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THE CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



BI-NATIONAL GATEWAY TERMINAL, LLC
RESTATED AND AMENDED LEASE AGREEMENT
NORTHERN TRACT SITE

NO. AL- 020

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®

RESTATED AND AMENDED LEASE AGREEMENT

THIS RESTATED AND AMENDED LEASE AGREEMENT, made and entered into as of the ____ day of _____, 2016, by and between The City of St. Louis, a municipal corporation of the State of Missouri, as lessor, and Bi-National Gateway Terminal, LLC, a limited liability company organized and existing under the laws of the State of Missouri, as lessee.

WITNESSETH, THAT:

WHEREAS, the City owns, operates, and maintains Lambert-St. Louis International Airport®, located in the County of St. Louis, Missouri;

WHEREAS, the City and BIAC entered into a Dual Customs Agreement, pursuant to which BIAC received certain rights and undertook certain obligations related to the construction of facilities to accommodate Dual Customs services; the offering of FBO Services and air cargo handling services, including Dual Customs Ancillary Services; and the ability to sublease space to accommodate International Cargo Enterprises wishing to do business at the Airport;

WHEREAS, Lessee currently leases certain real property located within the Northern Tract Site pursuant to Agreement No. AL-286, but wishes to amend and restate that agreement in order to better accommodate the phased development of the leasehold;

WHEREAS, this Lease Agreement is an amendment and a complete and full restatement of Agreement No. AL-286 dated July 1, 2015, and it is the intent of both parties that upon the Commencement Date of this Lease Agreement, as set forth below, Agreement No. AL-286 will be null, void, and no longer in force (see Section 1216 entitled "Previous Agreements");

WHEREAS, Lessee wishes to develop the Leased Premises to accommodate and operate air cargo operations and distribution facilities, and FBO Services, and to accommodate BIAC so it can exercise its rights and obligations as set forth in the Dual Customs Agreement;

WHEREAS, the Leased Premises are part of the Northern Tract Site, which was formerly owned by McDonnell Douglas Corporation, a wholly owned subsidiary of The Boeing Company, who has legal responsibility for remediating certain environmental conditions existing at the Northern Tract Site, including the Leased Premises, pursuant to a permit issued by the Missouri Department of Natural Resources under the Resource Conservation and Recovery Act;

WHEREAS, pursuant to the Site Management and Redevelopment Agreement, which Lessee had the opportunity to review before entering into this Lease Agreement, the City is undertaking certain environmental sampling and remediation at the Northern Tract Site, including the Leased

Premises, for which the City is entitled to receive reimbursement from Boeing, subject to certain limitations and procedures, which Lessee hereby acknowledges; and

WHEREAS, Lessee wishes to enter into this Lease Agreement with the City.

NOW, THEREFORE, for and in consideration of the promises, representations, warranties, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee agree as follows:

ARTICLE I DEFINITIONS

Section 101. Definitions. The following words and phrases will have the following meanings:

“Adjusted Rent” means the rent adjusted in accordance with Sections 404 of this Lease Agreement entitled “Index Rent Escalation”).

“Agreement No. AL-286” means Lease Agreement Northern Tract (East Site) NO. AL-286 entered into as of July 1, 2015, between the City and Lessee, which Lessee currently leases but wishes to amend and restate in order to better accommodate the phased development of the leasehold.

“Airport” means Lambert-St. Louis International Airport, together with any additions, improvements, or enlargements made from time to time.

“Airport Operations Area” or **“AOA”** means those areas of the Airport used for the landing, taking-off, movement, and parking of aircraft, as the same now exists or as the same hereafter may be added to, modified, changed, or developed.

“Airport Properties Department” or its successor department means that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and will be Lessee’s point of contact with the Airport or the City on all issues related to this Lease Agreement.

“Anniversary Month” means the month on which the fifth anniversary of the Effective Date occurs, and each fifth anniversary thereafter during the Term.

“Bankruptcy Code” means the Federal Bankruptcy Code as set forth in 11 U.S.C. §§ 101 et seq., and as it may be amended from time to time.

“Base Index” means the Index in effect on the month in which the Effective Date occurs, and then, after computation of the first Index Rent Escalation (see Sections 404 and 405 of this Lease Agreement), the Index in effect on each previous Anniversary Month.

“BIAC” means Brownsville International Air Cargo, Inc., doing business as Bi-National Air Cargo Terminals, a corporation organized and existing under the laws of the State of Texas.

“Boeing” means McDonnell Douglas Corporation, a corporation organized and existing under the laws of the state of Maryland, and a wholly owned subsidiary of The Boeing Company, a corporation organized and existing under the laws of the State of Delaware.

“Boeing Permitted Facility Excavated Soil Management Plan” or **“Soil Management Plan”** means the agreement or plan between the City and Boeing dated January 2011, a copy of which is attached hereto as **EXHIBIT “C”**, as may be amended, superseded, or replaced.

“Boeing Utility Parcel” means the parcel of land within the Northern Tract Site and located at 5240 Banchee Road in Hazelwood, MO. and consisting of approximately of 3.29 acres referred to as the Boeing Utility Parcel and more fully described and shown on **Exhibit “B”** entitled Description of the Leased Premises”. The property is improved with a structure known as Building 6 consisting of approximately 18,741 sq. ft. of enclosed space.

“City” means The City of St. Louis, Missouri.

“Commencement Date” means the first day of the month following the date in which the City and Lessee fully execute this Lease Agreement, as written by the City in the opening paragraph to this Lease Agreement.

“Contract Year” means a consecutive twelve (12) month period commencing on the Effective Date.

“days” or **“Days”** means consecutive calendar days unless otherwise expressly provided herein.

“Director” means the Director of Airports of the City of St. Louis or his/her authorized or designated representatives.

“Dual Customs” means, as defined in the Dual Customs Agreement, a single location at the Airport in which U.S. customs authorities provide customs clearance services for air cargo entering the U.S. from Mexico and in which Mexican customs authorities establish and provide customs pre-clearance services for air cargo going to Mexico from the U.S.

“Dual Customs Agreement” means the Dual Customs Agreement entered into as of January 9, 2015 by and between the City and BIAC (Agreement No. AL-353), as may be extended or amended from time to time.

“Dual Customs Ancillary Services” means, as defined in the Dual Customs Agreement, services and associated facilities for the loading, unloading, processing, and warehousing of air cargo subject to Mexican customs that is part of Dual Customs.

“Effective Date” means July 1, 2015, which was the effective date of Agreement No. AL-286.

“Environmental Laws” means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, Environmental Permits, permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances or chemicals or the

preservation or regulation of the environment or natural resources including, without limitation, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.* and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1401 *et seq.*; the Noise Control Act, 42 U.S.C. § 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. § 5101 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 2011 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. § 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 *et seq.*; as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, ordinances, policies, procedures, plans and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended, superseded or replaced from time to time.

“**Environmental Permits**” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by applicable Environmental Laws, whether federal, state or local, and any duly filed environmental covenants or land use restrictions applicable to the City, the Airport or the Leased Premises.

“**Event of Default**” means an Event of Default as defined in Section 1101 of this Lease Agreement.

“**Existing Environmental Conditions**” means the Existing Environmental Conditions as defined in Section 709 of this Lease Agreement and entitled “Existing Environmental Conditions Retained By City”.

“**Existing Improvements**” means, without limitation (unless otherwise expressly provided for herein), buildings, structures, facilities, fixtures or any appurtenances thereto on the Leased Premises, including but not limited to basements, foundations and other support structures, aircraft ramps and automobile parking lots, existing as of the Effective Date, as shown or described in **Exhibit “A”** entitled “Existing Improvements and Retained Improvements”.

“**FBO Services**” means the following services that, together, are offered to operators of cargo aircraft to which Lessee or any Sublessee is providing air cargo handling services:

- (A) the sale and into-plane delivery of aviation fuel, including avgas and jet fuel;
- (B) the provision of preventive maintenance for, and recovery and removal of, aircraft;
- (C) the provision of aircraft line services, including aircraft marshalling and towing,

ground power, aircraft cleaning and lavatory services, and inflight food catering; and

(D) the provision of lounge facilities for pilots and aircraft flight crews.

“Federal Aviation Administration” or **“FAA”** means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“Hazardous Materials” means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum derivatives, jet fuel, petroleum or crude oil or any fraction thereof, natural gas, source material, special nuclear material, byproducts, pesticides, hazardous waste, special waste, waste, pollutants, contaminants, toxic substance or substances, or any material defined or treated as a hazardous substance, regulated special waste, pollutant or contaminant (or comparable term) under any of the Environmental Laws. City and Lessee stipulate and agree that the existence and definition of Hazardous Materials will be construed herein broadly in accordance with all applicable federal, state, City or local laws, statutes or regulations relating to the protection of human health or the environment. Hazardous Materials also include petroleum and any petroleum derivative, including jet fuel. The City and Lessee agree that the existence and definition of Hazardous Materials will be construed broadly herein in accordance with all applicable federal, state, or local laws, statutes, Environmental Laws, Environmental Permits, or regulations relating to the protection of human health or the environment.

“Indemnitees” means the parties defined in Section 903 of this Lease Agreement entitled “Indemnification”.

“Index” means the “Consumer Price Index for all Urban Consumers” relating to “U.S. City Average” and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index is hereafter converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase (defined below) will be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said does not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication, by any other nationally chosen recognized publisher of similar statistical information as reasonably selected by the Director. In the event the Index ceases to be published, then the City and Lessee shall agree upon a new index to be used, and if they are unable to agree within ninety (90) days after the Index ceases to be published, such matter will be reasonably decided by the Director (see Section 404 of this Agreement entitled “Index Rent Escalation”).

“International Cargo Enterprises” means, as defined in the Dual Customs Agreement, enterprises engaged in the business of providing air transportation or logistics for freight destined to or arriving from Mexico, or any combination thereof.

“Initial Rent” means the Initial Rent as defined in Section 402 of this Lease Agreement entitled “Rent Payment”.

“Leased Premises” means the Leased Premises as more properly defined in Section 201 of this Lease Agreement entitled “Leased Premises”.

“Lease Agreement” means this Restated and Amended Lease Agreement and any subsequent amendments thereto, duly approved by the City and Lessee.

“Lessee” means Bi-National Gateway Terminal, LLC, a limited liability company organized and existing under the laws of the State of Missouri and a party to this Lease Agreement.

“New Improvements” means, without limitation, buildings, structures, facilities or any appurtenances built or constructed by Lessee or any Sublessee on the Leased Premises, including refurbishments of Retained Improvements, in accordance with Article VI of this Lease Agreement entitled “Rent and Fees”.

“Notice” or **“notice”** means as defined in Section 1202 entitled “Notice” of this Lease Agreement.

“Northern Tract Site” means the property situated in the County of St. Louis, State of Missouri, commonly known as the Northern Tract Site, containing approximately 75.99 acres.

“Phases” means the phases of development described in Section 601 of this Lease Agreement entitled “Development and Phases”.

“Phase 1” means the Phase 1 as set forth in Section 601.B and as described in Exhibit E entitled “Development Plan”, which is attached to this Lease Agreement.

“Phase 1 Area” means the Phase 1 Area as set forth in Section 601.B of this Lease Agreement.

“Phase 2” means the Phase 2 as set forth in Section 601.C and as described in Exhibit E.

“Phase 2 Area” means the Phase 2 Area as set forth in Section 601.C of this Lease Agreement.

“Phase 3” means the Phase 3 as set forth in Section 601.D and as described in Exhibit E.

“Phase 3 Area” means the Phase 3 Area as set forth in Section 601.D of this Lease Agreement.

“Percentage Increase” means the percentage equal to the fraction, the numerator of which is the Index in the Anniversary Month less the Base Index, and the denominator of which is the Base Index (see Section 404 of this Lease Agreement entitled “Index Rent Escalation”).

“Remediation Costs” means any losses, expenses, liabilities, or costs incurred by the City in connection with environmental remediation: (i) that may be required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or Environmental Permits, or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits or would substantially or materially interfere with the City’s or its tenants’ future use or enjoyment of the property, and caused by, or arising out of, Lessee’s

operations at the Airport or the Lessee's operations, activities, use, occupancy or lease of the City's property during the term of this Lease Agreement. Remediation Costs include, without limitation, reasonable investigation and evaluation costs, costs to implement and administer any institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys' fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out of Lessee's handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport, including the Leased Premises.

"Remediation Work" means the Remediation Work as defined in Section 703 of this Lease Agreement entitled "Environmental Remediation".

"Removable Fixtures" means all personal property, vehicles, trade fixtures, furnishings, equipment and fixtures installed by the Lessee that are not permanently affixed to any wall, floor or ceiling in the Leased Premises or any Existing Improvement, Retained Improvement, or New Improvement.

"Retained Improvements" means Existing Improvements that are not scheduled to be demolished in accordance with of Section 601.A of this Lease Agreement, as shown or described on Exhibit "A" entitled "Existing Improvements and Retained Improvements".

"Rules and Regulations" means those lawful, reasonable, and not unjustly discriminatory rules and regulations including, without limitation, ordinances, operating directives or procedures, and minimum standards promulgated by the Director, the Airport Commission, or the City, as amended from time to time, as the case may be, for the orderly administration or operation of the Airport (see Section 502 entitled "Compliance with Laws and Regulations").

"Site Management and Redevelopment Agreement" means the agreement between the City and Boeing, dated August 15, 2006, a copy of which is attached hereto as **EXHIBIT "D"**, as may be amended, superseded or replaced from time to time.

"Sublessee" means a third party subtenant of Lessee, including but not limited to BIAC, that conducts its business on the Leased Premises pursuant to a sublease agreement with the Lessee that was approved by the City in accordance with Section 1003 of this Lease Agreement entitled "Sublessees".

"Security Deposit" means the Security Deposit as defined in Section 412 of this Lease Agreement entitled "Security Deposit".

"Substantial Completion" means the date in which the construction or modification of any phase of the Leased Premises pursuant to Section 601 of this Lease Agreement is substantially completed as evidenced by a certificate of occupancy, temporary certificate of occupancy, or

similar governmental approval.

“Term” means the Term as defined in Section 301 of this Lease Agreement entitled “Term”.

ARTICLE II PREMISES

Section 201. Leased Premises. The City hereby leases and demises to Lessee, and Lessee takes from the City, a tract of land situated in the County of St. Louis, Missouri, commonly known as the “Northern Tract Site” containing approximately 61.10 acres (2,661,516 sq. ft.), as it may be modified by the City in accordance with the provisions of Section 601, together with all Existing Improvements and any New Improvements that may be constructed or made therein in accordance with Article VI, hereinafter collectively referred to as the “Leased Premises” and more fully described on **Exhibit “B”** entitled “Description of the Leased Premises”.

Section 202. Boeing Utility Parcel. City intends to acquire the Boeing Utility Parcel from Boeing and make such parcel part of the Airport. Parties acknowledge, stipulate, and agree that, if acquired by the City within three (3) years of the Commencement Date, the Boeing Utility Parcel: (i) will become part of the Leased Premises on the first day of the month following acquisition, and (ii) will be subject to all the terms and conditions of this Lease Agreement, including the rent applicable to the Leased Premises then in effect (see Exhibit E entitled “Development Plan” and Section 709 entitled “City Retained Liabilities”).

Section 203. Ramp B Area. The Ramp B area consist of approximately 48,000 square feet of ramp and is depicted on Exhibit B entitled “Description of Leased Premises”. Under Lessee’s Development Plan, Lessee intends to reconstruct both the Ramp A & Ramp B area as part of Phase 1 (see Exhibit E entitled “Development Plan”). Lessee acknowledges, stipulates and agrees that although the Ramp B area is part of the Leased Premises, the Ramp B area will not be available for use or occupancy by the Lessee until after the City completes its Taxiway Victor Connector ramp project.

Section 204. Acceptance of Leased Premises. Lessee hereby acknowledges that it accepts and receives the Leased Premises in an **“AS IS”** condition 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 with respect to the physical, geotechnical, environmental or structural conditions of the Leased Premises, or any portion thereof or otherwise including but not limited to: soil conditions of the land, structural conditions of the buildings or facilities, the presence or absence of any Hazardous Materials, any underground or aboveground storage tanks or repositories and related equipment, asbestos and asbestos related materials, water, sewage utilities serving the Leased Premises, easements, or any other matter or thing affecting or relating to the Leased Premises, except as expressly set forth in this Lease Agreement. The City without limitation expressly disclaims and negates, as to the Leased Premises: any implied or expressed warranty of fitness for a particular purpose; any implied warranty with respect to the condition of the Leased Premises; its compliance with any zoning or other rules, regulations, laws or statutes applicable to the Leased Premises, including but not limited to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); the uses permitted on the Leased Premises; or any other matter or

thing relating to the Leased Premises or any portion thereof, except as expressly set forth in this Lease Agreement.

Section 205. Reservations. The grant of lease hereunder is subject to the following reservations and conditions.

- A. The City reserves the right, but is not obligated, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee or Sublessees in this regard. The Leased Premises do not include any landing area.
- B. The City reserves the right to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as the City in its sole and absolute discretion sees fit, regardless of the desires or views of Lessee or any Sublessees, and without interference or hindrance of any kind.
- C. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee or Sublessees from erecting, or permitting to be erected, any building or other structure on the Airport, including the Leased Premises, which in the sole and absolute reasonable opinion of the City would limit the usefulness of the Airport or constitute a hazard to aircraft.
- D. The rights granted by this Lease Agreement to Lessee shall not be exercised in such a way as to unreasonably interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport.
- E. The City reserves, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises herein conveyed, together with the right to cause or allow in said airspace or within the Leased Premises such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on or about the Airport.
- F. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, will not unreasonably or materially impair or interfere with Lessee's use of the Leased Premises.
- G. The City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Leased Premises, provided that such use will not unreasonably or materially impair or interfere with Lessee's use of the Leased Premises, and provided further that such reservation or grant of rights shall not directly result in materially added cost or expense to Lessee.

Section 206. Access to the Leased Premises. Subject to the provisions of this Lease Agreement

including the Rules & Regulations, the Lessee will have the right of pedestrian and vehicular (motor vehicles and aircraft) ingress to and egress from the Airport and the AOA, including the Leased Premises, for the Lessee and its Sublessees, and their respective employees, agents, contractors, guests, invitees, licensees, suppliers of materials and providers of service, and its or their equipment, vehicles, machinery, and other property; provided, however, that the foregoing shall not preclude the City from: (i) subjecting such persons to the Rules and Regulations, (ii) requiring such persons to enter into an agreement with the City when such access is required on an ongoing basis, or (iii) imposing any charge, permit or license fee for the right to do business at the Airport, provided such is charged on a nondiscriminatory basis; and further provided that ingress to and egress from the Airport may be conditioned on adherence to security requirements and may be limited on temporary bases for security reasons. In the event Lessee or any Sublessee requires additional access, the City shall cooperate in good faith with Lessee in order to provide such access. Any such additional access shall be constructed at Lessee's sole cost and expense.

Section 207. Access to the Leased Premises by the City. The City reserves and will have the right to access, ingress to and egress from the Leased Premises without charge therefore, for its employees, contractors, agents, licensees, representatives, and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, as may be reasonable under the circumstances, and with as little interruption of Lessee as may be reasonably practical, and upon compliance with Lessee's reasonable security procedures; provided, however, that no right of the City provided for in this Article II will be so exercised as to unreasonably materially interfere with Lessee's use and enjoyment of the Leased Premises as provided in Section 1209 of this Lease Agreement. If Lessee is not present to permit entry and entry is necessary, the City may, in case of emergency, forcibly enter the Leased Premises without rendering the City liable therefore, except for any actual damage caused to Lessee's property as a result of such entry or any costs, damages or liabilities arising from City's negligence or willful misconduct. The City's right to access the Leased Premises will be without charge therefore, and may be for any purpose necessary for, incidental to, or connected with the City's right and obligation under this Lease Agreement, or the City's obligations and rights under the Site Management and Redevelopment Agreement, the Soil Management Agreement or the City's capacity as the Airport owner or operator, including, but not limited to, collecting environmental samples or performing environmental studies, assessments, inspections or remediation, or any combination thereof. Lessee and Sublessees will in good faith coordinate and cooperate with the City's environmental sampling, studies, inspections, and remediation efforts.

Section 208. Security. Lessee hereby acknowledges that the City is required by 49 C.F.R. Part 1500, as amended from time to time ("TSA 1500"), to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the Security Identification Display Area as defined in TSA 1500 ("SIDA") or the AOA. Lessee understands that the City has met said requirements by developing an Airport Security Program ("ASP") for the Airport, and Lessee warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of TSA 1500 and the ASP in connection with Lessee's exercise of the privileges granted hereunder during the Term, and to impose similar requirements on all of its Sublessees. Lessee, at its own cost, will cause facilities and procedures to be prepared, satisfactory to the City, designed to prevent and deter persons and vehicles from

unauthorized access to the SIDA or the AOA from and through any Leased Premises in accordance with the provisions of TSA 1500 and the ASP.

Lessee hereby acknowledges that it understands that its security procedures and facilities on the Leased Premises to meet the requirements of TSA 1500 and the ASP, will include but not be limited to:

- A. fencing and locked gates;
- B. City-approved badging, badge display, escort and challenge procedures applicable to persons authorized to enter the SIDA or the AOA;
- C. an electronic entry control system or a manned guard system where gates or doorways cannot reasonably be controlled by locks; and
- D. other facilities and procedures as may be required to control the entrance of persons and vehicles onto the SIDA or the AOA.

Lessee shall not do or permit its agents, employees, contractors, suppliers, or Sublessees to do anything at the Airport that would be in conflict with or violate the requirements of any federal, state, or local law, regulation or security directive regarding airport security, TSA 1500, or the ASP, as they may be amended from time to time. Lessee shall be responsible for obtaining and coordinating any security badging, vehicle decals, or any other actions required to ensure that Lessee's agents, employees, contractors, suppliers, and Sublessees are in compliance with all security requirements. Lessee shall be responsible for all costs associated with obtaining such badge or access privileges.

Section 209. Encumbrances on Leased Premises. Lessee accepts the Leased Premises subject to any and all then existing easements or other encumbrances and the City retains the right to install, lay, construct, maintain, repair and operate such utilities, sanitary sewers, drains, storm water sewers, pipelines, manholes, communication lines, connections, water, oil or gas pipelines, and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient in connection therewith, over, in, upon, through, across and along the Leased Premises, or any part thereof, and to enter thereupon at reasonable times for any and all such purposes; provided, however, that no right of the City provided for in this Section 209 will be so exercised as to materially or substantially diminish the utility or value of the Leased Premises, materially interfere unreasonably with the Lessee's use or enjoyment of the Leased Premises, or result in any material added expense to Lessee in conducting its operations hereunder.

ARTICLE III AGREEMENT TERM

Section 301. Term. The term ("**Term**") of this Lease Agreement commenced on the Effective Date and will end at 11:59 p.m. (local prevailing time) on the fortieth (40) year anniversary of the Effective Date, unless sooner terminated pursuant to the provisions hereof.

Section 302. Surrender of Possession. The City will not be required to notify Lessee to quit

possession of the Leased Premises at the expiration of this Lease Agreement. Upon the expiration or the early termination as hereinafter provided, Lessee shall peaceably surrender possession of the Leased Premises (as may be modified by any approved TCA) in good condition, reasonable wear and tear excepted, and the City shall have the right to take possession of the Leased Premises (see Section 604, of this Lease Agreement entitled "Title to New Improvements"). If Lessee does not vacate the Leased Premises as set forth herein, Lessee does hereby agree that the City may use any remedy at law or in equity including, but not limited to, a writ of possession to carry out the transfer of possession.

Before acceptance by the City of the Leased Premises as set forth herein, the City and Lessee shall perform a joint inspection of the Leased Premises being surrendered to the City. Lessee shall perform any reasonable maintenance work requested by the City so that all mechanical systems are fully functional and all facilities are protected from the weather. Said inspection will be conducted at the early termination, or within ninety (90) calendar days prior to the expiration, of this Lease Agreement. Upon surrendering of possession, Lessee shall give to the City all building plans (*i.e.*, as-built drawings) and mechanical specification manuals on all systems in the Leased Premises.

Any obligations of Lessee pursuant to Section 703 entitled "Environmental Remediation" hereof must be completed by Lessee prior to the expiration of the Term, as applicable, in accordance with and subject to the terms, covenants, and conditions of Article VII.

Section 303. Removal of Above-Ground Fuel Storage Tanks. At the expiration of the term of this Lease Agreement, or as soon as practicable after the earlier termination hereof, unless otherwise agreed to in writing by the City, Lessee, at Lessee's sole expense, shall promptly and timely: (i) remove all products or wastes stored in any above ground storage tanks located on the Leased Premises that were installed, operated, and/or used by the Lessee and/or any other person or entity during the term of this Lease Agreement; (ii) remove any above ground tanks including, without limitations, any connecting piping, tubing structures, facilities, secondary containment structures or facilities, or other related equipment or fixtures; and (iii) promptly remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water affected by leaks, spills, discharges, or releases from such above ground storage tanks or connecting piping, tubing, structures, facilities, or other related equipment or fixtures. Such removal, remediation, decontamination, and/or restoration shall be performed by Lessee in a manner consistent with all Environmental Laws and Environmental Permits (see Section 606 of this Lease Agreement entitled "Installation of Above-Ground Fuel Storage Tanks"). In addition, any obligations of Lessee pursuant to Section 703 entitled "Environmental Remediation" hereof shall be promptly and timely completed by Lessee in accordance with the provisions of this Lease Agreement including, without limitation, Articles VI and VII. In the event that City is required to undertake actions to bring the Leased Premises into compliance with the foregoing provision or any applicable Environmental Laws or Environmental Permits, as a result of any of the above described leaks, spills, discharges, or releases, and Lessee's failure to promptly and timely correct same, Lessee shall timely reimburse City for any expenses in accordance with Section 705 of this Lease Agreement entitled "Corrective Action by City".

ARTICLE IV RENT AND FEES

Section 401. General. Lessee, for and in consideration of the rights and privileges granted herein, agrees to promptly and timely pay the rents and fees and any other charges, expenses, or other payments due the City as set forth in this Lease Agreement, without demand, during the Term.

Section 402. Rent Payment. Lessee shall pay an annual rent to the City for the Leased Premises (the “**Initial Rent**”) based on a **Ground Rental Rate** of \$0.35 per square foot, as follows:

1. beginning on Contract Year two (2), in an amount equal to the product of the Ground Rental Rate multiplied by fifty percent (50%) of the total ground area of Phase 1 Area; and
2. beginning on the Substantial Completion of Phase 1 or thirty-six (36) months after the Effective Date, whichever is sooner, in an amount equal to the product of the Ground Rental Rate multiplied by the total ground area of Phase 1 Area; and
3. beginning on Contract Year six (6) or upon the substantial completion of Phase 2, whichever is sooner, in an amount equal to the product of the Ground Rental Rate multiplied by the total ground area equal to the sum of Phase 1 Area and Phase 2 Area, as adjusted in accordance with Section 404 below, if applicable; and
4. beginning on Contract Year eighth (8) or upon substantial completion of Phase 3, whichever is sooner, in an amount equal to the product of the Ground Rental Rate multiplied by the total ground area for the Leased Premises, as adjusted in accordance with Section 404 below, if applicable.

Rent payments are due in twelve equal monthly installments, in advance, on or before the first day of each month. The Initial Rent and the Adjusted Rent may be increased or reduced, if necessary, to reflect the actual size of the Leased Premises or phase area as modified by the Director in accordance with the provisions of Section 601 of this Lease Agreement.

Section 403. Rent Escalation. The Initial Rent will increase (but not decrease) on the fifth anniversary of the Effective Date, and on each fifth anniversary thereafter during the Term, in accordance with the provisions of Section 404 below.

Section 404. Index Rent Escalation. If the Index in an Anniversary Month exceeds the Base Index, then the Initial Rent or the previously Adjusted Rent will increase by the Percentage Increase to calculate the new Adjusted Rent.

Within ninety (90) days following the Anniversary Month, the City shall send Lessee an “Index Comparative Statement” setting forth the following:

1. The Index in the Anniversary Month preceding the date of the statement;

2. The Base Index;,
3. The Percentage Increase; and
4. The resulting Adjusted Rent.

Thereafter, on the first day of the calendar month following the month in which the Index Comparative Statement was sent (the “**Current Month**”), Lessee shall pay to the City a sum equal to $1/12^{\text{th}}$ of said increase in rent multiplied by the number of calendar months then elapsed since the most recent Anniversary Month, and thereafter, commencing with the Current Month and continuing monthly thereafter until a new Index Comparative Statement is sent to Lessee, the monthly installments of rent will be equal to $1/12^{\text{th}}$ of the new Adjusted Rent.

An example of the rent escalation outlined in this Section 404, wherein the Initial Rent on the Effective Date is \$100,000, the Base Index on the Effective Date is 10, and the Index on the Anniversary Month is 11:

The Percentage Increase will be $11-10/10 = 1/10 = 10\%$

The Initial Rent will increase by 10% so that the new Adjusted Rent shall be \$110,000.

The Base Index for computing the Percentage Increase on the next Anniversary Month will then be 11.

Section 405. No Rent Payments for New Improvements. In recognition that the Lessee or its Sublessees will be constructing or causing New Improvements to be constructed without cost to the City and that Lessee or its Sublessees will be obligated to pay the property taxes, insurance, and other costs that become payable in respect to the Leased Premises, including any New Improvements, and that all New Improvements will revert to the City at the expiration or early termination of this Lease Agreement in accordance with Section 604 of this Lease Agreement, no rent will be due or payable by the Lessee for the New Improvements.

Section 406. Collection and Payment of Airport Fees and Charges. When applicable, Lessee or its designee must timely report, collect, and remit Airport fees and charges assessed by the City to the Lessee or any Sublessees. Such Airport fees and charges may include, without limitation, aircraft Landing Fees, Fuel Flowage Fees, and other reasonable and not unjustly discriminatory fees and charges that the City may establish or impose from time to time in accordance with the City’s Rules and Regulations or the provisions of this Lease Agreement.

If applicable, Lessee or its designee must timely submit to the City by the fifteenth (15th) day of each month, two (2) copies of an accurate landing report and a fuel flowage report for the preceding month and the fees associated with those reports, as the case may be, regardless of whether such fees were actually collected by the Lessee or its designee. Said landing reports and fuel flowage reports will be in a form acceptable to the City.

The Landing Fee to be remitted to the City will be for each aircraft landing by an aircraft operator operating at the Airport from the Leased Premises that is not listed on the most current list issued

by the City of aircraft operators having an agreement with the City for use of the Airport, as established by the City from time to time.

The Fuel Flowage Fee to be remitted to the City will be for each gallon of aviation fuel, as measured by a metering system acceptable to the Director, delivered on the Leased Premises into the aircraft of aircraft operators that are not listed on the most current list issued by the City of aircraft operators having an agreement with the City for use of the Airport, as established by the City from time to time.

Lessee acknowledges and agrees that no Sublessee or third party supplier/operator (other than BIAC operating under the rights granted by the Dual Customs Agreement) will be permitted to conduct any business or activity at the Airport from or at the Leased Premises unless and until such Sublessee or supplier/operator has a valid written agreement or permit as may be required by the City allowing the conduct of such specifically authorized business or activity, which must comply with applicable Rules and Regulations.

Section 407. Unpaid Rent and Fees. All unpaid Initial Rent, Adjusted Rent, and other fee, charges or other payments due to the City hereunder will bear a service charge of one and one half percent (1 1/2%) per month if same is not paid and received by the City when due, and Lessee shall pay and discharge all costs and expenses including reasonable attorneys' fees, court costs and related expenses incurred or expended by the City in collection of said delinquent amounts due including service charges.

Section 408. Notice, Place and Manner of Payments. Payments to the City required by this Lease Agreement will be made at the office of the Director at the address set forth in Section 1201 below, or at such other place or by whatever payment method that the City may determine and hereafter notify Lessee, and must be made in legal tender of the United States.

Section 409. Additional Fees, Charges and Rents. Lessee shall pay additional fees, charges and rents under the following conditions:

- A. if the City has paid any sum or sums or has incurred any obligation or expense for which Lessee has agreed in writing to pay or reimburse the City; or
- B. if the City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Lessee to perform or fulfill any of the terms, covenants or conditions of this Lease Agreement, and such failure remains uncured for a period of thirty (30) days after notice specifying such default by the City to cure such default.

Such payments will 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 fees, charges and rent thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the rent payments as set forth herein.

Section 410. Prompt Payment of Taxes and Fees. Lessee 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 acquire and keep current all municipal, local, state or federal permits or licenses, required for the conduct of its business at the Airport.

Section 411. Lessee Charges to Sublessees. Lessee warrants, covenants, and agrees that it will charge fair, reasonable and nondiscriminatory rents and charges to its Sublessees for the use of the Leased Premises, or portions thereof.

Section 412. Security Deposit.

- A. Amount and Form of Security Deposit. Within ten (10) days after the Effective Date, Lessee shall provide the City with an irrevocable letter of credit, bond, or other security or instrument acceptable to the City ("**Security Deposit**") in an amount equal to 3 months of Initial Rent and any other estimated payments due the City pursuant to this Lease Agreement, as reasonably determined by the City or One Hundred Fifty Thousand Dollars (\$150,000.00), whichever is greater. The amount of the Security Deposit may be adjusted from time to time by the City to reasonably reflect changes in the Lessee's financial obligations to the City under this Lease Agreement, including, but not limited to fuel flowage fees and landing fees. The Security Deposit will guarantee the faithful performance by Lessee of all of its obligations hereunder and the payment of all rents, charges, and payments due to the City. The Security Deposit will be in such form and with such company licensed to do business in the State of Missouri as may be acceptable to the City, within its reasonable discretion. The Security Deposit is not the sole or exclusive remedy of the City and will not be construed, in and of itself, as adequate assurance of Lessee's future performance.
- B. Term of Security Deposit. The Security Deposit will remain in full force and effect throughout the term of this Lease Agreement and will extend for at least **one hundred and eighty (180)** days following the expiration or early termination of this Lease Agreement. Lessee shall provide at least 60 days prior notice of the date on which any Security Deposit expires or is subject to cancellation.
- C. City's Right to Use Security Deposit; Replenishment. If Lessee commits or is under an Event of Default pursuant to Section 1101 of this Lease Agreement; the City will have the right to use the amounts of such Security Deposit to pay Lessee's rents, or any other fees, charges, expenses, or amounts owed to the City by Lessee then due and payable, or to apply the proceeds to any cost, expense, or material damages incurred by the City as a result of Lessee's default or Event of Default under Section 1101 of this Lease Agreement. If any such Security Deposit, or portion thereof, is used as stated in this paragraph, Lessee shall replenish or provide a renewal or replacement Security Deposit up to the full amount set forth in Section 412 (A) within ten (10) days of being notified to do so by the City. The City's rights under this Section 412 are in addition to all other rights and remedies provided to the City hereunder.

ARTICLE V USE OF PREMISES

Section 501. Use. The City hereby grants to Lessee, subject to all the terms, covenants, and conditions of this Lease Agreement, permission to occupy and use the Leased Premises: (i) to demolish any Existing Improvements that are not Retained Improvements, and (ii) to construct or make New Improvements in accordance with the terms of this Lease Agreement including, without limitation, Article VI in order to accommodate International Cargo Enterprises and other air cargo operations and distribution facilities, (iii) to develop and operate cargo operations, distribution facilities, logistics center and FBO Services, and (iv) **to accommodate BIAC so BIAC can exercise its rights and obligations as set forth in the Dual Customs Agreement.** All other uses are prohibited unless expressly authorized in writing by the Director. The parties understand and agree that the right to develop and operate FBO Services granted herein is not to be interpreted as being duplicative of the substantially similar right granted to BIAC under the Dual Customs Agreement. Lessee acknowledges, stipulates and agrees that there will be no more than one (1) fixed base operator established and operating from the Leased Premises, unless otherwise expressly authorized by the Director.

Section 502. Compliance with Laws and Regulations. Lessee and its Sublessees, and their respective officers, directors, employees, agents, licensees, contractors, suppliers, and representatives, shall comply with the Rules and Regulations, the Airport Certification Manual, and the Airport Layout Plan on file at the office of the Director, all applicable Environmental Laws and Environmental Permits including, without limitation, all statutes, laws, ordinances, orders, judgments, decrees, and regulations of all federal, state, local, City, and other governmental authorities, and with all of the requirements imposed by the City's grant assurances, as any of them may be amended from time to time, and as now or hereafter applicable to the Leased Premises or to Lessee's or any Sublessee's use of the Leased Premises. Lessee shall make reasonable efforts to cause its guest and invitees to comply as well. Notwithstanding anything to the contrary, references in this Lease Agreement to a statute, regulation, or law will be deemed to be a reference to: (i) such statute or law as it may be amended from time to time, and (ii) all ordinances, regulations, rules, executive orders, policies, and instructions pertaining, and lawfully promulgated pursuant, to such statute or law as they now exist or may be amended from time to time.

Section 503. Repairs and Maintenance. Lessee shall, throughout the Term, at its own cost, and without any expense to the City, keep, repair and maintain in accordance with all applicable federal, state and local statutes, laws, rules or regulations including, without limitation, all applicable Rules and Regulations, Environmental Laws, and Environmental Permits, the Leased Premises, including the interior and exterior, structural and non-structural portions of all Retained Improvements and any New Improvements, including, without limitation, the plumbing, heating, lighting, air conditioning, fire protection systems, and other systems in connection therewith, in good and in safe condition, sanitary and neat order, and shall make all necessary repairs and maintenance thereto, ordinary and extraordinary, foreseen and unforeseen, and shall make all necessary replacements thereto of like quality when beyond repair, including, but not limited to, offices, hangars, buildings, aircraft ramp, parking lots, above ground tanks, and fuel facilities. Lessee shall restore, rehabilitate, or replace all Retained Improvements and

New Improvements that may be destroyed or damaged by fire, casualty or any other cause whatsoever. The City will not be obligated to perform any maintenance or make any repairs or replacements of any kind, nature, or description to the Leased Premises including any Existing Improvements, Retained Improvements, New Improvements, or any Removable Fixtures.

- A. Custodial/Maintenance Services. Lessee shall be responsible for all cleaning, custodial and janitorial services required to meet its obligations hereunder. Without limiting the generality of the foregoing, Lessee shall keep all portions of the Leased Premises in an orderly, neat, clean and safe condition and in good repair. Lessee shall keep all papers and debris picked up from the Leased Premises and sweep the pavements thereon as often as necessary to keep clean, and keep all grass mowed, and shrubbery and other plantings pruned, trimmed, and maintained in an orderly, neat, clean and safe condition and good repair. Lessee shall provide for essential streets, walkways, and pavement maintenance within the Leased Premises.
- B. Trade Fixtures/Removable Fixtures. Lessee shall keep all trade fixtures and Removable Fixtures on the Leased Premises in a good and safe condition, order, and repair at all times. Should damage occur, repair and/or replacement shall be made by Lessee on a timely basis. All trade fixtures and Removable Fixtures that become incapable of being kept in good and safe working order shall be removed and, if applicable, replaced by Lessee. All maintenance, repairs and replacement of trade fixtures and Removable Fixtures will be at Lessee's sole cost and expense.
- C. Security of Leased Premises. In addition to the security requirements set forth in Section 207 of this Lease Agreement, Lessee shall, at its sole cost and expense, take such measures as may be necessary to cause the Leased Premises to be kept secure and safe at all times. The City shall have no obligation or responsibility to keep the Leased Premises policed, secure or safe.
- D. Repair & Maintenance Reports. Lessee shall, throughout the Term, within thirty (30) days of the end of each Contract Year and within thirty (30) days after the expiration or early termination of this Lease Agreement, submit to the City a report identifying any and all repair and maintenance project, if any, in excess of Fifty Thousand Dollars (\$50,000) completed on the Leased Premises during the preceding Contract Year.
- E. Pavement Maintenance. Lessee shall, throughout the Term, within sixty (60) days of the start of each third Contract Year, submit to the City a detailed and sealed report prepared by a independent and qualified State of Missouri registered professional engineer who shall conduct an annual pavement inspection of all paved areas used by aircraft within the Leased Premises in compliance with FAA Advisory Circular 150/5380-6 Guidelines and Procedures for Maintenance of Airport Pavements ("FAA AC 150/5380-6"), as amended from time to time, and ASTM D 5340 Standard Test Method for Airport Pavement Condition Index Surveys ("ASTM D 5340"), as amended from time to time. The detailed and sealed report submitted to the City shall also include, if applicable, plans and schedules for repair or replacement of any found defects or deficiencies in accordance with FAA AC 150/5380-6 and ASTM D 5340.

- F. Drainage Facilities. Lessee shall comply with the Airport's Storm Water Detention Design Criteria and Guidelines dated December 1986, as revised from time to time, as well as all applicable Metropolitan Sewer District ("MSD") and FAA requirements for stormwater retention, as well as any and all applicable Environmental Laws, Environmental Permits, and/or federal, state, and municipal regulations (see Sections 503.K entitled "Stormwater Pollution Prevention Plan" and 708 entitled "Pollution Control"). Lessee shall establish a system of periodic inspections, cleaning and maintenance to keep watercourses, catch basins, and other drainage structures, as the case may be, on the Leased Premises functioning at full design capacity. Inspection, cleaning, and maintenance intervals shall be established by the Director with reports to be submitted by Lessee within thirty (30) calendar days of completion of each inspection, cleaning and maintenance. Lessee shall see that special care is taken to pile removed snow in a location that will permit the water generated by the melting of such snow piles to flow into the drainage system of the Leased Premises.
- G. Waste Disposal. Lessee, at its sole cost and expense, shall also provide for the complete sanitary handling and disposal of all solid waste, trash, garbage, and refuse (liquid or solid) in accordance with all local, state, and federal rules and regulations and the standards established by the Director and applicable to all City tenants at the Airport. Such standards may require the use of special devices including, but not limited to, special containers, compactors, and disposal systems. Lessee agrees, at its cost, to promptly provide and install same and to abide by such standards.
- H. Recycling. If the City establishes a recycling program, Lessee shall fully participate in said recycling program. Lessee shall comply with all applicable City, local, county, state, and federal regulations regarding recycling.
- I. Obstruction Lights. Lessee shall, at its sole cost and expense, provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable Rules and Regulations, law, statute, rule, regulation, ordinance, or any municipal, state, or federal regulation.
- J. Storage. No unscreened storage will be permitted on the exterior areas of the Leased Premises.
- K. Snow Removal. Lessee shall be solely responsible for removal of all snow and ice from within and without the Leased Premises as necessary to access the airfield and/or any portion of the Leased Premises. Lessee shall provide for snow and ice removal to allow, at a minimum, emergency for fire protection access to the Leased Premises.

Section 504. Utilities. Lessee shall install and provide for and pay for all utilities used on the Leased Premises.

Section 505. Interference to Operations of Airport. Lessee warrants, covenants, and agrees that no obstructions to air navigation, as such are defined from time to time by application of the

criteria of 14 C.F.R. Part 77, or subsequent and additional regulations of the FAA, will be constructed or permitted to be constructed, or permitted to remain on the Leased Premises, and if any such obstructions are constructed in violation of this Section 505, Lessee shall immediately remove them at its expense. Neither Lessee nor any Sublessee will 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 of the Airport and its operations. Neither Lessee nor any Sublessee will install any structures, objects, machinery or equipment that would interfere with the operation of navigation aids 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 506. Inoperable Aircraft. The Lessee agrees that any aircraft left in non-flyable condition will not be parked or stored on the Leased Premises for a period in excess of sixty (60) days without the prior written approval of the City. Non-flyable aircraft shall not be moved from the Leased Premises to other areas of the Airport without the express written approval of the Director.

Section 507. City's Right to Enter, Inspect, and Perform Corrective Actions. The City will have the right to enter upon the Leased Premises at any reasonable time upon at least twenty-four (24) hours prior written notice to Lessee, or without notice in case of emergency, provided however, Lessee is notified as soon thereafter as practicable:

- A. to inspect the Leased Premises for any purpose necessary for, incidental to, or connected with Lessee's obligations hereunder; and
- B. to perform any work therein that may be necessary by reason of Lessee's failure to make any repairs, perform any work or maintenance, or do anything required of Lessee under this Lease Agreement; provided, however, that except in cases of emergency, the City will give Lessee notice of such failure, and will not perform such work unless Lessee has failed to do so within thirty (30) days after receipt of such notice; provided, however, that if such work is not reasonably capable of being performed within thirty (30) days, the Lessee will have as much time as it reasonably takes, provided Lessee is diligently pursuing the necessary work. Lessee shall pay to the City all reasonable costs and expenses related to such work by the City plus an administrative charge of fifteen percent (15%) immediately upon demand thereof. Nothing herein will be interpreted or construed to imply any duty on the part of the City to perform such inspections, make any repairs, or perform any work on the Leased Premises, and the performance thereof by the City will not constitute a waiver of Lessee's default in failing to make any repairs or performing any work required of Lessee under this Lease Agreement. The City will not in any event be liable for cessation of revenues, inconvenience, annoyance, disturbance, loss of profits, or any other damage or loss whatsoever to Lessee or any other party by reason of making such repairs or performing such work or maintenance on the Leased Premises or on account of bringing materials, supplies, and equipment onto or through the Leased Premises during the course thereof, unless and to the extent arising out of the negligence of the City, and the obligations and duties of Lessee under this Lease Agreement will not thereby be waived or affected in any manner whatsoever.

Lessee shall have the right to accompany the City representative during any inspection or corrective action.

ARTICLE VI CONSTRUCTION OR MODIFICATIONS OF THE LEASED PREMISES

Section 601. Development and Phases.

A. General. Lessee shall develop the Leased Premises for the purposes permitted herein in phases (“**Phases**”) substantially similar to those set forth in **Exhibit E (“Development Plan”)**, except as they may be modified in accordance with Section 601.E. In addition, the City acknowledges that Lessee needs the flexibility to modify the Development Plan to account for changes in market conditions, which may include, without limitation, modifying the scope, size and scheduling of the phases set forth in this Section 601 and the Development Plan. Therefore, the Director, on behalf of the City and in the City’s, Airport’s, and the traveling public’s best interest, may in good faith consider and approve changes, modifications, or amendments to this Section 601 and the Development Plan (Exhibit “E”) or any combination thereof, as the case may be, proposed in writing by Lessee from time to time, without a formal amendment to this Lease Agreement.

B. Phase 1. Phase 1 must include the redevelopment of approximately 36.38 acres (1,584,713 sq. ft.) (“**Phase 1 Area**”) as shown in the Development Plan as Phase 1, including the demolition of certain Existing Improvements, the refurbishment of Retained Improvements, and the construction of New Improvements, as described in the Development Plan for Phase 1.

Subject to Force Majeure Events, Phase 1 must be Substantially Completed no later than thirty-six (36) months after the Effective Date. If Lessee fails to reasonably comply with the requirements of this Section 601.B, such failure shall not be deemed an Event of Default, but the City may, at its sole and absolute discretion, and at any time, as its sole and exclusive remedy, revoke Lessee’s leasehold rights to those portions of the Phase 1 Area, the Phase 2 Area, and the Phase 3 Area not redeveloped by Lessee, or portions thereof, and modify the size of the Leased Premises accordingly.

C. Phase 2. Phase 2 must include the redevelopment of approximately 10.49 acres (456,944 sq. ft.) (“**Phase 2 Area**”) shown in the Development Plan as Phase 2, including the demolition of certain Existing Improvements, the refurbishment of Retained Improvements, and the construction of New Improvements, as described in the Development Plan for Phase 2.

Subject to Force Majeure Events, Phase 2 must be Substantially Completed no later than sixty (60) months after the Effective Date. If Lessee fails to reasonably comply with the requirements of this Section 601.C, such failure shall not be deemed an Event of Default, but the City may, at its sole and absolute discretion, and at any time, as its sole and exclusive remedy, revoke Lessee’s leasehold rights to those portions of the Phase 2 Area and the Phase 3 not redeveloped by Lessee, or portions thereof, and modify the size of the

Leased Premises accordingly.

- D. Phase 3. Phase 3 must include the redevelopment of approximately 14.23 acres (619,858 sq. ft.) ("**Phase 3 Area**") shown in the Development Plan as Phase 3, including the demolition of certain Existing Improvements, the refurbishment of Retained Improvements, and the construction of New Improvements, as described in the Development Plan for Phase 3.

Subject to Force Majeure Events, Phase 3 must be Substantially Completed no later than eighty four months (84) months after the Effective Date. If Lessee fails to reasonably comply with the requirements of this Section 601.D, such failure shall not be deemed an Event of Default, but the City may, at its sole and absolute discretion, at any time, as its sole and exclusive remedy, revoke Lessee's leasehold rights to those portions of the Phase 3 Area not redeveloped by Lessee, or portions thereof, and modify the size of the Leased Premises accordingly.

- E. Election to Proceed with Phase 3 before Phase 2. Notwithstanding the requirements of Section 601. C and D, Lessee may elect to proceed with Phase 3 before Phase 2; provided however that: (i) Notice of such election shall be given by Lessee to the City no later than thirty-eight (38) months after the Effective Date; and (ii) Phase 3 will be considered as Phase 2 for purposes of this Lease Agreement and must be Substantially Completed in accordance with Section 601.C, and Phase 2 will be considered as Phase 3 for purposes of this Lease Agreement and must be Substantially Completed in accordance with Section 601.D,
- F. Further Modification of Leased Premises. Modifications of the Leased Premises made by the City in accordance with this Section 601 will be done in such a way so as to preserve the landside and airside access to and from the remainder of the Leased Premises for Lessee and its Sublessees, and to retain the landside and airside access to and from those tracts of land on which the leasehold rights are revoked for the City and other Airport tenants or users. Lessee acknowledges and agrees that any such access rights may be preserved or retained, if necessary, through reasonable easements, permits, or rights of way so as to maintain the use of the dominant and servant estates for Airport purposes at no costs to the City or the Lessee as the case may be.

Section 602. Obligations, Rights, and Procedures.

- A. General. Lessee shall prepare, and submit to the Director for approval as provided for in Section 602.B through 602.J of this Agreement, detailed plans to demolish any Existing Improvements, refurbish Retained Improvements, or to construct or make any New Improvements including, without limitation, the installation of any above-ground tanks. The Lessee acknowledges, stipulates, covenants, and agrees that **no basements, underground garages, underground storage tanks, underground parking structures, or other similar underground structures** will be allowed to be installed or constructed within the Leased Premises. Additionally, any construction on, or alteration to, the Leased Premises that requires permitting from St. Louis County, Missouri, or any

municipality in which the Leased Premises are located must also receive the prior written approval of the Director as provided for herein. Except as otherwise provided herein upon the demolition and/or removal from the Leased Premises of a building or structure in accordance with this Lease Agreement, such building or structure or the remains thereof (including without limitation all salable scrap) shall become the property of the Lessee.

- B. Submittals to City. Lessee covenants, stipulates, warrants and agrees that all such work that requires the City's approval must be completed according to the Tenant Design Standards, which are filed on record in the office of the Director. In addition, Lessee shall:
- submit a signed Tenant Construction or Alteration Application ("TCA") available from the Airport Properties Department, including detailed drawings, plans, specifications, and timetables for modifying the Leased Premises, including, without limitation, any excavation, demolition, construction, alteration or refurbishment, for the City's review and approval as provided for in Section 601.C below.
 - submit to the Airport Properties Department a building permit number from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following receipt of such permit. A building permit number will be required prior to the start of any demolition, construction, or modification to the Leased Premises by Lessee.
 - submit the contractor's liability insurance certificates and the required performance bonds and payment bonds, required by Sections 602.H and 602.I below, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
 - submit to the Airport Properties Department a copy of an occupancy or use permit from any and all municipalities, political jurisdictions and regulatory agencies, as required by Section 602.J below, prior to occupancy or use.
 - submit to the Airport Properties Department an Environmental Impact Statement, if required by any municipality, political jurisdiction, or federal or state regulatory agency with respect to the Leased Premises, not more than thirty (30) days following submission of the TCA.
- C. TCA Review and Approval by City. Lessee acknowledges, understands and agrees that following receipt of the TCA, including detailed project documents, the City is required to forward a copy of such plans to Boeing for its comments in accordance with the Site Management and Development Agreement. The City will then proceed to perform on the Leased Premises certain environmental sampling or testing and, if necessary, environmental assessments at the City's costs and may also proceed to perform the remediation of Existing Environmental Conditions at the City's cost, as provided for herein. The City shall obtain any required approvals related thereto, in accordance with Environmental Laws, the Site Management and Redevelopment Agreement, and the Soil

Management Plan. Lessee covenants, warrants, stipulates, and agrees to cooperate in good faith with the City throughout this process. Lessee acknowledges, understands and agrees that the City's approval of any excavation, demolition, construction, alteration or refurbishment to the Leased Premises may be subject to the City or the Lessee, as the case may be, completing the work described herein and complying with Environmental Laws, the provisions of the Site Management and Redevelopment Agreement, the Soil Management Plan, as well as other City applicable reviews and approvals. Lessee acknowledges and agrees that the City's approval of Lessee's TCA or plans, the City's pre-job sampling or testing including, if necessary, remediation of Existing Environmental Conditions by the City or the Lessee, as the case may be, and the City's obtaining of approvals in accordance with the Site Management and Redevelopment Agreement, the Soil Management Plan, and other approvals as required by Environmental Laws could require significant changes and delays to the Lessee's excavation, demolition, construction, alteration, or refurbishment schedule. Lessee acknowledges, stipulates, covenants and agrees that it shall take into consideration the City's approval process and remediation obligations hereunder when developing its demolition and construction schedules. Lessee acknowledges, stipulates, covenants, and agrees that Lessee's demolition and construction schedules may need to include a significant interval between demolition and site preparation or grading so that the City or the Lessee, as the case may be, may carry out the environmental remediation and mitigation work, if any. Lessee hereby releases and agrees for itself and its Sublessees and tenants that it will hold the City and its officers, employees, contractors, agents and representatives, harmless from any and all expenses, liability, or costs including, without limitation, loss of profits associated with any delay related to or arising out of the City's approval process or remediation obligations hereunder. In the event of an unexpectedly long delay resulting from the City's approval process or remediation obligations, the City shall in good faith agree to extend the applicable time periods for the Substantial Completion of any remaining Phase by extending the number of days that Lessee's performance was delayed as a result of such approval process or remediation.

- D. Conduct of Work Following Approval of TCA. No excavation or demolition at, construction or modifications of, or refurbishments to, the Leased Premises will commence until after Lessee has received the written approval of its TCA from the City. Lessee also understands and agrees that certain work elements described in the TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Lessee understands and agrees that ongoing coordination with the City at all times is crucial.

E. Discovered Hazardous Materials.

1. Lessee shall give the City not less than twenty five (25) working days written notice prior to commencement of any work at the Leased Premises involving excavation of soils so that the City may have a representative present at the work site during such excavation. In the event Hazardous Materials are encountered during any excavation, demolition, construction, modification, or refurbishment of the Leased Premises, Lessee shall promptly notify the City, and a determination

will be made by the City regarding whether the Hazardous Materials are an Existing Environmental Condition to be remediated by the City or the Lessee as the case may be. If Lessee reasonably disputes such determination, such dispute will be set forth in writing and submitted to the City; after which the matter will be addressed in good faith by the parties as quickly as reasonably possible. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be promptly resolved by upper management of both parties. If the Hazardous Materials constitute an Existing Environmental Condition, the City shall investigate and, if necessary, the City or the Lessee, as the case may be, will remediate said Hazardous Materials, in accordance with applicable Environmental Laws and, if applicable, following the procedures in the Site Management and Redevelopment Agreement and the Soil Management Plan at the City's cost as provided for herein. Lessee and its Sublessees shall, in good faith but at no material direct cost, cooperate with the City in all respects to ensure that the City receives appropriate reimbursement from Boeing. Lessee and City do hereby acknowledge and agree that in most cases it will be more practical and efficient for the Lessee to perform the necessary remediation work, which must be agreed to in writing by the Lessee and the City. Such work will only be performed by Lessee or its designee subject to the prior written approval by the City of detailed work plans submitted by Lessee, and with ongoing consultation and cooperation with the City during the performance of the work. The City shall timely reimburse or pay to Lessee or its designee approved reimbursable costs related to the investigation and remediation work by Lessee or its designee that is requested by the City, in accordance with the provisions more fully described in Section 602.E.2 below. Whether performed by the City or by Lessee or its designee, such investigations, remediation, and required approvals may result in construction delays for the Lessee; Lessee for itself, its Sublessees and their tenants, hereby releases and agrees that it will hold the City and its officers, employees, contractors, representatives, and agents harmless from any expenses, liabilities, or costs what so ever including, without limitation, loss of profits associated with such delays. However, in the event of a delay as a result of such investigation or remediation associated with Hazardous Materials, the City shall in good faith agree to extend the applicable time periods for Substantial Completion of any remaining Phase by extending the number of days that Lessee's performance was delayed by such investigation or remediation.

2. Lessee shall use commercially reasonable efforts to cause all requests for reimbursement or disbursements of funds ("**Request for Reimbursement**") for authorized reimbursable costs incurred by the Lessee or its designee on behalf of the City pursuant to this Article VI including Section 602.E.1 above to be submitted to the City within ten (10) calendar days of payment of the charges by the Lessee or its designee; provided, however, Lessee will not waive its right to reimbursement if any request is not submitted within said ten (10) day period. So that the City can promptly seek reimbursement from Boeing pursuant to the Site Management and Redevelopment Agreement, each Request for Reimbursement

must include the following: (a) adequate documentation and explanation supporting that the costs for which reimbursement are sought are authorized reimbursable costs in accordance with the terms of this Lease Agreement; (b) a detailed breakdown of the billing totaling the amount of the Request for Reimbursement; (c) copies of invoices, contracts, and such other proof of payment or documentation supporting the Lessee's Request for Reimbursement; and (d) such other documentation as may be reasonably requested in writing by the City to determine whether the costs are an authorized reimbursable cost in accordance with the terms of this Lease Agreement or necessary for the City to get reimbursed by Boeing. The City shall have sixty (60) calendar days from the date of its receipt of the Request for Reimbursement to process and pay the amount of the Request for Reimbursement. Should City reasonably dispute or object to any claimed reimbursable cost or any item or amount shown on any Request for Reimbursement or supporting documentation or explanation provided by the Lessee, or reasonably dispute or object to the adequacy of such supporting documentation and explanation, the City may withhold payment in part or in full; provided that the City shall, within that same sixty (60) calendar day period, timely pay the balance to which the City has no reasonable objection or dispute. If the City reasonably disputes or objects to a Request for Reimbursement or any cost item therein, such dispute or objection will be set forth in writing and submitted to the Lessee; after which the matter will be addressed in good faith by the parties as quickly as reasonably possible. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be promptly resolved by upper management of both parties. The City's obligation to reimburse Lessee under this Article VI including Section 602E is not contingent upon City's receipt of funds from Boeing under the Site Management and Redevelopment Agreement, the Soil Management Agreement or any other agreement.

- F. Federal Aviation Administration Review. Prior to commencement of any excavation on, demolition of, construction at, or alteration or refurbishment to the Leased Premises, Lessee shall submit all preliminary plans, drawings, and specifications to the FAA for any review and approval that may be required, with a copy to the Airport Properties Department. The preliminary plans must show plot plans, the location and elevations of buildings and other structures, must indicate proposed exterior materials and finishes for all structures, and must include any additional information that may be requested or required by the FAA or the City.
- G. Landscaping and Screening. Lessee shall provide and install, or cause to provide and install by a Sublessee, as applicable, appropriate landscaping and screening, including lawn, shrubbery, trees, bushes, vines and other plantings and screenings on the Leased Premises as part of the construction of any New Improvements. All proposed landscaping plans and screening designs must be submitted to the Director for review and approval. Lessee further agrees to provide any further landscaping and fencing that may be required, during the term hereof, by the Director, for security purposes.

- H. Contractor's Liability Insurance. In any contract relating to the excavation or demolition at, construction or modification of, refurbishment or improvement to the Leased Premises, Lessee shall require each of its contractors and suppliers to carry policies of Builders Risk Insurance, Commercial General Liability and Automobile Liability Insurance in accordance with Section 901B(v) of this Lease Agreement.
- I. Payment and Performance Bonds. In order to insure the payment of all laborers and material suppliers and the completion of projects requiring the City's approval, Lessee shall require each of its contractors and each supplier of materials to furnish a payment bond or a performance bond, as the case may be, each in the full amount of the contract in a form acceptable to the City. Payment bonds must comply with the coverage requirements and conditions of Section 107.170 R.S.Mo. (2000, as amended). Copies of the bonds must be given to the City for approval before work begins. Any sum or sums derived from said payment bonds or performance bonds must be used exclusively for the completion of said work and the payment of laborers and material suppliers, as the case may be. Lessee shall impose similar requirements on all of its Sublessees.
- J. Certificates of Completion. Upon the completion of New Improvements hereunder, Lessee shall submit to the Director a copy of its acceptance letter certifying completion, and a 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 Lessee. Lessee, at its cost, shall deliver to the City duplicate copies of as-constructed plans and specifications of the New Improvements within sixty (60) days after the date on which Lessee has certified completion thereof. If Lessee fails to provide as-constructed or "as built" drawings, and such failure continues for thirty (30) days after written notice from the City, Lessee shall pay to the City all reasonable costs and expenses related to recreating plans and specifications by the City plus an administrative charge of twenty percent (20%) immediately upon demand thereof. The requirement of this subsection shall survive the expiration or early termination of this Lease Agreement.

Section 603. Signs. Lessee shall not, without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed, erect, maintain, or display any signs on the Leased Premises. The term "**sign**" as used herein, shall mean advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Lessee shall have the right to install such identification signs as may be necessary for the proper conduct of its services as contemplated hereunder. Lessee shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Leased Premises. Prior to the erection, construction, or placing of any sign, Lessee shall submit to the Director and the FAA, if applicable, for approval, drawings, electrical details, sketches, designs, elevations, mounting details, and dimensions of such signs. Any conditions, restrictions, or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of this Lease Agreement.

Section 604. Title to New Improvements. Title to all improvements, including New Improvements constructed or made in or on the Leased Premises by Lessee, including all modifications, refurbishments, and additions to Retained Improvements, that are not Removable

Fixtures will vest in the City upon expiration or early termination of this Lease Agreement, unless otherwise expressly agreed to by the City in writing. It is understood and agreed that this Section 604 will not apply to Lessee's personal property or Removable Fixtures, the title to which will remain in Lessee and which Lessee will be entitled to remove promptly from the Leased Premises upon the expiration or early termination of this Lease Agreement. Lessee agrees that if after sixty (60) days following the expiration or early termination of this Lease Agreement, the Lessee fails to timely remove its personal property and Removable Fixtures from the Leased Premises, such personal property and Removable Fixtures will be deemed abandoned by Lessee, subject to any extension of time hereafter granted in writing by City to Lessee. In addition to whatever other rights are available to the City, with prior notification of Lessee, the City may: (i) remove, sell or store Lessee's abandoned property at Lessee's expense, or (ii) take title to Lessee's abandoned property in lieu of removal on behalf of Lessee. If the City takes title to such property or otherwise disposes of the property, the City will be entitled to all proceeds of sale of such Lessee property as liquidated damages for its failure to timely remove its Removable Fixtures in accordance with the terms of this Lease Agreement.

Section 605. Mechanics' and Materialmen's Liens. Lessee covenants and agrees to use its best efforts to prevent or not permit any mechanic's or materialmen's or any other liens or encumbrances to be attached to or foreclosed upon the Leased Premises or any part thereof, including, without limitation, any Retained Improvements, Existing Improvements or New Improvements, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason. If such lien or encumbrance is filed, Lessee shall, at its sole cost, take immediate steps to have the lien promptly removed, appropriately bonded or otherwise reasonably secured within sixty (60) days after notice from the City thereof.

Section 606. Installation of Above-Ground Fuel Storage Tank. Consistent with the Airport Rules and Regulations, Environmental Permits, Environmental Laws, and the provisions of this Lease Agreement, Lessee may construct above-ground storage tanks in order to store jet fuel on the Leased Premises, provided that the City approves the location, materials of construction, operating plan, spill control measures, and coordination with all Environmental Permits and Environmental Laws applicable to the City and the Airport. No part of a tank or its associated piping or equipment or containment may be located below the ground surface. Lessee shall provide secondary containment to prevent release from any tank and associated piping and equipment contents to soil, ground water, or surface water, of sufficient volume to contain the entire capacity of the tank, plus additional capacity to contain accumulated precipitation. Accumulated precipitation must not be released from the containment unless such accumulated precipitation is not impacted by the tank contents. Lessee shall take all measures specified by American Petroleum Institute standards for construction, design, maintenance and operation of petroleum above-ground storage tanks. All tanks must be operated in full conformance with Environmental Permits and Environmental Laws. Upon this Lease Agreement's expiration or its early termination, unless otherwise agreed to and directed by the Director, Lessee shall promptly remove all tanks, associated piping and equipment, and secondary containments from the Leased Premises and shall assess the potential that released Hazardous Materials may be present at the Leased Premises from the operation of the tanks, piping and equipment (see Section 303 of this Agreement entitled "Removal of Above-Ground Fuel Storage Tanks"). Any assessment plan must be timely submitted to the City for its review and approval. If Hazardous Materials are

released from the tank, Lessee shall immediately notify the City and fully contain and clean up such Hazardous Materials to the satisfaction of the City (see Article VII entitled "Compliance with Environmental Laws").

ARTICLE VII COMPLIANCE WITH ENVIRONMENTAL LAWS

Lessee and all Sublessees shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping, or programs prepared in accordance with Environmental Laws or Environmental Permits related to their occupancy of the Leased Premises or their use of the Airport. Further, Lessee, on behalf of itself and its Sublessees, does hereby covenants, stipulates, represents, and warrants as follows:

Section 701. Environmental Permits.

Lessee shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which the Lessee engages within the Leased Premises or at the Airport.

Lessee and its Sublessees shall comply with any requirement imposed by an Environmental Permit obtained by the City that is applicable to their activities at the Airport; provided, however, (i) that the City shall adequately notify Lessee of such Environmental Permit and associated requirements, including all applicable deadlines for compliance, and (ii) that the City shall be responsible for any requirements related to Existing Environmental Conditions. The City, Lessee, and Sublessees shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit to insure safety and to minimize cost of compliance.

Section 702. Duty to Notify City. In the event of any release or discharge, or threatened release or discharge, of Hazardous Materials at, on, under, or about the Airport, or any portion thereof, that is caused by Lessee, its employees, agents, Sublessees, tenants, suppliers, contractors, guests, or invitees, and which is required by applicable Environmental Laws or Rules and Regulations to be reported by Lessee or its Sublessees, or if not required to be reported, if there is a reasonable possibility that the release or discharge would move off the Leased Premises or affect Coldwater Creek or other navigable waters of the State of Missouri or the United States of America, whether as a result of negligent conduct or otherwise, or in the event any written claim, demand, complaint or action is made or taken against Lessee or Sublessees that pertains to Lessee's or Sublessees' release, discharge, or threatened release or discharge of Hazardous Materials, or failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Lessee shall promptly notify the City as soon as reasonably practical of all known facts pertinent to such release or discharge, or threatened release or discharge, claim, demand, complaint, action, or notice, and must provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Lessee or any Sublessee is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or discharge, or threatened release or discharge at, on, under or about the Airport, or any part thereof, Lessee shall simultaneously provide a copy of such notice or report to the City. Lessee shall promptly notify the City of any change in the nature of Lessee's or any

Sublessee's activities or operations on the Leased Premises that could materially change Lessee's or City's potential obligations or liabilities under Environmental Laws; provided, however, that this provision will not serve to waive any promise, covenant, or other obligation or requirement set forth in this Lease Agreement.

Section 703. Environmental Remediation. Lessee shall promptly undertake with all due diligence all necessary steps to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct, or presence of Lessee or Sublessee, or their agents, employees, representatives, invitees, licensees, contractors, or suppliers at the Airport, including the Leased Premises, whether resulting from negligent conduct or otherwise during the term of this Lease Agreement ("**Remediation Work**"), but excluding Existing Environmental Conditions. Such Remediation Work will be performed at Lessee's expense consistent with remediation standards established by or derived from the appropriate government agency responsible for enforcing Environmental Laws or Environmental Permits at the Airport and approved by the City as provided for herein. Except in the event of an emergency, such Remediation Work shall be performed only after Lessee submits to the City a written plan for completing such Remediation Work and receives the prior written approval of the City; provided, however, that the City's approval will not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Lessee will be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, will either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants, as reasonably determined by the City. The City will have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice. Lessee's obligations hereunder will survive the expiration or early termination of this Lease Agreement.

Section 704. Access for Environmental Inspection. The City at any reasonable time upon at least twenty-four (24) hours prior written notice to Lessee, or without notice or accompaniment in case of emergency, will have reasonable access, ingress to, and egress from the Leased Premises, without charge therefore, as may be reasonable upon the circumstances, and with as little interruption of Lessee's operations as reasonably practical, and upon compliance with Lessee's reasonable security procedures to inspect the same in order to confirm that Lessee and Sublessees are using the Leased Premises in accordance with the requirements of this Article VII. If the Lessee is not present to permit entry and entry is necessary, the City may, in case of emergency, forcibly enter the Leased Premises without rendering the City liable therefore, except for any damage caused to Lessee's property as a result of such emergency entry or any costs, damages, or liabilities arising from the City's negligence or willful misconduct. Lessee shall cooperate fully with any such inspections. If the City's inspections results in any type of written report, the City shall provide Lessee a reasonable opportunity to timely review and comment on a

draft of the report. Lessee shall provide to the City for its review and comment copies of: any and all notices to Lessee of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Lessee or any Sublessee responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this Section 704 to the extent consistent with the City's legal obligations. Lessee reserves the right to accompany the City Representative during such investigations.

Section 705. Corrective Action by the City. If Lessee fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport including the Leased Premises, or if Lessee fails to conduct necessary Remediation Work in a timely manner as required under this Lease Agreement including, without limitation, Sections 302 and 703 of this Lease Agreement, the City, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Leased Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants for which Lessee is responsible under this Lease Agreement and remedy Lessee's non-compliance with this Lease Agreement. All Remediation Costs incurred by the City shall be paid or reimbursed by Lessee as provided for herein. The City shall add the cost of the Remediation Work plus actual administrative costs, to the rent, fees or charges due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of said rent, fees, or charges. Subsequent to receipt of the City's notice to perform the Remediation Work, the Lessee shall not undertake performance of such Remediation Work without the specific prior authorization by the City. Remediation Work, if necessary, and any other actions taken by the City pursuant to this Section, will be performed in accordance with the provisions of Section 703 of this Agreement, but only after first having provided notice to Lessee of such failure to comply, and 30 days within which Lessee may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Lessee's compliance reasonably requires more than thirty (30) days to complete, the City may enter the Leased Premises and take such reasonable and necessary measures to achieve compliance only upon Lessee's failing to timely begin curing such noncompliance within such 30 day period and to continue diligently working to achieve compliance thereafter.

Section 706. Review of Environmental Documents. At the reasonable request of the City, Lessee shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Lessee or any Sublessee has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Leased Premises. In addition, Lessee shall make available to the City for its review and comments any non-privileged environmental management plans or environmental impact statements, studies, or reports including any supporting documents or materials pertaining to the Leased Premises and prepared by Lessee or any Sublessee pursuant to any applicable Environmental Laws or Environmental Permits at least thirty (30) days prior to submission to any governmental agency.

Section 707. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, Hazardous Material releases, or any actual or threatened violations of any applicable Environmental Laws or Environmental Permits are deemed to be cumulative in nature and the City does hereby reserve any and all remedies that it may have at law and in equity. The City's right to indemnification as provided under this Article VII and Article IX will survive the expiration or early termination of this Lease Agreement.

Section 708. Pollution Control. In addition to all other requirements of this Lease Agreement, Lessee, at its cost, shall manage all of its operations at the Airport including the Leased Premises, in compliance with all applicable Environmental Laws, Environmental Permits, and with applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and Storm Water Management Plan, which shall be provided to Lessee at Lessee's request. Lessee shall prepare and submit its own SWPPP to the Airport Environmental Office within thirty (30) calendar days of the City's written request for the City's review and possible comments. Lessee, at no cost to the City, shall cause the use of all Hazardous Materials, including, without limitation, potential water pollutants such as deicing agents, applied to aircraft and pavement surfaces during adverse weather conditions (e.g., snow, ice, freezing rain, etc.) to be properly managed so that storm water runoff from the Leased Premises, at all times, meets or exceeds water quality standards required by applicable Environmental Permits or Environmental Laws.

Section 709. City Retained Liabilities. Except as expressly provided for in this Section 709, Lessee will have no liability for, and no responsibility or obligation to, the City, its Board of Aldermen, or the Airport Commission to remove, remediate, decontaminate, or restore any soil, groundwater, or surface water affected by any Hazardous Materials which: (i) are or were released, discharged, disposed, or spilled on, in, under, about, around, or from the Leased Premises by the City, its officers, agents, employees, consultants, contractors, lessees, sublessees, licensees, independent lessees, guests, patrons, tenants, and invitees, excluding the Lessee or any Sublessees, or the officers, employees, agents, consultants, contractors, lessees, sublessees, licensees, independent contractors, assigns, representatives, guests, patrons, sub-lessees and invitees of the aforementioned persons or entities; (ii) migrate or move or migrated or moved onto, into, or under the Leased Premises from other property owned or operated by City or any of its sublessees or tenants (excluding Lessee or its Sublessees), or another third-party not affiliated with Lessee; or (iii) were present on or adjacent to the Leased Premises prior to the Effective Date (collectively, "**Existing Environmental Conditions**"). Except as expressly provided for in this Section 709 in regard to the Boeing Utility Parcel, the City's obligation, if any, under this Lease Agreement to remove, remediate, decontaminate, or restore any soil, groundwater, or surface water affected by any Existing Environmental Conditions as may be required by Environmental Laws is independent of Boeing's obligations to the City under the Site Management and Redevelopment Agreement or the Soil Management Agreement. Notwithstanding anything to the contrary in this Lease Agreement, the Lessee acknowledges, stipulates, understands, and agrees that the term "Existing Environmental Conditions" as used in this Lease Agreement including, without limitation, this Section 709 of this Lease Agreement will not apply to Hazardous Materials located in, on, within, or as a part of: (i) any soil, groundwater or surface water within or on the Boeing Utility Parcel (unless such costs are reimbursable costs under the Site Management and Redevelopment Agreement), or ii) any

improvement within the Leased Premises including, without limitation, Retained Improvements, Existing Improvements or New Improvements, and that the City, its Board of Aldermen, and the Airport Commission will have no responsibility or liability of any kind whatsoever for any costs or liability associated with remediating or addressing Hazardous Materials as part of the maintenance, demolition, renovation, or disposal of any improvements within or on the Leased Premises or the soil, ground water or surface water within the Boeing Utility Parcel (unless such cost or reimbursable costs under the Site Management and Redevelopment Agreement), or any part thereof, or the maintenance, removal, abatement, mitigation or remediation of Hazardous Materials located in, on, within, or as a part of any such improvements or the soil, ground water or surface water within the Boeing Utility Parcel (unless such costs are reimbursable costs under the Site Management and Redevelopment Agreement), and that all such costs, liability or expense, including any costs to comply with Environmental Laws, will be the responsibility and obligation of Lessee. Notwithstanding anything to the contrary in the prior sentence, the City and Lessee acknowledge, stipulate, understand, and agree that the term "Existing Environmental Conditions" as used in this Lease Agreement including, without limitation, this Section 709 of this Lease Agreement applies to any Hazardous Materials located under the foundation of any improvement within the Leased Premises including, without limitation, Retained Improvements, Existing Improvements or New Improvements, except in regard to Existing Environmental Conditions within the Boeing Utility Parcel (unless such costs are reimbursable costs under the Site Management and Redevelopment Agreement). Lessee acknowledges and understands that as of the Commencement Date of this Lease Agreement, the Boeing Utility Parcel, even if acquired by the City as contemplated in Section 202 of this Lease Agreement, is not subject to reimbursement under the Site Management and Redevelopment Agreement and the City makes no promises or representations that it will be at some future date.

Section 710. Spill Prevention Control and Countermeasures ("SPCC") Plan. Lessee shall comply with all applicable Environmental Laws pertaining to the proper storage of any Hazardous Materials including, without limitation, oil or petroleum based products within the Leased Premises. Lessee shall prepare and submit a SPCC Plan to the Airport Environmental Office within thirty (30) calendar days of the City's written request for the City's review and possible comments. The SPCC must comply with the requirements of 40 C.F.R. Part 112, regardless of the quantity of petroleum stored, and provide the same level of protection concerning the proper storage and use of any Hazardous Materials on the Leased Premises as is provided for petroleum or oil in 40 C.F.R. Part 112.

Section 711. Environmental Covenants. Lessee and its Sublessees shall not object to and, if requested by the City, will, without remuneration, promptly and timely subordinate any rights it has under this Lease Agreement or any sublease agreement, as the case may be, to environmental covenants or environmental land use restrictions which: (i) restrict the use of groundwater underlying the Leased Premises or the Airport; (ii) limit the use of the Leased Premises to nonresidential uses; (iii) restrict access to soil underlying the Leased Premises or the Airport; or (iv) any other restriction requested by the City to address the presence of Hazardous Materials at the Leased Premises, regardless of when such Hazardous Materials became present at the Leased Premises.

Section 712. Dust Control. Lessee covenants, stipulates, and agrees that the Lessee shall take appropriate dust control measures in accordance with Environmental Laws and Environmental Permits in regard to its activities within the Leased Premises or at the Airport.

Section 713. Hazardous and Solid Waste Management Covenants. Lessee shall timely and promptly provide the City with copies of non-privileged documents and materials Lessee has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which document or relate to Hazardous and Solid Waste Management or related environmental issues and which pertain to the Leased Premises and which would be discoverable in litigation (see Section 702, 704, and 706 herein). In regard to Lessee's activities within the Leased Premises or the use of the Leased Premises, Lessee shall not generate or use any fill materials, spoils, clean fill, or other materials without first obtaining the City's written approval.

ARTICLE VIII OPERATIONS

Section 801. Standards of Service. Lessee shall ensure that Lessee and all Sublessees offer high quality, prompt, and efficient services that are adequate to meet all reasonable demands thereof on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Lessee and the City. Lessee and Sublessees shall provide quality services and products and will equip, organize, put into service and manage their operation efficiently.

Section 802. Pricing. Lessee shall ensure that Lessee and all Sublessees charge fair, reasonable, and nondiscriminatory rents and prices on a basis substantially similar to the rents and prices charged for similar services at the Airport and other airports serving like users; provided that the Lessee and Sublessees may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar rent and price reductions as may be allowed under law to volume purchasers.

Lessee represents, warrants and agrees that if the City receives a complaint alleging that the Lessee or a Sublessee has charged or is charging unfair, unreasonable or discriminatory prices for services or products provided by the Lessee or Sublessee at the Airport, that the Lessee will, within ten (10) days of written notice from the Director of such complaint, provide the Director without limitation, schedules of rental rates, prices, and fees for all services and products offered at the Airport, and any other information or documentation requested by the Director in order to determine whether the Lessee and its Sublessees are in compliance with the requirements of this Section 802 regarding fair, reasonable and nondiscriminatory pricing.

Section 803. Personnel.

- A. Lessee shall require its employees and employees of Sublessees to wear appropriate uniforms and badges to indicate the fact and nature of their employment. Lessee and Sublessees shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom must be proficient in the duties to be performed in the operation of this Lease Agreement. Lessee agrees that it will be responsible for ensuring

that its employees abide by all applicable laws and Rules and Regulations. Lessee shall use its best efforts to prohibit and restrain its and its Sublessees' employees, agents, visitors and invitees from objectionable behavior. Upon notice from the Director concerning objectionable conduct or appearance of any persons, Lessee shall immediately take all steps necessary to correct the cause of the objection.

- B. Lessee and its Sublessees shall provide staff in adequate numbers to provide a high level of service.
- C. Lessee and Sublessees shall conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint if required by the Transportation Security Administration, the FAA, or the City. Lessee recognizes and agrees that the security requirements may change and Lessee agrees that it and Sublessees shall comply with all such changes throughout the Term.

Section 804. Manager. Lessee shall at all times retain one or more qualified, competent and experienced managers who will manage and supervise the operations and the facilities and represent and act for Lessee. The manager will ordinarily be available during regular business hours. A responsible subordinate must be in charge and available at all times during the manager's absence.

Section 805. Communication.

- A. Lessee's Manager must be available for meetings with Airport personnel as necessary upon forty-eight (48) hours prior written notice in person or by telephone.
- B. Lessee shall timely and promptly notify the Airport Properties Department of any problem which substantially reduces service levels or sales or in any way materially impairs the Lessee's operations.

Section 806. Separate Agreements. The City reserves the right to require third-party suppliers/operators of materials or furnishers of services doing business at the Airport, including the Leased Premises, to secure an agreement or permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City for conducting such activity at the Airport including the Leased Premises.

Section 807. Transition Period. During any future transition of the Leased Premises to another lessee, if applicable, Lessee shall use its best efforts to assure a smooth transition. Lessee shall closely coordinate the planning and execution of the transition with the Director.

Section 808. Equipment. Lessee shall provide for all equipment sufficient to perform its business activity at the Airport.

Section 809. Operation.

- A. Lessee shall be responsible for all aspects of the management and operation of the services offered by the Lessee under this Lease Agreement. Further, Lessee shall provide and is responsible for all employees and necessary components of the operation of those services including, without limitation, inventory, fixtures, equipment and supplies.
- B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored within the Leased Premises, nor will it be responsible for damage to such goods, merchandise, or equipment resulting from flood, fire, explosion, vandalism, theft, acts of God, casualty, or any other causes outside the direct control of City.

ARTICLE IX INDEMNIFICATION AND INSURANCE

Section 901. Insurance.

- A. *General.* Lessee, at all times during the Term, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, its officers, agents and employees and Lessee to be insured on an **occurrence basis** against the risk of claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the acts or omissions of Lessee or its Sublessees, officers, agents, employees, contractors, suppliers independent contractors, licensees, and invitees pursuant to this Lease Agreement both on the Leased Premises or at the Airport.
- B. *Risks and Minimum Limits of Coverage.* Lessee shall procure and maintain the following policies of insurance:
 - i. Commercial General Liability. Insurance, including Aircraft Liability in an amount not less than Ten Million Dollars per occurrence and in aggregate, where applicable. Such coverage shall be single limit liability with no annual aggregate. Lessee shall not be required to maintain Aircraft Liability until Substantial Completion of Phase 1 or Lessee or any Sublessee allow or conduct any aircraft operations within the Leased Premises or at the Airport
 - ii. Automobile Liability. Insurance in an amount not less than Ten Million Dollars primary (no excess), combined single limit per occurrence for automobiles used by Lessee in the course of its performance hereunder including, without limitation, Lessee's owned, non-owned and hired autos.
 - iii. Workers' Compensation and Employer's Liability. Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Lessee elects to be self-insured, Lessee shall comply with the applicable requirements of law. Lessee shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents will not be liable or responsible for any claims or actions occasioned by Lessee's failure to comply with the provisions of this Subparagraph. The indemnification provisions hereof will apply

to this Section 901. It is expressly agreed that the employees of Lessee are not employees or agents of the City for any purpose, and that employees of the City are not employees or agents of Lessee.

- iv. Contents Insurance. Lessee shall be solely responsible for obtaining insurance policies that provide coverage for losses of Lessee owned property including, without limitation, its Removable Fixtures.
 - v. Builders Risk Insurance. During any period of construction, alteration, refurbishment, demolition, excavation, installation, renovation, or reconstruction for which Lessee contracts, Lessee shall carry, or shall require its contractors or suppliers to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Lessee's personal property or Removable Fixtures). Lessee may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000) or less. In addition, Lessee or its contractor(s) or supplier(s) shall carry not less than Three Million Dollars of commercial general liability (single limit liability with no annual aggregate) and not less than Three Million Dollars of automobile liability insurance coverage (including owned, non-owned, and hired vehicles) during the period of construction, alteration, refurbishment, demolition, excavation, installation, renovation, or reconstruction. The policy limits set forth in this subsection must be per occurrence/aggregate (see Section 602.H of this Lease Agreement).
 - vi. Other Property Coverage. Lessee shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers all Retained Improvements and New Improvements including, without limitation, any trade fixtures and equipment or Removable Fixtures. Coverage must be for one hundred percent (100%) of the full replacement value of all such improvements and Removable Fixtures and must include loss of use coverage. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Lessee's Removable Fixtures or loss of use coverage). Such property insurance coverage must also extend to damage, destruction, and injury to City owned or leased property and City personnel, caused by or resulting from work, acts, operations, or omissions of Lessee or its officers, agents, employees, consultants, contractors, licensees, independent contractors, Sublessees, and invitees, and contractual liability.
- C. *Issuers of Policies.* The issuer of each policy required herein must be a financially sound insurance company authorized to do business in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A-," or other insurers or insurance syndicates of similarly recognized responsibility.
- i. Form of Policies. The insurance may be in one or more policies of insurance.

- ii. Non-waiver. Nothing the City does or fails to do will relieve Lessee from its duties to provide the required coverage hereunder, and the City's actions or inactions will not be construed as waiving the City's rights hereunder.
- iii. Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must name the City, its officers, agents, and employees as "Additional Insured" on the certificate of insurance, including all renewal certificates, to the extent of Lessee's indemnification obligations hereunder. At or prior to the Effective Date and as may be requested of the City, Lessee shall provide City with an endorsement consistent with the requirements of this Subsection. Inclusion as an "Additional Insured" is not intended to, and will not, make the City a partner or joint venturer with Lessee in its operations.
- iv. Deductibles. Lessee must assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated will diminish Lessee's rights or increase Lessee's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 903 hereof.
- v. Cancellation. Each policy must expressly state that it may not be cancelled or materially modified unless the insurance company endeavors to give thirty (30) days advance notice to the City.
- vi. Subrogation. Each policy must contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees. Lessee shall provide the City with an endorsement consistent with the requirements of this Subsection.
- vii. Certification of Primary Insurance. Each policy hereunder except Workers' Compensation will be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder. Lessee shall provide the City with an endorsement consistent with the requirements of this Subsection.
- viii. Liability for Premium. Lessee will be solely responsible for payment of all insurance premiums required pursuant to this Lease Agreement, and the City will not be obligated to pay any premiums; provided, however, that if Lessee fails to obtain the insurance as required herein or make premium payments, the City may, with written notification, effect such insurance or make such payments on Lessee's behalf and, after notice to Lessee, the City may recover the cost of those payments plus a 15% administrative charge, from Lessee.
- ix. Proof of Insurance. Prior to the Effective Date of this Lease Agreement and at any time during the Term, Lessee shall timely furnish the City with certificates of insurance and any endorsements consistent with the requirements of this Section

901. Lessee shall use its best efforts to submit to the City a certificate showing that such insurance coverage has been renewed at least five (5) days prior to the expiration of any such policy. If such coverage is canceled or materially modified, Lessee shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or material modification, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Lessee, the City will have the right to examine Lessee's insurance policies at the Lessees' offices at the Airport.

- D. *Maintenance of Coverage.* Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Lessee, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. *City Right to Review and Adjust Coverage Limits.* The City reserves the right at reasonable intervals during the term of this Lease Agreement to cause the insurance requirements set forth herein to be reviewed, at its sole cost, by an insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airport industry as well as that of Lessee, and, based on the written recommendations of such consultant, and in consultation with Lessee, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty four (24) months.

Section 902. Lessee Actions Affecting Insurance.

Lessee shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Lease Agreement. If such Lessee's act, or failure to act, causes cancellation of any policy, then Lessee shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Lessee does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Lessee shall immediately remedy such actions and/or pay the increase in premiums, upon notice from the City to do so; but in any event, Lessee will hold the City harmless for any expenses and/or damage resulting from any such action.

Section 903 Indemnification.

- A. Lessee shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the "**Indemnified Parties**" or "**Indemnitees**") from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of 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 arising out of and in connection with this Lease Agreement, the conduct of Lessee's business, or Lessee's use of the Lease Premises, or other areas or facilities at the Airport by Lessee, its agents, employees, contractors, representatives or subcontractors, including, but not limited to::

- i) the acts or omissions of Lessee, its agents, employees, contractors, independent contractors, representatives, licensees, Sublessees, or suppliers;
- ii) Lessee's use or occupancy of the Airport and the Leased Premises; and
- iii) any violation by Lessee in the conduct of Lessee's business or its use of its Leased Premises, or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Lease Agreement.

Lessee shall, at its own cost and expense, defend all such claims, demands, and suits, whether frivolous or not.

- B. Lessee shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Leased Premises, or which arise out of the operations of Lessee or by reason of Lessee's occupancy of its Leased Premises under this Lease Agreement except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to lessee-related receipts. However, Lessee may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Lessee to contest or appeal the same. Lessee will be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Lessee. Lessee will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Leased Premises, or the Airport, by Lessee, its agents, employees, contractors, Sublessees, or suppliers, in conjunction with Lessee's use and/or occupancy of the Leased Premises under this Lease Agreement or any prior use or occupancy of the Leased Premise or its operations at the Airport. Lessee will, at its own cost and expense, defend all such claims, demands, and suits, whether frivolous or not. Lessee shall include the substance of this Subsection (C) in every sublease, contract, or other agreement which Lessee may enter into related to its activities within the Leased Premises or at the Airport, and any such sublease, contract or

other agreement must specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Lease Agreement prohibiting or limiting assignments, subletting, or subcontracting.

- D. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment, the Leased Premises, or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Lessee or its agents, employees, contractors, independent contractors, invitees, licensees, representatives, Sublessees, or suppliers whether resulting from negligent conduct or otherwise.
- E. If a prohibited incursion into the air operations area occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Lessee's or Sublessee's employees, agents, contractors, independent contractors, invitees, licensees, representatives, or suppliers, and such incursion or breach results in a civil penalty action against the City, Lessee shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City will notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to, those paid or incurred as a result of violation of FAA or TSA regulations or security directives.
- F. Lessee's obligation to defend and indemnify past officers, employees, and agents of the City will apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Lessee of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Lessee hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Lessee with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and will tender the defense of same to Lessee.
- H. The duty to defend, indemnify, hold harmless, and reimburse will apply to any claims, demands, or suits made against the City for which Lessee is responsible pursuant to this Section 903. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the City harmless, the City shall promptly notify Lessee of such claim and, if Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim both on behalf of Lessee and on behalf of the City, at Lessee's expense; provided, however, that Lessee shall immediately notify City if a conflict between the interests of Lessee and City arises during the course of such representation. Lessee shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after

consultation with the Director, in carrying out its obligations hereunder. The provisions of this Section 903 shall survive the expiration or early termination of this Lease Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Lessee in accordance with this Section 903. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to amount upon the expiration of the time for appeal there from. Nothing in this Article IX will be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section 903 will not be construed as a waiver of the City's sovereign or other immunity.

- I. The City, at its own expense except as otherwise provided herein, will be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing by the City Counselor, the terms of any settlement related to any claim, action, proceeding, or suit set forth in this Section 903.
- J. Notwithstanding the provisions of this Section 903, Lessee will have no obligation to defend, indemnify, or hold harmless the City for any consequential or indirect damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards, and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than 10% liable due to contributory negligence.
- K. This Section 903 will survive the expiration or early termination of this Lease Agreement. Lessee understands and agrees that any insurance protection furnished by Lessee pursuant to this Article IX shall in no way limit Lessee's responsibility to indemnify and hold harmless the City under the provisions of this Lease Agreement.
- L. At all times during the Term, Lessee shall ensure that all Sublessees obtain and maintain, at a minimum, the following policies of insurance: Commercial General Liability, Automobile Liability, Workers' Compensation and Employer's Liability Insurance (if applicable), All Risks Commercial Property (if applicable), Contents, and Builders Risk (if applicable). Each such policy (except Workers Compensation & Employer's Liability insurance) must include the Indemnitees as "additional Insureds", must be in a form substantially similar to the form required in this Lease Agreement, and must contain coverage limits as set forth in the Rules and Regulations or as reasonably required by the Director from time to time.

Section 904. City Not Liable.

Unless otherwise expressly provided for in this Lease Agreement, the City will not in any event be liable to Lessee for:

- A. any acts or omissions of Lessee, its officers, directors, employees, agents, contractors, independent contractors, licensees, representatives, Sublessees, or suppliers, or for any conditions resulting from the operations or activities of Lessee's directors, officers, employees, agents, contractors, independent contractors, licensees, representatives, Sublessees, or suppliers;
- B. Lessee's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. any environmental conditions (other than Existing Environmental Conditions) in existence at the Airport, or any part thereof, which condition may interfere with Lessee's business or other operations or activities, or which might otherwise cause damages to Lessee through loss of business, destruction of property, or injury to Lessee, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees except to the extent such conditions are caused by the City, its employees or agents; or
- D. bodily injury or any loss or damage to real or personal property or business income occasioned by flood, fire, smoke, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, vandalism, malicious mischief, or other casualties or acts of God, or acts of war or terrorism, or for any injury, loss or damage not caused by the negligence, willful misconduct, or bad faith of the City.

ARTICLE X

ASSIGNMENT AND SUBLETTING

Section 1001. Assignment. Except as provided in Section 1002 of this Lease Agreement, and notwithstanding the provisions in Section 1208 of this Lease Agreement, Lessee shall not Assign this Lease Agreement without first obtaining the written approval of the City pursuant to City Ordinance 63687 as may be amended from time to time. For purposes of this Article X, the term "Assign" or "Assignment" includes all transfers, conveyances, or assignments of the Lessee's rights, whether voluntary or involuntary, but does not include any change in the ownership structure or control of Lessee. At least one hundred and twenty days (120) days prior to any contemplated Assignment of this Lease Agreement, Lessee shall submit a written request to the Director in accordance with Section 1004 below. No Assignment will be considered if Lessee is under an Event of Default. The party to whom such Assignment is made must expressly assume in writing the terms, covenants, and conditions contained in this Lease Agreement. Lessee acknowledges and agrees that, as a condition of granting approval of an Assignment, the City, pursuant to City Ordinance 63687, may require that Lessee not be released from some or all of the terms, covenants, conditions, and obligations of this Lease Agreement, as it may be determined at that time. No action or failure to act on the part of any officer, agent, or employee of the City will constitute a waiver by the City of this provision of this Lease Agreement. No Assignment will be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved assignment agreement as provided for above.

Section 1002. Collateral Assignments. Lessee, without obtaining the written approval of the City, may Assign, mortgage, or otherwise pledge all or any portion of its rights, title or interest in

the Leased Premises pursuant to this Lease Agreement, or any of its other rights under this Lease Agreement, as collateral to secure Lessee's payment of a debt or performance of any other obligation of Lessee, but only as provided herein:

- A. An agreement pursuant to which Lessee pledges, Assigns or grants an interest in its rights under this Lease Agreement as collateral for the payment of a debt or performance of some other obligation of Lessee must take the form of a leasehold mortgage ("**Leasehold Mortgage**"), which may not extend beyond the Term.
- B. Lessee may only grant a Leasehold Mortgage to secure the repayment of a loan, one hundred percent (100%) of the proceeds of which Lessee uses to finance the demolition of Existing Improvements, the construction or installation of New Improvements, the refurbishment of Retained Improvements, or the purchase of fixtures or Removable Fixtures to be installed or placed on the Leased Premises.
- C. In the Leasehold Mortgage, the mortgagee ("**Leasehold Mortgagee**") must expressly acknowledge, for the benefit of the City, that the Leasehold Mortgagee is acquiring no right, title, or interest in the City's fee title to the Leased Premises and that the Leasehold Mortgagee's rights in and to any Retained Improvements, New Improvements, and Removable Fixtures are, at all times, subject to the terms and conditions of this Lease Agreement.
- D. Lessee must execute and record a memorandum of this Lease Agreement in the appropriate county land records, and Lessee must record the Leasehold Mortgage in the appropriate county land records.
- E. If Lessee grants a Leasehold Mortgage satisfying the requirements of this Section 1002, the City agrees to execute a subordination agreement with the Leasehold Mortgagee pursuant to which the City subordinates any statutory or common law lien that the City may have on the personal property or Removable Fixtures of Lessee or on the New Improvements. The Director, on behalf of the City and in its best interest, is hereby authorized to execute such a subordination agreement that is in accordance with this Section 1002. The City will not subordinate its fee interest in the Leased Premises, its interest under this Lease Agreement, or any rights which the City may have to the Retained Improvements and the New Improvements upon the expiration or early termination of this Lease Agreement. In the Leasehold Mortgage, the Leasehold Mortgagee must expressly acknowledge and agree that notwithstanding any other provision of the mortgage or related loan documents, the Leasehold Mortgagee will permit the Lessee to retain sufficient insurance proceeds available as a result of any damage to, or destruction of, the Retained Improvements, New Improvements and Removable Fixtures located on the Leased Premises, to permit Lessee to fully perform its obligations under this Lease Agreement.
- F. At the time that the City gives Lessee written notice of the occurrence of an Event of Default, the City will simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices hereunder at the address for the

Leasehold Mortgagee provided to the City. No notice of default to Lessee will be effective until the City delivers the notice required by this subparagraph.

- G. The Leasehold Mortgagee may rectify an Event of Default on Lessee's part, but will have no obligation to do so. The City will accept the Leasehold Mortgagee's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The City may exercise a remedy available to it by reason of an Event of Default on Lessee's part only if Lessee within such time period specifically set forth in this Lease for a cure of a particular default fails to cure the default, and the Leasehold Mortgagee fails to rectify such an Event of Default within (a) thirty (30) days after the applicable time period specifically set forth in this Lease for a cure of a particular default; or (b) if no such time period is set forth, then within 30 days after the date of the delivery of the notice required by virtue of Section 1002.F above; or (c) if such failure cannot with due diligence be cured within such thirty (30) day period, corrective action is timely instituted by Leasehold Mortgagee within such thirty (30) day period and diligently and in good faith continuously pursued until the failure is properly corrected.
- H. Even though an Event of Default has occurred and neither the Lessee nor the Leasehold Mortgagee has provided for a cure within the times permitted by this Lease Agreement, the City will not terminate the Lease for a reasonable period of time, not to exceed two (2) years, from the date of the notice required by Section 1002.F above, if the Leasehold Mortgagee is then making: (i) prompt, diligent and continuous efforts to gain possession of the Leased Premises and to succeed to Lessee's interest in the Leased Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage; provided that Leasehold Mortgagee avails itself of any such remedy, including commencing a foreclosure action, within ninety (90) days from the date of the City's notice required by Section 1002.F above; together with (ii) the payment to the City of all rent and fees due hereunder with respect to which Lessee becomes delinquent; and (iii) good faith efforts to rectify other any other Events of Default contemporaneously with the efforts to gain possession of the Leased Premises.
- I. Upon the early termination of this Lease Agreement in bankruptcy, or otherwise, the Leasehold Mortgagee may request the City to approve an Assignment to a successor lessee meeting the criteria of this subparagraph ("**Successor Lessee**"). In order for the City to be obligated to approve an Assignment in accordance with this subparagraph, the Leasehold Mortgagee must: (i) within 60 days following the date of the early termination of this Lease Agreement give written notice to the City that the Leasehold Mortgagee will request the approval of a Successor Lessee in accordance with Section 1004 below; and (ii) no later than sixty (60) days thereafter, timely request in writing that the City Assign the Lease Agreement to a Successor Lessee, which will then be identified by the Leasehold Mortgagee; provided, however, that such a Successor Lessee must be reasonably acceptable to the City in terms of, but not limited to, experience, qualifications, technical competence (relative to comparable activities at other airports with projects containing airfield access), and financial and administrative capacity. Simultaneously with Leasehold Mortgagee's request for this Lease agreement to be

assigned to a Successor Lessee, the Successor Lessee must also execute and deliver to the City, for its review and approval, a written plan to rectify within a reasonable period of time, any default reasonably capable of being cured that exists at that time in respect of any of Lessee's obligations under the terms of this Lease Agreement. The provision of this subparagraph will survive the early termination, or rejection or disaffirmance of this Lease Agreement by Lessee, and will continue in full force and effect thereafter for a period of sixty (60) days from such early termination, rejection or disaffirmance to the same extent as if this subparagraph were a separate and independent contract made by the City, Lessee, and the Leasehold Mortgagee. It being understood and agreed that the Assignment of this Lease Agreement to a Successor Lessee must be approved by the City's Airport Commission and its Board of Estimate and Apportionment and authorized by a City ordinance approved by the City's Board of Aldermen in accordance with City Ordinance 63687. The City agrees that the Leasehold Mortgagee will be a third-party beneficiary to the terms of this Lease Agreement, but only to the extent required to fulfil the requirements of this Section 1002.

- J. Subject to and in accordance with the terms, covenants, and conditions of this Lease Agreement, the Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that becomes necessary by reason of damage or destruction occurring to Retained Improvements or New Improvements, and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, Leasehold Mortgagees and any Sublessees; provided, however, that any distribution of insurance proceeds must strictly comply with the requirements of this Lease Agreement.
- K. If a taking of any part of the Leased Premises occurs, the Leasehold Mortgagee, subject to and in accordance with the terms, covenants, and conditions of this Lease Agreement, will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements between or among the City, Lessee or Successor Lessee (if any), Leasehold Mortgagee, and any Sublessees.
- L. The City will have no right, and expressly waives any right arising under applicable law, in and to the rentals that will become due to Lessee from any Sublessee as long as Lessee's payments to the City are current and not delinquent; Lessee may Assign those rentals to the Leasehold Mortgagee without any consent or approval of the City. Nothing in this subparagraph will alter the City's ownership of the Retained Improvements and the New Improvements as provided herein.
- M. Upon written request from time to time by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective Successor Lessee, the City shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the City shall certify, to the extent that it then has knowledge: (i) the amount of the monthly rents and fees that Lessee is then obligated to pay under the terms of this Lease Agreement and the date through which

Lessee has paid those rents and fees, (ii) that this Lease is in full force and effect, (iii) the specific nature of any Event of Default that the City knows to exist in respect of either party's performance of its respective obligations under the terms of this Lease Agreement, and (iv) the specific nature of any defence or offset that the City may assert in connection with any effort on Lessee's part to enforce any of the obligations the City undertakes under the terms of this Lease Agreement. The Director in the best interest of the City is hereby authorized to execute and deliver said estoppel certificates on behalf of the City.

- N. The City acknowledges that without the Leasehold Mortgagee's prior written consent, Lessee may not: (1) be bound by an amendment to this Lease Agreement, (2) exercise any right available to it under the terms of this Lease Agreement or at law to cancel this Lease Agreement, or (3) voluntarily surrender possession of the Leased Premises to the City. The City further acknowledges that the Leasehold Mortgagee will not be bound by any amendment, cancellation, or surrender that occurs in contravention of the foregoing provisions of this subparagraph.

Section 1003. Subleases. Any sublease for space or granting of rights acquired hereunder will be subject to the review and prior written approval of Director, which approval will not be unreasonably withheld, delayed, or conditioned. At least thirty (30) days prior to any contemplated sublease of all or any part of the Leased Premises, Lessee must submit in writing a request to the Director. Such a request must include a copy of the proposed sublease (see Section 1004 below). No sublease must be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved sublease agreement as provided for above. All subleases must, at a minimum, include provisions: (i) requiring strict compliance with all applicable provisions of this Lease Agreement; (ii) that the Sublessee will use the facilities solely for the purposes identified in this Lease Agreement; (iii) that all terms of the sublease are subject to and subordinate to the provisions of this Lease Agreement; and (iv) that the term of the sublease shall expire no later than at the expiration or early termination of this Lease Agreement. Lessee will be responsible for the performance of its Sublessees and will initiate and take all corrective action immediately should a Sublessee fail or refuse to strictly comply with any applicable provision of this Lease Agreement.

Section 1004. Request for Consent. Lessee's request for consent to Assignments or subleasing must also include:

- A. name, address and telephone number of the proposed assignee, Successor Lessee, or Sublessee;
- B. a detailed description of the proposed operation, if applicable;
- C. the business background and qualifications of the proposed assignee, Successor Lessee, or Sublessee, including the number of proposed employees;
- D. the number and type of aircraft and other equipment necessary to conduct the proposed assignee's, Successor Lessee's, or Sublessee's intended operations;

- E. statements and documents demonstrating the financial stability of the proposed assignee, Successor Lessee, or Sublessee;
- F. if a request for an Assignment to a Successor Lessee, proof of the qualifications requirements set forth in Section 1002.I of this Lease Agreement;
- G. copies of the proposed Assignment or Sublease documents; and
- H. any other information the City may reasonably request.

Notwithstanding any other provision in this Article X, BIAC is hereby preapproved as a Sublessee to perform those rights granted and obligations imposed by the Dual Customs Agreement. However, those provisions in this Article X regarding the review and approval of the terms or provisions of the sublease and provisions requesting information shall apply to any sublease with BIAC except for Section 1004C.

ARTICLE XI DEFAULT AND TERMINATION

Section 1101. Events of Default. Each of the following constitutes an “**Event of Default**” under this Lease Agreement if Lessee fails (unless other-wise expressly addressed in this Section 1101) for a period of thirty (30) days after notice specifying such default by the City to cure such default; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such thirty (30) day period, will not give rise to an Event of Default if corrective action is instituted by Lessee within such thirty (30) day period and diligently pursued until the failure is corrected (“**Cure Period**”);

- A. Lessee fails to punctually pay when due any Initial Rent, Adjusted Rent, or any other money payments required to be paid hereunder.
- B. Lessee fails to keep, perform and observe any promise, covenant, term, or other provision of this Lease Agreement, not otherwise expressly addressed in this Section 1101.
- C. Lessee fails to seek approval or consent from the City or Director whenever such approval or consent is required by this Lease Agreement.
- D. Any representation or warranty of a material fact made by Lessee in any written and certificate, statement, or report furnished to the City pursuant to or in connection with this Lease Agreement, proves untrue in any material respect as of the date of issuance or making thereof, and such materiality is then continuing at the time of the City’s notice or an Event of Default.
- E. Lessee becomes insolvent (as such term is defined under Section 101 of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the “**Bankruptcy Code**”) or any successor statute thereto) and takes the benefit of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors. There will be no Cure Period for this default.

- F. Lessee files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Lessee under any chapter of the Bankruptcy Code. There will be no Cure Period for this default.
- G. Lessee is adjudged a debtor or bankrupt and/or an order is made approving a petition filed by any of Lessee's creditors or stockholders seeking Lessee's liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within sixty (60) days of its issuance.
- H. A petition under any chapter of the Bankruptcy Code or an action under any federal or state insolvency law or statute, or an action under any insolvency law or statute of another country is filed against Lessee and is not dismissed or stayed within 60 days after the filing thereof.
- I. By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Lessee and such possession or control continues in effect for a period of sixty (60) days.
- J. Lessee becomes an entity in dissolution.
- K. The letting, license, or other interests of or rights of Lessee hereunder are transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in Section 1101.E – J of this Lease Agreement.
- L. Lessee fails to pay when due any taxes or assessments relating to its operation or its employees; provided, however, that any such failure will not give rise to the City's right to terminate this Lease Agreement if Lessee is actively prosecuting or defending a related claim or suit in a court of competent jurisdiction or by appropriate government administrative procedure or by arbitration or mediation conducted by a recognized alternative dispute resolution organization.
- M. Lessee enters into an assignment or sublease which is not approved by the City in accordance with the provisions of Article X, and, if a sublease, it is not terminated within ten (10) days after notice by the City.

Section 1102. Termination by the City for Cause. Whenever an Event of Default has occurred, the City may, immediately and without further notification of such Event of Default, except as

provided for in Sections 1002 and 1101 above, terminate this Lease Agreement and Lessee's rights granted in this Lease Agreement. The remedies set forth herein will be in addition, and not concurrent, to all other remedies that are or may be available to the City at law or in equity to enforce the performance and observance of any obligation, agreement or covenant of Lessee hereunder. In no event will this Lease Agreement or any rights or privileges hereunder be an asset of Lessee under any bankruptcy, insolvency, or reorganization proceeding.

Section 1103. Termination by Lessee for Cause. At any time that Lessee is neither in default nor has committed an Event of Default hereunder, in addition to any rights Lessee may have at law or equity, Lessee may terminate this Lease Agreement by giving the City sixty (60) days advance notice upon or after the happening, and during the continuance of any failure by the City to keep, perform and observe any material promise, covenant, or other provision of this Lease Agreement for a period of sixty (60) days after notice, specifying such failure and requesting that it be remedied, is given to the City by Lessee; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such sixty (60) day period, will not give rise to Lessee's right to terminate this Lease Agreement if corrective action is instituted by the City within such sixty (60) day period and diligently pursued until the failure is corrected.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Lessee specified in this Article XI are not intended to be, and will not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any right that either party may have at law or in equity.

ARTICLE XII MISCELLANEOUS PROVISIONS

Section 1201. *[Note: This Section 1201 intentionally left blank.]*

Section 1202. Notice. Except as otherwise expressly provided for in this Lease Agreement, all notices, including notifications, requests, authorizations, approvals, demands, and consents provided for under this Lease Agreement will be in writing and must be delivered personally, or must be sent by United States registered or certified mail, return receipt requested, postage prepaid, or will be sent by telex, telegram, telecopy, fax or other similar form of rapid transmission confirmed by the mailing (by first class or express mail, postage prepaid) of written confirmation at substantially the same time as such rapid transmission; and must be addressed to the parties at the respective addresses set forth below ("**Notice**"). A party may change its address for receipt of notice by service of Notice of such change in accordance herewith. Notices will be deemed received at the earlier of actual receipt or three (3) calendar days after being sent in the manner provided for above.

If to the City:

Director of Airports,
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
10701 Lambert International Blvd.

St. Louis, MO 63145

with a copy to the Deputy Director of Airports and the Airport Properties Manager at the same address.

If to the Lessee:

Bi-National Gateway Terminal, LLC
9817 Air Cargo Road
St. Louis, MO 63145
Attn: Ricardo Farias Nicolopoulos, President

With a copy to:

Spencer Fane Britt & Browne LLP
1 North Brentwood Boulevard, Suite 1000
St. Louis, MO 63105
Attn: Robert B. Preston, Esq.

with a copy to the Leasehold Mortgagee, if applicable, as required by Section 1002.F of this Lease Agreement.

Section 1203. Condemnation.

- A. Total Take - If the whole of the Leased Premises should be taken by the exercise of the power of eminent domain by any public entity, including the City, this Lease Agreement will terminate as of the date of vesting of title in the condemning authority.
- B. Partial Take - If less than the whole of the Leased Premises, including any Retained Improvements or New Improvements, should be taken by the exercise of the power of eminent domain by any public entity, including the City, then this Lease Agreement will terminate only as to that portion of the Leased Premises so taken as of the date of the vesting in the condemning authority of title to such portion, but this Lease Agreement will remain in full force and effect with respect to that portion of the Leased Premises not so taken, provided that the Director and the Lessee, after good faith discussions, reasonably determine that the remainder of the Leased Premises may be feasibly used for the purposes contemplated by this Lease Agreement. After a partial condemnation of the Leased Premises, the Initial Rent, and Adjusted Rent, as applicable, will be adjusted *pro tanto*.
- C. Possession by Lessee - Notwithstanding any termination of this Lease Agreement in whole or in part under Paragraphs A and B of this Section 1203, Lessee may remain in possession of each portion of the Leased Premises as will be so taken at the applicable rent herein provided, until the condemning authority requires Lessee to surrender such possession. Any rent or charge in the nature of rent which Lessee is required to pay to the condemning authority in consideration of such remaining in possession will be paid by Lessee and will reduce *pro tanto* the obligation of Lessee to payment hereunder.

- D. Whether all or a portion of the Leased Premises should be taken in a condemnation proceeding, Lessee will be entitled to receive from the City that portion of the condemnation award allocable to the then remaining value, calculated in accordance with Missouri condemnation law of the New Improvements including any refurbishments to Retained Improvements made by the Lessee to the Leased Premises as well as the value of the Lessee's leasehold interest in the Leased Premises, taking into account the value of the City's ownership interest in the New Improvements (including any refurbishments to the Retained Improvements) at the expiration of this Lease Agreement. In addition, if applicable, Lessee shall be entitled to claim and receive from the appropriating authority compensation for Lessee's actual moving and relocation expenses, Lessee's Removable Fixtures and other personal property that are not otherwise acquired by the appropriating authority, and to the extent allowed by Missouri law, damage to Tenant's business and goodwill.
- E. Lessee shall be entitled to actively participate in and appear in any condemnation proceedings, and any negotiations with respect to a conveyance in lieu of such proceedings, either separately or in conjunction with the City. Lessee's written consent shall be required for the compromise or settlement of any action for condemnation or fixing compensation therefor. The City shall provide Lessee copies of all non-privilege documents and correspondence with regard to the condemnation and the condemnation proceedings, and shall give notice to Lessee of any meetings with the appropriating authority, its agents or representatives, and permit Lessee to attend such meetings. The City shall reasonably consult with Lessee so that reasonable business accommodations, if possible, can be made for Lessee as part of any consent or agreement concerning the condemnation or the manner and form in which such condemnation shall occur.

Section 1204. Non-Discrimination and Affirmative Action Program.

- A. Lessee hereto understands and agrees that the City in operation and use of the Airport will not discriminate or permit discrimination against any person or group of persons on the grounds of race, creed, color, religion, sex, national origin, or ancestry, in a manner prohibited by 49 C.F.R. Part 21. Lessee hereby agrees that its Leased Premises will be posted to such effect as required by such regulation.
- B. Lessee agrees that in performing under this Lease Agreement, neither it nor anyone under its control including, without limitation, any Sublessee, will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Lessee shall 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 will 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. Lessee shall state in all printed or circulated solicitations or other advertisements or publications for employees placed by or on behalf of Lessee, and will cause such

solicitations, advertisement or publications made by Sublessees to state, that all qualified applicants will 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 will contain the phrase "An Equal Opportunity Employer." Lessee will 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. Lessee agrees that should it be determined by Lessee or the City that Lessee will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the Revised Code of the City of St. Louis, Lessee shall notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency within ten (10) days of such determination, as to the steps to be taken by Lessee to achieve the provisions of its program.
- E. Lessee shall permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining Lessee's or Sublessees' compliance with fair employment practices.
- F. Paragraphs B through E of this Section 1204 covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Lessee into all subleases, contracts or agreements it enters into with Sublessees, 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 Lease Agreement.
- G. Whenever Lessee issued by a Sublessee, tenant, subcontractor, vendor, individual, group or association as a result of compliance with the paragraphs (A through F) of these provisions relating to fair employment practices, Lessee shall notify the City in writing of such suit or threatened suit within ten (10) business days.
- H. In event of Lessee's or its Sublessees' noncompliance with nondiscrimination clauses of this Lease Agreement, or to furnish information or permit Lessee's books, records and accounts to be inspected within twenty (20) days from date requested, this Lease Agreement may be terminated or suspended, in whole or in part subject to Article XI above, and Lessee may be declared ineligible for further City contracts for a period of one (1) year by option of the City; provided that if this Lease Agreement is terminated or suspended for failure to comply with fair employment practices, Lessee shall have no claims for any damages or loss of any kind whatsoever against the City.
- I. Lessee assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. Lessee assures that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its

covered Sublessees provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

Section 1205. FAA Non-Discrimination. The Lessee for itself, and its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- A. in the event facilities, structures, or improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a FAA activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the grounds of race, color, or national origin, will be excluded from participating in, denied the benefits of, or otherwise subjected to discrimination in the use of the Leased Premises;
- B. no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Leased Premises or the facilities, structures, or improvements within the Leased Premises;
- C. in the construction of any improvements on, over, or under the Leased Premises, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation, denied the benefits of, or otherwise be subject to discrimination,
- D. the Lessee will use the Leased Premises or facilities, structures, or improvements within the Leased Premises in compliance with the Acts and Regulations; and
- E. for purposes of this Section 1205, references to "Acts or Regulations" will mean or include the following statutory and regulatory cites, as may be amended from time to time:
 - Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21;
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 et seq.), (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, as amended (49 USC § 471, Section 47123), (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by the Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

Section 1206. No Personal Liability. No Alderman of the City, Commissioner of the Airport Commission, Director, member, owner, officer, board member, employee or other agent of either party will be charged personally or held contractually liable by or to the other party under any

term or provision of this Lease Agreement or because of any breach hereof or because of its or their execution of the Lease Agreement. Any administrative complaint brought against the City relating to any aspect of this Lease Agreement must be brought against the City and not against named individual respondents.

Section 1207. Force Majeure. Neither party hereto will be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including, without limitation, acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages, or other labor actions ("**Force Majeure Event**") affecting the rights or obligations of the City or Lessee hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Lessee to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section 1207 is intended or will be construed to abate, postpone or in any respect diminish Lessee's obligations to make any payments due to the City pursuant to this Lease Agreement. The parties hereto agree, that in the event of a Force Majeure Event, the applicable time periods hereunder will be extended by the number of days that performance was reasonably delayed as a result of the Force Majeure Event.

The City will be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore will be prohibited or rationed by any law, ordinance, rule, regulation, requirement, order or directive of any federal, state, county, City, or municipal government having jurisdiction.

Section 1208. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions, warranties, and considerations of this Lease Agreement will extend to and bind the legal representatives, successors, Sublessees and permitted assigns of the respective parties hereto. This provision will not constitute a waiver of any conditions regarding assignment or subletting contained in this Lease Agreement.

Section 1209. Quiet Enjoyment. Upon payment of all amounts due hereunder and performance of the covenants and agreements on the part of Lessee to be performed under this Lease Agreement, the City will not act or fail to act, except as otherwise provided by this Lease Agreement, in a manner that will prevent Lessee from peaceably having and, in accordance with the terms hereof, enjoying the quiet and peaceful possession of the Leased Premises.

Section 1210. Title to the Leased Premises. The Leased Premises from the date hereof until the expiration or early termination of this Lease Agreement will 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 Lease Agreement.

Section 1211. Subordination to Agreements with the United States. This Lease Agreement is subject and subordinate to any existing or future agreements between the City and the United States Government or governmental authority, relating to the operation or maintenance of the

Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the approval to impose and use Passenger Facility Charges (14 C.F.R. Part 158) (“PFCs”) for the improvement or development of the Airport. Neither Lessee, nor any Successor Lessee, Sublessee, or Leasehold Mortgagee will cause the City to violate any assurances made by the City to the United States Government in connection with the granting of federal funds or the approval of such PFCs.

This Lease Agreement is also subordinate to the rights of the United States Government to operate all of the Airport, or any part thereof, during time of war or national emergency. Such rights will supersede any provisions of this Lease Agreement inconsistent with the operation of the Airport by the United States Government.

Section 1212. Modifications to Maintain Federal Compliance. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement, development, or expansion of the Airport, modifications or changes to this Lease Agreement or determines this Lease Agreement to be inconsistent with City’s grant assurances, current or future, Lessee agrees to consent to such reasonable amendments, modifications, or changes to this Lease Agreement as may be reasonably required to enable the City to obtain said funds or comply with the City’s grant assurances.

Section 1213. Governing Law/Compliance/Venue. This Lease Agreement will 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 laws and ordinances, as may be amended from time to time. The parties will perform and comply in all material respects with laws, rules, orders, ordinances, regulations, Environmental Laws, Environmental Permits, decrees, judgments, and requirements now or hereafter enacted or promulgated which are applicable to the Leased Premises. It is agreed by the parties hereto that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Lease Agreement, or regarding its alleged breach, must be instituted only in a federal or state court in The City of St. Louis, Missouri. Lessee and the City hereby admit and consent to the jurisdiction and venue of such courts. The provisions of this Section 1213 will survive the expiration or early termination of this Lease Agreement.

Section 1214. Headings. The headings of the Articles and Sections of this Lease 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 Lease Agreement and will not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1215. Amendments. Except as expressly provided for herein, this Lease Agreement may only be amended by a written agreement, duly authorized and executed by all the signatories to this Lease Agreement. It is understood that any amendment to this Lease Agreement must be approved by the City’s Airport Commission and its Board of Estimate and Apportionment and authorized by a City ordinance approved by the City’s Board of Aldermen.

Section 1216. Previous Agreements. It is expressly understood by the parties hereto that the provisions of this Lease Agreement will in no way affect or impair the terms, covenants, conditions, or obligations of any other existing or prior agreement between the Lessee and the

City; provided, however, that upon the Commencement Date, Agreement No. AL-286 is null, void, and no longer in force.

Section 1217. Withholding Required Approvals. Unless otherwise expressly provided for herein, whenever the approval of the City or Director or of Lessee is required herein, no such approval will be unreasonably requested, delayed, or withheld. The parties hereto will cooperate with each other in all aspects and use best efforts to reach consensus and expedite any reviews.

Section 1218. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereto to be performed, kept, and observed by the other party will 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. No waiver will be binding unless executed in writing by the party granting the waiver.

Section 1219. Invalid Provisions. If any covenant, conditions, term, or provision in this Lease Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such covenant, condition, term, or provision will be deemed amended to conform to applicable laws or FAA grant assurances so as to be valid, enforceable, in compliance, or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken. If stricken, all other covenants, conditions, terms, and provisions of this Lease Agreement will remain in full force and effect provided that the striking of such covenants, conditions, terms, or provisions does not materially prejudice either the City or Lessee in its respective rights and obligations contained in the valid covenants, conditions, terms, or provisions of this Lease Agreement.

Section 1220. Americans with Disabilities Act ("ADA"). Lessee will be responsible for compliance with the ADA, plus any other federal, state, or local laws or City Ordinances or regulations pertaining to the disabled individual having access to the Leased Premises.

Section 1221. Advertising. Neither Lessee nor any Sublessee will have the right to use trademarks, symbols, trade names, or name of the Airport or the City, either directly or indirectly, in connection with any production, promotion, service, or publication without the prior written consent of the Director; provided however that the name of the Airport or the City may be utilized by the Lessee for purposes of identifying the location of its business.

Section 1222. Time is of the Essence. The parties hereto expressly agree that time is of the essence in this Lease Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, will relieve the other party, without liability, of any obligation to accept such performance.

Section 1223. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions, and requirements contained in this Lease Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Lease Agreement. As such, the terms of this Lease Agreement will 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, will not be employed, in

the interpretation of this Lease Agreement or any amendments, modifications, or exhibits thereto.

Section 1224. Entire Agreement. The terms, covenants, warranties, conditions, and provisions of this Lease Agreement are intended by the parties as a final expression of their agreement with respect to said provision as are included in this Lease Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Lease Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein. Except as expressly provided for in this Lease Agreement, this Lease Agreement may be amended only by written agreement duly authorized and executed by all the signatories to this Lease Agreement.

Section 1225. Required Approvals. When the consent, approval, waiver, certification, or extension in time of performance of the other party is required under the terms of this Lease Agreement, unless otherwise expressly stated herein (an “**Approval**”), the Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director is required, the Approval must be from the Director, which action the Director may take subject to applicable laws, regulations, and ordinances of the City, and in the best interest of the City and the traveling public. Whenever the Approval of Lessee is required, the Approval must be from the chief executive officer of Lessee or his/her authorized or designated representative.

Section 1226. Memorandum of Lease. The City and Lessee agree at the request of either party, to execute a memorandum of this Lease Agreement in a recordable form for the sole purpose of giving notice of this Lease Agreement. The Director, on behalf of the City and in its best interest, is hereby authorized to enter into, execute, and deliver said memorandum of lease.

Section 1227. Binding Contract; Counterparts; Facsimile Signatures. This Lease Agreement will become effective and binding only upon the execution and delivery hereof by the City and Lessee. Lessee acknowledges and agrees that this Lease Agreement is contingent upon the approval of the City Board of Estimate and Apportionment and must be authorized by the City’s Board of Aldermen. This Lease Agreement and any companion document or instruments referred to herein, may be executed in any number of counterparts, each of which will be original, but all of which together will constitute one document or instrument, and it will constitute sufficient proof of this Lease Agreement to present any copy, electronic copies, or facsimiles signed by the parties hereto.

Section 1228. Exhibits and Attachments. All exhibits and attachments described herein are fully incorporated into this Lease Agreement by this reference as if fully set out herein. The City and Lessee shall reasonably and in good faith finalize and attach all such exhibits and attachments to this Lease Agreement, which may not have been in final form as of the Effective Date. The Director, in the best interest of the City, the Airport, and the traveling public, is hereby authorized, on behalf of the City, to finalize said exhibits and to change, modify, or amend the Exhibits attached hereto, as the case may be, without a formal amendment to this Lease Agreement (see Section 601.A of this Lease Agreement).

Section 1229. Prevailing Wage. Lessee and all Sublessees will comply with the applicable provisions of the City’s Prevailing Wage Law in accordance with and subject to City Ordinance

No. 62124, as it may be amended from time to time.

Section 1230. Right to Audit.

- A. The Lessee “**records**” will be open to inspection and subject to audit and/or reproduction during normal working hours (upon not less than five (5) business days prior notice) and **made available within the greater St. Louis metropolitan area**. A City representative may perform such audits or an outside representative engaged by the City. The City or its designee may conduct such audits or inspections throughout the term of this Lease Agreement, and for a period of two (2) years after the early termination or the expiration of the Lease Agreement, or longer if required by law.
- B. The Lessee’s “**records**” as referred to in this Lease Agreement will include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, communities, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, and memoranda, and any and all other agreements, sources of information and matters that may in the City’s reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Lease Agreement. Such records subject to audit will also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations if applicable) as they may apply to costs associated with this Lease Agreement. Such records will include (hard copy, as well as computer readable data if reasonably available), written policies and procedures, time sheets, payroll registers, cancelled checks, original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries, and any other Lessee records which may have a bearing on matters of interest to the City in connection with the Lessee’s work for the City to the extent necessary to adequately permit evaluation of Lessee’s or Sublessees’ compliance with the terms, covenants, and conditions of this Lease Agreement or the performance of the services contemplated herein.
- C. If the result of an audit(s) reveals an underpayment by Lessee of more than five percent (5%) between the Landing Fees, Fuel Flowage Fees or other payments, rents, or charges payable by Lessee and Landing Fees, Fuel Flowage Fees, or other payments, rents, or charges determined by the audit, the reasonable and actual cost of the audit will be borne by the Lessee. In the event such an audit reveals an overpayment by Lessee, such amount will be credited against amounts owing pursuant to this Lease.
- D. If, as a result of an audit by the City or any other entity, Lessee is required to restate Landing Fees, Fuel Flowage Fees, or any other payments, rents, or charges payable to the City under this Lease Agreement, Lessee will, within thirty (30) days of finalization of the audit, report the change to the City. If the change in Landing Fees, Fuel Flowage Fees, or other payments rents or charges results in Lessee owing additional fees, Lessee will, within thirty (30) days remit to the City the additional fees.

Section 1231. Estoppel Certificates. At any time and from time to time, either party, on or before the date specified in a written request therefor made by the other party, which date will not be earlier than thirty (30) days from the making of such request, will execute, acknowledge, and deliver to the other a certificate evidencing whether or not:

- A. This Lease Agreement is in full force and effect; and
- B. This Lease Agreement has been amended in any way; and
- C. There are any existing defaults hereunder on the part of the other party and specifying the nature of such defaults if any; and
- D. The amount of Initial Rent and Adjusted Rent, and the date to which such rents have been paid; and
- E. Such other facts with respect to this Lease Agreement or the Leased Premises as City or Lessee may reasonably request.

Each certificate delivered pursuant to this Section 1229 may be relied on by any prospective mortgagee or transferee of the Leased Premises or of City's or Lessee's interest hereunder.

Section 1232. Survival of Warranties. All warranties and covenants set forth in this Lease Agreement will survive the execution and performance of this Lease Agreement.

{SIGNATURE PAGES TO FOLLOW.}

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Lease Agreement the day and year first above written.

Pursuant to City of St. Louis Ordinance 70338 approved on July 18, 2016.

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

The foregoing Lease Agreement was approved in substance by the Airport Commission at its meeting on the 4th day of May, 2016.

BY: [Signature] 7/29/16
Commission Chairman
and Director of Airports
Date

The foregoing Lease Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on May 18, 2016. BB #59

[Signature] 8-10-16
Secretary
Board of Estimate & Apportionment
Date

APPROVED AS TO FORM BY:

[Signature] 8-8-2016
City Counselor
City of St. Louis
Date

COUNTERSIGNED BY:

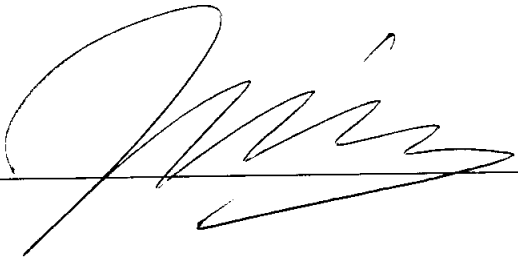
[Signature]
Comptroller
City of St. Louis
Date

ATTESTED TO BY:

[Signature] AUG 25 2016
Register
City of St. Louis
Date

COMPTROLLER'S OFFICE
DOCUMENT # 68602

LESSEE:
BI-NATIONAL GATEWAY TERMINAL, LLC:

BY: 

NAME: Ricardo Farias Nicolopoulos

TITLE: President

DATE: 04-27-16

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2020-01-15 17:03:49 +0000

TABLE OF EXHIBITS

EXHIBIT “A”	Existing Improvements and Retained Improvements
EXHIBIT “B”	Description of the Leased Premises
EXHIBIT “C”	Boeing Permitted Facility Excavated Soil Management Plan
EXHIBIT “D”	Site Management and Redevelopment Agreement
EXHIBIT “E”	Development Plan

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EXHIBIT “A”

EXISTING IMPROVEMENTS AND RETAINED IMPROVEMENTS

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Exhibit "A"

Existing and Retained Improvements

Existing Improvements	Gross Square Feet	Disposition	
		Retained	Not Retained
Building 1		Yes Ph.1	
Office 2 levels	167,150 sq. ft.		
Basement parking	21,600 sq. ft.		
Bomb shelter and hallway	15,100 sq. ft.		
Total	203,850 sq. ft.		
Building 2		Yes Ph.1	
High bay assembly hangar	259,600 sq. ft.		
Low bay manufacture floor	416,800 sq. ft.		
Low bay mezzanines	28,000 sq. ft.		
Basement	361,800 sq. ft.		
Fire House	6,000 sq. ft.		
Total	1,072,200 sq. ft.		
Building 3 office annex 2 levels	32,400 sq. ft.		Demolish Ph.1
Building 4 support	7,400 sq. ft.		Demolish Ph.3
(1) Building 6 utility parcel	18,750 sq. ft.		Demolish Ph.3
Building 48 paint shops			
2 high bay paint booths	27,500 sq. ft.		Demolish Ph.2
High bay enviro controls bldg	5,000 sq. ft.		Demolish Ph.2
5 low bay paint booths	26,000 sq. ft.		Demolish Ph.2
Low bay enviro controls bldg	2,400 sq. ft.		Demolish Ph.2
Support bldg. multi levels	5,000 sq. ft.		Demolish Ph.2
Total	65,900 sq. ft.		
Ancillary facilities			
AC shelters/equipment bldgs.	18,500 sq. ft.		Demolish Ph.3
Pump house generator bldg.	600 sq. ft.	Yes Ph.1	
High bay deluge manifold bldg.	400 sq. ft.		Demolish Ph.1
Bldg 1-3 breezeway connector	1,300 sq. ft.		Demolish Ph.1
Bldg unknown function	400 sq. ft.		Demolish Ph.1

(1) Building 6 is presently not part of the Leased Premises (see Section 202 of the Lease Agreement).



 LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT ®	Exhibit A Existing Improvements	<p>These drawings are a representation of the existing conditions of the airport and are not intended to be used for any other purpose. The drawings are based on the latest available information and are subject to change without notice. The drawings are not to be used for any other purpose without the written consent of the airport authority.</p>	Coordinate System: State Plane Coordinate, Missouri East Zone North American Datum 1983 Survey Feet	Prepared By: 42529916 Date: 4/25/2016 Revision No: 1 Date:	Review and Approved By: Date:
--	--	--	--	--	----------------------------------



 LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®	Exhibit B Leased Premises	<p>Coordinate System: State Plane Coordinates, Missouri East Zone North American Datum 1983 Survey Feet</p>	<p>Prepared By: Date: 4/25/2016 Revision No.: Date:</p>	<p>Reviewed and Approved By: Date: Drawing Name: Date:</p>
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EXHIBIT “B”

DESCRIPTION OF THE LEASED PREMISES

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Exhibit "B"

Property Descriptions

Leased Premises East Tract

A tract of land being part of U.S. Surveys 7, 1249, 8, 4, 1251, and 3091, Township 46 North, Range 6 East, St. Louis County, Missouri.

Commencing at a northwest corner corresponding to the geodetic coordinates $38^{\circ}45'31.53''\text{N}$ / $90^{\circ}22'06.51''\text{W}$, said point being the **Point of Beginning** for the description herein; thence south 25.11 feet to a point $38^{\circ}45'31.28''\text{N}$ / $90^{\circ}22'06.51''\text{W}$; thence east 92.93 feet to a point $38^{\circ}45'31.22''\text{N}$ / $90^{\circ}22'05.31''\text{W}$; thence south 115.41 feet to a point $38^{\circ}45'30.07''\text{N}$ / $90^{\circ}22'05.40''\text{W}$; thence west 93.85 feet to a point $38^{\circ}45'30.13''\text{N}$ / $90^{\circ}22'06.58''\text{W}$; thence south 398.19 feet to a point $38^{\circ}45'26.19''\text{N}$ / $90^{\circ}22'06.84''\text{W}$; thence east 15.38 feet to a point $38^{\circ}45'26.19''\text{N}$ / $90^{\circ}22'06.65''\text{W}$; thence south 411.52 feet to a point $38^{\circ}45'22.11''\text{N}$ / $90^{\circ}22'06.89''\text{W}$; thence east 160.42 feet to a point $38^{\circ}45'22.02''\text{N}$ / $90^{\circ}22'04.88''\text{W}$; thence south 317.67 feet to a point $38^{\circ}45'18.89''\text{N}$ / $90^{\circ}22'05.11''\text{W}$; thence northeast 325.11 feet to a point $38^{\circ}45'19.51''\text{N}$ / $90^{\circ}22'01.14''\text{W}$; thence south 73.45 feet to a point $38^{\circ}45'18.76''\text{N}$ / $90^{\circ}22'01.15''\text{W}$; thence northeast 1,287.27 feet to a point $38^{\circ}45'21.27''\text{N}$ / $90^{\circ}21'45.19''\text{W}$; thence north-northeast 453.44 to a point $38^{\circ}45'23.29''\text{N}$ / $90^{\circ}21'40.14''\text{W}$; thence north 149.77 to a point $38^{\circ}45'24.71''\text{N}$ / $90^{\circ}21'40.67''\text{W}$; thence northeast 475.21 feet to a point $38^{\circ}45'26.86''\text{N}$ / $90^{\circ}21'35.32''\text{W}$; thence 194.05 feet to a point $38^{\circ}45'28.79''\text{N}$ / $90^{\circ}21'35.25''\text{W}$; thence west 72.89 feet to a point $38^{\circ}45'28.84''\text{N}$ / $90^{\circ}21'36.17''\text{W}$; thence north 104.42 feet to a point $38^{\circ}45'29.89''\text{N}$ / $90^{\circ}21'36.10''\text{W}$; thence west 178.19 feet to a point $38^{\circ}45'30.00''\text{N}$ / $90^{\circ}21'38.37''\text{W}$; thence south 153.74 feet to a point $38^{\circ}45'28.47''\text{N}$ / $90^{\circ}21'38.51''\text{W}$; thence east 22.07 feet to a point $38^{\circ}45'28.46''\text{N}$ / $90^{\circ}21'38.26''\text{W}$; thence south 86.71 feet to a point $38^{\circ}45'27.60''\text{N}$ / $90^{\circ}21'38.27''\text{W}$; thence west 69.91 feet to a point $38^{\circ}45'27.60''\text{N}$ / $90^{\circ}21'39.17''\text{W}$; thence north 87.28 feet to a point $38^{\circ}45'28.49''\text{N}$ / $90^{\circ}21'39.13''\text{W}$; thence east 23.38 feet to a point $38^{\circ}45'28.48''\text{N}$ / $90^{\circ}21'38.78''\text{W}$; thence north 152.68 feet to a point $38^{\circ}45'29.27''\text{N}$ / $90^{\circ}21'39.25''\text{W}$; thence west 221.32 feet to a point $38^{\circ}45'30.20''\text{N}$ / $90^{\circ}21'41.68''\text{W}$; thence south 309.99 feet to a point $38^{\circ}45'27.06''\text{N}$ / $90^{\circ}21'41.57''\text{W}$; thence west 482.46 feet to a point $38^{\circ}45'27.73''\text{N}$ / $90^{\circ}21'49.12''\text{W}$; thence north 336.19 feet to a point $38^{\circ}45'30.62''\text{N}$ / $90^{\circ}21'47.44''\text{W}$; thence west 1,513.60 feet and returning to the **Point of Beginning** $38^{\circ}45'31.53''\text{N}$ / $90^{\circ}22'06.51''\text{W}$.

Said East Tract containing 50.61 acres or 2,204,571 square feet as per calculation.

This description is based upon calculation from best available source(s) and no boundary survey was performed for this description. All geodetic coordinates are based upon North American Datum 1983 (NAD83) and are to be used for reference only.

Leased Premises West Tract

A tract of land being part of U.S. Surveys 7, 1249, 8, 4, 1251, and 3091, Township 46 North, Range 6 East, St. Louis County, Missouri.

Commencing at a northwest corner corresponding to the geodetic coordinates $38^{\circ}45'32.35''\text{N}$ / $90^{\circ}22'24.29''\text{W}$, said point being the **Point of Beginning** for the description herein; thence south 655.37 feet to a point $38^{\circ}45'25.88''\text{N}$ / $90^{\circ}22'24.78''\text{W}$; thence east 112.10 feet to a point $38^{\circ}45'25.83''\text{N}$ / $90^{\circ}22'23.37''\text{W}$; thence northeast 265.79 feet to a point $38^{\circ}45'28.09''\text{N}$ / $90^{\circ}22'21.61''\text{W}$; thence southeast 377.71 feet to a point $38^{\circ}45'25.60''\text{N}$ / $90^{\circ}22'18.13''\text{W}$; thence east 228.65 feet to a point $38^{\circ}45'25.47''\text{N}$ / $90^{\circ}22'15.25''\text{W}$; thence north 256.55 feet to a point $38^{\circ}45'28.00''\text{N}$ / $90^{\circ}22'15.02''\text{W}$; thence northeast 95.18 feet to a point $38^{\circ}45'28.83''\text{N}$ / $90^{\circ}22'14.50''\text{W}$; thence north 305.33 feet to a point $38^{\circ}45'31.85''\text{N}$ / $90^{\circ}22'14.27''\text{W}$; thence west 795.05 feet and returning to the **Point of Beginning** $38^{\circ}45'32.35''\text{N}$ / $90^{\circ}22'24.29''\text{W}$.

Said West Tract containing 10.49 acres or 456,944 square feet as per calculation.

This description is based upon calculation from best available source(s) and no boundary survey was performed for this description. All geodetic coordinates are based upon North American Datum 1983 (NAD83) and are to be used for reference only.

EXHIBIT “C”

BOEING PERMITTED FACILITY EXCAVATED SOIL MANAGEMENT PLAN

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**BOEING PERMITTED FACILITY
EXCAVATED SOIL MANAGEMENT PLAN**

January 2011

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2020-01-15 17:03:49 +0000

Boeing Defense, Space & Security – St. Louis
Environment, Health and Safety

BOEING PERMITTED FACILITY EXCAVATED SOIL MANAGEMENT PLAN

I. Purpose/Summary

The overall objective of the Soil Management Plan (the "Plan") is to assure the continued protection of human health and the environment during current and future operations at the Boeing Permitted Facility. This Plan outlines the process and responsibilities associated with any development related disturbance of contaminated soil located on property subject to the jurisdiction of the current Missouri Hazardous Waste Management Facility (MHWMF) Part I Permit issued to Boeing as both owner and operator. This includes portions of the Boeing Tract I South permitted property now owned by the City of St. Louis, the Tract I North property now owned by GKN Technologies, and the buildings in both of these Tracts where Boeing still remains the owner of the property. The responsibilities described in this Plan apply to all development related activities at the permitted properties, including such activities conducted or initiated by any tenants or lessees of the parties hereto. This Plan outlines the planning, management and disposal procedures for contaminated soil that may be encountered during construction and maintenance activities, conducted on portions of the permitted property.

Specific responsibilities associated with any disturbance of soil by the owners of the property subject to the current permit may vary. To address each of the situations, Boeing, GKN and the City of St. Louis will be addressed in a section specific to the respective property ownership. Nothing in this document shall alter the various agreements between and among Boeing, MDC, GKN and the City of St. Louis regarding the allocation of costs for implementation of this Plan.

Upon final approval of a site-wide Corrective Measures Study by the Missouri Department of Natural Resources, this Plan may be modified to conform to the corrective measures implemented for the property.

II. General Requirements – Boeing Property

1. McDonnell Douglas Corporation (MDC) – St. Louis, a wholly-owned subsidiary of The Boeing Company, is responsible for all soil management associated with soil disturbance activities on portions of the permitted property owned by Boeing (see Property Ownership Map, Appendix A). Soil management as discussed in this section may include pre-project investigation, evaluation and documentation, sample collection and analysis, associated labor and equipment for excavation, transportation and disposal of soil.
2. GKN will be responsible for all soil management associated with soil disturbance activities on portions of the permitted property owned by GKN.

3. The City of St. Louis, owner and operator of Lambert-St. Louis International Airport® (the "City") will be responsible for all soil management associated with development related soil disturbance activities on portions of the permitted property owned by the City.
4. Boeing Environment, Health and Safety (EHS) will provide environmental project oversight for all soil disturbance activities covered by this Plan conducted on that portion of the permitted property owned by Boeing.
5. Prior to beginning any soil disturbance activities on permitted property now owned by Boeing, EHS will obtain the following information:
 - a) Description of construction or maintenance activities that are being planned;
 - b) Date project is to begin;
 - c) Specific location of soil disturbance or soil excavation;
 - d) Anticipated volume of soil that will be disturbed/excavated;
 - e) Requirements for backfill and final finishing of excavation;
 - f) Identification of any environmental contractors that will be used to perform any work;
 - g) Identification of any land disturbance or stormwater management permits that may be required;
 - h) Identification of any issues associated with the location of utility lines.
6. After a review of all of the project information on permitted property now owned by Boeing, a determination will be made by EHS as to the potential impact of the project with respect to areas with documented subsurface contamination.
 - a) If it is determined that the project is not expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided instructions should contamination be discovered during the project.
 - b) If it is determined that the project is expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided with specific information related to the location, depth(s) and level of contaminants. Boeing EHS will review the construction plans to determine if there is any feasible way to relocate the construction work to an area that is free of documented contamination.
 - (1) If construction relocation proves infeasible:
 - (a) Boeing will meet with all involved to discuss specific details and plans related to construction in areas of known contamination, including the following:
 - 1) Detailed information about the contamination;

- 2) Personal protective equipment needs/use and personnel training requirements and/or HAZWOPER qualifications;
 - 3) Equipment decontamination procedures;
 - 4) Soil management procedures;
 - 5) Groundwater management procedures;
 - 6) Stormwater management procedures;
 - 7) Excavation zone limits;
 - 8) Potential creation of preferential groundwater flow pathways (granular backfill, trenches, etc.);
 - 9) Any engineering controls;
 - 10) Additional details as needed.
- (b) Temporary containment areas may need to be constructed related to staging/loading of soil. These areas should be relatively close to the point of generation. Soil must be placed on an engineered surface (concrete or plastic liner). A berm, at least six inches in height, must surround the surface to contain any runoff. Any additional measures identified in the Land Disturbance Permit (if applicable) must be addressed.
- (c) Backfilling of the excavation will be performed to ensure that contamination is not spread through the creation of preferential groundwater flow pathways (granular backfill, trenches, etc.).
- (d) The type of loading and hauling equipment used for the project will be determined by Boeing. Operations to control Foreign Object Damage (FOD) and dust at the job site must be conducted at regular intervals.
- (e) Disposal facility and waste permitting requirements must be addressed as early in the process as possible.
- (f) Hazardous Waste Management Facility Permit Corrective Action Conditions II. A. and III. A. require Boeing to notify MDNR and EPA within 15 days of the discovery of new Solid Waste Management Units (SWMUs), Areas of Concern (AOC), or newly-identified releases from previously identified SWMUs/AOC. Any information related to the foregoing discoveries/situations must be immediately communicated to Boeing EHS. Notification of discovery of situations that may require stabilization action(s) are also required by the MHWMF Part I permit. Any information related to the foregoing discoveries/situations must be immediately communicated to Boeing EHS. Boeing will notify the Missouri Department of Natural Resources (MDNR) and EPA, as appropriate.
- (g) Any pre- or post-excavation sampling should be proposed in a plan for MDNR approval prior to implementation, except in the case of

emergencies. Post-excavation sampling of the floor and/or walls of an excavation will only occur in circumstances where additional soil characterization is necessary, or where post-excavation removal verification for soils shipped off-site is necessary.

III. General Requirements – GKN Property

1. GKN is responsible for all soil management associated with soil disturbance activities on portions of the permitted property owned by GKN (see Property Ownership Map, Appendix A). Soil management as discussed in this section may include pre-project investigation, evaluation and documentation, sample collection and analysis, associated labor and equipment for excavation, transportation and disposal of soil.
2. Boeing will be responsible for all soil management associated with soil disturbance activities on portions of the permitted property owned by Boeing (See Appendix A)
3. The City will be responsible for all soil management associated with development related soil disturbance activities on portions of the permitted property owned by the City.
4. GKN Environmental Safety and Health (ESH) will provide environmental project oversight for all soil disturbance activities covered by this Plan conducted on that portion of the permitted property owned by GKN.
5. Prior to beginning any soil disturbance activities on permitted property now owned by GKN, GKN Safety will obtain the following information:
 - a) Description of construction or maintenance activities that are being planned;
 - b) Date project is to begin;
 - c) Specific location of soil disturbance or soil excavation;
 - d) Anticipated volume of soil that will be disturbed/excavated;
 - e) Requirements for backfill and final finishing of excavation;
 - f) Identification of any environmental contractors that will be used to perform any work;
 - g) Identification of any land disturbance or stormwater management permits that may be required;
 - h) Identification of any issues associated with the location of utility lines.
6. After a review of all of the project information, a determination will be made by GKN as to the potential impact of the project with respect to areas with documented subsurface contamination.
 - a) If it is determined that the project is not expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided instructions should contamination be discovered during the project.

- b) If it is determined that the project is expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided with specific information related to the location, depth(s) and level of contaminants. GKN will review the construction plans to determine if there is any feasible way to relocate the construction work to an area that is free of documented contamination.

(1) If construction relocation proves infeasible:

- (a) Boeing will meet with all involved to discuss specific details and plans related to construction in areas of known contamination, including the following:
- 1) Detailed information about the contamination;
 - 2) Personal protective equipment needs/use and personnel training requirements and/or HAZWOPER qualifications;
 - 3) Equipment decontamination procedures;
 - 4) Soil management procedures;
 - 5) Groundwater management procedures;
 - 6) Stormwater management procedures;
 - 7) Excavation zone limits;
 - 8) Potential creation of preferential groundwater flow pathways (granular backfill, trenches, etc.);
 - 9) Any engineering controls;
 - 10) Additional details as needed.
- (b) Temporary containment areas may need to be constructed related to staging/loading of soil. These areas should be relatively close to the point of generation. GKN has a designated area that is used to stage stock-piled soil requiring additional analysis located on the east section of the GKN property.
- (c) Backfilling of the excavation will be performed to ensure that contamination is not spread through the creation of preferential groundwater flow pathways (granular backfill, trenches, etc.).
- (d) The type of loading and hauling equipment used for the project will be determined by GKN. Operations to control Foreign Object Damage (FOD) and dust at the job site must be conducted at regular intervals.
- (e) Disposal facility and waste permitting requirements must be addressed as early in the process as possible.
- (f) Hazardous Waste Management Facility Permit Corrective Action Conditions II. A. and III. A. require Boeing to notify MDNR and EPA

within 15 days of the discovery of new Solid Waste Management Units (SWMUs), Areas of Concern (AOC), or newly-identified releases from previously identified SWMUs/AOC. Any information related to the foregoing discoveries/situations must be immediately communicated to Boeing EHS. Notification of discovery of situations that may require stabilization action(s) are also required by the MHWMF Part I permit. Any information related to the foregoing discoveries/situations must be immediately communicated to Boeing EHS. Boeing will notify the Missouri Department of Natural Resources (MDNR) and EPA, as appropriate.

- (g) Any pre- or post-excavation sampling should be proposed in a plan for MDNR approval prior to implementation, except in the case of emergencies. Post-excavation sampling of the floor and/or walls of an excavation will only occur in circumstances where additional soil characterization is necessary, or where post-excavation removal verification for soils shipped off-site is necessary.

IV. General Requirements – City Property

1. The City and MDC have signed a Site Management and Redevelopment Agreement dated August 15, 2006 associated with soil management activities on portions of the permitted property owned by the City (the "Redevelopment Agreement"). This Plan addresses pre-project investigation, evaluation and documentation, sample collection and analysis, associated labor and equipment for excavation, transportation and disposal of contaminated soil. For purposes of this Plan, "contaminated" soils are soils which exceed the MRBCA Default Target Levels. This Plan between the City and Boeing specifically addresses the responsibilities of both parties related to responsibilities for contaminated soil management. As among Boeing, MDC and the City, nothing in this Plan is intended to alter or conflict with the Redevelopment Agreement. To the extent that anything in this Plan is inconsistent with the Redevelopment Agreement, the Redevelopment Agreement shall prevail.
2. Boeing and GKN will be responsible for all soil management associated with soil disturbance activities on portions of the permitted property not owned by the City.
3. The City will provide environmental project planning and oversight for all redevelopment activities which result in soil disturbance covered by this Plan conducted on that portion of the permitted property now owned by the City.
4. Prior to redevelopment activities on permitted property now owned by the City, the Airport Environmental Manager must be contacted by any construction contractor or group performing work that will disturb soil.

5. The construction contractor or group performing the work that will disturb soil shall provide the information listed below to the Airport Environmental Manager. In the event of an emergency, this information must be provided in a reasonable amount of time with as much information as available.
 - a) Description of construction or maintenance activities that are being planned;
 - b) Date project is to begin;
 - c) Specific location of soil disturbance or soil excavation;
 - d) Anticipated volume of soil that will be disturbed/excavated;
 - e) Requirements for backfill and final finishing of excavation;
 - f) Identification of any environmental contractors that will be used to perform any work;
 - g) Identification of any land disturbance or stormwater management permits that may be required;
 - h) Identification of any issues associated with the location of utility lines.
6. The Airport Environmental Project Manager will review all of the information received from the construction contractor or group, comparing this information with existing site characterization information found in the documents listed in Appendix B, which will be periodically updated to reflect interim corrective measures and final corrective measures approved by MDNR.
7. After a review of all of the project information, a determination will be made by the Airport Environmental Manager as to the potential impact of the project with respect to areas that are documented to be contaminated.
 - a) If it is determined that pre-job sampling will be performed by the City, the City will provide copies of the Pre-job Sampling Plan to Boeing. If Boeing has any comments on the plan, Boeing will provide comments to such plans for consideration within fifteen (15) calendar days.
 - b) If it is determined that the project is not expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided instructions to follow should contamination be discovered during the project.
 - c) If it is determined that the project is expected to encounter subsurface contamination, the construction contractor or group performing the work will be provided with specific information related to the location, depth(s) and level of contaminants. Reasonable steps shall be taken to avoid and minimize disturbance of the subsurface contamination.
 - (1) The Airport Environmental Manager and the construction contractor or group performing the work will meet to discuss specific details and plans

related to construction in areas of known contamination including the following:

- a) Detailed information about the contamination;
- b) Personal protective equipment needs/use and personnel training requirements and/or HAZWOPER qualifications;
- c) Equipment decontamination procedures;
- d) Soil management procedures;
- e) Groundwater management procedures;
- f) Stormwater management procedures;
- g) Excavation zone limits;
- h) Potential creation of preferential groundwater flow pathways (granular backfill, trenches, etc.);
- i) Any engineering controls;
- j) Additional details as needed.

8. During the preliminary activities and planning for the project, the City will determine if the potential exists for the excavated contaminated soil to be returned to the original excavation or used elsewhere on the permitted property. To minimize soil handling and disposal requirements, excavated contaminated soil should be reused onsite as fill or backfill whenever feasible, so long as that reuse is protective of human health and the environment.

- a) The management of any excavated soil shall be in accordance with Appendix C, Summary of Designated Categories of Fill Material and Constituent Criterion.
- b) If the Airport Environmental Manager determines that the contaminated soil is anticipated to be re-used on site, the following steps will be followed:
 - (1) The Airport Environmental Manager will identify the location for temporary management and replacement of the excavated contaminated soil. In most cases, soil is expected to be returned to the location from which it was excavated.
 - (2) If the contaminated soil is to be reused in a location other than the original excavation, the specific location must be identified by the Airport Environmental Manager. The following general criteria are applicable when contaminated soil will be placed in a location other than the original excavation:
 - (a) Location must be on the permitted property and not accessible by the general public, and
 - (b) The soil must contain no visible free liquids (e.g., groundwater) and must be sufficiently dry so as to not produce free liquids following placement, and

- (c) The location of the soil placement must be documented with the Airport Environmental Management Office if on property owned by the City, and shall also be provided to MDNR for placement in facility file.
 - (d) The location of the soil placement must be consistent with any and all of the activity and use limitations placed on the permitted property.
- (3) Analytical data is required to support any contaminated soil reuse onsite. This data may come from existing corrective action identified in Appendix B, and/or from any additional pre or post excavation soil sampling and analysis. The Pre-job Sampling Plan must be submitted to MDNR as provided in Article V of this Plan identifying specific constituents and specific analytical parameters, including information on the purpose and use of the data related to soil reuse.
- (4) Reuse of contaminated soil onsite is allowed only with written approval of the Pre-job Sampling Plan by MDNR as provided in Article V of this Plan, indicating all regulatory requirements have been addressed. Unless otherwise approved by MDNR, contaminated soil reused onsite must be free of debris and piping, and the reused contaminated soil is placed at a minimum of one (1) foot below surface. Contaminated soil reused onsite must not be used as finishing grade. Adequate controls must be in place to ensure soil reuse does not create additional contamination issues at the proposed reuse location (as determined by the Airport Environmental Manager). In addition, significant amounts of groundwater must not be transferred into the reuse area. Soil meeting these criteria will be placed in specific location identified in the Pre-job Sampling Plan approved by the department as provided in Article V of this Plan.
- (5) The Airport Environmental Manager will maintain information of all contaminated soil management activities on portions of the permitted property owned by the City. This information will contain locations of contaminated soil reused onsite, locations of soil removed for disposal, and analytical data collected during soil management activities.
- c) If it is determined by the City during the preliminary activities and planning for the project that the contaminated soil will NOT be reused on site:
- (1) Soil samples will be collected and analyzed for contaminated soil disposal. The location, quantity and type of soil sample to be collected must be determined. The Pre-job Sampling Plan for collection of soil samples for disposal must include the objective and or purpose of this sampling (i.e., determining excavation limits/requirement, personal protective equipment requirements, etc.).

- (2) The following issues must be addressed by the Airport Environmental Manager in coordination with the construction contractor or the group performing the work.
- (e) Groundwater must be managed to ensure any contamination is not spread to uncontaminated areas. This may involve collection, treatment and proper disposal of contaminated groundwater.
 - (f) Specific actions must be discussed should debris or piping be encountered during the soil disturbance or excavation.
 - (g) Should asbestos-containing piping be encountered in the excavation, work will be stopped and an asbestos abatement contractor called to complete the operation.
 - (h) The Airport Environmental Manager will be notified for specific direction if any debris is encountered in an excavation. Any liquid associated with piping debris must be specifically addressed.
 - (i) Temporary containment areas may need to be constructed related to staging/loading of contaminated soil. These areas should be relatively close to the point of generation. Contaminated soil must be placed on an engineered surface (concrete or plastic liner). A berm at least six inches in height must surround the surface to contain any runoff.
 - (j) Backfilling of the excavation will be performed ensuring that contamination is not spread through the creation of preferential groundwater flow pathways (granular backfill, trenches, etc.)
 - (k) The type of loading and hauling equipment used for the project will be determined by the Airport Environmental Manager. Operations to control Foreign Object Damage (FOD) and dust at the job site must be conducted at regular intervals.
- (3) Disposal of non-hazardous special waste soil will be addressed by the City. This may include obtaining special waste disposal approval from MDNR and St. Louis County Health Department.
- (4) Waste soil that is determined to be hazardous waste will be managed by the City, except that waste soil determined to originate from Boeing's historical operations will be shipped off-site for disposal at a Boeing approved waste disposal facility under the U.S. EPA and MDNR ID number assigned to Boeing for the site. Any off-site shipments utilizing the Boeing ID number will be reviewed by Boeing prior to shipment, with Boeing responsible for waste profiling, manifesting, and regulatory reporting associated with such shipments.

9. Hazardous Waste Management Facility Permit Corrective Action Conditions II.A. and III.A. require Boeing to notify MDNR and EPA within 15 days of the discovery of new Solid Waste Management Units (SWMUs), Areas of Concern, (AOC) or newly-identified releases from previously identified SWMUs/AOC. Notification of discovery of situations that may require stabilization action(s) are also required by the MHWMF Part I permit. The discovery of any new Solid Waste Management Units (SWMUs), Areas of Concern, (AOC) or newly-identified releases from previously identified SWMUs/AOC, or the discovery of situations that may require stabilization action(s) must be communicated by the City to Boeing as soon as practicable. Boeing will notify the department and EPA, as appropriate.

V. MDNR Review and Approval

1. MDNR generally expects to review and approve a pre-job plan before redevelopment soil disturbance activities for "planned" construction but not for "emergency" repairs that involve disturbing contaminated soils within the permitted property. In the case of emergencies, after the fact reporting would be expected.
2. If redevelopment construction occurs on the permitted property owned by the City, the Redevelopment Agreement between MDC and the City specifies who is responsible for reimbursement of the Department's oversight costs.
3. To facilitate site redevelopment and repair/maintenance of utilities on site that may be in a contaminated area of the permitted property, this Soil Management Plan must be followed.
4. A plan view map, which is legible and clear, showing the following shall be submitted to the Department before soil disturbance activities for planned construction activities which will disturb contaminated soils commence:
 - a) Location(s) and depth(s) of the necessary repair,
 - b) Location(s) and depth(s) of any pre-job samples, and
 - c) The location(s) of any known hazardous waste site (regulated units) or Solid Waste Management Units (SWMU's) and/or releases from such units which could be impacted by the proposed excavation/construction activities, and
 - d) Any information relevant to disturbance of areas with known contamination.
5. Pre-job soil sampling/analysis and subsequent excavation activities on the permitted property could lead to the discovery of additional SWMUs/ AOC's. Any SWMUs/AOCs and/or new releases from known SWMUs/AOCs discovered by Boeing, or reported to Boeing by GKN or City, must be reported to the Department and EPA by Boeing in accordance with Special Permit Conditions V

and VI as applicable. The Department acknowledges that Boeing's knowledge of additional SWMUs/AOC's and/or new releases from known SWMUs/AOCs located on permitted property owned or operated by GKN or City, and obligation to report such information to the Department and EPA, is limited to such information as is provided by GKN or City.

6. When contaminated soil is approved for backfill into the excavation, a clean layer of soil must be placed at grade on top of the soil that is backfilled. The clean soil layer shall be a minimum of one (1) foot thick and be free of contamination above MRBCA DTLs levels. Any contaminated soil which is not used as backfill must be managed and disposed of in accordance with all applicable local, state, and federal requirements.
7. The Soil Management Plan requests must be submitted (electronically when possible) to the MDNR at least 15 working days prior to performing the work. When possible, requests should be grouped together and consolidated. The Project Manager will confirm MDNR's receipt of the request. Within 10 working days, MDNR will notify requestor Project Manager by phone or e-mail if the request is approved or if MDNR has questions. If MDNR's approval is verbal, that approval will be confirmed by letter or e-mail within 5 working days. If approval is not received within 10 working days the project manager will contact MDNR to resolve any issues related to the request and obtain approval within the remaining 5 working days of the verbal approval.
8. Nothing contained herein shall be construed as preventing or otherwise limiting the Project Manager's ability to respond to an emergency situation or condition (e.g.: water, sewer or gas line break) that requires disturbance of contaminated soil. Following mitigation of an emergency, the Project Manager shall contact the Department as soon as practicable to advise that contaminated soil has been disturbed and to receive further instructions as to what additional action, if any and reporting will be required to address final disposition of the contaminated soil.

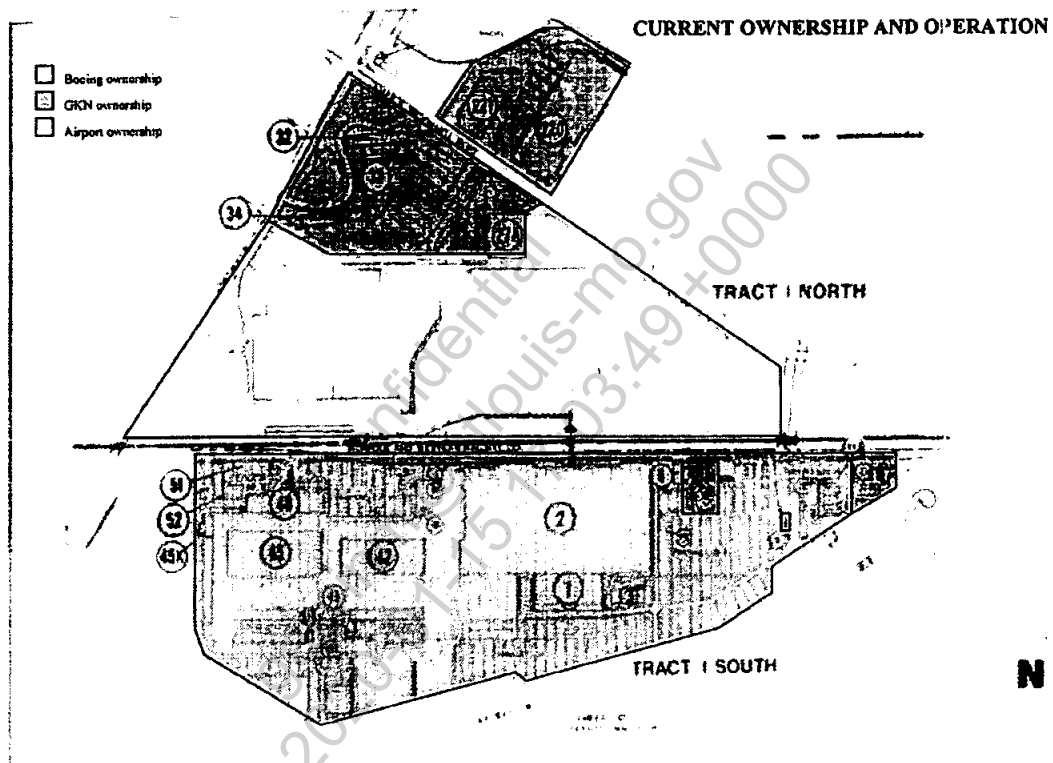
Signature Page

BOEING	
Signature	<i>M. J. A. Dwyer</i>
Title	Director - EHS - St. Louis
Date	1/28/2011

CITY of ST. LOUIS	
Signature	<i>Holly</i>
Title	ENVIRONMENTAL / HEALTH & SAFETY MANAGER
Date	1/21/11

GKN	
Signature	<i>James</i>
Title	Director, Facilities GKN
Date	1/31/2011

Appendix A Property Ownership Map



Appendix B

Corrective Action Administrative Records

	Author	Title
5/29/1997	Environmental Science & Engineering, Inc., St. Louis, MO	RCRA Facility Investigation Workplan for McDonnell Douglas, Hazelwood, Missouri Facility, Volume I
12/18/1997	Heritage Environmental Services, Inc., Chicago, IL	Interim Measures Completion Report, McDonnell Douglas Aerospace, U.S. EPA ID No. MOD000818963, Tract I Facility, Hazelwood, Missouri
4/20/2001	Harding ESE, Inc., St. Louis, MO	RCRA Facility Investigation Workplan Addendum II for McDonnell Douglas, Hazelwood, Missouri
7/19/2001	Harding ESE, Inc., St. Louis, MO	RCRA Facility Investigation Workplan Addendum II for McDonnell Douglas, Hazelwood, Missouri
9/27/2002	Harding ESE, Inc., St. Louis, MO	Environmental Field Investigation Statement of Work for Boeing Tract I South Property, Hazelwood, Missouri
10/29/2002	Harding ESE, Inc., St. Louis, MO	Annual monitoring Report for Solid Waste management Unit 17, McDonnell Douglas, Hazelwood, Missouri
3/2003	Golder Associates, Inc., St. Charles, MO	Environmental Baseline Survey, Boeing Tract I South Facility, Hazelwood, MO
11/7/2003	MACTEC Engineering and Consulting, Inc., St. Louis, MO	Environmental Investigation Report for Boeing Tract I South Property
2/3/2004	MACTEC Engineering and Consulting, Inc., St. Louis, MO	Enhanced Bioremediation Pilot Test Report for Boeing Tract I, Hazelwood, Missouri
9/2004	Risk Assessment & Management Group, Inc., Houston, TX	Risk Based Corrective Action Report, Boeing Tract I, St. Louis, Missouri
12/2004	MACTEC Engineering and Consulting, Inc., St. Louis, MO	RCRA Facility Investigation Report for McDonnell Douglas, Hazelwood, Missouri
10/20/05	MACTEC Engineering and Consulting, Inc., St. Louis, MO	Interim Action Remedial Excavation Workplan, Solid Waste Management Unit 17, McDonnell Douglas, Hazelwood, Missouri
12/5/05	MACTEC Engineering and Consulting, Inc., St. Louis, MO	TPH Soil Vapor Sampling Workplan, Boeing Tract I, Hazelwood, Missouri

5/2006	MACTEC Engineering and Consulting, Inc., St. Louis, MO	Interim Action Remediation Excavation Completion Report, Boeing Tract 1, McDonnell Douglas, Hazelwood, Missouri
6/2006	MACTEC Engineering and Consulting, Inc., St. Louis, MO	Interim Action Remedial Excavation Completion Report, Solid Waste Management Unit 17, McDonnell Douglas, Hazelwood, Missouri
3/2008	Tetra Tech EM, Inc., Lenexa, KS	Final Risk Assessment, Boeing Tract I Facility, St. Louis, Missouri
4/7/2010	RAM Group of Gannett Fleming, Inc., Houston, TX	Quality Assurance Plan, Boeing Tract 1, Hazelwood, Missouri
4/21/2010	RAM Group of Gannett Fleming, Inc., Houston, TX	Final Corrective measures Study Work Plan, The Boeing Company Tract 1, Hazelwood, Missouri
6/8/2010	RAM Group of Gannett Fleming, Inc., Houston, TX	Ground Water Gauging and Sampling-Spring 2010, Boeing Tract 1, Hazelwood, Missouri
12/2010	RAM Group of Gannett Fleming, Inc., Houston, TX	Ground Water Gauging and Sampling-Fall 2010, Boeing Tract 1, Hazelwood, Missouri

Appendix C

Summary of Designated Categories of Fill Materials and Constituent Criterion.

Category	Allowable Contaminant Limits	Allowable Uses/Requirements
Clean Fill*	Clean fill applies to soil, sand, gravel and rock where the concentration of <u>all</u> Constituents of Concern (COCs) are below their respective MRBCA Table B-1 DTLs or are below background levels.	Materials that qualify as "clean fill" do not require blanket beneficial use or site-specific approval and may be used without restriction in residential and non-residential applications. MDNR Water Protection Program approval may be required if placed in contact with surface water or groundwater. Subject to any applicable local approval requirements.
Blanket Beneficial Use Approval**	Blanket beneficial use applies to soil, sand, gravel and rock where the concentration of <u>any</u> COC is greater than its respective MRBCA Table B-1 DTL but <u>all</u> COCs are less than their respective MRBCA Table B-3 Risk-Based Target Levels for Residential Land Use Type 2 (Silty) Soil or below background. Materials containing <u>any</u> COC concentration greater than its respective MRBCA Table B-3 level are <u>not</u> approved for blanket beneficial use. Submission of a site-specific beneficial use request is required for materials with <u>any</u> COC concentration greater than its respective MRBCA Table B-3 level.	Materials that qualify for blanket beneficial use may be used, without additional site-specific approval, provided the material contains COC concentrations within allowable limits and the materials are placed on property subject to the jurisdiction of the Missouri Hazardous Waste Management Facility Permit. Transportation and placement of blanket beneficial use materials must be conducted in a manner that protects human health, worker safety and the environment

<p>Site Specific Beneficial Use***</p>	<p>Site-specific beneficial use applies to soil, sand, gravel and rock where the concentration of <u>any</u> COC is greater than its respective MRBCA Table B-3 Risk-Based Target Level for Residential Land Use Type 2 (Silty) Soil but <u>all</u> COCs are less than their respective MRBCA Table B-6 Risk-Based Target Levels for Non-residential Land Use Type 2 (Silty) Soil</p> <p>Site-specific beneficial uses for the subject materials cannot be granted where <u>any</u> COC concentration is greater than its respective Table B-6 Risk-Based Target Level for Non-residential Land Use Type 2 (Silty Soil Type) or where these materials exhibit the characteristic of toxicity via Toxicity Characteristic Leaching Procedure (TCLP) testing.</p>	<p>Site-specific beneficial use of soil requires prior review and written approval by the department. The department shall be consulted as to applicable requirements for approval of site-specific beneficial use at the time any such use is proposed.</p> <p>Site-specific beneficial use will be limited to property subject to the jurisdiction of the Missouri Hazardous Waste Management Facility Permit and may require implementation of land use restrictions or other exposure controls in areas where site-specific beneficial use is approved.</p>
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- * See MRBCA Table B-1 - Lowest Default Target Levels All Soil Types and Pathways. Guidance for determining background COC concentrations may be found in MRBCA Appendix M.
- ** See MRBCA Table B-3 – Tier 1 Risk Based Target Levels Residential Land Use Soil Type 2 (silty soil type).
- *** See MRBCA Table B-6.

EXHIBIT “E”

DEVELOPMENT PLAN

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:03:49 +0000

Exhibit "E"
Development Plan

Phase 1		Square Feet
Demolition		
Building 3 office annex		32,400
Ancillary facilities as needed		
Refurbish and Renovate		
Building 1 office		203,850
Building 2 high/low bay hangar		1,072,200
Truck Dock		79,200
Ancillary facilities as needed		
New Construction		
(1) Aircraft ramp A & B, approximately		366,000
Vehicle parking, approximately		150,000
West entrance, approximately		29,800
Phase 1 Area (36.38 acres)		1,584,713
Phase 2		
Demolition		
Building 48 paint booths		53,500
Building 48 support facilities		12,400
Ancillary facilities as needed		
New Construction		
Cargo building, approximately		65,000
Aircraft ramp C, approximately		247,000
(2) Ramp access, approximately		100,000
Vehicle parking, approximately		35,000
Truck dock, approximately		110,000
Phase 2 Area (10.49 acres)		456,944
Phase 3		
Demolition		
Building 4		7,400
(3) Building 6 utility parcel		18,750
Ac shelters equipment buildings		18,500
New Construction		
Truck park, approximately		616,000
Fuel storage, approximately		99,000
Phase 3 Area (14.23 acres, exclusive of the utility parcel)		619,858

- (1) Ramp B will be available upon completion of the Taxiway Victor Connector project (see Section 203 of the Lease Agreement).
- (2) The Ramp Access area to be constructed by the Lessee is within common use space and, although construction of the ramp access is part of Phase 2 development, it is not part of the Leased Premises and is not included in the Phase 2 Area total above.
- (3) The Boeing Utility Parcel containing approximately 3.29 acres including Building 6 is presently not part of the Leased Premises (see Section 202 of the Lease Agreement).



<p>LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®</p>	<p>Exhibit E</p> <p>Development Plan</p>	<p>Coordinate System:</p> <p>State Plane Coordinate, Missouri East Zone</p> <p>North American Datum 1983 Survey Feet</p> <p>Prepared By:</p> <p>Checked: 4/25/2016</p> <p>Reviewed and Approved By:</p> <p>Date:</p> <p>Drawing Name:</p> <p>Date:</p>
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