

ORDINANCE #65617
Board Bill No. 158

An ordinance recommended by the Airport Commission, the Board of Public Service, and the Board of Estimate and Apportionment authorizing and directing the Mayor and the Comptroller of the City of St. Louis (the "City") to execute and deliver on behalf of the City to St. Louis Air Cargo Services, Inc. (the "Grantee"), a Temporary and Non-Exclusive Easement Agreement (the "Easement Agreement") between the City and the Grantee, in order to accommodate the Grantee's construction of additional air cargo facilities at Lambert-St. Louis International Airport (the "Airport"); this Easement Agreement, which is attached hereto as **ATTACHMENT "A"** and made a part hereof, grants to the Grantee a temporary and non-exclusive easement over and under the surface of certain real estate at the Airport more fully described in Section One of this Ordinance for the purpose of installing, constructing, maintaining, repairing, monitoring, and operating a Glycol Recovery System consisting of an Oil/Water Separator, a Glycol Control Structure, a Glycol Pump Well and other improvements and appurtenances thereto necessary to comply with certain federal, state, and local laws and regulations regarding the containment of certain ground water contaminants; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section One. The Mayor and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to execute and deliver on behalf of the City to St. Louis Air Cargo Services, Inc. (the "Grantee"), a Temporary and Non-Exclusive Easement Agreement (the "Easement Agreement") between the City and the Grantee, in order to accommodate the Grantee's construction of additional air cargo facilities at Lambert-St. Louis International Airport (the "Airport"); this Easement Agreement grants to the Grantee a temporary and non-exclusive easement over and under the surface of certain real estate at the Airport for the purpose of installing, constructing, maintaining, repairing, monitoring, and operating a Glycol Recovery System consisting of an Oil/Water Separator, a Glycol Control Structure, a Glycol Pump Well, and other improvements and appurtenances thereto necessary to comply with certain federal, state, and local laws and regulations regarding the containment of certain ground water contaminants and is to read in words and figures as set out in **ATTACHMENT "A"**, which is attached hereto and made a part hereof.

Section Two. This being an Ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter and shall become effective immediately upon its approval by the Mayor of the City.

ATTACHMENT "A"

CITY OF ST. LOUIS, MISSOURI
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
TEMPORARY EASEMENT AGREEMENT

GRANTOR: CITY OF ST. LOUIS
GRANTEE: ST. LOUIS AIR CARGO SERVICES, INC.

AIRPORT NUMBER AL-376
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
TEMPORARY EASEMENT AGREEMENT
BETWEEN THE CITY OF ST. LOUIS AND
ST. LOUIS AIR CARGO SERVICES, INC.

THIS TEMPORARY AND NON-EXCLUSIVE EASEMENT AGREEMENT, made this _____ day of _____, 2002 (the "Easement Agreement"), by and between The City of St. Louis, a municipal corporation of the State of Missouri (the "Grantor") acting by and through its Mayor and Comptroller, and St. Louis Air Cargo Services Inc., a Missouri corporation (the "Grantee").

WITNESSETH THAT:

WHEREAS, the Grantor is the owner and operator of Lambert- St. Louis International Airport, located in the County of St. Louis Missouri;

WHEREAS, the Grantor and the Grantee have entered into that certain GROUND LEASE AND AGREEMENT (Air Cargo Terminal, AL-140) (the "Ground Lease") dated April 1, 1987 and authorized by Ordinance No. 60337 approved March 4, 1987, the term of which expires on April 30, 2019;

WHEREAS, the Grantee desires to construct additional air cargo facilities in accordance with and subject to the terms, covenants, and conditions of the Ground Lease, and as a result of that construction will be required to comply with the federal laws and regulations of the Environmental Protection Agency and state laws and regulations of the Missouri Department of Natural Resources regarding the containment of certain ground water contaminants;

WHEREAS, the Grantee desires to construct a Glycol Recovery System consisting of an Oil/Water Separator, a Glycol Control Structure, a Glycol Pump Well and other improvements and appurtenance thereto (collectively the "Facility") to comply with said laws and other applicable federal, state, and local laws and regulations;

WHEREAS, the Grantee has submitted a Tenant Construction or Alteration Application ("TCA") including detailed drawings, plans and specifications for the construction of the Facility in accordance with ARTICLE V, entitled "RESTORATION, MODIFICATION OR CONSTRUCTION OF IMPROVEMENTS" of the Ground Lease and said TCA has been approved by the Grantor;

WHEREAS, the Grantor and the Grantee both agree that no feasible location for the proposed Facility lies within the Grantee's leased Premises (as defined and described in the Ground Lease); and

WHEREAS, it is necessary in order to accommodate the Grantee's construction of additional air cargo facilities for the Grantor to grant to the Grantee a temporary and non-exclusive easement for the purpose of installing, constructing, maintaining, repairing, monitoring, and operating the Facility on property owned by the City and located on the Airport as described below.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants and conveys to the Grantee a Temporary and Non-Exclusive Easement (the "Temporary Easement") over and under the surface of certain real estate in the County of St. Louis, State of Missouri (the "Easement Area"), more fully described as follows:

A tract of land being part of United States Survey 2524, Township 46 North, Range 6 East, St. Louis County, Missouri; said tract being more particularly described as follows:

COMMENCING at the intersection of the southwestern line of property described in a lease to St. Louis Air Cargo Services, Inc. recorded in Book 8842, Page 2431 of the St. Louis County Recorder's Office with the western line of James S. McDonnell Boulevard; thence in a generally northwestwardly direction along said southwestern lease line the following courses and distances: North 57 degrees 45'14" West, 477.59 feet; North 32 degrees 14'46" East, 167.650 feet and North 57 degrees 45'14" West, 205.00 feet to THE POINT OF BEGINNING of the tract of land herein described; thence leaving the southwestern line of said lease South 32 degrees 14'46" West, 113.57 feet; thence North 57 degrees 18'53" West, 135.00 feet; thence North 32 degrees 14'46" East, 112.54 feet to a point on the southwestern line of said lease; thence South 57 degrees 45'14" East, 135.00 feet along the southwestern line of said lease to the Point of Beginning, and containing 15,262 square feet, according to calculation prepared by P.B.Q. & D. in June, 1999. See the plat of the Easement Area identified as EXHIBIT "A", attached hereto and incorporated herein.

Reserving unto the Grantor, its successors and assigns, the aviagation right more fully set forth in section 6 below, entitled "AVIAGATION RESERVATION".

The Grantor is willing that the Grantee so use the Temporary Easement over and under the Easement Area subject to the following terms, covenants, conditions, and reservation:

1. PURPOSE/USE. The Grantee, its agents, employees, representatives, contractors, and permitted assigns shall use this Easement Area only for the purpose of installing, constructing, maintaining, repairing, monitoring, and operating a functional Facility.

2. TERM. The term of this Easement Agreement shall begin on the date first written above and shall end April 30, 2019 the expiration date of the Ground Lease, or the early termination date of the Ground Lease, or if the Grantee should abandon its Temporary Easement as provided for herein; unless sooner terminated in accordance with other provisions of this Agreement. The Grantee shall be deemed to have abandoned the Temporary Easement or the Easement Area when the Grantee no longer uses the Temporary Easement for the purpose of installing, constructing, maintaining, repairing, monitoring and operating a functional Facility. This Easement Agreement is expressly subject to and shall not become effective or binding on either the Grantor or the Grantee until fully executed by both the Grantor and Grantee.

3. RESTORATION. Grantee shall not change the existing ground elevation or drainage pattern. All surfaces of the Easement Area and surrounding property shall be restored to its original ground elevation, drainage pattern, and condition after completion of the initial or any subsequent installation, construction, maintenance or repairs, except to the extent the Director of Airports agrees otherwise in writing, ordinary wear and tear excepted. At the effective date of the expiration or early termination of this Easement Agreement or the abandonment of the Temporary Easement or Easement Area by the Grantee, the Facility including without limitation all improvements constructed, installed or placed in or on the Easement Area by the Grantee, including any alterations, modifications and enlargements thereof shall become the Grantor's property with title vesting in Grantor upon the expiration or early termination of the Easement Agreement or the abandonment of the Temporary Easement or the Easement Area by the Grantee; subject, however, to Grantee's obligation to monitor, operate, repair, and maintain, and its right of possession and use during the term and in accordance with the terms, covenants, conditions, and reservation of this Easement Agreement. However, Grantor reserves the right and Grantee agrees that the Director of Airport may in his/her sole and absolute discretion (at the effective date of the expiration or early termination of this Easement Agreement or the abandonment of the Temporary Easement or the Easement Area by the Grantee) require the Grantee to remove the Facility including without limitation all improvements constructed, installed or placed in or on the Easement Area by the Grantee, including any alterations, modification and enlargements thereof or appurtenances thereto and/or restore the Easement Area substantially to the condition that originally existed at the time this Temporary Easement was granted. It understood and agreed by the Grantor and Grantee that such restoration and removals as contemplated under this Section 3. Restoration shall only apply to improvements constructed, installed or placed in or on the Easement Area, including any alterations, modification and enlargements thereof and appurtenances thereto within the Easement Area

as defined in the preamble of this Easement and as shown on EXHIBIT "A" attached hereto. Grantee agrees to bear all cost of such removals and restorations. No notice to quit possession at the expiration date of the term of this Easement Agreement shall be necessary.

4. MAINTENANCE/IMPROVEMENTS WITHIN EASEMENT. The Grantee shall maintain the Easement Area, including without limitation the Facilities and all improvements constructed, installed or placed in or on the Easement Area by the Grantee, including any alterations, modifications and enlargements thereof or appurtenances thereto, in a clean, safe, and in good order and repair, and in accordance with the applicable federal, state, and local law and regulations including without limitation environmental laws. Grantee shall obtain all necessary permits, licenses, and approvals in connection with the activities to be conducted pursuant to this Easement Agreement, including without limitation the necessary TCA in accordance with ARTICLE V, entitled "RESTORATION, MODIFICATION OR CONSTRUCTION OF IMPROVEMENTS" of the Ground Lease. In the event the Grantee fails to perform any duties or obligations hereunder, and such failure shall continue for thirty (30) calendar days after written notice by Grantor of the alleged failure to perform said duties (or, if the cause of the default by its nature can not be cured within said 30 days, then if the Grantee does not commence to correct such default within said 30 day period or does not fully correct the same as promptly as reasonable practical) the Grantor shall have the right to cure such default and Grantee warrants, represents and agrees to pay the Grantor promptly the reasonable cost actually incurred by Grantor to cure said default including without limitation reasonable legal fees and cost of litigation.

5. ACCESS. Grantee has the right of free access to and from the Temporary Easement or Easement Area for its employees, representatives, contractors, and agents together with the right to use additional space adjacent to the Easement Area and the right to bring necessary equipment upon the Grantor's premises as may be required during the period of any construction, installation, repairs, monitoring or maintenance in connection with the performance of the Grantee's activities as set out in section 1, all of which is subject to any applicable federal, state, and local laws, rules, regulations or requirements including but not limited to the Airport's Security Identification Display Area ("SIDA") requirements (if applicable), which may restrict or limit access to the Temporary Easement or Easement Area. In no event shall the Grantee, its employees, contractors, consultants, agents, or representatives interfere with the safe and efficient operation or administration of the Airport. Grantee shall give the Grantor reasonable and timely notice of its need to enter the Easement Area except for routine inspections and maintenance.

6. AVIATION RESERVATION. The Grantor reserves unto itself, successors and assigns for the use and benefit of the public, a perpetual and assignable easement and right-of-way, for the free and unobstructed passage of aircraft in, through, and across all the navigational air space above the Easement Area, together with the continuing right to cause and allow in all the air space above the surface of the Easement Area such noise, vibration, fumes, dust, fuel particles, illumination, interference with television, radio or any other type of transmission and other effects as may be caused by or result from the operation of aircraft or the landing at or taking off from or from the operation of aircraft on or at the Airport, also together with the rights to mark and light obstructions to air navigation any and all buildings, structures or other improvements and trees or other objects which extend into this easement or right-of-way.

The term "aircraft" is defined for the purpose of this instrument as any contrivance now known or hereafter invented, designed or used for navigation or flight in air or space involving either persons or property.

The Grantee, its successors in interest or assigns will not erect, nor permit the erection of, any structure, facility, or object, on or in the Easement Area which encroaches upon or extends into this easement or right-of-way, and that neither the Grantee, its successors or assigns will hereafter use, or permit or suffer the use of the Temporary Easement or Easement Area in such manner as to create electrical interference with radio communication to or from any aircraft, or as to make it difficult for aircraft pilots to distinguish between airport lights and other lights, or as to impair visibility in the vicinity of any airport, or as to otherwise endanger the landing, taking off, or maneuvering of aircraft.

The Grantee expressly agrees for itself, its successors and permitted assigns: a) to prohibit any use of the Temporary Easement or Easement Area which would be a hazard to the flight of aircraft over the land or to and from the Airport or interfere with air navigation and/or communication facilities serving the Airport; b) to restrict the height of structures, objects or natural growth, and other obstructions over the surface of the land, and c) to provide to the Federal Aviation Administration (the "FAA") notice of proposed construction or alteration to the Temporary Easement in a form acceptable to the Federal Aviation Administration (FAA") (currently, FAA Form 7460-1, entitled "Notice of Proposed Construction or Alteration") for its review and un-objectional determination, prior to commencement of construction, that the proposed construction or alteration is not an obstruction or hazard to the flight of aircraft over the land or to and from the Airport.

7. RIGHTS LIMITED. No rights except those specifically set out in this Easement Agreement are granted or conveyed to the Grantee. The Grantor makes no representation or warranties, expressed or implied, as to the suitability or fitness of the Temporary Easement or Easement Area for any particular purpose. Nothing herein shall be construed or interpreted to mean that the Grantee or any of its employees or agents is employees or agents of the Grantor.

8. INDEMNIFICATION.

A. Grantee warrants, represents, and agrees that it shall repair any and all damages to property arising out of or in connection with the rights granted by this Easement Agreement. Further, the Grantee agrees to protect, defend and hold, indemnify and save harmless the Grantor, its Board of Aldermen, Airport Commission, officers, employees, agents, contractors, and consultants completely harmless from and against all liabilities, losses, suits, claims or causes for action, judgments, fines or demand (including but not limited to attorney fees, court costs, and expert fees) of any nature

whatsoever arising out of or incident to this Easement Agreement or the use of the Temporary Easement or Easement Area and/or the acts or omissions of the Grantee's officers, employees, agents, representatives, contractors, consultants, licensee, independent contractors, or invitees regardless of where the injury, death, or damage may occur, and such indemnity shall survive the expiration or any termination of this Easement Agreement including the abandonment of the Temporary Easement. Grantor and Grantee each mutually agree that each will be responsible for their own negligent acts and/or negligent omissions. Grantor agrees to give reasonable notice of any such claims or actions. The Grantee shall use counsel reasonably acceptable to the City Counselor of the Grantor or his/her designee, after consultation with the Director of Airports or his/her designee in carrying out its obligations hereunder. Grantee shall have the right to defend, compromise, or settle to extent of Grantee's interest.

B. Grantee warrants, represents, and agrees that it shall protect, defend and hold, indemnify and save harmless the Grantor, its Board of Aldermen, Airport Commission, officers, employees, agents, contractors, and consultants completely harmless from and against all liabilities, losses, suits, claims or causes for action, judgments, administrative proceedings, fines or demand (including but not limited to attorney fees, court costs, and expert fees) of any nature whatsoever arising out of or incident to the use, manufacture, generation, production, treatment, storage, transportation, disposal, discharge, release, or spilling, into or onto the air, water, soil, sewer system or similar media of any hazardous substance, hazardous waste, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, infectious waste, solid waste, oil, petroleum product or derivative, or similar material or substance, or other chemical substance or material subject to federal, state, or local laws or regulations, discharge, release or spill, whether accidental or intentional, which occurs on or from the Temporary Easement or Easement Area during the Term of this Easement Agreement or previous agreements between the parties. Grantee's indemnity, liability, or obligation includes but is not limited to all costs and expenses related to the sampling, testing, investigation, cleanup, removal, remediation, decontamination, or restoration of the Easement Area and other affected areas. Grantor and Grantee each mutually agree that each will be responsible for their own negligent acts and/or negligent omissions. Grantor agrees to give reasonable notice of any such claims or actions. The Grantee shall use counsel reasonably acceptable to the City Counselor of the Grantor or his/her designee, after consultation with the Director of Airports or his/her designee in carrying out its obligations hereunder. Grantee shall have the right to defend, compromise, or settle to extent of Grantee's interest.

9. LIABILITY INSURANCE

A. Grantee, as partial consideration for the Grantor's performance hereunder, at its expense, at all times during the term hereof, shall cause Grantor and its Board of Aldermen, Airport Commission, officers, agents, and employees and Grantee to be insured on an occurrence basis against the risk of all claims and demands arising or alleged to arise out of the activities or omissions of Grantee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees pursuant to this Easement Agreement or use of the Easement Area or the Grantee's operations on or affecting the Easement Area whether on or off the Easement Area. Grantee shall maintain a Comprehensive General Liability policy of insurance, in a minimum amount of One Million Dollars (\$1,000,000) per incident and in the aggregate comprised of such primary and excess policies of insurance as lessee finds it feasible to purchase during the term of this Easement Agreement.

B. Grantee, shall also obtain, at its sole expense and at all times during the term of this Easement Agreement plus five (5) years, Pollution Legal Liability Insurance coverage specific to the Easement Area, insuring the Grantor and its Board of Aldermen, Airport Commission, officers, agents, and employees and Grantee to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death), property cleanup, legal defenses, and property damage arising or alleged to arise out of the activities or omissions of the Grantee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees pursuant to the Easement Agreement or the use of the Easement area or the Grantee's operations on or affecting the Easement area whether on or off Easement Area in a minimum amount of One Million Dollars (\$1,000,000) per incident and in the aggregate, comprised of such primary and excess policies of insurance as Grantee finds it feasible to purchase. Said Pollution Legal Liability Insurance coverage shall not exclude underground tanks or exclude or prevent the Grantor from taking legal action to protect its rights and property. Grantor acknowledges and agrees that the foregoing Pollution Legal Liability Insurance may be satisfied by Grantee's tenant or tenants who use the Facility.

C. Insofar as said insurance provide protection against liability for damages to a third party for bodily injury, death and property damage, Grantor, and its Board of Aldermen, Airport Commission, officers, employees and agents shall be named as an "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to Grantor owned or leased property and Grantor's personnel, and caused by or resulting from work, acts, operations, or omissions of the Grantee, its officers, agents, employees, consultant, contractors, licensees, independent contractors and invitees, and insuring the Grantee's contractual obligations hereunder.

D. Certificates of said insurance shall be filed with the Director of Airports in a form and content reasonably satisfactory to the Grantor. Grantor hereby reserves the right to review said insurance policies and deductibles. At least fifteen (15) calendar days prior to the expiration of any such policy, Grantee shall submit to the Director of Airports or his/her designee a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Grantee shall within fifteen (15) calendar days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director of Airports or his/her designee, a certificate showing that the required insurance has been reinstated or provided through another insurance company. Such policies of insurance required of Grantee herein shall be in a form and with a company of companies approved by Grantor, and qualified to do

insurance business in the State of Missouri. (Said insurance companies must be "A" rated or higher.) Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving thirty (30) calendar days written notice to the Director of Airport. Each such insurance policy shall also provide primary coverage to the Grantor and its Board of Aldermen, Airport Commission, officers, employees and agents when any policy issued to the Grantor, its Board of Aldermen, Airport Commission, officers, employees and agents provide duplicate or similar coverage; then in such circumstances, the Grantor's and its Board of Aldermen, Airport Commission, officers, employees and agents' policy will be excess over the Grantee's policy.

E. Grantee, at its expense, at all times during the term hereof, shall maintain for its employees workers' compensation insurance coverage at least at the statutory limits applicable to Grantee.

F. No Alderman, Commissioner, Director, officer, employee, board member of either party shall be personally liable under or in connection with this Easement Agreement.

G. Grantee, on behalf of itself and its insurers, hereby waives any claim or right of recovery from Grantor, its Board of Aldermen, Airport Commission, officers, employees, and agents for loss or damage to Grantee or its property or the property of others under Grantee's control, to the extent that such loss is covered by valid insurance policy. Grantee shall provide notice of this waiver of subrogation to its insurers.

H. Grantee and Grantor understand and agree that the minimum limits of coverage under the insurance policies herein required may become inadequate, and Grantee agrees that it will increase such minimum coverage limits upon receipt of notice in writing from the City's Director of Airport or his designee. Such notice to change coverage limits shall, in general, be issued with no more frequency than every fifth year of the lease terms; however, the Director of Airports, or his designee, may at any time, take note of judgement awards and out of court settlements and direct an increase in the minimum coverage limits of the insurance requirements at any time during the term hereof.

10. SUCCESSORININTERESTS. This Easement Agreement and the parties' commitments and obligation within, shall be binding on both parties, their successors, and permitted assigns. Notwithstanding anything to the contrary, this Temporary Easement granted hereunder is personal to St. Louis Air Cargo Services Inc., and may not be assigned or apportioned without the Grantor's prior written consent as provided for in Ordinance 63687 approved in 1996 and such approval may be granted or withheld in Grantor's sole and absolute discretion. The parties hereto understand and agree that the Grantee is responsible for the performance of its permitted assigns under this Easement Agreement. Permitted assignees must expressly assume in writing the terms, covenants, and conditions contained in this Easement Agreement.

11. NOTICE. Any notice, request, consent, approval, information, document, correspondences provided for in this Easement Agreement shall be in writing and delivered personally or sent by an overnight or express mail service, with a return receipt, postage prepaid to the person and address set forth below. The notice shall be deemed effective upon receipt. Any party may change the person or address to which notices are to be sent to it by giving written notice of such change to the other party in the manner herein provided for giving notice.

If to Grantee:

Mr. Myron Haith
President
St. Louis Air Cargo Services, Inc.
11415 W. 87th Terrace
Overland Park, KS 66214

and, if to the Grantor:

Director of Airports
Property Issues
Lambert-St. Louis International Airport
10701 Lambert International Boulevard
P.O. Box 10212
Lambert Station, St. Louis, Mo. 63145

with a copy to:

Airport Properties Division Manager
Airport Properties Department
Lambert-St. Louis International Airport
10701 Lambert International Boulevard
P.O. Box 10212
Lambert Station, St. Louis, Mo. 63145.

12. ENVIRONMENTAL NOTICE. Grantee shall immediately notify the Director of Airports or his/her designee and shall provide a written summary report within thirty (30) days for any of the following: (a) any correspondence or communication from any governmental entity regarding the application of environmental laws to the Easement Area or Grantee's operation on or affecting the Easement Area, (b) any change in Grantee's operations on or affecting the Easement Area that will change or has the potential to change the Grantee's or Grantor's obligations or liabilities under the any federal, state, or local environmental laws or regulations, (c) any disposal, release, or spill of any hazardous substance, extremely hazardous substance, hazardous waste, solid waste, oil petroleum product or derivative, infectious waste, pollutant, toxic pollutant, toxic substance, or chemical substance or material subject to federal, state, or local law or regulation, and (d) any breaches of any federal, state, or local environmental laws or regulations.

13. TERMINATION. This Easement Agreement shall be considered in default when Grantee fails to fulfill any of the terms, covenants, or conditions of this Easement Agreement. Such default shall be considered a material breach of this Easement Agreement for which the Grantor at its sole option may terminate the Easement Agreement and/or seek such appropriate remedies at law or in equity after first giving the Grantee thirty (30) days written notice specifying the date and cause of termination. No such termination shall be effective if the Grantee (a) cannot by the nature of the default cure it within such thirty (30) day period, and (b) commences to correct such default within said thirty (30) days, and (3) corrects the same as promptly as is reasonably practicable.

14. GENERAL PROVISIONS.

A. It is understood and agreed by and between the Grantor and Grantee that the Easement Agreement shall be deemed and construed to be entered into and to be performed in the City of St. Louis, State of Missouri, and it is further understood and agreed by and between parties hereto that the law of the State of Missouri, City Charter, and Ordinance shall govern the rights, obligations, duties and liabilities of the parties to the Easement Agreement and also govern the interpretation of the Easement Agreement.

B. The terms, covenants, conditions, warranties, and provisions of this Easement Agreement are intended by the parties as a final expression of their agreement with respect to such terms, covenant, conditions, warranties, or provisions as are included in this Easement Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Easement Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Easement Agreement.

C. Grantee shall comply with all federal, state, and local laws, and regulations, as well as rules and regulations established by the Grantor or the Director of Airports, now or hereafter, applicable to this Easement Agreement, the Easement Area, Grantee's operations on or affecting the Easement Area, or any adjoining public ways, as to the manner of use or the condition of the Easement Area or of the adjoining public ways.

D. A waiver by either party of the terms, covenants, or conditions hereto to be performed, kept or observed by the other party shall not be construed as, or operate as, a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Easement Agreement.

E. The parties affirm each has full knowledge of the terms covenants conditions, warranties and requirements contained in this Easement Agreement. As such, the terms, covenants, conditions, warranties and requirements of this Easement Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Easement Agreement or any amendments, modifications or exhibits thereto.

F. Grantee shall not allow any mechanic's liens or Other liens or encumbrances to attach to Airports property or any part thereof by its actions or omissions. Should any such lien or encumbrance be filed against the Grantor's property, Grantee shall satisfy the lien within thirty (30) calendar days of notice by the Grantor.

G. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term covenant, condition or provision does not materially prejudice either the Grantor or Grantee in its respective rights and obligations contained in the valid terms, covenants, conditions, and provisions of this Easement Agreement.

H. Grantee shall coordinate the activities performed under the Easement Agreement with the Airport representative designated by the Director of Airports.

I. In the event of a conflict between the Grantee and any other tenant, licensee, or concessionaire, as to the respective rights of the others, the Director of Airports shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Grantee agrees to be bound by such decision. All determinations by the Director of Airports are final.

J. Time is of the essence in this Easement Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Easement Agreement.

K. When the consent, approval, waiver, or certification ("Approval") of a party is required under the terms

of this Easement Agreement; such approval must be in writing and signed by the party Approving. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports, or his/her authorized designee. Grantor and Grantee agree that extensions of time for performance may be made by the written mutual consent of the Director of Airports and the Grantee or its designee.

L. Grantor and Grantee acknowledge and agree that a default under this Easement Agreement shall not constitute or be considered a default under any other agreement between Grantor and Grantee, including, without limitation, the Ground Lease.

TO HAVE AND TO HOLD THE TEMPORARY EASEMENT, with all right appertaining thereto unto the Grantee, its successors, and permitted assigns, it being understood and agreed that the reservation, conditions, and covenants shall run with the land.

IN WITNESS WHEREOF, The City and the Grantee have entered into this Easement Agreement as set forth above by affixing their signatures hereto.

Pursuant to City of St. Louis Ordinance No. _____, approved on the _____ day of _____, 2002.

GRANTOR/CITY:

THE CITY OF ST. LOUIS:

BY: _____
Mayor,
City of St. Louis

COUNTERSIGNED:

BY: _____
Comptroller,
City of St. Louis

APPROVED AS TO FORM:

ATTEST:

BY: _____
City Counselor,
City of St. Louis

BY: _____
Register
City of St. Louis

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this _____ day of _____, 2002 before me appeared Francis G. Slay, to me personally known, who being by me duly sworn, did say he is the Mayor of the City of St. Louis, a municipal corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation and that said instrument was signed and sealed on behalf of said corporation pursuant to Ordinance Number _____, approved _____, 2002.

IN TESTIMONY WHEREOF, I have herewith set my hand and affixed my official seal the day and year above written.

Notary Public

My commission expires _____.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this _____ day of _____, 2002 before me appeared Darlene Green, Comptroller, to me personally known, who being by me duly sworn, did say she is the Comptroller of the City of St. Louis, a municipal corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said municipal corporation and that said instrument was signed and sealed in behalf of said corporation pursuant to Ordinance Number _____, approved _____, 2002.

IN TESTIMONY WHEREOF, I have herewith set my hand and affixed my official seal the day and year above written.

Notary Public

My commission expires _____.

GRANTEE:

ORDINANCE #65618
Board Bill No. 162
Committee Substitute

AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT AUTHORIZING AND DIRECTING THE ISSUANCE BY THE CITY OF ST. LOUIS, MISSOURI OF ITS AIRPORT REVENUE BONDS, SERIES 2002 (2002 CAPITAL IMPROVEMENT PROGRAM) LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT, IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED SEVENTY-FIVE MILLION DOLLARS (\$175,000,000) AS A PART OF THE \$1,500,000,000 OF ADDITIONAL BONDS APPROVED BY THE VOTERS, TO FINANCE THE COST OF THE CONSTRUCTION, IMPROVEMENT, RENOVATION, EXPANSION, REHABILITATION AND EQUIPPING OF CERTAIN AIRPORT PROPERTY, REIMBURSEMENT FOR CERTAIN PRIOR AIRPORT CAPITAL EXPENDITURES, THE ACQUISITION OF CERTAIN LAND (INCLUDING THE RELOCATION OF CERTAIN FACILITIES), THE REFUNDING OF ALL OR A PORTION OF THE CITY'S AIRPORT REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 1992, LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT PROJECT, THE FUNDING OF ALL OR A PORTION OF CAPITALIZED INTEREST, IF ANY, AS PERMITTED BY LAW DURING CONSTRUCTION AND UP TO TWO (2) YEARS THEREAFTER, THE FUNDING OF ANY REQUIRED RESERVE FUNDS AND THE PAYMENT OF CERTAIN COSTS OF ISSUANCE; SETTING FORTH CERTAIN TERMS AND CONDITIONS FOR THE ISSUANCE OF SUCH BONDS; APPOINTING A TRUSTEE, A BOND REGISTRAR AND PAYING AGENT IN CONNECTION WITH THE BONDS; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE NINTH SUPPLEMENTAL INDENTURE OF TRUST TO THE INDENTURE OF TRUST; AUTHORIZING THE NEGOTIATED SALE OF THE BONDS AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT AND AN ESCROW DEPOSIT AGREEMENT; AUTHORIZING THE PREPARATION, EXECUTION AND DISTRIBUTION OF THE PRELIMINARY OFFICIAL STATEMENT AND THE OFFICIAL STATEMENT AND THE PREPARATION, EXECUTION AND DELIVERY OF THE CONTINUING DISCLOSURE AGREEMENT AND OTHER MATTERS WITH RESPECT THERETO; AUTHORIZING THE NEGOTIATION AND PURCHASE OF CREDIT ENHANCEMENT, IF ANY, AND CREDIT FACILITIES FOR ANY REQUIRED RESERVE FUNDS, IF ANY, AND THE APPROVAL AND EXECUTION OF DOCUMENTS NECESSARY TO COMPLY WITH THE DUTIES OF THE CITY UNDER ANY AGREEMENT FOR CREDIT ENHANCEMENT, IF ANY, AND A CREDIT FACILITY FOR ANY REQUIRED RESERVE FUNDS; DECLARING THE OFFICIAL INTENT OF THE CITY TO REIMBURSE ITSELF OUT OF THE PROCEEDS OF THE BONDS FOR CERTAIN EXPENDITURES OF THE CITY; AUTHORIZING THE PROPER OFFICIALS, AGENTS AND EMPLOYEES OF THE CITY TO EXECUTE SUCH DOCUMENTS AND TO TAKE SUCH ACTIONS AS ARE NECESSARY OR APPROPRIATE; REPEALING ORDINANCES OF THE CITY TO THE EXTENT INCONSISTENT WITH THE TERMS HEREOF; AND CONTAINING SEVERABILITY CLAUSES.

WHEREAS, The City of St. Louis, Missouri (the "City"), owns an airport known as Lambert-St. Louis International Airport (the "Airport") which is operated by the Airport Authority of the City;

WHEREAS, pursuant to Article VI, Section 27 of the Constitution of the State of Missouri, as amended, the City has financed the purchase, construction, extension and the improvement of the Airport by the issuance of \$178,000,000 of its airport revenue bonds (the "Outstanding Obligations") pursuant to its ordinances numbered 51342, 54813, 55647, 57110, 57613, 58328 and 58761 (the "Outstanding Obligations Ordinances");

WHEREAS, on November 29, 1984 the City issued, under and pursuant to an Indenture of Trust, dated as of October 15, 1984, as heretofore amended and supplemented (the "Original Indenture"), \$167,095,000 aggregate principal amount of its Airport Revenue Bonds, Series 1984 (the "Refunded Series 1984 Bonds") for the purpose of, among other things, defeasing the Outstanding Obligations;

WHEREAS, on August 4, 1987 the City issued \$52,000,000 of its airport revenue bonds pursuant to a First Supplemental Indenture dated as of July 1, 1987 between the City and the Trustee (the "Refunded Series 1987 Bonds") for the purpose of financing the construction, improvement, expansion and equipping of certain Airport property;

WHEREAS, on November 5, 1991 the qualified electors of the City approved the issuance by the City of airport revenue bonds in the amount of \$1,500,000,000 for the purpose of paying the costs of purchasing, constructing, extending and improving airports to be owned by the City (the "Voter Approval");

WHEREAS, on November 25, 1992, the City issued \$109,125,000 of its Airport Revenue Refunding and Improvement Bonds, Series 1992, Lambert-St. Louis International Airport Project (the "Series 1992 Bonds") pursuant to a Second Supplemental Indenture dated as of November 15, 1992 between the City and the Trustee for the purpose of providing funds (i) to refund the Lambert-St. Louis International Airport Corporation's Lease Revenue Bonds (Noise Mitigation Project) Series 1990 which had provided funds for the acquisition of land in connection with the Airport noise abatement program and (ii) for further land acquisition, airfield improvements and expansion of the terminal facility and related improvements;

WHEREAS, on September 9, 1993, the City issued \$121,720,000 of airport revenue bonds pursuant to a Third Supplemental Indenture dated as of August 1, 1993 between the City and the Trustee (the "Taxable Series 1993 Refunding Bonds") for the purpose of current refunding the Refunded Series 1984 Bonds;

WHEREAS, on December 14, 1993, the City issued \$65,405,000 of taxable airport revenue bonds pursuant to a Fourth Supplemental Indenture dated as of December 1, 1993 between the City and the Trustee (the "Taxable Series 1993A Bonds") for the purpose of financing the cost of purchasing the leasehold interests of certain property of Trans World Airlines, Inc.;

WHEREAS, on April 10, 1996 the City issued \$37,760,000 of airport revenue bonds pursuant to a Fifth Supplemental Indenture dated as of April 1, 1996 between the City and the Trustee (the "Series 1996 Bonds") for the purpose of refunding the Refunded Series 1987 Bonds;

WHEREAS, on September 10, 1997, the City issued \$40,420,000 of airport revenue bonds Series 1997A, and \$159,185,000 of airport revenue bonds Series 1997B, pursuant to a Sixth Supplemental Indenture dated as of August 1, 1997 between the City and the Trustee (the "Series 1997 Bonds") for the purpose of funding certain capital improvements;

WHEREAS, on December 17, 1998, the City issued \$69,260,000 of airport revenue bonds pursuant to a Seventh Supplemental Indenture dated as of December 1, 1998 between the City and the Trustee (the "Series 1998 Bonds") for the purpose of refunding a portion of the Series 1992 Bonds;

WHEREAS, on May 15, 2001, the City issued \$435,185,000 of Airport Revenue Bonds, Series 2001A (Airport Development Program) pursuant to an Eighth Supplemental Indenture dated as of May 1, 2001 between the City and the Trustee (the "Series 2001 Bonds") for the purpose of acquiring certain land located adjacent to the Airport and funding certain capital improvements at the Airport;

WHEREAS, the City is authorized under the Constitution and laws of the State of Missouri to issue, sell and negotiate its interest-bearing revenue bonds for the purpose of paying all or a part of the costs of purchasing, constructing, extending or improving airports;

WHEREAS, because a public purpose is served by financing the 2002 Project (defined herein), refunding all or a portion of the Series 1992 Bonds, reimbursing the City for certain Airport capital expenditures, funding a debt service reserve account, if required, funding capitalized interest, if any, during construction and up to two (2) years thereafter and the payment of certain costs of issuance, in order to enhance airport operations, the City is now prepared to issue and sell its Airport Revenue Bonds, Series 2002 (Capital Improvement Program) Lambert-St. Louis International Airport (the "Series 2002 Bonds") in an aggregate principal amount not to exceed One Hundred Seventy-Five Million Dollars (\$175,000,000) in one or more series the proceeds of which, together with other available funds, if any, will be used for the purposes described herein;

WHEREAS, pursuant to the Voter Approval, the City has heretofore issued revenue bonds for the purposes of paying the costs of purchasing, constructing, extending and improving the Airport and refunding certain of the City's revenue bonds issued for the Airport in the aggregate principal amount of One Billion One Hundred Twenty-Five Million Two Hundred Twenty-Five Thousand Dollars (\$1,125,225,000);

WHEREAS, the Original Indenture has been amended and supplemented pursuant to (i) the First Supplemental Indenture, dated as of July 1, 1987, between the City and Mercantile Trust Company National Association, as predecessor to State Street Bank & Trust Company of Missouri, N.A., as predecessor to UMB Bank, N.A. (formerly UMB Bank of St. Louis, N.A.) (the "Trustee"), (ii) the Second Supplemental Indenture of Trust, dated as of November 15, 1992, between the City and the Trustee (the "Second Supplemental Indenture"), (iii) the Third Supplemental Indenture of Trust, dated as of August 1, 1993, between the City and the Trustee, (iv) the Fourth Supplemental Indenture of Trust, dated as of November 1, 1993, between the City and the Trustee, (v) the Fifth Supplemental Indenture of Trust, dated as of April 1, 1996, between the City and the Trustee and (vi) the Sixth Supplemental Indenture of Trust, dated as of August 1, 1997, between the City and the Trustee (collectively, the "Prior Supplemental Original Indentures");

WHEREAS, the Original Indenture was further amended and restated by the Amended and Restated Indenture of Trust, dated as of September 10, 1997 (the "Amended Indenture") which superseded the Original Indenture and consolidated all of the amendments to the Original Indenture into the Amended Indenture;

WHEREAS, the Amended Indenture has been further amended and supplemented pursuant to the Seventh Supplemental Indenture of Trust, dated as of December 1, 1998, between the City and the Trustee pursuant to which the Series 1998 Bonds were issued in the principal amount of \$69,260,000;

WHEREAS, the Amended Indenture has been further amended and supplemented pursuant to the Eighth Supplemental Indenture of Trust dated as of May 1, 2001 between the City and the Trustee, pursuant to which the Series 2001 Bonds were issued in the principal amount of \$435,185,000 (such Eighth Supplemental Indenture of Trust together with the Seventh Supplemental Indenture of Trust, referred to as the "Supplemental Amended Indentures"; the Original Indenture, as amended and supplemented by the Prior Supplemental Original Indentures, the Amended Indenture and the Supplemental Amended Indentures are referred to collectively herein as the "Restated Indenture");

WHEREAS, the Series 2002 Bonds shall be issued and secured under and pursuant to the Restated Indenture, as supplemented, including particularly the Ninth Supplemental Indenture of Trust between the City and the Trustee (the "Ninth Supplemental Indenture"; the Restated Indenture, as supplemented by the Ninth Supplemental Indenture, is collectively referred to herein as the "Indenture") as hereinafter approved;

WHEREAS, it is necessary for the City to enter into the Ninth Supplemental Indenture, the Bond Purchase Agreement (as hereinafter defined), the Escrow Agreement (as hereinafter defined), the Continuing Disclosure Agreement (as hereinafter defined) and certain other agreements in connection with the issuance of the Series 2002 Bonds; and

WHEREAS, the Series 2002 Bonds shall state that the Series 2002 Bonds do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation and the taxing power of the City is not pledged to the payment of the principal of, premium, if any, or interest on the Series 2002 Bonds;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS, MISSOURI, AS FOLLOWS:

Section One. Authorization of the Series 2002 Bonds.

The City does hereby authorize and direct the issuance of the Series 2002 Bonds to finance a portion of the cost of the 2002 Project (as defined herein) and does hereby find and declare that this Ordinance is being enacted pursuant to the laws of the State of Missouri, including particularly Chapter 108, Missouri Revised Statutes, 1994, as amended, and that the issuance of the Series 2002 Bonds is for the public purposes set forth in the recitals to this Ordinance.

Section Two. Maximum Principal Amount, Purpose and Terms and Provisions of the Series 2002 Bonds.

The Board of Aldermen, acting as the governing authority of the City, does hereby authorize the City to issue the Series 2002 Bonds in one or more series in an aggregate principal amount not to exceed One Hundred Seventy-Five Million Dollars (\$175,000,000). The proceeds of the Series 2002 Bonds will, together with other available funds, if any, be used to finance a portion of the cost of the construction, improvement, renovation, expansion, rehabilitation and equipping of certain capital improvement projects at the Airport, to refund all or a portion of the City's Airport Revenue Refunding and Improvement Bonds, Series 1992, Lambert – St. Louis International Airport Project, to reimburse the City for certain prior Airport capital expenditures, to fund all or a portion of capitalized interest, if any, as permitted by law, during construction and up to two (2) years thereafter, to fund any required reserve funds, and to pay certain costs of issuance of the Series 2002 Bonds (collectively, the "2002 Project"). Subject to the terms of this Ordinance, the City hereby authorizes and directs the Mayor and the Comptroller of the City in the exercise of their sole discretion to determine and establish the aggregate principal amount and the other terms and conditions of the Series 2002 Bonds.

Section Three. Source of Repayment; Security; Pledge.

The Series 2002 Bonds shall be secured and payable, both as to principal, premium, if any, and interest, solely from proceeds of the Series 2002 Bonds, certain funds established pursuant to the Indenture, and the pledge of Revenues derived from the operation of the Airport, as set forth in the Indenture, as amended from time to time (collectively, the "Revenues"). The rights of the owners of the Series 2002 Bonds to the Revenues shall be subject and subordinate to the rights of the holders of the Outstanding Obligations under the Outstanding Obligations Ordinances and subject to the application of the proceeds of the Series 2002 Bonds and the Revenues to the purposes and on the conditions permitted by the Indenture. Upon the issuance and sale of the Series 2002 Bonds, and subject to the prior rights of the holders of the Outstanding Obligations (described in the preceding sentence), the Revenues shall be and are hereby pledged to the payment of the Series 2002 Bonds, on a parity with all outstanding Bonds as provided in the Indenture. The Series 2002 Bonds shall be limited obligations of the City payable solely from Revenues and shall not be deemed to be an indebtedness of the State of Missouri, the City or of any political subdivision thereof, and shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

The Series 2002 Bonds shall be issued in one or more series, bear such date or dates, mature at such time or times (not exceeding thirty (30) years from their date of issuance), bear interest at such rate or rates (not exceeding limitations set forth herein) and be subject to redemption at such time or times as shall be approved by the Mayor and the Comptroller of the City and provided for in the Ninth Supplemental Indenture as executed and delivered by the City. The Series 2002 Bonds shall be issuable in such denominations, be in fully registered form without coupons, carry such registration and exchange privileges, and be payable in such medium of payment and at such place or places as the Indenture may provide.

Section Four. Appointment of Trustee, Bond Registrar and Paying Agent for Bonds.

UMB Bank, N.A. is hereby appointed Trustee, Bond Registrar and Paying Agent for the Series 2002 Bonds under the Indenture. Such appointment will be effective immediately upon the execution thereof and the filing of the Ninth Supplemental Indenture with the Trustee.

Section Five. Authority to Prepare, Execute and Deliver the Ninth Supplemental Indenture.

The Mayor and the Comptroller of the City are hereby authorized and directed to prepare, execute, acknowledge and deliver the Ninth Supplemental Indenture, the same to be attested by the Register of the City, with such changes therein, as shall be approved by such persons executing such document, such persons' execution to constitute conclusive evidence of such approval, and the Register is hereby authorized to affix to the Ninth Supplemental Indenture the corporate seal of the City. The Ninth Supplemental Indenture will be effective immediately upon the filing of the Ninth Supplemental Indenture with the Trustee.

Section Six. Execution of Series 2002 Bonds.

The Series 2002 Bonds shall be executed on behalf of the City in the manner provided in the Ninth Supplemental Indenture. If any of the officers who shall have signed or sealed any of the Series 2002 Bonds shall cease to be such officers of the City before the Series 2002 Bonds so signed and sealed shall have been actually authenticated by the Trustee, or delivered by the City, such Series 2002 Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Series 2002 Bonds had not ceased to be such officer or officers of the City; and also any such Series 2002

Bonds may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Series 2002 Bonds, shall be the proper officers of the City, although at the dated date of such Series 2002 Bonds any such person shall not have been such officer of the City.

Section Seven. Manner of Sale of the Series 2002 Bonds; Application of Proceeds of the Series 2002 Bonds.

The Series 2002 Bonds may be sold at the best price obtainable at a negotiated sale as the Comptroller shall determine in her sole discretion, subject to the terms of this Ordinance and to the interest rate and par value limitations set forth in Chapter 108.170, Missouri Revised Statutes, 1994, as amended. The proceeds from the sale of the Series 2002 Bonds shall be applied by the City simultaneously with the delivery of the Series 2002 Bonds in accordance with the provisions of the Ninth Supplemental Indenture.

Section Eight. Execution and Delivery of a Bond Purchase Agreement and an Escrow Agreement.

In connection with a negotiated sale of the Series 2002 Bonds, the City hereby authorizes and directs the Mayor and the Comptroller to enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the purchaser or purchasers of the Series 2002 Bonds (the "Underwriters"), which purchaser or purchasers will be led by a senior managing underwriter (the "Managing Underwriter"), such Bond Purchase Agreement to set forth the terms of sale and to contain such other customary terms and provisions as the Mayor and the Comptroller shall approve, the Mayor's and the Comptroller's execution of the Bond Purchase Agreement to constitute conclusive evidence of such approval. The Series 2002 Bonds are hereby authorized to be sold to the Underwriters pursuant to the Bond Purchase Agreement.

The Mayor and the Comptroller of the City with the advice and concurrence of the City Counselor, in connection with the refunding of the Series 1992 Bonds, are hereby authorized to prepare and enter into an Escrow Deposit Agreement (the "Escrow Agreement") for and on behalf of the City with an escrow agent for the application of the proceeds of the Series 2002 Bonds toward the refunding of the Series 1992 Bonds, such Escrow Agreement to contain such customary terms and provisions as the Mayor and the Comptroller shall approve, the Mayor's and the Comptroller's execution of the Escrow Agreement to constitute conclusive evidence of such approval.

Section Nine. Official Statement and Continuing Disclosure Agreement.

The Mayor and the Comptroller of the City with the advice and concurrence of the City Counselor, in connection with the public offering of the Series 2002 Bonds, are hereby authorized to prepare a Preliminary Official Statement for and on behalf of the City containing such disclosure and other matters deemed material, necessary or appropriate, as the Mayor and the Comptroller shall deem advisable. The Mayor and the Comptroller are hereby authorized to deliver certifications to the effect that the Preliminary Official Statement and the final Official Statement, together with such other documents, if any, described in such certificates, were deemed final as of their respective dates for the purposes of Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"). The Mayor and the Comptroller are each hereby authorized to make public and to permit the Underwriters and the financial advisors to use and distribute the Preliminary Official Statement in connection with the sale of the Series 2002 Bonds. The Mayor and Comptroller, with the advice and concurrence of the City Counselor in connection with the public offering of the Series 2002 Bonds, are each hereby authorized and directed to prepare, execute and deliver a final Official Statement for and on behalf of the City, and the Mayor and the Comptroller are hereby authorized and directed to execute and deliver a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City and the Trustee in a form necessary for the Underwriters to comply with Rule 15c2-12.

Section Ten. Acquisition of Credit Enhancement; Acquisition of Credit Facility to fund any Required Reserve Funds.

Upon the recommendation of the Managing Underwriter and the financial advisor to the City with respect to the Series 2002 Bonds, based upon a cost-benefit analysis, the Comptroller is hereby authorized to negotiate and approve the terms of any agreement for credit enhancement and to purchase credit enhancement with respect to the Series 2002 Bonds from one or more recognized providers of credit enhancement with respect to all or a portion of the Series 2002 Bonds and to execute any agreement for credit enhancement with respect to the Series 2002 Bonds and other documents in connection therewith as necessary to obtain credit enhancement with respect to the Series 2002 Bonds. The fees payable with respect to any credit enhancement acquired for the Series 2002 Bonds shall be payable out of the proceeds thereof as a cost of issuance.

Upon the recommendation of the Managing Underwriter and the financial advisor to the City with respect to the Series 2002 Bonds, based upon a cost-benefit analysis, the Comptroller is hereby authorized to negotiate and approve the terms of any agreement for a credit facility for any reserve fund with respect to the Series 2002 Bonds and to purchase a credit facility for any reserve fund with respect to the Series 2002 Bonds from one or more recognized providers of credit facilities and to execute any agreement for a credit facility and other documents therewith as necessary to obtain a credit facility for any reserve fund with respect to the Series 2002 Bonds. The fees payable with respect to any credit facility acquired for any reserve fund for the Series 2002 Bonds shall be payable out of the proceeds thereof as a cost of issuance.

Section Eleven. Reimbursement Declaration.

The City has made and expects to make out of temporary funds certain expenditures in connection with the planning, design, acquisition, construction and equipping of the 2002 Project for which the City reasonably expects to be reimbursed as permitted by Treasury Regulation Section 1.150-2 issued pursuant to the Internal Revenue Code of 1986, as amended, from the

proceeds of one or more series of bonds, including the Series 2002 Bonds, issued to permanently fund the 2002 Project in an amount presently estimated to be not to exceed One Hundred Fifty-Five Million Dollars (\$155,000,000).

Section Twelve. Authorized Officials; Further Authority.

The Mayor, the Comptroller, the Treasurer, the Register and other appropriate officers, agents and employees of the City, with the advice and concurrence of the City Counselor, are hereby authorized and empowered to execute and deliver the Series 2002 Bonds, the Ninth Supplemental Indenture, the Bond Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Agreement, any investment or related agreements, and all documents and other instruments which may be required under the terms of the Indenture, the Bond Purchase Agreement, the Escrow Agreement, the Preliminary Official Statement, the Official Statement, the Continuing Disclosure Agreement, any agreement for credit enhancement and/or a credit facility or other documents in connection therewith as necessary to obtain credit enhancement and/or a credit facility, and this Ordinance, including, without limitation, applications, notices and other forms required to qualify the Series 2002 Bonds for sale under state securities or "Blue Sky" laws. The Mayor, the Comptroller, the Treasurer, the Register and other appropriate officers, agents and employees of the City, with the advice and concurrence of the City Counselor, are hereby authorized and empowered to execute such documents and to take such actions as are necessary or appropriate in connection with the issuance and sale of the Series 2002 Bonds and the consummation of the transactions contemplated hereby.

Section Thirteen. Repeal of Conflicting Ordinances.

Subject to the rights of the holders of the Outstanding Obligations to a prior pledge of the revenues of the Airport, all provisions of other Ordinances of the City which are in conflict with this Ordinance, the Ninth Supplemental Indenture approved hereby (as executed and delivered) or the Indenture shall be of no further force or effect on the City upon issuance and sale of the Series 2002 Bonds.

Section Fourteen. Severability.

The sections of this Ordinance shall be severable. In the event that any section of this Ordinance is found by a court of competent jurisdiction to be illegal or unconstitutional, the remaining sections of this Ordinance are valid unless the court finds the valid sections of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the void section that it cannot be presumed that the Board of Aldermen would have enacted the valid sections without the void sections; or unless the court finds the valid sections, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

Approved: August 5, 2002

ORDINANCE#65619
Board Bill No. 169

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City a certain grant agreement offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-68-2002, dated May 31, 2002, for a maximum federal obligation of Four Million Forty Seven Thousand Six Hundred Sixty Five Dollars (\$4,047,665), which is filed in the Office of the City Register (Comptroller Document No. 42544), for the reimbursement of all actual costs associated with land acquired in fee for noise mitigation; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City, a grant agreement offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-68-2002, dated May 31, 2002, for a maximum federal obligation of Four Million Forty Seven Thousand Six Hundred Sixty Five Dollars (\$4,047,665), which is filed in the Office of the City Register (Comptroller Document No. 42544) and made a part hereof, for the activities authorized in the Grant Agreement for the reimbursement of all actual costs associated with land acquired in fee for noise mitigation.

SECTION TWO. All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the project application and the incorporated materials referred to in the Grant Agreement are hereby ratified and approved and made a part hereof.

SECTION THREE. This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter, and shall become effective immediately upon approval of the Mayor of the City.

Approved: August 5, 2002

ORDINANCE #65620
Board Bill No.170

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City a certain grant agreement offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-70-2002, dated May 29, 2002, for a maximum federal obligation of Eleven Million Seven Hundred Forty Thousand Dollars (\$11,740,000), which is filed in the Office of the City Register (Comptroller Document No. 42545), for the reimbursement of all actual costs associated with security enhancements; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City, a grant agreement offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-70-2002, dated May 29, 2002, for a maximum federal obligation of Eleven Million Seven Hundred Forty Thousand Dollars (\$11,740,000), which is filed in the Office of the City Register (Comptroller Document No. 42545) and made a part hereof, for the activities authorized in the Grant Agreement for the reimbursement of all actual costs associated with security enhancements.

SECTION TWO. All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the project application and the incorporated materials referred to in the Grant Agreement are hereby ratified and approved and made a part hereof.

SECTION THREE. This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter, and shall become effective immediately upon approval of the Mayor of the City.

Approved: August 5, 2002

ORDINANCE #65621
Board Bill No. 171

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City a certain grant agreement offered by the United States of America (the 0Grant Agreement0), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-71-2002, dated May 31, 2002, for a maximum federal obligation of One Million Five Hundred Thousand Dollars (\$1,500,000), which is filed in the Office of the City Register (Comptroller Document No. 42547), for the reimbursement of all actual costs associated with the noise mitigation acoustical program for residences within 65-69 DNL (Phase 2); and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City, a grant agreement offered by the United States of America (the 0Grant Agreement0), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-71-2002, dated May 31, 2002, for a maximum federal obligation of One Million Five Hundred Thousand Dollars (\$1,500,000), which is filed in the Office of the City Register (Comptroller Document No. 42547) and made a part hereof, for the activities authorized in the Grant Agreement for the reimbursement of all actual costs associated with the noise mitigation acoustical program for residences within 65-69 DNL (Phase 2).

SECTION TWO. All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the project application and the incorporated materials referred to in the Grant Agreement are hereby ratified and approved and made a part hereof.

SECTION THREE. This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter, and shall become effective immediately upon approval of the Mayor of the City.

Approved: August 5, 2002

ORDINANCE #65622
Board Bill No. 172

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City a certain grant agreement offered by the United States of America (the 0Grant Agreement0), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-72-2002, dated May 31, 2002, for a maximum federal obligation of Four Million Four Hundred Thousand Dollars (\$4,400,000), which is filed in the Office of the City Register (Comptroller Document No. 42548), for the reimbursement of all actual costs associated with the functional replacement of the Berkeley High School complex (Phase 6); and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The actions of the Mayor and the Comptroller of the City of St. Louis (the 0City0), the owner and operator of Lambert-St. Louis International Airport (the 0Airport0), in accepting and executing on behalf of the City, a grant agreement offered by the United States of America (the 0Grant Agreement0), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-72-2002, dated May 31, 2002, for a maximum federal obligation of Four Million Four Hundred Thousand Dollars (\$4,400,000), which is filed in the Office of the City Register (Comptroller Document No. 42548) and made a part hereof, for the activities authorized in the Grant Agreement for the reimbursement of all actual costs associated with functional replacement of the Berkeley High School complex (Phase 6).

SECTION TWO. All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the project application and the incorporated materials referred to in the Grant Agreement are hereby ratified and approved and made a part hereof.

SECTION THREE. This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter, and shall become effective immediately upon approval of the Mayor of the City.

Approved: August 5, 2002

ORDINANCE #65623
Board Bill No. 173
Committee Substitute

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis to enter into and execute on behalf of the City of St. Louis (the City) a Lambert-St. Louis International Airport Concession Agreement (the Agreement), between the City and St. Louis Luggage Carts, LLC, d/b/a Central Carts, a limited liability corporation formed under the Missouri Limited Liability Company Act (the Concessionaire), granting to the Concessionaire the non-exclusive right, license, and privilege to operate and manage a Baggage Cart Rental and Electronic Locker Rental Concession within the premises as described in the Agreement, subject to the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and the Board of Estimate and Apportionment and is attached hereto as ATTACHMENT "A" and made a part hereof; directing that the Agreement be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement; containing a severability clause; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the City) are hereby authorized and directed to enter into and execute on behalf of the City a Lambert-St. Louis International Airport Concession Agreement (the Agreement), between the City and St. Louis Luggage Carts, LLC, d/b/a Central Carts, a limited liability corporation formed under the Missouri Limited Liability Company Act (the Concessionaire), granting to the Concessionaire the non-exclusive right, license, and privilege to operate and manage a Baggage Cart Rental and Electronic Locker Rental Concession within the premises as described in the Agreement, subject to the terms, covenants, and conditions of the Agreement that was approved by the Airport Commission and the Board of Estimate and Apportionment and is to read in words and figures as set out in ATTACHMENT "A", which is attached hereto and made a part hereof.

SECTION TWO. The Agreement shall be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity.

SECTION THREE. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the Agreement approved and authorized by this Ordinance and shall not be applicable to any other existing or future concession agreement or other agreements, documents, or instruments unless specifically authorized by ordinance enacted after the effective date of this Ordinance. All provisions of other City ordinances that are in conflict with this Ordinance shall be of no force or effect as to the Agreement.

SECTION FOUR. The sections, conditions, or provisions of this ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FIVE. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared an emergency measure as designed in Article IV, Section 20, of the City's Charter and shall become effective immediately upon its approval by the Mayor of the City.

ATTACHMENT "A"
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT



ST. LOUIS LUGGAGE CARTS, LLC, d/b/a CENTRAL CARTS
BAGGAGE CART RENTAL AND ELECTRONIC LOCKER RENTAL
CONCESSION AGREEMENT
NO. AL-064

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AIRPORT NUMBER064.....

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
 CONCESSION AGREEMENT
 (BAGGAGE CART RENTAL AND ELECTRONIC LOCKER RENTAL)**

THIS AGREEMENT, made and entered into as of the _____ day of _____, 2002 by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and St. Louis Luggage Carts, LLC, d/b/a Central Carts ("Concessionaire") a limited liability corporation formed under the Missouri Limited Liability Company Act.

WITNESSETH, That:

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

WHEREAS, a Baggage Cart Rental and Electronic Locker Rental Concession at the Airport is essential for proper accommodation of the public; and

WHEREAS, City has determined that it is in the public interest for the following objectives to be met in the provision of a Baggage Cart Rental and Electronic Locker Rental Concession:

- ▲ Provide a first-class, full-service Baggage Cart Rental and Electronic Locker Rental Concession that meets Airport user needs and adds value to other Airport and airline services;
- ▲ Provide a high level of service at prices that are attractive to airport users and competitive with prices found in comparable U.S. Airports;
- ▲ Provide a Baggage Cart Rental and Electronic Locker Rental Concession that is operated by well trained, efficient, courteous, and pleasant staff;
- ▲ Be responsive to Federal Aviation Administration goals for Disadvantaged Business Enterprise participation in concessions; and

WHEREAS, the City has determined that Concessionaire is a qualified operator of these services and has submitted terms deemed advantageous to the public and City.

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

**ARTICLE I
 DEFINITIONS**

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

"Agreement" shall mean this document (including exhibits) and any amendments thereto, duly approved by City.

"Airport" as stated in the preamble hereof.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be Concessionaire's point of contact with the Airport on all issues related to this Agreement.

"City" as stated in the preamble hereof.

"Comparable Airports" shall be U.S. Airports comparable to Lambert-St. Louis International Airport in size and total passenger enplanements.

"Concessionaire" as stated in the preamble hereof.

"Contract Year" shall be one (1) of five (5) consecutive 12-month periods commencing on the first day of the term of the Agreement.

"Director" shall mean the Director of Airports of the Airport Authority of the City of St. Louis, and incorporates the granting of approval requirements of Section 1414. Withholding Required Approvals. hereof.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

"Gross Revenue" shall mean the gross receipts from all sales made and services performed for cash or credit on the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire's operations on the Airport, whether performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise. Only the following may be excluded or deducted, as the case may be, from Gross Revenues:

- ⌚ Federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- ⌚ Cash or credit refunds given to customers for services purchased at the Airport. (Monetary awards paid by Concessionaire for cart returns, if applicable, are not deductible from Gross Revenue);
- ⌚ The value of any supplies or equipment exchanged or transferred from or to other locations of Concessionaire's business not made for the purpose of avoiding a sale at the Airport;
- ⌚ Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- ⌚ The sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.

"Minimum Guarantee" shall mean Concessionaire's minimum annual concession fee, as set out in Section 502 herein.

"Percentage Fee" shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage as set out in Article V.

"Premises" shall mean a location or locations described in Section 201 that have been designated by City for the sale of Concessionaire's services and for other uses herein specifically provided for.

"Removable Fixtures" shall mean all furnishings, equipment and fixtures installed by Concessionaire, that are not permanently affixed to any wall, floor or ceiling in the Premises.

ARTICLE II PREMISES

Section 201. Premises. City hereby permits Concessionaire to use at the Airport the Premises as described on Exhibit "A," attached hereto and made a part hereof. The rights granted in Section 301 hereof may be exercised only on the Premises.

Concessionaire accepts the Premises "AS IS", with no warranties or representations of any kind, expressed or implied, either oral or written made by the City or any of its agents or representatives. City without limitations expressly disclaims and negates, as to the Premises: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Premises or any portion thereof.

The Director shall have the right to add, substitute, relocate, or delete portions of the Premises upon notice to Concessionaire. Such changes will be made at the sole expense of Concessionaire and City will not be liable or responsible for any loss whatsoever including, without limitation, any inconvenience or loss by Concessionaire of work time, profit or business resulting from such changes.

Section 202. Access. Subject to the terms, covenants and conditions of this Agreement, Concessionaire has the right of free access, ingress to, and egress from the Premises, for Concessionaire's employees, agents, guests, patrons, and invitees.

**ARTICLE III
RIGHTS**

Section 301. Rights. City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the non-exclusive right, license, and privilege to operate a Baggage Cart Rental and Electronic Locker Rental Concession within the Premises. Concessionaire is not granted the right to offer for sale any other services or products. City does not envision, during the term hereof, granting Baggage Cart Rental and Electronic Locker Rental Concession rights to any other entity that would be in direct competition with Concessionaire.

Section 302. Limitation of Rights. Concessionaire shall have no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport except in the location approved under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof immediately and not later than upon receipt of written notice from the Director, and the decision of the Director shall be final.

This Agreement grants no real or implied rights to any Concession privileges on the Airport other than in the Premises.

**ARTICLE IV
TERM**

Section 401. Term. The term of this Agreement shall consist of five (5) contract years commencing on December 1, 2002, and ending November 30, 2007 unless sooner terminated in accordance with other provisions of this Agreement.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises. Such Premises, in accordance with Section 708, shall be, at the discretion of the Director, restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises with or without due process of law.

Section 403. Holdover Provision. If Concessionaire shall, with the prior written approval of the Director, hold over after the expiration of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be a tenant at will on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as set forth in the final year herein, unless different fees shall be agreed upon, and shall be bound by all terms, covenants and conditions of this Agreement.

**ARTICLE V
FEES AND PAYMENT**

Section 501. General. Concessionaire. for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Section 502 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Concession Fees. Concessionaire agrees to pay, for each Contract Year, a sum equal to the greater of the Minimum Guarantee (which is \$110,000.00 for contract years one through three and \$120,000.00 for contract years four and five), or the Gross Revenue Percentage Fee (Gross Revenue multiplied by the Percentage set out below).

<u>Year</u>	<u>Minimum Guarantee</u>	<u>Percentage</u>
1	\$ 110,000.00	23 %
2	\$ 110,000.00	23 %
3	\$ 110,000.00	25 %
4	\$ 120,000.00	25 %
5	\$ 120,000.00	25 %

Section 503. Payment. Payments shall consist of (a) an amount equal to 1/12th of the Minimum Guarantee, to be paid in advance on or before the first day of each month and (b) an amount equal to that portion of the Percentage Fee for the preceding month that is in excess of 1/12th the Minimum Guarantee, to be paid on or before the 15th day of the second and each succeeding month during the Concession Period. (See Section 505. Unpaid Fees for service charge.)

Section 504. Reports.

- A. Concessionaire shall submit to City by the 15th day of the second and each succeeding month of the term hereof, two copies of an accurate statement of Gross Revenue for both baggage cart rental and electronic locker rental services. These statements must separately state Gross Revenue for sales of products and services from each location and be certified as accurate by an officer of Concessionaire. The final statements of Gross Revenue will be due by the 15th day of the month

following expiration of this Agreement. City reserves the right to use these statements of Gross Revenue as a source of information to Bidders in a future solicitation for Bids for this concession.

Concessionaire shall submit to City by the 15th day of the second and each succeeding month of the term thereof, two copies of accurate DBE/MBE/WBE participation reports. One report is to be submitted to the Airport Properties Department, P.O. Box 10212, St. Louis, Missouri, 63145, and the other to the Airport Authority's DBE Programs Office, 13723 Riverport Drive, Maryland Heights, Missouri, 63043.

- B. Concessionaire shall submit an audit report of Gross Revenue for both baggage cart rental services and electronic locker rental services within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) the calculation of the total amount payable to City based upon accumulated Gross Revenue for the Contract Year and the Percentage Fee, and (iii) the aggregate amount attributable to DBE participants, if any. The audit reports shall also include a schedule showing the total of actual payments to City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.
- If through such audit report, it is established that additional fees are due City, Concessionaire shall pay such additional fees to City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that Concessionaire has overpaid City, then such overpayment from Concessionaire shall be credited to the fees and charges next thereafter due from Concessionaire or paid to Concessionaire after the last Contract year. Concessionaire shall immediately notify City of the results of any audit conducted by Federal, State or local authorities.
- C. Within one hundred twenty days from the end of the Concessionaire's accounting year, fiscal or calendar, Concessionaire will submit to the City a profit and loss statement for all operations conducted at this Airport. The statement will provide, at minimum, all revenues derived from the activities at this Airport and all direct expenses related to the operations at this Airport. Any allocations, overhead or management charges will be separately stated after a determination of the difference between direct revenue and direct expenses from operations has been made. This statement will include footnotes to describe the accounting practices used by Concessionaire to compile the profit and loss statement from operations at this Airport. An officer of the Concessionaire will certify the statement to be a true and accurate statement taken from the Concessionaire's accounting records.
- D. Within thirty (30) days after the close of each Contract Year, Concessionaire shall provide City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year).
- E. Concessionaire shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the DBE participation requirement [at a minimum of three (3) years after the expiration or termination of this Agreement]. The Airport Authority reserves the right to investigate, monitor, audit, and/or review records for compliance.

Section 505. Unpaid Fees. All unpaid fee payments due City hereunder will bear a service charge of 1½% per month if same is not paid and received by City on or before the 15th of the month in which said payments are due (see Section 503. Payment for due date), and Concessionaire agrees that it will pay and discharge all costs and expenses including, without limitation, attorneys' fees and litigation costs incurred or expended by City in collection of said delinquent amounts due, including services charges, within five (5) days of notice.

Section 506. Performance Bond. Concessionaire agrees to furnish a bond to City in the principal amount of \$120,000.00. Such bond will guarantee the payment of the Concession Fees and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size C Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect for such period as necessary to insure compliance with all terms and provisions of this Agreement. City may agree to another form of deposit that will provide equal protection of City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement bond in the same principal amount within 15 days.

Section 507. Prompt Payment of Taxes and Fees. Concessionaire 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 maintain in full force and effect all governmental licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent. Such licenses shall cover not only Concessionaire, but all its agents and employees required by law to be licensed to transact such business.

Section 508. Accounting Records. Concessionaire shall keep full and complete books of account and other records relating to the provisions and requirements of this Agreement and in so doing, shall comply with the minimum procedural requirements prescribed by City. Concessionaire will, during the term hereof, make available during normal business hours in the St. Louis area true, accurate, complete and auditable records of all business conducted by it at the Airport.

Concessionaire will retain and make these records available in the St. Louis area for at least three (3) years following the expiration

or termination of this Agreement, and upon City's request shall make these records accessible during usual business hours to City or its duly appointed agents or auditors at the Airport or at some other mutually agreed upon location. Should adequate records not be made available by Concessionaire at the appointed location, then the additional cost of said audit including all reasonable travel, food, and lodging expenses incurred by City shall at City's discretion be borne by Concessionaire.

Section 509. Additional Fees and Charges. Concessionaire will pay additional fees and charges under the following conditions:

- A If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City; or
- A If City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the terms, covenants, or conditions of this Agreement.

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

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

Section 510. Notice, Place and Manner of Payment. All fees and any payments contemplated herein shall be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Concessionaire and will be made in legal tender of the United States.

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Baggage Cart Rental and Electronic Locker Rental Concession serving the needs of all users of the Airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and City. Concessionaire shall provide quality services and products and shall equip, organize, put into service and manage efficiently the Concession to provide service with a clean, attractive and pleasant atmosphere. These services must include, but are not limited to:

- A. Concessionaire must ensure that unattended baggage carts be retrieved and returned to cart rental units immediately and continually throughout the day.
- B. Concessionaire must ensure that requests for locker or baggage cart assistance be responded to immediately, and not later than 30 minutes from the time of the call for assistance, at any time of day or night.
- C. Concessionaire must retain a stock of 850 carts at all times. The original cart supply must be new carts, and the equipment must be maintained throughout the agreement in new or like-new condition. Concessionaire must submit an annual report, certified as accurate by an officer of Concessionaire, verifying the number of carts in service as of the date of the report.
- D. Concessionaire must ensure that all equipment installed in association with and used throughout this Concession will be new or in like-new condition.

Section 602. Hours of Operation. Baggage Cart Rental and Locker Rental equipment shall be consistently maintained in good repair, operational, and available for public use 24 hours daily.

Section 603. Pricing.

- A. The Concessionaire agrees to ensure that all prices are attractive to the public and no more than prices charged for identical products found in comparable locations. For purposes of this Agreement, the comparable locations shall be U.S. Airports comparable to Lambert-St. Louis International Airport in size and total passenger enplanements.

A customer refund of \$0.25 will be permitted in secure areas of the Airport, i.e. on the secure side of the airline security checkpoints. Concessionaire employees returning carts to units with a refund award must return the refunded amount to Concessionaire.

- B. The Concessionaire submitted a complete list of all services proposed to be sold. This list shall contain the current price comparison, including the name of the comparison locations, and proposed selling prices that comply with paragraph (A) of this section. The proposed prices shall not be implemented until approved in writing by the Director. The award of the contract to the Concessionaire does not imply approval of Concessionaire's proposed price list.
- C. The Concessionaire shall not increase any prices without prior written approval of the Director. The Concessionaire's prices

may normally only be increased following substantiation of cost increases at comparable hub airports. Any of Concessionaire's prices found to be more than comparison prices shall be reduced to no more than their location comparisons. The Director reserves the right to independently compare the Concessionaire's prices to comparison locations and require the Concessionaire to reduce prices based upon its comparison.

- D. A request for a price increase by the Concessionaire must include a complete schedule of all services and prices, including comparison prices of the services sold. This schedule shall include a brief description of all services to be increased. All new services and prices must be added to the complete schedule of all services and prices and must be submitted in writing by the Concessionaire and approved in writing by the Director, prior to the sale of the new service(s). The proposed prices for these services are subject to all pricing requirements of this Section. The Concessionaire shall give written notice to the Director of all services it intends to delete from the schedule. The Director reserves the right to deny the Concessionaire permission to delete any service from this schedule. Service additions and deletions may be proposed at any time. It is the Concessionaire's responsibility to ensure compliance with the price requirement of this section. Concessionaire's prices found to be more than comparison prices shall be reduced to no more than their comparison locations.

Section 604. Promotion and Marketing.

- A. Concessionaire warrants, represents, and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, cause, or allow any business to be diverted from the Airport by referral or any other method.
- B. The Concessionaire shall arrange equipment within the Premises in such a manner that will maximize overall sales and Gross Revenue. The Director may require the Concessionaire to make specific changes to equipment locations and/or visibility if such efforts are not being effectively made by Concessionaire.

Section 605. Personnel.

- A. Concessionaire shall employ a sufficient number of personnel to: 1) provide a high level of service, and maintain and keep in good operating condition all of the cart and locker units; and 2) efficiently perform the office and administrative duties incidental to the operation of the business.

Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, all of whom shall be proficient in the duties to be performed in the operation of this Baggage Cart Rental and Electronic Locker Rental Concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules, and regulations. Concessionaire shall prohibit and restrain its agents, visitors, and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

Neither Concessionaire nor any of its employees shall conduct, transact, or otherwise carry on any business or service that is not specifically authorized, in accordance with the terms of this Agreement.

- B. Employee parking will be offered as available in the Airport Employee Parking Lot at established rates.
- C. Concessionaire shall require its employees to wear appropriate uniforms and name tags to indicate the fact and nature of their employment.
- D. Concessionaire acknowledges and agrees that it will conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint, at its cost, if required by the Federal Aviation Administration (FAA) and/or the Airport. Concessionaire recognizes and agrees that the security requirements may change and Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

Concessionaire understands and agrees that fines and/or penalties may be assessed against the City by the Federal Aviation Administration for Concessionaire's noncompliance with the provisions of 14 CFR § 107 (1988) or other applicable law or regulation and hereby agrees to promptly reimburse the City for said fines and/or penalties.

Section 606. Manager. Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence. The Manager or the Manager in Charge for each shift shall be responsible for the proper conduct of the employees on duty and the efficient and courteous transaction of the business herein authorized. Management personnel must be readily accessible for all hours the Concessionaire is in operation.

Section 607. Deliveries. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the Airport. The Concessionaire shall use only delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts. Deliveries shall be made at such times and in such manners as to minimize disruption of passenger traffic in the gate areas and/or other tenant operations.

Section 608. Record Keeping. Concessionaire agrees to provide for the collection of all monies and provide accounting, audit, and reports of Gross Revenue as required by Article IV of this Agreement. In addition, Concessionaire shall ensure that a point of sale system is provided which is capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and DBE participant(s), if any, for each facility under this Agreement (these records are to be retained by Concessionaire for a minimum of three (3) years, and made available to the City upon request).

Section 609. Transition Period. During any future transition of the Baggage Cart Rental and Electronic Locker Rental Concession to another concessionaire, if applicable, Concessionaire shall use its best efforts to assure a smooth transition. Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide, and is responsible for, all employees and necessary components of the operation including, without limitation, inventory, fixtures, equipment, and supplies.
- B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of City.

Section 611. Communication.

- A. Concessionaire's local Manager shall schedule quarterly or monthly meetings with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem which reduces service levels or sales or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 612. Customer Complaints. Concessionaire will establish procedures for handling all customer complaints. Concessionaire will respond in writing to every complaint (written or oral), within seven (7) calendar days, to the complainant and make a good faith attempt to explain, resolve or rectify the cause of the complaint. Concessionaire will provide the Director a copy of each such complaint and its written response thereto. Concessionaire will also provide the Director a monthly summary of complaints received together with the resolution/disposition of the complaints.

Section 613. Interference to Air Navigation. Concessionaire agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Any obstructions will be immediately removed by Concessionaire at its expense. Concessionaire warrants, represents, and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations.

Concessionaire further warrants, represents, and agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire.

- A. Concessionaire takes the Premises "AS IS" and agrees, at Concessionaire's sole cost and expense, to expend a minimum \$120,000.00 (One Hundred Twenty Thousand Dollars) Capital Investment to install, construct, equip, and furnish the Improvements in the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.
- B. Concessionaire shall install appropriate equipment to optimize space use and ease of operation, and satisfy the Americans with Disabilities Act (ADA).
- C. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are on file in the Office of the Director.
- D. Concessionaire shall submit a signed Tenant Construction or Alteration Application (TCA) including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Department. If construction or refurbishment is proposed, a TCA shall be submitted not more than 30 days following full execution of the Agreement by City.

- E. Concessionaire shall submit a St. Louis County building permit number not more than 30 days following approval of the TCA to the Airport Properties Department.
- F. Concessionaire shall submit the contractor's liability insurance certificates and performance and payment Bonds, required by Sections 704 and 705, to the Airport Properties Department not more than 45 days following the TCA approval by the Airport Properties Department prior to commencement of work.
- G. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 706, prior to occupancy of premises.
- H. In the event the Concessionaire encounters materials believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and the Concessionaire. The Concessionaire shall not be required to perform without consent any work relating to asbestos or PCB.

Section 702. Preparation of Plans and Specifications. Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises, prepared in accordance with the Tenant Design Standards. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director and a St. Louis County building permit.

Section 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, 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 City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include City and its Airport Commission, Board of Aldermen, officers, employees and agents as an "Additional Insured." Said insurance shall be in a form agreeable to City, and certificates showing proof of coverage shall be delivered to the Director.

Section 704. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo as amended. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be 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 706. Certificates of Completion. Upon the completion of improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

- A. Concessionaire shall not, without the prior written approval of the Director, erect, maintain, or display any signs on the Premises. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such identification signs as may be necessary for the proper conduct of a Baggage Cart Rental and Electronic Locker Rental Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.
- B. Concessionaire shall be responsible for the cost of any modifications to the Airport directories and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707.
- C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions, or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not obstruct its equipment with advertising matter, displays, or other literature not directly pertaining to its Baggage Cart Rental and Electronic Locker Rental Concession services. Concessionaire will not place any signs outside of the Premises.

Section 708. Title to Improvements and Fixtures. All improvements constructed or placed in the Premises by Concessionaire that

are not Removable Fixtures, and all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

City reserves the right and Concessionaire agrees that the Director may require Concessionaire to restore the Premises to the condition that originally existed at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

Section 709. Cost of Improvements. The Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs within sixty (60) days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs supported by invoices and cancelled checks and certified as accurate by an independent Certified Public Accountant. The Concessionaire shall provide to the Director any other proof necessary to satisfy the Director.

The Concessionaire is encouraged by the City to productively expend the entire Capital Investment obligated, but in the event the Concessionaire's actual expenditures are less than the total of \$120,000.00 (One Hundred Twenty Thousand Dollars), the difference shall be an item of additional Concession Fees paid to the City within thirty (30) days after the receipt of an invoice for such difference from the City.

Section 710. Reimbursement of Build-Out Costs. In the event of relocation of the Premises by the City, the City shall pay to the Concessionaire the Unamortized Investment Concessionaire has made in Improvements to the relocated Premises or portions thereof. The City shall be entitled to inspect the Improvements, and if this inspection reveals missing or damaged items, the Unamortized Investment shall be reduced by an amount equal to the cost of the replacement or repair of missing or damaged Improvements. Title to the Improvements shall pass to the City immediately upon payment of the Unamortized Investment.

ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations. Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time. In addition, Concessionaire warrants, represents, and agrees that it shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Section 802. Repairs and Maintenance. Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following, which shall be the responsibility of City:

- A. The structural components of the building.
- B. The utility system to, and within, the Premises, except where the utility systems are owned or controlled by the utility companies.
- C. The cleaning of the exterior of windows in the terminal building.

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

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire.
- C. Keep premises free from all fire and other hazards to persons and property, and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Concessionaire may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors, and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by these requirements. Concessionaire will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage, and refuse.
- F. Confine all handling and holding of Concessionaire's property to the premises.

- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. Storage will not be permitted on the exterior areas of the Premises. Damaged carts must be removed from the Airport immediately.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges City from any and all claims or causes of action arising out of the closing of any right-of-way.

Section 803. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.
- B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

In case of emergency, City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right to enter the Premises by whatever means necessary to remedy the emergency situation and without liability to Concessionaire for any damage related thereto.

Section 804. Utilities. City will provide and pay for electrical service to the Premises at the locations as delineated in Exhibit "A" hereof. The concessionaire shall be responsible for any necessary upgrade in the electrical supply caused by increased lighting or other changes to the Premises made by the Concessionaire. Concessionaire shall be responsible for all other utilities (i.e. telephone lines).

City shall not be liable to Concessionaire in damages or otherwise of any kind whatsoever for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

ARTICLE IX LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. Concessionaire, at its expense, at all times during the term hereof, shall cause City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors pursuant to this Agreement under the following types of coverage:

- 1. Comprehensive General Liability;
- 2. Comprehensive Automobile Liability (any vehicles, including owned, hired and non-owned).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$1,000,000 comprised of such primary and excess policies of insurance as Concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be included as an "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors. Such coverages shall also extend to contractual liability insurance sufficient to cover Concessionaire's indemnity obligations hereunder. City and its Board of Aldermen, Airport Commission, officers, agents and employees shall have no liability for any premiums charged for such coverage, and the inclusion of City and its Board of Aldermen, Airport Commission, officers, agents and employees as an "Additional Insured" is not intended to, and shall not, make City and its Board of Aldermen, Airport Commission, officers, agents and employees a partner or joint venturer with Concessionaire in its operations hereunder.

Concessionaire will maintain, and upon request furnish evidence to City, adequate provisions for Worker's Compensation Insurance, Social Security and Unemployment Compensation at statutory limits and to the extent such provisions are applicable to

Concessionaire's operations hereunder.

Section 902. Property Insurance. Concessionaire will provide fire, lightning, extended coverage or other casualty and hazardous insurance, and other related insurance coverage for the full value of the improvements and equipment or property it installed on the Premises.

Section 903. Damage or Destruction of Terminal Building. The building in which the Premises are located will be insured by City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, City may terminate this Agreement by written notice to Concessionaire.

If the building is repairable, City will begin such repairs as soon as is practicable. City will attempt to find temporary Premises during the repair. City will not be liable or responsible for any inconvenience or loss of any kind whatsoever, including the loss by Concessionaire of business resulting from such damage.

Section 904. Evidence of Insurance. Certificates of Insurance, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to City.

At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and with a company or companies approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director. Each such insurance policy shall also provide primary coverage to the City, its Board of Aldermen, Airport Commission, officers, agents, and employees. In the event of overlapping policies or duplicate coverage, Concessionaire's coverage shall be deemed the primary coverage and any other coverage shall be deemed excess coverage. City reserves the right from time to time to change the minimum limits of coverage required by this Section 904, based upon reasonable industry standards.

Section 905. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, independent contractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The Director or their designee shall give to Concessionaire reasonable notice of any such claims or actions. Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City or their designee, after consultation with the Director or their designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 906. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage, or theft arising out of the activities of Concessionaire under this Agreement.

Section 907. Occupancy of Premises. Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 908. Waiver of Subrogation. Concessionaire on behalf of itself and its insurers, hereby waives any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to Concessionaire's officers, agents, or employees or its property or the property of others under Concessionaire's control, to the extent that such loss is covered by a valid insurance policy or could be covered by an "all risk" physical damage property insurance policy. Concessionaire shall provide notice of this waiver of subrogation to its insurer(s).

ARTICLE X ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment. Concessionaire shall not assign this Agreement. Any such transfer or assignment shall constitute a default on the part of the Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

Section 1002. Subcontracting. Concessionaire shall not subcontract or sublet the Premises, or any portion thereof except as may be required to secure DBE participation and only with the prior written approval of the Director. The parties understand and agree that Concessionaire is responsible for the performance of its subcontractors under this Agreement. Such subcontract must require, at a minimum, the strict compliance with all provisions of this Agreement and that subcontractor will use the Premises solely for the

purposes identified in this Agreement.

Section 1003. Bankruptcy. In the event that there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after notice thereof given in writing to exercise the City's option hereby given to end the term on the date which shall be no sooner than forty-five (45) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee or assignee any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. City's Right to Terminate. City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of, but not limited to, any one or more of the following events.

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Agreement, Concessionaire shall:
 - 1. apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
 - 2. file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3. make a general assignment for the benefit of creditors;
 - 4. file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5. file an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days;
 - 6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
 - 7. fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
 - 8. allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire and is not removed or enjoined within thirty (30) days;
 - 9. desert, vacate or discontinue all or a portion of its operation of the Premises which, in the opinion of the Director, results in a failure to provide the public and others the service contemplated hereunder;
 - 10. fail to meet the DBE goal as described in Article XII of this Agreement;
 - 11. fail in the performance of any terms, covenants or conditions herein required to be performed by Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

This Agreement shall be considered in default when Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Failure of City to take any authorized action upon default by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, for the following causes:

- A. if a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety;
- B. if City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers;
- C. in the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that an agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport, and any of said events shall result in material interference with Concessionaire's normal business operations or substantial diminution of Concessionaire's gross revenue from the operation at the Airport, continuing for a period in excess of 60 days;
- D. if City shall have failed in the performance of any specific covenant within the control of City and required by this Agreement to be performed by City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date and cause of termination, except that for Concessionaire's failure to make any payments specified in Section 1101 (A) or provide the insurance specified in Article IX, the effective date of termination shall be 45 days from the payment(s) due date with notice to Concessionaire or 30 days from the date insurance is not provided with notice to Concessionaire; and no such termination, except for termination for Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such 45 day period, (2) commences to correct such default within said 45 days and (3) corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Concessionaire agrees also to pay attorneys' fees, court costs, and cost of litigation.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of City and Concessionaire specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XII DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than 30% of the total Gross Revenues earned in the exercise of the concession rights granted in Section 302. This goal remains in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director. Concessionaire submitted a DBE participation plan which detailed the method(s) and percentage of DBE participation it offers in the performance of this Agreement. This DBE participation plan must be approved in writing by the Director before it may be implemented. Concessionaire is obligated to meet the 30% DBE participation or the amount of participation detailed in its DBE participation plan as approved by the Director.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 26. Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
- C. Concessionaire warrants, represents, covenants, and agrees that it shall not terminate the subcontract or agreement between the Concessionaire and the DBE without cause (a material breach) or the written consent of the DBE. In the event that the Concessionaire terminates the DBE subcontract or agreement, the Concessionaire must provide the Director with reasonable documentation of the DBE's mutual consent to the termination or reasonable documentation of the material breach of the subcontract or agreement by the DBE. Concessionaire must then immediately take steps to obtain a replacement certified DBE through good faith efforts. The Director shall have the sole determination as to whether or not the Concessionaire has made acceptable good faith efforts.

When the Concessionaire secures a replacement DBE subcontract or agreement, such subcontract or agreement must be reviewed and certified by the City prior to implementation.
- D. Concessionaire shall operate its Baggage Cart Rental and Electronic Locker Rental Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 26, as applicable and as said regulations may be amended or new regulations promulgated, and the St. Louis Airport Authority's Contracts Administration/DBE Program. Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises thereon and hold the same as if this

Agreement had never been made or issued.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

ARTICLE XIII LIQUIDATED DAMAGES

Section 1301. Liquidated Damages. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expenses, the amounts of which are difficult to ascertain, if the Concessionaire violates any of the terms, covenants, or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect (after written notice to the Concessionaire of said violation) to impose the charges in amounts described below as liquidated damages on the basis of each violation per day:

VIOLATION	SECTION	CHARGES
Violation of Article III, Rights Clause	301 – 302	\$100.00
Violation of Article VI, Concessionaire's Operation Clause	602 – 609	\$150.00
Violation of Article VII, Improvements and Alterations Clause	707	\$150.00
Violation of Article VIII, Use of Premises Clause	802	\$100.00

The parties hereby stipulate and agree that time is of the essence in this Agreement and that charges provided for within this section shall be deemed liquidated damages and not a penalty or fine and the City may elect, alternatively, to pursue any remedy at law or in equity. Liquidated Damages shall be due upon receipt of notice and each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic Concession Fee as set for in ARTICLE V of this Agreement.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1401. Notice. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to the Director of Airports, St. Louis Airport Authority, 10701 Lambert International Boulevard, St. Louis, MO 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Concessionaire shall be sent by certified mail, return receipt requested addressed to: CEO, Central Carts, 2401 Twenty-First Avenue, South, Nashville, Tennessee, 37212, with a copy to Central Parking System of St. Louis, Inc., 2401 21st Avenue South, Nashville, Tennessee, 37212; Smart Management, Inc., 100 North Euclid, Suite 808, St. Louis, Missouri, 63108; American Locker, Inc., 608 Allen Street, Jamestown, New York, 14701; and Eric Siskind, 614 Frelinghysen Ave., Newark, New Jersey, 07114.

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 shall be the date such notice is mailed to Concessionaire or said Director.

Section 1402. Conditions of Default. This Agreement shall be considered in default when Concessionaire fails to fulfill any of the terms, covenants or conditions of this Agreement and such default shall be considered a material breach of this Agreement for which the City at its option may terminate this Agreement as provided for in ARTICLE XI of this Agreement.

Section 1403. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that their premises shall be posted to such effect as required by such regulation.
- B. Concessionaire agrees that in performing under this Agreement, neither they nor anyone under their control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that they will be unable to conform to their approved positive employment program submitted to determine eligibility under the fair employment practices provisions of City Code, they will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of their program.
- E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within 10 days.
- H. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- I. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1404. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1405. Force Majeure. Neither City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1406. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto.

Section 1407. Quiet Enjoyment. Subject to the provisions of the Agreement, City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the premises.

Section 1408. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1409. Title to Site. The premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

Section 1410. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds

for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1411. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds.

Section 1412. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the Charter of the City of St. Louis and its ordinances.

Section 1413. 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 terms and provisions hereof or the interpretation or construction thereof.

Section 1414. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1415. Withholding Required Approvals. Whenever the approval of City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of City is required, the approval must be in writing and the approving official is the Director or the person duly designated to perform one or more of the Director's duties under this Agreement.

Section 1416. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. All such waivers must be in writing and signed by the party waiving.

Section 1417. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1418. Americans with Disabilities Act (ADA). Concessionaire shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

Section 1419. Not a Lease. This Agreement is not a lease and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder, and Concessionaire will in no instance be deemed to have acquired any possessory rights against City or the Premises or be deemed to be a tenant of City.

Section 1420. Advertising. Concessionaire shall have 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, promotion service or publication without the prior written consent of the Director.

Section 1421. Conflicts Between Tenants. In the event of a conflict between Concessionaire and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1422. Prevailing Wage. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and subject to City of St. Louis Ordinance No. 62124.

Section 1423. Entire Agreement. This Agreement, together with all exhibits attached hereto are incorporated herein by reference, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto. In the event of any inconsistency or conflict between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. Agreement.
- b. Exhibits and Attachments to Agreement.

Section 1424. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1425. Acknowledgement of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto. The provisions of this Agreement shall survive the expiration or early termination of this Agreement.

Section 1426. Required Approvals. When the consent, approval, notice, waiver or certification ("Approval") of the other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Airport Director is required, the Approval must be from the Airport Director or his/her authorized designee or designated representative. City and Concessionaire agree that extensions of time for performance may be made by the written, mutual consent of the Airport Director and Permittee or its designee.

Section 1427. Environmental Notice. Concessionaire shall promptly notify the Director of (1) any change in the nature of Concessionaire's operation on the Premises that will materially and/or substantially change the Concessionaire's or City's potential obligations or liabilities under the environment laws, or (2) the commencement of any governmental entity of a formal administrator proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of environmental law in connection with Concessionaire's operations on the Premises.

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

Pursuant to City of St. Louis Ordinance _____ approved on the _____ day of _____, 2002.

THE CITY OF ST. LOUIS

By: _____
Commission Chairman Date
and Director of Airports

APPROVED AS TO FORM BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller, Date
City of St. Louis

ATTESTED TO BY:

Register, Date
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on _____, 2002.

Secretary, Date
Board of Estimate & Apportionment

CENTRAL CARTS

By: _____

Federal I.D. No: _____

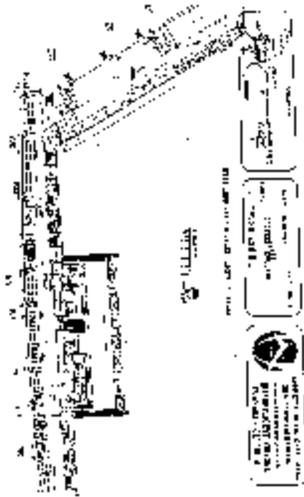
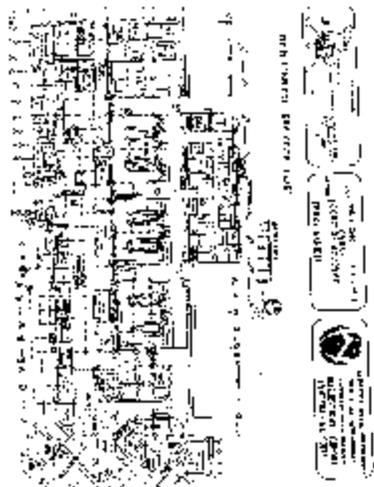
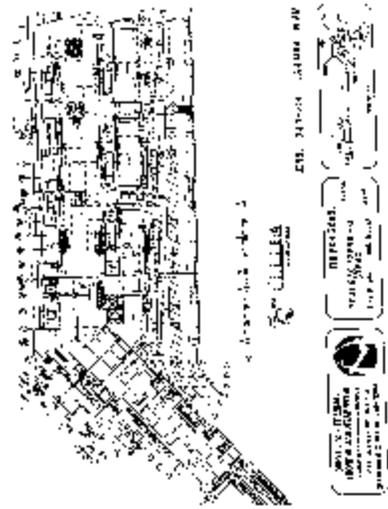
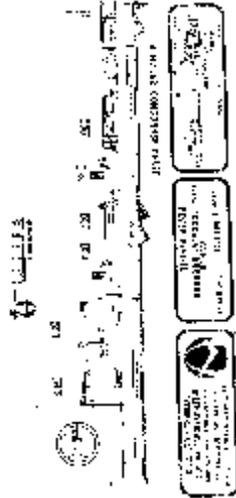
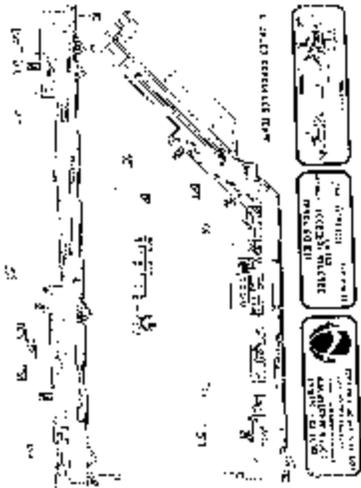
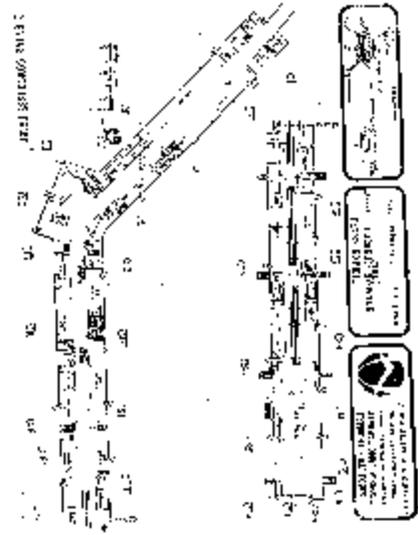
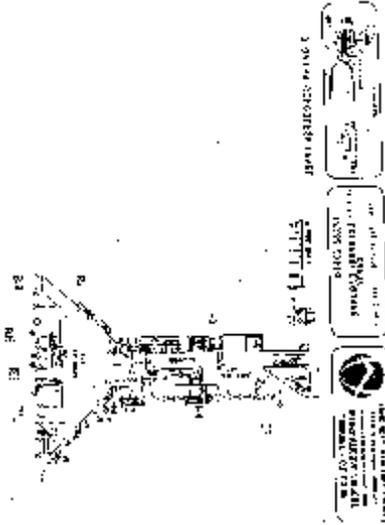
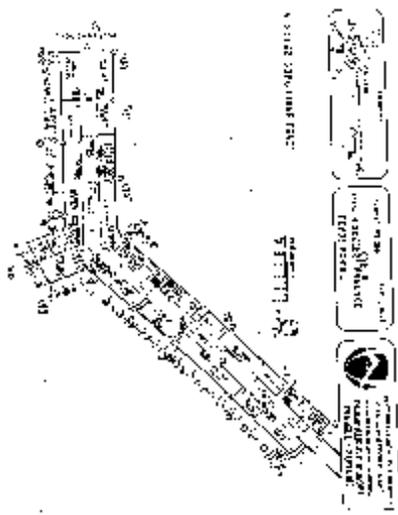
Title: _____

Date: _____

See attached Lease Exhibits.

Approved: August 5, 2002

ORDINANCE 65623 - LEASE EXHIBITS Sheets 1 - 11 and 1 - 4



ORDINANCE #65624
Board Bill No. 175
Committee Substitute

An Ordinance, recommended and approved by the Board of Estimate and Apportionment, authorizing and directing the Director of Airports and the Comptroller of The City of St. Louis (the "City") to enter into and execute on behalf of the City a Lease Agreement (the "Agreement") at Lambert-St. Louis International Airport (the "Airport") between the City and Gate Gourmet, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Lessee"), granting to the Lessee, subject to the terms, covenants, conditions, warranties, and obligations of the Agreement including, without limitation, the obligation to construct at Lessee's costs an In-Flight Catering Facility on certain Airport property (the "Premises"), more fully described in Article II, Section 201 of the Agreement, permission to occupy and use the Premises for the conduct of business as an In-Flight Catering Facility or other authorized businesses as provided for in Article V, Section 501 of the Agreement that was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment, and is attached hereto as ATTACHMENT "A" and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement; containing a severability clause; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City a Lease Agreement (the "Agreement") at Lambert-St. Louis International Airport (the "Airport") between the City and Gate Gourmet, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Lessee"), granting to the Lessee, subject to the terms, covenants, conditions, warranties, and obligations of the Agreement including, without limitation, the obligation to construct at Lessee's costs an In-Flight Catering Facility on certain Airport property (the "Premises"), more fully described in Article II, Section 201 of the Agreement, permission to occupy and use the Premises for the conduct of business as an In-Flight Catering Facility or other authorized businesses as provided for in Article V, Section 501 of the Agreement that was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment, and is to read in words and figures as set out in ATTACHMENT "A", which is attached hereto and made a part hereof.

SECTION TWO. The terms, covenants, warranties, and conditions set forth in this Ordinance shall be applicable exclusively to the agreement approved and authorized by this Ordinance and shall not be applicable to any other existing or future lease agreement or other agreements, documents, or instruments unless specifically authorized by ordinance enacted after the effective date of this Ordinance. All provisions of other City ordinances that are in conflict with this Ordinance shall be of no force or effect as to the Agreement.

SECTION THREE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FOUR. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City's Charter and shall become effective immediately upon its approval by the Mayor of the City.

ATTACHMENT "A"

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



Gate Gourmet, Inc.
LEASE AGREEMENT
NO. AL-288

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AIRPORT NUMBERAL-288.....

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
LEASE AGREEMENT

THIS LEASE, is made and entered into as of the ____ day of _____,
("Agreement"), by and between The City of St. Louis, a municipal corporation of the State of Missouri , as lessor (the
"City"), and Gate Gourmet, Inc., a corporation organized and existing under the laws of the State of Delaware, ("Lessee").

WITNESSETH, THAT:

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

WHEREAS, Lessee warrants and represents that it is willing to Lease the Premises from City and construct an In-Flight
Catering Facility in accordance with the terms, covenants and conditions of this Agreement.

WHEREAS, an In-Flight Catering Facility is important to the operations of the Airport; and

WHEREAS, City is willing to lease the Premises to Lessee; and

WHEREAS, this Agreement is necessary to reflect current Airport and City business practices and ensure the City's and
the Airport's compliance with Federal Aviation Administration orders and grant assurances;

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

ARTICLE I
DEFINITIONS

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

"Agreement" shall mean this document and any subsequent amendments thereto, duly approved by City and Lessee.

"Airport" shall mean as stated in the preamble hereof. "City" and "Airport" are used interchangeably throughout this Agreement.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility
the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be Lessee's point of contact with
the Airport on all issues related to this Agreement.

"Business Day" shall mean any day on which banks and the City's offices are open for business in St. Louis, Missouri (excluding
Saturdays).

"City" shall mean as stated in the preamble hereof. "City" and "Airport" are used interchangeably throughout this Agreement.

"Contract Year" shall mean a consecutive twelve (12) month period commencing on the first day of the term of this Agreement.

"Director" shall mean the Director of Airports of the City of St. Louis or his/her authorized or designated representatives.

"Discharge" shall have the meaning ascribed to such term by 1001(7) of the Oil Pollution Act of 1990, 33 USC 2701(7).

"Effective Date" shall mean the first day of the month following the date of full execution of this Agreement by City and Lessee.

"Extremely Hazardous Substance" shall mean any substance designated or considered to be an extremely hazardous substance pursuant to 302(a) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11002(a).

"Hazardous Substance" shall mean any substance designated or considered to be a hazard pursuant to 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601(14).

"Hazardous Waste" shall mean any substance designated or considered to be a hazardous waste pursuant to either 1004(5) of the Resource Conservation and Recovery Act, 42 USC 6903(5) or 260.360(10) R.S.Mo.

"Improvements" shall mean without limitation, any buildings, structures, facilities, parking lots, lighting or other fixtures, landscaping or any appurtenances thereto now or hereafter existing on the Premises, excluding personal property or trade fixtures of Lessee.

"In-Flight Catering Facility" shall mean the buildings, structures, roadways and landscaping within the Premises necessary for the preparation and delivery of food and beverages to aircraft, including buildings, structures and roadways for receiving, storage, and preparation of food and beverage products, fueling facilities and roads for ingress and egress within the Premises in accordance with the terms, covenants and conditions of this Agreement.

"Infectious Waste" shall mean any substance designated or considered to be an infectious waste pursuant to 260.360(13) R.S.Mo.

"Initial Market Rental Rate" shall mean the annual market rental rate established at the commencement date of this Agreement, and the amount shall be Thirty-Four Thousand Dollars (\$34,000.00) and to be used as the basis on which future Ground Rates shall be established in accordance with of this Agreement.

"Lessee" shall mean as stated in the preamble hereof.

"Oil" shall mean any substance designated or considered to be an oil pursuant to 1001(23) of the Oil Pollution Act of 1990, 33 USC 2701(23).

"Other Permitted Uses" shall mean permitted uses other than an In-Flight Catering Facility to include: wholesaling or warehousing of manufactured commodities excluding live animals, explosives, flammable gases or liquids; yards for storage of contractor's equipment, materials and supplies; vehicle or equipment storage excluding junkyards and salvage yards; business, professional and technical training schools; manufacturing, fabrication, assembly, processing or packaging of any commodity excluding explosives, flammable gases or liquids; office or office building; printing and duplicating services; research laboratories and facilities; sales and renting of equipment and vehicles; terminal for trucks and buses; vehicle repair and service facility; catering of non-airline and/or off-airport entities. Commercial parking operations and facilities are expressly excluded under this definition.

"Pollutant" shall mean any substance designated or considered to be a pollutant pursuant to 502(6) of the Federal Water Pollution Act, 33 USC 1362(6).

"Premises" shall mean a location or locations described in Section 201 that has or have been designated by City for the occupancy and use by Lessee, together with all Improvements, for its conduct of business and for other uses herein specifically provided for.

"Release" shall have the meaning ascribed to such term by 101(22) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601. (22).

"Reportable Quantity" ("RQ") shall mean as designated by 10CSR24-2.010.

"Special Waste" shall mean any substance as designated by 10CSR80-2.010.

"Solid Waste" shall mean any substance designated or considered as a solid waste pursuant to 260.200(25) R.S.Mo.

"Sublessee" shall mean a third party conducting business on the Premises which is incidental, necessary or customary to the proper use of the Premises as an In-Flight Catering Facility, or Other Permitted Uses, and under agreement with Lessee.

"Term" shall mean thirty-five (35) Contract Years and eight (8) months commencing on the Effective Date.

"Toxic Pollutant" shall mean any substance designated or considered to be a toxic pollutant pursuant to 502(13) of the Federal Water Pollution Control Act, 33 USC 1362(13).

ARTICLE II PREMISES

Section 201. Premises. City hereby leases and demises to Lessee and Lessee takes from City, a tract of land containing approximately 8.5 acres 370,260 sq. ft.) which final square footage shall be determined by a metes and bounds survey, together with all Improvements constructed, erected or installed thereon, hereinafter collectively referred to as the "Premises" and more fully described on **Exhibit "A"** and shown on **Exhibit "B"**, which are attached hereto and made a part hereof, subject to the reservations set forth in Section 202 hereof. Lessee acknowledges that it accepts and receives the Premises in an "AS IS" condition with no warranties or representations of any kind, expressed or implied, either oral or written, made by City or any of its agents or

representatives with respect to the physical, environmental or structural conditions of the Premises or any portion thereof or otherwise including but not limited to, soil conditions of the land and structural conditions of the Improvements existing on the Premises as of the Effective Date, if any or the presence or absence of any hazardous or toxic substances, materials, gases or waste in, on or under the Premises, or any underground or above ground storage tanks or repositories, including but not limited to asbestos and asbestos-related materials, water, sewage or utilities serving the Premises or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Agreement. City and Lessee agree that the existence and definition of hazardous or toxic substances, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants or waste, shall be construed herein in accordance with all applicable federal, state or local laws, statutes or regulations relating to the protection of human health or the environment. City without limitation expressly disclaims and negates, as to the Premises: a) any implied or express warranty of merchantability, b) any implied or express warranty of fitness for a particular purpose, and c) any implied warranty with respect to the condition of the Premises, its compliance with any zoning or other rules, regulations, laws or statutes applicable to the Premises including but not limited to the Americans with Disabilities Act, the uses permitted on the Premises, or any other matter or thing relating to the Premises or any portion thereof.

Section 202. Reservations. The grant of lease hereunder is subject to the following reservations and conditions.

- A. City reserves the right (but shall not be obligated to Lessee) to maintain and keep in repair, the landing area of the Airport and all public-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard as such activities relate to the landing areas and facilities of the Airport not on the Premises.
- B. City reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion sees fit, regardless of the desires or views of the Lessee, and without interference or hindrance of any kind.
- C. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which in the sole and absolute opinion of City would limit the usefulness of the Airport or constitute a hazard to aircraft.
- D. During the time of war or national emergency City shall have the right to enter into an agreement with the Government of the United States of America (the "U.S. Government") for use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt of written notice from City.
- E. It is understood and agreed that the rights granted by this Agreement to Lessee will not be exercised by Lessee in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport.
- F. There is hereby reserved to City, its successors and assigns, 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 herein conveyed, 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.
- G. This Agreement shall become subordinate to provisions of any existing or future agreement between City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, improvement, development, expansion or maintenance of the Airport.
- H. City reserves all gas, oil and mineral rights in and under the soil; provided, however, that City, in the exercise of such rights, shall not materially interfere with the surface of the soil or with Lessee's use of the Improvements thereon.
- I. 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 unreasonably and materially interfere with Lessee's use of the Premises, and provided further that such reservation or grant of rights shall not directly result in cost or expense to Lessee.

Section 203. Access. Subject to the terms, covenants, warranties and conditions of this Agreement, Lessee has the right of free access, ingress to and egress from the Premises, for Lessee's employees, agents, guests, patrons and invitees. Subject to the terms, covenants, warranties and conditions of this Agreement, City reserves and shall have the right to access, ingress to and egress from the Premises without charge therefore, for its employees, contractors, agents, guests, patrons and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, provided that such right will not unreasonably and materially interfere with Lessee's use of the Premises. If Lessee is not present to permit entry and entry is necessary, City may, in case of emergency only, forcibly enter the Premises without rendering City liable therefore, except for any damage caused by its gross negligence or willful misconduct. Nothing contained herein shall be construed to impose upon City any duty of inspection or repair of the Premises except as expressly and specifically provided for herein.

**ARTICLE III
LEASE TERM**

Section 301. Term. The Term of this Agreement shall be for a period of thirty-five (35) Contract Years and eight (8) months commencing on the first day of the month following the date of full execution of this Agreement by City and Lessee, unless sooner terminated in accordance with other provisions of this Agreement. The Commencement or Effective Date of this Agreement and the Expiration Date shall be written by City below.

Commencement Date: _____

Expiration Date: _____

Section 302. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement, or at the earlier termination hereof, shall be necessary. Lessee warrants, covenants, and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises in as good condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises. In the event Lessee does not vacate the Premises during the prescribed time period, Lessee does hereby agree that City may use any remedy at law or in equity including but not limited to a writ of possession to carry out the transfer of possession.

City and Lessee before acceptance by City of any of the Improvements shall perform a joint inspection of the Improvements being surrendered to the City. Lessee shall perform any reasonable maintenance work requested by City so that all mechanical systems are fully functional and the Improvements are protected from weather, normal wear and tear excepted. Said inspection shall be conducted at least thirty (30) days prior to the expiration date of the Term, or the earlier termination hereof as provided herein.

Lessee warrants, represents, covenants and agrees that at the expiration date of the Term, or at the earlier termination hereof, it shall, unless otherwise agreed to in writing by the City (i) remove all products or wastes stored in underground and aboveground storage tanks located on the Premises, which were installed or used during the Term of this Agreement (ii) remove and pull all underground and above ground storage tanks and any connected piping, tubing or other related equipment located on the Premises, and (iii) promptly remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water affected by leaks, spills, Discharges, or Releases from such storage tanks or connecting piping. Such removal, remediation, decontamination, and/or restoration shall be performed by Lessee in a manner consistent with any applicable environmental laws. Lessee shall be responsible for all compliance issues, including without limitation any permitting or licensing requirements, relating to any and all above ground or underground storage tanks as the owner of said tanks. In the event that City is required to undertake actions to bring the Premises into compliance with the foregoing provision or any applicable environmental laws, as a result of any of the above described leaks, spills, Discharges or Releases, and Lessee's failure to correct same, Lessee shall promptly reimburse the City for any expenses so incurred, including, but not limited to, reasonable attorneys' fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal and/or remediation, and disposal costs.

Lessee warrants, covenants and agrees that, at the expiration date of the term of this Agreement, or at the earlier termination hereof, it shall return the Premises to City free of any and all Hazardous Substances, Extremely Hazardous Substances, Hazardous Wastes, Special Wastes, Solid Wastes (unless disposal of Solid Waste on the Premises is otherwise specifically permitted by the terms of this Agreement), Oil, petroleum product or derivative, Infectious Wastes, Pollutants, Toxic Pollutants, toxic substances, or other chemical substances or materials subject to federal, state, or local regulation, which were placed, stored, used, generated, manufactured, produced, treated, Released, Discharged, disposed, and/or spilled on, under, or about the Premises by Lessee, its officers, agents, employees, consultants, contractors, subcontractors, licensees, independent contractors, guests, patrons and invitees since the time of Lessee's initial entry upon the Premises under this Agreement. Lessee shall be responsible for securing all operating permits and/or licenses or other approvals to the extent such permits and/or licenses or other approvals are required by local, state or federal officials or laws including, without limitation, air, water and waste disposal permits. In the event that City is required to undertake actions to bring the Premises into compliance with the foregoing provision or any applicable environmental or regulatory laws as a result thereof and Lessee's failure to correct same, Lessee does hereby warrant, covenant and assure that it shall reimburse City for any expenses so incurred, including, but not limited to, reasonable attorneys' fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs.

**ARTICLE IV
RENT AND FEES**

Section 401. General. Lessee, for and in consideration of the rights and privileges granted herein, agrees to pay the rents and fees set forth in this Agreement, without demand during the term of this Agreement.

Section 402. Ground Rent. For the use and hire of the Leased Premises, Lessee warrants, covenants and agrees to pay City as follows:

A. Pre-Paid Rental: For the period beginning at the commencement of Contract Year one (1) up to the commencement of Contract Year sixteen (16), Lessee shall pay City a Pre-Paid Rental of Three Hundred and Nineteen Thousand and Six Hundred Dollars (\$319,600), due on the Commencement Date of this Agreement.

B. Annual Rental: From the commencement date of Contract Year sixteen (16) through the expiration date of the term of this

Agreement, Lessee shall pay to City an annual rental to be paid beginning on the commencement date of each Contract Year thereafter for the Term of this Agreement in twelve equal monthly installments, due on the first day of each month. The annual rent as set forth in this Section 402 shall be reviewed on the commencement date of Contract Year sixteen (16) and on the commencement date each and every five (5) Contract Years thereafter, and shall be adjusted by the Consumer Price Index as described below:

1. Consumer Price Index (CPI-U): Ground Rent shall be calculated in accordance with the "Consumer Price Index for all Urban Consumers" (CPI-U) relating to "U.S. City Average" and published by the Bureau of Labor Statistics of the United States Department of Labor with the index number indicated for the month that this Agreement commences shall be the base index number. Thirty (30) days prior to the end of the Pre-Paid Rental period and each five (5) Contract Years thereafter shall be the current index number. Ground Rent increases shall be calculated by taking the current index number minus the base index number as the numerator and the base index number as the denominator and any resulting positive number and/or fraction shall be the percentage increase to the rent added to the Initial Market Rental Rate at the commencement of Contract Year sixteen (16) and to the current annual rent at the commencement date of every five (5) Contract Years thereafter. The base index number for ground rent calculations for the beginning of contract year twenty one (21) and every five contract years thereafter shall be the previous rate adjustment's current index number. All such adjustments shall be made and made only upward to the nearest one-tenth (1/10) of a percentage point. In the event that any time during the term hereof the United States Bureau of Labor Statistics shall discontinue the issuance of "Consumer's Price Index for all Urban Consumers" (CPI-U) then in such event the parties hereto agree to use any other standard nationally recognized cost of living index then issued and available, which is published by the United States Government, which is most similar to the discontinued "Consumer's Price Index for all Urban Consumers" (CPI-U).

By way of example, it is assumed that the base index number for the commencement date is 100 and the current index number 30 days before the commencement of Contract Year 16 is 109, then the CPI adjusted annual rent for Contract Years 16 through 20 would be calculated as follows: 109 (current year index) minus 100 (base year index) divided by 100 (base year index) multiplied by \$34,000 (Initial Market Rental Rate) equals \$3,060 (percentage increase) plus \$34,000 (Initial Market Rental Rate) equals \$37,060.

Likewise, by way of example, it is assumed that the current index number 30 days before the commencement of Contract Year 21 is 115, then the CPI adjusted annual rent for Contract Years 21 through 25 would be calculated as follows: 115 (then current year index) minus 109 (previous current year index) divided by 109 (new base year index) multiplied by \$37,060 (then "current annual rent") equals \$2,038 (then percentage increase) plus \$37,060 (then current annual rent) equals \$39,098

In the event the Federal Aviation Administration ("FAA") determines the payment terms under this Agreement to be unreasonable or otherwise not in compliance with federal requirements, those terms will be modified, retroactive to the Effective Date, to an amount that the FAA agrees is in compliance with federal requirements.

Section 403. Rent and Fee Payment Bond. Lessee agrees to furnish a bond or other form of security, throughout the Term, in a form acceptable to City as set forth below. For Contract Years one (1) up to the commencement date of Contract Year sixteen (16), Lessee agrees to furnish bond in the principal amount of Fifty Thousand Dollars (\$50,000). On the commencement date of Contract Year sixteen (16) through the termination or early expiration of this Agreement, City may require Lessee to increase principal amount of bond to reflect any increase in annual rent due City. Said increase to be made by Lessee upon the receipt of written notice from the Director at any time during the term of this Agreement. Such bond will guarantee the payment of all rents, fees and other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof. City may agree to another form of security or deposit which will provide equal protection of City's interest. If City cashes the bond or other form of security, Lessee agrees to furnish a replacement bond or other form of security in the same principal amount within thirty (30) days.

Section 404. Unpaid Rent and Fees. All unpaid rent and fee payments due City hereunder shall bear a service charge of one and one-half percent (1½%) per month if same is not paid and received by City on or before the tenth day 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, court costs and expenses incurred or expended by City in collection of said delinquent amounts due including service charges.

Section 405. Notice, Place and Manner of Payments. Payments shall be made at the Office of Director at the address as set forth in Section 1101 below, or at such other place in the City of St. Louis, Missouri as City or by whatever payment method the City may reasonably determine may hereafter notify Lessee in writing and shall be made in legal tender of the United States.

Section 406. Additional Fees, Charges and Rents. Lessee shall pay additional fees, charges and rents under the following conditions:

- A. If City has paid any sum or sums or has incurred any obligation or expense for which Lessee has agreed to pay or reimburse City; or

- B. If City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Lessee to perform or fulfill any of the terms, covenants or conditions of this Agreement and City has provided Lessee with thirty (30) days written notification of such failure, neglect or refusal and Lessee has failed to cure or commence and diligently pursue cure of such failure, neglect or refusal within such thirty (30) day period.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rent thereafter due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rent, 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 City for any work done or material furnished at the Premises shall be 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 acquire and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport or the Premises.

ARTICLE V USE OF PREMISES

Section 501. Use. City hereby grants to Lessee, subject to all the terms, covenants, and conditions of this Agreement, permission to occupy and use the Premises for conduct of business as an In-Flight Catering Facility or Other Permitted Uses. City and Lessee expressly agree that the use of the Premises are to be solely for the purpose of an In-Flight Catering Facility or Other Permitted Uses and that all other uses are not permitted under this Agreement.

Section 502. Compliance with Laws and Regulations. Lessee shall comply with all Rules and Regulations which City or the Director may establish from time to time. In addition, Lessee shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Lessee further agrees to abide by all federal, state, and local laws, regulations, and ordinances related to: (1) the transportation, storage, use, manufacture, generation, disposal, Discharge, spilling, or Release of Hazardous Substances and/or Extremely Hazardous Substances; (2) the transportation, storage, use, manufacture, generation, treatment, disposal, Discharge, Release, or spilling of Hazardous Wastes; (3) the transportation, storage, use, recovery, disposal, Discharge, Release or spilling of Oil or other petroleum products or derivatives; (4) the Discharge of effluents, Pollutants and/or Toxic Pollutants to publicly owned treatment works, storm water systems, or to waters of the United States or tributaries thereof; (5) the emission of any regulated substance into the air; (6) the transportation, storage, treatment, disposal, Discharge, Release, or spilling of Infectious Waste; (7) the transportation, storage, treatment, recycling, reclamation, disposal, Discharge, Release or spilling of Solid Wastes; (8) the transportation, storage, treatment, recycling, or disposal of waste tires, waste Oil, used Oil, and/or used lead-acid batteries; (9) and the operation, use, storage, removal, transportation, disposal, remediation, and compliance issues regarding any and all above ground or underground storage tanks as the owner of said storage tanks, until said storage tanks are removed by Lessee. In addition, Lessee shall promptly notify the appropriate governmental authorities and Director or his/her designee of any violation of any environmental laws that occur in connection with the Premises, and of which Lessee, its agents, employees, contractors, or invitees have actual knowledge. Lessee's failure to comply with any provision of this section or any environmental laws shall be considered a material breach of this Agreement for which City, at its sole option, and at any time, may terminate this Agreement and seek other remedies at law or in equity subject to the terms of Article X below.

Within ninety (90) days of Lessee taking beneficial occupancy of its In-Flight Catering Facility, or at such time as the Premises are converted to Other Permitted Uses, and within thirty (30) days of any additions, changes, occurrence of the following or required submittals, Lessee shall furnish a copy to the Director or his/her designee the following:

- A. Copies of all the Material Safety Data Sheets ("MSDS") for any Hazardous or Extremely Hazardous Substances, which require an MSDS pursuant to the Hazard Communication Standard, found in 29 CFR 1200 and existing on or brought onto the Premises.
- B. Copies of all Emergency Planning Community Right-to-Know Act ("EPCRA") (Superfund Amendment Reauthorization Act, Title III) inventories filed with the Environmental Protection Agency ("EPA") for the Premises or written documentation showing that Lessee was not required to file an EPCRA inventory.
- C. Copies of all Hazardous and Special Waste manifests from waste originating or stored on the Premises.
- D. Copies of all reports documenting spills, leaks or Releases of hazardous materials, Hazardous or Extremely Hazardous Substances, or Hazardous or Special Wastes on the Premises including documentation of notification to federal, state, and local authorities which have jurisdiction. In addition, Lessee shall furnish copies of all sampling and characterization

reports for sampling and characterization which was conducted on the Premises including but not limited to, soils, surface water, or ground water.

- E. Copies of all correspondence with regulatory agencies including federal, state, and local authorities which have jurisdiction in regard to environmental management of resources, i.e., air, soil, surface water, and ground water at the Premises.
- F. Copies of all environmental compliance and waste management plans including but not limited to Waste Management Plans, Waste Minimization and Pollution Prevention Awareness Plans, Waste Analysis Plans, Storm Water Pollution Prevention Plans, Health and Safety Plans, or any other environmental health and safety management plans.

Section 503. Repairs and Maintenance. Lessee shall, throughout the Term, at its own cost, and without any expense to City, keep, repair and maintain the interior and exterior, structural and non-structural portions of the Premises and the Improvements, including, without limitation the plumbing, heating, lighting, air conditioning, and other systems in connection therewith, in good and safe condition, sanitary and neat order, and will make all necessary repairs and maintenance thereto, ordinary and extraordinary, foreseen and unforeseen, and will make all necessary replacements thereto of like quality when beyond repair, including but not limited to offices, buildings, parking lots and fuel facility. Lessee shall restore, rehabilitate, or replace all Improvements that may be destroyed or damaged by fire, casualty or any other cause whatsoever. City shall not be obligated to perform any maintenance or make any repairs or replacements of any kind, nature or description, to the Premises or Improvements.

Lessee shall be responsible for all cleaning, custodial and janitorial services required to meet its obligations hereunder. Without limiting the generality of the foregoing, Lessee shall keep the exterior portions of the Premises and any of the Improvements in an orderly, neat, clean and safe condition and in good repair, and shall remove all dirt, trash, snow and ice therefrom.

Lessee shall, at its sole cost and expense, take such measures as may be necessary to keep the Premises secure and safe at all times. City shall have no obligation or responsibility to keep the Premises policed, secure or safe.

City shall be the sole and absolute judge of the adequacy of maintenance performed by Lessee, and may upon written notice, require specific maintenance work to be completed at Lessee's cost.

If, during the term hereof, it shall become necessary to perform repairs and/or maintenance on any part of the Premises affecting roads, streets or areas affecting other tenants, or the public, Lessee shall first obtain the written consent of Director and shall, without cost or expense to City, restore the affected area to the satisfaction of Director.

Lessee warrants, covenants and agrees, without cost or expense to City during the Term, to perform the following:

- A. Good Condition. Keep all of the Improvements in good and safe order and condition.
- B. Obstruction Lights. Provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law or ordinance, or any municipal, state or federal regulation.
- C. Housekeeping of Premises. Provide for complete, proper and adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation as an In-Flight Catering Facility or Other Permitted Uses; provide and use suitable, covered metal receptacles for all garbage, trash and other refuse on or about the Premises; and not store boxes, cartons, crates, drums or the like on the outside of any of the Improvements existing on the Premises, except in screened areas as provided in Section 503G below, or dump any waste matter of any nature, in a liquid state or otherwise, on the Premises nor permit contamination of the sewers or the Airport's drainage control system.
- D. Maintenance of Buildings and Structures. Maintain all buildings and structures on the Premises to prevent exterior or interior damage from water or other elements. This requirement includes immediate replacement of broken windows, doors and locks with like materials.
- E. Care of Premises and Streets. Keep all papers and debris picked up from the Premises and sweep the pavements thereon as often as necessary to keep clean, and keep all grass mowed, and shrubbery and other plantings pruned, trimmed and maintained to high standards. Provide for essential street, walkways and pavement maintenance within the Premises and, in addition, provide for snow and ice removal within the Premises to allow, at a minimum, emergency or fire protection access.
- F. Drainage Facilities. Comply with the Airport's Storm Water Detention Design Criteria and Guidelines dated December 1986 as revised from time to time, as well as comply with any and all applicable federal, state, and municipal regulations. Lessee shall establish a system of periodic inspection, cleaning and maintenance to keep watercourses, catch basins and other drainage structures on the Premises functioning at full design capacity. Inspections, cleaning and maintenance intervals shall be estimated by the Director with reports to be submitted within thirty (30) days of each inspection, cleaning and maintenance. Lessee shall see that special care is taken to pile removed snow in a location that will permit the water generated by the melting of such snow piles to flow into the drainage system of the Premises.
- G. Storage. No unscreened storage will be permitted on the exterior areas of the Premises.
- H. Environmental Responsibilities. Lessee shall, in the event of a spill or Release on the Airport of a Hazardous or Extremely

Hazardous Substance or Oil product in a Reportable Quantity (as defined in Section 101) notify federal, state, and local regulatory agencies which have jurisdiction and the Director or his/her designee immediately. In the event the spill or Release is less than a Reportable Quantity Lessee shall notify the Director or his/her designee immediately of all spills or Releases of Hazardous or Extremely Hazardous Substances or Oil products.

Lessee shall be responsible for defining the nature and the extent of the spill or Release and for remediation of the affected media to standards specified in *MDNR Clean Up Levels for Missouri (CALM), September, 1998* as revised or amended. Lessee shall forward copies of generated reports, notifications, and clean up verification, to the Director or his/her designee within thirty (30) days of completion.

Lessee hereby assumes all responsibility and liability related to or arising from any and all obligation for environmental protection, compatibility and responsibility related to, arising from or out of the Lessee's use of the Premises or its operations.

Section 504. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Lessee's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises during normal business hours upon not less than forty-eight (48) hours prior notice (except during any construction being performed and then upon twenty-four (24) hours prior notice, or, alternatively, except during any emergency, and then at any time) to determine whether Lessee has complied and is complying with the terms, covenants and conditions of this Agreement.
- B. To perform any work therein that may be necessary by reason of Lessee's failure to make any repairs or perform any work or maintenance required of Lessee under this Agreement; provided, however, that except in cases of emergency, City shall give Lessee notice of such failure, and shall not perform such work unless Lessee has failed to do so within thirty (30) days after receipt of such notice. Lessee shall pay all reasonable costs and expenses related to such work plus a charge of fifteen percent (15%) for overhead to City immediately upon demand thereof. Nothing herein shall imply any duty on the part of City to perform such inspections, make any repairs or perform any work on the Premises, and the performance thereof by City shall not constitute a waiver of Lessee's default in failing to make any repairs or performing any work required of Lessee under this Agreement. City shall not in any event be liable for cessation of revenues, inconvenience, annoyance, disturbance, loss of profits or any other damage or loss whatsoever to Lessee or any other party by reason of making such repairs or performing such work or maintenance on the Premises or on account of bringing materials, supplies and equipment onto or through the Premises during the course thereof, and the obligations and duties of Lessee under this Agreement shall not thereby be waived or affected in any manner whatsoever. City shall, however, make any such repairs or conduct any such work under this Section in a reasonable manner so as to minimize any interference with the conduct of Lessee's business at the Premises.
- C. To make inspections, testings, reports, surveys, environmental inspections, studies and assessments as City in its sole and absolute discretion may determine to make. City shall, however, make any inspections, testings, reports, surveys, environmental inspections, studies and assessments in a reasonable manner so as to minimize any interference with the conduct of Lessee's business at the Premises.

Section 505. Utilities. Lessee shall provide for and pay for all utilities used on the Premises.

Section 506. Interference to Air Navigation. Lessee 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 FAA, will be constructed or permitted to remain on the Premises. Any obstructions will be immediately removed by Lessee at its expense. Lessee agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Lessee further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VI LESSEE'S OPERATIONS

Section 601. Standards of Service. In regard to an In-Flight Catering Facility, Lessee shall furnish a first class, full service operation serving the needs of users of the Airport, and offer high quality, prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Lessee and City. Lessee shall provide quality services and products and shall equip, organize, put into service and manage efficiently their In-Flight Catering Facility. In regard to Other Permitted Uses, Lessee will provide quality services and products on a non-discriminatory basis to its customers and in a manner that will reflect credit upon Lessee and City.

Section 602. Manager. Lessee shall at all times retain one or more qualified, competent and experienced managers who shall manage and supervise the operations and the facilities and represent and act for Lessee. The manager shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 603. Transition Period. During any future transition of the Premises to another lessee, if applicable, Lessee does hereby

warrant, represent and agree to use its best efforts to assure a smooth transition. Lessee agrees to closely coordinate the planning and execution of the transition with the Director.

Section 604. Operation.

- A. Lessee shall be responsible for all aspects of the management and operation of the In-Flight Catering Facility and the management and operation of the Other Permitted Uses authorized by this Agreement. Further, Lessee will provide and is responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies, as the case may be.
- B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of City.

Section 605. Communication.

- A. Lessee shall be available for meetings with Airport personnel as necessary upon forty-eight (48) hours prior written notice.
- B. Lessee shall be responsible for notifying the Airport Properties Department of any problem, which substantially impairs Lessee's operation.

**ARTICLE VII
CONSTRUCTION OR ALTERATION OF IMPROVEMENTS**

Section 701. Construction or Modification By Lessee.

- A. Lessee covenants and agrees that it shall, at its sole cost and expense, construct or cause to be constructed, and such construction to be completed on or around March 1, 2003, an In-Flight Catering Facility on the Premises in accordance with plans and specifications prepared by Lessee and approved by the Director subject to the requirements of this Article VII. Lessee may, at its sole cost and expense, following the completion of the In-Flight Catering Facility, construct or modify improvements as would be customary to an In-Flight Catering Facility or Other Permitted Uses on the Premises in accordance with plans and specifications prepared by Lessee and approved by the Director subject to the requirements of this Article VII.
- B. Lessee agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
 - A Lessee shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 702 below, to the Airport Properties Department.
 - A Lessee shall submit to the Airport Properties Department a building permit number from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following submission of the TCA. (A building permit number is required prior to the start of any construction or modification by Lessee.)
 - A Lessee shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 705 and 706 below, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
 - A Lessee shall submit to the Airport Properties Department a copy of an occupancy permit from any and all municipalities, political jurisdictions and regulatory agencies, as required by Section 707 below, prior to occupancy.
 - A Lessee shall submit to the Airport Properties Department, if applicable, an original copy of the Environmental Impact Statement from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following submission of the TCA. (An Environmental Impact Statement maybe required before the TCA can be approved.)

Section 702. Preparations of Plans and Specifications. Lessee shall submit detailed drawings, plans and specifications for improving and equipping the Premises. Lessee will begin work on proposed improvements only after it has received the written approval of its plans and specifications from the Director or his/her designee.

Section 703. Federal Aviation Administration Review. All preliminary plans, prior to commencement of working drawings and specifications, shall be submitted to the FAA for review and approval, as may be required, with a copy to the Airport Properties Department. The preliminary plans shall show plot plans, buildings and other structures and improvement locations and their elevations, and shall indicate proposed exterior materials and finishes on all structures. It shall be the responsibility of Lessee to file all necessary alteration and construction forms with the FAA for review and approval, as may be required, with a copy to the Airport Properties Department.

Section 704. Landscaping and Screening. Lessee shall provide and install appropriate landscaping and screening, including lawn,

shrubby, trees, bushes, vines and other plantings and screenings on the Premises as a part of the construction of any of the Improvements. All proposed landscaping plans and screening designs shall be submitted to Director for review and approval. Lessee further agrees to provide any further landscaping and fencing that may be required, during the term hereof, by Director, for the purposes of screening from view any area of the Premises.

Section 705. Contractor's Liability Insurance. In any construction contract appertaining to the Premises, Lessee shall require the contractor to cause City, its Board of Aldermen, Airport Commission and their respective officers, agents, and employees, to be insured against the risk of claims and demands, just and unjust, by third parties against 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 \$2,000,000 as to any one person and \$3,000,000 as to any one occurrence, and with property damage limits of not less than \$3,000,000 as to any one occurrence. Said insurance shall be in a form agreeable to City, and Certificates showing proof of coverage shall be delivered to the Director.

Section 706. Performance and Payment Bonds. In order to insure the completion of new construction or modifications, and the payment of all laborers and material suppliers of projects costing in excess of \$10,000, Lessee shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 R.S.Mo. (1994, as amended). Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used, as the case may be, for the completion of said construction and/or the payment of laborers and material suppliers.

Section 707. Certificates of Completion. Upon the completion of the improvements hereunder, Lessee shall submit to Director a copy of its acceptance letter certifying completion, and a copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Lessee.

Lessee at its cost shall deliver to City duplicate copies of "as constructed" plans and specifications of the new facilities on the Premises within sixty (60) days after the date on which Lessee has certified completion thereof.

Section 708. Signs. Lessee agrees that no signs or advertising display shall be painted on or erected in any manner upon the Premises without the prior written approval of Director, and that such signs shall conform to reasonable standards established by Director with respect to wording, type, size, design, color and location.

Section 709. Title to Improvements and Fixtures. Title to the Premises and all Improvements constructed or placed in or on the Premises by Lessee including all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; subject however to Lessee's obligations to operate, repair, maintain, ensure, and replace and Lessee's right of possession and use and occupancy during the term in accordance with this Agreement.

Section 710. Mechanics' and Materialmen's Liens. Lessee agrees not to permit any mechanics' or materialmen's lien or any other lien to be 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.

ARTICLE VIII INSURANCE AND INDEMNIFICATION

Section 801. Liability Insurance. Lessee shall obtain, at its sole expense and maintain at all times during the Term, 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 of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors and invitees pursuant to this Agreement under the following types of coverage:

- A. Commercial General Liability- \$3,000,000 Combined Single Limit; and
- B. Comprehensive Automobile Liability (any vehicles, including hired and non-owned vehicles \$3,000,000 Combined Single Limit

The minimum limits of coverage for the above classes of insurance shall equal a combined single limit as shown above or be comprised of such primary and excess policies of insurance as Lessee finds it feasible to purchase during the Term.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees. In addition, such insurance shall include contractual liability insurance sufficient to cover Lessee's indemnity obligation hereunder. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City, and its Board of Alderman, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Lessee in its operations hereunder.

Section 802. Property Insurance. Lessee shall, at all times during the Term, and at Lessee's sole expense, keep all insurable Improvements which are existing or may be hereafter erected on the Premises insured against loss, damage or destruction by fire, lightning, extended coverage or other casualty and vandalism hazards for one hundred percent (100%) of the full replacement value of such Improvements, with loss payable to Lessee and to City as an Additional Insured. Any loss adjustment shall require the written consent of both Lessee and City. Such property insurance shall include loss of use coverage.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured". Such property insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees and contractual liability. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City, and its Board of Alderman, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Lessee in its operations hereunder.

Section 803. Workers' Compensation. Lessee shall obtain, at its sole expense and maintain at all times during the Term for its employees working on Airport Premises Workers' Compensation insurance coverage at least at the statutory limits applicable to Lessee's operations in the State of Missouri.

Section 804. Waiver of Subrogation. Lessee, on behalf of itself and its insurers, hereby waives any claim or right of recovery from City, its Board of Aldermen, Airport Commission, officers, employees and agents for loss or damage to Lessee or its property or the property of others under Lessee's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "all risk" physical damage property insurance policy. Lessee shall provide notice of this waiver of subrogation to its insurers.

Section 805. Evidence of Insurance. Certificates, or other evidence of insurance coverage and special endorsements required of Lessee in this Article VIII., shall be delivered to Director in form and content satisfactory to City.

At least fifteen (15) days prior to the expiration of any such policy, Lessee shall submit to Director a certificate 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 written notice from the insurer of such cancellation or reduction in coverage, file with Director a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance required of Lessee herein shall be in a form and with a company or companies reasonably approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days written notice to Director. Each such insurance policy shall also provide primary coverage to City when any policy issued to City provides duplicate or similar coverage and in such circumstances, City's policy will be excess over Lessee's policy.

Lessee and City understand and agree that the minimum limits of the insurance herein required may become inadequate, and Lessee agrees that it will increase such minimum limits upon receipt of notice in writing from Director. Such notices to change shall, in general, be issued with no more frequency than every fifth year of this Agreement term; however, Director may, at any time, take note of indemnification awards being granted by the courts and direct a reasonable increase in the minimum limits of the insurance requirements at any time during the term hereof. City shall provide Lessee with such written notice and Lessee shall comply within sixty (60) days without any adjustment to the rents and fees set forth in this Agreement.

Section 806. Indemnification.

- A. Lessee shall protect, defend, and hold St. Louis County, City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to 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 whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees, independent contractors or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence or willful misconduct of City. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her designee, after consultation with Director or his/her designee in carrying out its obligations hereunder.
- B. Lessee shall protect, indemnify, defend, and hold harmless St. Louis County, City and its Board of Aldermen and the Airport Commission and its officers, agents and employees against any lawsuits, administrative proceedings, claims, or administrative or judicial orders for any liability, cost, expenditure, injury, damage, penalty, or fine arising from or relating to Lessee's and its officers, agents, employees, consultants, contractors, subcontractors, licensees, independent contractors, guests, patrons or invitees use, manufacture, generation, production, treatment, storage, transportation, disposal, Discharge, Release, or spilling, into or onto the air, water, soil, sewer system, or similar media of any Hazardous Substance, Extremely Hazardous Substance, Hazardous Waste, Solid Waste, Oil, petroleum product or derivative, Pollutant, Toxic Pollutant, toxic substance, or other chemical substance or material subject to federal, state, or local regulation, whether accidental or intentional, which occurs on or from the Premises during the term of this Agreement or during the Lessee's occupancy, use, or entry upon the Premises. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessee

or City bears any liability or responsibility under any federal, state or local environmental laws, or other law, for any action or omission, and the consequences thereof, that occurred on or about the Premises during the term of this Agreement. This indemnification of City by Lessee includes, without limitation, all costs and expenses related to the sampling, testing, investigation, clean up, removal, remediation, decontamination, or restoration of the Premises and other affected areas, including, but not limited to, air, land, soil, or underground or surface water, as required by any federal, state, or local law, regulation, or ordinance, whether prompted by governmental action or private action, and also includes the costs of legal representation in connection with such sampling, testing, investigation, cleanup, removal, remediation, decontamination, or restoration of the Premises and other affected areas. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her designee, after consultation with Director or his/her designee in carrying out its obligations hereunder.

C. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 807. Adjustment of Claims. Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Lessee under this Agreement.

Section 808. Occupancy of Premises. Lessee agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the City's premium rate of insurance thereon or invalidate any such insurance.

ARTICLE IX ASSIGNMENT, SUBLETTING AND HYPOTHECATION OF LEASEHOLD ESTATE

Section 901. Assignment and Subletting. Lessee may assign this Agreement by first obtaining the written approval of the Director and the Airport Commission and said approvals shall not be unreasonably withheld, delayed, or conditioned. At least one hundred twenty (120) days prior to any contemplated assignment of this Agreement, Lessee shall submit a written request to the Director. The assignment request to the Director must include a copy of the proposed assignment agreement. No assignment shall be made or shall be effective unless Lessee shall not be in default on any of the terms, covenants and conditions herein contained. No assignment shall be effective as it pertains to the City until such time as the Director receives a fully executed copy of the approved assignment agreement as provided for above. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and conditions contained in this Agreement, however, such assignment shall not release Lessee from any of the terms, covenants, conditions or obligations of this Agreement.

Any such assignment without the consent of City as provided for above shall constitute a default on the part of Lessee under this Agreement. No action or failure to act on the part of any officer, agent, or employee of City shall constitute a waiver by City of this provision of this Agreement.

Lessee may sublet the Premises with the prior written approval of Director. At least ninety (90) days prior to any contemplated sublease of all or any part of the Premises, Lessee must submit in writing a request to Director. This request must include a copy of the proposed sublease. Any sublease for space or granting of rights acquired hereunder shall be subject to the review and prior written approval of Director, which shall not be unreasonably withheld, delayed or conditioned. Such a sublease must require at a minimum: (1) strict compliance with all provisions of this Agreement and (2) a provision that the Sublessee will use the facilities solely for the purposes authorized in this Agreement. No sublease shall be effective as it pertains to the City until such time as the Director receives a fully executed copy of the sublease agreement.

The parties understand and agree that Lessee is responsible for the performance of its Sublessees and assigns under this Agreement. Lessee agrees to initiate and take all corrective action should a Sublessee or assignee fail to comply with its contract with Lessee or any provision of this Agreement. Notwithstanding any assignment or sublease, lessee shall not be released from the obligation to perform each of the terms, covenants, and conditions of this Agreement whether arising before or after the date of such assignment or sublease. In the event of a default by the Lessee, the City within its sole and absolute discretion may, in writing, require that the Sublessee enter into a "Non-Disturbance and Attornment Agreement" with the City in a form reasonably acceptable to City to preserve the subtenancy.

Section 902. Hypothecation of Leasehold Estate.

- A. Lessee is hereby given the right, at any time and from time to time, to mortgage its leasehold estate in the Premises (but in no event the fee), provided that at the time such mortgage is made, Lessee is not then, or but for the passage of time would be, in default under this Agreement. All such leasehold mortgages shall be subject and subordinate to the rights of City hereunder. As used in this Section and throughout this Agreement, the noun "mortgage" shall include a deed of trust, the verb "mortgage" shall include the creation of a deed of trust, the word "mortgagee" shall include the beneficiary under a deed of trust, and the terms "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.
- B. No mortgagee of Lessee shall be deemed to be a mortgagee hereunder unless it is a bank, trust or insurance company, a savings and loan association, a pension fund, or any other monetary or lending institution authorized to make leasehold mortgage loans, unless the City otherwise so approves in writing. Nothing herein shall be deemed to restrict the right of any mortgagee to sell or assign its mortgage to a like institution. No mortgagee shall be entitled to enforce any right or remedy provided for herein or by law, or be entitled to any privileges accorded a mortgagee under this agreement, unless and until a photocopy of the executed mortgage or an executed counterpart of such mortgage shall have been delivered to

- City, along with the name and address to which notices are to be sent to mortgagee, notwithstanding any other form of notice, actual or constructive deemed given to the City.
- C. Notwithstanding any other provisions contained in this Agreement, there shall be no cancellation, modification, surrender or amendment of this Agreement without the written consent of the mortgagee, which consent shall not be unreasonably withheld, delayed, or conditioned, provided that nothing herein shall limit the City's right to terminate this Agreement upon the terms and conditions hereinafter set forth, subject, however, to Subsections D, E, and F of this Section.
- D. City shall not be empowered to terminate this Agreement by reason of the occurrence of any default hereunder unless City shall have served upon mortgagee a copy of the City's notice to Lessee of such default, within five (5) days after notice is given to Lessee and addressed to the mailing address last furnished by the mortgagee to the City.
- E. City hereby agrees to accept performance by any such mortgagee of any term, covenant, agreement, provision, condition or limitation on Lessee's part to be performed as though performed and observed by Lessee, provided such performance by said mortgagee shall occur within thirty (30) days after the last date for such performance as otherwise prescribed therefore in this Agreement
- F. In the event of a default by Lessee under this Agreement which cannot be cured by a mortgagee without first obtaining possession of the Premises, then, and notwithstanding any other provision contained in this Agreement excepting only Subsection G below, City shall not terminate this Agreement, by reason of such default if (i) said mortgagee, within the grace period set forth in Subsection E, shall have commenced, and thereafter diligently proceeds with, an appropriate proceeding to foreclose such mortgage and (ii) said mortgagee shall have cured such default within thirty (30) days following mortgagee's obtaining possession of the Premises.
- G. During the pendency of any foreclosure proceedings, mortgagee shall fully perform all the obligations of Lessee under this Agreement that can be performed by such mortgagee without possession of the Premises including, but not limited to, payment of all rent and any and all other moneys due and payable by Lessee under this Agreement Upon mortgagee obtaining possession of the Premises during the time that mortgagee is enforcing its foreclosure remedy or as a result thereof, mortgagee shall fully perform all of Lessee's obligations under this Agreement and mortgagee shall be deemed to have acquired all of Lessee's rights, title, and interest in, to, and under this Agreement and shall be obligated to perform all of the Lessee's terms, covenants, agreements, provisions and conditions to be performed by Lessee hereunder.:
- H. In the event such mortgagee acquires title to the leasehold estate of Lessee, then, provided said mortgagee has cured all defaults, if any, under this Agreement, City shall, upon written request of mortgagee deliver a new lease of the Premises to mortgagee or its nominee. The new lease (whether it be granted to the mortgagee or its nominee) shall have a term equal to the remainder of the term of this Agreement and shall be at the rent then in effect and upon the terms and conditions herein contained, except for requirements which are no longer applicable or have already been performed. Mortgagee shall have the right to a new lease as set forth above provided that mortgagee shall reimburse City for all of City's expenses, including attorneys' fees, incident to such efforts. It is understood and acknowledged that said new lease must be approved by the City's Airport Commission and the Board of Estimate and Apportionment, and authorized by the City's Board of Aldermen, and such approvals shall not be unreasonably withheld, delayed, or conditioned.
- I. Prior to commencement of any proceeding to foreclose the mortgage, the mortgagee, or any assigns of the mortgagee, shall, at least forty-five (45) days prior to any scheduled foreclosure sale, notify City in writing of the default by Lessee under the mortgage with a statement of the amount then due and shall withhold any acceleration of maturity of the indebtedness which is secured by the mortgage. City may (without any obligation to do so) pay to said mortgagee all amounts then in arrears on said mortgage; and upon such payment the mortgage shall be reinstated in all respects as if no default had occurred. City may, at its option, make such payments on said mortgage, and the amounts of such payments shall be considered additional rent due by Lessee to City under this Lease and shall be due and payable on demand. Subsequent and successive defaults by Lessee in making payments required by any mortgage shall be subject to the foregoing provisions each time any such default occurs. No judgment foreclosing the mortgage and the foreclosure sale thereunder nor a trustee's sale nor any assignment contemplated herein shall release Lessee from any of its obligations herein set forth. Nothing herein shall obligate the City to make any payments as authorized hereunder, and the City shall be permitted to cease making any such payments in its sole discretion.
- J. Upon the written request of any mortgagee or prospective mortgagee, and for the exclusive benefit of said mortgagee, the Director on behalf of the City will promptly deliver to said mortgagee a certificate setting forth: (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications that the Agreement is in full force and effect, as modified, and stating the modification), (b) the dates, if any, to which Rent, additional charges and other sums payable hereunder have been paid, and (c) that there are no defaults under this Agreement by City or Lessee, as the case may be, except such defaults, and events but for the passage of time would constitute a default, as may be specified in such certificate. Any such certificate may be relied upon by any permitted purchaser or encumbrancer of Lessee's leasehold estate.

**ARTICLE X
TERMINATION OF AGREEMENT IN ENTIRETY BY REASON OF DEFAULT**

Section 1001. City's Right to Terminate. City, acting by and through its Director, may declare this Agreement terminated in its

entirety, in the manner provided in Section 1003 hereof, upon the happening of any one or more of the following events:

- A. If the rent, fees, charges, or other money payments which Lessee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the Term, Lessee shall:
 - 1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
 - 2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3. Make a general assignment for the benefit of creditors;
 - 4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5. File an answer admitting the material allegations of a petition filed against any Lessee, assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Term an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Lessee a bankrupt or insolvent, or approving a petition seeking a reorganization of Lessee, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.
- C. If Lessee shall have failed in the performance of any term, covenant or condition herein required to be performed by Lessee.

On the date set forth in the notice of termination, the Term and all right, title and interest of Lessee shall expire, except as otherwise provided in Section 1003 hereof.

Failure of City to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee. The acceptance of monies by City from Lessee for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver, or release, or estopping of any right on the part of City to terminate this Agreement for failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

Section 1002. Lessee's Right to Terminate. Lessee, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If City shall have abandoned the Airport for a period of at least one hundred and twenty (120) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes.
- C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport or of the use of motor vehicles or airplanes by the general public, and any of said events shall result in material interference with Lessee's normal business operations or substantial diminution of Lessee's gross revenue from the operation at the Airport, continuing for a period in excess of one hundred and twenty (120) days.
- D. If City shall have failed in the performance of any term, covenant or condition within the control of City and herein required to be performed by City.

Section 1003. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated and no such termination shall be effective if such cause of default is cured within said forty-five (45) day period, or if by its nature cannot be cured within such forty-five (45) day period, and if the party at default commences to correct such default within said forty-five (45) days and corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Lessee agrees also to pay a reasonable attorneys' fee, court costs and expenses.

Section 1004. Rights Cumulative. It is understood and agreed that the rights and remedies of City and Lessee specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

Section 1101. Notice. Except as herein otherwise expressly provided, all notices required to be given to any party hereunder shall be in writing and shall be delivered personally, or shall be sent by United States registered or certified mail, return receipt requested, postage pre-paid, or shall be sent by overnight courier or facsimile transmission confirmed by the mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such facsimile transmission; and shall be addressed to the parties at the respective addresses as set forth below. A party may change its address for receipt of notice by service of notice of such change in accordance herewith. Notice shall be deemed received in the case of personal delivery, when delivered, in the case of overnight courier, on the next Business Day after delivery of such service, in the case of facsimile transmission, upon transmission, and in case of mailing, on the third day after mailing (or if such days is a day on which deliveries of mail are not made, on the next succeeding day on which deliveries of mail are made).

- If to City: Director of Airports
 St. Louis Airport Authority
 P.O Box 10212
 10701 Lambert International Blvd
 St. Louis, MO 63145
 Fax (314) 426-1221
- With a copy to: Airport Properties Division Manager
 St. Louis Airport Authority
 P.O Box 10212
 10701 Lambert International Blvd
 St. Louis, MO 63145
 Fax (314) 426-8076
- If to the Lessee: Mr. Carl I. Jacobson
 Vice President Legal
 Gate Gourmet, Inc.
 5100 Poplar Ave, 11th Floor
 Memphis, TN 38137
 Fax (901) 766-3848
- With a copy to: Edward J. Griesedieck, III, Esq.
 Herzog, Crebs & McGhee, LLP
 One City Centre, 24th Floor
 515 North Sixth Street
 St. Louis, MO 63101-2409
 Fax (314) 231-4656

Section 1102. Environmental Notice. Lessee shall immediately notify the Director or his/her designee and shall provide a written summary report within thirty (30) days for any of the following: (a) any correspondence or communication from any governmental entity regarding the application of environmental laws to the Premises or Lessee's operation on or affecting the Premises, (b) any change in Lessee's operation on or affecting the Premises that will change or has the potential to change Lessee's or City's obligations or liabilities under the environmental laws, (c) any disposal, Release, or spill of a Hazardous Substance, Extremely Hazardous Substance, Hazardous Waste, Solid Waste, Oil, petroleum product or derivative, Infectious Waste, Pollutant, Toxic Pollutant, toxic substance, or chemical substance or material subject to federal, state, or local regulation; and (d) any breaches, of any nature, of any environmental laws.

Lessee's failure to comply with any provision of this section shall be considered a material breach of this Agreement for which City, at its sole option, and at any time, may terminate this Agreement and seek appropriate remedies at law or in equity, subject to the terms of Article X above.

Section 1103. Condemnation.

- A. Total Take - If the whole of the demised Premises or Lessee's Improvements should be taken by the exercise of the power of eminent domain by any public entity including City, then in such case this Agreement shall terminate as of the date of vesting of title in the condemning authority.
- B. Partial Take - If less than the whole of the demised Premises should be taken in a condemnation proceeding, then this Agreement shall terminate only as to that portion of the demised Premises so taken as of the date of the vesting in the condemning authority of title to such portion, but this Agreement shall remain in full force and effect with respect to that portion of the demised Premises not so taken, provided that the Director and the Lessee, after good faith discussions, determine that the remainder of the demised Premises may be feasibly used for the purposes contemplated by this Agreement.
- C. Possession by Lessee - Notwithstanding any termination of this Agreement in whole or in part under Paragraphs A and B

of this Section, Lessee may remain in possession of each portion of the demised Premises as shall be so taken at the rent herein provided, until the condemning authority shall require Lessee to surrender such possession. Any rent or charge in the nature of rent which Lessee is required to pay to the condemning authority in consideration of such remaining in possession shall be paid by Lessee and shall reduce "pro tanto" the obligation of Lessee to payment hereunder.

Section 1104. Conditions of Default. This Agreement shall be considered in default when Lessee fails to fulfill any of the terms, conditions, or covenants of this Agreement, subject to Article X above.

Section 1105. Non-Discrimination and Affirmative Action Program.

- A. Lessee hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Lessee hereby agrees that its Premises shall be posted to such effect as required by such regulation.
- B. Lessee agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Lessee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Lessee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Lessee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Lessee shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Lessee agrees that should it be determined by Lessee or City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination, as to the steps to be taken by Lessee to achieve the provisions of his program.
- E. Lessee will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Lessee further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Lessee in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Lessee is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Lessee shall notify the City Counselor in writing of such suit or threatened suit within ten (10) business days.
- H. In event of Lessee's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit his books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part subject to Article X above, and Lessee may be declared ineligible for further City contracts for a period of one year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Lessee shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Lessee will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1106. No Personal Liability. No Alderman, Commissioner, Director, officer, board member, employee, shareholder, partner,

member, or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1107. Force Majeure. Neither City nor Lessee shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellions or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1108. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto.

Section 1109. Quiet Enjoyment. Subject to the terms, covenants and conditions of this Agreement, City covenants that Lessee on paying the rents and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1110. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1111. Title to Site. The Premises from the Effective Date until the expiration or early termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

Section 1112. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any applicable agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1113. Modifications to Maintain Federal Compliance. In the event that the FAA requires, as a condition precedent to granting funds for improvements, development, or the expansion of the Airport modifications or changes to the Agreement, or determines this Agreement to be inconsistent with City's grant assurances, current or future, Lessee agrees to either (i) consent to such reasonable amendments, modifications or changes to this Agreement as may be reasonably required for City to maintain and/or obtain said FAA funds or as required by the FAA, or (ii) consent to a cancellation of this Agreement with one (1) year prior written notice.

Section 1114. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter.

Section 1115. 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 terms and provisions hereof or the interpretation or construction thereof.

Section 1116. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Agreement.

Section 1117. Withholding Required Approvals. Whenever the approval of City, or Director, or of Lessee is required herein, no such approval shall be unreasonably requested or withheld, conditioned or delayed. Any non-approval of a TCA by City shall set forth in detail the objections of City to the TCA.

Section 1118. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. No waiver shall be binding unless executed in writing by the party granting the waiver.

Section 1119. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1120. Prevailing Wage. Lessee shall, as a condition of this Agreement, include in all service contracts pertaining to this Agreement, 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 City of St. Louis Ordinance No. 62124.

Section 1121. Americans with Disabilities Act ("ADA"). Lessee shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Lessee's Premises.

Section 1122. Advertising. Lessee shall have no right to use the trademarks, symbols, trade names or name of the Airport, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of Director.

Section 1123. 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, Director shall 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 Director are final.

Section 1124. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1125. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. Each party acknowledges that such party and counsel, after negotiation and consultation, has received and reviewed this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1126. Entire Agreement. The terms, covenants, warranties, conditions, and provisions of this Agreement are intended by the parties as a final expression of this Agreement with respect to said provisions as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended by written agreement duly authorized and executed by all the signatories to this Agreement.

Section 1127. Required Approvals. When the consent, approval, waiver, or certification ("Approval") of other party is required under the terms of this Agreement, such approval must be in writing and signed by the party making the Approval. Whenever the Approval of City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. City and Lessee agree that extensions of time for performance may be made by the written mutual consent of the Director and Lessee or its designee.

Section 1128. Previous Agreements. It is expressly understood by the parties hereto that the provisions of this Agreement shall in no way affect or impair the terms, covenants, conditions, or obligations of any other existing or prior agreement between the Lessee and the City

Section 1129. Binding Contracts: Counterparts. This Agreement shall become effective and binding only upon the execution and delivery hereof by the City and Lessee. Lessee acknowledges and agrees that this Agreement is contingent upon approval of the City's Board of Estimate and Apportionment and its Board of Aldermen, and the payment of the Pre-Paid Rental due on the Commencement Date of this Agreement (see Article IV, Section 402.A.). This Agreement and any companion document or instrument referred to herein, may be executed in any number of counterparts, each of which shall be original, but all of which together shall constitute one document or instrument.

Section 1130. Memorandum of Lease. City and Lessee agree at the request of either party to execute a memorandum of this Agreement in a recordable form for the sole purpose of giving notice of this Agreement.

Section 1131. Exhibits. All exhibits described herein are fully incorporated into this Agreement by this reference as if fully set out herein. The Director of Airports (on behalf of City) and Lessee shall reasonably and in good faith finalize and attach all such exhibits to the Agreement, which may not have been in final form as of the date of this Agreement.

Section 1132. Facsimile Signatures. This Agreement may be executed via facsimile and the facsimile signatures of each of the Parties shall be valid and binding on the Parties.

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

Pursuant to City of St. Louis Ordinance _____ approved on _____,

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

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

BY: _____
Commission Chairman
and Director of Airports
Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on _____, _____

BY: _____
Secretary, _____ Date
Board of Estimate & Apportionment

APPROVED AS TO FORM BY:

COUNTERSIGNED BY:

City Counselor _____ Date
City of St. Louis

Comptroller, _____ Date
City of St. Louis

ATTESTED TO BY:

Register, _____ Date
City of St. Louis

GATE GOURMET, INC.

ATTEST

BY: _____

BY: _____
Secretary _____ Date

Title: _____
Date: _____

Exhibit "A"
Legal Description
Gate Gourmet, Inc.
Lease Agreement AL-288

A TRACT OF LAND IN THE FRACTIONAL SECTION 9 AND 10, TOWNSHIP 46 NORTH, RANGE 6 EAST, ST. LOUIS COUNTY, MISSOURI AND BEING PART OF BERKELEY ACRES SUBDIVISION, AS RECORDED IN PLAT BOOK 17 PAGE 74, AND BEING PART OF KATHMAR SUBDIVISION, AS RECORDED IN PLAT BOOK 12, PAGE 16, OF THE ST. LOUIS COUNTY, MISSOURI RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE SOUTHEAST CORNER OF SAID BERKELEY ACRES, AND THE SOUTHWESTERN CORNER OF SAID KATHMAR SUBDIVISION;

THENCE, LEAVING THE SOUTHWEST CORNER OF SAID KATHMAR SUBDIVISION, ALONG THE SOUTHERN LINE OF SAID BERKELEY ACRES, NORTH 83 DEGREES 13 MINUTES 06 SECONDS WEST, A DISTANCE OF 321.58 FEET TO A POINT ON THE NORTHERN LINE OF SCUDDER ROAD (50.00 FEET WIDE) SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE, LEAVING THE NORTHERN LINE OF SAID SCUDDER ROAD AND THE SOUTHERN LINE OF SAID BERKELEY ACRES, ALONG THE EASTERN RIGHT OF WAY LINE OF PROPOSED JAMES S. MCDONNELL BOULEVARD, THE FOLLOWING COURSES AND DISTANCES;

NORTH 22 DEGREES 53 MINUTES 49 SECONDS WEST, 29.79 FEET.

NORTH 02 DEGREES 44 MINUTES 06 SECONDS EAST, 990.44 FEET;

THENCE, LEAVING SOUTH 89 DEGREES 42 MINUTES 47 SECONDS EAST, A DISTANCE OF 284.83 FEET TO A POINT ON THE EASTERN LINE OF THE AFOREMENTIONED BERKELEY ACRES, SAID POINT ALSO BEING ON THE WESTERN RIGHT OF WAY LINE OF THE STATE OF MISSOURI INNER BELT ROUTE I-170 (WIDTH VARIES) AS RECORDED IN DEED BOOK 6903 PAGE 512, DEED BOOK 6942 PAGE 1308, DEED BOOK 6517 PAGE 762, DEED BOOK 6485 PAGE 64, DEED BOOK 6505 PAGE 1341, DEED BOOK 6508 PAGE 1634, DEED BOOK 6535 PAGE 453, DEED BOOK 6527 PAGE 2192, DEED BOOK 6508 PAGE 10, DEED BOOK 6899 PAGE 1636, DEED BOOK 8729 PAGE 412, DEED BOOK 6853 PAGE 763, AND DEED BOOK 6898 PAGE 1549, OF THE ST. LOUIS COUNTY, MISSOURI RECORDS;

THENCE, CONTINUING ALONG THE EASTERN LINE OF SAID BERKELEY ACRES SUBDIVISION, AND THE WESTERN RIGHT OF WAY LINE OF SAID STATE OF MISSOURI INNER BELT ROUTE I-170, SOUTH 00 DEGREES 04 MINUTES 21 SECONDS WEST, A DISTANCE OF 569.99 FEET TO A POINT;

THENCE, LEAVING THE EASTERN LINE OF SAID BERKELEY ACRES, ALONG THE SOUTHERN, EASTERN AND NORTHERN RIGHT OF WAY LINES OF SAID STATE OF MISSOURI INNER BELT ROUTE I-170, THE FOLLOWING

COURSES AND DISTANCES;

Exhibit "A"
Legal Description
Gate Gourmet, Inc.
Lease Agreement AL-288

- SOUTH 89 DEGREES 08 MINUTES 05 SECONDS EAST, 54.97 FEET;
- SOUTH 19 DEGREES 44 MINUTES 21 SECONDS EAST, 105.73 FEET;
- SOUTH 23 DEGREES 43 MINUTES 20 SECONDS EAST, 218.57 FEET;
- NORTH 89 DEGREES 39 MINUTES 08 SECONDS WEST, 59.31 FEET;
- SOUTH 00 DEGREES 03 MINUTES 42 SECONDS WEST, 167.10 FEET;
- NORTH 82 DEGREES 19 MINUTES 10 SECONDS WEST, 36.59 FEET;
- NORTH 89 DEGREES 21 MINUTES 51 SECONDS WEST, 292.91 FEET;

THENCE, NORTH 30 DEGREES 47 MINUTES 24 SECONDS WEST, 17.54 FEET TO A POINT ON THE EASTERN LINE OF BERKELEY AVENUE AS RECORDED IN THE AFOREMENTIONED BERKELEY ACRES;

THENCE, LEAVING THE EASTERN LINE OF SAID BERKELEY AVENUE, SOUTH 89 DEGREES 10 MINUTES 39 SECONDS WEST, A DISTANCE OF 39.71 FEET TO A POINT ON THE WESTERN LINE OF SAID BERKELEY AVENUE;

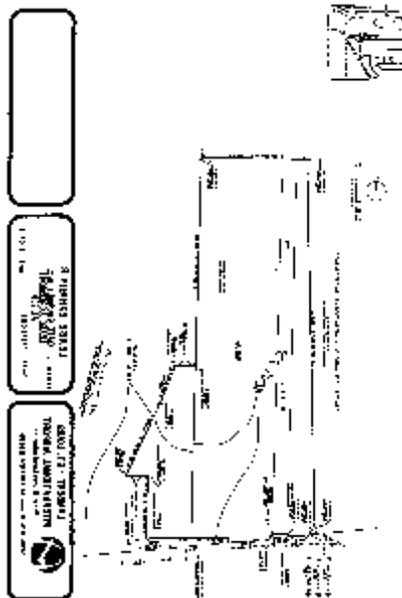
THENCE, LEAVING THE WESTERN LINE OF SAID BERKELEY AVENUE, SOUTH 43 DEGREES 07 MINUTES 05 SECONDS WEST, A DISTANCE OF 9.90 FEET TO A POINT ON THE SOUTHERN LINE OF THE AFOREMENTIONED BERKELEY ACRES;

THENCE, ALONG THE SOUTHERN LINE OF SAID BERKELEY ACRES, AND THE NORTHERN LINE OF THE AFOREMENTIONED SCUDDER ROAD, NORTH 83 DEGREES 13 MINUTES 39 SECONDS WEST, A DISTANCE OF 54.65 FEET, BACK TO THE TRUE POINT OF BEGINNING AND CONTAINING 370,260 SQUARE FEET, OR 8.500 ACRES, MORE OR LESS, ACCORDING TO SURVEYS AND CALCULATIONS PERFORMED BY HANSON PROFESSIONAL SERVICES INC. DURING THE MONTH OF JUNE, 2002.

See attached Lease Exhibit "B"

Approved: August 5, 2002

ORDNANCE 65624 - LEASE EXHIBIT B



ORDINANCE #65625
Board Bill No. 177
Committee Substitute

An Ordinance recommended and approved by the Airport Commission, Board of Public Service, and the Board of Estimate and Apportionment authorizing a First Amendment to Section One of the Building Projects Public Works Ordinance 65163 approved February 15, 2001, which authorized a multi-year public work and improvement program (the "Building Projects") at Lambert-St. Louis International Airport (the "Airport"), adding certain public work projects (more fully described in Section One of this Ordinance) to the listing of Building Projects authorized therein and increasing the total estimated cost of the Building Projects by Twenty Six Million Four Hundred Twenty Six Thousand Dollars (\$26,426,000) to One Hundred Seven Million Eight Hundred Eighty Six Thousand Dollars (\$107,886,000); amending Section Two of the Building Projects Public Works Ordinance 65163, which authorized and provided for the initial appropriation and expenditure of funds for the Building Projects, by deleting Section Two of Ordinance 65163 in its entirety and substituting a new Section Two authorizing and providing for the initial appropriation and expenditure of funds for the Building Projects and providing for the receipt of supplemental appropriations when authorized by ordinance as funds become available to continue the Building Projects; amending Sections Nine and Twelve of Ordinance 65163 as more fully described respectively in Sections Three and Four of this Ordinance; authorizing a First Supplemental Appropriation in the amount of Eight Hundred Thousand Dollars (\$800,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Building Projects Public Works Ordinance 65163 for the payment of costs authorized therein; containing a severability clause; and containing an emergency clause.

WHEREAS, the Building Projects Public Works Ordinance 65163 approved February 15, 2001, authorized and established a multi-year public work and improvement program (more fully described in Section One of Ordinance 65163) (the "Building Projects") at Lambert-St. Louis International Airport (the "Airport"), providing for the acquisition of certain real and personal property rights and the construction management and construction for additions, improvements, and new facilities to and for the terminal complexes, and concourses, parking facilities, associated Airport buildings, roadways, driveways and environs, and the administration and management of the Building Projects at a total estimated cost of Eighty One Million Four Hundred Sixty Thousand Dollars (\$81,460,000), authorized an initial appropriation of Eighty One Million Four Hundred Sixty Thousand Dollars (\$81,460,000) conditioned and subject in part to the issuance of the "Series 2001 Capital Improvement Program Bonds" (as defined and provided for in the Series 2001 Capital Improvement Program Bond Ordinance 65150 approved February 8, 2001 [BOARD BILL NO. 259] that was authorized but not issued) and the FAA's approval of the "City's Passenger Facility Charge Application Number Five", contained a severability clause, and contained an emergency clause;

WHEREAS, the City now intends to issue in one or more series in an aggregate principal amount not to exceed One Hundred Seventy Five Million Dollars (\$175,000,000) "Airport Revenue Bonds, Series 2002 (2002 Capital Improvement Program) Lambert-St. Louis International Airport" (the "Series 2002 Bonds") pursuant to a "Ninth Supplemental Indenture" (as defined in BOARD BILL NO. 162) between the City and the Trustee of the Series 2002 Bonds authorized by "BOARD BILL NO. 162" as approved by the City's Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance"), for the purpose of providing funds to finance the costs of the "2002 Project", as defined in BOARD BILL NO. 162;

WHEREAS, it is now necessary to add certain public work projects to the listing of Building Projects authorized in Section One of the Building Projects Public Works Ordinance 65163 and to increase by Twenty Six Million Four Hundred Twenty Six Thousand Dollars (\$26,426,000) the total estimate costs for the Building Projects provided for in Section One of Ordinance 65163 to One Hundred Seven Million Eight Hundred Eighty Six Thousand Dollars (\$107,886,000);

WHEREAS, it is now necessary to amend Section Two of Building Projects Public Works Ordinance 65163 that authorized and provided for the initial appropriation and the expenditure of funds for the Building Projects by deleting Section Two of Ordinance 65163 in its entirety and substituting a new Section Two authorizing and providing for the initial appropriation and expenditure of funds for the Building Projects and providing for the receipt of supplemental appropriations when authorized by ordinance, as funds become available to continue the Building Projects;

WHEREAS, it is also necessary to amend Sections Nine and Twelve of the Building Projects Public Works Ordinance 65163 as more fully described respectively in Sections Three and Four of this Ordinance;

WHEREAS, the initial appropriation and the expenditure of funds authorized and provided for in the Building Projects Public Works Ordinance 65163 from the sub-account of the Series 2002 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established pursuant to "BOARD BILL NO. 162" is expressly conditioned on the issuance of the Series 2002 Bonds; and

WHEREAS, it is now necessary to authorize a First Supplemental Appropriation in the amount of Eight Hundred Thousand Dollars (\$800,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Building Projects Public Works Ordinance 65163 in order to continue the Building Projects and the payment of costs authorized therein.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Section One of the Building Projects Public Works Ordinance 65163 approved February 15, 2001, is hereby amended by deleting the following words and figures:

“construction management and construction for additions, improvements, and new facilities to and for the terminal complexes and concourses, parking facilities, associated Airport buildings, roadways, driveways, and environs,”

and replacing with the following words and figures:

“construction management and construction for additions, expansions, improvements, and new facilities to and for the terminal complexes and concourses, boarding devices, vertical and horizontal passenger conveyance systems, electronic information and communication systems, airline/passenger interface facilities, improvements and additions as required by the United States Transportation Security Administration, parking facilities, associated Airport buildings, roadways, driveways, and environs necessary to keep said Airport facilities, buildings, structures, terminal complexes and concourses, parking facilities, roadways, driveways, and environs economically, operationally, and architecturally competitive with other major hub airports for the next decade,”

and also deleting the following words and figures from the last clause of Section One of the Building Projects Public Works Ordinance 65163 approved February 15, 2001:

“and other necessary and related work or services for the development, implementation, administration, management or monitoring of the Building Projects at a total estimated cost of Eighty One Million Four Hundred Sixty Thousand Dollars (\$81,460,000).”

and replacing with the following words and figures:

“replace asphalt on Lambert Boulevard, provide B/C/D Checkpoint Improvements, and other necessary and related work or services for the development, implementation, administration, management, or monitoring of the Building Projects at a total estimated cost of One Hundred Seven Million Eight Hundred Eighty Six Thousand Dollars (\$107,886,000);”

SECTION TWO. Section Two of the Building Projects Public Works Ordinance 65163 approved February 15, 2001, is hereby deleted in its entirety as set out below:

“SECTION TWO. There is hereby authorized an appropriation of Eighty One Million Four Hundred Sixty Thousand Dollars (\$81,460,000), as follows:

- a) Four Million Nine Hundred Forty Four Thousand Dollars (\$4,944,000) from the sub-account of the Series 1997 Airport Construction Account in the Airport Construction Fund designated as the Series 1997 Improvement Project Sub-account (the "Airport Construction Fund") established pursuant to Ordinance No. 64120 approved July 23, 1997 (the "1997 Airport Bond Ordinance",
- b) the amount of the net proceeds for “The City of St. Louis, Missouri Airport Revenue Bonds, Series 2001 (Capital Improvement Program)” deposited by the Trustee and/or City into the Series 2001 Airport Construction Account of the Construction Fund to finance the costs of the “2001 Project” as defined and provided for in “BOARD BILL NO. 259” as approved by the City’s Board of Aldermen (the "Series 2001 Capital Improvement Program Bond Ordinance") less Eleven Million Three Hundred Fifty Five Thousand Dollars (\$11,355,000) (intended for certain airfield projects),
- c) Four Million Eighty Six Thousand Dollars (\$4,086,000) from the Airport Development Fund established under authority of Ordinance No. 59286, Section 13, approved October 26, 1984, and
- d) Twenty Two Million Nine Hundred Forty Six Thousand Dollars (\$22,946,000) from the Passenger Facility Charge Fund established under authority of Ordinance 62501, Section 6, approved February 10, 1992,

to be expended for the payment of costs for work and services authorized herein.”

and the following words and figures are substituted in their place:

“SECTION THREE. There is hereby authorized an initial appropriation as follows:

- a) Four Million Nine Hundred Forty Four Thousand Dollars (\$4,944,000) from the sub-account of the Series 1997 Airport Construction Account in the Airport Construction Fund designated as the Series 1997 Improvement Project Sub-account (the "Airport Construction Fund") established pursuant to Ordinance No. 64120 approved July 23, 1997 (the "1997 Airport Bond Ordinance",
- b) the amount of the net proceeds for “The City of St. Louis, Missouri, Airport Revenue Bonds, Series 2002 (2002 Capital Improvement Program) Lambert-St. Louis International Airport” (the “Series 2002 Bonds”) deposited by the Trustee of the Series 2002 Bonds and/or City into the Series 2002 Airport Construction Account of the Construction Fund to finance the costs of the “2002 Project” as defined and provided for in “BOARD BILL NO. 162” as approved by the City’s Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance") less: i) Forty One Million Three Thousand Five Hundred Dollars (\$41,003,500) (intended for certain airfield projects, and ii) Seven Million Dollars (\$7,000,000) (intended for certain runway protection zone

projects,

- c) Four Million Eighty Six Thousand Dollars (\$4,086,000) from the Airport Development Fund Established under authority of Ordinance No. 59286, Section 13, approved October 26, 1984, and
- d) Twenty Two Million Nine Hundred Forty Six Thousand Dollars (\$22,946,000) from the Passenger Facility Charge Fund established under authority of Ordinance 62501, Section 6, approved February 10, 1992,

to be expended for the payment of costs for work and services authorized herein and providing for the receipt of supplemental appropriations when authorized by ordinance into this Ordinance as funds become available to continue the Building Projects.”

SECTION FOUR. Section Nine of the Building Projects Public Works Ordinance 65163 approved February 15, 2001, is hereby amended by deleting the following words and figures:

“and/or to the Trustee of the Series 2001 Capital Improvement Program Bonds authorized under BOARD BILL NO. 259,”

and replacing with the following words and figures:

“and/or to the Trustee of the Series 2002 Bonds authorized under BOARD BILL NO. 162,”

SECTION FIVE. Section Twelve of the Building Projects Public Works Ordinance 65163 approved February 15, 2001, is hereby amended by deleting the following words and figures:

“The appropriation and the expenditure of funds from the Airport Construction Fund established pursuant to BOARD BILL NO. 259 are hereby conditioned on the issuance of the Series 2001 Capital Improvement Bonds”

and replacing with the following words and figures:

“The appropriation and the expenditure of funds from the Airport Construction Fund established pursuant to BOARD BILL NO. 162 are hereby conditioned on the issuance of the Series 2002 Bonds”

SECTION SIX. There is hereby authorized a First Supplemental Appropriation in the total amount of Eight Hundred Thousand Dollars (\$800,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Building Projects Public Works Ordinance 65163 for the payment of costs authorized therein.

SECTION SEVEN. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION EIGHT. This being an Ordinance providing for a public work and improvement program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20, of the City of St. Louis’ Charter and shall become effective immediately upon approval by the Mayor of the City of St. Louis.

Approved: August 5, 2002

**ORDINANCE #65626
Board Bill No. 178
Committee Substitute**

An Ordinance recommended and approved by the Airport Commission, Board of Public Service, and the Board of Estimate and Apportionment authorizing a First Amendment to Section One of the Airfield Projects Public Works Ordinance 65162 approved February 15, 2001, which authorized a multi-year public work and improvement program (the “Airfield Projects”) at Lambert-St. Louis International Airport (the “Airport”), adding certain public work projects (more fully described in Section One of this Ordinance) to the listing of Airfield Projects authorized therein and increasing the total estimated cost of the Airfield Projects by Twenty Nine Million Six Hundred Forty Eight Thousand Five Hundred Dollars (\$29,648,500) to Forty Seven Million Two Hundred Forty Three Thousand Five Hundred Dollars (\$47,243,500); amending Section Two of the Airfield Projects Public Works Ordinance 65162, which authorized and provided for the initial appropriation and expenditure of funds for the Airfield Projects, by deleting Section Two of Ordinance 65162 in its entirety and substituting a new Section Two authorizing and providing for the initial appropriation and expenditure of funds for the Airfield Projects; amending Sections Five and Eight of Ordinance 65162 as more fully described respectively in Sections Three and Four of this Ordinance; containing a severability clause; and containing an emergency clause.

WHEREAS, the Airfield Projects Public Works Ordinance 65162 approved February 15, 2001, authorized and established a multi-year public work and improvement program (more fully described in Section One of Ordinance 65162) (the “Airfield Projects”) at Lambert-St. Louis International Airport (the “Airport”) and the development, implementation, administration, management, and monitoring of the Airfield Projects at total estimated cost of Seventeen Million Five Hundred Ninety Five Thousand Dollars (\$17,595,000), authorized an initial appropriation of Seventeen Million Five Hundred Ninety Five Thousand Dollars

(\$17,595,000) conditioned and subject in part to the issuance of the "Series 2001 Capital Improvement Program Bonds" (as defined and provided for in the Series 2001 Capital Improvement Program Bond Ordinance 65150 approved February 8, 2001 [BOARD BILL NO. 259] that was authorized but not issued), contained a severability clause, and contained an emergency clause;

WHEREAS, the City now intends to issue in one or more series in an aggregate principal amount not to exceed One Hundred Seventy Five Million Dollars (\$175,000,000) "Airport Revenue Bonds, Series 2002 (2002 Capital Improvement Program) Lambert-St. Louis International Airport" (the "Series 2002 Bonds") pursuant to a "Ninth Supplemental Indenture" (as defined in BOARD BILL NO. 162) between the City and the Trustee of the Series 2002 Bonds authorized by "BOARD BILL NO. 162" as approved by the City's Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance"), for the purpose of providing funds to finance the costs of the "2002 Project", as defined in BOARD BILL NO. 162;

WHEREAS, it is now necessary to add certain public work projects to the listing of Airport Projects authorized in Section One of the Airfield Projects Public Works Ordinance 65162 and to increase by Twenty Nine Million Six Hundred Forty Eight Thousand Five Hundred Dollars (\$29,648,500) the total estimated costs for the Airfield Projects provided for in Section One of Ordinance 65162 to Forty Seven Million Two Hundred Forty Three Thousand Five Hundred Dollars (\$47,243,500);

WHEREAS, it is now necessary to amend Section Two of Airfield Projects Public Works Ordinance 65162 that authorized and provided for the initial appropriation and the expenditure of funds for the Airfield Projects by deleting Section Two of Ordinance 65162 in its entirety and substituting a new Section Two authorizing and providing for the initial appropriation and expenditure of funds for the Airfield Projects;

WHEREAS, it is also necessary to amend Sections Five and Eight of the Airfield Projects Public Works Ordinance 65162 as more fully described respectively in Sections Three and Four of this Ordinance; and

WHEREAS, the initial appropriation and the expenditure of funds authorized and provided for in the Airfield Projects Public Works Ordinance 65162 from the sub-account of the Series 2002 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established pursuant to "BOARD BILL NO. 162" is expressly conditioned on the issuance of the Series 2002 Bonds.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Section One of the Airfield Projects Public Works Ordinance 65162 approved February 15, 2001, is hereby amended by adding the following words after the words "advertising and the taking of the bids, construction management and construction costs":

"necessary to keep the Airport's airfield economically and operationally competitive with other major hub airports for the next decade, including, but not limited to, electronic control and information systems, provide"

and deleting the following words and figures from the last clause of Section One of the Airfield Projects Public Works Ordinance 65162 approved February 15, 2001:

"at a total estimated cost of Seventeen Million Five Hundred and Ninety Five Thousand Dollars (\$17,595,000)."

and replacing with the following words and figures:

"at a total estimated cost of Forty Seven Million Two Hundred Forty Three Thousand Five Hundred Dollars (\$47,243,500)."

SECTION TWO. Section Two of the Airfield Projects Public Works Ordinance 65162 approved February 15, 2001, is hereby deleted in its entirety as set out below:

"SECTION TWO. There is hereby authorized an appropriation of Seventeen Million Five Hundred Ninety Five Thousand Dollars (\$17,595,000) as follows: a) Five Million Five Hundred Seventy Thousand Dollars (\$5,570,000) from the sub-account of the Series 1997 Airport Construction Account in the Airport Construction Fund designated as the Series 1997 Improvement Project Sub-account (the "Airport Construction Fund") established pursuant to Ordinance No. 64120 approved July 23, 1997 (the "1997 Airport Bond Ordinance"), b) Eleven Million Three Hundred Fifty Five Thousand Dollars (\$11,355,000) from the sub-account of the Series 2001 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established and authorized pursuant to "BOARD BILL NO. 259" as approved by the City's Board of Aldermen (the "Series 2001 Capital Improvement Bond Ordinance"), and c) Six Hundred Seventy Thousand Dollars (\$670,000) from the Airport Development Fund Established under authority of Ordinance No. 59286, Section 13, approved October 26, 1984, to be expended for the payment of costs for work and services authorized herein."

and the following words and figures are substituted in their place:

"SECTION TWO. There is hereby authorized an initial appropriation of Forty Seven Million Two Hundred Forty Three Thousand Five Hundred Dollars (\$47,243,500) as follows: a) Five Million Five Hundred Seventy Thousand Dollars (\$5,570,000) from the sub-account of the Series 1997 Airport Construction Account in the Airport Construction Fund designated as the Series 1997 Improvement Project Sub-account (the "Airport Construction Fund") established pursuant

to Ordinance No. 64120 approved July 23, 1997 (the "1997 Airport Bond Ordinance"), b) Forty One Million Three Thousand Five Hundred Dollars (\$41,003,500) from the sub-account of the Series 2002 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established and authorized pursuant to "BOARD BILL NO. 162" as approved by the City's Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance"), and c) Six Hundred Seventy Thousand Dollars (\$670,000) from the Airport Development Fund Established under authority of Ordinance No. 59286, Section 13, approved October 26, 1984, to be expended for the payment of costs for work and services authorized herein."

SECTION THREE. Section Five of the Airport Projects Public Works Ordinance 65162 approved February 15, 2001, is hereby amended by deleting the following words and figures:

"and/or to the Trustee of the Series 2001 Capital Improvement Program Bonds authorized under BOARD BILL NO. 259," and replacing with the following words and figures:

"and/or to the Trustee of the Series 2002 Bonds authorized under BOARD BILL NO. 162,"

SECTION FOUR. Section Eight of the Airport Projects Public Works Ordinance 65162 approved February 15, 2001, is hereby amended by deleting the following words and figures:

"The appropriation and the expenditure of funds authorized herein from the Airport Construction Fund established pursuant to BOARD BILL NO. 259 are hereby conditioned on the issuance of the Series 2001 Capital Improvement Bonds."

and replacing with the following words and figures:

"The appropriation and the expenditure of funds authorized herein from the Airport Construction Fund established pursuant to BOARD BILL NO. 162 are hereby conditioned on the issuance of the Series 2002 Bonds."

SECTION FIVE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION SIX. This being an Ordinance providing for a public work and improvement program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20, of the City of St. Louis' Charter and shall become effective immediately upon approval by the Mayor of the City of St. Louis.

Approved: August 5, 2002

**ORDINANCE #65627
Board Bill No. 179
Committee Substitute**

An Ordinance recommended and approved by the Airport Commission and the Board of Estimate and Apportionment authorizing a First Supplemental Appropriation in the amount of Seven Million Dollars (\$7,000,000) from the sub-account of the Series 2002 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established and authorized pursuant to "BOARD BILL NO. 162" as approved by the City of St. Louis' Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance"), into the Runway Protection Zone Ordinance 64220 approved December 15, 1997, which authorized and established a multi-year public work and improvement program (the "Program") at Lambert-St. Louis International Airport that is more fully described in Section One of Ordinance 64220, in order to continue the Program and the payment or reimbursement of eligible Program costs authorized therein; authorizing and directing the Comptroller and/or the Treasurer of the City of St. Louis, as necessary, to make such applications or certifications and provide such data to the Trustee of the "Series 2002 Bonds" (as defined and authorized under BOARD BILL NO. 162), and to take whatever action necessary in order to provide for the payment or reimbursement of eligible Program costs authorized therein; conditioning the appropriation and the expenditure or reimbursement of funds authorized herein from the Airport Construction Fund established pursuant to BOARD BILL NO. 162 on the issuance of the Series 2002 Bonds; and containing a severability clause; and an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. There is hereby authorized a First Supplemental Appropriation in the amount of Seven Million Dollars (\$7,000,000) from the sub-account of the Series 2002 Airport Construction Account in the Construction Fund (the "Airport Construction Fund") established and authorized pursuant to "BOARD BILL NO. 162" as approved by the City of St. Louis' Board of Aldermen (the "Series 2002 Capital Improvement Program Bond Ordinance"), into the Runway Protection Zone Ordinance 64220 approved December 15, 1997, which authorized and established a multi-year public work and improvement program (the "Program") at Lambert-St. Louis International Airport that is more fully described in Section One of Ordinance 64220, in order to continue the Program and the payment or reimbursement of eligible Program costs authorized therein.

SECTION TWO. The Comptroller and/or the Treasurer of the City of St. Louis (the "City"), as necessary, are hereby authorized and directed to make such applications or certifications and provide such data to the Trustee of the "Series 2002 Capital

Bonds” (as defined and authorized under BOARD BILL NO. 162), and to take whatever action necessary in order to provide for the payment or reimbursement of eligible Program costs authorized therein.

SECTION THREE. The appropriation and the expenditure or reimbursement of funds authorized herein from the Airport Construction Fund established pursuant to BOARD BILL NO. 162 are hereby conditioned on the issuance of the Series 2002 Bonds.

SECTION FOUR. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FIVE. This being an Ordinance providing for a public works and improvement program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20, of the City’s Charter and shall become effective immediately upon approval by the Mayor of the City.

Approved: August 5, 2002