



ST. LOUIS LAMBERT
INTERNATIONAL AIRPORT.

SCANNED

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ENTERPRISE LEASING COMPANY OF STL, LLC

LEASE AGREEMENT

AL-045

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THE CITY OF ST. LOUIS
ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®
LEASE AGREEMENT

THIS AGREEMENT made and entered into as of the ____ day of _____, 2017 (“**Agreement**”), by and between THE CITY OF ST. LOUIS, a municipal corporation of the State of Missouri (“**City**”) and Enterprise Leasing Company of STL, LLC, a limited liability company registered in the state of Delaware and qualified to do business in the state of Missouri (“**Lessee**”).

WITNESSETH, THAT:

WHEREAS, the City owns and operates St. Louis Lambert International Airport (“**Airport**”), located in the County of St. Louis, State of Missouri;

WHEREAS, Lessee and City are currently parties to a certain short term Agreement AL-036, for the Springdale Parking Lot, 4401 Springdale Ave, Berkeley, Missouri, as more fully described therein (“**Short Term Lease Agreement**”).

WHEREAS, the parties entered into the Short Term Lease Agreement to enable Lessee to begin making improvements to the premises while they worked toward a longer term arrangement involving the Springdale Parking Lot.

WHEREAS, the parties hereto now desire to enter into this longer term lease for the Springdale Parking Lot, as contemplated within the Short Term Lease Agreement.

WHEREAS, the Short Term Lease Agreement is set to terminate at the earlier of the Commencement Date of this Agreement or December 31, 2019.

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

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

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

“**Adjusted Rent**” means the rent adjusted in accordance with Sections 402 and 403.

“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” as stated in the preamble hereof.

“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, Lessee, agent, concessionaire and other space at the Airport, and is the Lessee’s point of contact with the Airport on all issues related to this Agreement.

“Anniversary Month” means July of the third Contract Year and July of every fifth Contract Year thereafter during the Term of this Agreement and any extensions thereof.

“Base Index” means the Index in effect on the month in which the Commencement Date occurs and then after computation of the first Index Rent Escalation (see Section 402 and 403 of this Lease Agreement), the Index in effect on each previous Anniversary Month.

“City” means the City of St. Louis, a municipal corporation of the State of Missouri.

“Commencement Date” means the first day of the Term of this Agreement as more fully described in (see Article III).

“Contract Year” means a period of twelve (12) consecutive calendar months commencing on the Commencement Date and each twelve (12) month period thereafter (See Article III).

“days” means consecutive calendar days unless other wised expressly stated herein.

“Director” means the Airport Director of the City or the person performing the functions of that office, as authorized by the City’s Mayor, or that person authorized by the Airport Director to act for or on behalf of the Airport Director with respect to any particular matter under this Agreement, and incorporates the granting of approval requirements of Section 1210 hereof.

“Effective Date” means the day this Agreement is executed by the parties hereto and will be written by the City on page 1 of this Agreement.

“Environmental Laws” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, Environmental Permits, 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).

"Index" means the "Consumer Price Index for all Urban Consumers" relating to "U.S. City Average" and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index is hereafter be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase (defined below) will be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said is not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication, by any other nationally chosen recognized publisher of similar statistical information as reasonably selected by the Director. In the event the Index ceases to be published, then the City and Lessee will agree upon a new index to be used, and if they are unable to agree within ninety (90) days after the Index ceases to be published, such matter will be reasonably decided by the Director (see Section 403).

"Improvements" means all construction, installations, modernization, refurbishment, improvements, and upgrades of all fixtures, furnishings, equipment and finishes built, installed, constructed, or erected by the Lessee under this Agreement, or the Short Term Agreement, and

forming a part of and which are permanently affixed or attached to any portion of Airport real property or existing improvements within the Premises.

“Initial Rent” means the Initial Rent as defined in Section 401.

“Lessee” means Enterprise Leasing Company of STL, LLC

“Notice” means a communication between the parties to this Agreement performed in accordance with the requirements of Section 1201 herein.

“Percentage Increase” means the percentage equal to the fraction, the numerator of which is the Index published in the Anniversary Month less the Base Index, and the denominator of which is the Base Index (see Section 403).

“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 Lessee for the uses herein specifically provided including all existing improvements existing within the Premises as of the commencement date of the Short Term Lease Agreement.

“Provision(s)” means the terms, covenants, warranties, conditions or provisions of this Agreement.

“Remediation Costs” means any losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or Environmental Permits, or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of Lessee’s operations or activities at the Premises or the Lessee’s use of the City’s property under this Agreement, or the Short Term Agreement. Remediation Costs include investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, administrative costs, reasonable attorneys’ fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, actual damages, and other similar liabilities caused by or arising out of Lessee’s handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

“Removable Fixtures” means all furnishings, equipment, personal property, billboard sign structures and fixtures installed or placed by the Lessee within the Premises under this Agreement or the Short Term Agreement, that are not permanently affixed to any wall, floor or

ceiling within the Premises, and identified and listed by Lessee on its Removable Fixtures list approved by the Director, as provided for in Section 607 of this Agreement.

Rents” means for any Fiscal Year, the rents payable by Lessee pursuant to Article V.

“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 Agreement (see Article III).

“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 Agreement to articles, sections, paragraphs, or exhibits pertain to articles, sections, paragraphs, or exhibits of this Agreement, unless otherwise specified.

- A. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
- 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 Agreement, and any table of contents or marginal notes appended to copies hereof, are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction, or effect.
- 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. City hereby leases and demises to Lessee and Lessee takes from City, land and improvements as shown on **Exhibit "A"**, attached hereto and made a part hereof and more fully described as Springdale Parking Lot, 4401 Springdale Ave, Berkeley, MO, total property area 854,416 square feet (19.62 acres); total paved area, 777,767.83 square feet (17.86 acres) St. Louis County ("**Premises**").

Lessee 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, geotechnical, 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 existing improvements or facilities, the presence or absence of any Hazardous Materials, any underground or aboveground storage tanks or repositories and related equipment, asbestos and asbestos related materials, water, sewage utilities serving the Premises, easements, or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Agreement. 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 of 1990 (42 U.S.C. Section 1201 et seq.), the uses permitted on the Premises, or any other matter or thing relating to the Premises or any portion thereof.

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 Agreement) to develop, maintain, and keep in repair the Airport, including the Aircraft Operating Area and all publicly-owned facilities.
- B. Lessee shall not exercise the rights granted by this Agreement to Lessee 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 Agreement 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 shall reasonably notify Lessee of any such action affecting Lessee.
- 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 Lessee's use of the Premises, and provided further that such reservation or grant of rights does not directly result in any material added expense to Lessee.
- F. City reserves to itself, its successors and assigns, the right to grant utility and drainage easements, to itself and others over, under, through, across or on Premises. City, its assignees, successors, may enter upon the Premises for the purposes of installing, replacing, maintaining, removing and operating any and all utilities and drainage facilities. Provided further, City reserves until itself, its successors and assigns, all gas, oil, and mineral rights in the Premises. Lessee shall comply with all Rules and Regulations which the Director may establish from time to time.

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

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

SECTION 205. ACCESS TO THE PREMISES BY THE CITY. The City reserves and will have the right to access, ingress to and egress from the Premises without charge therefore, for its employees, contractors, agents, licensees, representatives, and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, as may be reasonable under the circumstances, and with as little interruption of Lessee as may be reasonably practical, and upon compliance with Lessee's reasonable security

procedures; provided, however, that no right of the City provided for in this Article II will be so exercised as to unreasonably materially interfere with Lessee's use and enjoyment of the Premises as provided in Section 1206 of this Agreement. If Lessee is not present to permit entry and entry is necessary, the City may, in case of emergency, forcibly enter the Premises without rendering the City liable therefore, except for any actual damage caused to Lessee's property as a result of such entry or any costs, damages or liabilities arising from City's gross negligence or willful misconduct. The City's right to access the Premises will be without charge therefore, and may be for any purpose necessary for, incidental to, or connected with the City's right and obligation under this Agreement or the City's capacity as the Airport owner or operator, including, but not limited to, collecting environmental samples or performing environmental studies, assessments, inspections or remediation, or any combination thereof. Lessee will in good faith coordinate and cooperate with the City's need to access the Premises.

SECTION 206. ENCUMBRANCES ON THE PREMISES. Lessee accepts the Premises subject to any and all then existing easements or other encumbrances and the City retains the right to install, lay, construct, maintain, repair and operate such utilities, sanitary sewers, drains, storm water sewers, pipelines, manholes, communication lines, connections, water, oil or gas pipelines, and telephone and telegraph power lines and such other appliances and appurtenances necessary or convenient in connection therewith, over, in, upon, through, across and along the Premises, or any part thereof, and to enter thereupon at reasonable times for any and all such purposes; provided, however, that no right of the City provided for in this Section 206 will be so exercised as to materially or substantially diminish the utility or value of the Premises, materially interfere unreasonably with the Lessee's use or enjoyment of the Premises, or result in any material added expense to the Lessee in conducting its operations hereunder.

ARTICLE III TERM

SECTION 301. TERM. The "**Term**" of this Agreement begins on July 1, 2017 and will end Five Calendar Years thereafter at 11:59 pm (local prevailing time) on the last day of the Term, June 30, 2022 unless sooner terminated, as provided for in this Agreement.

Section 302. RENEWAL TERM. If the Lessee so requests, and provided Lessee is not under an Event of Default and otherwise is in compliance with all the terms, covenants, and conditions of this Agreement, the Lessee, may, at his or her direction renew this Agreement in writing for one (1) additional five (5) year term. The Renewal Term, if exercised by the Lessee and approved by the Director, will commence on July 1, 2022 and end on June 30, 2027.

Lessee's request to exercise the Renewal Term must be made by written notice to the Director no earlier than three (3) years prior to the expiration of the Initial Term and no later than six (6) months prior to the expiration of the Initial Term.

The Lessee may terminate this Agreement without cause at any time by giving ninety (90) days Notice to the City with no liability to the Lessee and such termination will be deemed a no fault cancellation.

Section 303. HOLDING OVER. If Lessee holds over after the expiration or early termination of this Agreement, the resulting tenancy will be for an indefinite period of time on a month-to-month basis, during which tenancy the parties to this Agreement must continue to adhere to all covenants, conditions and provisions of this Agreement. Notwithstanding the foregoing, Lessee shall pay the prevailing Rent then in effect during any holdover period. Acceptance by the City of payment of Rents or other fees or charges after expiration or early termination of this Agreement will be deemed to be payment on account, and will not operate to waive or modify any provision of this Section.

ARTICLE IV FEES & RENTALS

SECTION 401. RENTAL PAYMENT. Commencing on the first day Lessee shall pay in advance to the City the annual rental rate of **\$120,000**, payable in twelve (12) equal monthly installments ("**Rents**"). All Rents must be paid on or before the first (1st) day of each month during the term of this Agreement, *without demand*.

SECTION 402: RENT ESCALATION. The Initial Rent will be increased (but not decreased) on the fifth anniversary of the Commencement Date, in accordance with the provisions of Section 403.

SECTION 403: INDEX RENT ESCALATION. If the Index in an Anniversary Month exceeds the Base Index, then the Initial Rent or the previously Adjusted Rent will be increased by the Percentage Increase to calculate the new **Adjusted Rent**.

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

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

Thereafter, within the later of (a) fifteen (15) days after receipt of the Index Comparative Statement by Lessee or (b) the first day of the calendar month following the month in which the Index Comparative Statement was sent (the "**Current Month**"), Lessee shall pay to the City a sum equal to $1/12^{\text{th}}$ of said increase in rent multiplied by the number of calendar months then elapsed since the most recent Anniversary Month, and thereafter, commencing with the Current Month and continuing monthly thereafter until a new Index Comparative Statement is sent to Lessee, the monthly installments of rent shall be equal to $1/12^{\text{th}}$ of the new Adjusted Rent.

An example of the rent escalation outlined in this Section 403, wherein the Initial Rent on the Commencement Date is \$100,000, the Base Index on the Commencement Date is 10, and the Index on the Anniversary Month is 11.

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

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

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

SECTION 404. INTEREST CHARGES AND LATE FEES ON OVERDUE PAYMENT. If Lessee fails to make payment of any sums due hereunder by the due dates set forth herein, Lessee shall pay to the City, in addition to all other remedies available to the City and all other payments to be made by Lessee to the City, an interest charge equal to 1.5% compounded annually for each month of the overdue amount, and costs and attorney's fees reasonably incurred by the City in attempting to obtain payment, if any. Payments received later than 30 days from their respective due date will be assessed an additional one-time late charge of 5% of the amount due, in addition to applicable interest charges.

SECTION 405 UNPAID RENTS AND FEES. All unpaid Rents and fee payments due City hereunder bear a service charge of $1\frac{1}{2}\%$ 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 Lessee 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 406. ADDITIONAL FEES, CHARGES AND RENTALS. Lessee 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 Lessee 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 Lessee to perform or fulfill any of the terms, covenants or conditions of this Agreement.

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 Rents 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 Rents, 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 Lessee that the amount of such payment was necessary and reasonable.

SECTION 407. PROMPT PAYMENT OF TAXES AND FEES. Lessee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees,

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

SECTION 408. FORM OF PAYMENT. Payments to the City required by this Agreement must be made at the Airport Administrative Offices, with checks payable to the "Treasurer, City of St. Louis," delivered to Airport Assistant Director of Finance, St. Louis Lambert International Airport, P.O. Box 10036, St. Louis, MO, 63145, or at such other place or by whatever payment method that the City may determine and as the City may hereafter notify Lessee, and must be made in legal tender of the United States of America.

ARTICLE V USE OF PREMISES

SECTION 501. USE. The City hereby grants to Lessee, subject to all the payments, terms, covenants, and conditions of this Agreement, permission to occupy and use the Premises for a parking lot for vehicles owned or leased by Lessee. Lessee acknowledges, understands and agrees that the language in this Section 501 in no way authorizes or permits Lessee to use the Premises for the purpose of storing Hazardous Materials or any other use unless authorized in writing by the Director.

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 1210 entitled "Required Approvals").

All deliveries to the Premises for the Lessee are the responsibility of Lessee and not the City.

SECTION 502. 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 Lessee, *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 Lessee's responsibilities are not limited to those functions:

- A. Maintain and keep in good repair and appearance all portions of the Premises, including all Improvements, equipment, fixtures, Removable Fixtures, utility systems, if applicable and any other structures erected or installed 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. Keep all papers and debris picked up daily from the Premises.
- C. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

- D. Repair, or cause to be repaired, all damage to the Premises and the Airport when such damage results from the acts or omissions of Lessee or its agents, employees, invitees, guests, or representatives.
- E. Confine all handling and holding of Lessee's property or property under Lessee's control to the Premises.
- F. Take such measures as may be necessary to keep the Premises secure; the City has no obligation or responsibility to keep Lessee's Premises secure.
- H. Provide that notwithstanding anything contained in that section or the Lease to the contrary, Lessee shall have no obligation to undertake any overlay of the parking areas at any time during the Lease or upon surrender. Lessee's obligations respecting repairs and maintenance areas of the Premises shall be limited to routine crack and pothole filling, sealing and restriping as necessary.
- I. Provide for its own snow and ice removal.

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. Lessee understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Lessee 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 503. CITY RIGHT TO ENTER, INSPECT AND REQUIRE CORRECTIVE ACTION.

- A. The City has the right at reasonable times to enter upon Premises for any of the purposes listed below:
 - 1. to inspect the Premises for any purpose necessary for or incidental to or connected with the City's obligations hereunder, or in the exercise of the City's capacity as Airport owner;
 - 2. to identify those actions required of the Lessee or the City, pursuant to this Agreement;
 - 3. for fire protection, safety, or security purposes;
 - 4. to make structural additions and alterations to the Airport;
 - 5. upon the expiration or early termination of this Agreement; and
 - 6. to make emergency repair and,

7. to perform maintenance activities on airport property adjacent to the Premises.
- B. The City shall provide reasonable notification and such right of entry must not unreasonably interfere with Lessee's use or occupancy of its Premises, except if an emergency or the situation endangers the health or safety of persons or the safety of operations on the Premises. The right of inspection reserved to the City imposes no obligation on the City to make inspections to ascertain the condition of the Premises and imparts no liability upon the City for failure to make such inspections. The failure of the City to inspect or monitor or notify Lessee of a default or of a hazardous or unsafe condition with respect to Lessee operations hereunder does not release Lessee from its liability to perform its obligations hereunder or impose any liability on the City, and in any other event where the City determines that it is necessary or desirable to do so to preserve the Airport or the City's property or any portion thereof or to correct any conditions likely to cause injury or damage to persons or property.
- C. Unless otherwise provided herein, Lessee shall perform all corrective work required of it that is identified in such inspection(s) within 30 days of receipt of a notification from the City. If correction cannot reasonably be completed within such 30 day period, this period may be extended at the sole discretion of the City. Matters affecting public health, safety, and welfare, including trash and debris problems, must be corrected promptly after the City notifies the Lessee's manager or the manager's designee either orally or in writing via hand-delivery. All emergency repair costs incurred by the City for which the Lessee is responsible for under the terms of this Agreement must be paid or reimbursed by Lessee within thirty (30) calendar days of the City's written request.

SECTION 504. FAILURE TO MAINTAIN BY LESSEE. If City determines that Lessee has failed to properly clean, remove trash and refuse, maintain, or repair the Premises as required in Section 502, the City shall provide to Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for Lessee to correct same. If Lessee fails to correct such deficiencies within the time allowed and has not timely registered a reasonable objection as to its obligation to do so, the City, following 5 days further notification by the City to Lessee, may enter upon the Premises and correct the listed deficiencies. The City will add the cost of such work, plus actual administrative costs, to the Rents due hereunder on the first day of the month following the date of such work, and such cost will be and constitute a part of the Rents. Subsequent to receipt of the further notification of intent to perform repairs, maintenance, or cleaning from the City, Lessee shall not undertake performance of such repairs, maintenance, or cleaning without specific prior authorization from the City.

SECTION 505. CITY OBLIGATIONS. Except as specifically provided for herein, the City shall not be under any duty or obligation to Lessee to repair, maintain, or clean the Premises or any portion thereof, or any facilities or equipment constructed thereon. The City shall not be responsible or liable to Lessee for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by Lessee resulting from failure of the Airport structures or utility systems, or caused by the natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or

displacement of materials by fire, water, windstorm, tornado, act of God, state of war, terrorism, civilian commotion or riot, or other casualties or any other cause or peril beyond the control of the City, except to the extent caused by the City's gross negligence and willful misconduct and then only to the extent covered by the City's insurance, if any.

SECTION 506. UTILITIES. Lessee shall provide and pay for all utilities required by Lessee.

SECTION 507. INTERFERENCE TO AIR NAVIGATION Lessee warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of FAR Part 77 or subsequent and additional regulations of the Federal Aviation Administration ("FAA"), will be constructed or permitted to remain on the Premises. Lessee warrants, represents and agrees that, upon notification by the City, it will immediately remove any obstructions at its expense. Lessee 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 may interfere with the line of sight of the control tower and its operations. Lessee 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.

SECTION 508. OBSERVANCE AND COMPLIANCE WITH LAWS

A. Lessee, its officers, directors, employees, agents, and its contractors and suppliers, while such contractors and suppliers are providing services to Lessee, shall comply with:

1. all applicable federal, state and local laws and ordinances, including directives of the FAA applicable to the Lessee's operation at the Airport;
2. the Rules and Regulations governing the Airport; and
3. the provisions of the Airport certification manual, as it may be amended from time to time.

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

- B. Upon Lessee's request, the City shall promptly provide a copy of the Rules and Regulations and the Airport certification manual. The City shall also provide copies of amendments or additions to the Rules and Regulations to Lessee's station manager or his designee in the regular course of business. The City acknowledges that compliance with such amendments or additions will not be expected until Lessee is notified of such amendments or additions as provided in this Subsection.
- C. Notwithstanding anything to the contrary, references in this Agreement to a statute or law are deemed to be a reference to (i) such statute or law as it may be amended from time to time, (ii) all ordinances, regulations, rules, executive orders, policies and instructions pertaining and lawfully promulgated pursuant to such statute or law as they now exist or may be amended **from time to time**.

ARTICLE VI
IMPROVEMENTS AND ALTERATIONS

SECTION 601. MECHANICS' AND MATERIALMEN'S LIENS. Lessee 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 602. CONSTRUCTION BY LESSEE. Lessee may improve the Premises subject to written approval of the Director, which may be withheld for any or no reason at all. Lessee 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 . *Lessee agrees it will not begin any work until it receives the approval of its plans and specifications from the Director.* Lessee acknowledges and agrees that the Lessee shall not excavate or disturb any soil within the premises, unless authorized in writing by the City in accordance with an approved TCA. Any changes in the plans or specifications after approval will require resubmission. Further, Lessee agrees it shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications to the Airport Properties Division. The TCA must be submitted for each location in accordance with the construction drawings and specifications. Lessee also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Lessee's ongoing coordination with the City at all times is crucial.

Lessee shall provide the Director with a copy of all applicable permits as required by local municipalities prior to beginning any construction, modifications, installations, or alterations. No reduction or abatement of Rents will be allowed for any interference with Lessee's operations by such construction.

Upon the completion of the improvements hereunder, Lessee 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 Lessee.

Lessee shall provide the Director, within thirty (30) days of completion or occupancy of any construction or modification to the Premises, reproducible as-built drawings in an electronic format acceptable to the City.

SECTION 603. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving, constructing, maintaining, repairing or equipping the Premises, Lessee 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 Two Million Dollars (\$2,000,000.00) as to any one person, and Two Million Dollars (\$2,000,000.00) as to any one occurrence, and with property damage limits of not less than Two Million Dollars (\$2,000,000.00) as to any one occurrence. Said insurance must be in a form acceptable to the City.

SECTION 604. PERFORMANCE AND PAYMENT BONDS. Lessee 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 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 and Payment Bonds will be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

SECTION 605. SIGNS. Lessee agrees that no signs, banners, or advertising displays shall 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 shall conform to reasonable standards established by said Director with respect to wording, type, size, design, color and location.

SECTION 606. NONDISTURBANCE OF AIRPORT TENANTS AND OPERATIONS. Any work by Lessee 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. Lessee 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 Lessee or its contractors fails to comply with the provisions of this Section 606, the City has the right to stop any or all work being performed, until such compliance is achieved, without terminating this Agreement.

SECTION 607. TITLE TO IMPROVEMENTS. Title to the Premises and all Improvements constructed or placed in or on the Premises by the Lessee, excluding Lessee's Removable Fixtures, become part of the Premises with title vesting to the City upon the expiration or earlier termination of this Agreement, except that the City reserves the right and Lessee agrees that the Director may require Lessee to remove any or all Improvements and structures and restore the Premises to its original condition that existed when Lessee first used the Premises under this Agreement or any preceding permit or lease. Lessee agrees to bear all costs of such removals and restorations.

Within sixty (60) days of the Agreement's Commencement Date, a list of Removable Fixtures must be submitted in writing to the Director by Lessee for the Director's approval, and such list must be updated by Lessee no less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date or as may be deemed necessary or as requested by the City.

ARTICLE VII
COMPLIANCE WITH ENVIRONMENTAL LAWS

SECTION 701. COMPLIANCE WITH ENVIRONMENTAL LAWS. Lessee 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, Lessee shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws. Lessee further covenants and warrants as follows:

A. Environmental Permits.

1. Lessee shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Lessee engages on the Premises.
2. Lessee shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Lessee or Lessee'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 Lessee of such Environmental Permit and associated requirements, including all applicable deadlines for compliances.
3. The City and Lessee 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 Lessee, its employees, agents, contractors, suppliers, 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 Lessee, 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 Lessee that pertains to Lessee'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 Lessee at the Premises or the Airport, Lessee 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 Lessee 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, Lessee shall simultaneously provide a copy of such notice or report to the City.

C. Environmental Remediation. Lessee 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 Lessee of its agents, employees, contractors, independent contractors, lessees, invitees, licenses, or suppliers at the Premises or Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work must be consistent with remediation standards established by or derived from the appropriated government agency responsible for enforcing Environmental Laws or Environmental Permits. Such Remediation Work will be performed at Lessee's expense. Except in the event of an emergency, Lessee shall not perform such Remediation Work until Lessee, 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 shall not unreasonably withhold or delay its approval. 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, corrective measure studies, soil management plans 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 Lessee 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, and must also be approved by the City. Lessee agrees that 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, as determined by the City. The City has 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 Lessee, the City is entitled to reasonable access to the Premises to inspect the same in order to confirm that Lessee is using the Premises in accordance with the requirements of this Permit including, without limitation, this Section 701. Lessee shall cooperate fully with any such inspections provided that such inspections do not unreasonably interfere with Lessee's operations. If the City's inspection results in any type of written report, the City shall provide Lessee a reasonable opportunity to timely review and comment on a draft of the report. Lessee shall provide to the City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Lessee 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 Lessee fails to comply with any applicable Environmental Laws, Environmental Permits or Rules or Regulations governing its activities on the Premises, or if Lessee fails to conduct necessary Remediation Work in a timely manner as required under the terms of this Permit, the City, as may be necessary or required by applicable Environmental Laws, Environmental Permits or Rules or 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 Lessee is responsible under this Permit and remedy Lessee's non-compliance with the provisions of this Permit and applicable Environmental Laws, Environmental Permits or Rules and Regulations. All Remediation Costs plus actual administrative costs incurred by the City must be timely paid or reimbursed by Lessee 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 Lessee must not undertake performance of such remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, and any other action taken by the City pursuant to this Section, must be performed in accordance with the provisions of Section 701.C, but only after first having provided notice to Lessee of such failure to comply, and thirty (30) days within which Lessee may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Lessee's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Lessee'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, Lessee shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Lessee 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 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 under this Article VII survives the expiration or early termination of this Agreement.

- H. Pollution Control. In addition to all other requirements of this Agreement, Lessee, 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 Lessee at Lessee's written request.
- I. Environmental Covenants. Lessee will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises; (ii) limits the use of the Premises to nonresidential uses; (iii) restricts access to soil underlying the Premises, or (iv) any other reasonable environmental land use restriction.

ARTICLE VIII INSURANCE, DAMAGE AND INDEMNIFICATION

SECTION 801. LIABILITY INSURANCE. Lessee will obtain (at its sole expense and maintain at all times during the Term of this Agreement) 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 Lessee, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors and invitees, pursuant to this Agreement under the following types of coverage:

- A. Commercial General Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence/aggregate.
- B. Automobile Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit per occurrence (for automobiles used by Lessee in the course of its performance hereunder, including Lessee'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 Lessee elects to be self-insured, Lessee shall comply with the applicable requirements of law. Lessee shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents are not liable or responsible for any claims or actions occasioned by Lessee'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 Lessee are not employees of the City for any purpose, and that employees of the City are not employees of Lessee.
- D. Contents Insurance. Lessee is solely responsible for obtaining insurance policies that provide coverage for losses of Lessee-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 Lessee's cost for such insurance.

- E. Builders Risk Insurance. During any period of construction or reconstruction for which Lessee contracts, Lessee 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 Lessee's Removable Fixtures, equipment and personal property). Lessee may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000.00) or less. In addition, Lessee 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. 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.
- G. Form of Policies. The insurance may be in one or more policies of insurance.
- H. Non-waiver. Nothing the City does or fails to do relieves Lessee 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.
- I. 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, Lessee agrees to provide the City with a copy of the endorsement(s) and certificate of insurance, including all renewal endorsements and certificates, reflecting Lessee'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 Lessee in its operations.
- J. Deductibles. Lessee 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 Lessee's rights or increase Lessee's obligations with respect to its undertakings or hold harmless defense and indemnification set forth in Section 803.

- K. Cancellation. Each policy must expressly state that it may not be cancelled, materially modified or non-renewed unless a thirty (30) day advance notice is given in writing to the City by the insurance company, or authorized representative of Lessee.
- L. 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 Lessee agrees to provide the City with a copy of said endorsement.
- M. 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 Lessee agrees to provide the City with a copy of said endorsement.
- N. Liability for Premium. Lessee is solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City is not obligated to pay any premiums; provided, however, that if Lessee fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Lessee's behalf and, after notice to Lessee, the City may recover the cost of those payments with the installment of Rents next due, plus fifteen percent (15%) administrative charge, from Lessee.
- O. Proof of Insurance. Within thirty (30) days of full execution of the Agreement and at any time during the term hereof, Lessee shall furnish the City with certificates of insurance and endorsements reflecting Lessee's insurance obligations hereunder. At least fifteen (15) days prior to the expiration of any such policy, Lessee 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, Lessee 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 Lessee, the City has the right to examine Lessee's insurance policies as they relate to this Agreement.
- P. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Lessee, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- Q. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the Lessee industry as well as that of Lessee, and, based on the written recommendations of such consultant, and in consultation with Lessee, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 802. LESSEE ACTIONS AFFECTING INSURANCE. Lessee shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If such Lessee's act, or failure to act, causes cancellation of any policy, then Lessee shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Lessee does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Lessee shall immediately remedy such actions and pay the increase in premiums, upon Notice from the City to do so; but in any event, Lessee will hold the City harmless for any expenses or damage resulting from any such action.

SECTION 803. INDEMNIFICATION.

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

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

- B. Lessee shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Lessee or by reason of Lessee'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 Lessee-related receipts. However, Lessee may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Lessee to contest or appeal the same. Lessee 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 Lessee. Lessee shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

- C. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Lessee, its agents, employees, contractors, or suppliers, in conjunction with Lessee's use or occupancy of the Premises. Lessee will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Lessee shall include the substance of this Subsection (C) in every sublease, contract or other permit which Lessee may enter into related to its activities on the Premises, and any such sublease, contract or other permit 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 Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Lessee or its agents, employees, contractors, 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 Aircraft Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Lessee's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Lessee shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.
- F. Lessee's obligation to defend and indemnify past officers, employees, and agents of the City 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 Lessee of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Lessee hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Lessee with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Lessee.
- H. The duty to defend, indemnify, hold harmless, and reimburse applies to any claim, demands, or suits made against the City for which Lessee 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 Lessee herein agrees to indemnify and hold the City harmless, the City shall promptly notify Lessee of such claim and, if Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim both on behalf of Lessee and on behalf of the City, at Lessee's expense; provided, however, that Lessee shall immediately notify City if a conflict between the interests of Lessee and City arises during the course of such representation. Lessee shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder. The provisions of this section survive the expiration or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Lessee in accordance with this Section. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder is conclusive against Lessee 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. Lessee 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, Lessee has no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than 10% liable due to contributory negligence.
- K. This Section survives the expiration or early termination of this Agreement. Lessee understands and agrees that any insurance protection furnished by Lessee pursuant to Section 801 in no way limits Lessee's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

SECTION 804. CITY NOT LIABLE. Unless otherwise expressly provided for in this Agreement, the City is not in any event liable to Lessee for:

- A. any acts or omissions of Lessee, its officers, directors, employees, agents, contractors, or suppliers, or for any conditions resulting from the operations or activities of Lessee's directors, officers, employees, agents, contractors, or suppliers;
- B. Lessee'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 Lessee's business or other operations or activities, or which might otherwise cause damages to Lessee through loss of business, destruction of property, or injury to Lessee, its officers, directors, employees, agents, contractors, suppliers, 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 IX MERGERS, ASSIGNMENT, AND SUBLETTING

SECTION 901. LESSEE ASSIGNMENTS. Lessee is not permitted to assign, transfer, convey, sell, mortgage, pledge, or encumber (hereinafter collectively referred to as "Assignment") or sublet its Premises without the advance approval of the City, which is to be given by Notice to Lessee. No Assignment of this Agreement or sublet of the Premises is effective without advance approval of the City. If Lessee fails to obtain advance approval from the City of any such Assignment or sublet, the City, in addition to the rights and remedies set forth in Article XIII and by law, has the right, in its sole discretion, to hold Lessee responsible for continued performance of its obligations throughout the Term, or to immediately terminate this Agreement without the assignee or sublessee acquiring any interest herein or any rights to use the Premises.

SECTION 902. CITY APPROVAL OF ASSIGNMENTS. No Assignment of this Agreement is effective without advance approval of the City, which may approve, condition or deny such Assignment in its sole discretion pursuant to Ordinance 63687.

SECTION 903. CITY APPROVAL OF SUBLEASES. No sublease of Lessee's Premises is effective without advance approval by the City, which approval is to be given to Lessee by Notice, and will take into consideration the best interest of the traveling public and the operations of the Airport. All subleases are subordinate to this Agreement. Without in any manner limiting the City's general right to approve, disapprove, or condition subleases, it is not unreasonable for

the City to disapprove or condition a sublease of Lessee's Premises on any or all of the following circumstances, among others:

- A. The proposed sublease imposes excessive or otherwise unfair terms and conditions on the sublessee.
- B. A lessee which is not leasing space directly from the City, proposes to sublease, in whole or in part, the Premises, and the City determines that there is space in the Cargo City Buildings available for lease directly from the City by the proposed sublessee.
- C. The proposed sublease does not contain a provision which permits it to be terminated upon Notice from the City to the parties thereto of the availability of City-controlled space.
- D. The proposed sublease does not recognize explicitly that it is subordinate to this Agreement.

SECTION 904. METHOD OF OBTAINING APPROVAL OF SUBLEASES. When requesting approval of a sublease under Sections 902 and 903, Lessee must include with its request a copy of the proposed agreement, if prepared, or a detailed summary of the material terms and conditions to be contained in such agreement. Any proposed agreement or detailed summary thereof must provide information required by the City, including the following:

- A. the Premises to be sublet;
- B. the terms;
- C. the rents and fees to be charged; and
- D. any other material term and condition of the sublease.

If approved, Lessee shall submit a fully executed copy of such agreement to the City within 30 days after the commencement of the sublease.

SECTION 905. CHANGES TO SUBLESSEES. The City will not approve any sublease that includes charges other than the following:

- A. a reasonable charge for any services, equipment, and property provided by Lessee;
- B. actual costs other than rental costs incurred by Lessee; and
- C. reasonable rents not to exceed 115% of Lessee's Rents and fees allocable to the subleased portion of the Premises.

SECTION 906. LESSEE TO REMAIN LIABLE. Lessee remains fully and primarily liable throughout the Term for the payment of all of the Rents and fees due and payable to the City for

the Premises that are subject to a sublease, and remains fully responsible for the performance of all the other obligations hereunder, unless otherwise agreed to in writing by the City.

ARTICLE X TERMINATION OF AGREEMENT IN ITS ENTIRETY

SECTION 1001. RIGHTS CUMULATIVE. Except as otherwise expressly provided for in this Agreement, it is understood and agreed that the rights and remedies of the City and Lessee specified in this Agreement 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 Agreement:

- A. Lessee fails to punctually pay when due any Rental Payment 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 Lessee by the City.
- B. Lessee fails to keep, perform and observe any promise, covenant or other provision of this Agreement 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 Agreement if corrective action is instituted by Lessee 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 Lessee 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. Lessee discontinues its conduct of business at the Premises for a period of thirty (30) consecutive days or, after exhausting or abandoning any further appeals, Lessee 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. Lessee fails to maintain the minimum required insurance coverage as required by Section 801 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 Lessee's right to operate at the Airport until Lessee has obtained the minimum required insurance coverage.
- F. Lessee 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. Lessee files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof, or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Lessee under any chapter of the Bankruptcy Code.
- H. Lessee is adjudged a debtor or bankrupt or an order is made approving a petition filed by any of Lessee's creditors or stockholders seeking Lessee's liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within sixty (60) days of its issuance.
- 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 Lessee 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 Lessee and such possession or control continues in effect for a period of sixty (60) days.
- K. Lessee becomes a corporation in dissolution.
- L. The letting, license, or other interest of or rights of Lessee 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. Lessee 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.

Notwithstanding any other provision of this Agreement, if, as of the beginning Term of this Agreement, Lessee is a debtor in a Chapter 7 or Chapter 11 case under the Bankruptcy Code, such case does not constitute an Event of Default.

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 Agreement or Lessee's rights granted hereby, but without discharging any of Lessee's obligations hereunder and, at the City's further option, exclude Lessee from its Premises. If Lessee 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 Agreement has been terminated or expires, Lessee may be deemed a tenant at sufferance during the period of such use or failure and, in such event, Lessee shall pay Rents and other fees 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 Agreement, exclude Lessee from its Premises and use its best efforts to transfer the Premises to a replacement Lessee. Lessee remains liable for all Rents and other payments due hereunder for the remainder of the Term of this Agreement; provided, however, that any Rents received from a replacement Lessee will be credited against the amounts owed by Lessee.
- 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 Lessee, unless otherwise mutually agreed by Lessee 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, permit or covenant of Lessee 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 Agreement or the taking or recovering of the Premises will deprive the City of any of the City's remedies or actions against Lessee for Rents or fees due hereunder or for damages or for the breach of any covenant herein contained, nor will the bringing of any action for Rents or fees or breach of covenant, the resort to any other remedy herein provided for the recovery of Rents or fees or any delay in exercising such rights, be construed as a waiver of the right to obtain possession of the Premises.
- C. In no event will this Agreement or any rights or privileges hereunder be an asset of Lessee under any bankruptcy, insolvency, or reorganization proceedings.

SECTION 1004. TERMINATION BY LESSEE.

At any time that Lessee is neither in default nor has committed an Event of Default hereunder, Lessee may terminate this Agreement to the extent set forth below, at Lessee's option, prior to the scheduled expiration date set forth in Section 301, by giving the City 90 days' advance Notice upon or after the happening and during the continuance of any of the following events:

- A. Any action of the FAA or any federal, state, county, or municipal governmental agency refusing to permit Lessee to operate into, from, or through the Premises as Lessee has previously operated regularly thereon, and the remaining in force of such refusal for a period of at least 60 days;
- B. Any failure by the City to keep, perform and observe any material promise, covenant, or other provision of this Agreement for a period of 30 days after Notice specifying such failure and requesting that it be remedied is given to the City by Lessee; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, will not give rise to Lessee's right to terminate this Agreement if corrective action is instituted by the City within such 30 day period and diligently pursued until the failure is corrected; or
- C. Lessee is prevented from conducting its business at the Premises for a period in excess of 90 consecutive days for any reason other than causes directly controlled by Lessee.

SECTION 1005. PROCEDURE FOR TERMINATION. No termination declared by either party will be effective unless and until not less than thirty (30) days have elapsed after notice by either party to the other specifying the date upon which such termination will take effect, and the cause for which this Agreement is being terminated and no such termination will be effective if such cause of default is cured within said thirty (30) day period, or if by its nature cannot be cured within such thirty (30) day period, and if the party at default commences to diligently correct such default within said thirty (30) days and corrects the same as promptly as is reasonably practicable. In the event that suit is instituted by City upon the default of payment of rents, charges and fees as provided herein, then Lessee agrees also to pay reasonable attorneys' fees, court cost and expenses.

SECTION 1006. LESSEE'S DAMAGES. In the event City breaches any term, covenant, or condition of this Agreement, and is unable or unwilling to cure said breach in accordance with the procedures provided for in Section 1005, Lessee warrants, covenants and agrees that its sole remedy, either at law or in equity, is to terminate this Agreement by giving City written notice.

ARTICLE XI SURRENDER OF PREMISES

SECTION 1101. SURRENDER OF PREMISES.

- A. Surrender of Premises. On expiration of the Term of this Agreement or earlier termination as hereinafter provided, or on reassignment or reallocation of the Premises as provided herein, Lessee shall:
 - 1. peaceably surrender possession of the Premises and other space made available to Lessee hereunder in clean, sanitary, and good condition, excepting only reasonable wear and tear (taking into account repair and maintenance required to be done by Lessee), acts of God, fire, and other casualties, and conditions that can

be conclusively shown by Lessee existed prior to Lessee's occupancy or use of said Premises under this Agreement or any subsequent agreement with the City, and the City has the right to take possession of said Premises and other space made available to Lessee hereunder; and

2. 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 Lessee, its officers, directors, employees, agents, contractors, or suppliers are remediated and removed in accordance with Subsection 406(C). 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 Lessee's failure to timely correct same in accordance with Subsection 406(C), Lessee shall reimburse the City for any Remediation Costs incurred by the City, as provided for in Subsection 406(E).

The City is not required to notify Lessee to quit possession at the expiration date of the Term of this Agreement.

- B. Removal of Personal Property. Provided Lessee is not in default for non-payment of Rents or any other payment due hereunder, Lessee has the right, on expiration or early termination of this Agreement and within 30 days thereafter, to remove or dispose of all Removable Fixtures installed or placed by Lessee, in, on, or about the Airport. Lessee is not entitled to remove non-trade fixtures without the advance consent of the City. If, following the expiration or early termination of this Agreement, the City has immediate need to accommodate a new tenant, the City may remove and store Lessee's Removable Fixtures, at Lessee's risk.
- C. Removal Damages. Lessee shall repair any damage caused by the removal of its Removable Fixtures. Removal is at Lessee'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 Lessee first used the Premises pursuant to this Agreement or any preceding agreement (reasonable wear and tear taking into account repair and maintenance required to be done by Lessee excepted), after reasonable notification by the City to Lessee, the City will repair or recondition said Premises and the cost thereof, plus a charge of fifteen percent (15%) for overhead, will be invoiced to Lessee and payable immediately, unless otherwise agreed to in writing by the Director. The City will determine the condition of the Premises at the expiration or early termination of this Agreement.
- D. Ownership of Fixtures and Personal Property Not Removed. If, after 30 days following any of the actions or remedies authorized by Subsection 902(A) or the expiration of this Agreement, Lessee fails to remove its Removable Fixtures from the Premises, such

Removable Fixtures may be deemed abandoned by the City. In addition to whatever other rights are available to the City, with prior notification of Lessee, the City may: (i) remove and store all or any portion of the Removable Fixtures at Lessee'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 is entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the Lessee's breach of its covenant to timely remove its Removable Fixtures.

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 Lessee must be sent by certified mail, return receipt requested, addressed to:

Enterprise Leasing Company of STL, LLC
Timothy Hof, Operations Manager
10144 Page Avenue
St. Louis, MO 63132

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 Lessee or said Director.

SECTION 1201. FAA NON DISCRIMINATION.

(a) The Lessee 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:

- (i) in the event facilities, structures or improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a FAA activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee 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;
- (ii) 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;
- (iii) 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,
- (iv) the Lessee will use the Premises or facilities, structures, or improvements within the Premises in compliance with the Acts and Regulations; and
- (v) for purposes of this Section 1129, references to "Acts or Regulations" will mean or include the following statutory and regulatory cities, as may be amended from time to time:
 - Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21;
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

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

SECTION 1203. NO PERSONAL LIABILITY. No director, officer, employee, or agent of the City or Lessee will be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City

relating to any aspect of this Agreement must be brought against the City and not against named individual respondents.

SECTION 1204. FORCE MAJEURE.

- A. 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 Lessee hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Lessee to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended, or should be construed, to abate, postpone or in any respect diminish Lessee's obligations to make any payments due to the City pursuant to this Agreement.
- B. 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 1205. SUCCESSORS AND ASSIGNS. The terms, conditions, and covenants of this Agreement inure to the benefit of, and are binding upon, the parties hereto and upon their permitted successors, assigns and sublessees, if any. This provision does not constitute a waiver of any conditions regarding assignment or subletting contained in this Agreement.

SECTION 1206. QUIET ENJOYMENT. Upon payment of all amounts due hereunder and performance of the covenants and agreements on the part of Lessee to be performed hereunder, the City shall not act or fail to act, except as otherwise provided by this Agreement, in a manner that will prevent Lessee from peaceably having and, in accordance with the terms hereof, enjoying the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances and facilities granted herein.

SECTION 1207. 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 1208. SUBORDINATION TO AGREEMENTS WITH THE UNITED STATES

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

SECTION 1209. GOVERNING LAW AND FORUM SELECTION. This Agreement is made and entered into in the State of Missouri, and Missouri law governs and applies to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement must be brought only in a federal or state court in the City of St. Louis, Missouri. Lessee and the City hereby admit and consent to the jurisdiction and venue of such courts. The provisions of this section survive the expiration or termination of this Agreement.

SECTION 1210. REQUIRED APPROVALS.

- A. Whenever in this Agreement 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 Agreement 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 Agreement 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 1211. NO WAIVERS. No provision of this Agreement 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 terms of this Agreement be construed to waive or lessen the

right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

SECTION 1212. INVALID PROVISIONS. If any covenant, condition, or provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such covenant, condition, or provision 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 covenants, conditions and provisions of this Agreement will remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Lessee in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

SECTION 1213. ENTIRE AGREEMENT. This Agreement, including the attached exhibits, embodies the entire Agreement between the City and Lessee relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and Lessee relating thereto.

SECTION 1214. ADVERTISING. Lessee 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 1215. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Lessee 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 Lessee agrees to be bound by such decision. All determinations by the Director are final.

SECTION 1216. PREVAILING WAGE. Lessee shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This Section is in accordance with and is subject to the City of St. Louis Ordinance No. 62124.

SECTION 1217. AMERICANS WITH DISABILITIES ACT (ADA). Lessee is responsible for compliance with the Federal ADA, and other federal, state, or local laws or regulations and the City Ordinances pertaining to the disabled individual having access to Lessee's services.

SECTION 1218. TIME IS OF THE ESSENCE. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, relieves the other party, without liability, of any obligation to accept such performance.

SECTION 1219. ACKNOWLEDGMENT OF TERMS AND CONDITIONS. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or

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

SECTION 1220. SURVIVAL OF WARRANTIES. All warranties and covenants set forth in this Agreement survive the execution and performance of this Agreement.

SECTION 1221. EXHIBITS. All certificates, documents, exhibits, attachments, riders, and addenda referred to herein, including the exhibits referred hereto, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

SECTION 1222. COUNTERPARTS. This Agreement may be executed in one or more counterparts. It will constitute sufficient proof of this Agreement to present any copy, electronic copies, or facsimiles signed by the parties hereto.

SECTION 1223. SECURITY PLAN AND FACILITIES. Lessee hereby acknowledges that the City is required by the Transportation Security Administration ("TSA") regulation 49 CFR 1500, et al to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. The City has met said requirements by developing a master security plan for the Airport, and Lessee covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Lessee's exercise of the privileges granted to Lessee hereunder. Lessee shall, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon the City by the TSA or the FAA resulting from Lessee's negligence or failure to act in relation to TSA regulation 49 CFR 1500 et al or any other applicable airport security regulations.

SECTION 1224. HEADINGS. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any Provisions of this Agreement and shall not be construed to affect in any manner the Provisions hereof or the interpretation or construction thereof.

SECTION 1225. AMENDMENTS. Unless otherwise expressly provided herein, this Agreement may not be changed, modified, or amended except by written amendment duly executed by the parties hereto.

SECTION 1226. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Lessee agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions of this Agreement, as may be reasonably required to enable the City to obtain said FAA funds, provided that in no event shall such changes substantially impair the rights of Lessee hereunder.

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garvinm@stlouis-mo.gov
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IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written.

Authorized by City Ordinance No. 70547, approved June 9, 2017.

The foregoing Agreement was approved by the Airport Commission at its meeting on the 3rd day of May, 2017.

THE CITY OF ST. LOUIS BY:

[Signature] 6/23/17
Commission Chairperson

Date

and Director of Airports

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

[Signature] 6/23/17
City Counselor Date
City of St. Louis

[Signature] 7/18/17
Comptroller, Date
City of St. Louis

ATTESTED TO BY:

[Signature] 07-25-17
Register, Deputy Date
City of St. Louis

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DOCUMENT # 71868

The Board of Estimate and Apportionment approved the foregoing Agreement in substance at its meeting on the 17th day of May, 2017.

[Signature] 5/17/2017
Secretary, Date
Board of Estimate & Apportionment

Enterprise Leasing Company of STL, LLC

BY: [Signature]

Title: VICE PRESIDENT / GENERAL MANAGER

Date: 3-24-2017

EXHIBIT "A"
PREMISES

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