

LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT®

CLEAR CHANNEL OUTDOOR, INC.
d/b/a
CLEAR CHANNEL AIRPORTS

DISPLAY ADVERTISING CONCESSION AGREEMENT

AL# - 023

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
CONCESSION AGREEMENT
(Display Advertising)

THIS AGREEMENT, made and entered into as of the 29 day of October 2015, by and between the CITY OF ST. LOUIS ("**City**"), a municipal corporation of the State of Missouri and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports ("**Concessionaire**"), a corporation organized and existing under the laws of the State of Delaware.

WITNESSETH, THAT:

WHEREAS, the City now owns, operates and maintains an international airport known as "Lambert-St. Louis International Airport" ("**Airport**"), located in the County of St. Louis, Missouri;

WHEREAS, a Display Advertising Concession at the Airport is desirable for proper accommodation of the public;

WHEREAS, the City has determined that it is in the public's best interest for the following objectives to be met in the provision of a Display Advertising Concession:

- Provide a first-class Display Advertising Concession that meets or exceeds Airport user needs and adds value to other Airport and airline services;
- Maintain and operate a first-class automated Reservation Center Phone Board (**RCPB**) system for use by arriving passengers wishing to arrange lodging, ground transportation, and other local needs;
- Maintain and upgrade the Premises in ways which optimize advertising effectiveness and revenue generation, creatively utilizing both static and digital components of the Premises to drive revenue and enhance customer service;
- Propose and make renovations to the RCPBs that enhance the aesthetics and overall usability of the Premises;
- Maintain and manage the Airport Network Programming Service (**ANPS**) in the airline gate-hold areas;
- Provide a high level of service at prices that are attractive to Airport advertisers and competitive with prices found in comparable U.S. airports;
- Provide excellent customer service by operating the Display Advertising Concession with

well-trained, efficient, courteous and pleasant staff; and

- Be responsive to the Federal Aviation Administration (“FAA”) and City goals for Airport Concession Disadvantaged Business Enterprise (“ACDBE”) participation in concessions.

The order of these objectives should not be construed as an indication of their relative merit as viewed by the City.

WHEREAS, the City has advertised and received bids for the right to manage and operate a Display Advertising Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified and responsive bidder that submitted the highest and best bid deemed most advantageous to the City for the development, management and operation of a Display Advertising Concession (“**Concession**”) at the Airport, and best meets the City’s objectives..

NOW, THEREFORE, for and in consideration of the payments, promises and the mutual covenants and agreements herein contained and other valuable considerations, the City and the Concessionaire agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

SECTION 101. DEFINITIONS. The following words and phrases have the following meanings:

“**Advertising Category**” means the type of advertisement as it relates to the Percentage Fee as set out in Article V.

“**Agreement**” means this concession contract for and any amendments thereto, duly approved by the City.

“**Airport**” as stated in the preamble hereof.

“**Airport Concession Disadvantaged Business Enterprise (ACDBE)**” means a concession that is a for-profit small business concern:

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“**Airport Network Programming Service**” or “**ANPS**” means continuous audio and video programming packages consisting of news, information, advertising and promotional time, specifically designed for Airport broadcasting and providing to the Airport local insertion capability and time slots for public service announcements and advertising.

“Airport Properties Division” means that division of the City of 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 the Concessionaire’s point of contact with the Airport on all issues related to this Agreement.

“ANPS Operator” means the entity responsible for the operation, installation, maintenance, and management of the ANPS as designated by the Concessionaire and approved by the Director.

“Authority” means the City of St. Louis Airport Authority, the City department responsible for managing and operating the Airport.

“Build-Out Period” means the sixty (60) day period beginning on the Commencement Date during which no MAG Payments are due, but during which Percentage Fee Payments are due, to the City (see Article IV and Article V).

“City” as stated in the preamble hereof.

“Commencement Date” means the first day of the Term of this Agreement (see Article IV).

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

“Concession Fee” means the greater of the Minimum Annual Guarantee or the Percentage Fee due and payable to the City as specified in Article V.

“Concession Period” means the seven (7) Contract Years following the Build-Out Period.

“Contract Year” means a twelve (12) consecutive month period commencing on the first day of the Concession Period, and each twelve (12) month period thereafter during the Term of this Agreement (see Article IV).

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

“Digital Advertising” means advertising that is displayed on any digital medium such as televisions, video stripes, or other forms of electronic displays to include the ANPS.

“Director” means the Director of Airports of the City of St. Louis Airport Authority or his/her designee, and incorporates the granting of approval requirements of Section 1516 hereof.

“Environmental Laws” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, Environmental 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. §4321 *et seq.*; the Toxic Substance 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, U.S.C. §10101 *et seq.*, as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time.

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

“Existing Improvements” means, without limitation all equipment, fixtures and related installations, and improvements including all appurtenances thereto existing within the Premises as of the Commencement Date and owned by the City.

“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.

“Good Faith Efforts” means efforts to achieve an ACDBE goal or other requirement that, by their scope, intensity and appropriateness to this objective, can reasonably be expected to meet the programs requirement.

“Gross Receipts” means the total revenues from all sources and all types at this Airport under the Agreement performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order. Concessionaire is not entitled to any and all revenues derived from Airport’s locally inserted advertising on the Airport Network Programming Service. Only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;

- client agency fees;
- any amount paid by advertisers in connection with design, fabrication or installation of any advertiser's specialty or custom display/graphics (including without limitation, the printing distributing or maintaining of any advertiser's brochures) or with the design fabrication, installation or ongoing service of any new media technologies (including without limitation, the programming and maintenance charges for computer-operated, LCDs, video or interactive or motion displays;
- sale or trade-in value of any equipment or fixtures that were sold or transferred from the Premises provided the sale or transfer was approved for removal by the Director and the equipment or fixture was owned by Concessionaire;
- actual charges for utility costs (including telephone, data, and electrical) billed to advertisers on the RCPBs.

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

“Improvements” means, without limitation, all improvements, modifications, installations, construction, equipment, and fixtures built, installed, constructed, or erected during the Term of this Agreement by the Concessionaire or sublessees, and forming a part of and which are permanently affixed or attached to any portion of Airport’s real property or Existing Improvements within the Premises.

“Minimum Annual Guarantee” or **“MAG”** as stated in Article V, Section 502 hereof.

“Missouri Regional Certification Committee” or **“MRCC”** means the Unified Certification Program established by U.S. Department of Transportation to oversee the Unified Certification Process for the state of Missouri. Principal agencies are: Missouri Department of Transportation, City of Kansas City, Missouri, Kansas City Area Transportation Authority, City of St. Louis - Lambert Airport Authority and Metro.

“Percentage Fee” means the designated percentage of the Concessionaire’s Gross Receipts payable to the City, as set out in Article V.

“Premises” means a location or locations described in Article II, and shown on EXHIBIT A, that has or have been designated by the City for the sale of Concessionaire’s services or for other uses provided specifically herein, together with all Existing Improvements thereon.

“Provisions” means the terms, covenants, conditions, warranties, and specifications of this Agreement.

“Refurbishment” means to upgrade the Premises and return the Premises to original condition or the conversion of display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements.

“Refurbishment Costs” mean costs incurred to upgrade the Premises and return the Premises to original condition or convert display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest during construction and the internal costs of Concessionaire’s employees.

“Remediation Costs” means any losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) 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, and caused by, or arising out of Lessee’s operations or activities at the Premises or the Lessee’s use of the City’s property. Remediation Costs include investigation and evaluation costs, costs to implement 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, 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 Premises.

“Removable Fixtures” means all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor, or ceiling within the Premises or Existing Improvements, and identified and listed by Concessionaire on its Removable Fixtures list approved by the Director, as provided for in Section 710 of this Agreement.

“Reservation Center Phone Board” or “RCPB” means that portion of the Premises designed to accommodate passengers’ needs for arranging pick-up or lodging by use of advertising displays, auto-dial telephones, TTY Machines, and other useful information.

“Rules and Regulations” means those lawful, reasonable, and not unjustly discriminatory rules and regulations, including ordinances and operating directives, promulgated by the Airport

Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

“Static Advertising” means advertising that is displayed on any static medium such as backlit dioramas, tension fabric displays, column wraps, window clings, or other forms of displays to include specialty and associate-manned displays.

“Term” means the entire term of this Agreement (see Article IV).

“Transportation Security Administration” or **“TSA”** means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001, as amended, or any successor agency thereto.

“TTY Machine” means a device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening.

SECTION 102. INTERPRETATIONS. References in the text of this Agreement to articles, sections, paragraphs, or exhibits pertain to articles, sections, paragraphs, or exhibits of this Agreement, unless otherwise specified.

1. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
2. Words importing persons include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
3. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction, or effect.
4. Words importing the singular include the plural and vice versa. Words of any gender are deemed to include correlative words of the other gender.
5. The term **“including”** is be construed to mean “including without limitation,” unless otherwise expressly indicated.
6. All references to number of days mean calendar days.
7. Words used in the present tense include the future.

ARTICLE II PREMISES

SECTION 201. PREMISES. City hereby permits the Concessionaire to install, maintain and operate at the locations on Airport property including the Airport Terminals and Concourses in accordance with rights granted under Section 301 entitled "Rights", as described in **Exhibit A**, attached hereto and made a part hereof. The rights granted in Section 301 hereof must only be exercised within the Premises.

The Director has the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises. In the event that the Premises are relocated or reclaimed Concessionaire will be reimbursed the Unamortized Investment of the relocated Premises. In addition, the City will make good faith efforts to find replacement space that is of equal size and value as that of the reclaimed Premises. If replacement space is not located and developed by Concessionaire the MAG will be proportionately reduced, based upon the percentage of Gross Receipts of the Premises compared to the total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

Concessionaire accepts the Premises "AS IS" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its officers, employees, agents or representatives. City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Premises or any portion thereof and the use or condition of the Premises.

SECTION 202. RESERVATIONS. The grant of lease hereunder is subject to the following reservations and conditions:

- A. Concessionaire will not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. 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 Premises, together with the right to cause or allow in said airspace 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 or landing at, taking off from, or operating on or about the Airport.
- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire's use of the Premises, and provided further that such reservation or grant of rights does not directly result in additional cost or expense to Concessionaire.

- D. The City reserves the right (but will not be obligated to Concessionaire) 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 Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.
- G. During the time of war or national emergency the City will have the right to enter into an agreement with the Government of the United States of America (“**U.S. Government**”) for use of part of all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, will be suspended immediately upon receipt written notice from the City.
- H. This Agreement will become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. 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, does not substantially or materially interfere with the surface of the soil or with Concessionaire’s use of improvements thereon.

SECTION 203. ACCESS. Subject to the Provisions of this Agreement hereof, Concessionaire has the right of free access, ingress to and egress from the Premises for Concessionaire’s employees, agents, guests, patrons, licensees and invitees.

SECTION 204. PREMISES ADJUSTMENTS. If Premises are increased, reduced or changed as provided for in Section 201 of this Agreement, revised exhibits may be substituted for those herein without the necessity to amend this Agreement, which substitution will be made by Notice to Concessionaire from the Director on behalf of the City.

SECTION 205. STORAGE, CLOSET, OFFICE & EMPLOYEE BREAKROOM SPACE. Storage space, closet space, Concessionaire employee break room space and office space are **NOT** included in or provided for as part of this Agreement. If such space is required by the Concessionaire, the Concessionaire will be required to execute a separate agreement for any such space.

ARTICLE III
CONCESSION RIGHTS

SECTION 301. RIGHTS. City hereby grants to Concessionaire, subject to and in accordance with all the Provisions of this Agreement, the **non-exclusive** right, license and privilege, and Concessionaire hereby assumes the obligation to design, construct, operate, manage, market and maintain a Display Advertising Concession within the Premises. The following activities are inclusive of these rights:

The right to negotiate and execute advertising contracts with interested advertisers and install, operate, and maintain advertisements within the Premises only, including Static, Digital, and specialty advertising displays, the Reservation Center Phone Boards and the Airport Network Programming Service.

SECTION 302. LIMITATION OF RIGHTS. Concessionaire is not granted the right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. The Director reserves the right to require the immediate removal of any and all advertising copy deemed to be objectionable at the Director's sole discretion and without justification. All advertising contracts must be approved as to form by the Director. Staffed displays will only be permitted if specifically requested and approved by the Director. With the consent of the Director, Concessionaire will be permitted to install display advertising operations within airline clubs in the Airport provided it has executed an agreement to do so with the appropriate airline that operates the club. With the written consent of the Director, Concessionaire will be permitted to change the approved ANPS Operator

This Agreement grants no real or implied rights to any concession privileges at or on the Airport other than in the designated areas. The use of areas not specifically included in Exhibit A may be approved for a limited time and must be approved in advance and in writing by the Director (see Section 1516 entitled "Required Approvals").

ARTICLE IV
CONCESSION TERM

SECTION 401. TERM. The Term of this Agreement consists of Sixty (60) days Build-Out Period beginning on the Commencement Date and followed by the Concession Period consisting of Seven (7) Contract Years as written below, unless sooner terminated in accordance with other Provisions of this Agreement:

Commencement Date:	<u>November 1, 2015</u>
Build-Out Period:	<u>November 1, 2015 to December 31, 2015</u>
Concession Period:	<u>January 1, 2016 to December 31, 2022</u>

SECTION 402. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the Term of this Agreement will be necessary. Concessionaire covenants and agrees that at the expiration date of the Term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in a clean, sanitary, and good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear (taking into account the improvements, repair and maintenance required to be done by Concessionaire), acts of God, and other casualties excepted, and the City will have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 710 entitled "Title to Improvements, Equipment and Removable Fixtures").

SECTION 403. HOLDOVER PROVISION. If Concessionaire does, with the prior written approval of the Director, holdover after the expiration of the Term of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as stated for Contract Year Seven (7) and other fees and charges as set forth herein, unless different fees are agreed upon in writing by the Director on behalf of the City and the Concessionaire, and both parties will be bound by all the Provisions of this Agreement.

ARTICLE V FEES AND RENTALS

SECTION 501. GENERAL. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fees and other fees and charges as set forth in this Agreement including, without limitation, in Sections 502, 503, 504, 505, 507, 509, 510, Section 701.B, the utilities described in Section 804 and the liquidated damages described in Article XIII, *without demand*, during the Term of this Agreement.

SECTION 502. CONCESSION FEES. During each Contract Year or portion thereof, the Concessionaire agrees to pay to City a sum (the "**Concession Fees**") equal to the greater of: the Minimum Annual Guarantee (MAG) as set forth in Section 502.A below; or the aggregate of the applicable Percentage Fees for each Advertising Category as set forth in Section 502.B below which will be applied to the Gross Receipts of Concessionaire for each Contract Year or portion thereof.

- A. For Contract Years One (1) through Seven (7) during the Concession Period, the MAG will be Seven Hundred Twenty Five Thousand Dollars (**\$725,000.00**) per year.
- B. During the entire Term of the Agreement, the Percentage Fee for each Advertising Category will be as follows:

<u>Advertising Category</u>	<u>Percentage Fee</u>
Static Advertising	60%
Digital Advertising	40%
RCPB Advertising	50%

SECTION 503. PAYMENT. Concessionaire agrees to pay to City the Concession Fees set out in Section 502 above in the form of both MAG Payments and Percentage Fee Payments as described below:

- A. MAG Payments. The MAG Payment consists of an amount equal to 1/12 of the MAG for the applicable Contract Year paid in advance on or before the first (1st) day of each month during the Concession Period of the Agreement. MAG Payments begin on the first day of the Concession Period.
- B. Percentage Fee Payments. The Percentage Fee Payment consists of an amount equal to the aggregate of the applicable Percentage Fees for each Advertising Category applied to the Gross Receipts for the previous month to be paid on or before the 15th day of the second month and each succeeding month during each Contract Year during the entire Term of the Agreement (see Section 505 entitled "Unpaid Fees" and Article XIII entitled "Liquidated Damages" for the amount of any applicable service charge or liquated damages.)

SECTION 504. REPORTS

- A. Statement of Gross Receipts. Concessionaire shall submit to the City, by the fifteenth (15th) day of the second and each succeeding month of each Contract Year hereof, during the Term of the Agreement, two (2) copies of an accurate statement of Gross Receipts certified by an officer of the Concessionaire. The statement of Gross Receipts must separately state Gross Receipts by Advertising Category. Concessionaire shall report Gross Receipts on a form approved by the Director. The Director reserves the right to request Concessionaire to provide documentation in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in future solicitations for this or similar concessions.
- B. Final Statement of Gross Receipts. The final statement of Gross Receipts will be due fifteen (15) days following expiration or early termination of this Agreement. The City reserves the right to use these statements as a source of information to bidders in future solicitations for this or similar concessions.
- C. Certified Audited Report of Gross Receipts. Concessionaire shall submit to the Airport Properties Division an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year, during the Term of the Agreement. This audit report must be prepared by an independent Certified Public Accountant. The audit report must, at a minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report must also include a schedule showing the total of actual Concession Fee Payments to the City during the Contract Year and must state an opinion as to the correctness of the Concession Fee Payments without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing

Standards Board of the American Institute of Certified Public Accountants, will be deemed to be a default pursuant to Article XI herein.

- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Concessionaire shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Concessionaire shall, upon City verification and approval, deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year of the Term of the Agreement, the City will pay the amount of the overpayment to Concessionaire within thirty (30) days of receipt of the final audit report.
- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Concessionaire, the City will waive the annual Certified Audited Report of Gross Receipts requirement if, during the previous Contract Year, Concessionaire paid to the City only the Minimum Annual Guarantee (MAG) as set forth in Section 502 and 503. The City will review Concessionaire's payment history prior to approving the waiver request.
- F. Quarterly ACDBE Activity Reports. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement must be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.
- G. ACDBE Documentation. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation goal. These records must be retained for a minimum of three (3) years after the termination of this agreement. The City reserves the right to investigate, monitor and/or review records for compliance.

SECTION 505. UNPAID FEES. All unpaid Concession Fees or any other fees, charges or payments due the City hereunder must bear a service charge of 1.5% per month if same is not paid and received by the City on or before the twentieth (20th) day of the month in which said payments are due; and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

SECTION 506. PERFORMANCE AND PAYMENT BOND. Concessionaire agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount of **Two Hundred Fifty Thousand Dollars (\$250,000.00)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City will remain in full force and effect throughout the Term of this Agreement **and will extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** In the event that said bond should expire prior to expiration

or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond prior to the expiring bond's expiration date. Such bond must guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond must be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond must be kept in full force and effect during the Term hereof, **and must extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** City may agree to another form of deposit which provides equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within twenty (20) days.

SECTION 507. PROMPT PAYMENT OF TAXES AND FEES. Concessionaire warrants, covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses (municipal, state or federal) required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

SECTION 508. ACCOUNTING RECORDS AND REPORTS. During the Term hereof, Concessionaire shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Concessionaire shall make same records available in the St. Louis area for three (3) years following the expiration or early termination of this Agreement. These records must be accessible during usual business hours to the City or its duly appointed agents or auditors. Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Concessionaire's place of records.

SECTION 509. RIGHT TO AUDIT.

- A. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire's, subcontractor's, or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the fees and payments hereunder. If, by the results of the audit(s), it is established that additional fees are due to the City, the Concessionaire shall pay such fees to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between the fees and payments reported by the Concessionaire and the fees and payments determined by the audit, the cost of the audit will be borne by Concessionaire.
- B. If, as a result of an audit by any governmental entity, Concessionaire is required to restate Gross Receipts as defined herein, Concessionaire will, within thirty (30) days of finalization of the audit, report the change in Gross Receipts to the Airport. If the change in Gross Receipts

results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments.

SECTION 510. ADDITIONAL FEES, CHARGES AND RENTALS. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

- A. If the City has paid any sum(s) or has incurred any obligations or expenses for which Concessionaire has agreed to pay or reimburse the City for; or
- B. If the City is required or elects to pay any sum(s) or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the Provisions of this Agreement.

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 rentals 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 basic fees, charges and rentals, as set forth herein.

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

SECTION 511. NOTICE, PLACE AND MANNER OF PAYMENT. Payments to the City required by this Agreement must be made at the Airport Administrative Office at the address as set forth in Section 1501, or at such other place or by whatever payment method that the City may determine as the City may hereafter notify Concessionaire, and must be made in legal tender of the United States of America.

SECTION 512. COLLECTION OF ADVERTISING FEES. Concessionaire is responsible for the collection of all advertising fees or charges to be paid by advertisers, and is responsible for uncollected funds. Failure by an advertiser to pay Concessionaire does not relieve Concessionaire from paying to the City the fees and payments set forth herein.

SECTION 513. RADIO ADVERTISING. Concessionaire will provide to the City radio advertising time on stations owned by **iHeart Media, Inc.** in an amount equal to **Seventy Five Thousand Dollars (\$75,000.00) per Contract Year.** The advertising will be placed by the City's designated advertising agency and the cost will be calculated based upon the standard advertising rate for the station. If, at the end of any Contract Year, the City has purchased less than Seventy Five Thousand Dollars (\$75,000.00) worth of radio advertising time from Concessionaire, Concessionaire will pay to the City the difference between the advertising purchased and Seventy Five Thousand Dollars (\$75,000.00). If the City has purchased in excess of Seventy Five Thousand Dollars (\$75,000.00) worth of radio advertising time from Concessionaire, the City will credit to Concessionaire the difference. If the advertising time is used to promote an airline, no

more than Twenty Five Thousand Dollars (\$25,000.00) will be used to promote a single airline in any contract year.

ARTICLE VI CONCESSIONAIRE' S OPERATIONS

SECTION 601. STANDARDS OF SERVICE.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof.
- B. The Concessionaire shall, at its own cost and expense, furnish a first-class Display Advertising Concession to include Static, Digital, and specialty advertisements, RCPBs, and ANPS, serving the needs of all Airport users.
- C. Concessionaire shall ensure that each passenger and Airport customer receives prompt and efficient service. In conjunction with this requirement, Concessionaire shall ensure each advertising location contains up-to-date advertisements with up-to-date contact information.
- D. Concessionaire shall ensure that all Premises are cleaned and dusted no less frequently than every seven (7) days.
- E. Concessionaire shall ensure that all telephones on the RCPBs, including but not limited to handsets and keypads, at all locations are cleaned and sanitized no less frequently than every seven (7) days.
- F. Concessionaire shall check all Premises for mechanical malfunctions no less frequently than every seven (7) days. Concessionaire shall promptly repair any malfunctions, including but not limited to, advertisements, light bulbs, telephones, televisions, and digital display units. Concessionaire shall promptly notify the Airport in the event of any long term outage or malfunction. At the Director's request, Concessionaire shall place professionally made signage notifying passengers and Airport customers of any long term outage or malfunction. Note: Concessionaire is not responsible for the maintenance of the soffits above the RCPBs. However, the Concessionaire is responsible for the digital display units attached to the soffits above the RCPBs.
- G. Concessionaire shall respond within twenty-four (24) hours after notice by City of any and all maintenance issues.
- H. Concessionaire shall, no less than two (2) times per Contract Year, review, verify as operational, and update or repair as needed, the Braille and TTY Machines on the RCPBs. Concessionaire shall send the Airport Properties Division written notification when review and update has been completed.
- I. Concessionaire shall ensure that the exterior reservation centers, located outside of the terminal

buildings, are well maintained and have professionally made signage. Such signage must properly identify the units, their use, and the Concessionaire providing the service. All equipment, signage and supplies used must be durable, all-weather materials.

- J. Concessionaire shall ensure the pedestals of all exterior reservation centers located outside of the terminal buildings are painted during Contract Year 1 and Contract Year 5. Concessionaire shall send the Airport Properties Division written notification when painting of the pedestals has been completed in accordance with Section 708 entitled "Certificate of Completion".
- K. Deliveries of supplies, cash and coin to the Premises must be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
- L. Premises must be kept clean, neat, business-like, and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- M. Concessionaire shall assure that its agents and employees do not engage in solicitation or pressure sales tactics for products offered on or about the Airport, including agents working at any specialty advertising locations.
- N. Concessionaire's operations must fully comply with all FAA regulations including security requirements, Airport rules and regulations, and Airport security plan. Employees must be suitably badged in accordance with Airport security procedures and regulations and must fully comply with TSA regulation 1542 regarding conduct and access to the Airfield Operations Area ("AOA").

SECTION 602. HOURS OF OPERATION. Concessionaire shall operate 24-hours per day; seven days per week, 365/366 days per year, as applicable. Concessionaire may not change the hours-of-operation without written application to and written approval of the Director. The City may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

SECTION 603. PROMOTION. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Concessionaire to diminish the Gross Receipts of the Concessionaire under this Agreement will constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 604. PERSONNEL.

- A. Concessionaire shall ensure, *at its sole cost and expense*, all employees obtain an Airport-issued ID badge from the Airport Police Department and shall ensure all employees wear and display in an acceptable manner their Airport ID at all times while on Airport property. Employees must fully comply with TSA regulation 1542 regarding conduct and access to the AOA.

- B. Concessionaire, *at its cost*, acknowledges and agrees that all employees applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
- C. Concessionaire, *at its cost*, acknowledges and agrees that it shall conduct employee background checks of each of its personnel if required by the FAA, TSA or the City. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it must comply with all such changes throughout the Term of this Agreement.
- D. Concessionaire understands and agrees that fines and penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Concessionaire will promptly reimburse the City, within thirty (30) days of the City's request, for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.
- E. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and company-issued name tags so they may be identified by the public and indicates the fact and nature of their employment. Uniforms will be clean, neat, and worn according to company standards during the entire time the employee is on Airport property.
- F. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Concession.
- G. Concessionaire shall ensure staff demonstrates customer service by presenting a pleasant greeting and smile upon interaction with any customer.
- H. All employees shall act in a courteous and helpful manner at all times with customers and fellow employees. Employees are expected to behave in businesslike and professional manner at all times while in uniform and on Airport property.
- I. Employees shall provide a friendly and professional greeting to customers whenever and wherever contact is made; employees shall display a positive attitude toward passengers and fellow employees; English will be spoken by staff, except when necessary to accommodate customer; the use of foul or inappropriate language in public areas at any time is prohibited; employees shall smile and use a pleasant tone of voice when conversing with the customers; employees shall be actively working while on duty and refrain from gathering and "chatting" in groups while on duty, unless necessary; employees shall refrain from the use of cell phones while on duty; employees shall not nap or sleep in public areas while in uniform; and employees shall be attentive to customers.
- J. Employees are not permitted to utilize public seating, boarding areas, gate areas or lounge areas within the Terminal and Concourses. The above areas are intended for use by the traveling public and not as rest or lounge facilities for employees.

- K. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport's customer service program.
- L. Concessionaire acknowledges only direct support vehicles and equipment will be allowed on the AOA. Qualifying, direct support vehicles and equipment must be approved by the Airport Police Department and all drivers must attend Airport-sponsored driver training prior to driving on the AOA, and attend any recurrent driver training required by the Airport.
- M. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable federal, state, City, and local laws, rules and regulations including, without limitation, the Airport's Rules and Regulations, the Airport's Security Plan and all applicable FAA, TSA, & City security rules, regulations, plans orders, directives, requirements, and procedures.
- N. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.
- O. The Airport will provide the Concessionaire, at no cost or expense, **one (1) Terminal 1 Short Term Parking Garage** parking pass. Additional parking passes will be at *the sole cost and expense* of the Concessionaire.
- P. The Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 605. ONSET OF SERVICE. Concessionaire will receive the Premises "**AS IS**". Concessionaire will be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation, and maintenance of the Existing Improvements, Improvements, Removable Fixtures, equipment, and fixtures as is necessary to provide service pursuant to this Agreement. Notwithstanding any language to the contrary within this Section 605, during the Build-Out Period only, the City will allow Concessionaire to review the Premises to identify Existing Improvements determined by Concessionaire to be surplus and which Concessionaire would like removed. If the City, in its sole determination, agrees that an Existing Improvement is surplus, the City will remove, and be responsible for the costs associated with removing, the Existing Improvement. In the event an Existing Improvement is removed by City pursuant to a request by Concessionaire, Concessionaire acknowledges and agrees that said location will be removed from the Premises for the remaining term of this Agreement, unless otherwise agreed to in writing by the Director.

At the time of the award of this Agreement, Concessionaire submitted with its bid a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan with the previous

concessionaire to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

Concessionaire acknowledges, stipulates and agrees that the City will not be responsible or liable for any relocation costs associated with Concessionaires' personal property or Removable Fixtures including, without limitation, any loss of income or profit.

SECTION 606. PRICING. Concessionaire shall charge prices that are fair, reasonable and nondiscriminatory to all categories of users. The basis must be substantially similar to the prices charged for similar services at other airports of similar size. Prices are subject to review by the Director and must not be implemented until approved by the Director. Concessionaire agrees that it will not change prices until approved in writing by the Director.

Except as expressly permitted in this Agreement, Concessionaire may not permit any free or discounted advertising without the prior written approval of the Director.

SECTION 607. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who will manage and supervise the operations and the facilities and fully represent and act on behalf of the Concessionaire in all matters pertaining to its business operation. The manager(s) shall be available by phone during regular business hours. A responsible subordinate shall be in charge and available by phone at all times during the manager's absence. The Manager or subordinate shall be available after hours by phone to resolve any issues pertaining to the Concession operations.

SECTION 608. CONFLICTS. Concessionaire shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

SECTION 609. RECORD KEEPING. Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of revenue as required by Article V of this Agreement. This system must be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and ACDBE participant(s) under this Agreement (these records are to be retained by Concessionaire). Concessionaire must also maintain records that document, in a format acceptable to the Director, the portion of revenue attributable to ACDBE participants.

SECTION 610. TRANSITION PERIOD. If applicable, during any future transition of the Concession to another Concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

SECTION 611. OPERATION.

A. Concessionaire shall be responsible for all aspects of the development, management and operation of this Concession. Further, Concessionaire shall provide and be responsible for all

employees and necessary components of the operation, including inventory, fixtures, equipment, Removable Fixtures and supplies.

- B. The City will not be responsible for any equipment, Improvements, Removable Fixtures, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

SECTION 612. COMMUNICATION.

- A. If requested, Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Airport's discretion) with the appropriate representative of the Airport Properties Division to discuss sales and the DBE Program office to discuss ACDBE participation, or any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for notifying the Airport Properties Division of any problem that reduces service or sales levels or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

SECTION 613. CUSTOMER COMPLAINTS. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every complaint, written or oral, within seven (7) calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

SECTION 614. DELIVERIES. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the City.

SECTION 615. OPERATIONAL AUDIT. During the Term of this Agreement, Concessionaire shall be subject to regular operational facilities inspections of Concessionaire's operations at the Airport.

SECTION 616. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device will be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld. No antenna or aerial will be erected on the roof, interior walls or exterior walls of the Premises or on the Airport without, in each instance, first obtaining the prior written consent of the Director. Any radio, television, or other similar device, antenna or aerial so installed without such prior written consent will be subject to removal and forfeiture without notice at any time. No loudspeakers, televisions, phonographs, radios, or other devices will be used in a manner so as to be heard outside the Premises without the prior written consent of the Director. Surveillance equipment will be permitted within the Premises for surveillance within the Premises only. Concessionaire is not permitted, nor may Concessionaire permit others to use, establish, purchase, sell, or maintain any type of wireless data transmission service or antennae in, on or from the Premises without obtaining the prior written consent of the

Director, whose consent may be withheld for any reason whatsoever, or for no reason. The cost removal of any of the foregoing will be borne by the Concessionaire. It is agreed that all television, radio, antenna, wireless data transmission service, and other similar devices installed and in place prior to the Commencement Date are considered approved by the Director. In addition, wireless transmission of data from Concessionaires point of sales systems, if applicable, to its accounting and other systems will be reasonably permitted.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

SECTION 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Concessionaire takes the Premises “**AS IS**” as provided for in Article II, Section 201 hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, install, replace, equip and furnish Improvements, Removable Fixtures, equipment and fixtures, and make related facility changes as needed to operate a Display Advertising Concession, in accordance with and subject to the Provisions of this Agreement.
- B. Concessionaire agrees that all such work will be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.
 - 1. Concessionaire shall submit a signed Tenant Construction or Alteration Application (“**TCA**”) including complete construction drawings and specifications, as required by Section 704, to the Airport Properties Division. The TCA shall be submitted for each location in accordance with the construction drawings and specifications. Concessionaire also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Concessionaire ongoing coordination with the City at all times is crucial.
 - 2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Division. (A building permit number is required before the TCA can be approved.)
 - 3. Concessionaire shall submit the contractor’s liability insurance certificates, performance bonds, and payment bonds, required by Sections 705 and 706, to the Airport Properties Division not more than forty-five (45) days following the TCA approval by the Airport Properties Division and prior to beginning of work.
 - 4. Concessionaire shall use only City-approved contractors or subcontractors for improvements affecting control or programming of Airport systems including, but not limited to, security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.
 - 5. Concessionaire shall complete all construction and open all Premises fully fixtured and operational no later than one hundred eighty (180) days after full execution of the

Agreement by the City (also see Article XIII).

6. Failure to open and operate in accordance with this Section 701 may result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500.00) per day** for each day beyond ten (10) days after the Commencement Date.
7. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Division, as required by Section 708 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (“PCB”) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area will not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area will be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

SECTION 702. INITIAL MINIMUM INVESTMENT. In connection with Concessionaire’s performance under Section 701 of this Agreement, and as agreed to in advance in writing by the City, Concessionaire shall expend or cause to be expended Refurbishment Costs for the Refurbishment of the Premises, including but not limited to RCPBs, in an amount not less than **Three Hundred Thousand Dollars (\$300,000.00) (the “Initial Minimum Investment”).** Concessionaire shall complete or cause to be completed such Refurbishment subject to and in accordance with all the Provisions of this Agreement. Concessionaire’s Refurbishment must be completed no later than **one (1) year after the Commencement Date** of the Agreement unless delayed or postponed at the Director’s written direction.

Concessionaire shall furnish the Director with satisfactory proof of Refurbishment Costs for the unit within one hundred eighty (180) days following completion of work to the Premises. This proof of Refurbishment Costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified by an Independent Certified Public Accountant, and will supply the resulting audit report to the Director. Concessionaire shall provide to the Director any other proof or documentation required by the Director to ensure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Initial Minimum Investment. However, in the event Concessionaire’s actual expenditures for Refurbishment Costs are less than the Initial Minimum Investment, the difference will be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 703. MID-TERM REINVESTMENT Concessionaire covenants, warrants, represents, and agrees that the Concessionaire shall expend or cause to be expended Refurbishment Costs for Refurbishments to the Premises in an amount not less than **Fifty Thousand Dollars (\$50,000)** (the “**Mid-Term Reinvestment**”) during **Contract Year 5** of the Agreement. The Mid-Term Reinvestment to Refurbish the Premises including New Improvements will include only those Refurbishment Costs incurred or expended by the Concessionaire or its sublessees’ during Contract Year 5, unless delayed at the City’s direction. Concessionaire shall perform and complete the Refurbishments for the Mid-Term Reinvestment in accordance with the Provisions of this Agreement. The Director reserves the right to participate in and approve the Concessionaire’s Mid-Term Reinvestment plans to Refurbish the Premises.

Concessionaire shall furnish the Director with satisfactory proof of the Mid-Term Reinvestment within one hundred eighty (180) days following completion of work to the Premises. Upon completion of the Refurbishment, the Concessionaire shall promptly have the Refurbishment Cost for Mid-Term Reinvestment to Refurbish the Premises certified by an Independent Certified Public Accountant and shall promptly supply the resulting audit report to the Director. Concessionaire shall also promptly provide to the Director any other proof or documentation reasonably requested by Director to insure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Mid-Term Reinvestment amount. However, in the event Concessionaire’s actual expenditures for Refurbishment Costs to Refurbish the Premises are less than the Mid-Term Reinvestment amount of Fifty Thousand Dollars (\$50,000.00), the difference will be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 704. PREPARATION OF PLANS AND SPECIFICATIONS. Concessionaire shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. ***Concessionaire shall begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.***

SECTION 705. CONTRACTOR’S LIABILITY INSURANCE. In any contract appertaining to improving, constructing, maintenance, repair, or equipping of the Premises, Concessionaire shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) as to any one occurrence. Said insurance must be in a form acceptable to the City.

SECTION 706. PERFORMANCE AND PAYMENT BONDS. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish both a Performance Bond **and** a Payment Bond **each** in the full amount of any contract in a form acceptable to the City. The Payment Bond must comply with the coverage requirements and conditions of Section 107.170

RSMo (Revised Statutes State of Missouri). Copies of the bonds must be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond will be used for the completion of said construction and/or the payment of laborers and material suppliers, as the case may be.

SECTION 707. MECHANICS' AND MATERIALMEN'S LIENS. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

SECTION 708. CERTIFICATE OF COMPLETION. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings, preferably in an electronic format, within ninety (90) days of opening of each retail location.

SECTION 709. SIGNS.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "**sign**" as used herein, means advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire has the right to install such advertising and identification signs as may be necessary for the proper conduct of a Display Advertising Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to existing signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 709 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all 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 will become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining to the Display Advertising Concession or place any signs outside of the Premises without the prior written approval of the Director.
- E. Handwritten signs are strictly prohibited.
- F. The Director reserves the right to require the removal of any signs or advertising in, on or within the Premises deemed unacceptable or improper and the Director's decision will be final and binding.

SECTION 710. TITLE TO IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES.

All Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications, and enlargements thereof will become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the Term and in accordance with this Agreement.

All Removable Fixtures will remain the property of Concessionaire, and must be promptly removed by Concessionaire at date of expiration or early termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Removable Fixtures must be submitted in writing to the Director by Concessionaire for the Director's approval, and such list must be updated by Concessionaire no less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date or as may be necessary or as requested by the City.

The City reserves the right, and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Removable Fixtures and restore the Premises to an acceptable condition as approved by the Director. Concessionaire agrees to bear all costs of such removals and restorations (see Section 402 entitled "Surrender of Possession"). If after fifteen (15) days following the expiration or early termination of this Agreement, Concessionaire fails to remove its Removable Fixtures from the Premises, such Removable Fixtures may be deemed abandoned. In addition to whatever other rights are available to the City, with prior notification of Concessionaire, the City may: (i) remove and store all or any portion of the Removable Fixtures at Concessionaire's expense, or (ii) take title to, use, sell or otherwise dispose of all or any portion of the Removable Fixtures. If the City takes title to any Removable fixtures or otherwise disposes of the property, the City shall be entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the Concessionaire's breach of its covenant to timely remove its Removable Fixtures.

ARTICLE VIII
USE OF PREMISES

SECTION 801. COMPLIANCE WITH LAWS AND REGULATIONS. Concessionaire shall comply with all applicable Rules and Regulations, the Airport Certification Manual, Airport Security Plans and procedures, and operating directives, environmental plans or program, promulgated or established by the Airport Authority, the Airport Commission, the Director, or the City, as they may be amended from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises and/or its operations within the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

SECTION 802. USE. Concessionaire shall provide and pay for all repairs and maintenance of the Premises, *except* the following which will be the responsibility of the City:

- A. The structural components of the building.
- B. The utility system to the point of Concessionaire's connection to the utility system, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

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

- A. Keep the Premises clean and sanitary in accordance with Section 601 of this Agreement.
- B. Keep all its equipment and fixtures within the Premises in good repair and appearance including, without limitation, all Improvements, Existing Improvements, and Removable Fixtures.
- C. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage, recycling and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.
- F. If the City provides or designates a service for picking up refuse and garbage, Concessionaire will be required to use said service.
- G. If the City establishes a recycling program, the Concessionaire will fully participate in said recycling program. Concessionaire must comply with all applicable City, county, state, and federal regulations regarding recycling.
- H. Concessionaire shall break down or cause to break down all cardboard boxes prior to their disposal.
- I. Confine all handling and holding of Concessionaire's property to the Premises.

- J. Keep the Premises free of all pests, providing such pest control services as required.
- K. Keep the Premises secured at all times.
- L. Provide, at Concessionaire's sole cost and expense, a functional mailing address or other means of receiving mail, and ensure all mail is directed to that address. The City is not responsible for the Concessionaire's mail or the subsequent delivery thereof.
- M. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including, without limitation, loss of profit or business, actual, incidental, consequential or special damages. Notwithstanding, if Concessionaire is negatively impacted the City will make good faith efforts to work with Concessionaire to provide a solution that will offset the negative impact.

SECTION 803. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is practicable) to enter upon, and in, the Premises for the following purposes:

- A. To inspect such Premises to determine whether Concessionaire has complied, and is complying, with the terms, covenants and conditions of this Agreement.
- B. To perform maintenance and make repairs Concessionaire is obligated, but has failed to do so after the City has given Concessionaire notice to do so, in which event, Concessionaire shall reimburse the City for the cost thereof, plus a charge of fifteen percent (15%) for overhead, within thirty (30) days of the City's written request or demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections, remediation, studies and assessments during normal business hours.

SECTION 804. UTILITIES.

- A. **Electrical Fee.** The Concessionaire agrees to pay a monthly charge for electricity consumed based upon the number of advertising locations and the electrical specifications of the displays. **The monthly charge as of the Commencement Date is \$2,500.** The amount may be recalculated as part of the review of any tenant construction application for the addition, removal or change in advertising displays.

- B. Electrical Service & Supply. If electrical service outlets are not available where needed, Concessionaire will be responsible for bringing electrical service to the Premises. Concessionaire shall be responsible for any needed modifications or upgrades in electrical supply caused by increased lighting or other changes to the Premises made by the Concessionaire.
- C. Other Utilities. Concessionaire shall provide and pay for all other utilities (including telephone and other third party service) it requires, including but not limited to deposits, installation costs, costs of upgrading or relocating utility service, connection charges, telephone and data lines it requires, meter deposits, and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

The City will not be liable to Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. Concessionaire does hereby release and discharge the City from any and all inconvenience, losses, claims, or cause of actions arising out of or incidental to such interruption, including, without limitation, loss of profit or business, actual or incidental, consequential or special damages.

SECTION 805. INTERFERENCE WITH AIRPORT UTILITIES. Concessionaire shall not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

SECTION 806. INTERFERENCE TO AIR NAVIGATION. Concessionaire warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the FAA, will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Concessionaire at its expense. Concessionaire warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the Air Traffic Control Tower and its operations. Concessionaire further warrants, represents and agrees not to 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.

ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

SECTION 901. INSURANCE.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents

and employees to be insured as additional insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and at the Airport.

B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:

1. Commercial General Liability in an amount not less than Five Million Dollars (\$5,000,000.00), per occurrence and in aggregate.
2. Automobile Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of Five Million Dollars (\$5,000,000.00) to Concessionaire's automobile liability insurance.
3. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire 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 Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof will apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property including, without limitation, Concessionaire's personal property and Removable Fixtures. The City is not required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
5. Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City must be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000.00) or less.
6. Other Property Coverage. Concessionaire 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 form and which covers Concessionaire's

improvements to the Premises including, without limitation, Improvements, Removable Fixtures, trade fixtures, and equipment. The City must be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's Removable Fixtures and personal property).

C. Issuers of Policies. The issuer of each policy required herein must be a financially sound insurance company authorized to issue insurance policies 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 similar recognized responsibility.

1. Form of Policies. The insurance may be in one or more policies of insurance.
2. Non-waiver. Nothing the City does or fails to do will relieve Concessionaire 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.
3. Insured Parties. Each policy by endorsement, 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 Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to and does not, make the City a partner or joint venturer with Concessionaire in its operations.

The "additional insured" language must read exactly as follows: "St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City and its Board of Aldermen and Airport Commission, and their respective officers, employees, and agents are additional insured on the General Comprehensive and Automobile Liability portions of the insurance."

The "Certificate Holder" portion should read exactly: "City of St. Louis, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145."

4. Deductibles. Concessionaire shall 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 Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
5. 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.
6. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation must be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
7. Liability for Premium. Concessionaire shall be solely responsible for payment of all

insurance premiums required pursuant to this Agreement, and the City will not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus fifteen percent (15%) administrative charge, from Concessionaire.

8. **Proof of Insurance.** Within thirty (30) days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance and required endorsements. At least fifteen (15) days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or reduction in coverage, 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 Concessionaire, the City will have the right to examine Concessionaire's insurance policies as they relate to this Agreement.
- D. **Maintenance of Coverage.** Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, 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 Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 902. CONCESSIONAIRE ACTIONS AFFECTING INSURANCE. Concessionaire must 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 Agreement. If such Concessionaire's act, or failure to act, causes cancellation of any policy, then Concessionaire shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Concessionaire does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Concessionaire shall immediately remedy such actions and pay the increase in premiums, upon notice from the City to do so; but in any event, Concessionaire will hold the City harmless for any expenses or damage resulting from any such action.

SECTION 903. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the affected Premises will be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and will thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the affected Premises will be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises will be paid up to the time of such damage and will thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City will use its reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs will not increase as a result of any such alternate facilities unless Concessionaire requests additional space or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. Total Damage.
1. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City will notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace the affected Premises. However, the City will be under no obligation to replace or reconstruct the affected Premises. The fees payable hereunder with respect to affected Premises must be paid up to the time of such damage and thereafter will cease until such time as replacement or reconstructed space will be available for use by Concessionaire.
 2. If the City elects to reconstruct or replace affected Premises, the City will use reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space is not replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Concessionaire will have the right, upon giving the City thirty (30) days advance notice, to delete the affected

Premises from this Agreement, but this Agreement will remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its Concession at the Airport.

3. If the City elects not to reconstruct or replace affected Premises, the City will meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire will have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement will remain in full force and effect with respect to the remainder of said Premises, unless the loss of such Premises prevents Concessionaire from operating its Concession at the Airport.

D. Scope of Restoration of Premises.

1. The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this section will in any event be limited to using due diligence and reasonable efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and will further be limited by the provisions of Sections 903 A-C. If the City elects to repair, reconstruct, or replace affected Premises as provided in this section, then Concessionaire must proceed with due diligence and at its sole cost and expense to repair, install, reconstruct, or replace its signs, fixtures, equipment, furnishings, Removable Fixtures, Improvements, and other items provided, constructed, or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
2. In lieu of the City's repair, reconstruction, or replacement of the affected Premises, as provided in this section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of this Agreement, including without limitation, Article VII. The City shall reimburse Concessionaire for the cost of such authorized work performed by Concessionaire as agreed to in writing by the City and the Concessionaire. Concessionaire will be considered to be doing such work on its own behalf and not as a Concessionaire or contractor of the City.

- E. Damage From Concessionaire Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Concessionaire, its agents, servants, or employees, or those under its control, there will be no abatement of fees during the restoration or replacement of said Premises. In addition, Concessionaire will have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this section exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Concessionaire shall promptly pay the amount of such additional costs to the City.

SECTION 904. INDEMINIFICATION.

- A. Concessionaire 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**”) 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 Agreement, the conduct of the Concessionaire or Concessionaire’s use of the Premises or other areas or facilities at the Airport by Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- 1) the acts or omissions of Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
 - 2) Concessionaire’s use or occupancy of the Airport, including but not limited to the Premises; and
 - 3) any violation by Concessionaire in the conduct of Concessionaire’s Concession or its use of its Premises or other areas or facilities at the Airport of any Provision of this Agreement.

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

- B. Concessionaire 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 Premises, or which arise out of the operations of Concessionaire or by reason of Concessionaire’s occupancy of its Premises 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 Concession-related receipts. However, Concessionaire 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 reasonably necessary to permit Concessionaire to contest or appeal the same. Concessionaire shall 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 Concessionaire. Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Concessionaire 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 Airport, by

Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire's use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall 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 Agreement prohibiting or limiting assignments, subletting or subcontracting.

- D. Concessionaire 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 or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, officers, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.
- E. If a prohibited incursion into the Airport Operations Area ("AOA") 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 Concessionaire's employees, officers, agents, contractors, independent contractors, sublessees, invitees, licensees, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire 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 shall notify Concessionaire 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. Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the City applies 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 Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Concessionaire.
- H. The duty to defend, indemnify, hold harmless, and reimburse applies to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal

defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.

The provisions of this Section survive the expiration or early termination of this 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 Concessionaire in accordance with this Section. Any final judgment rendered against the City for any cause for which Concessionaire is liable hereunder will be conclusive against Concessionaire as to amount upon the expiration of the time for appeal there from. Nothing in this Article 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 is not to 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, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.
- J. Notwithstanding the provisions of this Section, Concessionaire will have no obligation to defend, indemnify, or hold harmless the City for any consequential 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 ten percent (10%) liable due to contributory negligence.
- K. This Section survives the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 will in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the Provisions of this Agreement.

SECTION 905. CITY NOT LIABLE. Unless otherwise expressly provided for in this Agreement, the City will not in any event be liable to Concessionaire for:

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, or suppliers;
- B. Concessionaire's failure to perform any of the obligations hereunder or for any delay in the performance thereof;

- C. Any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, 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 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 SUBCONTRACTING

SECTION 1001. ASSIGNMENT AND SUBCONTRACTING.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City will be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, will include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder will be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all applicable Provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement; (iv) a provision providing that all terms of the sublease are subject to and subordinate to the Provisions of this Agreement; and (v) a provision that the term of the sublease will expire immediately at the expiration or early termination of this Agreement.

The parties understand and agree that Concessionaire is responsible for the performance of its assignees, sublessees, and subcontractors under this Agreement. Concessionaire agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Concessionaire or any Provision of this Agreement. There will be no reduction of the Minimum Annual Guarantee payable to the City during any such period of change-out or vacancy of a subcontractor or sublessee.

- C. No subcontract, sublease, or other agreement will be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, will constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Article XI. 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.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

SECTION 1101. CITY'S RIGHT TO TERMINATE. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions will constitute a material breach thereby justifying the termination of this Agreement in its entirety:

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, are of a material amount (defined for this Section as an amount in excess of \$1,000.00) and remain unpaid after the date the same becomes due and Concessionaire does not satisfy the obligation after written notice and a reasonable cure period.
- B. If during the term of this Agreement, Concessionaire:
1. Applies for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
 2. Files a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 3. Makes a general assignment for the benefit of creditors;
 4. Files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;

5. Files an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Term of this Agreement, an order, judgment or decree is entered by any court of competent jurisdiction; or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree, continues unstayed and in effect for any period of ninety (90) consecutive days;
6. Fails to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. Fails to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
8. Allows a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire that is not removed or enjoined within thirty (30) days;
9. Deserts, vacates or discontinues all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or
10. Fails in the performance of any Provision herein required to be performed by Concessionaire when not cured upon written notice and a reasonable cure period.

On the date set forth in the notice of termination, the Term of this Agreement and all right, title and interest of Concessionaire will expire, except as otherwise provided in Section 1103 hereof. Failure of the City to take any authorized action upon default of any Provision required to be performed, kept and observed by Concessionaire will not be construed to be or act as a waiver of default or in any subsequent default of any Provision herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any Provision herein required to be performed, kept and observed by Concessionaire will not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any said Provision.

SECTION 1102. CONCESSIONAIRE'S RIGHT TO TERMINATE. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City abandons the Airport for a period of at least sixty (60) days and fails to operate

and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

- C. If the City fails in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

SECTION 1103. PROCEDURES FOR TERMINATION. No termination declared by either party will be effective unless and until not less than thirty (30) days have elapsed after written notice by either party to the other specifying the date and cause of termination. No such termination will be effective if the party at default (i) cannot by the nature of the default cure it within such thirty (30) day period; (ii) commences to diligently correct such default within such thirty (30) day period; and (iii) corrects such default as is reasonably practicable. Notwithstanding the foregoing, the effective date for termination will be thirty (30) days after written notice by City to Concessionaire for failure to make any payment when due, or for failure to provide the security for performance as specified in Article V or for failure to provide any insurance coverage as specified in Article IX unless cured in such thirty (30) days after written notice by City to Concessionaire.

SECTION 1104. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of the City and Concessionaire specified in this Article are not intended to be and are not exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

ARTICLE XII
AIRPORT CONCESSIONAIRE DISADVANTAGED
BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

SECTION 1201. COMPLIANCE.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than **Thirteen and Thirty Nine Hundredth Percent (13.39%)** participation in the ownership, management, and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal will be measured as a percentage based on the Gross Receipts. The goal remains in effect throughout the Term of the Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee ("MRCC") certified ACDBEs.
- B. If Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Concessionaire will not be required to perform additional Good Faith Efforts, except in the event that Concessionaire's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Concessionaire's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Concessionaire will be required to perform the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following the loss of ACDBE participation and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.

- C. If Good Faith Efforts did not result in fulfillment of the ACDBE goal, Concessionaire must again complete the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following commencement of the Term of this Agreement and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- D. In the event that any ACDBE Sublessee defaults, Concessionaire agrees to immediately take steps to obtain a replacement certified ACDBE through Good Faith Efforts. Notwithstanding, if ACDBE goes over the Personal Net Worth limitation, their participation will still count until the end of the lease term as per FAA/DOT regulations. It is the intent of City to have a certified ACDBE Sublessee replace any ACDBE Sublessee that has defaulted. Replacement ACDBE's must be approved in writing by the Director. If a replacement ACDBE cannot be located, Concessionaire must make good faith efforts to sublease other rights of Concessionaire to secure ACDBE participation. The Director will determine if Concessionaire has made acceptable Good Faith Efforts. Concessionaire must immediately operate in lieu of an ACDBE that has failed to perform due to default of its sublease until such time as a replacement ACDBE sublessee begins operation. The loss of an ACDBE does not relieve Concessionaire of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Concessionaire assistance in locating ready, willing, and able ACDBE firms.
- E. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, creed, color, religion, sex, national origin or ancestry in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.
- F. Concessionaire shall operate its Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. Concessionaire shall also comply with any City of St. Louis executive orders, resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City will have the right to terminate this Agreement and/or seek other remedies at law and/or inequity.
- G. The City will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including but not limited to breach of contract action, pursuant to the terms of the contract. In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to the remedies of 49 CFR Part 23, Section 23.11. The City will implement the following additional monitoring and compliance procedures. Operators or contractors will be required to submit quarterly gross receipts earned by ACDBEs. Operators

or contractors will be required to submit, for review and approval, a written notification of any material change in the duties, functions and responsibilities of ACDBEs prior to implementing the change. Operators or contractors will be required to list the specific duties, functions and responsibilities that ACDBEs will perform.

- H. The City will perform periodic reviews, including site visits, each year to confirm ACDBEs are performing listed duties, functions and responsibilities. The City will request from Operator any expenditures made with ACDBEs in performing services and supplying goods. Those expenditures will be reported quarterly to the City. The City will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26, Section 26.107. The City will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The City will have all remedies available to the City at law or in equity in the event of non-compliance with the ACDBE regulations herein, including but not limited to breach of contract action, pursuant to the term of the contract.

ARTICLE XIII LIQUIDATED DAMAGES

SECTION 1301. LIQUIDATED DAMAGES. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches any of the terms, covenants or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Concessionaire of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first default or breach in any category will result in a warning letter. The second default or breach will require Concessionaire to pay liquidated damages in the amount listed below. For the third default or breach in the same category, Concessionaire will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Concessionaire shall pay to City the third default or breach amount plus an additional 100%. Such liquidated damages will be due and payable by the Concessionaire within 30 days of the City's request or notice. The stated defaults or breaches in this Section are cumulative over the term of this Agreement and are in addition to any other remedies City may have under this Agreement or at law or in equity. For any defaults or breaches specified in this section with associated liquidated damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

BREACH OR DEFAULT	SECOND BREACH	THIRD BREACH
A. Unapproved equipment or placement of equipment in areas not authorized by City.	\$500.00 per day	\$750.00 per day

B. Late monthly reporting of gross receipts in breach of Article V.	\$50.00 per day	\$100.00 per day
C. Failure to deliver on-time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$200.00 per day	\$300.00 per day
D. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00 per day	\$750.00 per day
E. Inoperable equipment or equipment not repaired within 15 days of notice to Concessionaire.	\$200.00 per day	\$300.00 per day
F. Late annual financial reporting in violation of Article V.	\$50.00 per day	\$100.00 per day

SECTION 1302. CONTINUING OPERATIONS. Concessionaire acknowledges, stipulates, and agrees that the continuous operation of all the Premises is essential to the provision of excellent customer service to the traveling public. If Concessionaire fails to operate any portion of the Premises set forth in EXHIBIT A for more than five (5) consecutive days, except in the case of damage or destruction of the Premises or if Concessionaire is making Improvements as provided for in Article VII, Concessionaire shall either return the Premises to the City without cost to the City or pay to the City an amount equal to the non-airline square footage rental rate then applicable as Liquidated Damages to compensate the City for the failure.

ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS

SECTION 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS. Concessionaire warrants and covenants that in conducting any activities or business on Airport property, including any activities directly related or incidental to its use and occupancy of Premises, Concessionaire shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws.

Concessionaire further covenants and warrants as follows:

A. Environmental Permits.

1. Concessionaire shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Concessionaire engages on the Premises.
2. Concessionaire shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Concessionaire or Concessionaire's activities on the Premises, including any plans, monitoring, recordkeeping or programs prepared in conformance with such Environmental Permits or Environmental Laws; provided however, that the City shall adequately notify Concessionaire of such

Environmental Permit and associated requirements, including all applicable deadlines for compliances.

3. The City and Concessionaire shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit, Environmental Law and any associated requirements to ensure safety and to minimize cost of compliance.
- B. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused, handled, or owned by Concessionaire, its employees, agents, contractors, suppliers, licensees, sublessees, guests or invitees, and which is required by applicable Environmental Laws, Environmental Permits, Rules and Regulations, or any plan or program prepared in response to Environmental Laws, or Environmental Permits to be reported by Concessionaire, whether as a result of negligent conduct or otherwise, at, on, about, or under the Premises, or in the event any written claim, demand, complaint or action is made or taken against Concessionaire that pertains to Concessionaire's failure or alleged failure to comply with Environmental Laws or Environmental Permits at the Premises or which pertains to the release of Hazardous Materials by Concessionaire at the Premises or the Airport, Concessionaire shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials on or under the Premises, Concessionaire shall simultaneously provide a copy of such notice or report to the City.
- C. Environmental Remediation. Concessionaire shall promptly and timely undertake all necessary steps to promptly 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 Concessionaire or its agents, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Premises or Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work must be consistent with remediation standards established by or derived from the appropriated government agency responsible for enforcing Environmental Laws or Environmental Permits. Such Remediation Work will be performed at Concessionaire's expense. Except in the event of an emergency, such Remediation Work will be performed after Concessionaire, taking into consideration the circumstances, timely and promptly submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through notice; provided, however, that the City's approval will not be unreasonably withheld or delayed (see Section 402 entitled "Surrender Of Possession"). The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument on the land title. Specific cleanup levels for any Remediation Work by Concessionaire will be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits and be consistent with the

commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or 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 current and/or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City will have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.

- D. Access for Environmental Inspection. Upon reasonable notification to Concessionaire, the City will have reasonable access to the Premises to inspect the same in order to confirm that Concessionaire is using the Premises in accordance with this Section 1401. Concessionaire shall cooperate fully with any such inspections provided that such inspections do not unreasonably interfere with Concessionaire's operations. If the City's inspection results in any type of written report, the City shall provide Concessionaire a reasonable opportunity to timely review and comment on a draft of the report. Concessionaire shall provide to the City for its review and comment copies of: any and all notices 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, Concessionaire responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or finals, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with the Subsection to the extent consistent with the City's legal obligations.
- E. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Premises, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement, the City, as may be necessary or required by applicable Environmental Laws, Environmental Permits, and Rules and Regulations, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws, Environmental Permits, and Rules and Regulations in accordance with the Provisions of the Agreement. All Remediation Costs incurred by the City must be timely paid or reimbursed by Concessionaire within thirty (30) calendar days of the City's written notice. Subsequent to receipt of the City's notice to perform the Remediation Work, the Concessionaire shall not undertake performance of such Remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, will be performed in accordance with the provisions of Section 1401.C, but only after first having provided notice to Concessionaire of such failure to comply, and thirty (30) days within which Concessionaire may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Concessionaire's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon

the Concessionaire's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.

- F. Review of Environmental Documents. At the reasonable request of the City, Concessionaire shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Concessionaire 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 pertains to the Airport or the Premises, and which would be discoverable in litigation.
- G. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided for in this Article XIV survives the expiration or early termination of this Agreement.
- H. Pollution Control. In addition to all other requirements of this Agreement, Concessionaire, at its cost, shall manage all its operations at the 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 and Storm Water Management Plan, which will be provided to Concessionaire at Concessionaire's written request.
- I. Environmental Covenants. Concessionaire will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises or the Airport; (ii) limits the use of the Premises to nonresidential uses; and/or (iii) reasonably restricts access to soil and/or disturbance of soil underlying the Premises or the Airport.

ARTICLE XV MISCELLANEOUS PROVISIONS

SECTION 1501. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder must be in writing and must be sent by certified mail, return receipt requested, or other courier service which issues mail tracking, and addressed to:

The Director of Airports
Lambert-St. Louis International Airport
P.O. Box 10212
10701 Lambert International Blvd.
St. Louis, Missouri 63145

With a copy to:

Airport Properties Division Manager
Lambert-St. Louis International Airport
P.O. Box 10212
10701 Lambert International Blvd.
St. Louis, Missouri 63145

All notices, demands and requests by the City to Concessionaire must be sent by certified mail, return receipt requested addressed to:

Toby Sturek
Clear Channel Airports
7450 Tilghman Street, Suite 104
Allentown, PA 18106

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

The effective date of service of any such notice will be the date such notice is mailed to Concessionaire or said Director.

SECTION 1502. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Concessionaire hereto understands and agrees that City in operation and use of the Airport will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or Agreement discrimination against any person or group of persons in a manner prohibited by 49 CFR Part 21. Concessionaire agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but is not 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.
- B. Concessionaire agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but is not 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. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants must receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices Provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency ("CREA") within ten (10) days of such determination, as to the steps to be taken by Concessionaire to achieve the Provisions of it program.
- E. Concessionaire will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these Provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Concessionaire's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Concessionaire may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Concessionaire has no claims for any damages or loss of any kind whatsoever against City.
- I. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin, sex, religion, age or disability be excluded from participating in any

employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire 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. Concessionaire assures that it will require that its covered suborganizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- J. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Concessionaire hereby agrees that its Premises will be posted to such effect as required by such regulation. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- K. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and causes those businesses to similarly include the statement in further agreements.
- L. Concessionaire shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 CFR Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.
- M. Concessionaire will establish and maintain for the Term of this Agreement an affirmative action program, and City reserves the right to take such action as the City and the United States Government may direct to enforce the above covenants.

SECTION 1503. FAA NON-DISCRIMINATION. The Concessionaire for itself, personal representatives, successor 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 Concessionaire will 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 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 Premises or the facilities, structures or improvements within the Premises;
- C. in the construction of any improvements on, over, or under the 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 Concessionaire will use the Premises or facilities, structures, or improvements within the Premises in compliance with the Acts and Regulations; and
- E. for purposes of this Section 1503, 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, (29 U.S.C. § 794 et seq.), as amended, (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, (49 USC § 471, Section 47123), as amended, (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 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 1504. NO PERSONAL LIABILITY. No alderman, commissioner, director, officer, agent or employee of either party will be charged personally or held contractually liable by or to the other party under any Provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City relating to any aspect of this agreement must be brought against the City and not against named individual respondents.

SECTION 1505. 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 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 affecting the rights or obligations of the City or Concessionaire hereunder, their respective licensees, 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 Concessionaire 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 is intended or will be construed to abate, postpone or in any respect diminish Concessionaire's obligations to make any payments due to the City pursuant to this Agreement. The City or Concessionaire 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 or municipal government having jurisdiction.

SECTION 1506. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement will extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto. This provision does not constitute a waiver of any conditions regarding the assignment or subletting contained in this Agreement.

SECTION 1507. QUIET ENJOYMENT. Subject to the Provisions of this Agreement, the City covenants that Concessionaire, on paying the fees and otherwise performing its covenants and other obligations hereunder, will have quiet and peaceable use of the Premises.

SECTION 1508. OPERATIONS AND MAINTENANCE OF THE AIRPORT. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

SECTION 1509. TITLE TO THE SITE. The Premises from the date hereof until the expiration or early termination of this 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 Agreement.

SECTION 1510. AGREEMENTS WITH THE UNITED STATES OF AMERICA. This Agreement will be subordinate to the provisions of any existing or future agreements between the City and the United States Government or governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the granting of federal funds or the approval to impose or use Passenger Facility Charges (“PFCs”) for the improvement or development of the Airport. Concessionaire shall not cause the City to violate any assurance made by the City to the United States Government in connection with the granting of such federal funds or the approval of such PFC’s. All Provisions of this Agreement will be subordinate to the rights of the United States of America to operate all of the Airport or any part thereof during time of war or national emergency. Such rights will supersede and Provisions of this Agreement inconsistent with the operation of the Airport by the United States of America.

SECTION 1511. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions of this Agreement, as may be reasonably required to enable the City to obtain said FAA funds, provided that in no event will such changes substantially impair the rights of Concessionaire hereunder.

SECTION 1512. GOVERNING LAW AND FORUM SELECTION. This Agreement is made and entered into in the State of Missouri, and Missouri law governs and applies to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement must be brought only in a federal or state court in the City of St. Louis, Missouri. Concessionaire and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section survive the expiration or termination of this Agreement.

SECTION 1513. HEADINGS. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any Provisions of this Agreement and will not be construed to affect in any manner the Provisions hereof or the interpretation or construction thereof.

SECTION 1514. AMENDMENTS. Unless otherwise expressly provided herein, this Agreement may not be changed, modified, or amended except by written amendment duly executed by the parties hereto. It being understood that any amendment to this Agreement must be approved by the City Airport Commission, and its Board of Estimate & Apportionment, and its Board of Aldermen.

SECTION 1515. PREVIOUS AGREEMENTS. It is expressly understood that the Provisions of this Agreement will in no way affect or impair the Provisions or obligations or rights of any existing or prior agreements between Concessionaire and the City.

SECTION 1516. REQUIRED APPROVALS. When the consent, approval, waiver, or certification ("**Approval**") of other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. In taking such actions, the Director shall act reasonably, and take into consideration the best interest of the City, the Airport, and travel public. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director, on behalf of the City, and Concessionaire or its designee. Whenever the Approval of the City, or the Director, or Concessionaire is required herein, no such Approval will be unreasonably requested, conditioned, or withheld.

SECTION 1517. WAIVERS. No Provision of this Agreement will be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor will any custom or practice that may evolve between the parties in the administration of the Provisions of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the Provisions of this Agreement.

SECTION 1518. INVALID PROVISIONS. If any Provision in this 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 Provision will be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken. If stricken, all other Provisions of this Agreement will remain in full force and effect provided that the striking of such Provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid Provisions of this Agreement.

SECTION 1519. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto and/or incorporated by reference herein, constitutes or embodies the entire Agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and the Concessionaire.

SECTION 1520. NOT A LEASE. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges expressly granted hereunder. Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

SECTION 1521. ADVERTISING. Concessionaire has no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotional service or publication without the prior written consent of the Director.

SECTION 1522. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Concessionaire, and any other tenant, licensee, sublessee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final and binding.

SECTION 1523. PREVAILING WAGE. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is subject to and will be in accordance with City Ordinance No. 62124, as may be amended from time to time.

SECTION 1524. AMERICANS WITH DISABILITIES ACT ("ADA"). Concessionaire shall be responsible for compliance with the federal ADA, and any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

SECTION 1525. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The parties expressly agree that time will be of the essence in the performance of each and every obligation and condition of this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if not time is specified herein, will relieve the other party, without liability, of any obligation to accept such performance.

SECTION 1526. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the Provisions contained in this Agreement. As such, the Provisions of this 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 Agreement or any amendments, modifications or exhibits thereto.

SECTION 1527. SECURITY PLAN AND FACILITIES. Concessionaire hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire's negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

SECTION 1528. LIVING WAGE COMPLIANCE PROVISIONS. This Agreement is subject to the St. Louis Living Wage Ordinance No. 65597 (“**Ordinance**”) and the “**Regulations**” associated therewith, as may be amended from time to time. Copies of Ordinance and Regulations may be obtained by contacting Assistant Airport Director, M/W/DBE Certification and Compliance Office, P. O. Box 10212, St. Louis, Missouri, 63145-0212 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates and agrees to comply with these measures (unless expressly exempt as provided for in the Ordinance and Regulations):

- A. Minimum Compensation: Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (EXHIBIT B), which is incorporated herein. The initial rate will be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.
- B. Notification: Concessionaire shall provide the Living Wage Bulletin to all employees, together with a “Notice of Coverage”, in English, Spanish and other languages spoken by a significant number of Concessionaire’s employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. Posting: Concessionaire shall post the Living Wage Bulletin, together with a “Notice of Coverage”, in English, Spanish and other languages spoken by a significant number of Concessionaire’s employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. Subcontractors and Sublessees: Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.
- E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire Term of the Agreement, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such Agreement is in effect.
- F. Reporting: Concessionaire shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation,

suspension or termination of the Agreement, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.

H. Concessionaire hereby acknowledges receipt of a copy of the Ordinance and Regulations.

SECTION 1529. SURVIVAL OF WARRANTIES. All warranties and covenants set forth in this Agreement survive the execution and performance of this Agreement.

SECTION 1530. CITY'S RIGHTS AND REMEDIES ARE CUMMULATIVE. All rights and remedies of the City as provided for herein and under law are cumulative in nature.

SECTION 1531. EXHIBITS. All exhibits or attachments attached hereto are fully incorporated into this Agreement by this reference as if fully set out herein. The City and Concessionaire shall reasonably and in good faith finalize and attach all exhibits and attachments to this Agreement which have not been in final form as of the effective date of this Agreement.

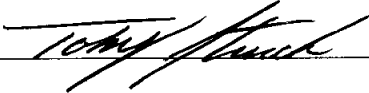
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Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:39:40 +0000

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

CONCESSIONAIRE BY:



Title: Toby Sturek, EVP/Regional President

Date: 8/12/15

ATTESTED TO BY:



Title: Ade Galloway, Airport Operations Counsel

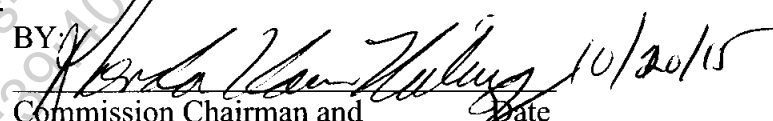
Date: 8/12/15

FEDERAL TAX ID# 86-0801051

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT pursuant to City Ordinance # 70092 approved the 13th day of October, 2015.

The foregoing Agreement was approved by the Airport Commission at its meeting on the 2nd day of September, 2015.

BY:

 10/20/15
Commission Chairman and
Director of Airports

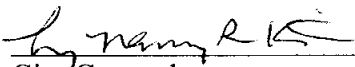
The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the 23rd day of September, 2015.

Approved by BEM #175

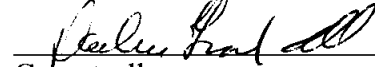
BY:

 10/20/15
Secretary,
Board of Estimate and Apportionment

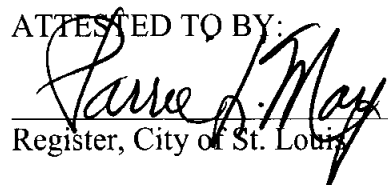
APPROVED AS TO FORM ONLY BY:

 10-21-15
City Counselor
City of St. Louis

COUNTERSIGNED BY:

 10/21/15
Comptroller
City of St. Louis

ATTESTED TO BY:

 OCT 29 2015
Register, City of St. Louis
Date

COMPTROLLER'S OFFICE
DOCUMENT NUMBER 69179

EXHIBIT A

PREMISES

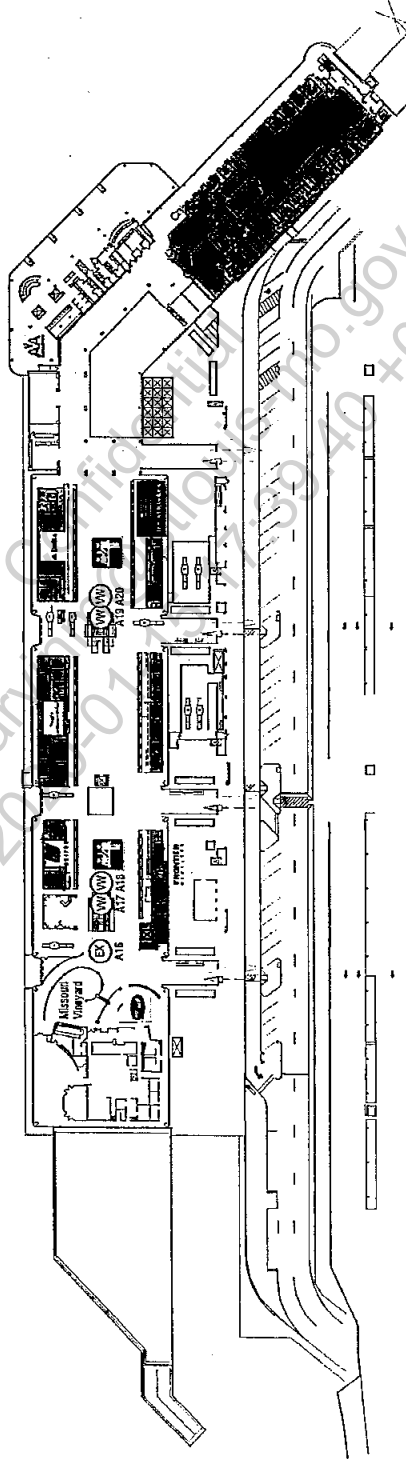
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WWW WINDOW CLING

(TD) TENSION FABRIC DISPLAY

(W) VIDEO WALL

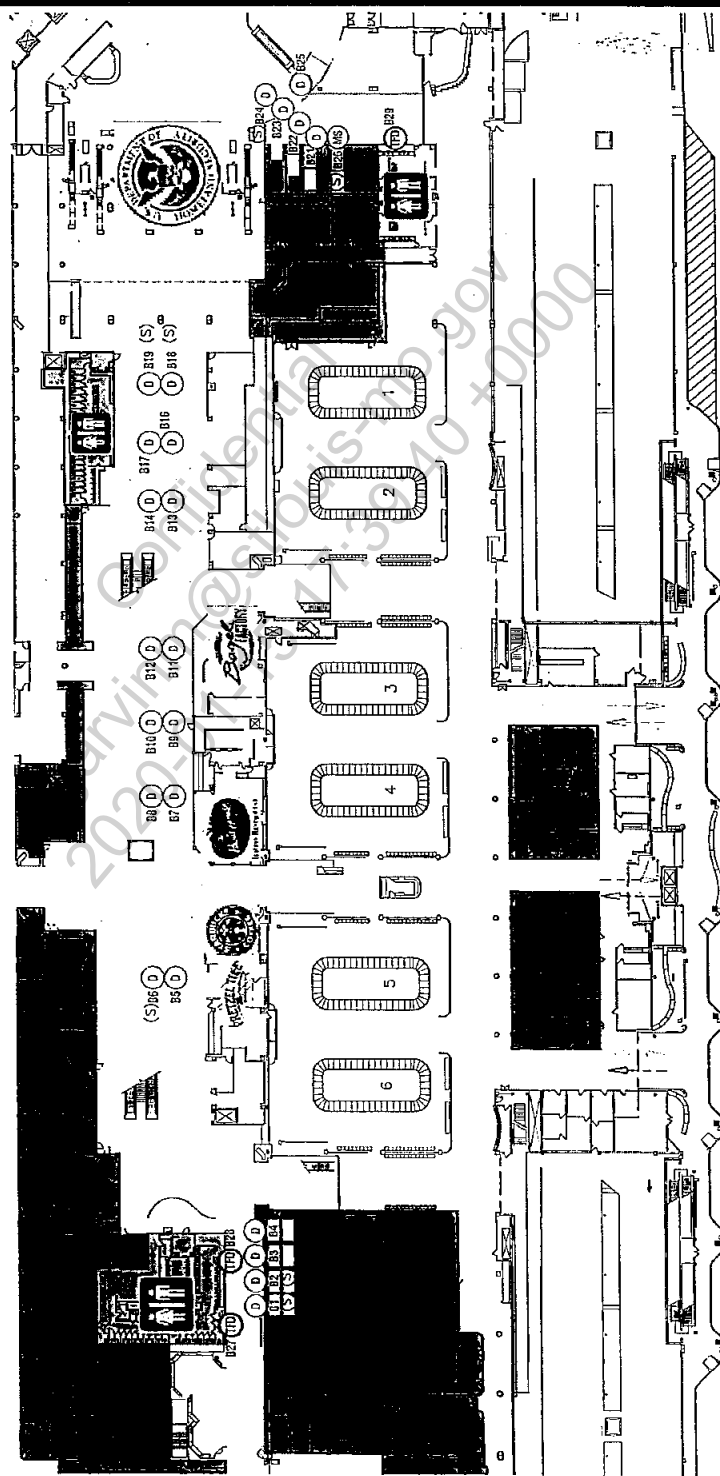
(EX) FLOOR EXHIBIT



LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 1 TICKETING

A

7 X 11 TENSION FABRIC DISPLAY



LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 1 LOWER LEVEL

12

(D) DIDRAMA

(AS) MINI SPECTACULAR

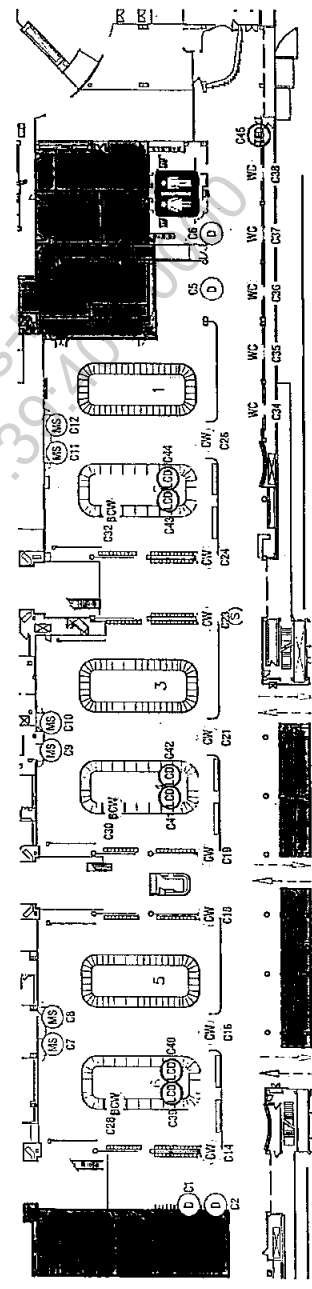
CV COLUMN WRAP

BCV BAG CAROUSEL WRAP

WC WINDOW CLING

(TD) TENSION FABRIC DISPLAY

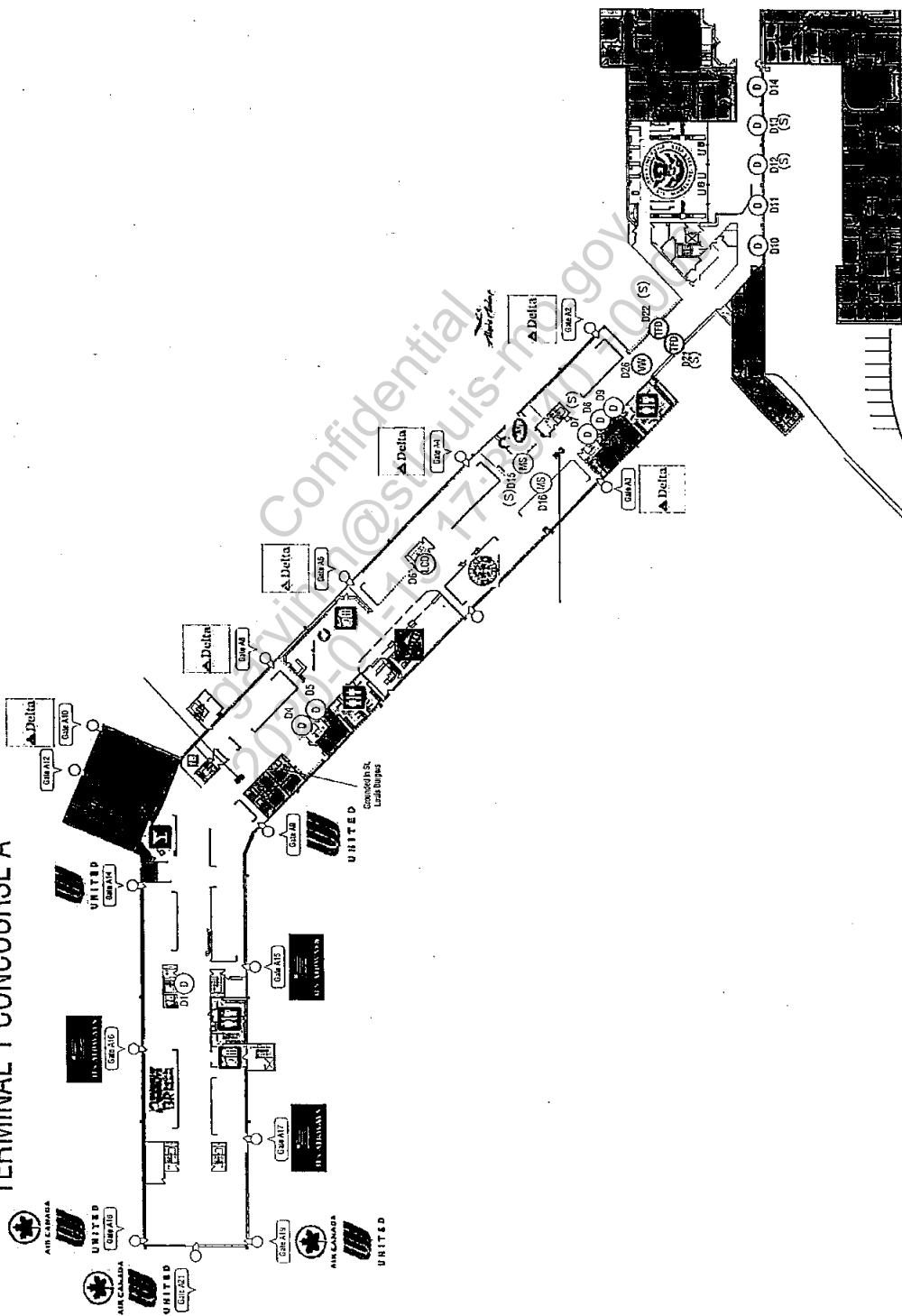
(CD) 70" LCD



C

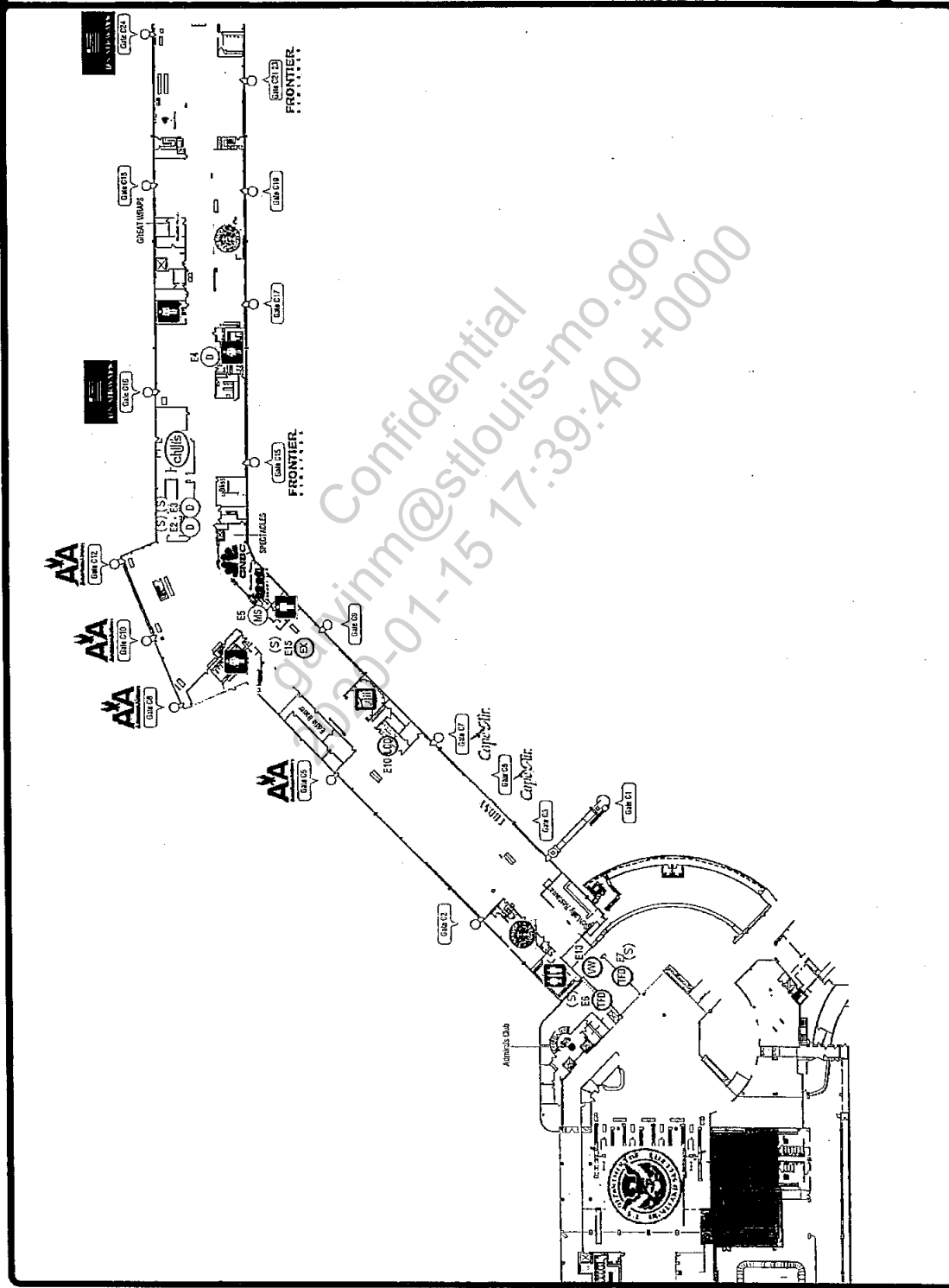
LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 1 LOWER LEVEL BAG CLAIM

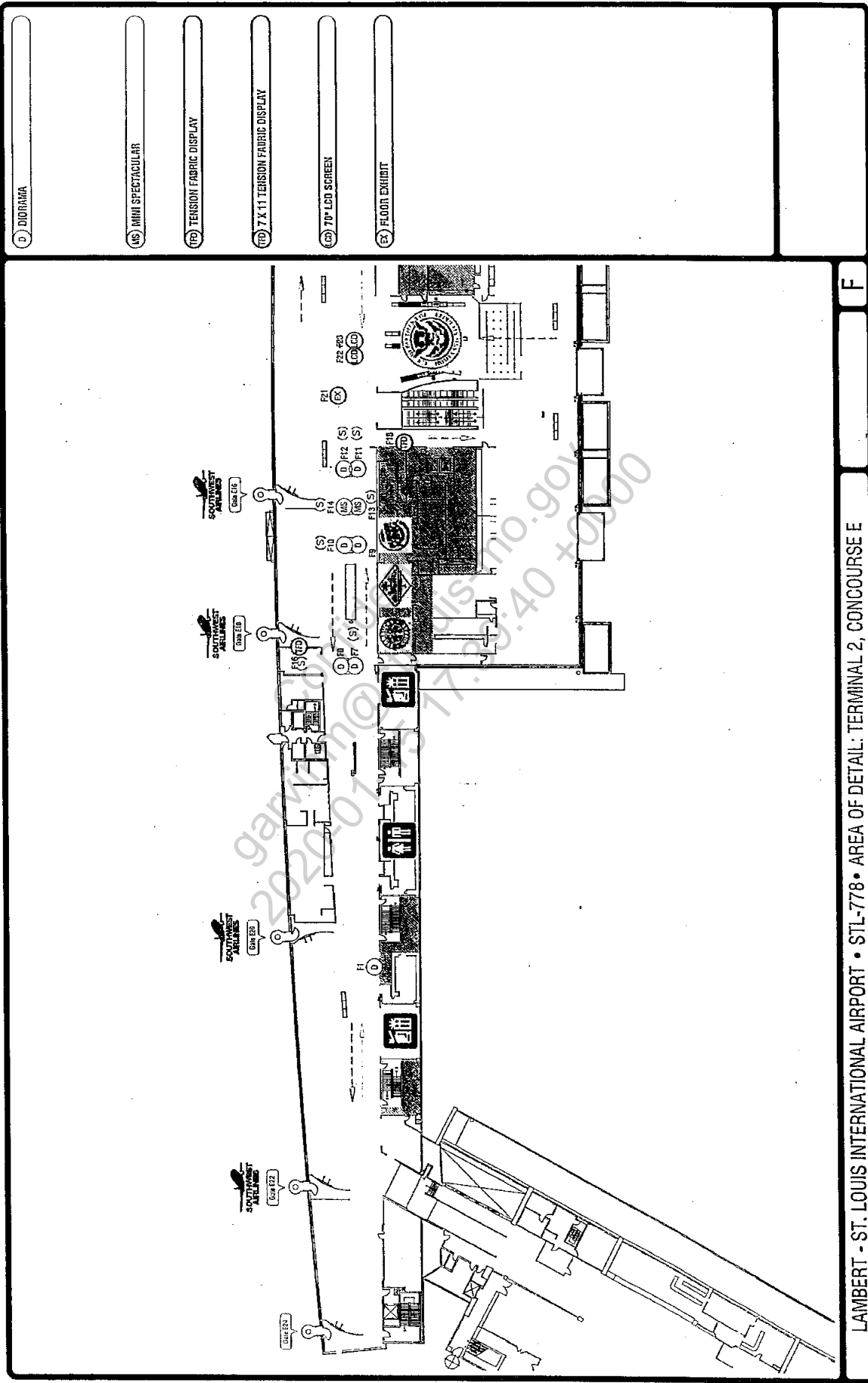
TERMINAL 1 CONCOURSE A



- (D) DIAGRAM
- (MS) MINI SPECTACULAR
- (TD) TENSION FABRIC DISPLAY
- (TD) 7 X 11 TENSION FABRIC DISPLAY
- (W) VIDEO STRIPE
- (CD) 70" LCD SCREEN

- (D) DIORAMA
- (MS) MINI SPECTACULAR
- (S) SPECTACULAR
- (TD) TENSION FABRIC DISPLAY
- (TD) 7 X 11 TENSION FABRIC DISPLAY
- (W) VIDEO STRIPE
- (CD) 70" LCD SCREEN
- (EX) CITY KIOSK





F

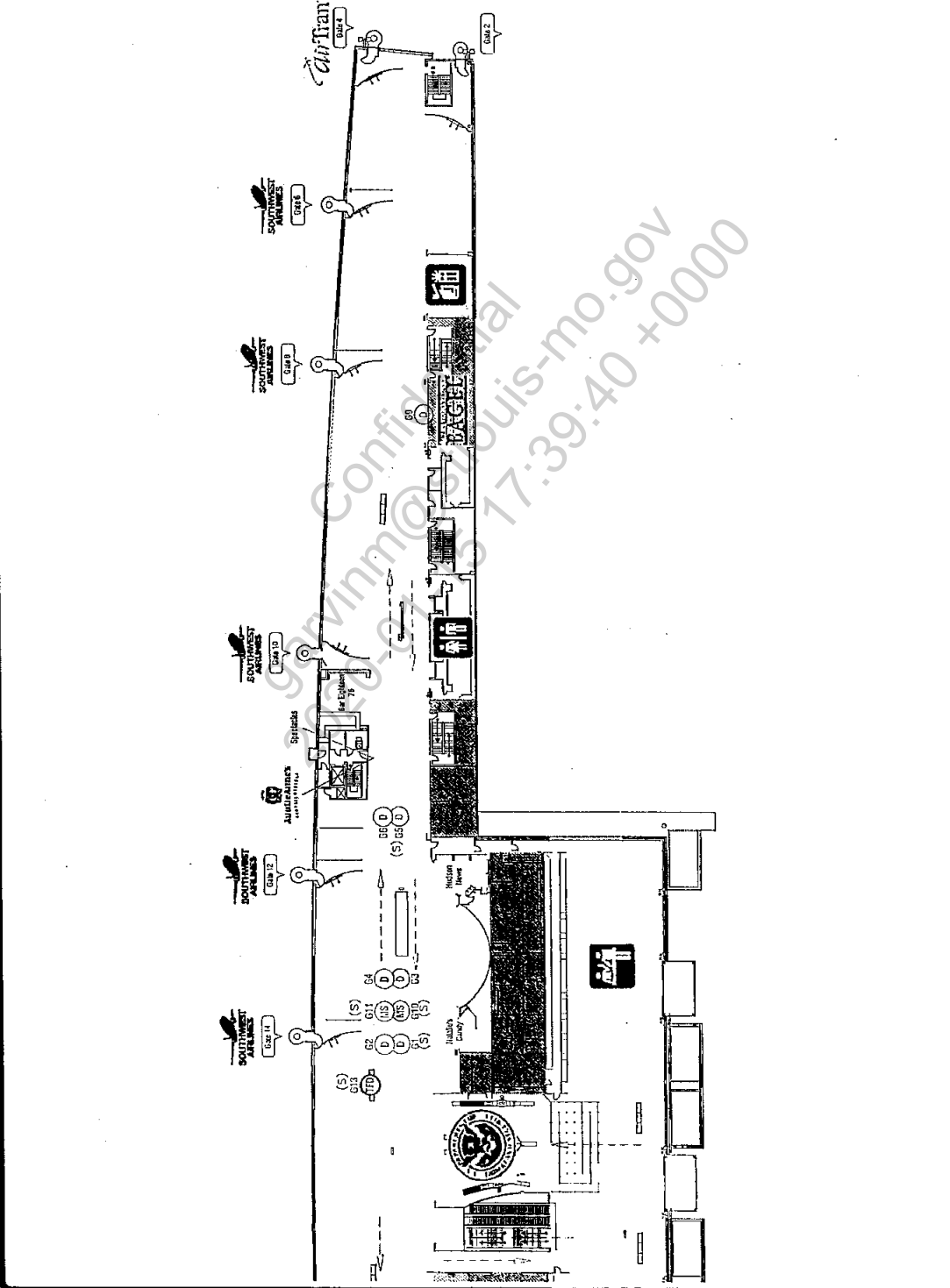
LAMBERT • ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 2, CONCOURSE E

(D) DUEHAMA

(US) MINI SPECTACULAR

(TD) TENSION FABRIC DISPLAY

(PD) 7 X 11 TENSION FABRIC DISPLAY



G

LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 2, CONCOURSE E

D DIORAMA

MS MINI SPECTACULAR

BCV BAC CAROUSEL WRAP

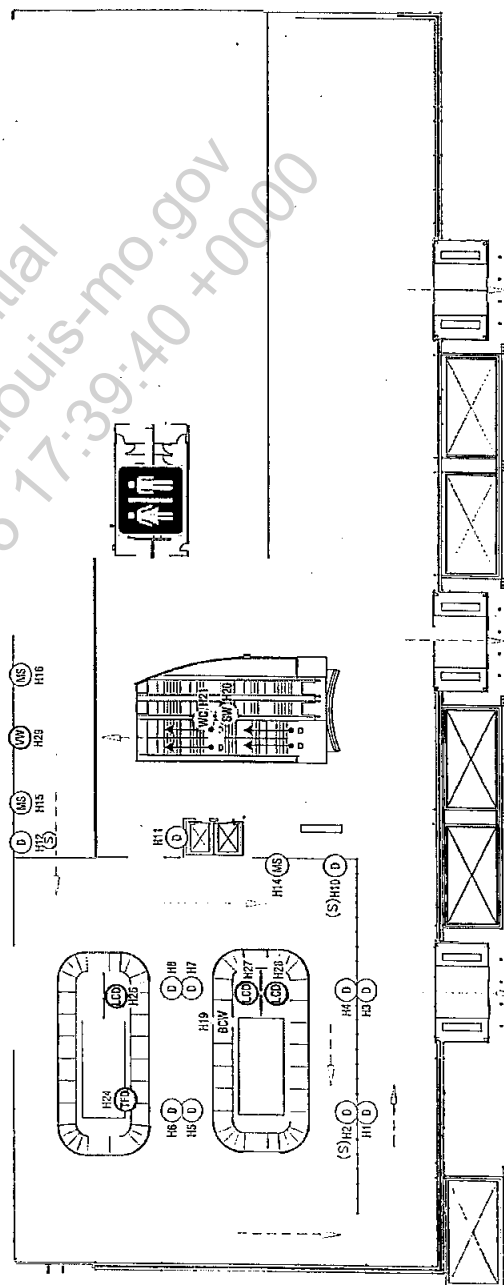
SW. SOFFIT WRAP

MC WINDOW CLING

(TFO) TENSION FABRIC DISPLAY

(LCD) 70" LCD SCREEN

VIDEO STRIPE



LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT • STL-778 • AREA OF DETAIL: TERMINAL 2 BAG CLAIM



Reservation Center Phone Board Equipment

There are currently seven (7) existing Reservation Centers within the Premises, four (4) Reservation Centers in Terminal 1, one (1) Reservation Center in Terminal 2 and two (2) Exterior Reservation Centers on the center island of Arriving Flights Drive, Terminal 1. The Reservation Centers are equipped with the following Existing Equipment:

Terminal 1 Reservation Center - Unit 1

- Mid-Level Located between Baggage Carousel 2 & 3, near Exit 12.
- Five (5) Auto-Dial Telephones
- Five (5) Panels for Maps and Telephone Numbers
- One (1) Digital Display Unit
- Seven (7) Advertising Windows
- One (1) Braille Reservation Center
- One (1) TTY Machine

Terminal 1 Reservation Center - Unit 2

- Mid-Level Located between Baggage Carousel 5 & 6, near Exit 17.
- Five (5) Auto-Dial Telephones
- Five (5) Panels for Maps and Telephone Numbers
- One (1) Digital Display Unit
- Seven (7) Advertising Windows

Terminal 1 Reservation Center - Unit 3

- Mid-Level Located near Exit 18.
- Two (2) Auto-Dial Telephones
- One (1) Panel for Maps and Telephone Numbers
- Two (2) Advertising Windows

Terminal 1 Reservation Center - Unit 4

- Upper Level Located near T1 Metrolink ticket dispensing machines.
- One (1) Auto-Dial Telephone
- One (1) Panel for Telephone Numbers
- One (1) Advertising Window

Terminal 2 Reservation Center - Unit 5

- Lower Level Located near Exit 12.
- Five (5) Auto-Dial Telephones
- Three (3) Panels for Maps and Telephone Numbers
- One (1) Digital Display Unit
- Six (6) Advertising Windows
- Three (3) TTY / Braille Directional Signs
- One (1) Braille Reservation Center
- One (1) TTY Machine & Telephone

Exterior Terminal 1 Reservation Center - Unit 6

- Center Island-Arriving Flights Drive
- Car Rental Shuttle Pick-Up Zone (“Rental Car Courtesy Phone”)
- One (1) Auto-Dial Telephone
- One (1) Panel for Car Rental Agency Telephone Numbers
- One (1) Outdoor Telephone Enclosure
- Mounted on Pedestal

Exterior Terminal 1 Reservation Center - Unit 7

- Center Island-Arriving Flights Drive
- Off-Airport Shuttle Pick-Up Zone (“Off-Airport Parking Courtesy Phone”)
- One (1) Auto-Dial Telephone
- One (1) Panel for Off-Airport Parking Shuttle Telephone Numbers
- One (1) Outdoor Telephone Enclosure
- Mounted on Pedestal

Note: Concessionaire is not responsible for the maintenance of the soffits above the Reservation Centers. Concessionaire is responsible for the Digital Display Units attached to the soffits above the Reservation Centers.

EXHIBIT B

LIVING WAGE ADJUSTMENT BULLETIN

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:39:40 +0000

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

NOTICE OF ST. LOUIS LIVING WAGE RATES EFFECTIVE APRIL 1, 2015

In accordance with Ordinance No. 65597, the St. Louis Living Wage Ordinance ("Ordinance") and the Regulations associated therewith, the City Compliance Official for the City of St. Louis has determined that the following living wage rates are now in effect for employees of covered contracts:

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$12.56** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$16.58** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$4.02** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2015**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

The Ordinance applies to employers who are covered by the Ordinance as defined in the Ordinance, where the contract or grant is entered into or renewed after the effective date of the Ordinance, which is November 3, 2002. A copy of the Ordinance may be viewed online at <http://www.mwdbe.org> or obtained from:

City Compliance Official
Lambert-St. Louis International Airport
Certification and Compliance Office
P.O. Box 10212
St. Louis, Mo 63145
(314) 426-8111

Dated: January 26, 2015