



ST. LOUIS LAMBERT
INTERNATIONAL AIRPORT

SCANNED
APR 16 2019
ACCOUNTING DEPT.

1065420

THE CITY OF ST. LOUIS
SPACE PERMIT
HG-ST LOUIS JV
TERMINAL 1 OFFICE SPACE
AL-297

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ST LOUIS LAMBERT INTERNATIONAL AIRPORT
SPACE PERMIT
HG-ST LOUIS JV

This Space Permit is made and entered into as of the ____ day of _____, ____ (“Permit”) by and between the City of St. Louis, a municipal corporation of the State of Missouri (the “City”) and HG-ST LOUIS JV (“Permittee”).

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

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

“**Aircraft 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.

“**Airport**” means St. Louis Lambert International Airport.

“**Airport Properties Division**” means that division of the City of St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, agent, concessionaire and other space at the Airport, and is the Permittee’s point of contact with the Airport on all issues related to this Permit.

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

“**Commencement Date**” means the first day of the Term of this Permit as more fully described in Article III, Section 301 entitled “Term”.

“**Contract Year**” means a period of twelve (12) consecutive calendar months commencing on the Commencement Date and each twelve (12) month period thereafter during the Term of this Permit (see Article III).

“**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 Permit, and incorporates the granting of approval requirements of Section 1212 hereof.

“**Environmental Laws**” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, Environmental permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances, or chemicals or the preservation or regulation of the environment or natural resources including, without limitation,

the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the

Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §5101 *et seq.*; the Endangered Species Act, 16 U.S.C. §1531 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §10101 *et seq.*, as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time.

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

"Event of Default" means an Event of Default as defined in Section 1002.

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

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

"Improvements" means all construction, installation, modernization, refurbishment, and upgrades of all fixtures, furnishings, equipment, finishes, facilities, structures, or appurtenances thereto, built, constructed, installed or erected by the Permittee under this Permit, and forming a part of and which are permanently affixed or attached to any portion of City's real property or existing improvements within the Premises.

"Notice" means a communication between the parties to this Permit performed in accordance with the requirements of Section 1201 herein.

"Premises" means the area or areas described in Section 201, and shown on Exhibit "A," that has or have been designated by the City for the exclusive occupancy and use by Permittee for the uses herein specifically provided including all existing improvements existing within the Premises as of the Commencement Date.

"Remediation Costs" means any losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or Environmental Permits, and/or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits, and to the extent caused by, or resulting from Permittee's operations or activities at the Premises or the Permittee's use of the City's property. Remediation Costs include reasonable 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 expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out of Permittee's handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

"Removable Fixtures" means all furnishings, equipment, personal property, and fixtures installed or placed by the Permittee within the Premises that are not permanently affixed to the City's real property or any improvements within the Premises including any existing improvements or Permittee's Improvements, and listed by Permittee on its Removable Fixtures list approved by the City, as provided for in Section 609 of this Permit.

"Rent(s)" means for any Fiscal Year, the Space Rental Payment or rents payable by Permittee pursuant to Article IV.

"Rules and Regulations" means those lawful, reasonable, and not unjustly discriminatory rules and regulations, including ordinances and operating directives, promulgated by the Airport Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

"Term" means the entire Term of this Permit as defined in Section 301 of this permit.

"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.

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

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

ARTICLE II PREMISES

SECTION 201. PREMISES. The City hereby grants Permittee the use and occupancy of the Premises described as 423 square feet, located on the lower level of Terminal 1, in the vicinity of Exit 15.

Permittee accepts the Premises "AS IS" with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives with respect to the physical, environmental or structural conditions of the Premises or any portion thereof or otherwise including but not limited to: soil conditions of the land, structural conditions of any structures or facilities, the geotechnical condition of the Premises, the presence or absence of any Hazardous Materials, asbestos and asbestos related materials, water, sewage utilities serving the Premises, or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Permit.

The City without limitation expressly disclaims and negates, as to the Premises: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty for a particular purpose; and c) any implied or expressed warranty with respect to the Premises or any portion thereof.

The City without limitation expressly disclaims any expressed or implied warranty with respect to the condition of the Premises, its compliance with any zoning or other laws, statutes, rules, ordinances or regulations applicable to the Premises including but not limited to the Americans with Disabilities Act, the uses permitted on the Premises, or any other matter or thing relating to the Premises or any portion thereof.

The City may relocate, add, substitute or delete portions of the Premises at its sole option as may be reasonably required in the opinion of the Director of Airports. Such changes will be made at the sole expense of Permittee, and the City will not be liable or responsible for any loss whatsoever including, without limitation, any inconvenience or loss by Permittee of work time, profit or business resulting from such changes including, without limitation, actual, incidental, consequential or special damages.

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

- A. The City reserves the right (but is not obligated pursuant to this Permit) to develop, maintain, and keep in repair the Airport, including the Aircraft Operating Area and all publicly-owned facilities.
- B. Permittee shall not exercise the rights granted by this Permit to Permittee in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operations of other tenants or users of the Airport.
- C. The City reserves the right to, from time to time, temporarily or permanently close or restrict specific roadways, taxiways, taxi lanes, runways, apron areas, doorways, and any other area at the Airport. The City also reserves the right at any time or times to relocate, reconstruct, change, alter, or modify any such means of access provided for pursuant to this Permit or otherwise, either temporarily or permanently; provided that a reasonably convenient and adequate means of access, ingress, and egress exist or be provided in lieu thereof. The City will reasonably notify Permittee of any such action affecting Permittee.
- D. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- E. The City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Permittee's use of the Premises, and provided

further that such reservation or grant of rights does not directly result in additional cost or expense to Permittee.

SECTION 203. ACCESS. Subject to and in accordance with the Provisions of this Permit, Permittee has the right of free access, ingress to and egress from the Premises, for Permittee's employees, volunteers, guests, patrons, contractors, subcontractors, agents, and invitees.

SECTION 204. PREMISES ADJUSTMENT. If Premises are increased, reduced or changed, revised exhibits may be substituted for those herein without the necessity to amend this Permit, which substitution will be made by Notice to Permittee from the City.

ARTICLE III TERM

SECTION 301. TERM. The Term of this Permit consists of **Three (3) Years** beginning on **February 1, 2019** (the "**Commencement Date**") and ending on **January 31, 2022** unless sooner terminated in accordance with other Provisions of this Permit.

The City or Permittee may terminate this Permit without cause by giving **ninety (90)** days' notice to the other party with no liability to the terminating party and such termination will be deemed a no fault cancellation.

SECTION 302. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the term of this Permit is necessary. Permittee covenants and agrees that at the expiration date of the term of this Permit, or at the earlier termination hereof, it will peaceably surrender possession of the Premises (see Article VI, Section 609 entitled "Title To Improvements" and Article XI entitled "Surrender Of Premises" of this Permit).

SECTION 303. HOLDOVER PROVISION. If Permittee holds over after the expiration or early termination of this Permit, the resulting tenancy will, unless otherwise mutually agreed, be a tenant at will on a month-to-month basis. During such month-to-month tenancy, Permittee shall pay to the City the same Rents, fees, and charges as set forth herein (see Article IV entitled "Fees & Rentals" of this Permit), unless different fees are agreed upon in writing by the Director on behalf of the City and the Permittee, and will be bound by all Provisions of this Permit.

ARTICLE IV FEES & RENTALS

SECTION 401. SPACE RENTAL PAYMENT. Permittee shall pay in advance to City a monthly rental fee based upon the current annual square foot rental rates for Terminal 1. "**Space Rental Payments**" or "**Rents**" must be paid on or before the first (1st) day of each month during the Term of this Permit as invoiced by City.

The current charge as computed by the City is:

Terminal 1 Space 423 sq. ft. x \$52.39 per sq. ft. = \$22,160.97 / 12 = \$1,846.75 per month.

Permittee acknowledges and agrees that the Terminal rental rates will be revised on July 1st of each year, or on such other date as the Director may specify. Further, Permittee agrees that it shall pay a per square foot rental rate that is equal to the then current non-airline square footage rental rate in Terminal 1.

SECTION 402. UNPAID RENTS AND FEES. All unpaid rent, fees or other payments or charges due City hereunder will bear a service charge of 1½ % per month if same is not paid and received by City on or before the thirtieth (30th) of the month in which said payments are due, and Permittee agrees that it shall pay and discharge all costs and expenses including attorneys' fees and litigation cost incurred or expended by City in collection of said delinquent amounts due including service charges.

SECTION 403. NOTICE, PLACE AND MANNER OF PAYMENTS. Payments to the City required by this Permit must be made at the Airport Administrative Offices, with checks payable to the "Treasurer, City of St. Louis," at the address set forth in Section 1201, or at such other place or by whatever payment method that the City may determine and as the City may hereafter notify Permittee, and must be made in legal tender of the United States of America.

SECTION 404. ADDITIONAL FEES, CHARGES AND RENTALS. Permittee shall pay additional fees, charges and rentals under the following conditions:

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

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

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

SECTION 405. PROMPT PAYMENT OF TAXES AND FEES. Permittee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees,

permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further warrants, covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent.

ARTICLE V USE OF PREMISES

SECTION 501. USE. The City hereby grants to Permittee, subject to all the Provisions of this Permit, the use and occupancy of the Premises as office and storage space, unless otherwise expressly authorized in writing by the City. Permittee acknowledges and agrees that the Permittee shall comply with all Rules and Regulations which the Director may establish from time to time. In addition, Permittee shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

No sale of any goods or services to the public or other users of the Airport is authorized. Violation of this restriction may result in immediate termination of this Permit.

The use of areas not specifically included in Exhibit A entitled "Premises" must be approved in advance and in writing by the Director (see Section 1212 entitled "Required Approvals").

All deliveries to or pick-ups from the Airport Terminal Buildings by Permittee or its agents will be through the Terminal 1 delivery dock at the west end of the lower level. All deliveries are the responsibility of Permittee and not the City.

This Permit does not grant the use of any parking area by Permittee unless specifically granted.

The Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 502. COMPLIANCE WITH LAWS AND REGULATIONS. Permittee shall comply with all statutes, laws, rules, ordinances, orders, judgments, executive orders, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, security procedures, plans or requirements, operating directives or requirements of all federal, state, City, local and other governmental authorities, including without limitation the "Airport Certification Manual" on file at the Airport Director's Office and the Airport's Rules and Regulations, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways, as may be amended from time to time (see Section 1224 entitled "Security Plan and Facilities").

SECTION 503. REPAIRS AND MAINTENANCE. The City shall operate, maintain, keep in good repair and clean all of the public areas and facilities of the Airport. The City is responsible for maintaining the following:

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

The Permittee, at its sole cost and expense, shall perform the following functions as part of its responsibilities in the cleaning, repair and maintenance of the Premises. The following list includes certain functions but Permittee's responsibilities are not limited to those functions:

- A. Maintain and keep in good repair and appearance the interior and exterior, non-structural portions of the Premises, including all Permittee Improvements, equipment, fixtures, Removable Fixtures, utility systems (up to the common distribution points for each utility system), all doors and windows, locks and keys, floor coverings, ceilings, and any other structures erected within the Premises. Maintenance and repairs must be in quality and class equal to or better than the original work to preserve the Premises in good order and condition, based on a standard of care reflecting prudent property management.
- B. Perform, or cause to be performed, custodial services daily.
- C. Keep all papers and debris picked up daily from the Premises.
- D. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- E. Repair, or cause to be repaired, all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Permittee or its agents or employees; this requirement includes immediate replacement of broken windows, doors and locks with like materials.
- F. Provide for complete, sanitary handling and disposal of all trash, garbage, recycling and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Permittee agrees to promptly provide and install same and to abide by such standards.
- G. If the City provides or designates a service for picking up refuse and garbage, Permittee will be required to use said service.
- H. If the City establishes a recycling program, the Permittee will fully participate in said recycling program. Permittee must comply with all applicable City, county, state and federal regulations regarding recycling.

- I. Permittee will break down or cause to break down all cardboard boxes prior to their disposal.
- J. Confine all handling and holding of Permittee's property or property under Permittee's control to the Premises.
- K. Take such measures as may be necessary to keep the Premises secure; the City has no obligation or responsibility to keep Permittee's Premises secure.
- L. Keep the Premises free of all pests, providing such pest control services as required.
- M. No storage will be permitted on the exterior areas of the Premises.
- N. Provide, at Permittee's sole cost and expense, a functional mailing address or other means of receiving mail, and ensure all mail is directed to that address. The City is not responsible for Permittee's mail or the subsequent delivery thereof.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Permittee understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Permittee hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including without limitation loss of profit or business, incidental, consequential or special damages.

SECTION 504. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives have the right (at such times as may be reasonable under the circumstances and with as little interruption of Permittee's operations as is practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises to determine whether Permittee has complied and is complying with the Provisions of this Permit.
- B. To perform maintenance and make repairs in any case where Permittee is obligated, but has failed to do so, after the City has given Permittee notice to do so, in which event Permittee shall reimburse the City for the cost thereof, plus a charge of fifteen percent (15%) for overhead, promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections or remediation, studies and assessments.

SECTION 505. UTILITIES.

- A. Electrical Fee. Permittee will pay a monthly electrical fee, invoiced by the City, at a cost based upon metered usage for its electrical usage on the Premises.
- B. Electrical Service & Supply. If electrical service outlets are not available where needed, Permittee will be responsible for bringing electrical service to the Premises. Permittee will be responsible for any needed modifications or upgrades in electrical supply caused by increased lighting or other changes to the Premises made by the Permittee (see Article VI entitled "Improvements And Alterations").
- C. Other Utilities. Permittee shall provide and pay for all other utilities (including telephone and other third party service) it requires, including but not limited to deposits; installation costs; costs of upgrading or relocating utility service; connection charges; telephone and data lines it requires; meter deposits; and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.
- D. Fire Detection & Suppression Equipment. If required by building codes or other regulations, Permittee shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. Permittee shall pay for the connection of fire detection equipment up to City provided z-tie boxes. Permittee shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

Permittee shall not at any time overburden or exceed the capacity of mains, feeders, ducts, conduits, or other facilities by which such utilities are supplied to, distributed in or serve the Premises.

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

SECTION 506. ENTERTAINMENT SYSTEM/WIRELESS DATA. Permittee shall comply with all Airport Rules and Regulations concerning the use and operation of entertainment and wireless systems.

SECTION 507. INTERFERENCE WITH AIRPORT UTILITIES. Permittee agrees that it will not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

SECTION 508. INTERFERENCE TO AIR NAVIGATION. Permittee warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional

regulations of the FAA, will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Permittee at its expense. Permittee warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the Air Traffic Control Tower and its operations. Permittee further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aids or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

SECTION 509. KNOWLEDGE OF AIRPORT. Employees of Permittee are expected to be able to assist Airport users with way-finding within the Airport. Permittee shall ensure that each of its employees (i) have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Airport and provide such information upon request, with courtesy and accuracy, and (ii) have a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers' requests for information.

SECTION 510. CITY'S OBLIGATIONS. Except as specifically provided for herein, the City is not under any duty or obligation to Permittee to repair, maintain, or clean the Premises or any portion thereof, or any facilities or equipment constructed thereon. The City will not be responsible or liable to Permittee for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by Permittee resulting from failure of the Airport structures or utility systems.

ARTICLE VI IMPROVEMENTS AND ALTERATIONS

SECTION 601. CONSTRUCTION BY PERMITTEE. Permittee may construct, alter, modify, install, refurbish or improve the Premises subject to the prior written approval of the Director. Permittee will submit to the Director detailed plans and specifications for all Improvements to and equipping of the Premises prepared in accordance with the Tenant Design Standards issued by the Airport. *Permittee agrees it will not begin any work until it receives the approval of its plans and specifications from the Director.* Any changes in the plans or specifications after approval will require resubmission.

Permittee shall provide the Director with a copy of all applicable permits as required by local municipalities prior to beginning any construction, modification, installation, or alterations. No reduction or abatement of Space Rental Payments will be allowed for any interference with Permittee's operations by such construction.

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

Permittee shall provide the Director, within sixty (60) days of completion or occupancy of any construction or modification to the Premises, reproducible as-built drawings on either Mylar or Sepia Mylar base and in an electronic format acceptable to the City.

SECTION 602. PREPARATION OF PLANS AND SPECIFICATIONS. Permittee shall submit detailed drawings, plans and specifications for improving and equipping the Premises. *Permittee may begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.*

SECTION 603. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving, constructing, maintaining, repairing, or equipping the Premises, Permittee agrees to require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than \$3,000,000.00 as to any one person, and \$3,000,000.00 as to any one occurrence, and with property damage limits of not less than \$3,000,000.00 as to any one occurrence. Said insurance must be in a form acceptable to the City.

SECTION 604. PERFORMANCE AND PAYMENT BONDS. Permittee shall require each of its contractors and suppliers of construction materials to furnish a Performance Bond and a Payment Bond each in the full amount of any contract in a form acceptable to the City. The Payment Bond must comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds must be given to the City for approval before work begins. Any sum or sums derived from said Performance Bond and Payment Bond will be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

SECTION 605. MECHANICS' AND MATERIALMEN'S LIENS. Permittee agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

SECTION 606. CERTIFICATE OF COMPLETION. Upon the completion of the Improvements hereunder, Permittee shall submit to the Director of Airports a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit, which may be required by any federal, state, City, or local government or agency in connection with the completion or occupancy thereof by Permittee. Permittee, at its sole cost, shall deliver to the City duplicate copies of "as built" drawings of the new Improvements on the Premises within sixty (60) calendar days after the date on which the Permittee has certified completion thereof.

SECTION 607. SIGNS. Permittee agrees that no signs or advertising displays will be placed on, painted on or erected in any manner upon the areas of the Premises exposed to the public without prior written approval of the Director and that such signs will conform to reasonable standards

established by said Director with respect to wording, type, size, design, color and location. Handwritten signs are strictly prohibited.

SECTION 608. NONDISTURBANCE OF AIRPORT TENANTS AND OPERATIONS. Any work by Permittee and its contractors must be conducted in an orderly and proper manner, and must not otherwise disturb, create a hazard, or interfere with other projects on, or the operations of, the Airport. Permittee 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 Permittee or its contractors fails to comply with the provisions of this Section, the City has the right to stop any or all work being performed, until such compliance is achieved, without terminating this Permit.

SECTION 609. TITLE TO IMPROVEMENTS AND REMOVABLE FIXTURES. Title to the Premises including all Improvements constructed or placed in or on the Premises by the Permittee, excluding Permittee's Removable Fixtures, furniture, trade fixtures, equipment, but including all alterations, modifications and enlargements thereof, become part of the Premises with title vesting to the City upon the expiration or earlier termination of this Permit; subject, however, to Permittee's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Provisions of this Permit.

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

The City reserves the right and Permittee agrees that the Director may require Permittee to remove any or all Improvements and structures and restore the Premises to its original condition that existed when Permittee first used the Premises under this Permit or any preceding permit or lease, ordinary wear and tear accepted. Permittee agrees to bear all costs of such removals and restorations (see Article XI entitled "Surrender of Premises").

ARTICLE VII INSURANCE, DAMAGE AND INDEMNIFICATION

SECTION 701. LIABILITY INSURANCE. Permittee will obtain (at its sole expense and maintain at all times during the Term of this Permit) liability insurance on an **occurrence basis**, against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or the omissions of Permittee, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors and invitees, pursuant to this Permit under the following types of coverage:

- A. Commercial General Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence/aggregate.

- B. Automobile Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limit per occurrence (for automobiles used by Permittee in the course of its performance hereunder, including Permittee's non-owned and hired autos).
- C. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Permittee elects to be self-insured, Permittee shall comply with the applicable requirements of law. Permittee 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 are not liable or responsible for any claims or actions occasioned by Permittee's failure to comply with the provisions of this Subparagraph and that the indemnification provisions hereof apply to this Section. It is expressly agreed that the employees of Permittee are not employees of the City for any purpose, and that employees of the City are not employees of Permittee.
- D. Contents Insurance. Permittee is solely responsible for obtaining insurance policies that provide coverage for losses of Permittee-owned property, Removable Fixtures, Improvements, existing equipment or subsequently installed equipment within or on the Premises. The City is not required to provide such insurance coverage or be responsible for payment of Permittee's cost for such insurance.
- E. Builders Risk Insurance. During any period of construction or reconstruction for which Permittee contracts, Permittee shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City must be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Permittee's Removable Fixtures, equipment and personal property). Permittee may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000.00) or less. In addition, Permittee or its contractor(s) shall carry not less than Two Million Dollars (\$2,000,000.00) of commercial general liability (single limit liability with no annual aggregate) and not less than Two Million Dollars (\$2,000,000.00) of automobile liability insurance coverage (including owned, non-owned and hired vehicles) during the period of construction, alteration, refurbishment, demolition, excavation, installation, renovation, or reconstruction. The policy limits set forth in this subsection are per occurrence/aggregate.
- F. Other Property Coverage. Permittee 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 Permittee's Improvements to the Premises, windows and doors, trade fixtures, Removable Fixtures and equipment. The City must be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Permittee's equipment, Removable Fixtures and personal property).

- G. Issuer of Policy. The issuer of each policy required herein must be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A-," or other insurers or insurance syndicates of similar recognized responsibility.
- H. Form of Policies. The insurance may be in one or more policies of insurance.
- I. Non-waiver. Nothing the City does or fails to do relieves Permittee from its duties to provide the required coverage hereunder, and the City's actions or inactions are not to be construed as waiving the City's rights hereunder.
- J. Insured Parties. Each policy, by endorsement, except those for Workers' Compensation and Employer's Liability, must name the City, its officers, agents, and employees as "additional insured". As verification of compliance with this Subparagraph, Permittee agrees to provide the City with a copy of the endorsement(s) and certificate of insurance, including all renewal endorsements and certificates, reflecting Permittee's obligation to name the City, its officers, agents, and employees as "additional insured". Inclusion as an "additional insured" is not intended to, and does not make the City a partner or joint venturer with Permittee in its operations. the "additional insured" language must read exactly as follows: "St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City and its Board of Aldermen and Airport Commission, and their respective officers, employees, and agents, are additional insured on the General Comprehensive and Automobile Liability portions of the insurance." The "Certificate Holder" portion should read exactly: "City of St. Louis, St. Louis Lambert International Airport, P.O. Box 10212, St. Louis, Missouri 63145."
- K. Deductibles. Permittee agrees to assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated diminishes Permittee's rights or increase Permittee's obligations with respect to its undertakings or hold harmless defense and indemnification set forth in Section 704.
- L. Cancellation. Permittee or its authorized representative must provide at least thirty (30) days advance written notice to the City of any cancellation, material modification or non-renewal by the insurance company.
- M. Subrogation. Each policy must contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees and Permittee agrees to provide the City with a copy of said endorsement.
- N. Endorsement of Primary Insurance. Each policy hereunder, except Workers' Compensation, must, by endorsement, be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder and Permittee agrees to provide the City with a copy of said endorsement.

- O. Liability for Premium. Permittee is solely responsible for payment of all insurance premiums required pursuant to this Permit, and the City is not obligated to pay any premiums; provided, however, that if Permittee 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 Permittee's behalf and, after notice to Permittee, the City may recover the cost of those payments with the installment of Rents next due, plus fifteen percent (15%) administrative charge, from Permittee.
- P. Proof of Insurance. Within thirty (30) days of full execution of the Permit and at any time during the term hereof, Permittee shall furnish the City with certificates of insurance and endorsements reflecting Permittee's insurance obligations hereunder. At least fifteen (15) days prior to the expiration of any such policy, Permittee shall submit to the City a certificate, and all required endorsements, showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Permittee shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate, and all required endorsements, showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Permittee, the City has the right to examine Permittee's insurance policies as they relate to this Permit.
- Q. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Permittee, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- R. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Permit to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the Permittee industry as well as that of Permittee, and, based on the written recommendations of such consultant, and in consultation with Permittee, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 702. PERMITTEE ACTIONS AFFECTING INSURANCE. Permittee must not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Permit. If such Permittee's act, or failure to act, causes cancellation of any policy, then Permittee shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Permittee does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Permittee shall immediately remedy such actions and pay the increase in premiums, upon Notice from the City to do so; but in any event, Permittee will hold the City harmless for any expenses or damage resulting from any such action.

SECTION 703. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenantable as determined by the City, the same will be repaired to usable condition with due diligence by the City as provided in this Section.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenantable but capable of being repaired, as determined by the City, the same will be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the rents payable hereunder with respect to affected Premises will be paid up to the time of such damage and thereafter be abated ratably in the proportion that the untenantable area bears to the total Premises of the same category or type of space. Such abatement in rent will continue until the affected Premises are restored adequately for Permittee's use. The City shall use reasonable efforts to provide alternate facilities to continue Permittee's operation while repair, reconstruction, or replacement is being completed.
- C. Total Damage.
1. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Permittee as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace the affected Premises. However, the City is under no obligation to replace or reconstruct the affected Premises. The rents payable hereunder with respect to affected Premises will be paid up to the time of such damage and thereafter cease until such time as replacement or reconstructed space is available for use by Permittee.
 2. If the City elects to reconstruct or replace affected Premises, the City shall use its reasonable efforts to provide alternate facilities to continue Permittee's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space is not replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Permittee has the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Permit, but this Permit will remain in effect with respect to the remainder of the affected Premises, unless such damaged or destroyed premises prevent Permittee from operating its Premises under this Permit.
 3. If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Permittee on ways to permanently provide Permittee with adequate replacement space for affected Premises. Permittee has the right, upon giving the City thirty (30) days advance notice, to terminate this Permit.
- D. Scope of Restoration of Premises.

1. The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section are any event limited to using due diligence and reasonable efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and are further limited by the provisions of Subsections 703(A)-(C). If the City elects to repair, reconstruct, or replace affected premises as provided in this Section, then Permittee shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, Improvements, Removable Fixtures and other items provided or installed by Permittee in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
 2. In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Permittee requests to perform said function with respect to damage under Subsections 703(A) and (B), the City may, in its sole discretion, allow Permittee to do so. Any such work by Permittee must be done in accordance with the requirements of Article VI. The City shall reimburse Permittee for the cost of such City authorized work authorized in writing by the Director and performed by Permittee. Permittee will be considered to be doing such work on its own behalf and not as an agent or contractor of the City.
- E. Damage From Permittee Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Permittee, its agents, servants, or employees, or those under its control, there will be no abatement of rent during the restoration or replacement of the affected Premises. In addition, Permittee will have no option to delete the affected Premises from this Permit. To the extent that the costs of repairs pursuant to this Section exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Permittee shall pay the amount of such additional costs to the City.

SECTION 704. INDEMNIFICATION.

- A. Permittee shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents, contractors, representatives and employees (the "**Indemnified Parties**") from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees) of any nature, arising out of and in connection with this Permit, or Permittee's use of its Premises or other areas or facilities at the Airport by Permittee, its agents, employees, contractors, or subcontractors, including, but not limited to:
1. the acts or omissions of Permittee, its agents, employees, contractors, licensees, invitees or suppliers;

2. Permittee's use or occupancy of the Airport and the Premises; and
3. any violation by Permittee under this Permit of its use of its Premises or any provision, warranty, covenant, or condition of this Permit.

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

- B. Permittee shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Permittee or by reason of Permittee's occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Permittee-related receipts. However, Permittee 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 Permittee to contest or appeal the same. Permittee is 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 Permittee. Permittee shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Permittee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Permittee, its agents, employees, contractors, or suppliers, in conjunction with Permittee's use or occupancy of the Premises. Permittee will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Permittee shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Permittee may enter into related to its activities on the Premises, and any such sublease, contract or other agreement must specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Permit prohibiting or limiting assignments, subletting or subcontracting.
- D. Permittee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Permittee or its agents, employees, contractors, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.

- E. If a prohibited incursion into the air operations area occurs, or if the Airport Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Permittee's employees, agents, contractors, licensees, invitees or suppliers, and such incursion or breach results in a civil penalty action against the City, Permittee 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 Permittee 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. Permittee's obligation to defend and indemnify past officers, employees, and agents of the City applies to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Permittee of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Permittee hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Permittee 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 Permittee.
- H. The duty to defend, indemnify, hold harmless, and reimburse applies to any claim, demands, or suits made against the City for which Permittee 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 Permittee herein agrees to indemnify and hold the City harmless, the City shall promptly notify Permittee of such claim and, if Permittee does not settle or compromise such claim, then Permittee shall undertake the legal defense of such claim both on behalf of Permittee and on behalf of the City, at Permittee's expense; provided, however, that Permittee shall immediately notify City if a conflict between the interests of Permittee and City arises during the course of such representation. Permittee shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder. The provisions of this section survive the expiration or early termination of this Permit. 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 Permittee in accordance with this Section. Any final judgment rendered against the City for any cause for which Permittee is liable hereunder is conclusive against Permittee as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article is 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 does not in any way waive any of the City's sovereign or other immunity.
- I. Permittee shall invite the City, at its own expense except as otherwise provided herein, to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the

terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.

- J. Notwithstanding the provisions of this Section, Permittee has no obligation to defend, indemnify, or hold harmless the City for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than ten percent (10%) liable due to contributory negligence.
- K. This Section survives the expiration or early termination of this Permit. Permittee understands and agrees that any insurance protection furnished by Permittee pursuant to Section 701 in no way limits Permittee's responsibility to indemnify and hold harmless the City under the provisions of this Permit.

SECTION 705. CITY NOT LIABLE. Unless otherwise expressly provided for in this Permit, the City is not in any event liable to Permittee for:

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

ARTICLE VIII COMPLIANCE WITH ENVIRONMENTAL LAWS

SECTION 801. COMPLIANCE WITH ENVIRONMENTAL LAWS. Permittee warrants and covenants that in conducting any activities or business on Airport property, including any activities directly related or incidental to its use and occupancy of Premises, Permittee shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or

programs prepared in conformance with Environmental Laws.

Permittee further covenants and warrants as follows:

A. Environmental Permits.

1. Permittee shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Permittee engages on the Premises.
2. Permittee shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Permittee or Permittee's activities on the Premises, including any plans, monitoring, recordkeeping or programs prepared in conformance with such Environmental Permits or Environmental Laws; provided however, that the City shall adequately notify Permittee of such Environmental Permit and associated requirements, including all applicable deadlines for compliances.
3. The City and Permittee shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit, Environmental Law and any associated requirements to ensure safety and to minimize cost of compliance.

B. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused, handled, or owned by Permittee, its employees, agents, contractors, suppliers, licensees, sublessees, guests or invitees, and which is required by applicable Environmental Laws, Environmental Permits, Rules and Regulations, or any plan or program prepared in response to Environmental Laws, or Environmental Permits to be reported by Permittee, whether as a result of negligent conduct or otherwise, at, on, about, or under the Premises, or in the event any written claim, demand, complaint or action is made or taken against Permittee that pertains to Permittee's failure or alleged failure to comply with Environmental Laws or Environmental Permits at the Premises or which pertains to the release of Hazardous Materials by Permittee at the Premises or the Airport, Permittee 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 Permittee is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials on or under the Premises, Permittee shall simultaneously provide a copy of such notice or report to the City.

C. Environmental Remediation. Permittee shall promptly and timely and with all due diligence undertake all necessary steps to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct, or presence of Permittee or its agents, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Premises or Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work must be consistent with remediation standards established by or derived from the appropriate government agency responsible for enforcing Environmental Laws of

Environmental Permits. Such Remediation Work will be performed at Permittee's expense. Except in the event of an emergency, such Remediation Work will be performed after Permittee, taking into consideration the circumstances, timely and promptly submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through notice; provided, however, that the City's approval will not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument on the land title. Specific cleanup levels for any Remediation Work by Permittee will be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, will either unreasonably or materially impair or interfere with the City's current or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City will have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.

- D. Access for Environmental Inspection. Upon reasonable notification to Permittee, the City will have reasonable access to the Premises to inspect the same in order to confirm that Permittee is using the Premises in accordance with the Provisions of this Permit, including without limitation this Section 801. Permittee shall cooperate fully with any such inspections provided that such inspections do not unreasonably interfere with Permittee's operations. If the City's inspection results in any type of written report, the City shall provide Permittee a reasonable opportunity to timely review and comment on a draft of the report. Permittee shall provide to the City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Permittee responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or finals, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with the Subsection to the extent consistent with the City's legal obligations.
- E. Corrective Action by City. If Permittee fails to comply with any applicable Environmental Laws, Environmental Permits or Rules or Regulations governing its activities on the Premises, or if Permittee fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Permit, the City, as may be necessary or required by applicable Environmental Laws, Environmental Permits, or Rules and Regulations, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants for which the Permittee is responsible under this Permit and remedy Permittee's non-compliance with

the Provisions of this Permit and applicable Environmental Laws, Environmental Permits, and Rules and Regulations in accordance with the Provisions of the Permit. All Remediation Costs plus actual administrative costs incurred by the City must be timely paid or reimbursed by Permittee within thirty (30) calendar days of the City's written notice. Subsequent to receipt of the City's notice to perform the Remediation Work, the Permittee shall not undertake performance of such Remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, and any other actions taken by the City pursuant to this Section, will be performed in accordance with the provisions of Section 801.C, but only after first having provided notice to Permittee of such failure to comply, and thirty (30) days within which Permittee may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Permittee's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Permittee's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.

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

ARTICLE IX
ASSIGNMENT AND SUBLETTING

SECTION 901. ASSIGNMENT AND SUBLETTING. Permittee shall not assign this Permit. Permittee shall not sublet the Premises or any portion thereof.

ARTICLE X
TERMINATION OF PERMIT IN ITS ENTIRETY

SECTION 1001. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of the City and Permittee specified in this Permit are not intended to be, and are not exclusive of one another or exclusive of any common law right of either of the parties hereto.

SECTION 1002. EVENTS OF DEFAULT. Each of the following constitutes an "Event of Default" under this Permit:

- A. Permittee fails to punctually pay when due any Rents, Transaction Fees or any other sums required to be paid hereunder, and such failure continues for a period of fifteen (15) days after Notice of non-payment has been given to Permittee by the City.
- B. Permittee fails to keep, perform and observe any promise, covenant or other provision of this Permit for a period of thirty (30) days after Notice specifying such failure by the City; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such thirty (30) day period, will not give rise to the City's right to terminate this Permit if corrective action is instituted by Permittee within such thirty (30) day period and diligently pursued until the failure is corrected.
- C. Any representation or warranty of a material fact made by Permittee herein or in any certificate or statement furnished to the City pursuant to or in connection herewith proves untrue in any material respect as of the date of issuance or making thereof, and such materiality is then continuing.
- D. Permittee discontinues its conduct of business at the Premises for a period of thirty (30) consecutive days or, after exhausting or abandoning any further appeals, Permittee is prevented for a period of thirty (30) consecutive days by action of any governmental agency other than the City from conducting its business at the Premises.
- E. Permittee fails to maintain the minimum required insurance coverage as required by Section 701 for a period of thirty (30) days after Notice specifying such failure by the City, provided that the City has the right to immediately suspend Permittee's right to operate at the Airport until Permittee has obtained the minimum required insurance coverage.
- F. Permittee 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. Permittee 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 Permittee under any chapter of the Bankruptcy Code.
- H. Permittee is adjudged a debtor or bankrupt or an order is made approving a petition filed by any of Permittee's creditors or stockholders seeking Permittee's liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within sixty (60) days of its issuance.
- 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 Permittee and is not dismissed or stayed within sixty (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 Permittee and such possession or control continues in effect for a period of sixty (60) days.
- K. Permittee becomes a corporation in dissolution.
- L. The letting, license, or other interest of or rights of Permittee 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. Permittee enters into an Assignment or sublease which is not approved by the City in accordance with the provisions of Article IX, and, if a sublease, it is not terminated within ten (10) days after Notice from the City.

SECTION 1003. 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:
 - 1. Terminate this Permit or Permittee's rights granted hereby, but without discharging any of

Permittee's obligations hereunder and, at the City's further option, exclude Permittee from its Premises. If Permittee uses, occupies, or fails to surrender or remove its property from its Premises, or any portion thereof, without the consent of the City after this Permit has been terminated or expires, Permittee may be deemed a tenant at sufferance during the period of such use or failure and, in such event, Permittee shall pay Rents established by the City during such period. In such event, the City has, 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.

2. Without terminating this Permit, exclude Permittee from its Premises and use its best efforts to transfer the Premises to a replacement Permittee. Permittee remains liable for all Rents and other payments due hereunder for the remainder of the Term of this Permit; provided, however, that any Rents received from a replacement Permittee will be credited against the amounts owed by Permittee.
- 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 Permittee, unless otherwise mutually agreed by Permittee and the City.
- C. The remedies set forth in this Article are 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 Permittee 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 are cumulative and concurrent. No termination of this Permit or the taking or recovering of the Premises will deprive the City of any of the City's remedies or actions against Permittee for Rents or for damages or for the breach of any covenant herein contained, nor will the bringing of any action for Rents or breach of covenant, the resort to any other remedy herein provided for the recovery of Rents or any delay in exercising such rights, be construed as a waiver of the right to obtain possession of the Premises.
- E. In no event will this Permit or any rights or privileges hereunder be an asset of Permittee under any bankruptcy, insolvency, or reorganization proceedings.

SECTION 1004. TERMINATION BY PERMITTEE FOR CAUSE. At any time that the Permittee is neither in default nor has committed an Event of Default hereunder, Permittee may declare this Permit terminated in its entirety, with cause for the reasons set out below, by giving the City not less than thirty (30) days prior written Notice. The Permittee shall specify the cause of the termination in its written Notice. No such termination for cause by the Permittee will be effective if the City (i) cannot by the nature of the default cure it within such thirty (30) calendar day period, (ii) commences to diligently correct such default within such thirty (30) calendar day period; and (iii) corrects such default as is reasonably practicable.

- A. Any failure by the City to keep, perform and observe any material promise, covenant, or

other provision of this Permit for a period of thirty (30) days after Notice specifying such failure and requesting that it be remedied is given to the City by Permittee.

ARTICLE XI SURRENDER OF PREMISES

SECTION 1101. SURRENDER OF PREMISES. On expiration or early termination of this Permit, Permittee shall:

- A. Peaceably surrender possession of the Premises and other space made available to Permittee hereunder in a clean, sanitary, and good condition, excepting only reasonable wear and tear (taking into account repair and maintenance required to be done by Permittee), acts of God, fire, and other casualties, and the City has the right to take possession of said Premises hereunder with or without due process of law; and
- B. Return the Premises to the City in a condition such that Hazardous Materials which were placed, stored, used, generated, treated, released, discharged, disposed, or spilled on, under, or about the Premises by Permittee, its officers, directors, employees, agents, contractors, or suppliers do not exceed allowable levels established under applicable Environmental Laws and Environmental Permits in accordance with Article VIII. If the City is required under applicable Environmental Laws to undertake actions to bring the Premises into compliance with this provision, or any applicable Environmental Laws or Environmental Permits as a result of Permittee's failure to timely correct same in accordance with Article VIII, Permittee shall reimburse the City for any Remediation Costs incurred by the City, as provided for in Article VIII.

SECTION 1102. REMOVAL OF PERSONAL PROPERTY. Provided Permittee is not in default for non-payment of rents or any other payment due hereunder, Permittee has the right, on expiration or early termination of this Permit and within thirty (30) days thereafter, to remove or dispose of all Removable Fixtures installed or placed by Permittee, in, on, or about the Premises. Permittee is not entitled to remove non-trade fixtures without the advance consent of the City. If, following the expiration or early termination of this Permit, the City has immediate need to accommodate a new tenant, the City may remove and store Permittee's Removable Fixtures, at Permittee's risk.

SECTION 1103. REMOVAL DAMAGES. Permittee shall repair any damage caused by the removal of its Removable Fixtures, trade fixtures, equipment, or personal property. Removal is at Permittee's expense. Notwithstanding the above, consideration will be given to the intended long-term use of the Premises and if the City determines that such 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 Premises are yielded or delivered to the City in need of repair, reconditioning, or restoration to the condition that existed when Permittee first used the Premises pursuant to this Permit or any preceding permit (reasonable wear and tear excepted, taking into account repair and maintenance required to be done by Permittee), after notification by the City to Permittee, the City has the right to repair or recondition said Premises and the cost

thereof, plus a charge of fifteen percent (15%) for overhead, will be invoiced to Permittee and payable immediately upon demand in accordance with Section 504.B.

SECTION 1104. OWNERSHIP OF FIXTURES AND PERSONAL PROPERTY NOT REMOVED. If, after thirty (30) days following the expiration or early termination of this Permit, Permittee fails to remove its Removable Fixtures from the Premises, such Removable Fixtures may be deemed

abandoned. In addition to whatever other rights are available to the City at law or in equity, the City may: (i) remove and store all or any portion of the Removable Fixtures at Permittee's expense, or (ii) take title to, use, sell or otherwise dispose of all or any portion of the Removable Fixtures. If the City takes title to any Removable Fixtures or otherwise disposes of the property, the City will be entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the cost of Permittee's breach of its covenant to timely remove its Removable Fixtures, and may seek other remedies at law or in equity (see Article VI, Section 609 entitled "Title to Improvements").

ARTICLE XII MISCELLANEOUS PROVISIONS

SECTION 1201. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder must be in writing and must be sent by certified mail, return receipt requested, to:

The Director of Airports
St. Louis Lambert International Airport
P.O. Box 10212
10701 Lambert International Blvd., Rm. MTN-2276
St. Louis, MO 63145

With a copy to:

Airport Properties Division Manager
St. Louis Lambert International Airport
P.O. Box 10212
10701 Lambert International Blvd., Rm. MTN-2501
St. Louis, MO 63145

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

Michael R. Mullaney
Executive Vice President
Hudson Group (HG) Retail, LLC
One Meadowlands Plaza, 11th Floor
East Rutherford, NJ 07073

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

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

SECTION 1202. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Permittee hereto understands and agrees that City, in operation and use of the Airport, will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or permit discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21.
- B. Permittee agrees that in performing under this Permit, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Permittee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but is not limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Permittee agrees that in performing under this Permit, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. Permittee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but is not limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- D. Permittee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Permittee state that all qualified applicants will receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Permittee will not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- E. Permittee agrees that should it be determined by Permittee or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency ("CREA") within ten (10) days of

such determination, as to the steps to be taken by Permittee to achieve the provisions of it program.

- F. Permittee will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- G. Permittee further agrees that these clauses (B through F) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Permittee in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Permit.
- H. Whenever Permittee is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through G) of these provisions relating to fair employment practices, Permittee shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- I. In event of Permittee's noncompliance with nondiscrimination clauses of this Permit, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Permit may be canceled, terminated or suspended, in whole or in part, and Permittee may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Permit is canceled, terminated or suspended for failure to comply with fair employment practices, Permittee will have no claims for any damages or loss of any kind whatsoever against City.
- J. Permittee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person, on the grounds of race, creed, color, national origin, sex, religion, age or disability, is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Permittee assures that no person is excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Permittee assures that it will require that its covered suborganizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- K. Permittee shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

SECTION 1203. FAA NON-DISCRIMINATION. The Permittee for itself, personal representatives, successor in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- A. in the event facilities, structures or improvements are constructed, maintained, or otherwise

operated on the Premises for a purpose for which a FAA activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the Permittee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the grounds of race, color, or national origin, will be excluded from participating in, denied the benefits of, or otherwise subjected to discrimination in the use of the Premises;

- B. no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises or the facilities, structures or improvements within the Premises;
- C. in the construction of any improvements on, over, or under the Premises, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation, denied the benefits of, or otherwise be subject to discrimination,
- D. the Permittee will use the Premises or facilities, structures, or improvements within the Premises in compliance with the Acts and Regulations; and
- E. for purposes of this Section 1203, references to "Acts or Regulations" will mean or include the following statutory and regulatory cites, as may be amended from time to time:
 - Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21;
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38; (also see 49 CFR Part 27 and 28 CFR Parts 35 and 36);
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

SECTION 1204. NO PERSONAL LIABILITY. No alderman, commissioner, director, officer, agent or employee of either party will be charged personally or held contractually liable by or to the other party under any Provision of this Permit or because of any breach hereof or because of its or their execution of this Permit. Any administrative complaint brought against the City relating to any aspect of this Permit must be brought against the City and not against named individual respondents.

SECTION 1205. FORCE MAJEURE. Neither party hereto will be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the City or Permittee hereunder, their respective licensees, contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Permittee 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 should be construed to abate, postpone or in any respect diminish Permittee's obligations to make any payments due to the City pursuant to this Permit. The City is under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore is prohibited or rationed by any law, ordinance, rule,

regulation, requirement, order or directive of any federal, state, county or municipal government having jurisdiction.

SECTION 1206. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Permit extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto. This provision does not constitute a waiver of any conditions regarding the assignment or subletting contained in this Permit. Notwithstanding any other term or provision in this Permit, the City may assign this Permit at its sole discretion by providing Notice to Permittee as described in Section 1201 herein.

SECTION 1207. QUIET ENJOYMENT. Subject to the Provisions of this Permit, the City covenants that Permittee, on paying the fees and otherwise performing its covenants and other obligations hereunder, will have quiet and peaceable use of the Premises.

SECTION 1208. OPERATION AND MAINTENANCE OF AIRPORT. The City will at all times operate the Airport properly and in a sound and economical manner; and the City will use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and will from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

SECTION 1209. AGREEMENTS WITH THE UNITED STATES. This Permit will be subordinated to 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. Permittee 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.

All provisions of this Permit will be subordinate to the rights of the United States of America to operate all of the Airport or any part thereof during time of war or national emergency. Such rights will supersede any provisions of this Permit inconsistent with the operation of the Airport by the United States of America.

SECTION 1210. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Permit, Permittee agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions of this Permit, as may be required to enable the City to obtain said FAA funds.

SECTION 1211. GOVERNING LAW AND FORUM SELECTION. This Permit is made and entered into in the State of Missouri, and Missouri law governs and applies to this Permit. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this

Permit must be brought only in a federal or state court in the City of St. Louis, Missouri. Permittee and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section survive the expiration or termination of this Permit.

SECTION 1212. REQUIRED APPROVALS.

- A. Whenever in this Permit any approval is required, such decision must be promptly rendered and must not be unreasonably withheld or conditioned. No disapproval is 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 Permit the approval, authorization, consent, certification, determination, waiver, or any other action of the City is required, it may be performed by the Airport Director, unless otherwise provided herein. In taking such actions, the Airport Director shall act reasonably, and take into consideration the best interest of the traveling public and the operations of the Airport.
- C. In all instances in this Permit where consent or approval of one party is required for an action by the other party, such consent must be in writing unless otherwise agreed by the parties.

SECTION 1213. WAIVERS. No Provision of this Permit is deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor will any custom or practice that may evolve between the parties in the administration of the Provisions of this Permit be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the Provisions of this Permit.

SECTION 1214. INVALID PROVISIONS. If any Provision in this Permit is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such Provision will be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it will be stricken. If stricken, all other Provisions of this Permit will remain in full force and effect provided that the striking of such Provision does not materially prejudice either the City or Permittee in its respective rights and obligations contained in the valid Provisions of this Permit.

SECTION 1215. ENTIRE PERMIT. This Permit, together with all exhibits attached hereto or incorporated by reference herein, constitutes or embodies the entire Permit between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and the Permittee.

SECTION 1216. ADVERTISING. Permittee has no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotional service or publication without the prior written consent of the Director.

SECTION 1217. AMENDMENTS. Unless otherwise expressly provided herein, this Permit may not be changed, modified, or amended except by written amendment duly executed by the parties hereto.

SECTION 1218. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Permittee and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director will review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Permittee agrees to be bound by such decision. All determinations by the Director are final.

SECTION 1219. PREVAILING WAGE. Permittee shall, as a condition of the Permit, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is subject to and shall be in accordance with City Ordinance No. 62124, as may be amended from time to time.

SECTION 1220. AMERICANS WITH DISABILITIES ACT ("ADA"). Permittee is responsible for compliance with the federal ADA, and any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Permittee's services.

SECTION 1221. TIME IS OF THE ESSENCE. The parties expressly agree that time is of the essence in the performance of each and every obligation and condition of this Permit. Failure by a party to complete performance within the time specified, or within a reasonable time if not time is specified herein, relieves the other party, without liability, of any obligation to accept such performance.

SECTION 1222. HEADINGS. The headings of the Articles and Sections of this Permit are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any Provisions of this Permit and are not to be construed to affect in any manner the Provisions hereof or the interpretation or construction thereof.

SECTION 1223. ACKNOWLEDGMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the Provisions contained in this Permit. As such, the Provisions of this Permit will be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, will not be employed in the interpretation of this Permit or any amendments, modifications or exhibits thereto.

SECTION 1224. SECURITY PLAN AND FACILITIES. Permittee hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Permittee covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Permittee's exercise of the privileges granted to Permittee hereunder. Permittee will, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Permittee's negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

SECTION 1225. EXHIBITS. All certificates, documents, exhibits, attachments, riders, and addenda referred to herein, including the exhibits referred hereto, are hereby incorporated into this Permit by reference and made a part hereof as though set forth in full in this Permit to the extent they are consistent with its conditions and terms.

SECTION 1226. SURVIVAL OF WARRANTIES. All warranties and covenants set forth in this Permit survive the execution and performance of this Permit.

SECTION 1227. NOT A LEASE. This Permit is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges expressly granted hereunder. Permittee will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City under this Permit.

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

The foregoing Permit was approved by the Airport Commission at its meeting on the 9th day of January, 2019.

THE CITY OF ST. LOUIS BY:

[Signature] 1/4/19
Commission Chairman Date
and Director of Airports

APPROVED AS TO FORM ONLY BY:

[Signature] 1-4-19
City Counselor Date
City of St. Louis

COUNTERSIGNED BY:

[Signature] 2/6/19
Comptroller 66 Date
City of St. Louis

ATTESTED TO BY:

[Signature] 2-7-2019
Register Date
City of St. Louis

COMPTROLLER'S OFFICE
DOCUMENT # 73912

The foregoing Permit was approved in substance by the Board of Estimate and Apportionment at its meeting on the 16th day of January, 2019.

[Signature] 4/7/19
Secretary Date
Board of Estimate & Apportionment

HG-ST LOUIS JV

BY:

[Signature] MICHAEL R. MULLANEY

Title: EVP

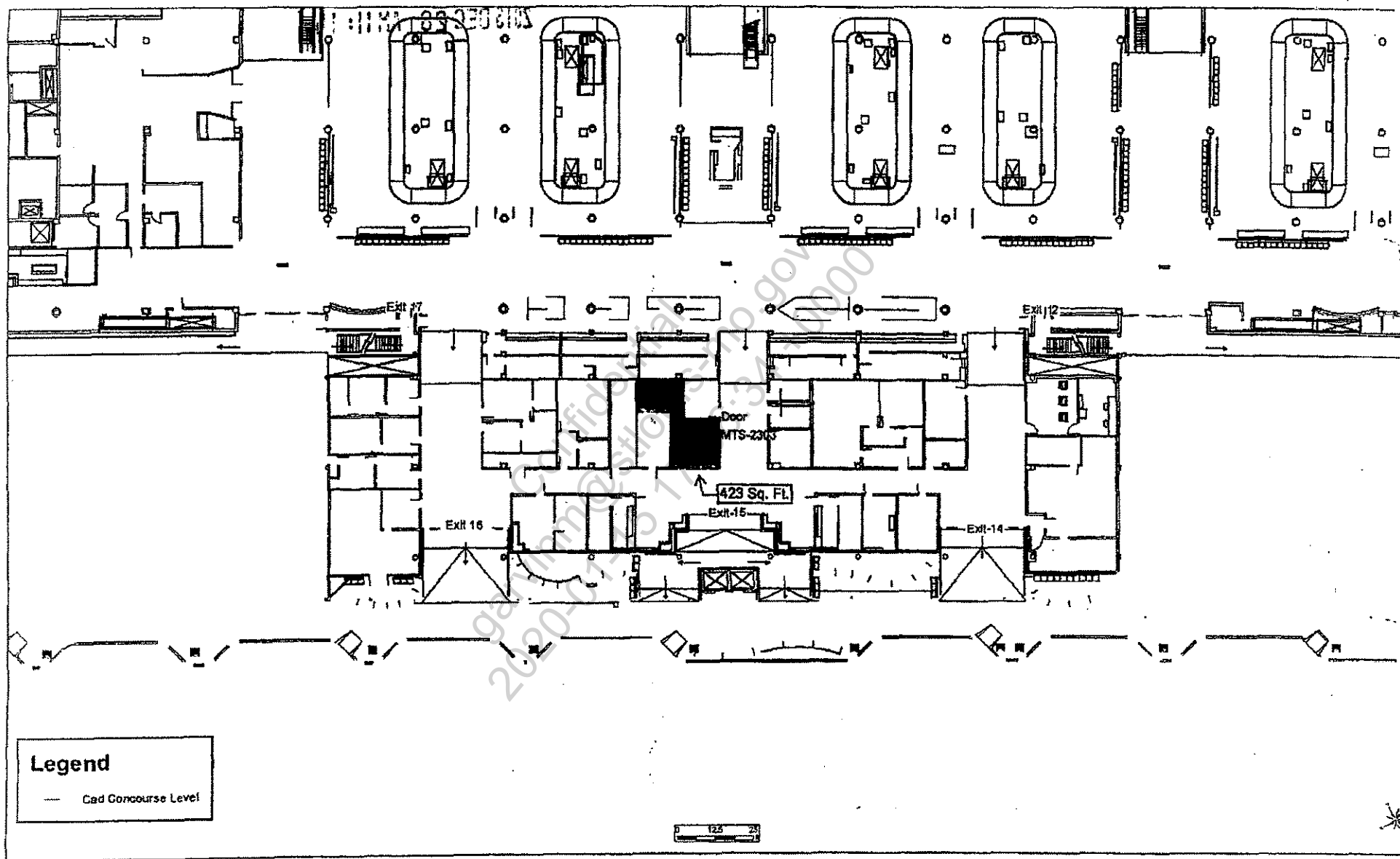
Date: 1/3/19

FID #: 32-0382393

EXHIBIT A

PREMISES

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:36:34 +0000



Legend

— Cad Concourse Level



**LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT**

**Lambert-STL Terminal 1
Hudson Office Space**

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Coordinate System:
State Plane Coordinate, Minnesota East Zone
North American Datum 1983 Survey Feet

Prepared by: Ryan Stolt
Date: 10/20/2015
Review and Approval by:
Date:

Received
February 7, 2019 2:13

140580

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:36:34 +0000