

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



FUEL SYSTEM LEASE AND USE AGREEMENT

STL FUEL COMPANY, LLC

NO. AL-442

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**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
FUEL SYSTEM LEASE AND USE AGREEMENT
STL FUEL COMPANY LLC**

This Fuel System Lease and Use Agreement is dated _____, 20__, and is between The City of St. Louis, Missouri, and STL Fuel Company LLC, a limited liability company organized and existing under the laws of the State of Delaware.

RECITALS

The City owns and operates the Lambert-St. Louis International Airport®, located in the County of St. Louis, State of Missouri.

Each of the members of Company is an Airline.

Company, for the benefit of its members and other users of aviation fuel at the Airport, desires to lease and be responsible for the management, operation and maintenance of the Fuel System.

The City is willing to grant Company certain rights and privileges for the lease and use of the Leased Premises, including the Fuel System, upon the terms and conditions set forth herein.

The parties, therefore, agree as follows:

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ARTICLE I DEFINITIONS

Section 101. Meanings and Construction

Except as otherwise clearly indicated by the context, the words and phrases defined in this Section shall have the following meanings when used elsewhere in this Agreement.

“Agreement” means this Fuel System Lease and Use Agreement.

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

“Airline” means an air carrier certificated by the U.S. Department of Transportation to engage in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft in commerce, as defined in the Federal Aviation Act of 1958, as amended, that operates at the Airport.

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

“Airport Commission” means the now-existing Airport Commission of the City created by §18.08.030 of the Revised Code of the City of St. Louis, or such officer, board or commission who or which hereafter may be legally given the powers and duties given to the Airport Commission in existence on the date hereof.

“Airport Director” means the Airport Director of the City or the person performing the functions of that office, as authorized by the City’s Mayor, or that person authorized by the Airport Director to act for or on behalf of the Airport Director with respect to any particular matter under this Agreement.

“Ancillary Agreements” means the Fuel System Access Agreements, Non Contracting User Agreements, Interconnection Agreements, and the Fuel System Operating Agreement in effect at any time.

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

“Base Index” means the Index in effect on the first month in which the Commencement Date occurs, and then, after computation of the first rent escalation (see Sections 503 and 504), the Index in effect on each previous Anniversary Month.

“Capital Escrow Account” means an account to be established and maintained by Company in accordance with Section 708.

“Capital Improvements” means the demolition, refurbishment, improvement, modification, replacement, or construction proposed or required to be made by Company to the Leased Premises in accordance with Sections 701 and 702 herein.

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

“Commencement Date” means January 1, 2012.

“Company” means STL Fuel Company LLC, a limited liability company organized and existing under the laws of the State of Delaware.

“Contracting Airline” means an Airline that is a party to the Interline Agreement and is a member of the Company.

“Effective Date” means the date in which this Agreement has been duly executed by both the City and Company, as written on the first page of this Agreement.

“Environmental Condition” means the presence of Hazardous Materials, environmental contamination or damage by Hazardous Materials at, upon, under or adjacent to the Leased Premises as a result of the escape, seepage, leakage, spillage, discharge, deposit, disposal, emission, or release of Hazardous Materials from the Fuel System or arising out of the operation of the Fuel System. Environmental Condition shall not include any such conditions to the extent created by or arising out of the operations of an Into-Plane Agent on or after the Commencement Date.

“Environmental Laws” means and includes all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Substances, including without limitation, all federal or state superlien or environmental clean-up statutes, and the following specific laws: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. 9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.); (iii) the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); (v) the Clean Water Act (33 U.S.C. 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. 349; 42 U.S.C. 201 and 300f et seq.); (viii) the National Environmental Policy Act of 1969 (42 U.S.C. 4331, et seq.); (ix) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C.; 29 U.S.C.; 33 U.S.C. and 42 U.S.C.); (x) Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.); (xi) Missouri Clean Water Law, Chap. 644, RSMo.; (xii) Missouri Air Conservation Law, Chap. 643, RSMo.; (xiii) Missouri Hazardous Waste Management Law, Sec. 260.350, et seq.; (xiv) Missouri

Spill Law, Sec. 260.500, et seq.; (xv) the Missouri Underground Tank Law, Sec. 319.100, et seq.; (xvi) any amendments to or state or local laws similar to the above laws; and (xvii) any regulations, permits, programs, plans or procedures prepared or issued pursuant to such Laws and any successor Laws pertaining to the same subject.

“Environmental Permits” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials, as defined herein, as such permits relate to the Company’s activities at the Airport regardless of the entity listed as the permittee, licensee or other approved party. For the purposes of Environmental Permits to which the Company is not a permittee or for which the Company did not apply or otherwise request, such Environmental Permits include only such written documents of which the Company has actual knowledge.

“Event of Default” means an Event of Default as defined in Section 1301.

“Existing Environmental Condition” means: (i) an Environmental Condition in existence before the Commencement Date, or (ii) the presence of Hazardous Materials, environmental contamination or damage by Hazardous Materials at, upon, under or adjacent to the Maintenance Facility, or as a result of the escape, seepage, leakage, spillage, discharge, deposit, disposal, emission, or release of Hazardous Materials arising out of or relating to into-plane fueling before the Commencement Date.

“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.

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

“Fuel Farm” means, collectively, the elements of the Jet Fuel receipt and storage tanks, unleaded gasoline and diesel fuel storage tanks and loading facilities, drainage and containment facilities, and related filters, pumps, meters and other appurtenances, all as generally shown on **Exhibit “A”**, together with the underlying tract of land, containing approximately 3.167 acres, as depicted and described on **Exhibit “A”**.

“Fuel Hydrant System” means, collectively, the elements of the Jet Fuel delivery system from the Fuel Farm to the passenger terminal aircraft parking aprons and to and including the Jet Fuel hydrant refueling station located at the Maintenance Facility, including the oil/water separators located adjacent to or within the Maintenance Facility, the continuous-loop pipe system, fuel manifolds, delivery fuel lines, hydrant fuel pits, low and high point drain pits, containment drains and sump pits, meters and related appurtenances, all as generally shown on **Exhibit “B”**.

“Fuel System” means the Fuel Farm and the Fuel Hydrant System.

“Fuel System Access Agreement” means the agreement between Company and an Airline, an Into-Plane Agent, or any other third-party allowing limited access to the Fuel System to take Jet Fuel from the Fuel System and deliver it into-plane within the Fueling Area.

“Fuel System Operating Agreement” means the services agreement, together with all amendments and modifications thereto, between Company and the Fuel System Operator for the maintenance, operation and management of the Fuel System, and entered into in accordance with Section 401.

“Fuel System Operator” means the entity engaged by Company to maintain, operate, and manage the Fuel System.

“Fueling Area” means the area that encompasses the Airport’s passenger terminal facilities and the associated aircraft parking aprons, as shown on **Exhibit “C”**.

“Hazardous Materials” means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, refined petroleum products (including Jet Fuel), natural gas, source material, special nuclear material, and byproduct materials, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, pollutant or contaminant (or comparable term) under any of the Environmental Laws.

“Indenture of Lease” means the Indenture of Lease between the City and Lambert Field Fueling Facilities Corporation, dated July 1, 1955, as amended from time to time.

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

“Interconnection Agreement” means an agreement between Company and a Jet Fuel pipeline owner or operator establishing the terms under which the pipeline owner or operator may connect its pipeline to, and may deliver Jet Fuel into, the Fuel Farm.

“Interline Agreement” means the agreement, together with all amendments and modifications thereto, among the Company and Contracting Airlines pertaining to the

allocation of Rents and other charges established pursuant to this Agreement and other expenses of Company, including those associated with the maintenance, operation, and management of the Fuel System, and other related issues including, without limitation, acceptance of new Contracting Airlines, withdrawal, insurance, indemnification, and default.

“Into-Plane Agent” means an entity that obtains all necessary approvals and permits from the City to perform into-plane fueling services within the Fueling Area, and that enters into a Fuel System Access Agreement with Company.

“Jet Fuel” means kerosene-based jet fuel meeting the specifications of ASTM D1655 (latest revision) and any other reasonable quality specifications established by the Company from time to time.

“Leased Premises” means the Leased Premises as set forth in Section 301.

“Maintenance Facility” means the operations building, maintenance building, and associated vehicle parking area, drainage and containment system, and related appurtenances, all as generally shown on **Exhibit “D”**. The Maintenance Facility does not include any component of the Fuel Hydrant System.

“Maintenance Facility Agreement” means the agreement between City and one or more Into-Plane Agents that lease and/or use space in the Maintenance Facility.

“New Environmental Condition” means an Environmental Condition first occurring on or after the Commencement Date.

“Non-Contracting Airline” means an Airline that is not a Contracting Airline and that has entered into a Non-Contracting User Agreement.

“Non-Contracting User” means an entity that has entered into a Non-Contracting User Agreement. A Non-Contracting Airline is a Non-Contracting User.

“Non-Contracting User Agreement” means the agreement between Company and an Airline other than a Contracting Airline or another entity that obtains the necessary approvals and permits from the City to conduct its business at the Airport, for the use of the Fuel System for the storage and delivery of Jet Fuel.

“Notice” means a communication between the parties to this Agreement performed in accordance with the requirements of Subsection 1513(B).

“Passenger Facility Charge” or “PFC” means charges imposed by the City pursuant to 49 U.S.C. §40117, as amended or supplemented from time to time, and 14 C.F.R. Part 158, as amended or supplemented from time to time.

“Percentage Increase” means the percentage equal to the fraction, the numerator of which is the Index in the Anniversary Month less the Base Index, and the denominator of which is the Base Index.

“Remediation Costs” means any reasonable losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by Environmental Laws or Environmental Permits, or the appropriate governmental agency responsible for enforcing Environmental Laws or Environmental Permits, and (ii) attributable to Hazardous Materials placed, or that come to be found, on City property in violation of Environmental Laws or Environmental Permits, or that is required to be remediated pursuant to Environmental Laws or Environmental Permits, and caused by, or arising out of, Company’s operations at the Airport or the Company’s use or lease 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, reasonable administrative costs, reasonable attorneys’ fees and other legal fees and litigation and/or mediation and/or arbitration 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 arising out of Company’s operations at the Airport or Company’s use or lease of the City’s property.

“Remediation Work” means the Remediation Work as defined in Section 1002(D).

“Rent” means the Rent defined in Section 502, as it may be adjusted in accordance with Sections 503 and 504.

“Right-of-Way” means the easement necessary to operate, inspect, maintain, repair, and improve the Fuel Hydrant System in accordance with the provisions of this Agreement.

“Rules and Regulations” means the Airport Certification Manual required by 14 C.F.R. Part 139, as it may be amended from time to time, and 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.

“Security Deposit” means an irrevocable letter of credit, cash, or other similar security or instrument acceptable to the City as provided pursuant to Section 508.

“Term” means the Term as defined in Section 201.

“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.

“User” means an entity that has entered into an Ancillary Agreement with Company and that has access to the Fuel System pursuant to such Ancillary Agreement.

Section 102. Interpretation

- (A) 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.
- (B) The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
- (C) Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
- (D) 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, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- (E) Words importing the singular shall include the plural and vice versa. Words of any gender shall be deemed to include correlative words of other genders.
- (F) The term “including” shall be construed to mean “including without limitation,” unless otherwise expressly indicated.
- (G) All references to number of days shall mean calendar days, unless otherwise expressly indicated.
- (H) Words used in the present tense include the future.

Section 103. Incorporation of Exhibits

The following Exhibits are hereby made a part of this Agreement:

Exhibit A – Fuel Farm

Exhibit B – Fuel Hydrant System

Exhibit C – Fueling Area

Exhibit D – Maintenance Facility

Exhibit E – Capital Improvement Program

Exhibit F – Existing Environmental Conditions Subject to Section 1002(D)(i)

ARTICLE II
TERM OF THE AGREEMENT

Section 201. Term

The term of this Agreement shall commence on the Commencement Date, and shall expire at midnight on the last day of the calendar month containing the twentieth anniversary thereof ("Term"), unless sooner terminated pursuant to the provisions hereof.

Section 202. Holding Over

If Company holds over after the expiration or early termination of this Agreement, the resulting tenancy shall be for an indefinite period of time on a month-to-month basis, during which tenancy Company shall continue to adhere to all covenants, conditions and provisions of this Agreement. Acceptance by the City of payment of Rent after expiration or early termination of this Agreement shall be deemed to be payment on account, and shall not operate to waive or modify any provision of this Section.

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**ARTICLE III
LEASE OF THE FUEL SYSTEM**

Section 301. Leased Premises

Subject to the terms of this Agreement, the City hereby grants to Company, and Company takes and leases from the City, the exclusive use of the Fuel System, including all Capital Improvements thereto, and the non-exclusive use of the Right-of-Way (together, the “Leased Premises”).

Section 302. Acceptance of the Leased Premises

Company accepts and receives the Leased Premises in an “as is” condition with no warranties or representation of any kind, expressed or implied, oral or written, made by the City or any of its agents or representatives with respect to the physical, environmental, or structural conditions of the Leased Premises or any portion thereof, or any other matter or thing affecting or relating to the Leased Premises, except as expressly set forth in this Agreement. The City makes no representation regarding the fitness or suitability for use of the Leased Premises, or regarding Lease Premises’ compliance with any zoning, or any other applicable local, state, or federal laws or regulations. Company understands and acknowledges that past use and operation of the Leased Premises has resulted in Existing Environmental Conditions.

Section 303. Company Right of Access

(A) Company shall have the right of ingress to and egress from the Airport, including its Leased Premises and the public areas and public facilities of the Airport, for Company’s employees, agents, contractors, invitees, licensees, suppliers of materials and providers of service, and its or their equipment, vehicles, machinery, and other property. The foregoing shall not preclude the City from:

- (i) subjecting all persons to the Rules and Regulations;
- (ii) requiring third-parties to enter into an agreement with the City when such access is required on an ongoing basis; or
- (iii) imposing any charge, permit or license fee upon third-parties for the right to do business at the Airport.

(B) Company shall have the right to access and use the Airfield Operations Area, in common with others so authorized by City, to manage, operate, and maintain the portion of the Fuel Hydrant System located within the Airfield Operations Area. Company agents, contractors, invitees, licensees, suppliers of materials and providers of service shall have the right to park its/their support equipment designated to be used in the Airfield Operations Area, in areas designated by the City; provided, however, that the City reserves the right to

assess a reasonable rental charge for such parking areas, if located outside the Leased Premises.

(C) The right to access or use the Airport or any portion thereof, including the Leased Premises, shall be conditioned on adherence to security requirements as set forth in Section 414, and may be limited on temporary bases for security reasons.

Section 304. Access to the Leased Premises by the City

The City reserves and shall have the right to access, ingress to and egress from the Leased Premises for its employees, contractors and agents, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, as may be reasonable under the circumstances, including reasonable notification to Company, and with as little interruption to Company as reasonably practical, and upon compliance with Company's reasonable security procedures. If Company's representatives are not present to permit entry and entry is necessary, the City may, in case of substantial risk to human health or environment or other emergency, forcibly enter the Leased Premises. The City's right to access the Leased Premises shall be without charge; shall not render the City liable, except for any damage arising from the negligence or willful misconduct of the City or its employees, contractors or agents; and shall be:

- (A) for any purpose necessary for, incidental to, or connected with the City's right and obligation hereunder, or the City's capacity as the Airport owner or operator;
- (B) for fire protection, safety, or security purposes;
- (C) to make structural additions and alterations to the Airport; and
- (D) upon the expiration or early termination of this Agreement.

Section 305. Reservations

The grant of lease and use rights hereunder is subject to the following reservations and conditions:

(A) The rights granted by this Agreement to Company shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport; provided, however, that this Subsection shall not be construed as reserving or granting rights to the City with respect to matters affecting the Leased Premises that are not otherwise reserved or granted by this Agreement.

(B) The City reserves the right, but shall not be obligated, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control on a non-discriminatory

basis all activities of tenants (including without limitation, Company) in this regard.

(C) The City reserves the right to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as the City in its sole and absolute discretion sees fit, regardless of the desires or views of Company, and without interference or hindrance of any kind.

(D) The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Company from erecting, or permitting to be erected, any building or other structure on the Airport, including the Leased Premises, which in the sole and absolute opinion of the City would limit the usefulness of the Airport or constitute a hazard to aircraft.

(E) The City reserves, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises herein conveyed, together with the right to cause or allow in said airspace or within the Leased Premises such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

(F) The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, shall not unreasonably or materially impair or interfere with Company's use of the Leased Premises.

(G) The City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Leased Premises, provided that such use will not unreasonably or materially impair or interfere with Company's use of the Leased Premises, and provided that the City shall consult with Company prior to any grant of such rights affecting the Fuel Farm.

**ARTICLE IV
FUEL SYSTEM OPERATIONS**

Section 401. Operation of the Fuel System

(A) Company, at its own cost and expense, shall manage, operate and maintain the Fuel System in accordance with this Agreement. In the alternative, at its discretion, Company may provide for the management, operation, and maintenance of the Fuel System by a Fuel System Operator upon execution of an agreement with terms and conditions consistent with this Agreement and acceptable to the City. The City reserves the right to approve the identity of any Fuel System Operator to ensure that the Fuel System Operator has: (i) significant experience in the management and operations of complex, integrated aviation fueling facilities in a competent and professional manner; (ii) financial strength and management competency, with personnel having appropriate experience, to manage, operate and maintain the Fuel System; and (iii) demonstrated experience with federal environmental controls, emergency spill response and compliance with permitting requirements for aviation fueling facilities.

(B) Company shall establish reasonable and not unjustly discriminatory rates and fees, including terms and conditions, for the use of the Fuel System by Contracting Airlines and Non-Contracting Airlines. Unless otherwise approved by the City in writing, the rates charged to Users other than Contracting Airlines for through-put of Jet Fuel through the Fuel System shall be no more than 150% of the highest budgeted gallonage rate established by Company for a Contracting Airline during any applicable period.

Section 402. Fuel Distribution and Storage

City and Company agree that throughout the Term, the Fuel System shall be the exclusive means for storing and distributing Jet Fuel to Airlines operating at the Airport from the Fueling Area. All Jet Fuel stored and/or distributed through the Fuel System may be used only for distribution anywhere at the Airport to Contracting Airlines and other Airlines operating from the Fueling Area, and for distribution to aircraft parked in the aircraft aprons located adjacent to the Fueling Area and designated as the C (Charlie) and J (Juliet) aircraft parking aprons in the Airport Layout Plan approved by FAA as of the Effective Date. Upon request by Company, and with the prior approval of the City, Company may also store Jet Fuel on behalf of fixed base operators and other aeronautical users at the Airport. Company shall implement and maintain a fuel inventory and quality control plan to ensure accurate records and acceptable quality of all fuel and fluids received into, and distributed through, the Fuel System. Company shall maintain inventory records of all fuel (Jet Fuel, gasoline, and diesel fuel) received into the Fuel Farm, all fuel dispensed therefrom, and all Jet Fuel delivered into-plane from the Fuel Hydrant System, sufficient to calculate any and all losses of said fuel.

Section 403. Right to Deliver Fuel Into Plane

The exclusive rights granted in Section 402 shall not include the right to deliver Jet Fuel from the Fuel Hydrant System into aircraft of an Airline. Company understands and acknowledges that each Airline operating from the Fueling Area may enter into a Fuel System Access Agreement directly with Company or into an agreement with an Into-Plane Agent to act as an agent of such Airline, separately or as the agent of a group of Airlines, for into-plane delivery of Jet Fuel.

Section 404. Fuel System Drawings

Company shall prepare, update as necessary and maintain accurate and complete drawings of the location of the Fuel System and all components thereof. Upon request by the City, the Company shall, promptly upon request and if possible, within 24 hours of request, provide an accurate location of and mark in the field the location of the Fuel System in any area where the City, or any Airport tenant or other entity, proposes to excavate, drill or conduct any other construction activity below, at or above the ground surface in the vicinity of the Fuel System.

Section 405. Operation of Equipment

Company and its contractors and agents shall have the right to operate the necessary equipment and vehicles at the Airport as is reasonably required in connection with the rights granted under this Agreement; provided, however, that such equipment and vehicles shall be operated only by properly trained and licensed personnel, and subject to the Airport's Rules and Regulations.

Section 406. Modification of Leased Premises

Subject to the approval and permitting requirement provisions of Article VII, Company shall have the right to:

(A) build, install, maintain and operate facilities and equipment for all activities related to the operation, maintenance, remediation, repair, improvement and inspection of the Fuel System; provided, however, that the particular Leased Premises are designed to be used for said purpose or that said use has been approved by the City; and

(B) install, maintain and operate personal property, including furniture, furnishings, supplies, machinery, and equipment deemed necessary or prudent for the operation, maintenance, repair, improvement and inspection of the Fuel System.

Section 407. Communication Systems

Company and the Fuel System Operator shall have the right to install, maintain, and operate such radio, telecommunications, and computer equipment, facilities and associated wiring, as may be necessary for the management, operation, and maintenance

of the Fuel System. The location of such equipment and facilities, method of installation, and type of equipment shall be subject to the prior approval of the City. The City may require modification, removal, or relocation of such equipment if it interferes with other communication, meteorological, or aerial navigation systems operated by the City, other tenants, or governmental agencies. The City shall have the right to charge a fee, surcharge, or rental charge for any equipment location outside of the Leased Premises.

Section 408. Personnel

Company shall ensure that all persons engaged by Company or the Fuel System Operator to operate the Fuel System are fully instructed and trained in the proper procedures for the operation of the Fuel System, and shall possess the licenses, permits, certifications and/or ratings required by applicable federal, state, and local laws and regulations.

Section 409. Hours of Operation

Company shall operate the Fuel System, shall conduct business and furnish services authorized by this Agreement, and shall ensure that a manager and/or a designated representative in charge is either on-duty or available on-call, twenty-four hours a day, seven days a week, without exception. Company shall provide to the City, and update as necessary, the names and phone numbers of such manager and/or designated representative in charge.

Section 410. Other Agreements

As provided in Section 401, Company may enter into a Fuel System Operating Agreement with the Fuel System Operator to exercise the rights and obligations granted in this Agreement for the management, operation and maintenance of the Fuel System. In addition, Company shall enter into agreements with other third parties for access to, and use of, the Fuel System including, but not necessarily limited to Non-Contracting User Agreements, Fuel System Access Agreements, and Interconnection Agreements. The City expressly reserves the right to review and approve, in its sole discretion, the form of the Ancillary Agreements, and any material amendments thereto. The City also reserves the right to review and approve the form of those provisions, or amendments thereto, of the Company's limited liability company agreement or the Interline Agreement affecting membership status, including access fees imposed on new members, and the treatment by Company of Users other than Contracting Airlines.

Section 411. Prohibition Against Exclusive Rights

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by 49 U.S.C. §§ 40103(e) and 47107(a)(4), as amended, and the City reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

Section 412. Restrictions on Exercise of Rights and Reservation of Rights to City

(A) *No Interference.* The operational rights established in this Article shall not be exercised so as to interfere with the City's operation of the Airport for the benefit of all aeronautical users or adversely affect the health, safety or security of the public, and shall be subject at all times to the restrictions herein and reservation of rights by the City.

(B) *Integration with Systems.* Company shall not knowingly do, or permit to be done by its agents or contractors, anything that interferes with the effectiveness or accessibility of the drainage, sewer, water, natural gas, sprinkler, alarm or fire protection systems, or any other part of the utility, electrical, or other systems installed or located from time to time at the Airport.

(C) *Right to Designate Location.* The City reserves the right to designate the locations within which all of the activities conducted at the Airport, including the activities required and authorized herein, shall be conducted, and to reasonably change such designations from time to time; provided, however, that if Company's Leased Premises, or any portion thereof, are relocated as a result of any re-designation, such relocation shall be at no direct cost to Company; further provided that any relocated or new Leased Premises or portion thereof caused to be constructed by the City in accordance with this Subsection shall be substantially comparable in quality and finish to the Leased Premises being replaced and shall not adversely impact the operational and environmental integrity or the safety of the Fuel System.

(D) *Airport Access.* The City may, from time to time, temporarily or permanently close or restrict access to specific areas of the Airport; provided, however, that, unless an emergency situation exists, to the extent that the City deems it practical, Company shall be notified with regard to such closings in order to minimize the disruption of services being provided. The City shall have the right at any time or times to relocate, reconstruct, change, alter, or modify any such means of access provided for pursuant to this Agreement or otherwise, either temporarily or permanently; provided that a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. The City shall notify Company of any such action.

(E) *All Other Rights.* Any and all rights and privileges not specifically granted to Company pursuant to this Agreement are hereby reserved for and to the City.

Section 413. Hazards

Except as otherwise provided in this Agreement, Company shall not do, authorize to be done, or fail to do anything at the Airport which may: (i) create or contribute to a nuisance, (ii) in any way obstruct or interfere with rights of others using the Airport, (iii) create a hazardous condition or potentially hazardous condition so as to increase the risks

normally attendant upon operations permitted herein, or (iv) engage in any activity prohibited by the City's applicable noise abatement procedures included in the Rules and Regulations, as they may be promulgated from time to time.

Section 414. Airport Security

(A) Company shall not do or permit its agents or contractors, including the Fuel System Operator, to do anything at the Airport that would be in conflict with or violate the requirements of any federal, state, or local law, regulation or security directive regarding airport security, as they may be amended from time to time, or the City's Airport security plan.

(B) Company shall be responsible for obtaining and coordinating any security badging, vehicle decals, and/or any other actions required to ensure that Company's agents and contractors, including the Fuel System Operator, are in compliance with the City's Airport security plan, and any federal, state, or local law, regulation and security directive regarding airport security, as they may be amended from time to time. Company shall be responsible for all costs associated with obtaining such badge and/or access privileges.

Section 415. Impact on Airport Certification

Company shall not knowingly do or permit its agents, directors, or employees to do anything at the Airport that would be in conflict or violate the requirements of Title 14, Part 139 of the Code of Federal Regulations, "Certification and Operations: Land Airports Serving Certain Air Carriers," as amended from time to time, or any successor regulation, order, or directive, or that would jeopardize the Airport's operating certificate obtained pursuant to such federal regulations.

Section 416. Reports

(A) *Monthly Reports.* No later than the 15th day of each month, Company shall provide to City a Monthly Operations Report containing the following information:

(i) aggregate amounts of: (a) all Jet Fuel received into the Fuel Farm; (b) all Jet Fuel dispensed from the Fuel Hydrant System, in accordance with Section 402; and (c) all Jet Fuel stored in the Fuel System as of midnight on the last day of the prior month; and

(ii) the fuel flowage report required to be made pursuant to Section 507(B).

(B) *Annual Reports.* No later than 60 days after the end of each Fiscal Year, Company shall provide to the City an Annual Operations Report containing the following information:

- (i) a list of all Users by type for the prior Fiscal Year, including the date each User became a User and, if applicable, the date each User ceased to be a User;
- (ii) amount of Jet Fuel received into the Fuel Farm and delivered into-plane (either via the Fuel Hydrant System or by any other means) for each Contracting Airline and Non-Contracting Airline;
- (iii) amount of fuel, other than Jet Fuel, delivered into the Fuel Farm, and the amount delivered to each User;
- (iv) per gallon fee paid to Company by each category of User for the use of the Fuel System, and the mechanism by which such fees were established;
- (v) copies of any amendments to the Interline Agreement, organizational documents of Company, and any other agreements among members of Company relating to Company, to the extent that such documents were not previously submitted to the City for its information or approval (as applicable), as required by this Agreement;
- (vi) a summary report of all refurbishment, improvement, modification, replacements, or construction made to the Leased Premises or portions thereof costing more than \$25,000 that were performed during the prior Fiscal Year, including a brief description of the work, location within the Leased Premises, and date in which work was completed;
- (vii) the maintenance report required to be made pursuant to Subsection 903(D);
- (viii) any Fuel System tightness report required to be made pursuant to Section 905;
- (ix) the leak detection and monitoring audit report required to be made pursuant to Section 906; and
- (x) other information as Company deems necessary, or as the City may reasonably request from time to time, to permit the City to review and understand the operation of the Fuel System and to determine Company's compliance with the requirements of this Agreement.

(C) *Incident Reports.* Promptly upon the occurrence of: (i) any malfunction of the Fuel System that causes material damage to the Fuel System or causes the Fuel System to be partially (in any material respect) or totally inoperable, (ii) any casualty causing material damage to the Fuel System, (iii) any event that triggers a duty to notify in accordance with Subsection 1002(B), or (iv) any other incident required to be reported in accordance with the Rules and Regulations, Company shall submit an Incident Report to the Airport Director. Such Incident Report

shall include as appropriate: (i) sufficient details to explain the nature of the incident, (ii) the date and time in which the incident occurred, and (iii) a statement of actions taken in response to the incident. Company shall provide promptly any additional information that is reasonably requested by the Airport Director concerning such incident.

Section 417. Company Records

For a period of 5 years after the end of each Fiscal Year, or longer if necessary for pending litigation, Company shall maintain all books and records for such Fiscal Year, including without limitation: (i) agreements with Users, including amendments thereof; (ii) operational records; (iii) financial records; and (iv) incident and other environmental reports or filings. All such books and records shall be made available for review to the City or its designated representative on reasonable prior notice. The City shall have the right, during normal business hours and after 10-day Notice to Company, to examine and audit Company's financial records.

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**ARTICLE V
RENT AND OTHER FEES AND CHARGES**

Section 501. General

Company, for and in consideration of the rights and privileges granted herein, agrees to promptly and timely pay the Rent set forth herein, without demand.

Section 502. Rent

Beginning on the Commencement Date, Company shall pay an annual Rent to the City for the Leased Premises in the amount of \$466,247 (four hundred and sixty six thousand two hundred forty seven dollars). The annual Rent payable to the City shall be setoff each year by an amount equal to the amount deposited by Company into the Capital Escrow Account during such year; provided, however, that the annual Rent setoff throughout the Term shall not exceed 20% of the total annual Rent as set forth herein, or as it may be adjusted from time to time in accordance with Section 503. Rent payments, net of setoffs allowed in accordance with this Section 502, shall be due to the City in twelve equal monthly installments, in advance, on or before the first day of each calendar month.

Section 503. Rent Escalation

Rent shall be increased (but not decreased) on the first day of the calendar year following the fifth anniversary of the Commencement Date, and on each fifth anniversary thereafter during the Term, in accordance with the provisions of Section 504.

Section 504. Index Rent Escalation

If the Index in an Anniversary Month exceeds the Base Index, then the Rent, as it may have been previously adjusted in accordance with Section 503, shall be increased by the Percentage Increase to calculate the new Rent.

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

1. the Index in the Anniversary Month preceding the date of the statement,
2. the Base Index,
3. the Percentage Increase, and
4. the resulting adjusted Rent.

Thereafter, the new adjusted Rent shall become effective on the first day of the calendar year following the Anniversary Month.

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

The Percentage Increase shall be $(11-10)/10 = 1/10 = 10\%$

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

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

Section 505. Rent for Capital Improvements

In recognition that Company will be constructing or causing Capital Improvements to be constructed without cost to the City, and Company is obligated to pay the property taxes, insurance, and other costs that become payable in respect to the Leased Premises, including any Capital Improvements, and that all Capital Improvements will vest in the City immediately upon beneficial use in accordance with Section 704, no Rent shall be paid by Company for Capital Improvements.

Section 506. Prompt Payment of Taxes and Fees

Company warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and acquire, keep current and remain in compliance with all permits, licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport.

Section 507. Other Fees and Charges

(A) *Utilities.* With respect to its Leased Premises and Company-installed facilities, trade fixtures, equipment and personal property, Company agrees to pay all water, sewage, electricity, gas and other utility charges which are charged to Company for the use thereof, whether such charges are separately assessed or metered to Company, as appropriate. Any such utility payments to the City are made in trust for the benefit of the public utility providing the service. Utility charges for areas that are separately metered shall be paid monthly, or on such other billing schedule as is established by the City, according to actual use by Company. For those areas not separately metered, charges for utility services shall be assessed by the City on a proportionate basis related to the total area or the number of fixtures served, as the City may reasonably determine. The City may install utility meters for any portion of the Leased Premises if it is economically and mechanically feasible.

(B) *Fuel Flowage Fees.* Company shall make commercially reasonable efforts to collect fuel flowage fees, as they may be established by the Airport Commission from time to time in accordance with Rules and Regulations, for all fuel delivered into-plane whose owner or operator does not have an agreement

with, or a permit issued by, the City. City shall provide to Company, and shall update as necessary, a list of aircraft operators that have entered into agreements with, and have permits issued by, the City. Company shall timely submit to the City by the 15th day of each month an accurate fuel flowage report in a form acceptable to the City for the proceeding month, together with all fuel flowage fees collected and due to City.

(C) *Other.* Company shall pay all other charges which are assessed by City for the use of other Airport facilities or for services that may be provided by City to Company from time to time, including employee parking and issuance of security identification badges.

Section 508. Security Deposit

(A) *Amount and Form of Security Deposit.* Upon execution of this Agreement, Company shall provide the City with an irrevocable letter of credit, cash, or other similar security or instrument acceptable to the City (“Security Deposit”) in an amount equal to \$250,000, which amount shall be increased to \$500,000 by no later than the first anniversary of the Commencement Date. Thereafter, and until the expiration or early termination of this Agreement, the amount of the Security Deposit shall remain at \$500,000 in accordance with the provisions of this Section 508. The Security Deposit shall guarantee the faithful performance by Company of all of its obligations hereunder, including the payment of Rent. If in the form of cash, the Security Deposit shall be deposited in the Airport accounts of the City set up for that purpose. If in the form of a letter of credit or other security or instrument, the Security Deposit shall be in such form and with such company licensed to do business in the State of Missouri as shall be acceptable to the City, within its reasonable discretion. The Security Deposit is not the sole or exclusive remedy of the City and shall not be construed, in and of itself, as adequate assurance of Company’s future performance, or interpreted as a waiver, discharge or impairment of the City’s rights under law or equity.

(B) *Term of Security Deposit.* Company shall maintain the Security Deposit until the expiration or early termination of this Agreement. If applicable, Company shall provide at least sixty (60) days prior Notice of the date on which any Security Deposit expires or is subject to cancellation.

(C) *City’s Right to Use Security Deposit; Replenishment.* If Company commits or is under an Event of Default pursuant to Section 1301, the City shall have the right to use the amounts of such Security Deposit to pay Company’s Rent, or any other amounts owed to the City by Company then due and payable, or to apply the proceeds to any cost or expense or material damages incurred by the City as a result of Company’s default, or Event of Default under Section 1301. If any such Security Deposit, or portion thereof, is used as stated in this Subsection, Company shall immediately replenish or provide a renewal or replacement Security Deposit up to the full amount set forth in Subsection 508(A)

within 10 days of being notified to do so by the City. The City's rights under this Section shall be in addition to all other rights and remedies provided to the City hereunder.

Section 509. Payment Provisions

(A) *Rent.* Rent for the occupancy and use of the Leased Premises shall be due and payable on the first day of each month in advance without invoice from the City.

(B) *Other Fees.* All other fees and charges required hereunder shall be due and payable within 20 days of the date of the invoice.

(C) *Form of Payment.* Company shall pay all sums due hereunder in lawful money of the United States of America, without notice or demand, without deduction or setoff, by wire transfer or check made payable to the "Treasurer, City of St. Louis," which check shall be delivered postage or other charges prepaid to:

By U.S. Mail:

Airport Assistant Director of Finance
Lambert-St. Louis International Airport
P.O. Box 10036
Lambert Station
St. Louis, Missouri 63145

By Express Mail:

Airport Assistant Director of Finance
Lambert-St. Louis International Airport
10701 Lambert International Boulevard
St. Louis, Missouri 63145

By Wire Transfer:

Routing Number: 081000210-1001018702
Bank Name: USBank (Checking)
Account Name: Airport Revenue Fund
(include a description of the transfer (e.g. "ABC Company Account"))

or as hereafter the City may designate by Notice to Company.

(D) *Interest Charges and Late Charges on Overdue Payment.* If Company fails to make payment of any sums due hereunder by the due dates set forth herein, Company shall pay to the City, in addition to all other remedies available to the City and all other payments to be made by Company to the City, an interest charge equal to 1.5% for each month of the overdue amount, and costs and attorney's fees reasonably incurred by the City in attempting to obtain payment, if any.

Section 510. No Other Charges

(A) The City shall impose no other charges, direct or indirect, on Company for the exercise and enjoyment of the rights, licenses, and privileges granted herein except as provided for in this Agreement.

(B) The provisions contained in Subsection 510(A) shall not preclude the City from:

(i) imposing fees and charges for the use of specified equipment or facilities at the Airport;

(ii) imposing fines, penalties, or assessments for the enforcement of the City's Rules and Regulations;

(iii) imposing fees on third-party service providers or contractors; provided, however, that the City shall not charge the Fuel System Operator or any supplier of Jet Fuel a separate fee for doing business at the Airport, and the City shall not charge Into-Plane Agents a per-gallon throughput fee;

(iv) seeking reimbursement from Company for the cost of services provided to Company in compliance with any federal, state, or local law, rule, or regulation which is enacted or amended subsequent to execution of this Agreement;

(v) imposing charges for any services or facilities provided subsequent to the execution of this Agreement, the cost of which is not included in the calculation of Rent set forth in this Agreement; or

(vi) imposing charges, after Notice, under the following conditions:

(1) if the City has paid any sum or sums or has incurred any obligation or expense for which Company has agreed to pay or reimburse the City; or

(2) if the City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Company to perform or fulfill any of the terms, covenants or conditions of this Agreement.

ARTICLE VI
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**ARTICLE VII
CAPITAL IMPROVEMENTS**

Section 701. General

Company shall make, or cause to be made, Capital Improvements to the Fuel System of any nature whatsoever, whether seen or unforeseen:

- (A) to ensure the environmental integrity of the Fuel System to then-current industry standards and regulations;
- (B) for safety or security reasons;
- (C) to comply with all applicable federal, state, and local laws, ordinances, regulations and permits, grant assurances made by the City, and the Rules and Regulations;
- (D) to settle claims, satisfy judgments, or comply with judicial orders rendered by a court of competent jurisdiction arising out of judicial or administrative cases in which Company is a party;
- (E) to repair damage covered by Company's indemnification of the City in accordance with Section 1103;
- (F) to keep the Fuel System in essentially the same working condition as on the Commencement Date; provided however, that Company may give one-year Notice to terminate this Agreement if the cost of such Capital Improvement is budgeted to exceed:
 - (i) \$10,000,000 during any 12 consecutive months at any time throughout the period beginning on the fifth anniversary and ending on the tenth anniversary of the Commencement Date,
 - (ii) \$5,000,000 during any 12 consecutive months at any time throughout the period beginning on the tenth anniversary and ending on the fifteenth anniversary of the Commencement Date, or
 - (iii) \$1,000,000 during any 12 consecutive months at any time throughout the period beginning on the fifteenth anniversary of the Commencement Date; or
- (G) as proposed by Company.

Section 702. Capital Improvement Program

In addition to its obligations under Section 701, Company, during the time frames ascribed, shall make, or cause to be made, the Capital Improvements identified on **Exhibit "E"**.

Section 703. Obligations, Rights and Procedures

(A) *General.* Company shall prepare, and submit to the Airport Director for approval as provided for in Section 703.B through 703.J, detailed plans to make any and all excavations within, demolition of, refurbishment, improvement, modification, replacements, or construction to the Leased Premises or portions thereof, including without limitation, all Capital Improvements, but excluding in-kind or equivalent replacement of fixtures or equipment costing \$25,000 or less. Additionally, any construction on, or alteration to, the Leased Premises that requires permitting from St. Louis County, Missouri, the State of Missouri or any agency thereof, the United States or any agency thereof, or any municipality must also receive the prior written approval of the Airport Director as provided for herein.

(B) *Submittals to City.* Company covenants, stipulates, warrants and agrees that all such work that requires the City's approval shall be completed according to the Tenant Design Standards, which are filed of record in the office of the Airport Director. In addition, Company shall comply with the City's Tenant Construction or Alteration Application ("TCA") process as set out below:

- submit a signed TCA available from the Airport Properties Department, including detailed drawings, plans, specifications, and timetables for making Capital Improvements for the City's review and approval as provided for in Section 703.C below.
- submit to the Airport Properties Department a building permit number from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following receipt of such permit. A building permit number shall be required prior to the start of any construction or modification to the Leased Premises by Company.
- submit the contractor's liability insurance certificates and the required performance bonds and payment bonds, required by Subsections 703(H) and 703(I) below, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
- submit to the Airport Properties Department a copy of an occupancy permit from any and all municipalities, political jurisdictions and regulatory agencies, as required by Subsection 703(J) below, prior to use or occupancy.

If an Environmental Impact Statement is required by any municipality, political jurisdiction, or federal or state regulatory agency with respect to the Leased Premises, Company shall submit to the Airport Properties Department a copy of such Environmental Impact Statement not more than thirty (30) days following submission of the TCA.

(C) *Conduct of Work.* No excavation or demolition at, construction or modifications of, or refurbishments or improvements to, the Leased Premises, as permitted herein, shall commence until after Company has received the written approval of its TCA from the City. Notwithstanding the prior sentence, and without limiting any other requirement imposed by this Agreement, in case of an emergency affecting the health or safety of the public, Company may take immediate and reasonable action to protect the public without first submitting a TCA; provided, however, that: (i) promptly following such emergency, Company shall notify the City of the circumstances surrounding the emergency and the actions taken by Company; and (ii) as immediately thereafter as reasonably possible Company shall submit a TCA detailing the actions taken and yet to be taken by Company related to such emergency. Company also understands and agrees that certain work elements described in the TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Company understands and agrees that ongoing coordination with the City at all times is crucial.

(D) *Hazardous Materials Discovered During Capital Improvements Work.* In the event Hazardous Materials are encountered during any excavation, demolition, construction, modification, improvement, replacement or refurbishment of the Leased Premises, Company shall promptly notify the City. Such Hazardous Materials shall be remediated in accordance with the provisions of Section 1002(D).

(E) *Federal Aviation Administration Review.* Prior to commencement of any Capital Improvement, Company shall submit all preliminary plans, drawings and specifications to the FAA for any review and approval that may be required, with a copy to the Airport Properties Department. The preliminary plans shall show all applicable plot plans, location and elevations of buildings and other structures, shall indicate proposed exterior materials and finishes for all structures, and shall include any additional information that may be required by FAA.

(F) *Screening.* Company shall provide and install appropriate screening on the Leased Premises as part of the construction of any Capital Improvements. All proposed screening designs shall be submitted to the Airport Director for review and approval. Company further agrees to provide any further screening and/or fencing that may be required for security purposes by the Airport Director.

(G) *Contractor's Liability Insurance.* In any excavation, demolition, construction, alteration, modification, improvement, replacement or refurbishment contract pertaining to the Leased Premises, Company shall 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 and unjust, by third parties, with bodily injury limits of not less than \$2,000,000 as to any one person and \$2,000,000 as to any one occurrence, and with property damage (including environmental coverage) limits of not less than \$2,000,000 as to any one occurrence to the extent such claims and liabilities arise out of the acts or

omissions of the contractor. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Airport Director before construction begins.

(H) *Payment and Performance Bonds.* In order to insure the payment of all laborers and material suppliers and completion of projects requiring the City's approval, Company shall require each of its contractors and each supplier of materials to furnish a payment bond and/or a performance bond, as the case may be, each in the amount of the contract in a form acceptable to the City. Payment bonds shall comply with the coverage requirements and conditions of Section 107.170 R.S.Mo. (2000, as amended). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said payment bonds and/or performance bonds shall be used exclusively for the completion of said work and the payment of laborers and material suppliers, as the case may be.

(I) *Certificates of Completion.* Upon the completion of Capital Improvements hereunder, Company shall submit to Airport Director a copy of its acceptance letter certifying completion, and a copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion, occupancy, or use thereof by Company. Company, at its cost, shall deliver to the City duplicate copies of as-constructed plans and specifications of the Capital Improvements within sixty (60) days after the date on which Company has certified completion thereof.

Section 704. Title to Capital Improvements

Title to Capital Improvements constructed or made by Company shall vest in the City on the date of beneficial use; provided, however, that this Section 704 shall not apply to Company's personal property and trade fixtures, the title to which shall remain in Company and which Company shall be entitled to remove from the Leased Premises upon the expiration or early termination of this Agreement; provided, however, that if after thirty (30) days following the expiration or early termination of this Agreement Company fails to remove its fixtures and personal property from the Leased Premises, such fixtures and personal property shall be deemed abandoned by Company.

Section 705. Mechanics' and Materialmen's Liens.

Company shall not permit any mechanics' or materialmen's or any other lien to be or remain attached to the Leased Premises or any part thereof, including, without limitation, any Capital Improvements, by reason of any work or labor performed or materials furnished by any mechanic or materialman under contract with, or on behalf of, Company or for any other reason. Company shall have the right to contest the amount and validity of any such liens without being in default hereunder; provided, however, that while contesting the amount or validity of any such liens, Company shall provide the City, at the City's request, a bond in an amount equal to the amount of the lien. Company shall give City timely Notice of all such liens.

Section 706. Nondisturbance of Airport Tenants and Operations

All work by Company and its contractors shall be conducted in an orderly and proper manner, and shall not otherwise create a hazard or interfere with the operations of, or unreasonably disturb other projects at, the Airport. Company shall promptly comply, and shall cause its contractors to comply, with any reasonable request from the City to correct its conduct or that of its contractors. If Company or its contractors fails to comply with the provisions of this Section, the City shall have the right to stop any or all work being performed, until such compliance is achieved, without terminating this Agreement.

Section 707. Failure to Make Capital Improvements

If Company fails to timely perform the requirements of this Article VII, the City, in addition to any other remedy that may be available to it, may give Company Notice of such performance failure, which Notice shall include a reasonable opportunity to cure. If Company fails to cure any such performance failure or fails to register an objection as to its obligation to do so within the time set forth in such Notice, the City may enter the Leased Premises in accordance with Section 304 and cure such deficiency, including without limitation, make or cause to be made any Capital Improvement that is required by Sections 701 and 702 and that Company failed to make. Company shall reimburse the City for all reasonable costs incurred by the City as a result of reasonable actions it takes in accordance with this Section, including actual administrative costs.

Section 708. Establishment, Funding and Use of Capital Escrow Account

(A) Beginning on the Commencement Date, Company shall establish a Capital Escrow Account that shall be maintained throughout the Term. Funds deposited in the Capital Escrow Account shall be restricted for use to fund Capital Improvements required or permitted in accordance with the provisions of Sections 701 and 702, and for no other purposes.

(B) Funding for the Capital Escrow Account shall be made by Company in amounts to be determined by Company.

(C) The City retains the right to review and approve all uses of funds deposited in the Capital Escrow Account, which approval shall not be unreasonably withheld or delayed.

(D) In the event of an early termination of the Agreement, the balance of the Escrow Capital Account, if any, as of the date of the Notice of early termination shall be transferred to the Airport revenue fund.

(E) At the expiration of this Agreement, the balance of the Escrow Capital Account, if any, shall be transferred to the Airport revenue fund.

ARTICLE VIII
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garvinm@stlouis-mo.gov
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**ARTICLE IX
MAINTENANCE**

Section 901. [Intentionally Left Blank]

Section 902. Maintenance by the City

(A) The City shall operate, maintain, keep in good repair, and clean all of the public areas and facilities of the Airport.

(B) The City shall be responsible for maintaining the Airport utility systems under the control of City as follows:

(i) *Electrical.* The City shall maintain the electrical system mains up to the distribution points. In addition, the City shall maintain the electrical circuits beyond the distribution points to the extent that such electrical circuits are an integral part of the public, common, or joint use systems owned and operated by the City.

(ii) *Plumbing.* The City shall maintain the plumbing system mains, supplies, and sewers up to the dedicated plumbing lines of Company.

(C) Company shall be charged for the cost, plus actual administrative costs, of any repair, maintenance, or cleaning performed by the City that is caused by the negligence or willful misconduct of Company, its employees, agents, contractors, or suppliers, including the Fuel System Operator.

Section 903. Maintenance by Company

(A) Fuel System.

(i) *Maintenance Obligation.* At all times during the Term, and subject to the maintenance obligations of the City as set forth in Section 902, Company shall test, maintain, repair (except for repairs occasioned due to the negligence or willful misconduct of the City or its employees or agents), and keep the Fuel System, including all Capital Improvements thereto, in good working order and repair, and in full compliance with all applicable federal, state, and local laws, ordinances, regulations and permits, the Rules and Regulations, and all manufacturers' operating manuals. Such maintenance and repair shall include but not be limited to regular inspection and maintenance of the Fuel System cathodic protection equipment in conformance with standard industry practice and good engineering standards and to ensure the Fuel System is protected from corrosion in accordance with industry standards. Company shall make or arrange for all necessary maintenance and repair in a timely manner.

(ii) *Testing.* Company shall be responsible for all necessary tests, including without limitation routine and annual tests of the cathodic

protection system and the tightness tests required by Section 905 and the leak detection monitoring required by Section 906, to ensure the operational integrity of the Fuel System.

(B) **Fuel Farm.** In addition to providing maintenance in accordance with Subsection 903(A), Company shall maintain the Fuel Farm and all Capital Improvements thereto in a clean, neat, orderly, sanitary and presentable fashion, and shall remove and dispose of all trash and refuse in a manner approved by the City. Such maintenance shall be in quality and class necessary to preserve the facilities in good order and condition, based on a standard of care reflecting prudent property management.

(C) **Utility Systems on Leased Premises.** In addition to maintaining the Fuel System in accordance with Subsections 903(A) and 903(B), Company shall maintain the utility systems on the Leased Premises as follows:

(i) *Electrical.* Company shall maintain the electrical circuits beyond the distribution points to the extent that such electrical circuits serve the Leased Premises.

(ii) *Plumbing.* Company shall maintain the dedicated plumbing lines, including sewer lines, serving the Leased Premises.

(iii) *HVAC.* Company shall maintain the HVAC systems and units within the Leased Premises serving such space.

(D) *Maintenance Records.* Company shall keep and maintain accurate records of all testing, maintenance and repairs made to the Leased Premises in accordance with this Section, including but not limited to cathodic protection of the Fuel System. Company shall keep records of: (i) all maintenance and repairs made to the Leased Premises for a period of 12 months from the date of such maintenance or repair; (ii) replacement of Fuel System filters for a period of 36 months from the date of such replacement; and (iii) tests required by Sections 905 and 906 for the term of the Agreement, with surrender at the end of the term consistent with Subsection 1401(A)(iii). No later than 60 days after the end of each Fiscal Year, Company shall provide City with a summary report of all testing, maintenance and repair work performed during the prior Fiscal Year. Such report shall include a brief description of the work, including purpose, and the date in which the work was performed.

Section 904. City Right to Enter, Inspect, and Require Corrective Action

(A) In accordance with Section 304, the City may enter upon any of the Leased Premises to identify and/or inspect those items of cleaning, maintenance, and/or repair required of the Company or the City pursuant to this Article.

(B) The right of inspection reserved to the City shall impose no obligation on the City to make inspections to ascertain the condition of the Leased Premises and

shall impart no liability upon the City for failure to make such inspections. The failure of the City to inspect or monitor or notify Company of a default or of a hazardous or unsafe condition with respect to Company's operations hereunder shall not release Company from its liability to perform its obligations hereunder or impose any liability on the City, and in any other event where the City determines that it is necessary or desirable to do so to preserve the Airport or any portion thereof or to correct any conditions likely to cause injury or damage.

(C) Company shall perform all corrective cleaning, maintenance and/or repair work on the Leased Premises required of it that is identified in such inspection(s) within 30 days of receipt of a notification from the City. If correction cannot reasonably be completed within such 30 day period, this period may be extended at the sole discretion of the City. Matters affecting public health, safety, and welfare, including trash and debris problems, shall be corrected promptly after the City notifies the Company's manager or his designee either orally or in writing via hand-delivery.

Section 905. Fuel System Tank Tightness Testing

Company shall perform tightness testing of the Fuel System above-ground and underground storage tanks to assess the integrity of the storage tanks. Where applicable, all tanks shall be tightness tested at intervals required by Environmental Laws. At a minimum, all tanks shall be tightness tested within one year of the Commencement Date and: (i) for tanks installed before January 1, 1985, on every third anniversary of this initial test thereafter during the Term, or (ii) for tanks installed on or after January 1, 1985, on every fifth anniversary of this initial test thereafter during the Term. A written report of the testing shall be provided to the City within 10 business days following receipt of said report by Company. If the report of the results of any such tightness testing recommends a more frequent testing interval for any tank, the recommended interval shall be followed for the tank. Any and all resulting repairs and/or replacement of the Fuel System shall be performed by Company in accordance with Sections 701 or 903, as applicable.

Section 906. Leak Detection and Monitoring

Within one year of the Commencement Date, Company shall perform a leak detection test of the Fuel System pipelines. Thereafter, Company shall perform annual, or more frequently as required by Environmental Laws, leak detection tests of the Fuel System pipelines and shall provide copies of the leak test reports to the City. Leak tests shall be performed during the last quarter of each Fiscal Year, and completed final reports shall be provided to the City no later than 60 days after the end of such Fiscal Year. Any leaks detected shall be investigated and repaired by Company as soon as reasonably practical in accordance with Sections 701 or 903, as applicable.

Section 907. Failure to Maintain by Company

If City determines that Company has failed to properly clean, maintain, and/or repair the Leased Premises, or any portion thereof, as required in Section 903, the City may provide to Company a list of deficiencies, reflecting the amount of time to be reasonably allowed for Company to correct same. If Company fails to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, following 5 days further notification by the City to Company, may enter the Leased Premises in accordance with Section 304 and correct the listed deficiencies. The City shall charge the cost of such work, plus actual administrative costs, to the Company. Subsequent to receipt of the further notification of intent to perform repairs, maintenance, or cleaning from the City, Company shall not undertake performance of such repairs, maintenance, or cleaning without specific prior authorization from the City.

Section 908. Limitations of City Obligations

Except as specifically provided for herein, the City shall not be under any duty or obligation to Company to repair, maintain, or clean the Leased Premises or any portion thereof, any facilities or equipment constructed thereon. The City shall not be responsible or liable to Company for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by Company resulting from failure of the Airport structures or utility systems, or caused by the natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, act of God, state of war, terrorism, civilian commotion or riot, or any other cause or peril beyond the control of the City, except to the extent covered by the City's insurance or as may be caused by the City's negligence, willful misconduct, or bad faith.

**ARTICLE X
COMPLIANCE WITH LAWS**

Section 1001. Observance and Compliance with Laws

(A) Company, its officers, directors, employees, agents, and its contractors while such contractors are providing services to Company, shall comply with:

(i) all applicable federal, state and local statutes, laws, ordinances and permits, including directives of the FAA applicable to the Company's operation at the Airport; and

(ii) the Rules and Regulations; provided, however, that if the City amends the Rules and Regulations in a manner that materially affects the rights of Company hereunder, Company may terminate this Agreement with one-year Notice to the City, which Notice must be given no later than 30 days after the City first provides copies of any such amendment to Company or to the Fuel System Operator in accordance with Subsection 1001(B).

Company shall make reasonable efforts to cause its guests and invitees to comply as well.

(B) Upon request, the City shall promptly provide Company with a copy of the Rules and Regulations. The City shall also provide copies of amendments or additions to the Rules and Regulations to Company or the Fuel System Operator in the regular course of business. The City acknowledges that compliance with such amendments or additions will not be expected until notification is made by City as provided in this Subsection.

(C) Notwithstanding anything to the contrary, references herein to a statute or law shall be deemed to be a reference to (i) such statute or law as it may be amended from time to time, (ii) all ordinances, regulations, rules, executive orders, policies and instructions pertaining to or lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time, and (iii) all future statutes, laws, ordinances, regulations, rules, executive orders, policies, and instructions pertaining to the same or similar subject matter as they now exist or may be amended from time to time.

Section 1002. Environmental Matters

Company warrants and covenants that in conducting its activities at the Airport, it shall comply with any and all applicable Environmental Laws. Company further covenants and warrants as follows:

(A) *Environmental Permits.*

(i) Company shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Company engages at the Airport. In any event in which either Company or the City could lawfully be the permit holder under Environmental Laws related to Company's activities pursuant to this Agreement, Company shall obtain such permit as the permit holder. To the extent both the City and Company and/or any User must be co-permit holders, the Company shall be responsible for all permit obligations related to Company's activities pursuant to this Agreement and City shall cooperate with Company's effort to comply with said co-permit obligations.

(ii) Company shall comply with any requirement: (1) imposed by an Environmental Permit obtained by the City that is generally applicable to the Airport, including tenant operations, and is applicable to Company or Company's activities at the Airport, or (2) imposed by a plan or program developed pursuant to such an Environmental Permit; provided, however that the City shall adequately notify Company of such Environmental Permit and associated requirements, including all applicable deadlines for compliance.

(iii) If Company wishes to participate in negotiations over the language of a particular City Environmental Permit applicable to the activities of Company at the Airport, and any amendments thereto, City will cooperate with Company to request the government agency issuing the Environmental Permit to issue an individual permit to Company.

(B) *Duty to Notify City.* In the event of any material release or threatened release of Hazardous Materials relating to the Fuel System or arising from the Company's operation or maintenance of the Fuel System and known by Company, its employees, agents, contractors or suppliers, whether or not required by applicable Environmental Laws, Environmental Permits, or Rules and Regulations to be reported by Company to a governmental agency, and whether as a result of negligent conduct or otherwise, at, on, under or about the Airport, or any portion thereof, or in the event any written claim, demand, complaint or action is made or taken against Company that pertains to Company's failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Company 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 Company 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 at, on, under or about the Airport, or any part thereof, Company shall simultaneously provide a copy of such notice or report to the City. To the extent that the City is required to report any information related to a release or threatened release of Hazardous Materials involving Company or any

of the Users, the Company shall cooperate with the City and make available information needed by the City to make such report.

(C) *Environmental Baseline.* In the event it is reasonable to conduct an Environmental Baseline (as defined herein) or other focused environmental sampling and testing in order to pursue responsible parties for Existing Environmental Conditions, the Company agrees to cooperate in such effort with the City, and the City agrees to consult with Company before selecting the environmental consultant. For purposes of this Agreement, an Environmental Baseline is defined as a study performed by a qualified environmental professional that is designed to document and define, to the extent reasonably practicable, each Existing Environmental Condition. During the conduct of the Environmental Baseline, if an Environmental Condition not previously reported to the relevant environmental agency is discovered, the City shall make all such reports as are required under applicable Environmental Laws or Environmental Permits and shall give Notice of such Environmental Condition to the Company. If the Environmental Condition is an Existing Environmental Condition, City shall include in its Notice a request to the Company for a determination as to whether the Company will respond to and remediate such Existing Environmental Condition under Subsection 1002(D)(ii). Nothing herein shall obligate the Company to incur the costs, or any part of the costs, to design or implement the Environmental Baseline, unless the Company separately agrees to incur such costs.

(D) *Environmental Remediation.* Company shall be responsible for, and shall undertake, all agency required steps of any person under applicable Environmental Laws and Environmental Permits to remedy and remove any Environmental Condition:

(i) provided it is an Existing Environmental Condition, described in **Exhibit "F"**, any migration or exacerbation of an Existing Environmental Condition described in **Exhibit "F"**, or any extension of any release area shown in **Exhibit "F"** beyond the identified boundary;

(ii) provided it is an Existing Environmental Condition not described in Subsection (D)(i) above, if the Company elects to remediate such Environmental Condition; provided, however, that Company's right to elect not to remediate such an Existing Environmental Condition shall be null and void for purposes of this Subsection if the City is prevented by law or contract authorized by City Ordinance No. 68892 dated May 25, 2011, or any similar future agreement from including Remediation Work expenses in the rate-base used to calculate rents, fees, or charges chargeable to Airlines for the use of the Airport, in which case such Existing Environmental Condition shall be remediated by Company as if it had been listed in **Exhibit "F"**; or

(iii) provided it is a New Environmental Condition anywhere at the Airport, or migrating from the Airport, if such Hazardous Material, environmental contamination, condition or damage resulted from acts or omissions of Company or its agents, employees or contractors, whether resulting from negligent conduct or otherwise;

(such work to be the "Remediation Work"). Except as identified in **Exhibit "F"**, as of the Effective Date the parties are unaware of any Existing Environmental Condition that is not covered by this Agreement.

Remediation Work shall be performed at Company's expense; provided, however, that nothing herein shall limit Company from recovering such expenses from third-parties. Except in the event of an emergency, such Remediation Work shall be performed after Company submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice. The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels and/or institutional controls for any Remediation Work by Company in such documents shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither ongoing Remediation Work, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants. Subject to the above, the City agrees to assist the Company, to the extent practicable, in its negotiations with the relevant agency overseeing the Remediation Work. In all instances in which the Company has taken responsibility for the Remediation Work pursuant to this Subsection, the Company shall be the primary interface with the agency overseeing the Remediation Work. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

Consistent with the language herein, the Company is responsible for investigation, monitoring and, if and to the extent required by Environmental Laws, Remediation Work, all in accordance with Environmental Laws. The Company retains the right to provide Notice to the City with regard to acceptance or rejection of its right to perform response actions in relation to any Existing Environmental Condition described in Subsection 1002(D)(ii) above. If Company provides Notice to the City that Company elects not to perform work in relation to any Existing Environmental Condition described in subsection 1002(D)(ii) above, the City, without waiving any of its rights herein, may perform the Remediation Work. In the event that the City performs the Remediation Work described in Subsection 1002(D)(ii) above, the City retains all

of its rights to recover the costs of such work from any liable party, and/or to include the costs of such work in the rate base calculations as permitted by law or, if applicable, by an Airport Use and Lease Agreement or similar agreement then in effect with individual Airlines.

(E) *Access for Environmental Inspection.* In accordance with Section 304, the City shall have the right to access the Leased Premises to inspect the same in order to observe whether Company is using the Leased Premises in accordance with all applicable Environmental Laws and Environmental Permits. Such inspection shall not serve to transfer to City the obligation to so comply. Company shall cooperate fully with any such inspections provided that such inspections shall not materially impair or unreasonably interfere with Company's operations. If the City's inspection results in any type of written report, the City shall provide Company a reasonable opportunity to timely review and comment on a draft of the report. Company shall provide to 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; draft official submittals (proposed final drafts) prepared by, or on behalf of, Company responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this Subsection to the extent consistent with the City's legal obligations.

(F) *Corrective Action by City.* If Company fails to: (1) comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport, or (2) conduct or commence and diligently pursue necessary Remediation Work to be performed by Company in a timely manner as required under this Section, then the City, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, has the right, but not the duty, unless required by governmental agency, Environmental Laws or Environmental Permits, to enter the Leased Premises and take all reasonable and necessary actions to conduct such Remediation Work to remove Hazardous Materials or other contaminants and ensure such compliance with such Environmental Laws and Environmental Permits. All reasonable Remediation Costs so incurred by the City shall be paid or reimbursed by Company. Remediation Work, if necessary, shall be performed in accordance with the provisions of Subsection 1002(D), but only after first having provided Notice to Company of such failure to comply, and 30 days (unless a shorter period is required by a governmental agency, Environmental Laws or Environmental Permits) within which Company may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Company's compliance reasonably requires more than 30 days to complete, the City may enter the Leased Premises and take such reasonable and necessary measures to achieve compliance only upon Company's failing to timely begin curing such noncompliance within such 30 day period and to continue diligently working to achieve compliance thereafter.

(G) *Spill Prevention, Control and Countermeasures Plan.* Company understands and agrees that various federal and state laws and regulations require a properly prepared and maintained Spill Prevention, Control and Countermeasures Plan ("SPCC Plan") for the Fuel System, and Company agrees to prepare, maintain and adhere to such SPCC Plan. It is further understood that City intends to rely upon that SPCC Plan for compliance with Environmental Laws and Environmental Permits, and Company agrees to consult with the appropriate City officers and employees at all appropriate times during the preparation, maintenance and modifications of such SPCC Plan and to provide City ready and appropriate access to it. Compliance with the SPCC Plan shall not relieve Company of its other environmental obligations as set forth in this Agreement or resulting from Company's presence at the Airport.

(H) *Corrective Action Related to Storm Water Discharges.* If Company fails to comply with any applicable Environmental Laws, Environmental Permit, or plans or programs developed pursuant to such Environmental Laws or Environmental Permits pertaining to its activities at the Airport as they relate to storm water or other pollutant discharges to waters in a timely manner as required under this Section, the City, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may impose and Company agrees to accept noncompliance penalties or restrictions developed by the City as part of a non-discriminatory storm water management program pursuant to an Environmental Permit.

(I) *Storm Water Best Management Practices.* In addition to the other covenants provided in this Section, Company shall at all times comply, and shall require in Ancillary Agreements that all Users comply, with the storm water best management practices set forth in the Airport Storm Water Pollution Prevention Plan and Storm Water Management Plan, and with all storm water plans and/or procedures that may be adopted from time to time by the City at the Airport pursuant to an Environmental Law or Environmental Permit; provided, however, that such storm water plans and/or procedures may not unjustly discriminate against any Airport tenant or group of tenants.

(J) *Review of Environmental Documents.* Without limiting any other provision of this Agreement, at the reasonable request of the City, Company shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Company has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental, health or safety issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Leased Premises, and which would be discoverable in litigation.

(K) *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 under this Section shall survive the expiration or early termination of this Agreement.

(L) *Maintenance Facility.* For that area identified as the Maintenance Facility the City and Company agree to cooperate in and, within thirty (30) days of the Commencement Date, initiate joint communications with Allied, appropriate Federal and State entities and such other entities as the parties may agree requesting participation by the entity to fund investigation, remediation and closure activities associated with any soil and groundwater impacted by Hazardous Materials located on or emanating from the Maintenance Facility.

Section 1003. Nondiscrimination

(A) Company for itself, its personal representatives, successors in interest, and assigns, agrees that no person on the grounds of race, creed, color, national origin, sex, age, or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in (i) the use of the Airport; or (ii) the construction of any improvements on, over, or under the Airport, and the furnishing of services thereon.

(B) Company shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

Section 1004. Prevailing Wage

Company shall include in all service contracts pertaining to the Leased Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by service contractors to employees of said service contractors in accordance with the provisions of the Revised Code of The City of St. Louis, Chapter 6.20.

ARTICLE XI
INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 1101. Insurance

(A) *General.* Company, at all times during the Term, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their officers, agents and employees and Company to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the acts or omissions of Company or the Fuel System Operator, their officers, agents, and employees, regardless of any actual or alleged negligence by same, pursuant to this Agreement both on the Leased Premises and the Airport.

(B) *Risks and Minimum Limits of Coverage.* Company shall procure and maintain the following policies of insurance:

(i) Commercial General Liability Including Aircraft Liability with War Risk Allied Perils in an amount not less than \$300 million per occurrence and in aggregate, where applicable; provided, however, that War Risk Allied Perils coverage may be provided by the FAA War Risk Insurance Program, or other program generally available in the marketplace. Such coverage shall be single limit liability with no annual aggregate.

(ii) Automobile Liability Insurance in an amount not less than \$10 million primary (no excess) combined single limit per occurrence for automobiles used by Company in the course of its performance hereunder, including Company's non-owned and hired autos.

(iii) Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Company elects to be self-insured, Company shall comply with the applicable requirements of law. Company 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 shall not be liable or responsible for any claims or actions occasioned by Company's failure to comply with the provisions of this Subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Company are not employees of the City for any purpose, and that employees of the City are not employees of Company.

(iv) Contents Insurance. Company shall be solely responsible for obtaining insurance policies that provide coverage for losses of Company-owned property. The City shall not be required to provide such insurance

coverage or be responsible for payment of Company's cost for such insurance.

(v) Builders Risk Insurance. During any period of construction or reconstruction for which Company contracts, Company 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 shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Company's equipment and personal property).

(vi) Pollution Insurance against loss for bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including cost and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising out of the use, operation, and maintenance of the Fuel System or from any discharge or release of Hazardous Materials by Company, Fuel System Operator, or other person or entity who occupies, uses, or performs, or occupied, used, or performed, activities on, the Leased Premises, or the officers, employees, agents, consultants, contractors, subcontractors, licensees, independent contractors, representatives, assigns, sublessees, tenants, guests, patrons, and invitees of the aforementioned persons or entities. Coverage shall be maintained in an amount of at least \$4 million per loss, with an annual aggregate of at least \$8 million. In lieu of procuring and maintaining such pollution insurance, the Company may cause the Fuel System Operator to procure and maintain the pollution insurance described above in the same amounts, naming the City and Company as additional insureds on the policy.

If Pollution Insurance coverage is written on a claims-made basis, Company warrants that coverage under the policy is from the Effective Date and that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period that is commercially available but is no less than two years beginning from the expiration or early termination of this Agreement.

(vii) Other Property Coverage. Company shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Company's improvements to the Leased Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Company's equipment and personal property).

(C) *Issuers of Policies*. The issuer of each policy required herein shall be a financially sound insurance company authorized to do business in the State of

Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.

(i) Form of Policies. The insurance may be in one or more policies of insurance.

(ii) Non-waiver. Nothing the City does or fails to do shall relieve Company from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.

(iii) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and the FAA War Risk Insurance Program, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Company's indemnification obligations hereunder. Upon City's request, Company shall provide the City with an endorsement consistent with the requirements of this Subsection. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Company in its operations.

(iv) Deductibles. Company shall assume and bear any claims or losses to the extent of any deductible amounts; provided, however, that nothing herein stated shall diminish Company's rights or increase Company's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 1103 hereof.

(v) Cancellation. Each policy shall expressly state that it may not be cancelled or materially modified unless 30 days advance Notice is given to the City by the insurance company, or authorized representative of Company.

(vi) Subrogation. Each policy shall 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.

(vii) Certification of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.

(viii) Liability for Premium. Company shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Company 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 Company's behalf and, after Notice to Company, the City may recover the cost of those payments, plus actual administrative costs, from Company.

(ix) **Proof of Insurance.** Within thirty (30) days of the Commencement Date of this Agreement and at any time during the Term, Company shall furnish the City with certificates of insurance. At least 5 days prior to the expiration of any such policy, Company shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or materially modified, Company shall, within 15 days after the date of such notice from the insurer of such cancellation or material modification, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Company, the City shall have the right to examine Company's insurance policies.

(D) **Maintenance of Coverage.** Notwithstanding the proof of insurance requirements set forth above, Company shall maintain in force, continuously and without interruption, 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 to cause the insurance requirements of this Article to be reviewed by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history in the aircraft fueling and/or airport industry as well as that of Company, and, based on the written recommendations of such consultant, and in consultation with Company, to adjust the insurance coverages and limits required herein; provided, however that any such adjustment shall be on commercially reasonable basis and shall be made no more often than every 24 months.

(F) **Insurance Shall Cover Indemnification Obligations.** To the extent insurable on commercially reasonable and available terms, the Company shall obtain insurance coverage with respect to Company's obligations under Section 1103 as part of, and to the extent of, the insurance required under this Section 1101.

Section 1102. Company Actions Affecting Insurance

Company shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If such Company's act, or failure to act, causes cancellation of any policy, then Company shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Company does or permits to be

done any act or fails to do any act which causes an increase in the City's insurance premiums, Company shall immediately remedy such actions and/or pay the increase in premiums, upon Notice from the City to do so; but in any event, Company will hold the City harmless for any expenses and/or damage resulting from any such action.

Section 1103. Indemnification

(A) Company 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: (i) the acts or omissions of Company, Fuel System Operator (acting in such capacity only), their agents, employees, contractors, or suppliers in the lease, occupancy, or operation of the Leased Premises or use of the other areas or facilities at the Airport; or (ii) any violation by Company of any provision, warranty, covenant, or condition of this Agreement. Company shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(B) Company 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 Company's interest in the Leased Premises, or which arise out of the operations of Company or Fuel System Operator (acting in such capacity only), or by reason of Company's occupancy of its Leased Premises except for any taxes or assessments on the City's interest in the Leased Premises or based on the gross or net income or gross or net receipts of the City that are not allocable to Company-related receipts. However, Company may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Company to contest or appeal the same. Company 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 Company. Company shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(C) Company 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, permits, ordinances, grant assurances, or court orders affecting the Airport, by Company, the Fuel System Operator (acting in such capacity only), or their agents, employees, contractors, or suppliers, in conjunction with Company's or Fuel System Operator's (acting in such capacity only) lease, occupancy, or operation of the Leased Premises or the use of other areas or facilities at the Airport. Company will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(D) Without limiting the generality of any other provisions hereof, Company shall defend, indemnify, and hold harmless the Indemnified Parties for all claims, suits, demands, actions, liabilities, losses, damages, judgments, fines, penalties, settlements, costs, and expenses made or incurred as a result of any alleged or actual violation of any Environmental Law or Environmental Permit, regardless of whether the same are made by private parties or governmental agencies, with respect to or arising out of the use of the Airport by or on behalf of Company, unless arising out of the negligence or willful misconduct of the Indemnified Parties. Company's indemnification of the Indemnified Parties in accordance with this Subsection 1103(D) shall include, without limitation, all reasonable and necessary costs and expenses, including legal representation in connection thereof, related to the sampling, testing, investigation, clean-up, removal, remediation, decontamination, or restoration of the Leased Premises and other affected areas, including but not limited to, air, land, soil, or underground or surface water, to the extent and in a manner consistent with the standards set forth in this Agreement.

(E) If a prohibited incursion into the Airfield Operations Area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Company's or Fuel System Operator's (acting in such capacity only) employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Company 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 Company 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) Company's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.

(G) The City shall promptly notify Company of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Company hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Company 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 Company.

(H) The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Company 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 Company agrees pursuant to this Section to indemnify and hold the City harmless, the City shall promptly notify Company of such claim and, if Company does not settle or compromise such claim, then Company shall undertake the legal defense of such claim both on behalf of Company and on behalf of the City, at Company's expense; provided, however, that Company shall immediately notify City if a conflict between the interests of Company and City arises during the course of such representation. Company 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. 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 Company in accordance with this Section. Any final judgment rendered against the City for any cause for which Company is liable hereunder shall be conclusive against Company as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article shall 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 shall not be construed as a waiver of the City's sovereign or other immunity.

(I) The City, at its own expense except as otherwise provided herein, shall 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) Company shall 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 10% liable due to contributory negligence.

(K) Every sublease, contract or other agreement that Company may enter into related to its activities at the Airport, including without limitation all Ancillary Agreements, shall expressly provide that the City is a third-party beneficiary of

the indemnification received by Company pursuant to such sublease, contract, or agreement. This Subsection does not constitute a waiver or limitation of Company's indemnification obligations under this Section, or of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

(L) This Section shall survive the expiration or early termination of this Agreement. Company understands and agrees that any insurance protection furnished by Company pursuant to Section 1101 shall in no way limit Company's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

Section 1104. City Not Liable

Unless otherwise expressly provided for in this Agreement, the City shall not in any event be liable to Company for:

- (A) any acts or omissions of Company, its officers, directors, employees, agents, contractors, or suppliers, including the Fuel System Operator, or for any conditions resulting from the operations or activities of Company's directors, officers, employees, agents, contractors, or suppliers;
- (B) Company's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- (C) Existing Environmental Conditions which may interfere with Company's business or other operations or activities, or which might otherwise cause damages to Company through loss of business, destruction of property, or injury to Company, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees; 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 XII
MERGERS, ASSIGNMENT, AND SUBLETTING**

Section 1201. [Intentionally Left Blank]

Section 1202. Company Assignments

Company shall not assign, transfer, convey, sell, mortgage, pledge, or encumber (hereinafter collectively referred to as "Assignment") this Agreement, or sublet its Leased Premises without the advance approval of the City, which is to be given by Notice to Company. No Assignment of this Agreement or sublet of the Leased Premises shall be effective without advance approval of the City; provided, however, that delegation to the Fuel System Operator in accordance with Section 401, or the addition to, or withdrawal from, Company membership by Contracting Airlines shall not be deemed to be an Assignment. If Company fails to obtain advance approval from the City of any such Assignment or sublet, the City, in addition to the rights and remedies set forth in Article XIII and by law, shall have the right, in its sole discretion, to hold Company responsible for continued performance of its obligations throughout the Term, or to immediately terminate this Agreement, and the assignee or sublessee shall acquire no interest herein or any rights to use the Leased Premises.

Section 1203. City Approval of Assignments

No Assignment of this Agreement shall be effective without advance approval by the legislative body of the City pursuant to City Ordinance 63687, which may approve, condition or deny such Assignment in its sole discretion.

Section 1204. City Approval of Subleases

No sublease of the Leased Premises shall be effective without approval by the City, which approval is to be given to Company by Notice, and shall take into consideration the best interest of the traveling public and the operations of the Airport. All subleases shall be subordinate to this Agreement.

Section 1205. Company to Remain Liable

Company shall remain fully and primarily liable during the Term for the payment of all of the Rent due and payable to the City for the Leased Premises that are subject to a sublease, and shall remain fully responsible for the performance of all the other obligations hereunder, unless otherwise agreed to by the City.

**ARTICLE XIII
DEFAULT AND TERMINATION**

Section 1301. Events of Default

Each of the following constitutes an “Event of Default” under this Agreement:

(A) Company fails to punctually pay its Rent or any other sum required to be paid hereunder, and such failure continues for a period of 15 days after Notice of non-payment has been given to Company by the City.

(B) Company fails to keep, perform and observe any promise, covenant or other provision of this Agreement for a period of 30 days after Notice specifying such failure by the City, or Company misrepresents a material fact in any certificate or statement furnished to the City pursuant to or in connection herewith and Company fails to correct such misrepresentation within 30 days after Notice from the City or after Company has actual knowledge of such misrepresentation; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, shall not give rise to the City's right to terminate this Agreement if corrective action is instituted by Company within such 30 day period and diligently pursued until the failure is corrected.

(C) Any representation or warranty of a material fact made by Company herein proves untrue in any material respect as of the date of issuance or making thereof, and such materiality is then continuing.

(D) Company voluntarily ceases using or substantially abandons the Leased Premises.

(E) Company fails to maintain the minimum required insurance coverage as required by Section 1101 for a period of 30 days after Notice specifying such failure by the City, provided that the City shall have the right to immediately suspend Company's right to operate at the Airport until Company has obtained the minimum required insurance coverage.

(F) Company becomes insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), or any successor statute thereto); or fails to pay its debts generally as they mature; or takes the benefit of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors.

(G) Company files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof, or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of

its property; or an order for relief is entered by or against Company under any chapter of the Bankruptcy Code.

(H) Company is adjudged a debtor or bankrupt and/or an order is made approving a petition filed by any of Company's creditors or stockholders seeking Company's liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within 60 days of its issuance.

(I) A petition under any chapter of the Bankruptcy Code or an action under any federal or state insolvency law or statute, or an action under any insolvency law or statute of another country is filed against Company and is not dismissed or stayed within 60 days after the filing thereof.

(J) By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Company and such possession or control continues in effect for a period of 60 days.

(K) Company becomes an entity in dissolution.

(L) The letting, license, or other interest of or rights of Company hereunder is transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in subparagraphs (F) through (K) of this Section.

(M) Company enters into an assignment or sublease which is not approved by the City in accordance with the provisions of Article XII.

Section 1302. Termination by the City

(A) Whenever an Event of Default has occurred, the City may at its option, immediately and without further notification of such Event of Default:

(i) Terminate this Agreement and/or Company's rights granted hereby, but without discharging any of Company's obligations hereunder and, at the City's further option, exclude Company from its Leased Premises. If Company uses, occupies, or fails to surrender or remove its property from its Leased Premises, or any portion thereof, without the consent of the City after this Agreement has been terminated or expires, Company may be deemed a tenant at sufferance during the period of such use or failure. In such event, the City shall have, in addition to whatever other rights are available to the City, the right to all remedies provided under applicable laws, and reasonable costs, disbursements, and attorney fees including consequential damages incurred as a result of the holdover.

(ii) Without terminating this Agreement, exclude Company from the Leased Premises and use its best efforts to lease such Leased Premises to a replacement tenant. Company shall remain liable for the Rent and other payments due hereunder for the remainder of the Term; provided, however, that any rents received from a replacement tenant shall be credited against the amounts owed by Company.

(B) In the event of an Event of Default, the City may exercise any and all of the rights provided to it in this Section irrespective of any subsequent cure by Company, unless otherwise mutually agreed by Company and the City.

(C) The remedies set forth in this Article shall be in addition to all other remedies which are or may be available to the City at law or in equity to enforce the performance and observance of any obligation, agreement or covenant of Company hereunder, including collection of amounts due.

(D) All rights and remedies given to the City herein and all rights and remedies granted to the City by law shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Leased Premises shall deprive the City of any of the City's remedies or actions against Company for Rent or for damages or for the breach of any covenant herein contained, nor shall the bringing of any action for Rent or breach of covenant, the resort to any other remedy herein provided for the recovery of Rent or any delay in exercising such rights, be construed as a waiver of the right to obtain possession of the Leased Premises.

(E) In no event shall this Agreement or any rights or privileges hereunder be an asset of Company under any bankruptcy, insolvency, or reorganization proceedings.

Section 1303. Change of Term

Notwithstanding the provisions of Section 201, automatically and immediately upon the occurrence of an Event of Default described in Subsections 1301 (G) - (M), the Term shall convert to month-to-month; provided, however, that the conversion of the Term pursuant to this Section shall not discharge any of Company's obligations hereunder nor affect any of the City's remedies set forth herein.

Section 1304. Termination by Company

At any time that Company is neither in default nor has committed an Event of Default hereunder, Company may terminate this Agreement to the extent set forth below, at Company's option, prior to the scheduled expiration date set forth in Section 201, by giving the City 60 days' advance Notice upon or after the happening and during the continuance of any of the following events:

(A) Any action of any federal, state, county, or municipal governmental agency substantially limiting the ability of Company to operate the Fuel System, or substantially limiting the ability of the City to operate the Airport; or

(B) Any failure by the City to keep, perform and observe any material promise, covenant, or other provision of this Agreement for a period of 30 days after Notice specifying such failure and requesting that it be remedied is given to the City by Company; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, shall not give rise to Company's right to terminate this Agreement if corrective action is instituted by the City within such 30 day period and diligently pursued until the failure is corrected.

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:39:55 +0000

**ARTICLE XIV
SURRENDER OF PREMISES**

Section 1401. Surrender of Premises

(A) *Surrender of Premises.* On expiration of this Agreement or earlier termination as hereinafter provided, or reallocation of the Leased Premises as provided herein, Company shall:

(i) peaceably surrender possession of the Leased Premises and other space made available to Company on the Commencement Date hereunder in a clean, sanitary, and good condition, excepting only reasonable wear and tear (taking into account repair, environmental remediation and maintenance required to be done by Company), acts of God, fire, and other casualties, and the City shall have the right to take possession of said Leased Premises and other space made available to Company hereunder;

(ii) return the Leased Premises to the City in a condition such that Hazardous Materials which were placed, stored, used, generated, treated, released, discharged, disposed, and/or spilled on, under, or about the Leased Premises by Company, its officers, directors, employees, agents, contractors, or suppliers on or after the Commencement Date do not exceed allowable levels established under applicable Environmental Laws and Environmental Permits. If the City is required under applicable Environmental Laws to undertake actions to bring the Leased Premises into compliance with this provision, or any applicable Environmental Laws or Environmental Permits as a result of Company's failure to timely correct same in accordance with Subsection 1002(D), Company shall reimburse the City for any Remediation Costs incurred by the City, as provided for in Subsection 1002(D); and

(iii) surrender all original records pertaining to the Leased Premises, including, but not limited to, the records referred to in Section 417 herein, any and all Fuel System drawings, operating procedures, agreements with maintenance contractors, operating records, including the results of tank and line tightness tests, equipment warranties and specifications, all correspondence with and reports to governmental agencies pertaining to Environmental Laws and Environmental Permits, all Environmental Permits pertaining to the Leased Premises, records and reports of environmental investigations and remediation of the Leased Premises or releases from the Leased Premises.

The City shall not be required to notify Company to quit possession at the expiration date of this Agreement.

(B) *Removal of Personal Property.* Provided Company is not in default for non-payment of Rent or any other payment due hereunder, Company shall have

the right, on expiration or early termination of this Agreement and within 30 days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Company, in, on, or about the Airport. Company shall not be entitled to remove non-trade fixtures without the advance consent of the City. If, following the expiration or early termination of this Agreement, the City has immediate need to accommodate a new tenant, the City may remove and store Company's trade fixtures, equipment and personal property, at Company's risk.

(C) *Removal Damages.* Company shall repair any damage caused by the removal of its trade fixtures, equipment, or personal property. Removal shall be at Company's expense. Notwithstanding the above, consideration shall be given to the intended long-term use of the Leased Premises and if the City determines that the Leased Premises would not be maintained for a period warranting the repairs indicated above, the City may alter or waive the repair requirement of this Subsection. If the Leased Premises are yielded or delivered to the City in need of repair, reconditioning, or restoration to the condition that existed when Company first occupied the Leased Premises pursuant to this Agreement (reasonable wear and tear taking into account repair and maintenance required to be done by Company excepted), after reasonable notification by the City to Company, the City shall repair or recondition said Leased Premises and the cost thereof, plus actual administrative costs, shall be invoiced to Company and payable immediately. The City shall determine the condition of the Leased Premises at the expiration or early termination of this Agreement.

(D) *Ownership of Fixtures and Personal Property Not Removed.* If, after 30 days following any of the actions authorized by Subsection 1302(A), Company fails to remove its fixtures and other personal property from the Leased Premises, such fixtures and personal property may be deemed abandoned. In addition to whatever other rights are available to the City, with prior notification of Company, the City may: (i) remove, sell, or store Company property at Company's expense, or (ii) take title to Company property in lieu of removal on behalf of Company. If the City takes title to such property or otherwise disposes of the property, the City shall be entitled to all proceeds of sale of such Company property as liquidated damages for the breach of this covenant to remove.

**ARTICLE XV
MISCELLANEOUS PROVISIONS**

Section 1501. Relationship of Parties

Nothing herein contained is intended or shall be construed to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Company the general representative or agent of the City for any purpose whatsoever.

Section 1502. Amendment

Except as otherwise expressly provided herein, this Agreement may not be changed, modified, discharged, or extended except by written amendment duly executed by the parties.

Section 1503. Subordination to Agreements with the United States

This Agreement and all Ancillary Agreements shall be subordinated to:

(A) the provisions of any existing or future agreement between the City and the United States Government or governmental authority, relating to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the approval to impose or use PFCs for the improvement or development of the Airport; Company shall not cause the City to violate any assurances made by the City to the United States Government in connection with the granting of such federal funds or the approval of such PFCs; and

(B) 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 shall supersede any provisions of this Agreement inconsistent with the operation of the Airport by the United States of America.

If the Federal Aviation Administration or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport or otherwise, Company agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement.

Section 1504. [Intentionally Left Blank]

Section 1505. Certificate in Connection with Issuance of Bonds

In connection with any issuance of Bonds by the City, upon not less than 30 days prior request by the City, Company shall deliver to the City a statement in writing certifying:

(A) that this Agreement is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that the Agreement as modified is in full force and effect);

(B) that to Company's knowledge the City is not in default under any provision of this Agreement, or, if in default, the nature thereof in detail; and

(C) such further matters as may be reasonably requested by the City, it being intended that any such statement may be relied upon by the parties involved in such issuance of Bonds.

Section 1506. No Third Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their permitted assigns. Nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder, nor shall it be considered or construed to be an admission of liability or responsibility to any third party.

Section 1507. Counterparts

This Agreement may be executed in one or more counterparts.

Section 1508. Exhibits

All certificates, documents, exhibits, attachments, riders, and addenda referred to herein, including the exhibits referred hereto, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

Section 1509. Survival of Warranties

All warranties and covenants set forth in this Agreement shall survive the execution and performance of this Agreement.

Section 1510. Quiet Enjoyment

Upon payment of all amounts due hereunder and performance of the covenants and agreements on the part of Company to be performed hereunder, the City shall not act or fail to act, except as otherwise provided by this Agreement, in a manner that will prevent Company from peaceably having and, in accordance with the terms hereof,

enjoying the Leased Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances and facilities granted herein.

Section 1511. No Personal Liability

(A) The City shall not be liable for any acts or omissions of Company or any condition resulting from the operations or activities of tenants or their representatives.

(B) No director, officer, employee, or agent of the City shall be charged personally or held contractually liable by or to the other party under any term or 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 shall be brought against the City and not against named individual respondents.

Section 1512. Governing Law and Forum Selection

This Agreement is made and entered into in the State of Missouri, and Missouri law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the City of St. Louis, Missouri. Company and the City hereby admit and consent to the jurisdiction and venue of such courts. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 1513. Communications and Notices

(A) Except as otherwise expressly provided in this Agreement, all communications, including notifications, requests, authorizations, approvals, demands, and consents provided for hereunder shall be in writing.

If to the City, to:

Airport Director
Lambert-St. Louis International Airport
10701 Lambert International Boulevard
St. Louis, Missouri 63145

with copy to the Airport Properties Division Manager at the same address.

If to Company, to:

STL FUEL COMPANY LLC
Attn: Kevin Wiecek, Fuel Committee Chairman
P. O. Box 36611, HDQ-7FM
2702 Love Field Drive
Dallas, TX 75235-1611

or to such other person or address as either the City or Company may hereafter designate by Notice to the other in accordance with Subsection 1513(B).

(B) All Notices required by this Agreement shall be mailed via certified mail return-receipt requested, via overnight mail or courier with receipt, or personally delivered to the City and Company at the addresses set forth in Subsection 1513(A), with copy to:

If to the City:

Office of the City Counselor
Airport Legal Department
10701 Lambert International Boulevard
St. Louis, Missouri 63145

If to Company:

Karen L. Chapman
Sherman & Howard L.L.C.
633 17th Street, Suite 3000
Denver, Colorado 80121

or to such other person or address as either the City or Company may hereafter designate by Notice.

Except as otherwise expressly provided hereunder, any such Notice shall be deemed to have been given or made: (i) if sent by certified mail, 5 days after being deposited in the mails, postage prepaid and properly addressed; (ii) if via overnight mail or courier, the next business day; and (iii) if delivered by personal service, when delivered to the addressee.

Section 1514. Force Majeure

(A) Neither party hereto shall 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 Company hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Company 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 shall be construed to abate, postpone or in any respect

diminish Company's obligations to make any payments due to the City pursuant to this Agreement.

(B) The City shall 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 therefor shall 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 1515. Invalid Provisions

If any covenant, condition, or 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 covenant, condition, or provision shall 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 shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Company in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

Section 1516. No Waiver

No provision of this Agreement shall 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 shall any custom or practice that may evolve between the parties in the administration of the terms 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 terms of this Agreement.

Section 1517. City's Rights and Remedies are Cumulative

All rights and remedies of the City as provided herein and under law are cumulative in nature.

Section 1518. Construction of Agreement

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against the City by reason of the preparation of this Agreement by the City.

Section 1519. Timing

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

Section 1520. Representatives

The City and Company shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for the City and Company, respectively, with respect to any actions to be taken by either of them under the terms of this Agreement. Except as specifically set forth herein, for the purposes of actions to be taken by it or by the City, the City's representative shall be the Airport Director. Company's representative shall be designated in a Notice delivered to the City. Any party hereto may change its designated representative by Notice to the other party.

Section 1521. Approvals

(A) Whenever in this Agreement any approval is required, such decision shall be promptly rendered and shall not be unreasonably withheld or conditioned. No disapproval shall be valid if such disapproval constitutes an anticompetitive act as described by a federal agency having jurisdiction over such matters.

(B) Unless otherwise required by state or local law, wherever in this Agreement the approval, disapproval, authorization, consent, certification, determination, waiver, or any other action of the City is required or permitted, it may be performed by the Airport Director, unless otherwise provided herein. In taking such actions, the Airport Director shall act reasonably, without undue delay, and shall take into consideration the best interest of the traveling public and the operations of the Airport.

(C) In all instances in this Agreement where consent or approval of one party is required for an action by the other party, such consent shall be in writing unless otherwise agreed by the parties.

Section 1522. Successors and Assigns

The terms, conditions, and covenants of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and upon their permitted successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions regarding assignment or subletting contained in this Agreement.

Section 1523. Authority to Execute

The person(s) executing this Agreement on behalf of Company warrants to the City that Company is a duly authorized and existing limited liability company, that Company is qualified to do business in the State of Missouri, that Company has full right

and authority to enter into this Agreement, and that each and every person signing on behalf of Company is authorized to do so.

Section 1524. Entire Agreement

This Agreement, including the attached exhibits, embodies the entire agreement between the City and Company relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and Company relating thereto.

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

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

Pursuant to Ordinance 69039, approved NOVEMBER 18, 2011.

The foregoing Agreement was approved by the Airport Commission at its meeting on _____, 2011.

By:

[Signature] 11/30/11
Commission Chairman
and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on October 27, 2011.

"BB 184"

By:

[Signature] 12/16/11
Secretary, Board of Estimate &
Apportionment

APPROVED AS TO FORM ONLY:

[Signature] 12/16/11
City Counselor Date

COUNTERSIGNED:

[Signature]
Comptroller Date

ATTESTED:

[Signature] DEC 22 2011
Register Date

63637

STL FUEL COMPANY LLC:

By: Kevin C. Wiecek

Kevin C. Wiecek 22 SEP 2011
Title: Chairperson Date

ATTESTED:

By:

Title: Date

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EXHIBIT “A”

FUEL FARM

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Legend
Fuel Farm

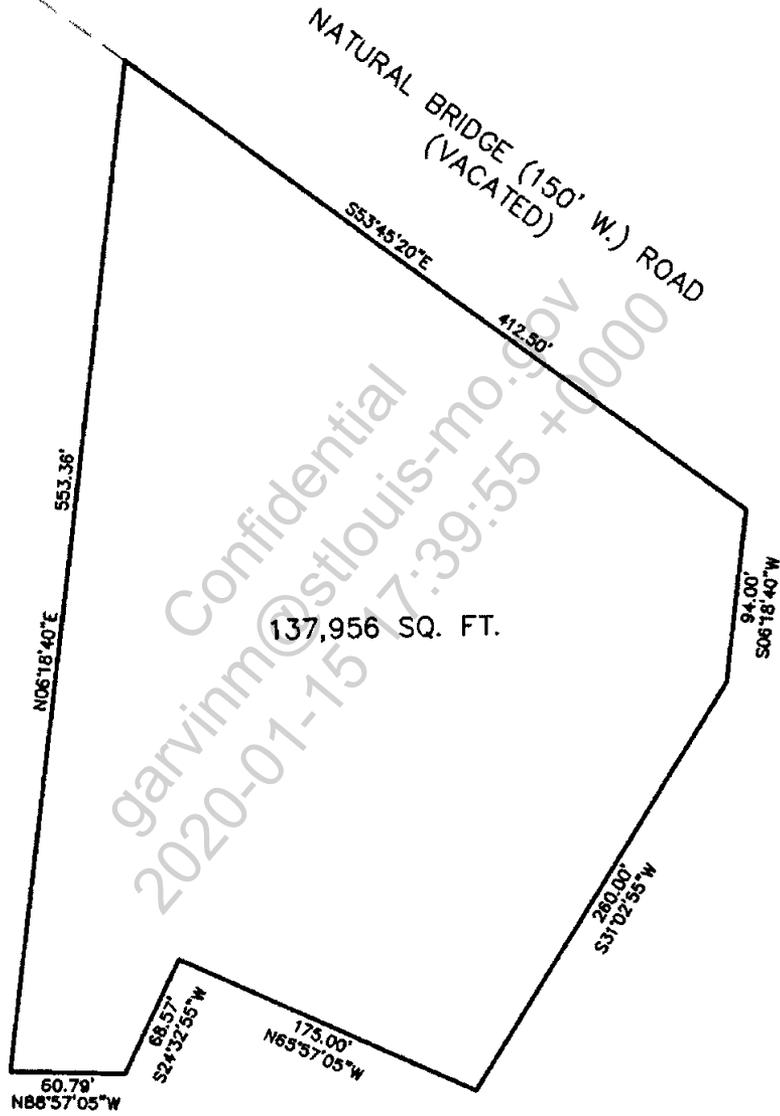
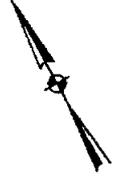
 **LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT** ®

Exhibit "A"
Fuel Farm
St. Louis Fuel, LLC

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Prepared By: WT
Date: Jan. 1, 2012
Review and Approval By:
Date:

SCALE: 1"=100' N



FUEL FARM
 LAMBERT ST. LOUIS INTERNATIONAL AIRPORT
 U.S. SURVEY 2524, T.46 N.— R.6 E.
 ST. LOUIS COUNTY, MISSOURI

6/29/09

LAMBERT FUEL FARM-SOUTH
K0726D.1

A TRACT OF LAND IN U.S. SURVEY 2524, TOWNSHIP 46 NORTH, RANGE 6 EAST, ST. LOUIS COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT ON THE SOUTHWESTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED) AT ITS INTERSECTION WITH THE EASTERN LINE OF PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED IN BOOK 1302, PAGE 285 OF THE ST. LOUIS COUNTY RECORDS; THENCE ALONG SAID SOUTHWESTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED), SOUTH 53 DEGREES 45 MINUTES 20 SECONDS EAST 412.50 FEET TO A POINT; THENCE LEAVING SAID ROAD LINE SOUTH 06 DEGREES 18 MINUTES 40 SECONDS WEST 94.00 FEET TO A POINT; THENCE SOUTH 31 DEGREES 02 MINUTES 55 SECONDS WEST 260.00 FEET TO A POINT; THENCE NORTH 65 DEGREES 57 MINUTES 05 SECONDS WEST 175.00 FEET TO A POINT; THENCE SOUTH 24 DEGREES 32 MINUTES 55 SECONDS WEST 68.57 FEET TO A POINT; THENCE NORTH 88 DEGREES 57 MINUTES 05 SECONDS WEST 60.79 FEET TO A POINT IN THE SOUTHWESTWARD PROLONGATION OF THE EASTERN LINE OF PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA, AS AFOREMENTIONED; THENCE ALONG SAID PROLONGATION AND ALONG SAID EASTERN LINE NORTH 06 DEGREES 18 MINUTES 40 SECONDS EAST 553.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 137,956 SQUARE FEET.



LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT ®

Exhibit "B"
Fuel Hydrant System
St. Louis Fuel, LLC

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Prepared By: _____ name
Date: _____
Review and Approval By: _____
Date: _____



Legend
Fuel Hydrant System



Legend

- Fuel Pit
- Fuel Hydrant System
- Oil Water Separator

**LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT ®**

**Exhibit "B"
Fuel Hydrant System
St. Louis Fuel, LLC**

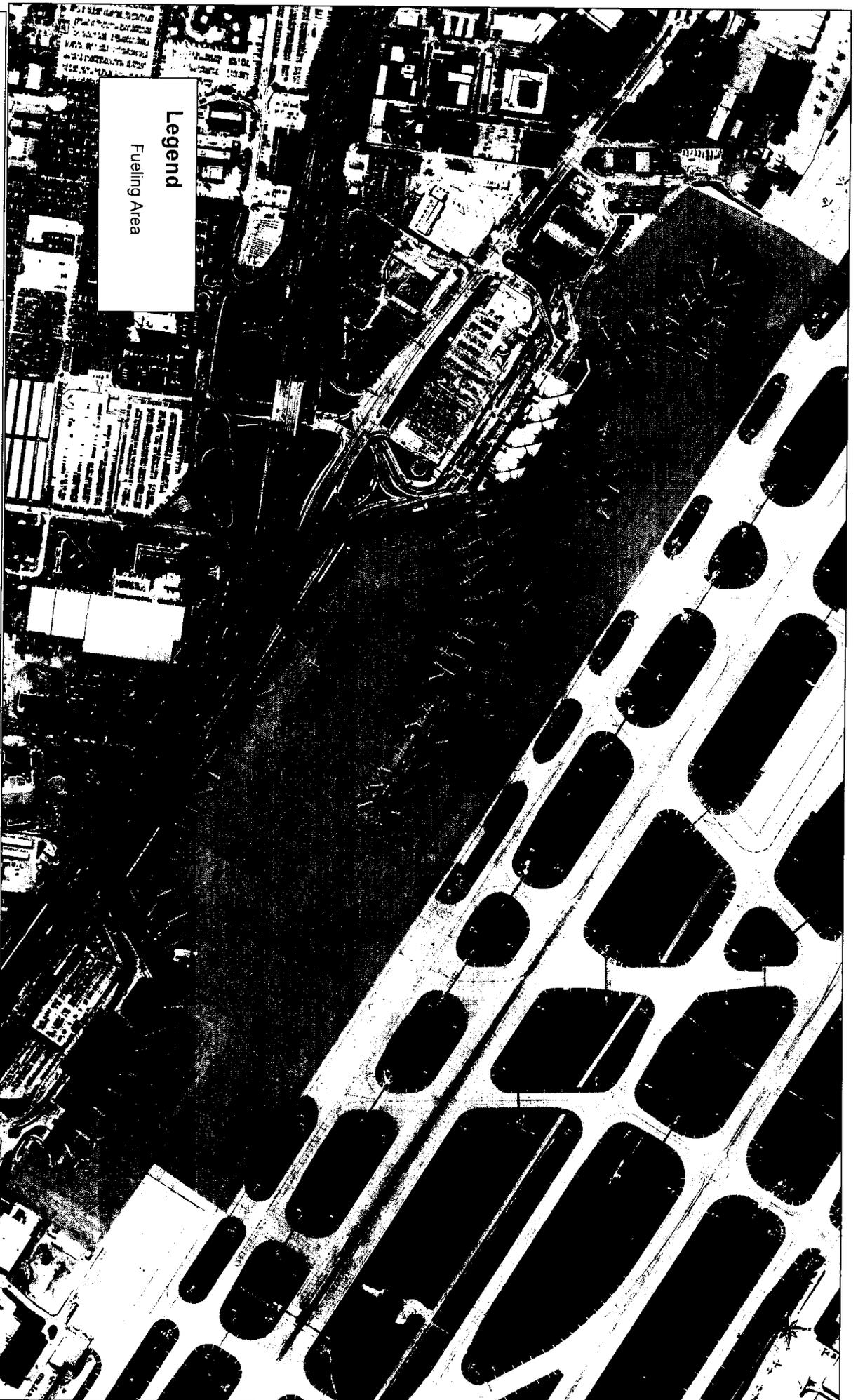
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Prepared By: WT
Date: Jan. 1, 2012
Review and Approval By:
Date:

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FUELING AREA

EXHIBIT “C”



 LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT ®

Exhibit "C"
Fueling Area
St. Louis Fuel, LLC

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Prepared By: WT
Date: Jan. 1, 2012
Review and Approval By:
Date:

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MAINTENANCE FACILITY

EXHIBIT „D“



Legend

- Fuel Pit
- Fuel Hydrant System
- Oil Water Separator
- Maintenance Facility

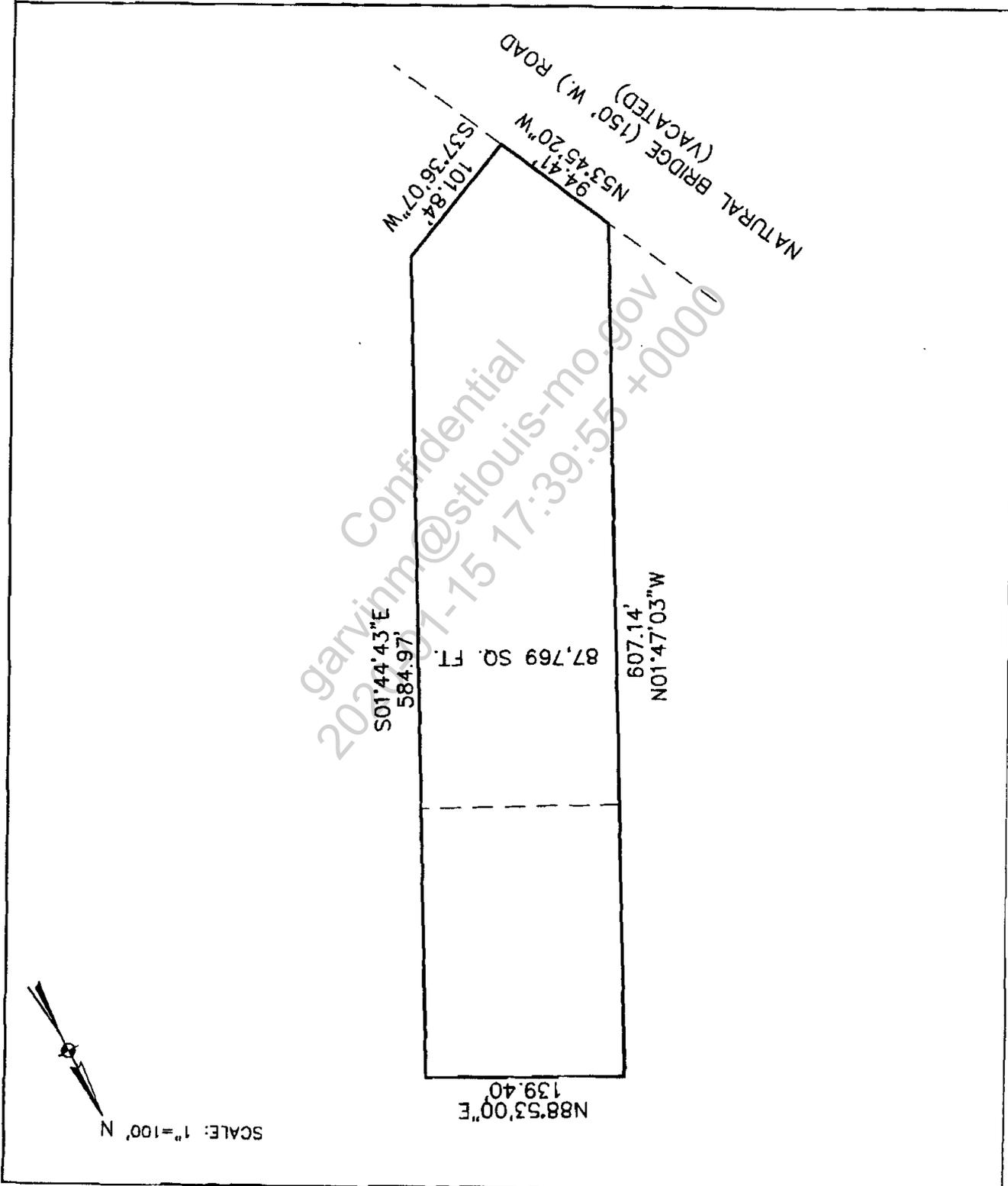
**LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT** 

Exhibit "D"
Maintenance Facility
St. Louis Fuel, LLC

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Prepared By: WJ
Date: Jan. 1, 2012
Reviewed and Approved By: [Signature]
Date: [Signature]

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT
U.S. SURVEY 1993, T.46 N. - R.6 E.
ST. LOUIS COUNTY, MISSOURI



4/17/09

K0726D.1

A TRACT OF LAND IN U.S. SURVEY 1993, TOWNSHIP 46 NORTH, RANGE 6 EAST, ST. LOUIS COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED) WITH THE EASTERN LINE OF PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED IN BOOK 1302, PAGE 285 OF THE ST. LOUIS COUNTY RECORDS; THENCE NORTHWESTWARDLY ALONG SAID SOUTHWESTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED), NORTH 53 DEGREES 45 MINUTES 20 SECONDS WEST 314.05 FEET TO A POINT; THENCE LEAVING SAID ROAD LINE NORTH 37 DEGREES 36 MINUTES 07 SECONDS EAST 150.04 FEET TO THE NORTHEASTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED) TO THE ACTUAL POINT OF BEGINNING; THENCE NORTHWESTWARDLY ALONG SAID NORTHEASTERN LINE OF NATURAL BRIDGE ROAD, 150 FEET WIDE, (NOW VACATED), NORTH 53 DEGREES 45 MINUTES 20 SECONDS WEST 94.41 FEET TO A POINT; THENCE NORTH 01 DEGREES 47 MINUTES 03 SECONDS WEST 607.14 FEET TO A POINT; THENCE NORTH 88 DEGREES 53 MINUTES 00 SECONDS EAST 139.40 FEET TO A POINT; THENCE SOUTH 01 DEGREES 44 MINUTES 43 SECONDS EAST 584.97 FEET TO A POINT; THENCE SOUTH 37 DEGREES 36 MINUTES 07 SECONDS WEST 101.84 FEET TO THE ACTUAL POINT OF BEGINNING AND CONTAINING 87,769 SQUARE FEET.

EXHIBIT “E”

CAPITAL IMPROVEMENT PROGRAM

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EXHIBIT “E”

CAPITAL IMPROVEMENT PROGRAM - CIP

YEAR ONE:

1. Perform study to reduce Fuel Hydrant System pressure to no more than 150 p.s.i.
2. Install double block and bleed valves to segment that section of the Fuel Hydrant System serving Concourses “D” and “E” from the remainder of the Fuel Hydrant System, so that the segmented section can be isolated for pressure testing purposes.
3. As necessary, elevate hydrant fuel pits located throughout that section of the Fuel Hydrant System serving Concourse “C” so that the fuel pits are level with the surface of the surrounding aircraft parking apron.
4. Replace existing chain link security fence located at the south side of the Fuel Farm with a new 8-foot security chain link fence containing three strands of barbed wire on top.
5. Use commercially reasonable efforts to have the owner or operator of each Jet Fuel pipeline construct spill containment measures at the point(s) where each pipeline connects to the Fuel System
6. Reinstall or replace the masonry cap on the south wall of the Fuel Farm control building.

YEAR TWO:

1. Replace “Knife Edge” pipe supports at the Fueling Farm with devices that distribute the load over some length of the pipe and provides corrosion protection. Inspect other pipe supports at the Fueling Farm, particularly pipe supports with slide bearings, for deterioration; repair or replace as needed. Install Teflon pads between the pipes and supports.
2. Implement recommendations of the study to reduce Fuel Hydrant System pressure to no more than 150 p.s.i.
3. If directed to do so by a local, state or federal court or governmental entity with jurisdiction over such matters, construct a permanent facility for dispensing diesel fuel. This obligation will continue throughout the Term.
4. If directed to do so by a local, state or federal court or governmental entity with jurisdiction over such matters, construct a new bottom loading unleaded fueling facility. This obligation will continue throughout the Term.

YEAR THREE:

1. Install double block and bleed valves to segment that section of the Fuel Hydrant System serving Concourse “C” from the remainder of the Fuel Hydrant System, so that the segmented section can be isolated for pressure testing purposes;

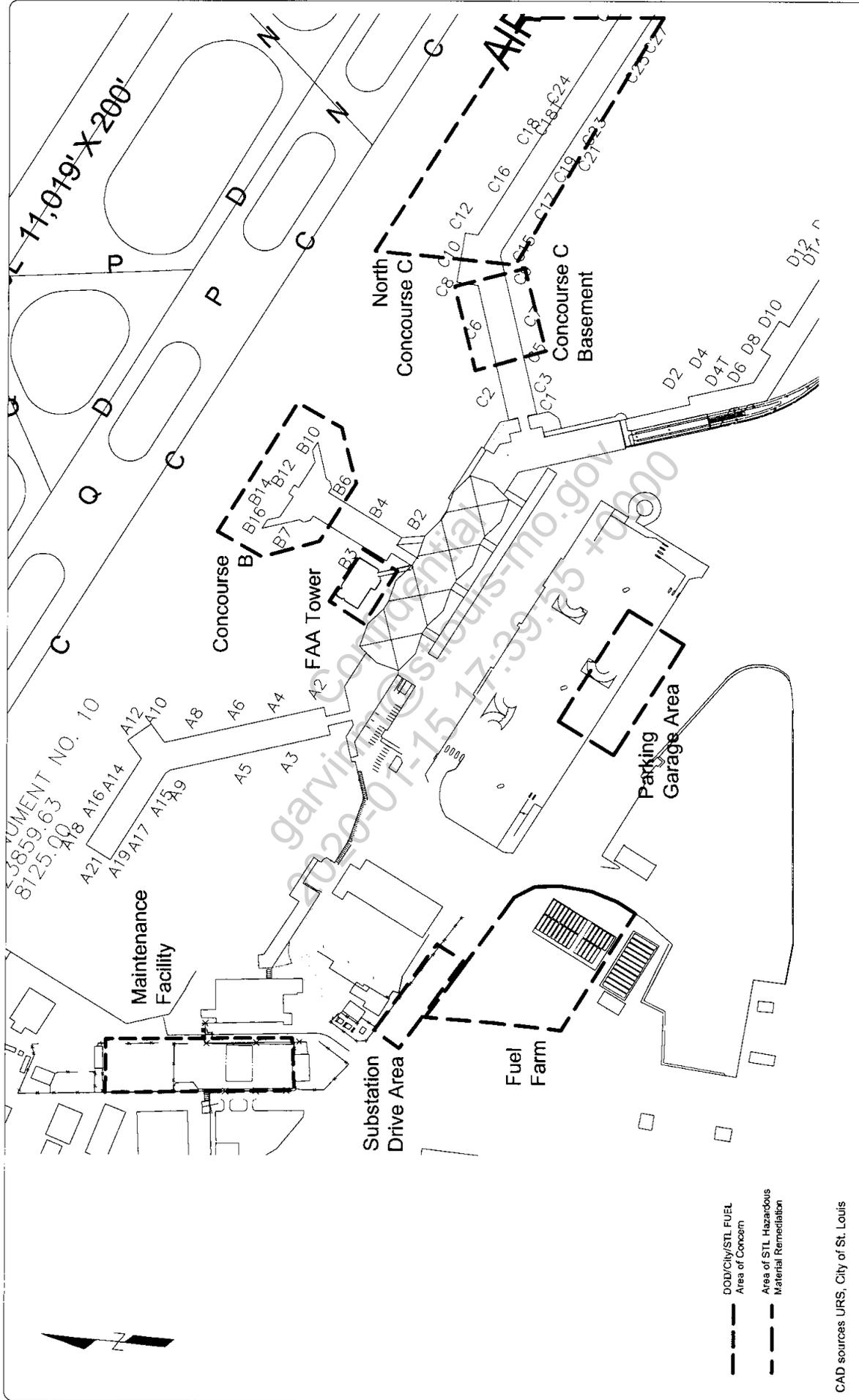
EXHIBIT F

**EXISTING ENVIRONMENTAL CONDITIONS
SUBJECT TO SECTION 1002(D)(i)**

<p align="center">Existing Environmental Condition</p> <p>The boundaries of the areas described below and illustrated on Exhibit F-1 are approximate. Areas where constituents of concern have migrated or emanated from the described Existing Environmental Condition are also included within the Existing Environmental Condition, even if outside the described boundaries</p>	<p align="center">Constituents of Concern</p>
<p>Fuel Farm Includes the lower Jet Fuel Storage area, gasoline storage area, areas in between, and to the Fuel Farm boundary lines on the east and west, and to the Lambert International Blvd. to the south. See attached Figure F-1.</p>	<p>Jet A, aviation gasoline and gasoline impacts to soil and groundwater in this area.</p>
<p>Parking Garage Area Includes an area along the south side of Terminal 1 parking garage where Jet Fuel was discovered to be seeping from the south portion of the parking garage. Boundaries not established as of the Effective Date. See attached Figure F-1 for approximate area.</p>	<p>Jet A impacts to soil and groundwater in this area</p>
<p>Concourse C Extends from the airside alignment of the concourse building between Gates C-10 and C-12 on the west to approximately Gate C-28 on the east to an area of the associated aircraft parking apron, approximately 220 feet to the north. Does not extend to or beyond the large trunk sewer line running in a north - south direction beneath the concourse at Gate C-10 and to the north. See attached Figure F-1.</p>	<p>Jet A impacts to soil and groundwater in this area.</p>
<p>Concourse C – Gate C-6 Basement See attached Figure F-1.</p>	<p>Jet A impacts to this area.</p>
<p>Concourse B Approximately the northernmost one-half of the Concourse B building at Gates B-6 through B-16 and surrounding aircraft parking apron areas to an approximate distance of 25 feet from the concourse building. See attached Figure F-1. Boundaries not established for northeastern edge as of the Effective Date.</p>	<p>Jet A and aviation gasoline soil and groundwater impacts to this area.</p>

<p style="text-align: center;">Existing Environmental Condition</p> <p>The boundaries of the areas described below and illustrated on Exhibit F-1 are approximate. Areas where constituents of concern have migrated or emanated from the described Existing Environmental Condition are also included within the Existing Environmental Condition, even if outside the described boundaries</p>	<p style="text-align: center;">Constituents of Concern</p>
<p>FAA Tower Area of impacted soil discovered during construction excavation for the FAA tower in 1995. Boundaries not established as of the Effective Date. See attached Figure F-1 for approximate area.</p>	<p>Petroleum hydrocarbons</p>
<p>Substation Drive Area Odor or product noted during subsurface investigation in November 1994 (O'Brien & Gere report dated January 5, 1995). Petroleum hydrocarbons noted at three locations. Benzene at one location. Boundaries not established as of the Effective Date. See attached Figure F-1 for approximate area.</p>	<p>Petroleum hydrocarbons, benzene</p>
<p>Maintenance Facility Petroleum hydrocarbons detected in the immediate vicinity of the Maintenance Facility.</p>	<p>Petroleum hydrocarbons present in soil and groundwater</p>

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Project: STL
 Prof. Manager: HERNST
 Date: 19AUG10
 Drawn by: HERNST
 Check by: HERNST
 Design: JMP

CAD sources: URS, City of St. Louis
 GRAPHIC SCALE
 (IN FEET)
 0 170 340 480

ENVIRONMENTAL COST MANAGEMENT, INC.
 Managing Cost and Liability
 3525 Hybrid Ave., Suite 200 • Costa Mesa, CA 92626
 Tel: (714) 662-2739 • Fax: (714) 662-2758

Lambert - St. Louis International Airport
 St. Louis, Missouri

Exhibit F-1
 Existing Environmental Conditions Subject to
 Section 1002(D)(i)

Sheet
 1