. Successors and Assigns. All of the terms, provisions, covenants, warranties, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto.

Section 1106. Quiet Enjoyment. Subject to the provisions of this Agreement, the City covenants that Airline on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1107. Operation and Maintenance of Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.



Section 1108. Title to Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1109. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1110. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Airline agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes substantially impair the right of Airline hereunder.

Section 1111. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter and ordinances as may be amended from time.

Section 1112. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1113. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1114. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Airline and the City.

Section 1115. Withholding Required Approvals. Whenever the approval of the City, or the Director of Airports, or of Airline is required herein, no such approval shall be unreasonably requested or withheld, conditioned, or delayed.

Section 1116. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein

contained to be performed, kept and observed by the other party. Any such waiver must be in writing and signed by the party waiving.

Section 1117. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Airline in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1118. Non-Exclusivity. It is understood and agreed that nothing herein contained 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.

Section 1119. Prevailing Wage. Airline shall, as a condition of the Agreement, include in all service contracts pertaining to the Airline language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City of St. Louis Ordinance No. 62124.

Section 1120. Americans with Disabilities Act (ADA). Airline shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Airline's services.

Section 1121. Advertising. Airline shall have no right to use the trademarks, symbols, trade names or name of the Airport or Leased Premises or portions thereof, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director of Airports.

Section 1122. Conflicts Between Tenants. In the event of a conflict between Airline and any other airline, tenant, licensee or concessionaire, as to the respective rights of the others, the Director of Airports shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Airline agrees to be bound by such decision. All determinations by the Director of Airports are final.

Section 1123. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction hereof.

Section 1124. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1125. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As

such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1126. Required Approvals. When the consent, approval, waiver, or certification ("Approval") of the other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports or his/her authorized or designated representative. The City and the Airline agree that extensions of time for performance may be made by the written mutual consent of the Director of Airports and the Airline or its designee.

Section 1127. Conformity of Agreement. The City covenants and agrees not to enter into any lease, contract, or agreement with any other air transport operator with respect to the Airport containing more favorable terms than this Agreement or to grant to any other air transport operator rights, privileges, or concessions with respect to said Airport which are not accorded to the Airline hereunder unless the same terms, rights, privileges, and concessions are concurrently made available to the Airline.

Section 1128. Environmental Notice. Airline shall promptly notify the Director of Airports of (1) any change in the nature of the Airline's operations on the Leased Premises that will materially and/or substantially change the Airline's or the City's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Airline's operations on the Leased Premises.

Section 1129. Entire Agreement. This Agreement, together with all exhibits attached hereto, and documents or agreements incorporated herein by reference, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

*<Remainder of page intentionally left blank>*

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement as of date first written above written.

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT:

The foregoing Agreement was approved by the Airport Commission at its meeting on \_\_\_\_\_, \_\_\_\_.

BY:

\_\_\_\_\_  
Commission Chairman                      Date  
and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on \_\_\_\_\_, \_\_\_\_.

BY:

\_\_\_\_\_  
Secretary,                                      Date  
Board of Estimate & Apportionment

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

\_\_\_\_\_  
City Counselor                      Date  
City of St. Louis

\_\_\_\_\_  
Comptroller,                                      Date  
City of St. Louis

ATTESTED TO BY:

\_\_\_\_\_  
Register,                                      Date  
City of St. Louis

**FRONTIER AIRLINES, INC.**

ATTESTED TO BY:

BY:

\_\_\_\_\_  
Secretary                                      Date

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

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

## Exhibit "G"

### DISPUTE RESOLUTION PROCEDURES

#### LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT

1. Disputes between air carriers relating to issues arising at the Airport, or issues faced by individual air carriers, are initially considered by the Airport Business and Marketing Manager, in his capacity as the airport staff member charged with day to day administration of airport properties.
2. If a carrier is dissatisfied with the initial response it receives from the Airport Business and Marketing Manager, it may appeal either orally or in writing to the Airport Director.
3. If the carrier is not satisfied by the Airport Director's response, it may seek to appear and present its issues before the Airport Commission, or may have resort to the court system (the Circuit Court of St. Louis City).
4. The Airport will exercise its best efforts to complete the initial response and the Director's review within 30 days.