

**ORDINANCE #67500  
Board Bill No. 21**

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 the Lambert-St. Louis International Airport® (the "Airport") "Operating Agreement" (Wireless Internet Access System) (AL-472) between the City and Concourse Communications St. Louis, LLC, a Limited Liability Corporation organized and existing under the laws of the State of Delaware; the Operating Agreement, which was recommended and approved by the City's Selection Committee for the installation, operation, marketing, maintenance, and management of a Wireless Internet Access System at the Airport and the City's Airport Commission, is attached hereto as ATTACHMENT "1" and is made a part hereof; containing a severability clause; and an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® (the "Airport") "Operating Agreement" (Wireless Internet Access System) (AL-472) between the City and Concourse Communications St. Louis, LLC, a Limited Liability Corporation organized and existing under the laws of the State of Delaware; the Operating Agreement is to read in words and figures substantially as set out in ATTACHMENT "1" and is attached hereto and made a part hereof

**SECTION TWO.** The sections, conditions, and 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 THREE.** 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 Charter and shall become effective immediately upon its approval by the Mayor of the City.

**Lambert St. Louis International Airport®**



**Concourse Communications ST. LOUIS, LLC**

**Operating Agreement NO. AL- 472**

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**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®  
OPERATING AGREEMENT  
(WIRELESS INTERNET ACCESS SYSTEM)**

THIS AGREEMENT, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri (“**City**”) and Concourse Communications St. Louis, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**Operator**”).

WITNESSETH, THAT:

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

WHEREAS, a wireless internet access system (the “**System**”) at the Airport is essential for proper accommodation of the traveling public;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of a wireless internet access system:

- to provide an enterprise class, multi-user wireless internet access system designed to provide comprehensive wireless internet coverage that meets Airport users’ needs and adds value to other Airport services;
- to provide high quality, secure, reliable and easy to use wireless internet access to the public, qualified Internet Service Providers (“**ISPs**”) and Airport Authority staff, airlines, concessionaires, tenants, contractors, and public safety and operational groups (“**Private Side Users**”) at the Airport, such services will be provided at a cost attractive to Airport users;
- to provide secure access, authentication and accounting (“**AAA**”) mechanisms with an efficient administrative interface for the Airport that allows timely access to detailed usage, revenue, and other statistical reports;
- to manage the System to ensure optimal uptime and performance, to offer neutral host wireless access to all qualified ISPs, and a high quality customer service experience, providing superior network support, at both the physical and customer level;
- to leverage the value of the Airport's passenger market, facilities and infrastructure to maximize potential revenue to the Airport, capitalizing on proven revenue opportunities as well as those that may present themselves as the wireless industry develops, e.g. content, advertising, Voice over Wireless, etc.;
- to enable equal, open access, consistent terms and opportunity to all wireless ISPs, attracting as many service providers as possible, with an eye towards maximizing revenues;
- to accommodate current technological and capacity requirements for wireless services, with the capability to add capacity and coverage to support increased demand as the needs arise; and
- to be responsive to both Federal Aviation Administration (“**FAA**”) and City goals for Disadvantaged Business Enterprise (“**DBE**”) participation in Airport business opportunities.

WHEREAS, the City has advertised and issued a Request For Proposals with Qualifications (“**RFP**”) dated September 11, 2006 and received proposals for the right to operate and manage a wireless internet access system, and by this process the City has determined that the Operator is a qualified operator of this service and has submitted a proposal deemed to be the best proposal and the most advantageous to the public, Private Side Users, and the City.

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

**ARTICLE I  
DEFINITIONS**

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

“**Agreement**” shall mean this Operating Agreement for a Wireless Internet Access System, duly approved by the parties hereto.

“**Agreement Term**” as stated in Article IV, Section 402 herein.

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

“**Airport Properties Department**” shall mean that department or successor department of the City of St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, Operator and other space at the Airport, and shall be the Operator’s point of contact with the Airport on all issues related to this Agreement.

“**Airport Authority**” or “**Authority**” shall mean the City of St. Louis Airport Authority, the City department responsible for managing and operating the Airport.

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

“**Contract Year**” shall mean one of not more than seven (7) consecutive twelve month periods commencing on the first day following the Initial Term (as defined below) of the Agreement, as specified in Article IV, Section 402 and Section 403.

“**days**” shall mean consecutive calendar days unless otherwise expressly stated.

“**Designated Areas**” shall mean those areas of the Airport terminal complex designated by the Director where the System shall be available and operational. Initial coverage areas include the Airport ticket lobbies and associated offices, administrative offices, concourses, gate areas, concession areas, baggage claim areas and associated offices, and rental car counters. This area is subject to expansion as the Director may deem necessary.

“**Director**” shall mean the Director of the Airport for the City or his/her designated representative, and incorporates the granting of approval requirements of Section 1415 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 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 refutably 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 Receipts**” shall mean the total revenues generated by the operation of the System from all sources and all service categories at this Airport under the Agreement and any derivative thereof performed by Operator, its subcontractors, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order. This includes all revenue generated from sponsorship, advertising and other indirect sources of revenue. Only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;
- receipts in the forms 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 Operator;
- capital contributions, loan proceeds, or other revenues, proceeds or receipts of the Operator or its affiliates that do not arise from the charges and fees for use of, connection to, and advertising on the System.
- cash in the form of payment from the City to the Operator connected to the operation and maintenance of stationary internet access points as outlined in Section 618.

“**Improvements**” shall mean without limitation all equipment, hardware, cabling, wiring, conduits, antennas, and other associated equipment, and fixtures installed, built or erected by the Operator, and forming a part of the Premises and/or is a part of or a component of the System as more fully described in Section 709 herein.

“**Initial Term**” as stated in Section 401 herein.

“**Minimum Annual Guarantee**” or “**MAG**” shall mean Operator’s minimum annual obligation as specified in Article V, Section 502(A) hereof.

“**Operator**” (or “**Contractor**”) as stated in the preamble hereof.

“**Option Term**” shall mean one of not more than two (2) consecutive twelve month periods subject to Article IV, Section 403 herein.

“**Percentage Fee**” shall mean the product of (i) the Gross Receipts for service multiplied by (ii) the percentage set out in Article V, Section 502(B) hereof.

“**Premises**” shall mean a location or locations described in Section 201 that have been designated by the City for installation or housing of equipment, hardware, conduit, cable runs, wiring, antennas and other associated equipment or fixtures necessary for the proper performance of the System, for the sale of Operator’s services, and for other uses provided specifically herein, together with all Improvements thereon (see Sections 201 and 709).

“**Wireless Internet Access System**” or “**System**” shall mean a fully operational enterprise-class, non-proprietary, 802.11 standards based Wireless Local Area Network (**WLAN**) capable of accommodating the needs of multiple users groups within the Airport terminal complex. The System will allow public users to access the Internet on a transaction (per-use) basis or via qualified ISP, with whom the user has a subscription. The System shall be made available to all reasonably qualified ISP’s in a nondiscriminatory manner, under established and consistent business terms.

## ARTICLE II PREMISES

Section 201. Premises. City hereby permits the Operator to install, operate, manage, support and maintain the System, including equipment space, cable, conduit and power runs, at the locations within the Designated Areas of the Airport terminal complex, as described in **Exhibit “A-1,”** entitled “Premises,” attached hereto and made part hereof, in accordance with rights granted under Section 301. Rights.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Operator. The City shall not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Operator of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises, provided however that if any such addition, substitution, relocation, or deletion of the Premises that reduces the total square footage of the Premises by greater than fifteen percent (15%) of the total Premises originally apportioned as the Designated Areas for operation of the System, then the MAG shall thereafter be decreased in proportion to the amount of such percentage reduction, until sufficient space of similar quality is provided to the Operator.

Operator 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 limitation expressly disclaims and negates as to the Premises; a) any implied or expressed warranty of merchantability, b) any implied or expressed warranty for a particular purpose, and c) any expressed or implied warranty with the respect to the Premises or any portion thereof.

Section 202. Access. Subject to and in accordance with the terms, covenants and conditions of this Agreement, the Operator shall have the right of free access, ingress to and egress from the Premises for the Operator’s employees, agents, contractors, guests, patrons and invitees.

## ARTICLE III OPERATOR RIGHTS

Section 301. Rights. City hereby grants to the Operator, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement the nonexclusive right, license and privilege to operate, manage, market, support and maintain the System and Operator hereby assumes the obligation to design, install, construct and to operate, manage, market, support and maintain the System within the Premises.

Section 302. Advertising. City hereby grants the Operator the nonexclusive right to sell advertisements on the System splash page, which is the first page that appears on a user’s computer screen when using the System. Operator may use the Airport’s logo and trademarks upon written approval of the Director (See Section 1420). Advertising categories must be approved in advance in writing by the Director. Additionally, the Operator shall promptly remove any advertisement or advertisements which the Director, at his/her sole discretion, designates for removal from the System.

Section 303. Limitation of Rights. The Operator is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Operator, the Operator will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

#### ARTICLE IV TERM

Section 401. Initial Term. The “**Initial Term**” of this Agreement shall consist of sixty (60) days commencing on the Director’s written approval of the design of the System. During the Initial Term, the Operator will be under no obligation to pay any fees and/or rentals as described in Article V herein. All other terms, covenants, warrants and conditions shall remain in full force and effect.

Section 402. Agreement Term. Following the completion of the Initial Term as described in Section 401 herein, the Agreement will automatically continue into the “**Agreement Term**” which shall commence at the end of the Initial Term and shall be for five (5) Contract Years, which commencement and expiration date shall be written below unless sooner terminated in accordance with other provisions of this Agreement.

Commencement Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Section 403. Option Terms. The Director or his/her designee, at his/her sole option, may grant up to two (2) one (1) Contract Year “**Option Term**” following the Agreement Term by giving one-hundred and twenty (120) days advance written notice to the Operator, which shall then have thirty (30) days to accept or decline each Option Term.

Section 404. Holdover Provision. If Operator shall, with the prior written approval of the Director, continue to use the Premises after the expiration of the Agreement Term or Option Term, if applicable, the resulting use shall, unless otherwise agreed to in writing by the Director, be at will, and on a month-to month basis. During such month-to month use, Operator shall pay to City the same Minimum Annual Guarantee and revenue share as set for the final Contract Year unless different fees shall be agreed to in writing by the Director, and shall be bound by all terms, covenants and conditions of this Agreement.

Section 405. Surrender of Possession. No notice to quit possession at the expiration date of this Agreement shall be necessary. The Operator covenants and agrees that at the Expiration Date of the Agreement Term or Option Term if granted, or at the earlier termination hereof, it shall peaceably surrender possession of the Premises, in accordance with Section 709. The City shall have the right to take possession of the Premises with or without due process of law.

#### ARTICLE V FEES

Section 501. General. The Operator, for and in consideration of the rights and privileges granted herein, agrees to pay the operating fees set forth below in Sections 502, 505 and 510 and the utilities described in Section 804 of this Agreement, without demand during the Term of this Agreement and Option Term if applicable.

Section 502. Operator’s Fee Payments.

A. The Operator agrees to pay to City, for each Contract Year, a sum equal to the greater of the Minimum Annual Guarantee as set out below, or the Percentage Fee as set out in Part B of this Section 502, and which shall be applied to Gross Receipts.

The MAG for Contract Year One shall be One Hundred Thousand Dollars (\$100,000.00).

The MAG for Contract Year Two shall be One Hundred and Ten Thousand Dollars (\$110,000.00).

The MAG for Contract Year Three shall be One Hundred and Twenty Thousand Dollars (\$120,000.00).

The MAG for Contract Year Four shall be One Hundred and Thirty Thousand Dollars (\$130,000.00).

The MAG for Contract Year Five shall be One Hundred and Forty Thousand Dollars (\$140,000.00).

The MAG for Contract Option Year One (see Section 403) shall be One Hundred and Fifty Thousand Dollars (\$150,000.00).

The MAG for Contract Option Year Two (see Section 403) shall be One Hundred and Sixty Thousand Dollars (\$160,000.00).

B. Operator shall pay a Percentage Fee of 40% of Gross Receipts.

Section 503. Payment. Monthly payments to the City for each month of the entire Agreement Term, including any Option Term if applicable, shall consist of:

(a) a **Monthly MAG Payment** - an amount paid in advance on or before the first day of each month, without the need for invoice or notice, equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year, and

(b) a **Monthly Percentage Fee Payment** - an amount paid on or before the 15th day of the following month, for the preceding month, by which the Percentage Fee exceeds the Monthly MAG Payment, if applicable. (See Section 505 Unpaid Fees for the amount of any applicable service charge). If the Percentage Fee for the preceding month does not exceed the applicable Monthly MAG Payment, then no Monthly Percentage Fee Payment shall be made by the Operator.

For each partial calendar month during the Agreement Term, including any Option Term, if applicable, the applicable Monthly MAG Payment shall be prorated based on the actual days in such partial calendar month during which the Agreement was effective.

Section 504. Reports.

A. The Operator shall submit to the City by the 15th day of the second and each succeeding month of the entire Agreement Term, two copies of an accurate statement of Gross Receipts. This statement shall separately state usage and Gross Receipts for each of the various user groups, with an attached breakdown for each ISP and Private Side User. Such statement shall be certified as accurate by an officer of the Operator. The final statement of Gross Receipts shall be due by the 15th day of the month following expiration or earlier termination of this Agreement. The Operator shall report Gross Receipts, on a form(s) reasonably approved by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to proposers or bidders in a future solicitation for bids or request for proposals for this service.

B. The Operator shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports shall be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Receipts, broken out by category; (ii) a calculation of total fees due the City for the entire Contract Year; and (iii) schedule showing the total of actual payments to the City during the Contract Year. The audit reports shall also state an opinion as to the correctness of the computation of Gross Receipts without exception.

If, upon completion of such audit report (including the resolution of disputes thereof), it is established that additional fees are due City, Operator 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 Operator has overpaid City, then such overpayment from Operator shall be credited to the fees and charges next thereafter due from Operator or paid to Operator after the last Contract Year. Operator shall immediately notify City of the results of any audit conducted by Federal, State or local authorities.

C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, the Operator shall provide the City with an estimate of projected monthly Gross Receipts for the subsequent Contract Year.

D. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Section 1101 (B) (10) herein.

E. Operator 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. The Airport Authority reserves the right to investigate, monitor and/or review records for compliance. The Operator shall submit monthly DBE activity reports to the Airport Authority in a form approved by the Director.

Section 505. Unpaid Fees. All unpaid fee payments due the City hereunder shall bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due. Operator shall pay and discharge all costs and expenses including attorneys' fees, court costs and litigation costs incurred or expended by the City in collection of said delinquent amounts due including service charges.

Section 506. Performance and Payment Bond. Operator agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to Twenty Five Thousand Dollars (\$25,000.00) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the Agreement Term, or Option Term, if applicable and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Operator covenants and agrees to provide City a renewal bond sixty (60) days prior to expiration date of the expiring bond. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants, conditions, and obligations of this Agreement. The Performance and Payment Bond shall be in the form of 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 shall be kept in full force and effect during the Agreement Term and Option Term if applicable. City may agree to another form of security which may provide equal protection of City's interest. If City cashes the bond or other form of security agreed to by the City, Operator agrees to furnish a replacement Performance and Payment Bond or other form of security in the same principal amount within fifteen (15) days.

Section 507. Prompt Payment of Taxes and Fees. The Operator covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to obtain and keep current all licenses, municipal, state or federal, required for

the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 508. Accounting Records and Reports. During the Agreement Term hereof, and Option Term if applicable, the Operator shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Operator shall make same records available in the St. Louis area for one year following the termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. The Operator is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City or its' duly appointed agents or auditors at the Operator's place of records.

Section 509. Audit. City, or its duly appointed agents or auditors, reserves the right to audit Operator, its subcontractors or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. Such audit requests shall be limited to one request per Contract Year, unless the City shall reasonably conclude that an additional audit is required to verify Gross Receipts. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Operator and Gross Receipts determined by the audit, the cost of the audit shall be reimbursed by the Operator within thirty (30) days of the City's written request.

Section 510. Additional Fees, Charges and Rentals. The Operator shall pay additional fees, charges and rentals under the following conditions:

A. if the City has paid any sum(s) or has incurred any obligation(s) or expense(s) for which the Operator has agreed to pay or reimburse the City, or

B. if the City is required or elects to pay any sum(s) or incurs any obligation(s) or expense(s) because of the failure, neglect or refusal of the Operator to perform or fulfill any term, covenant or condition of this Agreement.

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 rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, as set forth herein.

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

Section 511. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Operator.

## ARTICLE VI OPERATOR'S OPERATIONS

### Section 601. Obligations of Operator.

Operator shall assume full responsibility for the design, installation, management, operation, ongoing support, maintenance, and marketing of an enterprise class, multi-user, neutral-host Wireless Local Area Network ("WLAN") providing wireless internet telecommunications access to airport passengers, tenants, employees, contractors, and visitors throughout the Designated Areas (the System) as provided for in Operator's Proposal to: Lambert-St. Louis International Airport<sup>®</sup> RFP for Wireless Internet Access System, dated September 11, 2006, as amended, which is incorporated herein by reference, and in accordance with the final design approved by the City. In addition, the Operator hereby covenants, warrants, stipulates, and agrees that:

- A. All costs for the design, installation, management, operation, maintenance and ongoing support, and possible future expansion of the System will be borne by the Operator, pursuant to its obligations herein. To the maximum extent reasonably possible the installation and operation of the System must be undertaken to minimize disruption to the Airport's facilities and operations. Operator shall ensure that the System is installed and operated in a manner that complies with applicable building codes and standards and Airport Tenant Design Standards and subject to the terms and conditions of ARTICLE VII, IMPROVEMENTS AND ALTERATIONS of this Agreement;
- B. Operator will measure and document System coverage upon completion of installation, and shall be responsible for ensuring that coverage does not materially degrade during the term of the Agreement. A copy of final as-built WLAN design documentation, including system configuration and coverage patterns, must be provided to the Airport within thirty (30) days of network launch;
- C. Operator(s) is solely responsible for the management, operation, maintenance and ongoing support of the System, and will provide high quality, secure, reliable, easy to use, enterprise class service, supporting both the physical network and the various user groups;
- D. Operator will provide all services reasonably necessary to ensure optimal System performance and uptime and a high quality user experience; including free access to an 'airport-branded' welcome and information splash page, secure access

and authorization, as well as 24 hours per day, 7 days per week, 365 days per year superior customer support and network monitoring;

- E. Operator will provide, on a continual basis, a fully managed WLAN system that provides secure access, authentication and accounting (AAA) mechanisms that accurately measure and identify wireless traffic through the System;
- F. Operator will make the System available to participating qualified Internet Service Providers (“ISPs”) so that they may provide wireless services to their subscribers while at the Airport. The System will be designed and managed in a brand neutral, nondiscriminatory manner so that all qualified ISPs have equal access to the System, under consistent terms and requirements, and so that their subscribers may access the System via their selected provider. Interested users should be able to access subscription offerings from all participating qualified ISPs;
- G. The Operator will provide wireless service and support to those users who do not have or wish to utilize a subscription internet service, on a transaction basis (“**Transaction Based Users**”) without requiring the use of any special software or commitment to an ongoing relationship between the Operator and Transaction Based User. In order to ensure Operator’s neutral status in the operation and management of the System, Operator shall not offer subscription type plans or services directly to public users of the System;
- H. Operator will make the System available to Private Side Users at the Airport, to serve the wireless internet access requirements of these users, enabling support for multiple private networks;
- I. Operator shall manage and administer access agreements, utilizing fair and consistent business terms, in substantially the form submitted in Operator’s Proposal to: Lambert-St. Louis International Airport® RFP for Wireless Internet Access System, dated September 11, 2006, as amended, to accommodate commercial and private users of the System;
- J. Operator will make up to one (1) megabyte of bandwidth of the System available to Airport staff for support of Airport operations and wireless internet communications, at no charge. At the City’s sole option, this may include a designated VLAN;
- K. At the City’s option, the Authority’s staff shall be briefed on the components and operation of the on-site network upon completion of the installation. This training is intended to acquaint Airport personnel with the features and performance of the wireless network; however, the Operator accepts full responsibility for the on-going use, operation, care and maintenance of the network and its various components, including all customer service issues;
- L. Operator will develop an Operating and Procedures Manual prior to the start of operations, to address relevant quality assurance, safety, security, system testing, and maintenance issues at initiation of the project as well as periodically during the term of the Agreement. The City shall have a minimum of ten (10) days to review and accept such procedures; and
- M. The System must be compliant with all-applicable laws, rules, regulations and license requirements of the Federal Communications Commission, the FAA, and the Airport.

Section 602. Service Levels. Operator shall comply with service levels for the System’s operation at the Airport as described in this Section 602:

- A. The Operator shall provide, or cause to be provided, Tier 1 customer service via a dedicated toll-free number on a twenty-four (24) hours per day, each and every day of the year, basis for the Term of this Agreement and Option Term if applicable. Aforementioned customer service will answer and respond to all calls related to billing support, information regarding the System services and technical support. Customer service shall be staffed by knowledgeable employees of the Operator and/or subcontractors capable of providing assistance relating to the System.
- B. The System shall have an “**Uptime**” rate of no less than ninety-eight percent (98%) and “**Connection Rate**” of ninety-eight percent (98%), on an annual basis for the Term of this Agreement and Option Term, if applicable, assuming that all users connect with the appropriate hardware and software. **Uptime** means the absence of “**Downtime**,” which is defined as any interruption in the availability of the System services due to issues with Operator’s, or any of its subcontractor’s, provided equipment and notwithstanding the foregoing includes unavailability associated with System maintenance. Downtime does not include interruptions based on outages due to force majeure (see Section 1404). Any planned maintenance activities will be scheduled between 11:00 p.m. and 6:00 a.m. local time. Any maintenance to be performed other than the hours listed above shall require the Director’s approval in writing.
- C. The Operator shall have a System network operations center available on a twenty-four (24) hours per day, each and every day of the year, basis for the Term of this Agreement and Option Term, if applicable. This center shall provide monitoring and surveillance of the System. This center will provide technical support on System network design issues, equipment issues and outages, and will provide communications directly to the Operator’s designated technical group. Each System network link, down to each access point shall be polled a minimum of every five (5) minutes to ensure connectivity. The System network operations center shall immediately answer all calls by the Interactive Voice Response (“**IVR**”) system. Eighty percent (80%) of all calls will be answered within forty-five (45) seconds of the conclusion of the IVR recording.
- D. Operator shall provide on-site repair and maintenance of Operator’s System equipment and equipment of its contractors

and subcontractors at the Airport and use its reasonable efforts to resolve all such repair and maintenance issues within seventy-two (72) hours of the time the Operator or its contractors and /or subcontractors becomes aware from any source that an outage condition or problem is caused by or related to such System equipment.

Section 603. Compliance with Security Regulations and Laws.

- A. Operator shall fully comply with all FCC regulations applicable to the operation of the System, all FAA regulations applicable to the operation of the Airport, and all Transportation Security Administration (“TSA”) security requirements. In addition, Operator shall fully comply with all Airport rules and regulations and Airport security plan. Employees of the Operator shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with TSA’s regulation 1542 regarding conduct and access to the Airport Operations Area (“AOA”) when entering the AOA.
- B. Operator shall submit to the City for approval on or before **Commencement Date** detailed written operating and security procedures. City shall have a minimum of twenty-one (21) days to review such procedures.

Section 604. Hours of Operation. Operator shall operate the System twenty four (24) hours a day, each day of the year.

Section 605. Promotion. The Operator warrants, covenants, 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. The Operator shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method over which it has control. Any action taken by the Operator to diminish the Gross Receipts of the Operator under this Agreement shall constitute a material breach hereof for which the City may terminate this Agreement and/or seek other remedies at law or in equity.

Section 606. Maintenance Personnel.

- A. Operator shall have available qualified maintenance personnel in adequate numbers to provide routine maintenance of the System and to respond to any emergency outages of the System. The Operator shall require its employees (except managerial and supervisory employees) to wear appropriate badges to indicate the fact and nature of their employment. The Operator shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of the System. The Operator shall be responsible for ensuring that its employees abide by all applicable laws, rules and regulations.
- B. The Operator, at its cost, shall conduct employee background checks of each of its personnel if required by the FAA, TSA, and/or the Airport. The Operator recognizes and agrees that security requirements may change and the Operator agrees that it shall comply with all such changes throughout the Term of this Agreement, and Option Term, if applicable.

The Operator understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for the Operator’s noncompliance with the provisions of the TSA regulation 1542 as amended or other applicable laws or regulations. The Operator shall promptly reimburse the City (within 30 days of the City’s request) for any fines or penalties paid by the City due to Operator’s noncompliance with said laws or regulations.

Section 607. Onset of Service. Operator shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as is necessary to provide the service pursuant to this Agreement

Section 608. Pricing.

- A. The Operator shall charge fair, reasonable and nondiscriminatory retail prices that are attractive to the public and substantially similar to the prices charged at comparable locations for comparable transaction based, retail usage. Initial pricing is detailed in **Exhibit B-1**, entitled “Pricing Structure,” which is attached hereto and incorporated herein, provided, however, that the Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in this Section 608(A).
- B. The Operator shall charge fair, consistent and nondiscriminatory wholesale prices to all reasonably qualified ISPs seeking to offer service to their subscribers via the System. Initial pricing is detailed in Exhibit B-1. Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(B).
- C. The Operator shall charge private side users fair, reasonable and nondiscriminatory prices that are comparable for similar services at similar facilities. Pricing should be structured to encourage use of the System by tenants and other private-side users at the Airport. Initial pricing is detailed in Exhibit B-1. Operator may reduce such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(C).
- D. The Operator shall not increase any prices in excess of those set forth in Exhibit B-1 without the prior written approval of the Director. The Operator’s prices shall be subject to review for increases only once per year unless agreed to the contrary in writing by the Director. The Operator’s prices may normally only be increased following substantiation of cost increases from service vendors and presentation of similar price increases at comparable locations.

Section 609. Relationship Manager. The Operator 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 the Operator. 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.

Section 610. Local Representative. The Operator shall at all times retain one or more qualified, competent and experienced local technician(s) (i.e. a person having a place of residence within the St. Louis metropolitan region) to assist (in such matter as the Operator and such local technician may agree) Operator in fulfilling its obligations with respect to System maintenance, response to outages, and emergency repairs.

Section 611. Conflicts. The Operator shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

Section 612. Record Keeping. The Operator agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Operator under this Agreement (these records are to be retained by the Operator). The Operator must also maintain records that document, in a format acceptable to the Director, the utilization of DBE participants.

Section 613. Transition Period. If applicable, during any future transition to another Operator, the incumbent Operator hereby warrants, represents, covenants and agrees that the Operator shall use its commercially reasonable best efforts, in good faith, to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 614. Operation.

- A. The Operator shall be responsible for all aspects of the management and operation of the System and services as required herein. Further, the Operator shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Improvements, supplies or fixtures of Operator that are used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

Section 615. Communication.

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

Section 616. Customer Complaints. Operator shall establish procedures for handling all customer complaints. Operator shall respond in writing to every complaint, written or oral, within seven (7) calendar days of the complaint and will make good faith efforts to explain, resolve or rectify the cause of the complaint. Operator shall provide the Director with a copy of each such complaint and its written response thereto. Operator shall also provide the Director with a monthly summary of complaints received together with the resolution/disposition of the complaints.

Section 617. Deliveries. Operator 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 the Operator and not the City.

Section 618. Internet Access Points for Use by Traveling Public. Operator shall provide, install, operate, manage, and maintain up to six (6) stationary high speed devices (the "Access Points") offering high speed internet access for the use of the traveling public during the Agreement Term, including any Option Term if applicable, at no charge to the traveling public or users. The location, installation, and deployment of the Access Points shall be approved in advance and in writing by the Director.

- A. The initial costs for the purchase and installation of the Access Points shall be borne by the Operator, provided that all reasonable costs associated with the purchase and installation of the Access Points shall be reimbursed by the City to the Operator within sixty (60) days of the Access Points connection to the System, as provided for in this Section 618(A). All reasonable costs associated with the purchase and installation of the Access Points shall be approved in advance and in writing by the Director. The City's reimbursement shall be in the form of authorization to the Operator to reduce its monthly payment due to the City for the proceeding month after installation of each Access Point by the approved installation costs.
- B. The Operator shall bear all costs associated with upkeep, maintenance, operation, management, and repair of the Access

Points during the Agreement, including any Option Term, if applicable; provided, however, if an Access Point requires maintenance or repair in an amount greater than ten percent (10%) of the replacement cost therefore, then Operator shall be permitted to replace such Access Point and City will reimburse such costs as described in Section 618(A) above. The Operator is hereby authorized to reduce its monthly payment due to the City for each month pursuant to Article V of this Agreement by one hundred dollars (\$100.00) for each Access Point in use during such month.

## ARTICLE VII IMPROVEMENTS AND ALTERATIONS

### Section 701. Construction by Operator.

- A. Operator takes the Premises “AS IS” as provided for in Section 201 above and agrees, at Operator’s sole cost and expense, to design, construct, equip and furnish all necessary Improvements and equipment and make related facility changes as needed to provide a fully operational and properly functioning System, pursuant to this Agreement, in accordance with plans prepared by Operator and approved by the Director subject to the requirements of this Article VII.
- B. Operator 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.
- Operator shall submit a signed Tenant Construction or Alteration Application (**TCA**) including complete sealed construction drawings and specifications, as required by Section 703, to the Airport Properties Department for its initial as well as future construction.
  - Operator shall submit a St. Louis County building permit number not more than 30 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before construction can begin.)
  - Operator 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 and prior to beginning of work.
  - Operator shall complete all construction and the System shall be fully tested and operational no later than sixty (60) days following the Director’s written approval of the design of the System, subject to the provisions of Article XIII.
  - Operator 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 707.

In the event Operator encounters material believed to be asbestos or polychlorinated biphenyl (**PCB**) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Operator 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 and Operator 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 Operator. Operator shall not be required to perform, without their consent, any work related to asbestos or PCB.

Section 702. Design Criteria and Technical Specifications. Operator shall design and construct the System in accordance with the plans and specifications as provided in its Proposal to: Lambert-St. Louis International Airport® RFP for Wireless Internet Access System, dated September 11, 2006, as amended, which is incorporated herein by reference; and the final WLAN design approved by the City. Any deviations from the aforementioned plans and specifications must be approved by the Director in writing.

Section 703. Preparation of Plans and Specifications. The Operator shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. The Operator may begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 704. Operator’s Liability Insurance. In any contract that pertains to improving and equipping the Premises, Operator shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$2,000,000 for bodily injury and property damage and include the City as an Additional Insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 705. Performance and Payment Bonds. The Operator shall require each of its contractors and suppliers of construction materials to furnish Performance Bonds and Payment Bonds each in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 706. Mechanics’ and Materialmen’s Liens. The Operator shall not 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 707. Certificates of Completion. Upon the completion of the improvements hereunder, the Operator 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 Operator.

Section 708. Signs.

- A. The Operator shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Operator may install such advertising and identification signs as may be necessary for the proper conduct of the System's services as contemplated hereunder. The Operator shall comply with all rules promulgated by the Director regarding the placement of physical signs and advertising in the Premises.
- B. The Operator shall be responsible for the cost of any new physical signs or modifications to Airport directories and other existing signs, including sign systems reasonably required by the Director. All modifications to these signs must be approved by the Director and Operator and are subject to all applicable requirements of this Section 708 and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, the Operator shall submit to the Director for approval all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such physical 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. The Operator shall not place any physical advertising matter, displays or other literature not directly pertaining to the System's services without the City's prior written consent or except as explicitly provided for herein.

Section 709. Title to Improvements. At the City's sole discretion, all Improvements constructed, installed, or placed in or on the Premises by the Operator and/or comprising a part of or a component of the System, including without limitation all conduits, cabling, hardware, and other associated equipment, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to the Operator's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy in accordance with this Agreement.

The City reserves the right and the Operator agrees that the Director may require the Operator to promptly and timely remove any or all Improvements and structures and restore the Premises and Airport facilities to their original condition at the time the Operator took possession of the Premises. The Operator agrees to bear all costs of such removals and restorations. If the City so demands, all Improvements shall be removed by the Operator at date of expiration or early termination of this Agreement and Operator shall, as reasonably as possible, restore the Airport facilities to their former condition. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Improvements shall be submitted in writing to the Director by Operator for the Director's approval, and such list shall be periodically updated by Operator.

At the expiration of or in the event of the early termination of the Agreement between the City and the Operator for any reason, unless the City requires the operator to restore the Premises to their original condition (see above), the City may need to continue the operation of the wireless system providing service to Airport administrative functions. All installation and construction information, hardware, software, manuals, user names, maps, passwords, network diagrams, and other information necessary for the efficient, proper and safe operation and the maintenance of the System must be provided to the City immediately upon the expiration or the early termination of the Agreement as requested by the City.

## ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Operator shall comply with all rules and regulations which the Director may reasonably establish from time to time. In addition, the Operator 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. The Operator shall provide and pay for all repairs and maintenance of the System, except the following which shall be the responsibility of the City:

- A. The structural components of the terminal buildings.
- B. The utility system up to the Operator's point of connection, except where the utility systems are owned or controlled by the utility companies.

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. The Operator understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Operator hereby releases and discharges the City from any and all inconvenience claims, liability, losses, or causes of action arising out of or incidental to the good faith closing of any right-of-way, including without limitation loss of profit or business, actual, incidental, consequential, or special damages.

Section 803. Right to Enter, Inspect and Make Repairs. The 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 the Operator'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 the Operator has complied and is complying, with the terms, covenants or conditions of this Agreement.
- B. In the event the Operator is obligated but has failed or refused to perform maintenance and make repairs within thirty (30) days of receipt of notice to do so from the City, the City may perform all corrective work required, and the Operator shall promptly reimburse the City for the cost thereof.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To gain access to the Premises in order to perform studies, inspections, assessments or environmental inspections, etc.

Section 804. Utilities. The City shall provide sufficient electrical facilities from which the Operator shall obtain electricity at a cost based upon metered usage. The Operator shall be responsible for the cost of electric meters and sockets and all connections to and within the Operator's communication hub room(s) within the Premises. The Operator shall be responsible for any needed modification or upgrade in electrical supply caused by changes to the Premises made by the Operator.

The Operator shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to Operator for the System, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Operator shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Operator shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Operator shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

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

Section 805. Interference to Air Navigation. The Operator warrants, represents, and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, may be constructed by the Operator or permitted to remain on the Premises. Any obstructions so constructed shall be immediately removed by the Operator at its expense. The Operator further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides, the safe and efficient operations of the Airport, or the operations of other tenants and users of the Airport.

## ARTICLE IX LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Operator, at its expense and, at all times during the Agreement Term, and Option Term if applicable, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Operator 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 have arisen out of the operation of the System or a breach by the Operator of the terms of this Agreement or by the activities or omissions of the Operator, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors pursuant to this Agreement, whether on or off of the Premises or the Airport, under the following types of coverage:

- A. Comprehensive Commercial General Liability;
- B. Comprehensive Automobile Liability (all vehicles, including hired and non-owned).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of Two Million Dollars (\$2,000,000.00) comprised of such primary and excess policies of insurance as the Operator finds feasible to purchase during the Agreement Term, and Option Term, if applicable.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City and its Board of Aldermen, Airport Commission, officers, agents, and employees shall be named 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 the Operator, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors. In addition, such insurance shall include contractual liability sufficient to cover Operator’s indemnity obligation hereunder. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City and its Board of Aldermen, Airport Commission, officers, agents and employees as an Additional Insured is not intended to, and shall not make the City a partner or joint venturer with the Operator in its operations hereunder.

Operator shall maintain, and upon request furnish evidence to City, adequate provisions for workers compensation insurance, Social Security and Unemployment Compensation in at least statutory limits to the extent such provisions are applicable to Operator’s operations hereunder.

Section 902. Property Insurance. The Operator shall provide fire, lightning, extended coverage and other related insurance coverage for the full value of the Improvements and equipment existing or installed on the Premises.

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

If the building is destroyed or damaged to such an extent as to be economically irreparable, the City may terminate this Agreement by written notice to the Operator. All Operator’s Fee payments will cease as of the date of the destruction or damage.

If the building is repairable, the City will begin such repairs as soon as is practicable. Operator’s Fee payments on unusable portions will cease as of the date of the damage. Operator’s Fee payments will continue to be due on the usable areas. The City will attempt to find temporary facilities for use by the Operator during the repairs and the Operator shall pay Operator’s Fees for the temporary facilities. City shall not be liable or responsible for any losses of any kind whatsoever, including, without limitation, any inconvenience or loss by Operator of business or profit resulting from such damage or any incidental, actual, consequential, or special damages.

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

At least fifteen (15) days prior to the expiration of any such policy, the Operator shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Operator shall within fifteen (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 in a company or companies approved by the 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 the Director. Each such insurance policy shall also provide primary coverage to the City when any policy issued to the City provides duplicate or similar coverage and in such circumstances the City’s policy shall be excess over Operator’s policy which shall be primary.

Section 905. Conditions of Default. This Agreement shall be considered in default when the Operator fails to comply with any material term, covenant or condition of this Agreement. Said default shall constitute a material breach hereof for which the City, at its sole option, may terminate this Agreement (as provided for in Article XI) and/or seek other remedies at law or in equity.

Section 906. Indemnification. The Operator shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 and/or the acts or omissions of the Operator’s officers, agents, employees, consultants, 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 of St. Louis. The Director or his/her designee shall give to the Operator reasonable notice of any such claims or actions. The Operator shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his/her designee, after consultation with the Airport Director or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The Operator shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Operator under this Agreement.

Section 908. Occupancy of Premises. The Operator accepts the Premises “**AS IS**”. The Operator shall 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. Operator agrees to pay the City upon demand any increase in premiums for insurance that may be charged resulting from a breach of the foregoing sentence.

Section 909. Waiver of Subrogation. Operator 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 Operator's officers, agents, or employees or its property or the property of others under Operator'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. Operator shall provide notice of this waiver of subrogation to its insurer(s).

#### ARTICLE X ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Operator shall not assign or transfer this Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Operator's right, title and interest in the Operator's equipment, Removable Fixtures, or the Operator'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 a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

B. The Operator shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, the Operator must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all System services are available during the hours of operation required in Section 604 of this Agreement.

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

C. No subcontract, sublease, or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approval, subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of the Operator under this Agreement, and the City may terminate this Agreement as provided for in Section 1103 and/or seek other remedies at law or in equity. 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.

#### ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. The City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a material breach of the Agreement justifying the termination of this Agreement in its entirety.

A. If the fees, charges, or other money payments which the Operator herein agrees to pay, or any part thereof, remain unpaid after thirty (30) days following the notice from the City that such payments are past due.

B. If during the Agreement Term or Option Term, if applicable, the Operator 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 sub lessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Agreement Term or Option Term, if applicable, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating the Operator

as bankrupt or insolvent; or approving a petition seeking a reorganization of the Operator, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;

6. fail to maintain the quality of services and prices to the reasonable satisfaction of the Director as required hereunder;

7. fail to take reasonable measures 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 the Operator under this Agreement;

8. allow a lien to be filed against the Operator or any of the equipment or furnishings therein because of or resulting from any act or omission of the Operator that is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the reasonable opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or

10. fail in the performance of any material term, covenant or condition herein required to be performed by the Operator within thirty (30) days after receipt of notice from the City of such failure.

On the date set forth in the notice of termination, the Agreement Term or Option Term, if applicable, and all right, title and interest of Operator shall expire, except as otherwise provided in Section 1103 hereof.

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

#### Section 1102. The Operator's Right to Terminate.

The Operator, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City abandons the Airport for a period of at least sixty (60) days and 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. If the City fails in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party 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 and cause of termination, except for the Operator's failure to make any payments or to maintain and provide the Performance and Payment Bond specified in Article V or maintain and provide any insurance coverage specified in Article IX. The effective date of termination shall be thirty (30) days from the payment(s) due date with notice to the Operator or thirty (30) days from the date the insurance coverage or Performance and Payment Bond is not provided with notice to the Operator; and no such termination, except for termination for the Operator's failure to make any payments or provide insurance coverage or Performance and Payment Bond, shall be effective if the party at default (1) cannot by the nature of the default cure it within such thirty (30) day period, (2) commences to diligently correct such default within said thirty (30) days and (3) corrects the same as promptly as is reasonably practicable.

In the event that suit shall be instituted by the City upon the default of payment of charges and fees as provided herein and the City is the prevailing party, then the Operator agrees also to pay reasonable attorneys' fees, litigation fees, and court costs associated with such suit.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and the Operator specified in this Agreement 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 or any other remedies otherwise available to the parties at law or in equity.

## ARTICLE XII DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

#### Section 1201. Compliance.

A. During the construction and implementation of the System, the Operator agrees as a condition hereunder to meet a minimum DBE participation goal of not less than thirty percent (30%) participation in the ownership, and/or management and control of the business by the methods of participation allowed by DOT 49 CFR Part 26. The goal shall be measured as a percentage of total

dollars spent on installation and implementation of the System, including construction costs. The goal remains in effect throughout the Agreement Term, and Option Term if applicable, of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

B. At the end of the construction and implementation of the System, and for the remaining Agreement Term, the Operator agrees as a condition hereunder to meet a minimum DBE participation goal of not less than ten percent (10%) participation in the ownership, and/or management and control of the business by the methods of participation allowed by DOT 49 CFR Part 26. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the Agreement Term, and Option Term if applicable, of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

C. If good faith efforts resulted in the fulfillment of either of the DBE goals, the Operator will not be required to perform additional good faith efforts, except in the event that the Operator’s DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event the Operator’s DBE participation fails to continue to meet the goal or comply with applicable federal regulations, the Operator will be required to perform the good faith efforts procedure specified in the applicable federal regulations for the type of participation sought within four (4) months following the loss of DBE participation and continue at intervals of not less than twelve (12) months, or until the DBE goal is reached by the Operator.

D. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations 49 CFR Part 26. The Operator 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 agreement covered by 49 CFR Part 26. The Operator agrees to include the above statements in any subsequent agreements that it enters into with respect to the System and shall cause those businesses to covenant to similarly include the statements in further agreements.

E. The Operator shall operate the System in accordance with the Agreement 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 (as provided herein). The Operator 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, the City shall have the right to terminate this Agreement.

**ARTICLE XIII  
LIQUIDATED DAMAGES**

Section 1301. Liquidated Damages. Operator recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Operator fails to satisfy or comply with certain requirements or provisions enumerated below. Therefore, the Operator agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Operator of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach and/or seek other remedies at law or in equity. The “**First Breach**” in any category will result in a warning letter. The “**Second Breach**” in any category will require Operator to pay liquidated damages in the amount listed below. For the “**Third Breach**” in the same category, Operator will pay City liquidated damages in the amount listed under Third Breach” below. For the fourth and each subsequent cumulative breach, Operator shall pay to City the applicable Third Breach amount for liquidated damages plus an additional 100%. Such liquidated damages shall be due and payable by the Operator within thirty (30) days of the City’s request or notice. The defaults or breaches listed below are cumulative over the Agreement Term and Option Term, if applicable, and are in addition to any other remedies that the City may have under this Agreement or at law or in equity. The City agrees to provide immediate written notice via facsimile and overnight courier of any such failure or breach, including the amount of liquidated damages.

LIQUIDATED DAMAGES FOR BREACH OF OPERATING STANDARDS

	<b>BREACH</b>	<b>SECOND BREACH</b>	<b>THIRD BREACH</b>
A.	Unapproved equipment or placement of equipment in areas not authorized by City.	\$500.00	\$750.00
B.	Late monthly reporting of gross receipts in violation of Article V	\$25.00 per day	\$50.00 per day
C.	Failure to deliver, on time, required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$200.00	\$300.00
D.	Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00	\$750.00
E.	Inoperable equipment or equipment otherwise not in presentable condition.	\$200.00	\$300.00

F.	Late annual financial reporting in Violation of Article V	\$50.00 per day	\$100.00 per day
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**ARTICLE XIV  
MISCELLANEOUS PROVISIONS**

Section 1401. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director, St. Louis Airport Authority, 10701 Lambert International Boulevard, P.O. Box 10212 Lambert Station, St. Louis, MO 63145. A copy of all notices shall also be mailed to the Airport Business and Marketing Manager at the same address. All notices, demands, and requests by the City to the Operator shall be sent by certified mail, return receipt requested addressed to: Mr. Jon Irwin, Concourse Communications St. Louis, LLC, Two N. Lasalle Street, Suite #1725, Chicago, IL 60602.

Either or both parties may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Operator or said Director.

Section 1402. Non-Discrimination and Affirmative Action Program.

A. The Operator hereto understands and agrees that the City in the 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. The Operator hereby agrees that his premises shall be posted to such effect as required by said regulations.

B. The Operator 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. The Operator 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 the following: actions 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. The Operator will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Operator 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". The Operator 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. The Operator agrees that should it be determined by the Operator or the 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 to ascertain the steps to be taken by the Operator to achieve the provisions of his program.

E. The Operator will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. The Operator 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 the Operator in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever the Operator 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, the Operator shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.

H. The Operator 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. The 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. The Operator 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. The Operator 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. The Operator 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 1403. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of the City shall be personally liable under or in connection with this Agreement.

Section 1404. Force Majeure. Neither the City nor the Operator 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, terrorism or any other circumstances for which it is not responsible and which is not within its control.

Section 1405. 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 assigns of the respective parties hereto.

Section 1406. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the Operator on paying the fees and otherwise performing its covenants and other obligations hereunder shall have quiet and peaceable possession of the Premises.

Section 1407. Operation and Maintenance of the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1408. Title to the Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the use thereof by the City as herein provided.

Section 1409. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the 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 the 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 1410. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Operator agrees, without cost, 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 the City to obtain said Federal Aviation Administration funds.

Section 1411. Governing Law. This Agreement shall be deemed to have been made and be construed in accordance with the laws of the State of Missouri, and is subject to the City Charter and ordinances, as may be amended from time to time.

Section 1412. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1413. 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 1414. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Operator and the City.

Section 1415. Required Approvals. When the consent, approval, waiver, or certification ("**Approval**") of either 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, the Authority, or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Operator agree that extensions of time for performance may be made by the written mutual consent of the Director and the Operator or its designee.

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. Any waiver 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 the City or the Operator in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1418. Entire 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. This Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

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. The Operator shall in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1420. Advertising. The Operator 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. (See Section 302).

Section 1421. Conflict Between Tenants. In the event of a conflict between the Operator and any tenant, licensee or concessionaire at the Airport 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 shall make a final decision to which the Operator agrees to be bound. All determinations by the Director are final.

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

Section 1423. Request for Proposals. The Operator's proposal, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Request for Proposals for a Wireless Internet Access System, dated September 11, 2006, as amended, is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the Exhibits attached hereto is in conflict with any provision of the Operator's proposal or the Request for Proposals referred to above, the provisions of this Agreement and the Exhibits attached shall prevail.

Section 1424. Americans with Disabilities Act ("ADA"). Operator shall be responsible for compliance with the Federal ADA, plus any federal, state, or local laws and City Ordinances pertaining to the disabled individual having access to Operator's services.

Section 1425. 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 1426. 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, covenants, conditions and requirements 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 1427. Security Plan and Facilities. Operator hereby acknowledges that City is required by the Transportation Security Administration's regulation 1542, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Operator warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Operator's exercise of the privileges granted to the Operator hereunder. Operator shall promptly (within 30 days of the City's request) reimburse City for all fines or penalties imposed upon City by the TSA resulting from Operator's negligence or failure to act in relation to regulation 1542.

Section 1428. Environmental Notice. Operator shall promptly notify the Director of (1) any change in the nature of the Operator's operations on the Premises that will materially and/or substantially change the City's or Operator's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Operator's operations on the Premises.

#### ARTICLE XV LIVING WAGE PROVISIONS

Living Wage Compliance Provisions: This Agreement is subject to the St. Louis Living Wage Ordinance Number 65597 (the "**Ordinance**") and the "**Regulations**" associated therewith, as may be amended from time to time, both of which are incorporated herein by this reference. The Ordinance and Regulations require the following compliance measures, and Operator hereby warrants, represents, stipulates, and agrees to comply with these measures.:

Section 1501. Minimum Compensation. Operator hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (See "**Exhibit C-1**") which is incorporated herein. The initial rate shall be adjusted each year no later than April 2, and Operator hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.

Section 1502. Notification. Operator shall provide the Living Wage Bulletin to all employees together with a "Notice of Coverage," in English, Spanish, and other languages spoken by a significant number of the Operator's employees within thirty (30) days of the

execution of this Agreement for existing employees and within thirty (30) days of employment for new employees.

Section 1503. Posting. Operator shall post the Living Wage Bulletin, together with a "Notice of Coverage," in English, Spanish, and other languages spoken by a significant number of the Operator's employees, in a prominent place in a communal area of each worksite covered by this Agreement.

Section 1504. Subcontractors. Operator hereby agrees to require Subcontractors, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors. Operator shall include these Living Wage Compliance Provisions in any contract with such Subcontractors.

Section 1505. Term of Compliance. Operator hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for as long as work related to this Agreement is being performed by Operator's employees, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such work is performed.

Section 1506. Reporting. Operator shall provide the Annual Reports and attachments required by the Ordinance and Regulations.

Section 1507. Penalties. Operator acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations may result in penalties specified in the Ordinance and/or Regulations, which penalties may include, without limitation, suspension or termination of this Agreement, forfeiture and/or liquidated damages, as provided in the Ordinance and Regulations.

Section 1508. Acknowledgments. Operator acknowledges receipt of a copy of the Ordinance and Regulations.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written. Authorized by City Ordinance \_\_\_\_\_, approved \_\_\_\_\_, 2007

The foregoing Agreement was approved by the Airport Commission at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

THE CITY OF ST. LOUIS BY:

\_\_\_\_\_  
Commission Chairman and Director of Airports Date

APPROVED AS TO FORM ONLY 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 Board of Estimate and Apportionment approved the foregoing Agreement in substance at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Secretary, Date  
Board of Estimate & Apportionment

OPERATOR:

BY: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A-1**

**"PREMISES"**

**RESERVED FOR "PREMISES MAP"**

**EXHIBIT "B-1"**

**PRICING STRUCTURE**

## PRICING STRUCTURE

<b>Transaction Based Users</b>	<b>\$7.95</b> Per 24 hour period of unlimited access
<b>WISP Roaming Access</b>	<b>\$2.50</b> Per 24 hour period of unlimited access, Per user connect. Charged to WISP.
<b>Airport Authority Administrative &amp; Operational Use</b>	<b>No Charge</b> See Section 601(J)
<b>Private Side Users High Speed Wireless Service</b>	<b>Set Up Fee: \$499.00</b> <b>Monthly Fee: \$79.00</b>
<b>Private Side Users Customer Managed VLAN (interconnect of multiple devices to corporate network)</b>	<b>Set Up Fee: \$1,000.00</b> <b>Monthly Fee: Varies (per device)</b>

## EXHIBIT "C-1"

## LIVING WAGE BULLETIN

## ST. LOUIS LIVING WAGE ORDINANCE

## LIVING WAGE ADJUSTMENT BULLETIN

NOTICE OF ST. LOUIS LIVING WAGE RATES  
EFFECTIVE APRIL 1, 2006

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

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$10.31** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$13.18** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$2.87** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2006**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

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

City Compliance Official  
DBE Program Office  
11495 Natural Bridge Road  
Bridgeton, MO 63044  
(314) 551-5000

Dated: March 21, 2006

Approved: May 31, 2007

**ORDINANCE #67501**  
**Board Bill No. 70**

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment

authorizing a supplemental appropriation and set apart in the total amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) from the Airport Development Fund established under Ordinance 59286, Section 13, approved October 26, 1984, to the "Annual Budget" established under authority of Ordinance No. 67090 approved June 23, 2006 for the fiscal year beginning July 1, 2006 and ending June 30, 2007, for current expenses of the government as detailed in EXHIBIT "1" which is attached hereto and incorporated herein; and containing an emergency clause.

WHEREAS, the "Annual Budget" was established under authority of Ordinance No. 67090 approved on June 23, 2006;

WHEREAS, the Charter of The City of St. Louis (the "City"), Article XVI, Section 6, authorizes supplemental appropriations when any accruing, unappropriated City revenue is available and when the Board of Estimate and Apportionment recommends same;

WHEREAS, it is now necessary to authorize a supplemental appropriation to the Annual Budget established under authority of Ordinance No. 67090 approved June 23, 2006 in the total amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) for current expenses of the government as detailed in EXHIBIT "1" which is attached hereto and incorporated herein;

WHEREAS, there is a balance in excess of Two Million Three Hundred Thousand Dollars (\$2,300,000) available for appropriation from the Airport Development Fund established under Ordinance No. 59286, Section 13, approved October 26, 1984; and

WHEREAS, this Ordinance is recommended by the Airport Commission and the Board of Estimate and Apportionment.

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

SECTION ONE. There is hereby authorized a supplemental appropriation and set apart in the total amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) from the Airport Development Fund established under Ordinance 59286, Section 13, approved October 26, 1984, to the "Annual Budget" established under authority of Ordinance No. 67090 approved June 23, 2006 for the fiscal year beginning July 1, 2006 and ending June 30, 2007, for current expenses of the government as detailed in EXHIBIT "1" which is attached hereto and incorporated herein.

SECTION TWO. In addition to the charter powers granted to the Comptroller to preserve the credit of the City of St. Louis (the "City"), and for that purpose, or in case of any extraordinary emergency of any kind, with the approval of the Board of Estimate and Apportionment, and with or without any ordinance or other authority or appropriations therefore, to draw warrants on the treasurer or effect temporary loans to pay debts and judgments and other liabilities of the City, or to meet any such emergency, charging such warrants to any excess balances in appropriations made by this budget ordinance and then specifically reporting such action to the Board of Aldermen at its first meeting thereafter, the Comptroller is hereby directed to cause to be made transfers:

- a. within departments, divisions of funds, if such transfers are under \$250,000 per occurrence and if they are approved by a majority vote of the Board of Estimate and Apportionment, or
- b. between or among departments, divisions or funds (except Fund 1217-Capital Improvement Projects), if such funds are under \$250,000 per occurrence and if they are approved by a vote of the Board of Estimate and Apportionment.

SECTION THREE. This Ordinance being deemed necessary for the immediate preservation of the public peace, health or safety, it is hereby declared to be an emergency measure pursuant to Article IV, Section 20, of the City Charter and shall become effective immediately upon passage and approval by the City's Mayor.

**BOARD BILL NO. 70**

**EXHIBIT 1**

**FY 2007 SUPPLEMENTAL APPROPRIATION**

**AIRPORT ACCOUNT (FUND 1511)**

**SOURCES OF FUNDS:**

Unappropriated Airport Development Fund \$2,300,000

**USES OF FUNDS:**

<b><u>Airport Contract Snow Removal- Airfield</u></b>	\$1,500,000
<b><u>Airport Jet Bridge &amp; Carousels</u></b>	\$ 400,000
420-5638 Facilities and Grounds Services	\$1,900,000
<b><u>Airport Compressed Natural Gas &amp; Fuel</u></b>	\$ 300,000
420-5239 Facilities and Grounds Supplies	\$ 300,000

**Airport Emergency Vehicle Repairs**  
420-5639 Facilities and Grounds Services

\$ 100,000  
\$ 100,000

**TOTAL ESTIMATED USES OF FUNDS**

**\$2,300,000**

Approved: May 31, 2007

**ORDINANCE #67502**  
**Board Bill No. 71**

An Ordinance, recommended and approved by the Airport Commission, the Board of Public Service, and the Board of Estimate and Apportionment, establishing and authorizing a public work and improvement program ("Building & Environ Projects") at Lambert-St. Louis International Airport® (the "Airport"), consisting of capital improvement projects to and for the terminal complexes, concourses, and associated Airport buildings, structures, ramps, facilities, and environs, and other associated Airport improvements as more fully described in the attached EXHIBIT "A", entitled "CIP BUILDING & ENVIRON PROJECTS" that is incorporated herein, such authorization including, without limitation, engineering planning and designing services, programming services, technical advice and assistance, inspection services, surveying and mapping services, appraisal services, legal services and/or related costs, CADD services, the removal or relocation of structures, obstructions, and utilities, and related work, landscaping costs, grading costs, security services, relocation costs, the demolition of improvements, the costs for the repair, renovation, and relocation of loading bridges, architectural, engineering and related consultant and management expense pertaining to the planning, design, consulting, installing mock-ups, the preparation and production of contract documents, or the advertising and taking of bids, architect and design services, costs for structural and maintenance studies, estimating and cost benefit consulting services, the costs for general engineering services, consulting services and other technical advices and assistance, construction management, construction, installation, renovation, rehabilitations, repairs, expansion, reconfiguration, improvement, and inspection work, the equipping and furnishing of Airport property including loading bridges, supplies, material and equipment, and other necessary and related work or services for the development, implementation, administration, management or monitoring of the Building & Environ Projects at a total estimated cost of Three Million Eight Hundred Seventy Seven Thousand Five Hundred Dollars (\$3,877,500); authorizing and initial appropriation in the total amount of Three Million Eight Hundred Seventy Seven Thousand Five Hundred Dollars (\$3,877,500) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, to be expended for the payment and/or reimbursement of costs for work and services authorized herein; authorizing the Mayor and the Comptroller of the City Of St. Louis ("City") to enter into and execute on behalf of the City easement agreements granting such easements or right-of-ways as are necessary to the administration or implementation of the Building & Environ Projects and containing such terms, covenants, and conditions that are in the best interest of the City, the City's residents, and the traveling public; authorizing the Director of Airports with the approval of the Board of Estimate and Apportionment to let contracts providing for mapping, appraisal, and escrow services, title work, ground maintenance, security services, legal services, and other related services for the implementation and administration of the Building Projects; authorizing and directing the Board of Public Service with the advice, consent, and approval of the Director of Airports to let and/or enter into contracts or agreements for all other approved work or services, purchase materials, supplies and equipment, employ labor, pay salaries, wages and fees, pay or reimburse costs for authorized work or services, retain consultants and otherwise provide for the work or services authorized herein; providing that any contract or agreement let hereunder, shall be subject to the City's Charter and applicable City ordinances and Missouri State laws or regulations applicable thereto; authorizing and directing the Comptroller of the City to draw warrants from time to time on the Treasurer of the City for payment or reimbursement of expenses or costs authorized herein upon submission of properly certified vouchers in conformance with procedures established by the Comptroller and, authorizing, as necessary and appropriate, the Comptroller, Treasurer, City Counselor, and other appropriate officers, agents and employees of the City to make such applications or certifications and provide such data to appropriate parties, and to take whatever action necessary in order to provide for the payment or reimbursement of eligible costs authorized herein; authorizing the Director of Airports to make such applications and provide such data and to take whatever action necessary to seek funds under the Airport Improvement Program, the Passenger Facility Charge Program or other federal, state or local programs for projects herein authorized where such costs or expenditures are deemed eligible and monies made available for those costs under federal, state, or local law or contract; directing that all contracts let under authority of this Ordinance be in compliance with all applicable minority and women or 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; and containing a severability and an emergency clause.

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

**SECTION ONE.** There is hereby established and authorized a public work and improvement program ("Building & Environ Projects") at Lambert-St. Louis International Airport® (the "Airport"), consisting of capital improvement projects to and for the terminal complexes, concourses, and associated Airport buildings, structures, ramps, facilities, and environs, and other associated Airport improvements as more fully described in the attached EXHIBIT "A", entitled "CIP BUILDING & ENVIRON PROJECT LIST" that is incorporated herein, such authorization including, without limitation, engineering planning and designing services, programming services, technical advice and assistance, inspection services, surveying and mapping services, appraisal services, legal services and/or related costs, CADD services, the removal or relocation of structures, obstructions, and utilities, and related work, landscaping costs, grading costs, security services, relocation costs, the demolition of improvements, the costs for the repair, renovation, and relocation of loading bridges, architectural, engineering and related consultant and management expense pertaining to the planning, design, consulting, installing mock-ups, the preparation and production of contract documents, or the advertising and taking of bids, architect and design services, costs for structural and maintenance studies, estimating and cost benefit consulting services, the costs for general engineering services, consulting services and other technical advices and assistance, construction management, construction, installation, renovation, rehabilitations, repairs, expansion, reconfiguration, improvement,

and inspection work, the equipping and furnishing of Airport property including loading bridges, supplies, material and equipment, and other necessary and related work or services for the development, implementation, administration, management or monitoring of the Building & Environ Projects at a total estimated cost of Three Million Eight Hundred Seventy Seven Thousand Five Hundred Dollars (\$3,877,500).

**SECTION TWO.** There is hereby authorized an initial appropriation in the total amount of Three Million Eight Hundred Seventy Seven Thousand Five Hundred Dollars (\$3,877,500) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, to be expended for the payment and/or reimbursement of costs for work and services authorized herein.

**SECTION THREE.** The Mayor and the Comptroller of the City of St. Louis ("City") are hereby authorized to enter into and execute on behalf of the City easement agreements granting such easements or right-of-ways as are necessary to the administration or implementation of the Building & Environ Projects and containing such terms, covenants, and conditions that are in the best interest of the City, the City's residents, and the traveling public.

**SECTION FOUR.** The Director of Airports with the approval of the Board of Estimate and Apportionment is hereby authorized to let all contracts providing for mapping, appraisal, and escrow services, title work, ground maintenance, security services, legal services, and other related services that may be necessary for the implementation and/or administration of the Building & Environ Projects.

**SECTION FIVE.** The Board of Public Service with the advice, consent and approval of the Director of Airports is hereby authorized and directed to let and/or enter into contracts or agreements for all other approved work or services, purchase materials, supplies and equipment, employ labor, pay salaries, wages and fees, pay or reimburse costs for authorized work or services, retain consultants and otherwise provide for the work or services authorized herein, except for the agreements for work or services covered by procedures contained in Section Three and Four of this Ordinance.

**SECTION SIX.** It is hereby provided that any contract let hereunder, shall be subject to the City's Charter and applicable City ordinances and any Missouri State laws or regulations applicable thereto.

**SECTION SEVEN.** The Comptroller of the City is hereby authorized and directed to draw warrants from time to time on the Treasurer of the City for payment of expenses authorized herein upon submission of properly certified vouchers in conformance with procedures established by the Comptroller and, as necessary and appropriate, the Comptroller, Treasurer, City Counselor, and other appropriate officers, agents and employees of the City are hereby authorized and directed to make such applications or certifications and provide such data to appropriated parties, and to take whatever action necessary in order to provide for the payment or reimbursement of eligible costs authorized herein.

**SECTION EIGHT.** The Director of Airports is hereby authorized to make such applications and provide such data and to take whatever action necessary to seek funds under the Airport Improvement Program, the Passenger Facility Charge Program or other federal, state or local programs for projects herein authorized where such costs or expenditures are deemed eligible and monies made available for those costs under federal, state, or local law or contract.

**SECTION NINE.** All contracts let under authority of this Ordinance shall be in compliance with all applicable minority and women or disadvantage 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 TEN.** 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 a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions or provisions of this Ordinance.

**SECTION ELEVEN.** This being an ordinance providing for public work and improvement, 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.

#### EXHIBIT "A"

#### (CIP BUILDING & ENVIRON PROJECT LIST)

**Concourse C Extension General Improvements** - Concourse Level (i.e. elevator, stair tower, escalators up and down, holdroom)

**Concourse C Extension General Improvements** – Ramp Level (i.e. new holdroom, fuel hydrants, paint ramp, operations space improvements)

**Concourse C Extension General Improvements** - Mezzanine Level (i.e. office space improvements)

**Concourse C Extension Loading Bridge Improvements**

**Main Terminal General Improvements** - (i.e. communications and data wiring, office improvements, ticket counter)

**Concourse B General Improvements** - (i.e. holdroom, passenger loading bridge, operations space improvements, ramp)

**Approved: May 31, 2007**

**ORDINANCE #67503  
Board Bill No. 72**

An Ordinance that provides for financial incentives for passenger air service at Lambert St. Louis International Airport® (the "Airport"); determines and finds that it is the best of interests of the City of St. Louis, Missouri (the "City"), the Airport and others to encourage service at the Airport by new passenger airlines and to stimulate passenger service by airlines currently using the Airport by the adoption of programs providing for financial incentives for new airlines and new air service at the Airport; ratifies and adopts the Passenger Air Service Incentive Program (the "Program") for the Airport recommended and approved by the Airport Commission and by the Board of Estimate and Apportionment; authorizes and directs the Director of Airports to implement the Program; containing a severability clause; and containing an emergency clause.

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

**WHEREAS**, it is in the best interests of the City, the Airport, the traveling public using the Airport and the residents of the St. Louis metropolitan area to encourage new passenger airlines to provide air service at the Airport, and to stimulate passenger air service to domestic and international destinations not currently served from the Airport by the airlines currently using the Airport;

**WHEREAS**, the City desires to broaden passenger activity at the Airport; attract new passenger air service to the St. Louis market; increase the number of non-stop destinations served from the Airport; increase the number of passengers traveling through the Airport; increase non-airline revenues generated at the Airport; and, over time, reduce the airlines' unit cost to operate at the Airport; and

**WHEREAS**, in order to accomplish the foregoing the City intends to ratify and adopt the Passenger Air Service Incentive Program, attached hereto as ATTACHMENT A, with an effective date for air service commencing at the Airport on or after May 1, 2007 and expiring June 30, 2009.

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

**SECTION ONE.** The Board of Aldermen of the City of St. Louis, Missouri (the "City") hereby determines and finds that it is in the best interests of the City, Lambert St. Louis International Airport® (the "Airport"), the traveling public using the Airport, and the residents of the St. Louis metropolitan area to encourage new passenger airlines to provide air service at the Airport, and to stimulate passenger air service to domestic and international destinations not currently served from the Airport by airlines currently using the Airport by the adoption of a program of financial incentives for new airlines and new air service.

**SECTION TWO.** The City hereby ratifies and adopts the Passenger Air Service Incentive Program (the "Program") granting the Director of Airports the authority to waive certain Airport fees and charges associated with qualifying flights operated by eligible airlines, as provided for in the Program as set out in ATTACHMENT A, which was approved and previously adopted by the City's Airport Commission and the City's Board of Estimate and Apportionment.

**SECTION THREE.** The Director of Airports is authorized and directed to implement the terms of the Program including, without limitation: securing appropriations necessary to fund the Program; accepting applications from airlines interested in participating in an incentive program; determining airline eligibility and flight qualifications; approving or rejecting applications based on the standards set forth in the Program; monitoring compliance with the terms and conditions for participation, and, if necessary, terminating an airline's eligibility for participation; and any and all other actions necessary to implement and administer the Program.

**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 a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions or portion thereof of this Ordinance unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**SECTION FIVE.** 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 Charter and shall become effective immediately upon its approval by the Mayor of the City.

**ATTACHMENT A**

**City of St. Louis  
Lambert-St. Louis International Airport®**

### Passenger Air Service Incentive Program

The City of St. Louis, Missouri, is adopting this Passenger Air Service Incentive Program (individually, “Program I” and “Program II,” collectively the “Incentive Program”) to stimulate new passenger air service at the Airport.

#### Section 101: General

##### A. Overall Goals

The goals of the Incentive Program are to:

1. broaden passenger airline activity at the Airport;
2. attract new passenger air service to the St. Louis market;
3. increase the number of non-stop destinations served from St. Louis;
4. increase the number of passengers traveling through the Airport;
5. increase non-airline (concessions, parking, etc.) revenues to the Airport; and
6. over time, reduce the airlines’ unit cost to operate at the Airport.

##### B. Term

The Incentive Program shall become effective for new passenger air service at the Airport commencing on or after May 1, 2007, and shall remain in effect until June 30, 2009.

##### C. Funding

Subject to the availability of funds and appropriations by the City, the Incentive Program shall be funded solely from the Airport’s Contingency Fund. Financial benefits conferred through the Incentive Program shall not exceed \$200,000 during Fiscal Year 2007, \$3,000,000 during Fiscal Year 2008, and \$1,800,000 during Fiscal Year 2009; provided, however, that any appropriated amounts in excess of actual financial benefits conferred in each Fiscal Year may be carried over to the immediately-following Fiscal Year to be used in accordance with the Incentive Program. If necessary, the available annual funding shall be prorated among the Incentive Programs’ participants.

Waivers of Landing Fees and Terminal Building Rents offered by the City under this Incentive Program shall not have the effect of increasing the rentals, fees, or charges imposed on other aeronautical users of the Airport, including other airlines.

##### D. Compliance with Federal Obligations

The terms and implementation of this Incentive Program shall be, at all times, subordinated to applicable state and federal laws and regulations, and the provisions of any existing or future agreement between the City and the United States Government or governmental authority, relating to the operation or maintenance of the Airport. The Incentive Program may be terminated, in whole or in part, if it is determined to violate applicable laws, regulations, or any assurance made by the City to the United States Government in connection with the receipt of federal grants-in-aid or the approval of Passenger Facility Charges.

##### E. Incentive Program Definitions

The words and phrases defined below have the following meaning when used elsewhere in this Incentive Program:

Airport Use and Lease Agreement: means the agreement first adopted by Ordinance No. 66926, approved on December 14, 2005, as it may be amended from time to time.

Airport: means the Lambert-St. Louis International Airport, together with any additions, improvements, or enlargements made from time to time.

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

City: means The City of St. Louis, Missouri.

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

Landing Fees: means the fees payable in accordance with Section 503 of the Airport Use and Lease Agreement.

Terminal Building Rents: means the charges payable in accordance with Sections 502 and 504 of the Airport Use and Lease Agreement.

### **Section 102: Program I – New Entrant Airlines**

#### A. Program I Goals

1. Attract new passenger air service to, and increase competition among airlines in, the St. Louis market.
2. Help mitigate the financial impact to new entrant airlines of beginning passenger air service at the Airport.
3. Compete with other airports seeking to attract new entrant airlines.

#### B. Program I Definitions

Eligible Airline: an airline that has not provided passenger air service at the Airport in the previous 12 months, and that begins new scheduled passenger air service at the Airport and commits to maintain such service for a period of 24 consecutive months, is eligible to participate in Program I, except:

1. an airline that operates for the benefit of, or under the same or substantially similar name and/or livery as another airline that is serving the Airport on, or discontinued service at the Airport within the 12 months prior to, the date on which the new scheduled passenger air service begins; or
2. an airline that consolidates with, or merges into, another airline that is serving the Airport on, or discontinued service at the Airport within the 12 months prior to, the date on which the new scheduled passenger air service begins.

To become an Eligible Airline, an airline must commit to enter into, and comply with all the terms of, an Airport Use and Lease Agreement.

Qualifying Flight: regularly scheduled service at the Airport (designated by a particular flight number or numbers) that is first operated by an Eligible Airline during that airline's initial 45 days of operations at the Airport qualifies as scheduled service for purposes of Program I.

#### C. Program I Incentives

Upon the Airport Director's determination that an airline is eligible to participate in Program I, and subject to the provisions of this Incentive Program, the following fees shall be waived:

1. Landing Fees incurred by that airline's Qualifying Flights beginning on the date in which each Qualifying Flight is first operated, and continuing for a period of 9 consecutive months thereafter for each such Qualifying Flight; and
2. Terminal Building Rents associated with the space assigned to an Eligible Airline during the first 9 consecutive months of operations by that airline at the Airport.

### **Section 103: Program II – New Destinations**

#### A. Program II Goals

1. Stimulate the introduction of passenger air service to new destinations from the Airport.
2. Ease the economic risk associated with beginning service to new destinations.
3. Help mitigate the financial impact of starting new passenger air service to a new destination from the Airport.

#### B. Program II Definitions

Eligible Airline: an airline that introduces Qualifying Flights and commits to maintain such service for a period of 12 consecutive months is eligible to participate in Program II; *except*:

an airline that operates for the benefit of, or under the same or substantially similar name and/or livery as another airline that is providing non-stop roundtrip flights between the Airport and such other airport on, or discontinued such service within the 12 months prior to, the date on which the Qualifying Flights begin.

To become an Eligible Airline, an airline must have entered into, and be in compliance with all the terms of, an Airport Use and Lease Agreement, or must have been designated as an Affiliate in accordance with the terms of such agreement.

An airline participating in Program I that is also an Eligible Airline under Program II may request to participate in Program II for any applicable new passenger air service for which the airline is not receiving an incentive under Program I.

Qualifying Flight: new regularly scheduled non-stop roundtrip service between the Airport and an airport that has not been served from the Airport by the airline operating such new service during the previous 12 months qualifies as scheduled service for purposes of Program II.

C. Program II Incentives

Upon the Airport Director's determination that an airline is eligible to participate in Program II, and subject to the provisions of this Incentive Program, the following fees shall be waived:

1. Landing Fees associated with that airline's Qualifying Flights and incurred during the first 6 consecutive months of operations of that service.
2. Incremental Terminal Building Rents, if any, associated with that airline's Qualifying Flights and incurred during the first 6 consecutive months of operations of that airline.

**Section 104: Procedures**

A. Application Process

1. Before commencing new passenger air service that may qualify for Program I or Program II, an airline desiring to participate must petition in writing to the Airport Director. A petition should include sufficient information to demonstrate eligibility to participate in the desired program and flight qualifications, including, without limitation: the type of new service to be offered, the destination airport, the date on which the new service will begin, and the type of aircraft to be used for the new service. If applicable, a petition to participate in Program II also should include evidence that the airline would incur incremental Terminal Building Rents as a result of operating the Qualifying Flights under Program II.
2. The Airport Director may request any additional information as may be necessary to consider an application.
3. An application must be approved by the Airport Director before an airline is eligible to participate, and its flights qualify for participation, in the Incentive Program.
4. The Airport Director may reject an application if the Airport Director determines that:
  - a. the airline is not eligible to participate in the Incentive Program;
  - b. the proposed service does not qualify for an incentive; or
  - c. the proposed service does not meet the Incentive Program's goals.
5. The Airport Director may terminate an airline's eligibility to participate if that airline fails to meet or maintain any of the requirements for participation.

B. Reports

An airline participating in the Incentive Program may be required to provide operational reports to show it is meeting the applicable requirements.

C. Year-End Settlement

Contemporaneously with the year-end accounting, recalculation and settlement of fees and charges payable by airlines operating at the Airport, Airport staff shall calculate the aggregate actual financial benefits conferred in the form of fee and rent waivers to all the airlines that participated in the Incentive Program during the previous Fiscal Year. If the amount of aggregate actual financial benefits conferred exceed the authorized amount for that Fiscal Year, the financial benefits shall be prorated among all the airlines participating in the Incentive Program based on the percentage that results from dividing the total aircraft landed weight of each Eligible Airline for its Qualifying Flights during that Fiscal Year, by the aggregate landed weight of all Eligible Airlines for their Qualifying Flights during such period.

Any benefits actually conferred to an airline participating in the Incentive Program in excess of that airline's prorated authorized amount, if any, shall be paid by the airline to the City upon demand.

D. Retroactive payment of waived fees

If the eligibility of an airline that is participating in the Incentive Program is terminated by the Airport Director for failure to meet or maintain the requirements for participation, including withdrawal of service prior to completion of any commitment period, such

airline shall pay to the City an amount equal to the applicable Landing Fees and/or Terminal Building Rents that were waived in accordance with the Incentive Program.

The foregoing Passenger Air Service Incentive Program was approved and adopted by the:

Airport Commission at its meeting on \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
Director of Airports Date

Board of Estimate and Appointment at its meeting on \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
Secretary Date

**Approved: May 31, 2007**

**ORDINANCE #67504**  
**Board Bill No. 73**

An ordinance recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, making certain findings with respect to the transfer of Twelve Million Dollars (\$12,000,000) of moneys that The City of St. Louis, the owner and operator of Lambert-St. Louis International Airport®, intends to transfer from the “Airport Development Fund” (established under Ordinance 59286, Section 13, approved October 26, 1984) into the “Airport Contingency Fund” (established under Ordinance 59286 approved October 26, 1984, Exhibit A, Article V, Sections 502 and 510) in accordance with Section 509.F of the Lambert-St. Louis International Airport® Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated as of October 15, 1984, as amended and restated on September 10, 1997, as amended; authorizing a transfer in the total amount of Twelve Million Dollars (\$12,000,000) from the Airport Development Fund into the Airport Contingency Fund; further authorizing transfers of funds in the total amount not to exceed Twelve Million Dollars (\$12,000,000) from the Airport Contingency Fund to the Airport Revenue Fund (established under Ordinance 59286, Section 13, approved October 26, 1984) during the fiscal year beginning July 1, 2006 (“Fiscal Year 2007”) as are required for the purposes of making funds available for the mitigation of airline landing fee rates by the City in Fiscal Year 2007 provided for in Section 607 of the City’s Airport Use and Lease Agreements with terms ending June 30, 2011; containing a severability clause; and containing an emergency clause.

**WHEREAS**, The City of St. Louis (the “City”) is the owner of Lambert-St. Louis International Airport® (the “Airport”), which is operated for the City by the City’s Airport Authority, a department of the City;

**WHEREAS**, pursuant to Section 509.F of the Lambert-St. Louis International Airport® Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated as of October 15, 1984, as amended and restated on September 10, 1997, as amended (the “Airport Indenture”), the City may, but if and only to the extent consistent with the Capital Budget, transfer from the “Airport Development Fund” (established under Ordinance 59286, Section 13, approved October 26, 1984) into the “Airport Contingency Fund” (established under Ordinance 59286 approved October 26, 1984, Exhibit A, Article V, Sections 502 and 510) any moneys in the Airport Development Fund which are no longer needed for the purposes of moneys on deposit in the Airport Development Fund;

**WHEREAS**, the City anticipates that up to Twelve Million Dollars (\$12,000,000) may be required depending on airline traffic activity at the Airport to fund during the fiscal year beginning July 1, 2006 (“Fiscal Year 2007”) the mitigation of airline landing fee rates provided for in Section 607 of the City’s Airport Use and Lease Agreements with terms ending June 30, 2011 and entered between the City and various airlines using the Airport;

**WHEREAS**, there is a balance in excess of Twelve Million Dollars (\$12,000,000) available for transfer from the Airport Development Fund into the Airport Contingency Fund;

**WHEREAS**, it is now in the best interest of the City, the Airport, and the traveling public to authorize the transfer of funds from the Airport Development Fund into the Airport Contingency Fund in the total amount of Twelve Million Dollars (\$12,000,000); and

**WHEREAS**, this Ordinance authorizing the transfer of Twelve Million Dollars (\$12,000,000) from the City’s Airport Development Fund into the Airport Contingency Fund is recommended by the City’s Airport Commission and the City’s Board of Estimate and Apportionment.

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

**SECTION ONE.** The Board of Aldermen for The City of St. Louis hereby adopts and incorporates herein the foregoing recitals as findings and further finds that the Twelve Million Dollars (\$12,000,000) of excess moneys or funds that the City intends to transfer from the Airport Development Fund into the Airport Contingency Fund is no longer needed for the purposes of moneys on deposit in the Airport Development Fund and that said transfer is consistent with the Airport Capital Budget in accordance with Section 509.F of the Airport Indenture.

**SECTION TWO.** There is hereby authorized a transfer of funds in the total amount of Twelve Million Dollars (\$12,000,000) from the Airport Development Fund into the Airport Contingency Fund.

**SECTION THREE.** There is hereby further authorized periodic transfers as are required of sufficient funds or moneys on deposit in the Airport Contingency Fund as authorized in Section Two above in the total amount not to exceed Twelve Million Dollars (\$12,000,000) from the Airport Contingency Fund to the Airport Revenue Fund (established under Ordinance 59286, Section 13, approved October 26, 1984) during Fiscal Year 2007 for the purposes of making funds available for the mitigation of airline landing fee rates by the City in Fiscal Year 2007 provided for in Section 607 of the City's Airport Use and Lease Agreements with terms ending June 30, 2011 entered between the City and various airlines using the Airport.

**SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section, and subsection of this Ordinance shall be separate and severable from each and every other part, section, and subsection hereof and that the Board of Aldermen intends to adopt each said part, section, and subsection separately and independently of any other part, section, and subsection. In the event that any part, section, or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections, and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**SECTION FIVE.** 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 Charter of the City and shall become effective immediately upon its approval by the Mayor of the City.

**Approved: May 31, 2007**

**ORDINANCE #67505**  
**Board Bill No. 74**

An ordinance recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, making certain findings with respect to the transfer of Three Million Two Hundred Thousand Dollars (\$3,200,000) of moneys that The City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport®, intends to transfer from the "Airport Development Fund" (established under Ordinance 59286, Section 13, approved October 26, 1984) into the "Airport Contingency Fund" (established under Ordinance 59286 approved October 26, 1984, Exhibit A, Article V, Sections 502 and 510) in accordance with Section 509.F of the Lambert-St. Louis International Airport® Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated as of October 15, 1984, as amended and restated on September 10, 1997, as amended; authorizing a transfer in the total amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) from the Airport Development Fund into the Airport Contingency Fund; further authorizing transfers of funds in the total amount not to exceed Two Hundred Thousand Dollars (\$200,000) from the Airport Contingency Fund to the Airport Revenue Fund (established under Ordinance 59286, Section 13, approved October 26, 1984) during the fiscal year beginning July 1, 2006 ("Fiscal Year 2007") and the transfer of funds in the total amount not to exceed Three Million Dollars (\$3,000,000) during the fiscal year beginning July 1, 2007 ("Fiscal Year 2008"), as are required for the purposes of making funds available for the Passenger Air Service Incentive Program previously adopted by the City; containing a severability clause; and containing an emergency clause.

**WHEREAS,** The City of St. Louis (the "City") is the owner of Lambert-St. Louis International Airport® (the "Airport"), which is operated for the City by the City's Airport Authority, a department of the City;

**WHEREAS,** pursuant to Section 509.F of the Lambert-St. Louis International Airport® Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated as of October 15, 1984, as amended and restated on September 10, 1997, as amended (the "Airport Indenture"), the City may, but if and only to the extent consistent with the Capital Budget, transfer from the "Airport Development Fund" (established under Ordinance 59286, Section 13, approved October 26, 1984) into the "Airport Contingency Fund" (established under Ordinance 59286 approved October 26, 1984, Exhibit A, Article V, Sections 502 and 510) any moneys in the Airport Development Fund which are no longer needed for the purposes of moneys on deposit in the Airport Development Fund;

**WHEREAS,** the City anticipates that up to Two Hundred Thousand Dollars (\$200,000) may be required depending on passenger air service at the Airport to fund during the fiscal year beginning July 1, 2006 ("Fiscal Year 2007") and up to Three Million Dollars (\$3,000,000) during the fiscal year beginning July 1, 2007 ("Fiscal Year 2008") for the Passenger Air Service Incentive Program previously adopted by the City and provided for in Section 610 (B) of the City's Airport Use and Lease Agreements with terms ending June 30, 2011 entered between the City and various airlines using the Airport;

**WHEREAS,** there is a balance in excess of Three Million Two Hundred Thousand Dollars (\$3,200,000) available for transfer from the Airport Development Fund into the Airport Contingency Fund;

**WHEREAS,** it is now in the best interest of the City, the Airport, and the traveling public to authorize the transfer of funds from the Airport Development Fund into the Airport Contingency Fund in the total amount of Three Million Two Hundred Thousand Dollars (\$3,200,000); and

**WHEREAS,** this Ordinance authorizing the transfer of Three Million Two Hundred Thousand Dollars (\$3,200,000) from the City's Airport Development Fund into the Airport Contingency Fund is recommended by the City's Airport Commission and

the City's Board of Estimate and Apportionment.

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

**SECTION ONE.** The Board of Aldermen for The City of St. Louis hereby adopts and incorporates herein the foregoing recitals as findings and further finds that the Three Million Two Hundred Thousand Dollars (\$3,200,000) of excess moneys or funds that the City intends to transfer from the Airport Development Fund into the Airport Contingency Fund is no longer needed for the purposes of moneys on deposit in the Airport Development Fund and that said transfer is consistent with the Airport Capital Budget in accordance with Section 509.F of the Airport Indenture.

**SECTION TWO.** There is hereby authorized a transfer of funds in the total amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) from the Airport Development Fund into the Airport Contingency Fund.

**SECTION THREE.** There is hereby further authorized the transfers as are required of sufficient funds or moneys on deposit in the Airport Contingency Fund as authorized in Section Two above in the total amount not to exceed Two Hundred Thousand Dollars (\$200,000) from the Airport Contingency Fund to the "Airport Revenue Fund" (established under Ordinance 59286, Section 13, approved October 26, 1984) during Fiscal Year 2007 and in the amount not to exceed Three Million Dollars (\$3,000,000) from the Airport Contingency Fund to the Airport Revenue Fund during Fiscal Year 2008 for the purposes of making funds available for the Passenger Air Service Program previously adopted by the City and provided for in Section 610 (B) of the City's Airport Use and Lease Agreements with terms ending June 30, 2011 entered between the City and various airlines using the Airport.

**SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section, and subsection of this Ordinance shall be separate and severable from each and every other part, section, and subsection hereof and that the Board of Aldermen intends to adopt each said part, section, and subsection separately and independently of any other part, section, and subsection. In the event that any part, section, or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections, and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**SECTION FIVE.** 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 Charter of the City and shall become effective immediately upon its approval by the Mayor of the City.

**Approved: May 31, 2007**

**ORDINANCE #67506  
Board Bill No. 75**

An ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller for the City of St. Louis (the "City") to enter into and execute on behalf of the City its Airport Use and Lease Agreement AL-689 with a term ending June 30, 2011 (the "Use Agreement") for Lambert- St. Louis International Airport® (the "Airport") between the City and Airtran Airways, Inc. (the "Airline") granting to the Airline certain rights and privileges for the use of the Airport and its facilities subject to the terms, covenants, and conditions set forth in the Use Agreement approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and attached hereto as ATTACHMENT A to this ordinance and made a part hereof; containing a severability clause; and containing an emergency clause.

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

**WHEREAS,** the Airtran Airways, Inc. (the "Airline") is engaged in the business of providing commercial air transportation of persons and property as a scheduled air carrier certificated by the United States Government to engage in such business and to that end desires to enter into an agreement for the use of the Airport and its facilities; and

**WHEREAS,** the City is willing to grant certain rights and privileges for the use of the Airport and its facilities to the Airline upon the terms and conditions set forth in the City's Airport Use and Lease Agreement AL-689 with a term ending June 30, 2011 attached hereto as ATTACHMENT A to this ordinance.

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

**SECTION I.** 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 the Airport Use and Lease Agreement AL-689 with a term ending June 30, 2011 (the "Use Agreement") at Lambert-St. Louis International Airport® (the "Airport") between the City and Airtran Airways, Inc. (the "Airline") granting to the Airline certain rights and privileges for the use of the Airport and its facilities subject to the terms, covenants and conditions set forth in the Use 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 substantially as set out in ATTACHMENT A, which is attached hereto and made a part hereof.

SECTION 2. 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 a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions or portion thereof of this Ordinance unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 3. 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 Charter and shall become effective immediately upon its approval by the Mayor of the City.

ATTACHMENT A  
Airtran Airways, Inc. Use Agreement

ATTACHMENT "A"

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



AIRPORT USE AND LEASE AGREEMENT

AIRTRAN AIRWAYS, INC.  
NO. AL-689  
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**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®  
 AIRPORT USE AND LEASE AGREEMENT  
 AIRTRAN AIRWAYS, INC.**

This Airport Use and Lease Agreement is dated \_\_\_\_\_, 2007 and is between The City of St. Louis, a municipal corporation of the State of Missouri, and AirTran Airways, Inc., a corporation organized and existing under the laws of the State of Delaware.

**RECITALS**

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

Airline is engaged in the business of providing commercial air transportation as a scheduled air carrier and is certificated by the United States Government to engage in such business.

The City and certain airlines previously entered into agreements governing the use of the Airport, which expire on December 31, 2005.

Airline wishes to provide commercial air transportation at the Airport and, to that end, desires to enter into this Agreement

for the use of the Airport and its facilities.

The City is willing to grant Airline certain rights and privileges for the use of the Airport and its facilities upon the terms and conditions set forth herein.

The parties, therefore, agree as follows:

## ARTICLE I DEFINITIONS

### Section 101. Meanings and Construction

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

“Affiliate” means any commercial air transportation company that:

- (i) is designated by Airline to the City as its Affiliate; provided that Airline is a Participating Airline; and,
- (ii) has executed an airline operating agreement containing insurance, indemnification, and other standard provisions as required by the City; and either --
- (iii) is operating at the Airport for the benefit of Airline, under the same or substantially similar livery as Airline, and:
  - (a) is owned by Airline, or
  - (b) is a subsidiary of the same corporate parent of Airline, or
  - (c) is under contract to Airline in respect of such operation; or,
- (iv) if operating under its own livery, is not selling any seats on an aircraft in its own name and all seats on such aircraft are being sold in the name of Airline; or,
- (v) is operating at the Airport under a shared International Air Transport Association (“IATA”) flight designator code with Airline at the airport.

An Affiliate shall execute an airline operating agreement containing insurance, indemnification, and other standard provisions as required by the City.

The designation of an Affiliate shall be made only if Airline is a Participating Airline. Moreover, no “major” airline, as such term is defined by the U.S. Department of Transportation, and as measured on the date of designation hereunder, may be designated as an Affiliate of Airline (unless such Affiliate is a subsidiary of the same corporate parent as Airline). Airline shall notify the City of those commercial air transportation companies it designates as Affiliates, and when such designation is removed or when the qualifications set forth herein are no longer present. At any time, Airline may give the City 30-day notice that such commercial air transportation company otherwise meeting the definition of an Affiliate hereunder shall no longer be considered an Affiliate of Airline for purposes of this Agreement.

The Rents, Fees, and Charges of the Affiliates shall be calculated using the same methodology used to calculate Airline’s Rents, Fees, and Charges, in accordance with Article VI.

“Agreement” means this Airport Use and Lease Agreement.

“Aircraft Parking Position” means the area on the aircraft apron adjacent to each Gate and designated by the City to serve as the position at which aircraft using each particular Gate must be parked.

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

“Airfield Requirement” means the total cost of the Airfield Cost Center net of certain revenue items as calculated in accordance with the provisions of Section 606.

“Airline” means the Airline named on the signature page hereof.

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

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

“Airport Director” means the Airport Director of the City or the person performing the functions of that office, as authorized by the City’s Mayor, or that person authorized by the Airport Director to act for or on behalf of the Airport Director with

respect to any particular matter under this Agreement.

“Air Transportation Business” means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft in commerce, as defined in the Federal Aviation Act of 1958, as amended.

“Amortization” means the level annual charge required to recover the Net Cost of a Capital Improvement, or, when applicable, a Capital Outlay, over the Useful Life of such Capital Improvement or Capital Outlay at the City's Cost of Capital, commencing on the first day of the month following the date in which such Capital Improvement or Capital Outlay is placed into service.

“Apron-Level Unenclosed Space” means the unenclosed space under any of the concourses of the Terminal Building, as shown in Exhibit B.

“Bond or Bonds” means all bonds, notes, or other obligations issued by the City pursuant to the Trust Indenture.

“Capital Budget” means the capital budget of the City for the Airport, as amended or supplemented from time to time, adopted or in effect for a particular Fiscal Year, as provided in section 816 of the Trust Indenture.

“Capital Improvement” means any land purchased for the use of the Airport, improvement constructed, or capital asset or equipment acquired by the City at the Airport that has a Net Cost in excess of \$100,000.

“Capital Outlay” means any equipment item or other capital asset acquired or constructed by the City that is included in the Capital Budget and has a Net Cost of \$100,000 or less.

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

“Common Use Formula” means the formula used to prorate the total monthly rent attributable to the Common Use Space in each Terminal Building among those airlines using such space (the “Common User Airlines”) as follows: 20 percent of such monthly rent equally among each such Common User Airline, and 80 percent based on the percentage that results from dividing the average monthly number of Enplaned Passengers of each Common User Airline during the most recently available preceding six month period by the aggregate average monthly number of Enplaned Passengers of all Common User Airlines during such period. The results of the Common Use Formula shall be calculated by the City, and shall become effective on January 1 and July 1 of every year; provided, however, that the City shall update its calculations upon the commencement of service by a new Common User Airline, for which the City shall estimate the average monthly number of Enplaned Passengers for purposes of the Common Use Formula calculations.

“Common Use Space” means the designated tug drives within the baggage make-up areas, and the baggage claim areas and related facilities and appurtenances of the East Terminal Cost Center and of the West Terminal Cost Center, respectively, that Airline uses on a common basis with other airlines assigned to that space, as depicted on Exhibit B.

“Cost Centers” means the areas (and functional activities associated with such areas) used in accounting for the Amortization, the Capital Outlays, and the Operating and Maintenance Expenses of the Airport for the purposes of calculating Rents, Fees, and Charges, as such areas now exist as shown on Exhibit A, or may hereafter be modified or expanded, and as more particularly described below:

(i) “Airfield Cost Center” means areas of the airport used for the landing, taking-off, movement, and parking of aircraft at an Aircraft Parking Position, including runways, taxiways, aprons, navigational aids, hazard designation and warning devices, airfield security roads and fencing, blast fencing, lighting, clear zones and safety areas, aviation easements, including land utilized in connection therewith or acquired for such future purpose or to mitigate aircraft noise, and associated equipment and facilities, the acquisition, construction or installation cost of which is wholly or partially paid by the City.

(ii) “Airport Administration Cost Center” means all of the activities of the City in managing and administering the Airport including: (1) the services provided by the Airport’s administrative organizational units or “Departments” (Office of the Airport Director, Administration, Finance and Accounting, Governmental Affairs, Properties, Safety, Public Relations, Marketing, Legal, Operations & Maintenance Management, Planning & Development, Engineering, Contract Administration, Materials Management, Information Technology, and any other administrative organizational units that may be established from time to time); (2) direct charges assessed to the Airport by the City for specific services rendered; (3) the overhead charges for other services provided to the Airport by the City as determined by the City using a city-wide cost allocation methodology; and (4) the costs of facilities that support the Airport’s administrative functions and activities.

(iii) “East Terminal Cost Center” means the following two sub-Cost Centers:

(1) the “East Terminal” which is the unit terminal building situated at the east end of the passenger terminal complex, including Gates E2 through E25, as well as Gates D30, D32, D34, and D36, and all supporting and connecting structures and facilities and all related appurtenances, excluding City-owned loading bridges; and

(2) the “International Facilities” which is the area comprising the federal inspection services (FIS) area, Gates E29, E31, and E33 (as designated by the City from time to time), together with all associated office and operation space, and related appurtenances.

(iv) “Passenger Loading Bridges Cost Center” means the passenger loading bridges and appurtenant equipment acquired by the City on or after January 1, 2006, in accordance with Section 707, and available for use at any of the Gates in the Terminal Buildings.

(v) “Terminal Roadways Cost Center” means the upper (departure) and lower (arrival) roadways serving the entire terminal complex, together with the roadway system that provides access to and from Interstate 70.

(vi) “West Terminal Cost Center” means the area comprising the west portion of the passenger terminal complex and commonly referred to as the main terminal building, together with concourses A, B, C and D, including all supporting and connecting structures and facilities and all related appurtenances to said building and concourses, excluding City-owned loading bridges, and also excluding Gates D30, D32, D34, and D36, and all supporting facilities and related appurtenances to such Gates, which are part of the East Terminal sub-Cost Center.

Other Cost Centers used by the City but not defined herein include the Parking and Ground Transportation Cost Center and Other Buildings and Areas Cost Center.

“Cost of Capital” means:

(i) for Capital Improvements financed with Bonds, the effective interest rate (a.k.a. “true interest cost” or “TIC”) on the bonds used to finance the particular Capital Improvement; and

(ii) for Capital Improvements, or when applicable, Capital Outlays, financed with other Airport funds, the current Revenue Bond Index of 22-year+, “A” rated bonds published daily in the Wall Street Journal (or successor publication thereto), as of April 1 of the Fiscal Year in which the Capital Improvement is placed in service.

“Debt Service Reserve Account” means the account by the same name established pursuant to section 502 of the Trust Indenture.

“Enplaned Passengers” means all originating and on-line and off-line connecting passengers of Airline and of all other airlines enplaning at any of the Terminal Buildings, but excluding through passengers.

“Environmental Laws” means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials, including, without limitation, the Clean Air Act, 442 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §1010 *et seq.*

“Environmental Permits” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.

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

“Equipment Purchases and Capital Outlays” means the aggregate amount of expenditures for Capital Outlays.

“Exclusive Use Space” means that space within the Terminal Buildings, as depicted on Exhibit B, in which Airline is granted the right to occupy and use to the exclusion of others, in accordance with the provisions of Article IV.

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

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

“Gate” means each area from which passengers enplane or deplane aircraft, including the associated holdroom and passenger loading bridge, and related tenant improvements.

“Gross Space” means the entirety of any particular area of the Terminal Buildings measured, as appropriate for each area, from the primary interior surface of the exterior walls and from the centerline of interior partitions, or, in the absence of such interior partitions, the point where such centerline would be located if such interior partitions existed, expressed in square feet.

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

“Joint Use Formula” means the formula used to prorate the total monthly rent attributable to the Joint Use Space in each area of the Terminal Buildings (e.g., concourse operational area) among those airlines using such area (the “Joint User Airlines”) based on the percentage that results from dividing the relevant square footage attributable to the Exclusive Use Space of each Joint User Airline by the aggregate leaseable square footage within such area.

“Joint Use Space” means the areas in the Terminal Buildings that Airline uses jointly with other airlines assigned to those areas, as depicted on Exhibit B.

“Landed Weight” means the sum of the Maximum Certificated Gross Landed Weight for all Revenue Aircraft Arrivals over a stated period of time, rounded to the nearest thousand pounds.

“Landing Fees” means the fees payable by Airline for the use of the Airfield Operations Area in accordance with Section 503.

“Landing Fee Rate” means any Landing Fee Rate established pursuant to Section 606.

“Leased Premises” means, at any time, for Airline, those areas and facilities in the Terminal Buildings which, pursuant to Article IV, are leased to Airline for its exclusive, preferential, joint, or common use and occupancy, consisting of Exclusive Use Space, Preferential Use Gates, Joint Use Space, and Common Use Space, as depicted in Exhibit B.

“Majority-In-Interest” means, with respect to each Cost Center and sub-Cost Center, those Participating Airlines that: (i) represent no less than 66.66% in number of the Participating Airlines operating at the affected Cost Center or sub-Cost Center at the time of the voting action, and (ii) paid no less than 66.66% of the total Rents, Fees, and Charges applicable to such Cost Center or sub-Cost Center paid by all Participating Airlines operating in such Cost Center or sub-Cost Center during the immediately preceding Fiscal Year. No airline shall be deemed to be a Participating Airline for purposes of this definition if such airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1301.

“Maximum Certificated Gross Landed Weight” means, for any aircraft operated by an airline, the maximum certified gross landing weight in one thousand pound units of such aircraft as certified by the FAA and as listed in Airline’s FAA-approved Flight Operations Manual.

“Mitigated Landing Fee Rate” means a landing fee rate calculated in accordance with Subsection 606(C)(ii).

“Net Cost” means, with respect to a Capital Improvement or a Capital Outlay, the total project cost (including actual construction costs; architectural and engineering fees, program management fees, and inspection fees, construction management fees, permit fees, and other direct or allocable fees; interest during construction; and allocable out-of-pocket financing costs), less funds from any federal or state grants-in-aid or Passenger Facility Charge used in funding the Capital Improvement or Capital Outlay.

“Nonpreferential Gate Use Fee” means the just and reasonable fee, established by the City from time-to-time for the use of a Gate by nonpreferential gate users. Nonpreferential Gate Use Fee shall include a space use component as well as an allowance for the use of equipment and furnishings considered to be essential for the use of that Gate, such as seating, podiums, and the associated passenger loading bridge.

“Nonsignatory Airline” means an airline using the Airport which is not a Signatory Airline.

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

“Operating and Maintenance Expenses” means, as defined in section 101 of the Trust Indenture, as follows: the City’s expenses for operation, maintenance, repairs, ordinary replacement and ordinary reconstruction of the Airport, including a reasonable reserve for uncollectible revenues, and shall include, without limitation, administrative and overhead expenses, insurance premiums, deposits for self-insurance, legal, engineering, consulting, accounting or other professional service expenses, union contribution, payments to pension, retirement, group life insurance, health and hospitalizations funds, or other employee benefit funds, costs of rentals of equipment or other personal property, costs of rentals of real property, costs incurred in collecting and attempting to collect any sums due the City in connection with the operation of the Airport, and any other expenses required to be paid by the City under the provisions of the Trust Indenture or by laws or consistent with standard practices for airports similar to the properties and business of the Airport and applicable in the circumstances, including, without limitation, an allocable share of administrative

personnel costs incurred by the City at locations other than the Airport in connection with the operations of the Airport, and the expenses, liabilities and compensation of the fiduciaries required to be paid under the Trust Indenture, all to the extent properly attributable to the Airport. Operation and Maintenance Expenses shall not include any capital development cost or any allowance for depreciation or any operation or maintenance costs for special facilities where the lessee is obligated under its special facilities lease to pay such expenses. For purposes of this Agreement, Operating and Maintenance Expenses shall also include the gross receipt payments transferred annually from the Airport's revenue fund to the general fund of the City, as authorized by City ordinance, and as provided for in section 504(B) of the Trust Indenture.

"Originating Enplaned Passengers" means all Enplaned Passengers of Airline and of all other airlines at the Terminal Buildings, except passengers connecting between flights, both on-line and off-line.

"Participating Airline" means a Signatory Airline that has elected to make the Participating Commitment by signing and delivering to the City the form shown as Exhibit H.

"Participating Commitment" means the irrevocable commitment made by a Signatory Airline by signing and delivering to the City the form shown as Exhibit H, that the sum of annual Rents, Fees, and Charges payable by such Signatory Airline to the City shall be equal to, or greater than, \$100,000, on each Fiscal Year during the term of this Agreement, regardless of the level of activity, or amount of space leased by such Signatory Airline. The Participating Commitment shall be prorated for the Fiscal Year in which it is made, based on the actual date in which Notice is given to the City.

"Partner" means any commercial air transportation company that:

- (i) is a Signatory Airline;
- (ii) is operating at the Airport under a shared International Air Transportation Association (IATA) flight designator code with Airline at the Airport; and
- (iii) sells seats on flights in or out of the Airport in the name of Airline.

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

"Passenger Loading Bridge Charge" means the charge payable for the use of City-owned passenger loading bridges assigned to Airline as established in accordance with Section 604.

"Preferential Use Gates" means those Gates within the Terminal Buildings, as depicted on Exhibit B, in which Airline holds a priority over others as to use in accordance with the provisions of Article IV.

"Remediation Costs" means any reasonable losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing Environmental Laws or Environmental Permits, and (ii) attributable to Hazardous Materials left on City property in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of, Airline's operations at the Airport or the Airline's use or lease of the City's property. Remediation Costs include investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys' fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities arising out of Airline's violation of Environmental Laws or Environmental Permits.

"Rents, Fees, and Charges" means for any Fiscal Year, the rents, fees, and charges payable by Airline pursuant to Articles V and VI. The definition of Rents, Fees, and Charges excludes Passenger Facility Charges.

"Renewal and Replacement Fund" means the fund by the same name established pursuant to section 502 of the Trust Indenture.

"Requesting Airline" means an airline requesting the right to use, in common with Airline, all or a designated portion of Airline's Preferential Use Gates in accordance with the provisions of Section 406.

"Revenue Aircraft Arrival" means each landing of an aircraft at the Airport, except: (i) landing of an aircraft that departs from the Airport and returns, without having landed at another airport, for meteorological, mechanical, safety, or any other emergency purpose; (ii) the landing of aircraft during training flights; or (iii) the landing of aircraft during maintenance test flights.

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

"Security Deposit" means an irrevocable letter of credit or other instrument acceptable to the City provided pursuant to Section 506.

“Signatory Airline” means, at any time, each one of the airlines which then has executed an agreement with the same expiration date, and containing substantially similar terms and conditions as this Agreement.

“Terminal Buildings” means the terminal complex area comprised of the West Terminal Cost Center and the East Terminal Cost Center. The term “Terminal Buildings” also includes all additional new passenger terminal structures and facilities that may be constructed by the City at the Airport.

“Terminal Rental Rate” means the rental rate payable for the Leased Premises assigned to Airline in each of the Terminal Buildings as established in accordance with Section 603.

“Ticket Counter Queuing Space” means the public area in front of, and extending 15 feet from, Airline’s ticket counters, as shown on Exhibit B.

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

“Trust Indenture” means the Amended and Restated Indenture of Trust between the City and UMB Bank, N.A., Trustee, dated as of October 15, 1984, as Amended and Restated as of September 10, 1997, and as further amended or supplemented from time to time. The City shall provide to Airline, upon request, a copy of all such amendments and supplements.

“Unmitigated Landing Fee Rate” means a landing fee rate calculated in accordance with Subsection 606(C)(i).

“Usable Space” means the Gross Space of the particular terminal building, less any mechanical, electrical, and other utility space.

“Useful Life” means the estimated period of time in which the Net Cost of a Capital Improvement, or, when applicable, a Capital Outlay, is recovered through an Amortization charge. Useful Life shall be determined by the City based on generally accepted accounting practices.

### **Section 102. Interpretation**

(A) References in the text of this Agreement to articles, sections, paragraphs, or exhibits pertain to articles, sections, paragraphs, or exhibits of this Agreement, unless otherwise specified.

(B) The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.

(C) Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

(D) Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

(E) Words importing the singular shall include the plural and vice versa. Words of any gender shall be deemed to include correlative words of the other gender.

(F) The term “including” shall be construed to mean “including without limitation,” unless otherwise expressly indicated.

(G) All references to number of days shall mean calendar days.

(H) Words used in the present tense include the future.

### **Section 103. Incorporation of Exhibits**

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

Exhibit A – Cost Centers

Exhibit B – Leased Premises and City Gates

Exhibit C – Statistical Report Form

Exhibit D – Area Measurement Policy, Measurement Rules

Exhibit E – Illustrative Calculation of Rates and Charges

Exhibit F – 5-Year Capital Improvement Program

Exhibit G – Division of Responsibility for Maintenance and Operation

Exhibit H – Participating Airline Election Notice

## ARTICLE II TERM OF THE AGREEMENT

### Section 201. Term

The term of this Agreement shall commence on May 8, 2007, and shall expire on June 30, 2011, unless sooner terminated pursuant to the provisions hereof.

### Section 202. Holding Over

If Airline holds over after the expiration or early termination of this Agreement, the resulting tenancy shall be for an indefinite period of time on a month-to-month basis, during which tenancy the parties to this Agreement shall continue to adhere to all covenants, conditions and provisions of this Agreement; provided, however that, unless otherwise agreed to by the Airport Director with the approval of the Airport Commission, Airline shall be deemed to be a Nonsignatory Airline for purposes of Article VII, and shall pay to the City the rents, fees, and charges then applicable to Nonsignatory Airlines. Acceptance by the City of payment of Rents, Fees, and Charges after expiration or early termination of this Agreement shall be deemed to be payment on account, and shall not operate to waive or modify any provision of this Section.

## ARTICLE III Airline RIGHTS, PRIVILEGES, AND LIMITATIONS

### Section 301. Use of Airport

Subject to the terms of this Agreement, Airline shall have the right to conduct its Air Transportation Business at the Airport and to perform all operations and functions that are incidental or necessary to the conduct of such business at the Airport. Nothing in this Article shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business at the Airport. Any rights not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to the City.

- (A) *Use in Common of Terminal Buildings.* Airline shall have the right to use, in common with, and subject to the rights of others so authorized, the public areas and public facilities of the Terminal Buildings.
- (B) *Use in Common of Airfield Operations Area.* Airline shall have the right to use the Airfield Operations Area, in common with others so authorized, to land, takeoff, fly over, taxi, tow, park, and condition Airline's aircraft. Airline shall have the right to park, service, deice, load, unload, and maintain Airline's aircraft and support equipment in areas designated by the City, subject to the availability of space. Airline shall not knowingly permit, without the consent of the City, the use of the Airfield Operations Area or any portion thereof by any aircraft operated or controlled by Airline that exceeds the design strength or capability of such area as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual, a copy of which shall be provided, upon request, by the City to Airline.
- (C) *Airline Operations.* Airline shall have the right to handle reservations; sell tickets, including electronic tickets; document shipments; and load and unload persons, property, cargo, and mail, including interlining with other airlines.
- (D) *Maintenance of Aircraft and Equipment.* Airline shall have the right to conduct routine servicing by Airline, or by its suppliers of materials or by its furnishers of routine services, of aircraft operated by Airline or by other airlines with which Airline has an approved handling agreement, at its assigned Aircraft Parking Position(s), or as otherwise permitted by the City's Rules and Regulations; provided, however, that Airline shall not do, or permit to be done any heavy maintenance (e.g., engine changes, control surface replacements and overhauls) at its assigned Aircraft Parking Position(s) unless such maintenance is consented to by the City. Airline shall restrict its maintenance and/or repairs of ground support equipment (e.g., baggage carts, power units, and trucks) only to areas designated by the City for that purpose. The City reserves the right to require all third-party suppliers of materials or furnishers of services doing business at the Airport to secure a permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City for conducting such activity at the Airport.
- (E) *Ramp Support.* Subject to applicable fees and charges, Airline shall have the right to use water, electric power, telephone, and preconditioned air systems, to the extent supplied by the City, at or adjacent to Airline's assigned Aircraft Parking Positions. To the extent such systems are not supplied by the City, Airline shall have the right to purchase, install, use, and maintain, at Airline's assigned Aircraft Parking Positions, equipment and services necessary for loading, unloading, and general servicing of Airline's aircraft, auxiliary power systems, air start systems, preconditioned air systems, and other miscellaneous aircraft and aircraft-related support equipment and facilities.

- (F) *Storage of Fuels, Lubricants, and Deicing Fluids.* Airline shall have the right to erect or install and maintain on the Airport, only at locations designated, and in a manner approved by the City, adequate storage facilities for fuels, lubricants, and deicing fluids, together with the necessary pipes, pumps, motors, filters and other appurtenances incidental to the use thereof. Airline shall install, maintain, and operate such storage facilities in full compliance with all applicable federal, state and local laws and regulations, and in accordance with insurance underwriters' standards. The City reserves the right to assess a reasonable rental or use charge for any such storage areas, if located outside the Leased Premises.
- (i) Airline shall apply deicing/anti-icing fluids only in areas in which appropriate containment systems are operational, or in areas otherwise designated by the City. The City reserves the right to include the costs associated with the operation and maintenance of containment systems in the Airfield Cost Center.
- (ii) All non-hydrant fueling trucks shall be reasonably approved by the City, including their routing and parking locations.
- (G) *Personnel.* Airline shall have the right to hire and train personnel in the employ of or to be employed by Airline at the Airport.
- (H) *Customer Service.* Airline shall have the right to provide to its passengers such services that Airline normally provides at similar airports, such as skycaps and wheelchair services. Airline shall not provide any type of motorized passenger cart services within the Terminal Buildings without the approval of the City.
- (I) *Test of Aircraft and Equipment.* Airline shall have the right to test aircraft and other equipment owned or operated by Airline; provided that such testing is incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and will not hamper or interfere with use of the Airport and its facilities by others entitled to use of the same. The City reserves the right to restrict any testing operations it deems to interfere with the safe and efficient use of the Airport and its facilities or to create excessive noise as determined by the City.
- (J) *Sale, Disposal, or Exchange of Equipment and Products.* Airline shall have the right to sell, dispose, or exchange aircraft, engines, accessories, gasoline, fuel, oil, lubricants, deicing fluid, and other equipment of Airline, only in areas designated by the City.
- (K) *Use of Ground Transportation.* Airline shall have the right to load and unload persons, property, cargo, and mail by motor vehicles or other means of conveyance, operated by itself or provided by third-party suppliers, as Airline may desire or require in the operation of its Air Transportation Business, via routes and at locations designated by the City; provided, however, that the City reserves the right to require such third-party supplier or suppliers to secure a permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City to conduct such activity at the Airport.
- (L) *Modification of Leased Premises.* Airline shall have the right to conduct the following activities within its Leased Premises:
- (i) build, install, maintain and operate facilities and equipment for all activities related to its Air Transportation Business at the Airport, including: check-in and ticket counters; reservations offices; administrative offices; operations offices; lockers, restrooms, and related facilities for its employees; and baggage, cargo, and mail handling and storage space; provided, however, that the particular Leased Premises are designed to be used for said purpose or that said use has been approved by the City;
- (ii) install and maintain personal property, including furniture, furnishings, supplies, machinery, and equipment deemed necessary or prudent for the operation of its Air Transportation Business; title to such personal property shall remain with Airline, subject to the provisions of this Agreement;
- (iii) install and maintain wall treatments and other identifying signs, subject to the prior approval of the City, and provided that such signs shall be substantially uniform in size, type, and location with those of other Signatory Airlines, harmonious and in keeping with the pattern and decor of the Terminal Buildings, and consistent with the City's graphics standards and standards for mounting; and
- (iv) construct modifications, finishes, and improvements deemed necessary or prudent for the operation of its Air Transportation Business, subject to the approval and permitting requirement provisions of Article VIII.
- (M) *Airline Clubs.* Airline shall have the right to furnish and operate a preferred customer, VIP club, or similar private club. In addition to its space rents, Airline shall pay a concession fee if it provides goods or services for a charge, which concession fee shall be the applicable concession fee rate for like sales payable at the Airport; provided that no such payment shall be required with respect to: (i) goods or services obtained from concessionaires already obligated to make payments to the City with respect to such goods or services, (ii) the rent of conference room space within the club, and (iii) reciprocal club membership fees. Notwithstanding the above, club membership fees shall be exempt from concession fees. At Airline's option, such preferred customer or VIP club may be shared with one or more other airlines.
- (N) *Handling Arrangements.* Airline shall have the right to enter into or conduct handling arrangements as part of

its Air Transportation Business at the Airport.

(i) The rights granted to Airline pursuant to this Article may be exercised on behalf of Airline by its Affiliates, by other Signatory Airlines, or by third-party suppliers; provided, however, that the City reserves the right to require such third-party suppliers to secure a permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City to conduct such activity at the Airport.

(ii) Airline may exercise on behalf of its Affiliates or other Signatory Airlines any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to Rents, Fees, and Charges applicable to such activities.

(O) *Airport Access.* Airline shall have the right of ingress to and egress from the Airport including its Leased Premises and the public areas and public facilities of the Terminal Buildings, for Airline's employees, agents, contractors, passengers, guests, invitees, licensees, suppliers of materials and providers of service, and its or their equipment, vehicles, machinery, and other property; provided, however, that the foregoing shall not preclude the City from: (i) subjecting such persons to the City's Rules and Regulations, (ii) requiring such persons to enter into an agreement with the City when such access is required on an ongoing basis, or (iii) imposing any charge, permit or license fee for the right to do business at the Airport; further provided, however, that ingress to and egress from the Airport may be conditioned on adherence to security requirements, and may be limited on temporary bases for security reasons.

(P) *Right to Purchase Services and Products.* Airline shall have the right to purchase or contract for the purchase of the following services and products subject to the limitations contained herein:

(i) Airline may purchase or otherwise obtain products of any nature, including aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, propellants, passenger supplies and other materials, equipment, supplies, articles, and goods, used or acquired by Airline in connection with or incidental to Airline's Air Transportation Business at the Airport from any person or company; provided, however, that the City reserves the right to require such person or company to secure a permit from the City, to comply with all applicable Rules and Regulations, and to pay any applicable fees to the City to conduct such activity at the Airport.

(ii) Airline shall have the right to contract with a third party or Airline-owned ground handler to provide to it or to perform for it any of the services or functions which it is entitled to perform hereunder, provided that such third party must maintain any permits and pay all fees required by the City. The contractual relationship between any third party and Airline shall not affect in any way the fulfillment of Airline's obligations, including those of insurance and indemnification for activities, hereunder.

(iii) Any suppliers, contractors or agents performing services for, or selling products to, Airline at the Airport shall conform to applicable performance standards, lease requirements, and the City's Rules and Regulations, including any permit requirement or payment of fees required by the City.

(Q) *Communications and Weather Equipment, Multi-User Flight Information Display System (MUFIDS) and Public Address System.* Airline shall have the right to use the following communications equipment, flight information displays, and public address systems in conjunction with the conduct of its Air Transportation Business:

(i) Subject to the prior approval of the City and conditions stated below, Airline shall have the right to install, maintain, and operate, alone or in conjunction with any other Signatory Airline(s), or through a nominee, such radio, telecommunications (both wireline and wireless), meteorological, aerial navigation, and computer equipment, facilities and associated wiring, as may be necessary for the conduct of Airline's Air Transportation Business at the Airport. The location of such equipment and facilities, method of installation, and type of equipment shall be subject to the prior approval of the City. The City may require modification, removal, or relocation of such equipment if it interferes with other communication, meteorological, or aerial navigation systems operated by the City, other tenants, or governmental agencies. Such modification, removal, or relocation shall be at the City's sole cost. The City shall have the right to charge a fee, surcharge, or rental charge for any equipment location outside of Airline's Leased Premises. The City retains the right to impose reasonable and non-discriminatory access fees to third-party telecommunications and data service providers

(ii) Airline shall provide electronic flight arrival and departure information through City-installed systems and shall cooperate with the City's installation and maintenance of centralized and remote flight information displays.

(iii) Airline shall have the right to use, in common with others so authorized, the public address system serving the Terminal Buildings. Airline shall not install, cause to be installed, or use any other public address system at the Terminal Buildings without the prior approval of the City.

(iv) Airline shall comply with the Airport's RF Systems Antenna/Radio Frequency Policy, as amended from time to time.

(R) *Food and Beverage.* Airline shall have the following rights to prepare, package, and/or distribute food and

beverages with respect to the conduct of its Air Transportation Business at the Airport:

(i) Airline shall have the right to purchase, prepare, and/or package food and beverages to be distributed at no cost to passengers of Airline, its Affiliates, or Partners without paying the applicable concession fee. Airline shall pay a concession fee for all food and beverages purchased, prepared, and/or packaged to be sold at the Airport; provided that no such payment shall be required with respect to food and beverages obtained from vendors already obligated to make payments to the City with respect to such food and beverages. Moreover, if Airline provides in-flight food and beverage preparation services to other airlines other than its Affiliates or Partners, Airline shall pay a concession fee. The concession fee to be paid by Airline shall be the applicable concession fee rate paid by in-flight food catering concessionaires located at the Airport.

(ii) If Airline purchases food and beverages from an off-Airport caterer for delivery to Airline at the Airport, said caterer shall have a contract with, or permit from, the City to do business at the Airport, and said caterer shall be subject to a concession fee equal to the concession fees paid by in-flight food catering concessionaires located at the Airport.

(iii) Airline shall have the right to distribute food and/or beverages to passengers at no cost from Airline's Leased Premises in the event of service delays or other emergencies. Airline shall also have the right to distribute food and/or beverages at no cost to the general public from Airline's Leased Premises; provided, however, that such distribution must be in connection with holidays and/or promotional events.

(iv) Airline shall have the right to install soft drink and/or snack vending machines in its non-publicly accessible Leased Premises for the sole use of Airline's employees, contractors, and agents. Such sales shall not be subject to a concession fee. Vending machines shall not be within the view of the general public. Vending machine locations are subject to the prior approval of the City.

(S) *Employee Parking.* The City may, but is not required to, designate parking areas at the Airport available to Airline's employees while at work at the Airport, subject to the payment of monthly fees as the City shall determine from time to time. The City shall have the right to relocate, re-designate, or otherwise change the location of such parking areas, if any, as needed.

### **Section 302. Prohibition Against Exclusive Rights**

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

### **Section 303. Restrictions on Exercise of Rights and Reservation of Rights to City**

The rights established in this Article shall not be exercised so as to interfere with the City's operation of the Airport for the benefit of all aeronautical users, and shall be subject at all time to the restrictions herein and reservation of rights by the City.

(A) *No Interference with Operations.* If the City determines that Airline or its contractors are exercising the rights and privileges granted to Airline pursuant to this Article (i) in a manner which interferes with the operation or maintenance of the Airport; (ii) in a manner which adversely affects the health, safety or security of the public or other users of the Airport; or (iii) in a manner which fails to comply with the City's Rules and Regulations or terms of this Agreement, the City shall give Airline Notice of such determination including the specific reasons therefor. Airline shall promptly commence and diligently pursue actions necessary to correct the conditions or actions specified in such Notice. If such conditions or actions are not, in the opinion of the City, promptly corrected after receipt of such Notice or if such conditions or actions required corrective action over a period of time, and Airline has not, in the reasonable opinion of the City, promptly commenced and diligently pursued all such corrective action, then upon 10 days Notice from the City to Airline, the City may suspend Airline's or its contractor's access to the Airport. Notwithstanding the foregoing provision, the City shall have the right, upon Notice to Airline, to immediately suspend operations of Airline or of said contractors if such action is necessary to protect the health, safety or security of the public or other users of the Airport or in emergency situations.

(B) *Integration with Systems.* Airline shall not knowingly do, or permit to be done, anything that may interfere with the effectiveness or accessibility of the drainage, sewer, water, communications, heating or ventilation, air conditioning, natural gas, sprinkler, alarm or fire protection systems, fire hydrants and hoses, or any other part of the utility, electrical, or other systems installed or located from time to time at the Airport.

(C) *Right to Designate Location.* The City reserves the right to designate the locations within which all of the activities conducted at the Airport, including the activities authorized herein, shall be conducted, and to reasonably change such designations from time to time; provided, however, that the City shall comply with the provisions of this Agreement if Airline's Leased Premises, or any portion thereof, are relocated as a result of any re-designation.

(D) *Airport Access.* The City may, from time to time, temporarily or permanently close or restrict specific roadways,

taxiways, taxi lanes, runways, apron areas, doorways, and any other area at the Airport; provided, however, that, unless an emergency situation exists, to the extent that the City deems it practical, Airline shall be notified with regard to such closings in order to minimize the disruption of services being provided. The City shall have the right at any time or times to relocate, reconstruct, change, alter, or modify any such means of access provided for pursuant to this Agreement or otherwise, either temporarily or permanently; provided that a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. The City shall reasonably notify Airline of any such action.

(E) *Telecommunication and Data Networking Infrastructure.* The City, acting in its capacity as proprietor of the Airport, retains the right to act as or designate the provider of wireless and wireline public telecommunications services and public data networking infrastructure for the general public in the public accessible areas of the Airport. The City shall have the sole right to determine the location of, and install or cause to be installed, all public telephones, public telefax, wireless access, and other public telecommunications devices and conduit in any part of the Airport, provided that doing so does not (i) unreasonably interfere with Airline's operations authorized hereunder or (ii) substantially diminish the space contained in or the functionality of Airline's Leased Premises. Upon reasonable prior notification by the City, the City shall be entitled to reasonable access to Airline's Leased Premises to install or service such devices. The City shall be entitled to all income generated by such telephones and devices and shall have the right to collect reasonable and non-discriminatory charges for access to the telecommunications/data networking infrastructure except for systems or components which are owned by Airline.

(F) *Informational Devices.* The City reserves the right to install or cause to be installed informational devices, including static and electronic advertising, in all public accessible areas of the Terminal Buildings; provided, however, that such installation shall not unreasonably interfere with the operations of Airline authorized herein. The City has the right to enter Airline's Leased Premises to install or service such devices. The City shall be entitled to all income generated by such devices. The City will use its best efforts to restrict the content of advertising messages displayed in informational devices located within Airline's Common Use Space and Preferential Use Gates that are deemed to be incompatible with Airline's Air Transportation Business.

(G) *All Other Rights.* Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to the City.

(H) *Strict Construction of Rights.* The rights granted to Airline hereunder may be exercised by Airline only to the extent such rights are necessary or incidental to the conduct by Airline of its Air Transportation Business at the Airport.

#### Section 304. Hazards

Airline shall not do, authorize to be done, or fail to do anything at the Airport which may: (i) create or contribute to a nuisance, (ii) in any way obstruct or interfere with rights of others using the Airport, or (iii) create a hazardous condition so as to increase the risks normally attendant upon operations permitted herein.

(A) *Noise Abatement.* Airline shall not engage in any activity prohibited by the City's applicable noise abatement procedures included in the Rules and Regulations, as they may be promulgated from time to time.

(B) *Engine Runups.* Airline shall perform aircraft engine runups only at locations and during time periods approved by the City, in its sole discretion.

(C) *Disabled Aircraft.* As soon as possible after release from proper authorities, Airline shall promptly remove any of its disabled aircraft from the Airfield Operations Area or Aircraft Parking Positions, shall place any such disabled aircraft only in such storage areas as may be designated by the City, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by the City. If Airline fails to promptly remove its disabled aircraft from the Airfield Operations Area or Aircraft Parking Positions, the City may remove said aircraft and take other reasonable and appropriate action under the circumstances. The City shall add the cost of such removal or other action, plus actual administrative costs, including time and expenses, as an additional charge due hereunder on the first day of the month following the date of such work. The City's rights under this Section are in addition to all other rights and remedies provided to the City hereunder.

(D) *Aircraft Apron Operations:*

(i) Airline shall not operate the engines of aircraft so as to endanger passengers present on the aircraft apron.

(ii) The City retains the right to review and approve all aircraft push-out, power-out, and/or power-back operating procedures at each Aircraft Parking Position, which approval shall not be unreasonably delayed or denied.

#### Section 305. Airport Security

(A) Airline shall not do or permit its agents, employees, and its contractors or suppliers while such contractors or suppliers are providing services to Airline, to do anything at the Airport that would be in conflict with or violate the

requirements of any federal, state, or local law, regulation or security directive regarding airport security, as they may be amended from time to time, or the Airport Security Program.

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

#### **Section 306. Impact on Airport Certification**

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

#### **Section 307. Avigation Rights**

The City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including Airline's Leased Premises, for navigation or flight in said airspace for landing on, taking off from, or operating at the Airport.

#### **Section 308. Airline Summary**

Upon request by the City, Airline shall provide to the City a written summary containing the following information and such additional information as the City may reasonably request from time to time:

- (A) The names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities, including a 24-hour emergency contact. Airline shall update information as needed.
- (B) The published schedules of Airline's flight activity at the Airport.
- (C) The description of Airline's fleet and identification of the type and series of aircraft. Airline shall reasonably notify the City of the introduction of an aircraft that is not being operated by Airline at the Airport on the date of this Agreement.

### **ARTICLE IV PREMISES**

#### **Section 401. General**

The City intends to maximize the utilization and flexibility of current Airport facilities to meet changing air service demands.

#### **Section 402. Leased Premises**

- (A) The City hereby leases to Airline, subject to the provisions of Article III, the Leased Premises as shown on Exhibit(s) B. Airline accepts the Leased Premises in AS IS condition, with no warranties or representations, expressed or implied, oral or written, made by the City or any of its agents or representatives.
- (B) Airline acknowledges that the City requires no commitment by Airline to lease space at the Airport as a condition precedent to entering into this Agreement.
- (C) If space changes are made consistent with the provisions of this Agreement, revised exhibits may be substituted for those herein without the necessity for amendment of this Agreement; which substitution may be made by Notice to Airline from the City.
- (D) Airline agrees that the measurements obtained from the City's Computer-Aided Drafting and Design ("CADD") drawings of the Terminal Buildings shall be used for determining the amount of space in the Terminal Buildings, including the Leased Premises, and for calculating the Terminal Rental Rates. Such CADD drawings are the basis for the exhibits to this Agreement. As the spaces in the Terminal Buildings and the Leased Premises change from time to time, the City may revise the exhibits to this Agreement by notifying Airline that it is substituting new exhibits; provided, however, that (i) all CADD measurements shall be done in compliance with the Lambert-St. Louis International Airport, Planning and Engineering, Area Measurement Policy, Measurement Rules, dated January 12, 2005, as shown in Exhibit D; (ii) Airline shall be notified by the City, including a copy of any such substituted exhibit; and (iii) no such changes to Airline's Exclusive Use Space or Preferential Use Gates shall be made without the consent of Airline, which consent shall not be unreasonably delayed or withheld.

**Section 403. Preferential Use Gates**

Airline shall have a priority in using its Preferential Use Gates as follows:

(A) Airline's right to its Preferential Use Gates shall be subject to an average Gate utilization requirement of 4 flight departures each day per Gate assigned to Airline. For purposes of this Section, flight departures by Affiliates and Partners shall be counted towards Airline's average Gate utilization requirement.

(B) Airline shall have the right to permit the occasional use of any of its Preferential Use Gates by other airlines to accommodate non-routine operational anomalies. Such use shall not be considered a sublease arrangement.

(C) If Airline fails to meet the average Gate utilization requirement set forth in Subsection 403(A) during any given six-month period, Airline may be subject to losing its preferential right to one or more Gates, so that, thereafter, Airline will meet the average Gate utilization requirement with its remaining Preferential Use Gates. If Airline is required by City to relinquish any Gate(s) in accordance with Subsection 403(D), such Gate(s) shall be deleted prospectively from Airline's Leased Premises and Airline's rent obligation with respect to such Gate(s) shall cease.

(D) If City requires Airline to relinquish one or more of its Preferential Use Gates, City and Airline will confer to determine whether Gates should be relinquished, and if so, which Gates should be relinquished. If after 15 days of good faith negotiations no agreement is reached, the City shall select the Gate(s) to be relinquished. In making such selection, the City shall take into consideration the best interest of the traveling public and the operations of the Airport, and will also be guided by the following factors:

- (i) all known planned Gate uses in the 180 days immediately after the relinquishment;
- (ii) Airline's historical Gate utilization;
- (iii) Airline's operational space adjacencies;
- (iv) specialized fixtures required for Airline's operations; and
- (v) the compatibility of any new proposed operations and work force with Airline's and its Affiliates' operations and work force.

**Section 404. Passenger Loading Bridges**

(A) Airline shall have the right to use the City-owned passenger loading bridges and appurtenant equipment at each of Airline's Preferential Use Gates in accordance with the provisions of this Agreement.

(B) If passenger loading bridges are not supplied by the City, Airline shall have the right to install and use its own passenger loading bridges and appurtenant equipment at its Preferential Use Gates.

**Section 405. Accommodation In City-Controlled Facilities**

The City may retain under its exclusive control and possession certain facilities in the Terminal Buildings, including, initially, the facilities described and shown on Exhibit B. It is the intent of the City to use, at its discretion, any of the City-controlled facilities to accommodate: (i) airlines not requiring permanent facilities or airlines requiring temporary accommodation pending allocation of permanent facilities, and (ii) the needs of Signatory Airlines and Non-signatory Airlines. Upon Airline's request, the City may grant to Airline the right to use, in common with other airlines, designated City-controlled facilities subject to Airline's payment of applicable fees.

**Section 406. Accommodation in Preferential Use Gates**

The City may grant Requesting Airline(s) the right of use in common of all or a designated portion of Airline's Preferential Use Gates and rights of ingress and egress subject to and in accordance with the terms and conditions of this Agreement.

(A) The right to use Airline's Preferential Use Gates (and associated Aircraft Parking Positions, appurtenant equipment, and ancillary support space which are reasonably necessary for the effective use of such Gates), shall be scheduled so as not to interfere with Airline's scheduled deplaning, enplaning, and servicing activities or those of any Affiliate or Partner, or any other airline that Airline services under any then-existing handling agreement. In accommodating Requesting Airline(s) in Airline's Preferential Use Gates, the City shall provide for departure not later than one hour before Airline's next scheduled arrival and for arrival not earlier than one hour after Airline's scheduled departure. Airline, its Affiliates, and Partners shall have priority over other users with respect to overnight parking on Airline's assigned Aircraft Parking Position, provided that Airline, its Affiliates, and Partners may be required to remove a parked aircraft from its Assigned Parking Position during regular hours of operations to accommodate use by others in accordance with the provisions of this Article. Airline's off-schedule operations in its Preferential Use Gates shall take precedence over the use of a Requesting Airline; provided, however, that if Airline's off-schedule operations interfere with the Requesting Airline's use of Airline's Preferential Use Gates, Airline shall work with, and shall make best efforts to

accommodate, Requesting Airline at another Gate.

(B) As a condition to any grant of rights to the Requesting Airline in accordance with this Section, the City shall require Requesting Airline to pay Airline, and Airline shall be entitled to collect from the Requesting Airline the Nonpreferential Gate Use Fee, as well as reasonable charges for the Requesting Airline's use of Airline's proprietary systems and equipment.

(C) When granted use of space under the provisions of Sections 406 and 407, Requesting Airlines shall have the right in all cases to ground-handle their own operations or to be handled by the operator of their choice.

(D) City shall require that the Requesting Airline enter into an agreement to pay Airline the fees and charges specified in this Section, and to indemnify the City and Airline in connection with Requesting Airline's use of Airline's Preferential Use Gates and associated Aircraft Parking Positions, and shall require the Requesting Airline to provide a payment guarantee and proof of insurance. The terms of the indemnification and the required insurance shall be those set out in Article XI; provided, however, that Airline may request to be named as an additional insured.

#### **Section 407. Procedures for Accommodation in Preferential Use Gates**

(A) If a Requesting Airline, including any airline seeking to expand its scheduled service or an airline seeking to begin scheduled service at the Airport, needs Gate space at the Airport, and such need cannot reasonably be met by use of Gates not leased to other Signatory Airlines, the City on behalf of the Requesting Airline shall make a request of all Signatory Airlines leasing Preferential Use Gates for accommodation. The request shall be made to the person(s) designated to receive communications hereunder with a copy to the local station manager, and shall identify the need for such request. Airline shall make reasonable efforts to accommodate such request and shall provide a response to the Requesting Airline and the City within 15 days.

(B) If no Signatory Airline volunteers to accommodate the Requesting Airline's operational needs or requirements for Gate space at reasonable costs and on other reasonable terms, the City may, upon 30 days notification to Airline, grant the Requesting Airline the right of use in common with Airline one or more of Airline's Preferential Use Gates subject to the conditions contained herein. In making such determination, the City shall take into consideration the best interest of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, including Airline's historical and then-present Gate utilization, the known planned use for such premises in the 180 days immediately after the request, the compatibility of such Requesting Airline's proposed operations and work force including ground-handling operations with Airline's and its Affiliates' and Partners' operations and work force, and the security of Airline's and the Requesting Airline's operations. The City may request that planned uses and requirements be documented and submitted in writing to the City, but the City shall treat such planned uses and requirements as confidential, proprietary information, to the extent allowable by law.

(C) Requesting Airline has the right to make improvements and alterations necessitated by any required long-term accommodation, the scope of which shall be subject to approval by Airline and the City. Approval shall not be unreasonably withheld.

(D) Upon the termination of such use in common with Airline, Requesting Airline shall be responsible for returning all Gate and other facilities used by the Requesting Airline to the condition received, normal wear and tear excepted, unless Airline and the City release Requesting Airline from this requirement.

#### **Section 408. Consolidation of Operation**

(A) If the City needs additional facilities and it reasonably determines that Airline is under utilizing its Leased Premises and is able to consolidate its operation without sacrificing its operational integrity (or that of its Affiliates, Partners, or of those airlines under contract with Airline for ground-handling services and being handled in the same facilities), the City may, upon consultation with Airline and after 60 days prior Notice to Airline, recapture a portion of the Leased Premises and require Airline to consolidate its operations into its remaining Leased Premises.

(B) For purposes of this Section, under-utilization shall be reasonably determined by the City, taking into account the then-normal space utilization standard by all airlines at the Airport, Airline's space requirements to accommodate normal operating procedures of Airline, its Affiliates and Partners, planned use by Airline for such premises in the next 180 days and normal seasonal variations, and any related labor agreement. The City shall report its findings to Airline.

(C) Through Notice to the City, Airline may request the City to reconsider its determination of under-utilization within 30 days of receipt of the City's Notice to consolidate. In such event, Airline shall provide documentation to show future plans for service and other information requested by the City. The City shall make a reasonable determination which it believes best meets its overall goals for the Airport.

(D) If the City elects to proceed with the consolidation of space after such reconsideration, the City shall give Airline Notice within 10 days of such decision.

(E) If there is no Event of Default with respect to Airline, the City shall pay all reasonable costs associated with the

relocation of Airline's equipment, fixtures, furniture, and signage, and shall reimburse Airline for the undepreciated value of the tenant's improvements that cannot be relocated pursuant to the provisions of this Section; provided, however, that in lieu of reimbursing the undepreciated value of Airline's tenant improvements, the City may replace such tenant improvements with like improvements in the consolidated space. If Airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1301, Airline shall consolidate into its remaining Leased Premises at its sole cost and expense.

#### **Section 409. Relinquishment of Abandoned Space**

If the City reasonably determines that Airline has abandoned or constructively abandoned all or a portion of its Leased Premises, the City may, but is not obligated to, upon 30 days Notice to Airline, terminate this Agreement with respect to, and delete from Airline's Leased Premises hereunder, such abandoned or constructively abandoned space. For purposes of this Section, abandoned or constructively abandoned space shall be determined by the City in its sole discretion but taking into account planned use by Airline for such premises in the following 180 days and normal seasonal variations. Airline may request the City to reconsider its determination of abandonment by giving Notice to the City. In such event, Airline shall provide documentation to show future plans for service, events of force majeure, if any, and other information requested by the City. The City shall make the determination that it believes best meets its overall goals for the Airport.

#### **Section 410. Relocation of Leased Premises**

In order to optimize use of Airport facilities, the City reserves the right to reassign any or all of Airline's Leased Premises after Notice, followed by a consultation period of no less than 90 days. In making such determination, the City shall take into consideration the best interest of the traveling public and the operations of the Airport, and will be guided by all pertinent factors, including Airline's historical and then-present space utilization, the known planned use for such premises, and Airline's operational space adjacencies. If any such reassignment occurs, Airline shall be assigned new space reasonably comparable in size, quality, finish, and location. Airline's costs shall not increase as a result of any relocation unless Airline requests additional space and/or replacement space in a different Cost Center. Airline's relocation of any of its Leased Premises resulting from such reassignment shall be at the City's sole expense. Airline shall be reimbursed for its reasonable out-of-pocket expenses incurred as part of the relocation and for the undepreciated value of its tenant improvements that cannot be relocated; provided, however, that in lieu of reimbursing the undepreciated value of Airline's tenant improvements, the City may replace such tenant improvements with like improvements in the new space.

### **ARTICLE V RENTS, FEES, AND CHARGES**

#### **Section 501. Participating Commitment**

In consideration for the rights and privileges available to Airline in accordance with Subsection 506(D), Section 602, and Article VII, Airline may elect to become a Participating Airline by signing and delivering to the City the form shown as Exhibit H.

#### **Section 502. Terminal Building Rents**

- (A) Airline shall pay the City for the use of its Exclusive Use Space and Preferential Use Gates a monthly rent equal to the applicable Terminal Rental Rate calculated in accordance with Section 603 multiplied by the amount of space in Airline's Exclusive Use Space and Preferential Use Gates set forth in Section 402.
- (B) Airline shall pay the City for the use of Common Use Space and Joint Use Space a monthly rent based on the Terminal Rental Rate calculated in accordance with Section 603, and the applicable Common Use Formula and Joint Use Formula.
- (C) Notwithstanding the provisions in Subsections 603(A) and (B), the annual Terminal Rental Rate applicable to Apron-Level Unenclosed Space shall be \$12.00 per square foot per year, or \$1.00 per square foot per month, for the term of this Agreement.

#### **Section 503. Landing Fees**

- (A) Airline shall pay to the City for the use of the Airfield Operations Area monthly Landing Fees calculated by multiplying Airline's Landed Weight for that month by either the Mitigated Landing Fee Rate or the Unmitigated Landing Fee Rate, whichever is applicable pursuant to Sections 606 and 607; provided, however, that for purposes of the annual calculation of Rents, Fees, and Charges under Section 602, the City shall make the following assumptions:
- (i) Airline will pay the Mitigated Landing Fee Rate; and
  - (ii) for purposes of the applicable Landing Fee Rate mitigation adjustments made in accordance with Subsection 607(B), the Landed Weight of all Participating Airlines and their Affiliates will be deemed equal to 100% of the comparable Landed Weight for the 12-month period ending December 31, 2005.
- (B) If Airline was operating at the Airport on September 30, 2005, and if Airline does not return an executed

Agreement to the City by November 22, 2005, Airline shall pay monthly landing fees based on the Unmitigated Landing Fee Rate beginning on the first day of the month when the Mitigated Landing Fee Rate is first offered, and continuing for a period of time equal to the period measured starting on November 22, 2005, and ending on the day in which Airline returns an executed Agreement to the City (the "Late Penalty Period"); provided, however, that for the purposes of this section, Airline's Late Penalty Period shall be rounded up to the last day of the nearest calendar month. The Late Penalty Period shall not exceed 6 months.

#### **Section 504. Passenger Loading Bridge Charges**

(A) Unless otherwise provided for in one or more separate agreements, Airline shall pay the City \$2,500 each month for its use of each City-owned passenger loading bridge that is assigned to Airline.

(B) If the City proceeds with the passenger loading bridge program set forth in Section 707, Airline shall pay the City for the use of any passenger loading bridge acquired under such program a monthly Passenger Loading Bridge Charge calculated in accordance with Section 604.

#### **Section 505. Other Fees and Charges**

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

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

#### **Section 506. Security Deposit**

(A) *Amount and Form of Security Deposit.* Upon execution of this Agreement, or upon the assignment of this Agreement to Airline, Airline shall provide the City with an irrevocable letter of credit, contract bond, or other security or instrument acceptable to the City ("Security Deposit") in an amount equal to 3 months of estimated Rents, Fees, Charges, estimated PFC remittals, and any other estimated payments due the City pursuant to this Agreement, as determined by the City based on published flight schedule and anticipated space assignments for Airline's operations. The amount of the Security Deposit may be adjusted from time to time to reflect changes in Airline's financial obligations to the City. The Security Deposit shall guarantee the faithful performance by Airline of all of its obligations hereunder and the payment of all Rents, Fees, and Charges, and of all PFC remittances due to the City. The Security Deposit shall be in such form and with such company licensed to do business in the State of Missouri as shall be acceptable to the City, within its reasonable discretion. The Security Deposit is not the sole or exclusive remedy of the City and shall not be construed, in and of itself, as adequate assurance of Airline's future performance.

(B) *Term of Security Deposit.* Airline shall maintain the Security Deposit until the completion of the year-end adjustment in accordance with Section 609 following the expiration or early termination of this Agreement. Airline shall provide at least sixty (60) days prior Notice of the date on which any Security Deposit expires or is subject to cancellation.

(C) *City's Right to Use Security Deposit; Replenishment.* If Airline commits or is under an Event of Default pursuant to Section 1301, the City shall have the right to use the amounts of such Security Deposit to pay Airline's Rents, Fees, and Charges, PFC remittances, or any other amounts owed to the City by Airline then due and payable, or to apply the proceeds to any cost or expense or material damages incurred by the City as a result of Airline's default, or Event of Default under Section 1301. If any such Security Deposit, or portion thereof, is used as stated in this Subsection, Airline shall replenish or provide a renewal or replacement Security Deposit up to the full amount set forth in Subsection 506(A) within 10 days of being notified to do so by the City. The City's rights under this Section shall be in addition to all other rights and remedies provided to the City hereunder.

(D) *Waiver of Security Deposit Requirement.* Notwithstanding the provisions of Subsections 506(A)-(C), the City will waive the Security Deposit obligation if it determines that Airline qualifies for relief from such obligation. To qualify for such relief, Airline must:

- (i) be a Participating Airline;
- (ii) not be under an Event of Default pursuant to, and not have received Notice in accordance with, Section 1301;

- (iii) have provided regularly scheduled service to the Airport during the prior 12 consecutive months; and
- (iv) have made timely payments of all applicable Rents, Fees, and Charges, and PFC remittances during such 12 month period.

If, after having waived the Security Deposit obligation in accordance with this Subsection, the City determines that Airline has not continued to satisfy the requirements for relief, or if Airline commits or is under an Event of Default pursuant to Section 1301, Airline shall immediately provide a Security Deposit in accordance with the provisions of Subsection 506(A). The provisions of this Subsection shall be inapplicable during any holdover period not authorized in accordance with Section 202.

#### **Section 507. Statistical Report**

(A) Airline shall complete and submit to the City no later than the 15th day of each month, on forms similar to those attached hereto as Exhibit C, reports summarizing statistics and information for Airline's prior month of operations at the Airport necessary for the computation of Rents, Fees, and Charges established hereunder, and such other statistical and financial data that the City determines is necessary for the computation and administration of Airline's financial obligations hereunder, including the following data:

- (i) total number of flight departures at each gate assigned to Airline;
- (ii) total number of originating and connecting passengers;
- (iii) total number of domestic enplaned and deplaned passengers;
- (iv) total number of international enplaned and deplaned passengers;
- (v) total number of landings by type of aircraft and Maximum Gross Certificated Landed Weight by type of aircraft;
- (vi) total pounds of air cargo enplaned and deplaned;
- (vii) total pounds of air mail enplaned and deplaned; and
- (viii) total amount of food and beverage purchased to be sold, if any, in accordance with the provisions of Subsection 301(R).

The information submitted by Airline to City pursuant to this Subsection shall be in addition to any other information required elsewhere in this Agreement to be submitted by Airline.

(B) The City shall have the right to rely on said activity reports in determining Rents, Fees, and Charges due hereunder. Airline shall have full responsibility for the accuracy of said reports. Late payment and payment deficiencies due to incomplete or inaccurate activity reports shall be subject to the late payment and late penalty charges as set forth in Subsection 509(E).

(C) The acceptance by the City of any Airline payment shall not preclude the City from verifying the accuracy of Airline's reports or computations, or from recovering any additional payment actually due from Airline. Interest on any additional amount due shall accrue from the date the payment was originally due, at the rate prescribed as calculated in Subsection 509(E).

#### **Section 508. Airline Records and Audit**

(A) Airline shall maintain books, records, and accounts, including computerized records, relevant to the determination and payment of any Rents, Fees, and Charges, PFC remittals, and other payments due to the City in accordance with this Agreement including: records of its aircraft arrivals and departures; gate utilization; originating and connecting, enplaned and deplaned, domestic and international passengers; aircraft landings; enplaned and deplaned air cargo and mail; food and beverage purchased for resale; and sublease and subcontracted services arrangements at the Airport. Each such item of information shall be maintained for a period of at least three years following the expiration or early termination of this Agreement, and longer if necessary for pending litigation. Airline may maintain such books, records and accounts at its corporate offices, but shall make such material available at the Airport upon 15-day Notice.

(B) The City and such persons as may be designated by it, including its auditors and financial consultants, shall have the right, during normal business hours, with 10-day Notice to Airline, to examine, audit, and make copies of such books, records, and accounts, including computerized records. Except as otherwise provided, the cost of such examination or audit shall be borne by the City; provided, however, that the cost of such audit shall be reimbursed to the City by Airline if: (i) the audit reveals an underpayment by Airline of at least 5% for Rents, Fees and Charges, PFC remittance, or other payment payable by Airline hereunder for any Fiscal Year, as determined by such audit, or (ii) Airline has failed to maintain accurate and complete books, records, and accounts in accordance with this Section.

(C) If Airline fails to maintain true and complete books, records, and accounts resulting in an underpayment of Rents, Fees, and Charges by Airline to the City, the City may recalculate the total amount of Rents, Fees, and Charges, PFC remittances, or other payments due to the City by Airline in accordance with this Agreement. In such case Airline shall remit to the City within 15 days of receipt of a demand or invoice from the City the delinquent amount plus interest, fees and charges as provided for in Subsection 509(E).

#### **Section 509. Payment Provisions**

(A) *Terminal Building Rents and Passenger Loading Bridge Charges.* Terminal Building rents for the use of the Leased Premises, including Passenger Loading Bridge Charges shall be due and payable on the first day of each month in advance without invoice from the City.

(B) *Landing Fees.* Landing fees for the preceding month shall be due and payable, without invoice from the City, on or before the 15th day of each month, and shall be transmitted to the City together with Airline's monthly statistical report as required in Section 507.

(C) *Other Fees.* All other Rents, Fees, and Charges required hereunder shall be due and payable within 20 days of the date of the invoice.

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

**By U.S. Mail:** Airport Assistant Director of Finance  
Lambert-St. Louis International Airport  
P.O. Box 10036  
Lambert Station  
St. Louis, Missouri 63145

**By Express Mail:** Airport Assistant Director of Finance  
Lambert-St. Louis International Airport  
10701 Lambert International Boulevard  
St. Louis, Missouri 63145

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

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

(E) *Interest Charges and Late Charges on Overdue Payment.* If Airline fails to make payment of any sums due hereunder by the due dates set forth herein, Airline shall pay to the City, in addition to all other remedies available to the City and all other payments to be made by Airline to the City, an interest charge equal to 1.5% for each month of the overdue amount, and costs and attorney's fees reasonably incurred by the City in attempting to obtain payment, if any. Payments received later than 30 calendar days from their respective due date shall be assessed an additional one-time late charge of 5% of the amount due, in addition to applicable interest charges.

#### **Section 510. No Other Rents, Fees, and Charges**

(A) The City shall impose no other rents, fees or charges, direct or indirect, on Airline for the exercise and enjoyment of the rights, licenses, and privileges granted herein except those Rents, Fees, and Charges provided for in this Agreement.

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

- (i) imposing fees and charges for the use of specified equipment or facilities at the Airport;
- (ii) imposing fines, penalties, or assessments for the enforcement of the City's Rules and Regulations;
- (iii) imposing fees on third-party service providers, contractors, or suppliers;
- (iv) seeking reimbursement from Airline for the cost of services provided to Airline in compliance with any federal, state, or local law, rule, or regulation which is enacted or amended subsequent to execution of this Agreement;
- (v) assessing and collecting PFCs as allowed by federal law;
- (vi) imposing guarantee payments in accordance with Section 512;

- (vii) imposing any charges resulting from year-end adjustments in accordance with Section 609; or
- (viii) imposing charges for any services or facilities provided subsequent to the execution of this Agreement, the cost of which is not included in the calculation of Rents, Fees, and Charges.

(C) The City has charged and continues to charge certain gross receipt payments upon the airline rate base, the proceeds of which are transferred annually from the Airport revenue fund to the general fund of the City. The City believes such charge is appropriate pursuant to federal law, City ordinance, and the Trust Indenture. It is expressly understood that nothing contained herein shall limit Airline's right to challenge the gross receipt payments, or the City's right to assert legal or equitable defenses against any such challenge.

#### **Section 511. Security Interests**

(A) All PFCs collected by Airline for the benefit of the City that are in the possession or control of Airline are held in trust by Airline on behalf and for the benefit of the City. To the extent that Airline holds any property interest in such PFCs, and notwithstanding that Airline may have commingled such PFCs with other funds, Airline hereby pledges to the City and grants the City a first priority security interest in such PFCs, and in any and all accounts into which such PFCs are deposited to the extent of the total amount of such PFCs (net of the airline compensation amounts allowable in accordance with 14 C.F.R. §158.53) held in such accounts.

(B) As a guarantee by Airline for the payment of all Rents, Fees, and Charges, and all PFC remittances due to the City, Airline hereby pledges to the City and grants the City a security interest in all of its leasehold improvements and fixtures located on or used by Airline at the Airport.

#### **Section 512. Airline as Guarantor of its Affiliates**

Airline hereby unconditionally guarantees all Rents, Fees, and Charges, and all PFC remittances of any of its Affiliates accrued during the period of such designation, to the extent that such Affiliate's operations at the Airport were performed for the benefit or in the name of, or under a shared IATA flight designator code with, Airline. Upon receipt of Notice of default by any such Affiliate, Airline shall pay all amounts owed to the City on demand in accordance with the payment provisions of this Agreement.

### **ARTICLE VI CALCULATION OF RENTS, FEES, AND CHARGES**

#### **Section 601. General**

Effective January 1, 2006, for the six-month period ending June 30, 2006, and for each Fiscal Year thereafter for the term of this Agreement, Rents, Fees, and Charges shall be calculated based on the principles and procedures set forth in this Article. The methodology for the calculation of Rents, Fees, and Charges described in this Article is illustrated in Exhibit E.

#### **Section 602. Coordination Process**

(A) On or about March 15 of each year, the City shall: (i) provide Airline's properties representative with a copy of the Airport's draft Operating and Maintenance Expense and Capital Improvement budgets for the ensuing fiscal year; and (ii) request the data required to be provided by Airline in accordance with Subsection 602(B). Within 30 days of such action, the City shall convene a meeting with the properties representatives of the Participating Airlines to discuss the Airport's draft budgets. The City shall give due consideration to the comments and suggestions made by the Participating Airlines at that meeting.

(B) On or about April 1 of each year, the Signatory Airlines, including Airline, shall provide the City with an estimate of each of their total Revenue Aircraft Arrivals and the Maximum Certificated Gross Landed Weight of all aircraft expected to be landed at the Airport during the ensuing Fiscal Year. If Airline is a Participating Airline, Airline also shall make best efforts to provide the City with a similar estimate for each one of its Affiliates.

(C) On or about May 15 of each year, the City shall provide Airline's properties representative with a copy of a preliminary calculation of Rents, Fees, and Charges for the ensuing Fiscal Year. For rate setting purposes, the calculations shall be made on the basis of costs, expenses, and other factors estimated by the City and estimates of total Landed Weight provided by the Signatory Airlines (or estimated by the City to the extent that any Signatory Airline, including Airline, fails to provide estimates of Landed Weight pursuant to Subsection 602(B)).

(D) On or about June 1 of each year, the City shall convene a meeting with the properties representatives of the Participating Airlines to review and discuss the City's preliminary calculation of Rents, Fees, and Charges for the ensuing Fiscal Year. The City shall give due consideration to the comments and suggestions made by the properties representatives of the Participating Airlines at that meeting. Based on consideration of those comments and suggestions, and upon the Airport's final Operating and Maintenance Expenses and Capital Improvement budgets approved by the City's Board of Aldermen, the City shall prepare a final calculation of Rents, Fees, and Charges for the ensuing Fiscal Year, and will make best efforts to provide a copy to Airline no later than the last business day of the month preceding the start of the new Fiscal Year. Notwithstanding anything else to the contrary, the City's final calculation of Rents, Fees, and Charges shall take

effect on the first day of each Fiscal Year.

### Section 603. Terminal Rental Rates

- (A) The total costs attributable to each of the Terminal Buildings shall be calculated by adding together the following:
- (i) direct and indirect Operation and Maintenance Expenses allocable to each of the Terminal Buildings;
  - (ii) Amortization of Equipment Purchases and Capital Outlays allocable to each of the Terminal Buildings and put into service on or after July 1, 1997, but before January 1, 2006;
  - (iii) Equipment Purchases and Capital Outlays allocable to each of the Terminal Buildings and put into service on or after January 1, 2006;
  - (iv) depreciation and interest charges attributable to each Capital Improvement made in, or allocable to, each of the Terminal Buildings and put into service before July 1, 1997;
  - (v) Amortization of each Capital Improvement made in, or allocable to, each of the Terminal Buildings and put into service on or after July 1, 1997;
  - (vi) fifty percent (50%) of the total costs in the Terminal Roadways Cost Center allocated among each of the Terminal Buildings based on the ratio that the Usable Space in each of the Terminal Buildings is to the aggregate Usable Space in all Terminal Buildings; and
  - (vii) any replenishment of the Debt Service Reserve Account, and the Renewal and Replacement Fund allocable to each Terminal Building, as may be required by the Trust Indenture.
- (B) The total costs attributable to each of the Terminal Buildings shall then be reduced by the amount of rent payable for Apron-Level Unenclosed Space in accordance with Subsection 502(C), to derive the net cost attributable to each of the Terminal Buildings.
- (C) The annual Terminal Rental Rate applicable to the East Terminal Cost Center and the West Terminal Cost Center shall then be calculated by dividing the net costs attributable to each Cost Center in accordance with Subsections 603(A) and (B), by the Usable Space in each of the respective Terminal Buildings. The respective monthly Terminal Rental Rates shall be 1/12 of the annual Terminal Rental Rates.
- (D) The City shall establish annually a terminal rental rate applicable to Nonsignatory Airlines equal to 125% of the respective Terminal Rental Rate calculated in accordance with Subsection 603(C).
- (E) The City shall establish annually fair and reasonable charges for the use of the International Facilities.

### Section 604. Passenger Loading Bridge Charges

The Passenger Loading Bridge Charge applicable to Subsection 504(B), shall be computed as follows:

- (A) The total cost of the Passenger Loading Bridges Cost Center shall be calculated by adding together the following:
- (i) direct and indirect Operation and Maintenance Expenses, if any, allocable to the Passenger Loading Bridges Cost Center; and
  - (ii) Equipment Purchases and Capital Outlays, if any, allocable to the Passenger Loading Bridges Cost Center; and
  - (iii) the Amortization of each new passenger loading bridge acquired by the City during the term of this Agreement as a result of the City's passenger loading bridge program set forth in Section 707.
- (B) The annual Passenger Loading Bridge Charge applicable to each new passenger loading bridge shall be calculated by dividing the total cost and charges allocable to the Passenger Loading Bridges Cost Center in accordance with Subsection 604(A), by the total number of passenger loading bridges then available for use as a result of the City's passenger loading bridge program set forth in Section 707. The monthly Passenger Loading Bridge Charge shall be 1/12 of the annual Passenger Loading Bridge Charge.

### Section 605. [Reserved]

### Section 606. Landing Fee Rate

- (A) The total costs of the Airfield Cost Center shall be calculated by adding together the following:

- (i) direct and indirect Operation and Maintenance Expenses allocable to the Airfield Cost Center;
  - (ii) Amortization of Equipment Purchases and Capital Outlays allocable to the Airfield Cost Center and put into service on or after July 1, 1997, but before January 1, 2006;
  - (iii) Equipment Purchases and Capital Outlays allocable to the Airfield Cost Center and put into service on or after January 1, 2006;
  - (iv) depreciation and interest charges attributable to each Capital Improvement made in, or allocable to, the Airfield Cost Center and put into service before July 1, 1997;
  - (v) Amortization of each Capital Improvement made in, or allocable to, the Airfield Cost Center and put into service on or after July 1, 1997;
  - (vi) Amortization of land investment associated with the Airfield Cost Center and made on or after July 1, 1997;
  - (vii) 4% annual interest on the net cost of land investment associated with the Airfield Cost Center made prior to July 1, 1997; and
  - (viii) any replenishment of the Debt Service Reserve Account, and the Renewal and Replacement Fund allocable to the Airfield Cost Center, as may be required by the Trust Indenture.
- (B) The “Airfield Requirement” shall then be calculated by subtracting the following revenue items from the total costs of the Airfield Cost Center:
- (i) Nonsignatory Airline landing fees;
  - (ii) general aviation landing fees, if any;
  - (iii) military use fees, if any; and
  - (iv) fuel flowage fees.
- (C) Based on the Airfield Requirement, two different Landing Fee Rates shall then be calculated, as follows:
- (i) the “Unmitigated Landing Fee Rate” shall be calculated by dividing the Airfield Requirement by the aggregate Landed Weight of all Signatory Airlines for the particular Fiscal Year; and
  - (ii) the “Mitigated Landing Fee Rate” shall be calculated by subtracting from the Airfield Requirement an amount equal to the amount transferred from the Airport Contingency Fund into the Airport Revenue Fund (if any) for landing fee rate mitigation, as described in Section 607 below, to produce the “Mitigated Airfield Requirement,” and then dividing the Mitigated Airfield Requirement by the aggregate Landed Weight of all Signatory Airlines for the particular Fiscal Year; provided, however, that for purposes of the annual calculation of Rents, Fees, and Charges under Section 602, the City shall make the assumptions set forth in Section 503.
- (D) The City shall establish annually a landing fee rate applicable to Nonsignatory Airlines that have signed an airline operating agreement equal to the landing fee rate calculated in accordance with this Section.

#### **Section 607. Landing Fee Rate Mitigation**

- (A) Subject to the availability of funds and annual appropriations, the City shall transfer a total of \$40 million (or such smaller amount to be determined by the City as a result of the reductions to be calculated in accordance with Subsection 607(B)), in annual installments, which amounts shall be subtracted from the Airfield Requirement to mitigate landing fee rates over the five fiscal years (FY 2007–FY 2011). The maximum allocation by Fiscal Year of the amount to be transferred and made available for Landing Fee Rate mitigation is as follows:

FY 2007	\$12,000,000
FY 2008	\$10,000,000
FY 2009	\$ 8,000,000
FY 2010	\$ 6,000,000
FY 2011	\$ 4,000,000
	<u>\$40,000,000</u>

The final allocation by Fiscal Year of the amount to be transferred and made available for Landing Fee Rate mitigation shall be made at the discretion of the City with the objective of easing the financial impact of the Airfield Cost Center by smoothing out year-to-year variations in Landing Fee Rates payable by all airlines serving the Airport.

(B) The total amount available for Landing Fee Rate mitigation (and, proportionally, the amount allocated for such purpose in each Fiscal Year), shall be adjusted based on the actual aggregate Landed Weight of all Participating Airlines and their Affiliates during each Fiscal Year, compared with the aggregate Landed Weight of all Participating Airlines and their Affiliates for the 12-month period ending December 31, 2005 (“CY 2005”), as shown below:

Rate Mitigation Pro-Forma

Landed Weight Requirement	Applicable Mitigation				
If the aggregate Landed Weight of Participating Airlines and their Affiliates equals at least x% of comparable Landed Weight of those airlines in CY 2005,	then, the following amounts <sup>1</sup> will be available for Landing Fee Rate mitigation in each Fiscal Year:				
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
100 %	\$6,000,000	\$5,000,000	\$4,000,000	\$3,000,000	\$2,000,000
101 %	\$12,000,000	\$7,000,000	\$5,000,000	\$3,500,000	\$2,100,000
102 %		\$10,000,000	\$6,000,000	\$4,000,000	\$2,200,000
103 %			\$8,000,000	\$4,500,000	\$2,500,000
104 %				\$6,000,000	\$3,000,000
105 %					\$4,000,000

<sup>1</sup>Actual amounts available for Landing Fee Rate mitigation are subject to the provisions of Subsection 607(A).

**Section 608. Mid-Year Rate Adjustment**

If, at any time during any Fiscal Year, the City estimates that the total costs attributable to any of the Terminal Buildings, the total costs of the Airfield Cost Center, or the aggregate Landed Weight for all Signatory Airlines, including Participating Airlines and their Affiliates, will vary 10% or more from the estimates used in setting Rents, Fees, and Charges in accordance with the provisions of Section 602, such rates may be adjusted based on the new mid-year estimates and in accordance with the principles and procedures set forth in this Article; provided, however, that for purposes of calculating the Landing Fee Rate mitigation in accordance with Section 607, the City may consider variations in the aggregate Landed Weight for all Participating Airlines and their Affiliates of 1% or more. Such adjustments shall be made at the City’s discretion and the resulting new rates shall be effective for the balance of such Fiscal Year. The City shall notify Airline of a meeting for the purpose of discussing any such rate adjustment, along with a written explanation of the basis for such rate adjustment, 30 days prior to the effective date of the new rates. Unless extraordinary circumstances warrant additional adjustments, the City shall limit any such mid-year rate adjustments to no more than once during each Fiscal Year.

**Section 609. Year-End Adjustment to Actual and Settlement**

(A) If Airline is a Participating Airline, and if Airline has not met its Participating Commitment for the previous Fiscal Year, the difference between the amount of Airline’s Rents, Fees, and, Charges paid during such Fiscal Year and the amount of the applicable Participating Commitment owed to the City for that period shall be paid by Airline in a lump sum upon 30 days Notice.

(B) As soon as possible following the completion of the annual audit for each Fiscal Year, but no sooner than 30 days thereafter, the City shall provide Airline with an accounting of the total costs actually incurred, revenues and other credits actually realized (reconciled to the audited financial statements of the City), and actual enplaned passengers and total Landed Weight during such Fiscal Year with respect to each of the components of the calculation of Rents, Fees, and Charges, and the City shall recalculate the Rents, Fees, and Charges, and provide to Airline a settlement required for the Fiscal Year based on those actual numbers. Following reasonable notification, the City shall convene a meeting with the Signatory Airlines to discuss the calculation of the year-end settlement and shall give due consideration to the comments and suggestions made by the Signatory Airlines before finalizing the settlement calculations.

(i) If the amount of Airline's Rents, Fees, and Charges paid during such Fiscal Year is more than the amount of Airline's Rents, Fees, and Charges required (as recalculated pursuant to Subsection 609(A)), such excess amount shall be credited by the City to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year; provided, however, that if Airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1301, the City may apply such excess to pay any and all amounts owed to the City by Airline, or to pay any cost or expense or material damages incurred by the City as a result of Airline's default.

(ii) If the amount of Airline's Rents, Fees and Charges paid during such Fiscal Year is less than the amount of Airline's Rents, Fees, and Charges required (as recalculated pursuant to Subsection 609(A)), such deficiency shall be paid by Airline to City in equal monthly installments over the remaining months of the then-current Fiscal Year; provided, however, that if Airline is under an Event of Default pursuant to, and has received Notice in accordance with, Section 1301, such deficiency and all outstanding Rents, Fees, and Charges shall be paid immediately.

#### **Section 610. Covenant Not To Grant More Favorable Rents, Fees and Charges**

(A) The City shall not enter into an agreement with any airline providing scheduled or charter passenger or all-cargo air transportation service to and from the Airport, having comparable leased premises, facilities, rights, and privileges and imposing similar obligations to those of Airline hereunder, which grants more favorable rents, fees, or charges to said airline than those granted to Airline hereunder unless the City also makes a substantially similar agreement available to Airline; provided, however, that the City reserves the right to charge for City-controlled space and facilities on a non-discriminatory per use basis.

(B) The provisions of Subsection 610(A) shall not be construed to apply to any air service incentive program, or similar programs, that the City may choose to offer, as allowed by applicable federal law, regulation, or policy.

### **ARTICLE VII AIRPORT EXPANSION AND CAPITAL IMPROVEMENTS**

#### **Section 701. Airport Expansion**

As the City may deem necessary to protect the interest of the public, the City may incur costs to acquire land; plan, design and construct facilities; or purchase and install equipment to preserve, rehabilitate, protect, enhance, expand, or improve the Airport, or any part thereof, during the term of this Agreement in accordance with the provisions of this Article.

#### **Section 702. Five-Year Capital Improvement Program**

The City has developed a five-year (FY 2006-FY 2010) Capital Improvement Program ("5-Year CIP") for the Airport, which is attached and incorporated herewith as Exhibit F.

(A) The Capital Improvements identified in the 5-Year CIP are hereby approved by Airline. Accordingly:

(i) the City may proceed with each and all of those Capital Improvements without additional review by the Participating Airlines; provided, however, that City shall adhere to the general timing, budget estimates, and funding sources shown in Exhibit F;

(ii) the City may pay the Net Costs associated with such Capital Improvements by using funds lawfully available for such purposes, and may borrow funds in amounts sufficient to finance such projects;

(iii) the City may recover through Rents, Fees, and Charges a proper allocation of the Net Costs of such Capital Improvements through an Amortization beginning in the Fiscal Year of beneficial use, in accordance with the provisions of Article VI.

(B) Contemporaneously with the coordination process set forth in Section 602, and otherwise at any time during each Fiscal Year as needed, the City shall report to all Participating Airlines on the progress of its implementation of the 5-Year CIP, including then-current cost estimates, funding sources, and expenditures to date.

#### **Section 703. Review and Approval of Material Changes to 5-Year CIP**

(A) If, following receipt of bids for a Capital Improvement, the projected cost of such Capital Improvement is greater than 110% of the total cost as shown in Exhibit F, the City shall convene a meeting with the Participating Airlines to review and discuss the project. Following such meeting, the Capital Improvement shall be deemed approved for purposes of Section 702(A) unless a Majority-in-Interest gives Notice to the City within 30 days of such meeting that the Capital Improvement is disapproved.

(B) If a Capital Improvement listed in the 5-Year CIP is disapproved in accordance with Subsection 703(A), the City may:

- (i) reduce the scope and cost of the Capital Improvement so that the project's projected total cost is no greater than 110% of the total cost shown in Exhibit F for that Capital Improvement, and proceed to undertake the Capital Improvement as modified;
- (ii) proceed to undertake the Capital Improvement; provided, however, that the City shall not recover through Rents, Fees, and Charges a project Net Cost greater than the Net Cost resulting from a total estimated cost that is no greater than 110% of the total cost shown in Exhibit F; or
- (iii) not proceed with the Capital Improvement at that time.

#### **Section 704. Long-Term Solution for Baggage Screening**

The City and Airline recognize that it is in the best interest of the traveling public to develop a long-term solution for screening baggage for explosives as an integrated part of the outbound baggage conveyor systems at the Airport. The City has developed a comprehensive plan for such "in-line" explosives detection systems ("EDS") for each of the Terminal Buildings that include building and parking structure modifications and conveyor systems to accommodate new or relocated EDS equipment that would be provided and installed by the Transportation Security Administration ("TSA"). The City reserves the right to design and construct the Capital Improvements necessary to accommodate the in-line EDS without Majority-In-Interest approval, and to include the Net Cost of such Capital Improvements in the Rents, Fees, and Charges so long as the City applies for and obtains a commitment from TSA (or other appropriate federal agency) to provide no less than 75% of the total cost of such Capital Improvements in federal grants-in-aid. Contemporaneously with obtaining a federal grant commitment, the City shall review and discuss with the Signatory Airlines such in-line EDS-related Capital Improvements to ensure that the proposed projects are deemed to be efficient technical solutions given the state of available technology at that time.

To the extent permitted by law and FAA policy, and to the extent feasible within the context of the City's 5-Year CIP, the City will use its best efforts to seek approval to collect and use PFCs to fund the City's share of the costs of the Capital Improvements referenced in this Section so as to reduce, to the extent possible, the Net Cost of such Capital Improvements.

#### **Section 705. Additional Capital Projects**

- (A) Airline recognizes that, from time to time, the City may consider it necessary, prudent, or desirable to undertake Capital Improvements other than those identified in the 5 Year CIP ("Additional Capital Improvements"), and that the Net Cost of such Additional Capital Improvements may be recoverable through Rents, Fees, and Charges.
- (B) Contemporaneously with the coordination process set forth in Section 602, and otherwise at any time during each Fiscal Year as needed, the City shall review and discuss all such proposed Additional Capital Improvements with the Participating Airlines. Following such meeting, the relevant Additional Capital Improvements shall be deemed approved unless a Majority-in-Interest notifies the City within 30 days of such meeting that such Additional Capital Improvements are disapproved.
- (C) If such Additional Capital Improvements are not disapproved as provided in Subsection 705(B), the Net Costs attributable to such Additional Capital Improvements shall be recoverable through Rents, Fees, and Charges in accordance with the provisions of Article VI.
- (D) Notwithstanding the provisions of Subsections 705(B) and (C), the City may undertake Additional Capital Improvements, and recover the Net Costs attributable to each such Additional Capital Improvement through Rents, Fees, and Charges without Majority-In-Interest approval, if such Additional Capital Improvement is undertaken:
  - (i) to comply with federal, state, or local law, regulation, policy, grant agreement or airport certification requirements, or mandated by executive order or by an executive agency (state or federal) having jurisdiction over the activities at the Airport;
  - (ii) to comply with a requirement of the Trust Indenture;
  - (iii) as an emergency repair, replacement, or improvement to maintain the Airport's functional capability;
  - (iv) to settle claims, satisfy judgments, or comply with judicial orders rendered by a court of competent jurisdiction against the City, and pertaining to the Airport;
  - (v) to repair casualty damage at the Airport not covered by insurance proceeds, if any;
  - (vi) to acquire land or rights to land to mitigate aircraft noise, or provide for sound insulation as part of a noise compatibility program approved by the federal government in accordance with the provisions of 14 C.F.R. Part 150;
  - (vii) to conduct environmental investigation and remediation at the Airport as required by applicable Environmental Laws and Environmental Permits; provided, however, that the City will use its best efforts to recover such costs from the party at fault, if such party is identified;

- (viii) for safety reasons;
- (ix) as a substitute project for a Capital Improvement that is identified in the 5-Year CIP, which Capital Improvement is not to be undertaken due to changed circumstances at the Airport and is to be deleted from Exhibit F; provided, however, that:
  - (1) the substitute project is functionally equivalent, or is deemed by the City to be a better technical solution, to the Capital Improvement to be deleted from Exhibit F;
  - (2) the Net Cost of such substitute project is equal to or less than the Net Cost of the Capital Improvement being deleted; and
  - (3) for purposes of calculating Rents, Fees, and Charges, the Net Cost of such substitute project is allocated to the same Cost Center as that shown on Exhibit F for the Capital Improvement being deleted; or
- (x) as a substitute project for a Capital Improvement that is identified in the 5-Year CIP, which Capital Improvement is not to be undertaken at the request of the Participating Airlines, and is to be deleted from Exhibit F; provided, however, that:
  - (1) the Net Cost of such substitute project is equal to or less than the Net Cost of the Capital Improvement being deleted; and
  - (2) for purposes of calculating Rents, Fees, and Charges, the Net Cost of such substitute project is allocated to the same Cost Center as that shown on Exhibit F for the Capital Improvement being deleted.

When undertaking Additional Capital Improvements, and consistent with prudent business practices, the City will apply for all available federal and state grants-in-aid, and will seek approval for collection and use of Passenger Facility Charges to the extent permitted by law or FAA policy.

#### **Section 706. Capital Outlays**

Equipment Purchases and Capital Outlays shall not be subject to Majority-In-Interest approval. For the purposes of calculating Rents, Fees, and Charges in accordance with Article VI, the cost of Equipment Purchases and Capital Outlays shall be allocated to the applicable Cost Center and expensed in the Fiscal Year in which they occur. The City will make its best efforts to disclose all proposed Equipment Purchases and Capital Outlays for each Fiscal Year as part of the coordination process in accordance with Section 602. Airline recognizes, however, that certain unbudgeted Equipment Purchases and Capital Outlays may be required to be undertaken during the course of any Fiscal Year in order to properly operate, maintain, or repair the Airport facilities. The City reserves the right to undertake such Equipment Purchases and Capital Outlays as it deems necessary; provided, however, that the City shall not subdivide Capital Improvements into smaller projects solely for the purpose of re-characterizing such Capital Improvements as Equipment Purchases and Capital Outlays to avoid a Majority-In-Interest review in accordance with Subsection 705(B).

#### **Section 707. Passenger Loading Bridge Program**

Airline acknowledges that it is the City's long-term policy to own all the passenger loading bridges at the Terminal Buildings. Notwithstanding any other provision in this Agreement, the City may elect during the term of this Agreement to: (i) replace any existing City-owned passenger loading bridges, (ii) purchase passenger loading bridges to be installed at Gates lacking such equipment, and/or (iii) enter into negotiations with Airline to acquire and/or replace any or all Airline-owned passenger loading bridges at the Airport.

#### **Section 708. Expenditures for Planning and Preliminary Design**

Airline recognizes that, from time to time, the City may engage with outside professionals to provide planning and preliminary design services to define the scope and costs of proposed Capital Improvements. The City reserves the right to undertake such services without a Majority-In-Interest approval, and the City reserves the right to include the Net Costs of such services in the Rents, Fees, and Charges upon completion of such Capital Improvements, or if and when such projects are ultimately disapproved and/or cancelled. Net Costs of planning and preliminary design for projects that proceed to construction shall be amortized over the useful life of the project. Net Costs of planning and preliminary design of projects that are disapproved and/or cancelled shall be amortized over five years. This Section shall relate only to preliminary design efforts required to define the scope, configuration, technical specifications and estimated cost of a proposed Capital Improvement, but not final design or construction documents. Contemporaneously with the coordination process set forth in Section 602, the City shall review and discuss with the Participating Airlines any actions proposed to be taken in accordance with this Section during the upcoming year.

#### **Section 709. Effect of Construction on Leased Premises**

- (A) The City shall have the right, at such times as may be reasonable for purposes of maintaining or constructing

improvements, modifications, or expansions to the Airport, to close, relocate, reconstruct, change, alter, or modify the Leased Premises and/or the means of access to the Leased Premises pursuant to this Agreement or otherwise, either temporarily or permanently; provided, however, that the City shall provide:

- (i) reasonable notification of the construction activities to Airline; and
- (ii) adequate means of ingress and egress for the Leased Premises or, in lieu thereof, alternate premises of comparable size, condition, utility, and location to the Leased Premises, to the extent reasonably possible, with adequate means of ingress and egress.

(B) If reasonable alternate premises are provided to Airline by the City in accordance with Subsection 709(A)(ii), Airline shall vacate the Leased Premises, or portions thereof, and relocate to the alternate space. The City shall pay all costs resulting from such relocation, including the undepreciated value of Airline's improvements; provided, however, that in lieu of reimbursing the undepreciated value of Airline's improvements, the City may replace such tenant's improvements with like improvements in the alternate space.

(C) If no alternate premises are provided to Airline by the City in accordance with Subsection 709(A)(ii), and if any part of the Leased Premises is rendered untenable, as determined by the City, as a result of an action taken by the City under this Section, the rents payable hereunder with respect to the Leased Premises shall be abated ratably in the proportion that the untenable area bears to the total Leased Premises of the same category or type of space. Such abatement in rent will continue until such time as the affected Leased Premises are restored adequately for Airline's use.

#### ARTICLE VIII TENANT IMPROVEMENTS

##### **Section 801. Alterations and Improvements by Airline**

Airline may construct and install, at Airline's sole expense, such improvements in its Leased Premises as Airline deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such improvements, including any substantial alteration or addition thereto, must be submitted to and approved by the City prior to the commencement of any and all such construction or installation. Airline shall comply with the requirements of all applicable laws and building codes and the City's Rules and Regulations governing tenant construction, alterations, and improvements. No reduction or abatement of Rents, Fees, and Charges shall be allowed for any interference with Airline's operations by such construction. All such alterations and improvements by Airline shall be subject to the following:

(A) The City shall have the right to refuse approval of such plans and specifications if the external appearance of such alteration or improvement of facilities in publicly-viewed areas does not meet the City's requirements for substantial uniformity of appearance of facilities on the Airport, or, if the type or time of construction of such alteration or improvement, or the location thereof does not meet the City's requirements for safe use of the Airport and appurtenances by other authorized persons. The City may, at its own cost, inspect any such alterations or improvements.

(B) All improvements made to Airline's Leased Premises and permanent additions or alterations thereto made by Airline, except those financed by the City, shall be and remain the property of Airline until expiration of the term of this Agreement. Upon expiration or early termination of this Agreement, said additions and alterations shall become the property of the City; provided, however, that any trade fixtures, signs, equipment, and other movable personal property of Airline shall remain the property of Airline, subject to the terms of Article XIV.

(C) Airline shall promptly pay all lawful claims made against the City and discharge all liens filed or which exist against the Leased Premises, any other portion of the Airport, or Airline's trade fixtures or trade equipment arising out of or in connection with the failure to make payment for work done or materials provided by Airline, its contractors, subcontractors, or materialmen. Airline shall have the right to contest the amount or validity of any such claim or lien without being in default hereunder; provided, however, that while contesting the amount and validity of any such claims or liens Airline shall provide the City, at the City's request, with a performance bond in an amount equal to the amount of the claim or lien. Airline shall give timely Notice to the City of all such claims and liens.

(D) Airline shall use, and shall cause each of its officers, directors, employees, agents, contractors, and suppliers to use, the highest degree of care when entering upon any property owned by the City in connection with the work. Airline shall comply, and shall cause each of its officers, directors, employees, agents, contractors, and suppliers to comply, with any and all instructions and requirements for the use of City-owned property.

(E) In any contract relating to the construction or installation of improvements in the Leased Premises, Airline shall require each of its contractors and suppliers to:

- (i) carry a policy of Builders Risk Insurance in accordance with Section 1101(B)(v); and
- (ii) furnish performance and payment bonds in the full amount of any contract in a form acceptable to the City. Payment bonds shall comply with the coverage requirements and conditions of Section 107.170 of the Missouri Revised Statutes, as amended. Copies of the bonds shall be given to the 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, as the case may be.

(F) Upon the completion of the improvements hereunder, Airline shall submit to the City a copy of its acceptance letter certifying completion, 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 Airline, and a certified set of "as built" drawings.

### **Section 802. Nondisturbance of Airport Tenants and Operations**

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

## **ARTICLE IX OPERATION AND MAINTENANCE OF AIRPORT**

### **Section 901. Division of Responsibility**

A schedule identifying the division of responsibility for operations and maintenance between the City and Airline is attached hereto as Exhibit G and made a part hereof.

### **Section 902. Maintenance by the City**

(A) The City shall operate, maintain, keep in good repair, and clean all of the public areas and facilities of the Airport, including the Common Use Space and the Joint Use Space; the structures associated with the Terminal Buildings; and common use systems owned and operated by the City.

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

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

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

(iii) *HVAC.* The City shall maintain the Heating, Ventilating and Air Conditioning ("HVAC") system mains, and be responsible for the supply of steam and chilled water, up to the dedicated lines of Airlines. That City shall maintain the HVAC systems and units serving the publicly accessible areas of the Terminal Buildings, including the Common Use Space, the Joint Use Space, and the Gate areas.

(C) Airline shall be charged for the cost, plus actual administrative costs, of any repair, maintenance, or cleaning performed by the City that is caused by the negligence or willful misconduct of Airline, its employees, agents, contractors, or suppliers. Such charge shall constitute part of Airline's Rents, Fees and Charges payable on the month following the date of invoicing by the City for such work.

### **Section 903. Maintenance by Airline**

(A) *Cleaning.* Airline shall, at its sole cost and expense, perform or cause to be performed services which will at all times keep its Exclusive Use Space and Preferential Use Gates clean, neat, orderly, sanitary and presentable.

(B) *Removal of Trash.* Airline, at its sole cost and expense, shall remove from its Exclusive Use Space and Preferential Use Gates all trash and refuse, and shall dispose of it in a manner approved by the City.

(C) *Maintenance and Repairs.* Airline shall repair and maintain in good condition (casualty damage excepted) the Leased Premises and all alterations or improvements thereto, except for those items for which the City is responsible pursuant to Section 902. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Leased Premises in good order and condition, based on a standard of care reflecting prudent property management. Airline shall repair all damage to the Leased Premises caused by Airline or its sublessors, and the employees, agents, contractors, suppliers, passengers, or invitees of Airline or sublessors.

(D) *Utilities.* Airline shall be responsible for maintaining the utility systems as follows:

(i) *Electrical.* Airline shall maintain the electrical circuits beyond the distribution points to the extent that

such electrical circuits serve Airline's Exclusive Use Space.

(ii) *Plumbing.* Airline shall maintain the dedicated plumbing lines, including sewer lines, serving Airline's Exclusive Use Space.

(iii) *HVAC.* Airline shall maintain the HVAC systems and units within Airline's Exclusive Use Space serving such space.

(E) *Passenger Loading Bridge Maintenance.* On or about July 1 of each year, Airline shall submit to the City for City's approval, which approval shall not be unreasonably withheld or denied, a 12-month maintenance schedule for each City-owned passenger loading bridge associated with each of Airline's Preferential Use Gates. Airline shall report to the City at the close of each Fiscal Year any repair and maintenance completed on each such passenger loading bridge, and the cost expended for all repairs and maintenance. Airline shall pay all costs of operating, repairing and maintaining such passenger loading bridges.

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

(A) The City shall have the right at reasonable times to enter upon any of the Leased Premises for any of the purposes listed below:

(i) to inspect the Leased Premises for any purpose necessary for or incidental to or connected with the City's obligations hereunder, or in the exercise of the City's capacity as Airport owner;

(ii) to identify those items of maintenance, cleaning, or repair required of the Airline or the City, pursuant to this Article;

(iii) to perform such maintenance, cleaning, or repair as the City reasonably deems necessary, and which is the responsibility of the City hereunder;

(iv) for fire protection, safety, or security purposes;

(v) to make structural additions and alterations to the Airport;

(vi) as provided in Section 905; and

(vii) upon the expiration or early termination of this Agreement.

(B) The City shall provide reasonable notification and such right of entry shall not unreasonably interfere with Airline's use or occupancy of its Leased Premises, except if the situation endangers the health or safety of persons or the safety of operations at the Airport. The right of inspection reserved to the City shall impose no obligation on the City to make inspections to ascertain the condition of the Leased Premises and shall impart no liability upon the City for failure to make such inspections. The failure of the City to inspect or monitor or notify Airline of a default or of a hazardous or unsafe condition with respect to Airline's operations hereunder shall not release Airline from its liability to perform its obligations hereunder or impose any liability on the City, and in any other event where the City determines that it is necessary or desirable to do so to preserve the Airport or any portion thereof or to correct any conditions likely to cause injury or damage.

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

#### **Section 905. Failure to Maintain by Airline**

If City determines that Airline has failed to properly clean, remove trash and refuse, maintain, or repair the Leased Premises as required in Section 903, the City shall provide to Airline a list of deficiencies, reflecting the amount of time to be reasonably allowed for Airline to correct same. If Airline fails to correct such deficiencies within the time allowed and has not registered an objection as to its obligation to do so, the City, following 5 days further notification by the City to Airline, may enter upon the Leased Premises and correct the listed deficiencies. The City shall add the cost of such work, plus actual administrative costs, to the Rents, Fees and Charges due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the Rents, Fees and Charges. Subsequent to receipt of the further notification of intent to perform repairs, maintenance, or cleaning from the City, Airline shall not undertake performance of such repairs, maintenance, or cleaning without specific prior authorization from the City.

#### **Section 906. City Obligations**

Except as specifically provided for herein, the City shall not be under any duty or obligation to Airline to repair, maintain,

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

## ARTICLE X COMPLIANCE WITH LAWS

### Section 1001. Observance and Compliance with Laws

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

- (i) all applicable federal, state and local laws and ordinances, including directives of the FAA applicable to the Airline's operation at the Airport;
- (ii) the Rules and Regulations governing the Airport; and
- (iii) the provisions of the Airport certification manual, as it may be amended from time to time.

Airline shall make reasonable efforts to cause its passengers, guests and invitees to comply as well.

(B) Upon Airline's request, the City shall promptly provide a copy of the Rules and Regulations and the Airport certification manual. The City shall also provide copies of amendments or additions to the Rules and Regulations to Airline's station manager or his designee in the regular course of business. The City acknowledges that compliance with such amendments or additions will not be expected until Airline is notified of such amendments or additions as provided in this Subsection.

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

### Section 1002. Compliance with Environmental Laws

Airline warrants and covenants that in conducting any activities or business at the Airport, including any activities directly related or incidental to its Air Transportation Business, Airline shall comply with any and all applicable Environmental Laws. Airline further covenants and warrants as follows:

(A) *Environmental Permits.*

- (i) Airline shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Airline engages at the Airport.
- (ii) Airline shall comply with any requirement imposed by an Environmental Permit obtained by the City that is applicable to Airline or Airline's activities at the Airport; provided, however that the City shall adequately notify Airline of such Environmental Permit and associated requirements, including all applicable deadlines for compliance.
- (iii) The City and Airline shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit to insure safety and to minimize cost of compliance.

(B) *Duty to Notify City.* In the event of any release or threatened release of Hazardous Materials caused by Airline, its employees, agents, contractors, suppliers, passengers, guests, or invitees, and which is required by applicable Environmental Laws or Rules and Regulations to be reported by Airline, whether as a result of negligent conduct or otherwise, at, on, under or about the Airport, or any portion thereof, or in the event any written claim, demand, complaint or action is made or taken against Airline that pertains to Airline's failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Airline shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Airline is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Airport, or any part thereof, Airline shall simultaneously provide a copy of such notice or report to the City.

(C) *Environmental Remediation.* Airline shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of Airline or its agents, employees, contractors, or suppliers at the Airport, whether resulting from negligent conduct or otherwise (“Remediation Work”). Such Remediation Work shall be performed at Airline's expense. Except in the event of an emergency, such Remediation Work shall be performed after Airline submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided, however, that the City's approval shall not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Airline shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

(D) *Access for Environmental Inspection.* Upon reasonable notification to Airline, the City shall have reasonable access to the Leased Premises to inspect the same in order to confirm that Airline is using the Leased Premises in accordance with all applicable Environmental Laws and Environmental Permits. Airline shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Airline's operations. If the City's inspection results in any type of written report, the City shall provide Airline a reasonable opportunity to timely review and comment on a draft of the report. Airline shall provide to City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; draft official submittals (proposed final drafts) prepared by, or on behalf of, Airline responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this Subsection to the extent consistent with the City's legal obligations.

(E) *Corrective Action by City.* If Airline fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport, or if Airline fails to conduct necessary Remediation Work in a timely manner as required under this Section, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Leased Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be paid or reimbursed by Airline. Remediation Work, if necessary, shall be performed in accordance with the provisions of Subsection 1002(C), but only after first having provided Notice to Airline of such failure to comply, and 30 days within which Airline may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Airline's compliance reasonably requires more than 30 days to complete, the City may enter the Leased Premises and take such reasonable and necessary measures to achieve compliance only upon Airline's failing to timely begin curing such noncompliance within such 30 day period and to continue diligently working to achieve compliance thereafter.

(F) *Review of Environmental Documents.* At the reasonable request of the City, Airline shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Airline has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Leased Premises, and which would be discoverable in litigation.

(G) *Cumulative Remedies.* All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided under this Section shall survive the expiration or early termination of this Agreement.

### **Section 1003. Passengers with Disabilities**

Airline shall be responsible for providing boarding assistance to individuals with disabilities as required by 14 C.F.R. Part 382 and 49 C.F.R. Part 27; provided, however, that Airline may use the mechanical lift devices owned and made available by the City in accordance with the provisions of a separate passenger mobile lift device permit that may be granted to Airline by the City.

### **Section 1004. Nondiscrimination**

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

(B) Airline shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the

Federal Aviation Act of 1958, as amended; the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

#### Section 1005. Prevailing Wage

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

### ARTICLE XI INSURANCE, DAMAGE, AND INDEMNIFICATION

#### Section 1101. Insurance

(A) *General.* Airline at all times during the term hereof, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their officers, agents and employees and Airline 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 or omissions of Airline, its officers, agents, and employees pursuant to this Agreement both on the Leased Premises and the Airport.

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

(i) Commercial General Liability Including Aircraft Liability with War Risk Allied Perils in an amount not less than \$500 million; provided, however, that War Risk Allied Perils coverage may be provided by the FAA War Risk Insurance Program, or other program generally available in the marketplace. Such coverage shall be single limit liability with no annual aggregate.

(ii) Automobile Liability Insurance in an amount not less than \$10 million combined single limit per occurrence (for automobiles used by Airline in the course of its performance hereunder, including Airline's non-owned and hired autos). In addition, Airline shall carry excess coverage in the amount of \$25 million to Airline automobile liability insurance.

(iii) Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Airline elects to be self-insured, Airline shall comply with the applicable requirements of law. Airline shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Airline's failure to comply with the provisions of this Subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Airline are not employees of the City for any purpose, and that employees of the City are not employees of Airline.

(iv) Contents Insurance. Airline shall be solely responsible for obtaining insurance policies that provide coverage for losses of Airline owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Airline's cost for such insurance.

(v) Builders Risk Insurance. During any period of construction or reconstruction for which Airline contracts, Airline shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Airline's equipment and personal property). Airline may elect to self-insure for individual projects with a total cost of \$50,000 or less.

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

(C) *Issuers of Policies.* The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.

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

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

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

(iv) Deductibles. Airline shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Airline's rights or increase Airline's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 1103 hereof.

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

(vi) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.

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

(viii) Liability for Premium. Airline shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Airline fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Airline's behalf and, after Notice to Airline, the City may recover the cost of those payments with the installment of Rents, Fees, and Charges next due, plus 15% administrative charge, from Airline.

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

(D) Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Airline, continuously and without interruption, maintain in force the required insurance coverages set forth above.

(E) City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Airline, and, based on the written recommendations of such consultant, and in consultation with Airline, to reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

#### **Section 1102. Airline Actions Affecting Insurance**

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

#### **Section 1103. Damage to Premises**

(A) Minor Damage. If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of the Leased Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Leased Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section.

(B) Substantial Damage. If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of the Leased Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Leased

Premises untenantable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the rents payable hereunder with respect to affected Leased Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenantable area bears to the total Leased Premises of the same category or type of space. Such abatement in rent will continue until the affected Leased Premises are restored adequately for Airline's use. The City shall use its best efforts to provide alternate facilities to continue Airline's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Airline's rental costs shall not increase as a result of any such alternate facilities unless Airline requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.

(C) *Total Damage.*

(i) If any part of the Leased Premises, or adjacent facilities directly and substantially affecting the use of the Leased Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Leased Premises incapable of being repaired, as determined by the City, the City shall notify Airline as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The rents payable hereunder with respect to affected Leased Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Airline.

(ii) If the City elects to reconstruct or replace affected Leased Premises, the City shall use its best efforts to provide alternate facilities to continue Airline's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within 6 months after the date of such damage or destruction, Airline shall have the right, upon giving the City 30 days advance Notice, to delete the affected Leased Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Leased Premises, unless such damaged or destroyed premises prevent Airline from operating its Air Transportation Business at the Airport.

(iii) If the City elects not to reconstruct or replace affected Leased Premises, the City shall meet and consult with Airline on ways to permanently provide Airline with adequate replacement space for affected Leased Premises. Airline shall have the right, upon giving the City 30 days advance Notice, to delete the affected Leased Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Leased Premises, unless the loss of such premises prevents Airline from operating its Air Transportation Business at the Airport.

(D) *Scope of Restoration of Premises.*

(i) The City's obligations to repair, reconstruct, or replace affected Leased Premises under the provisions of this Section shall in any event be limited to using due diligence and best efforts to restore affected Leased Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Subsections 1103(A)-(C). If the City elects to repair, reconstruct, or replace affected premises as provided in this Section, then Airline shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Airline in or about the Leased Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.

(ii) In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Airline requests to perform said function with respect to damage under Subsections 1103(A) and (B), the City may, in its sole discretion, allow Airline to do so. Any such work by Airline must be done in accordance with the requirements of Section 801. The City shall reimburse Airline for the cost of such work performed by Airline. Airline shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.

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

**Section 1104. Indemnification**

(A) Airline shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the "Indemnified Parties") from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting

from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of Airline's Air Transportation Business, or Airline's use of its Leased Premises or other areas or facilities at the Airport by Airline, its agents, employees, contractors, or subcontractors, including, but not limited to:

- (i) the acts or omissions of Airline, its agents, employees, contractors, or suppliers;
- (ii) Airline's use or occupancy of the Airport and the Leased Premises; and
- (iii) any violation by Airline in the conduct of Airline's Air Transportation Business or its use of its Leased Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement.

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

(B) Airline shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Leased Premises, or which arise out of the operations of Airline or by reason of Airline's occupancy of its Leased Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to airline-related receipts. However, Airline may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Airline to contest or appeal the same. Airline shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Airline. Airline shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(C) Airline shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Airline, its agents, employees, contractors, or suppliers, in conjunction with Airline's use and/or occupancy of the Leased Premises or its operations at the Airport. Airline will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Airline shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Airline may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

(D) If a prohibited incursion into the air operations area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Airline's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Airline shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Airline of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

(E) Airline's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.

(F) The City shall promptly notify Airline of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Airline hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Airline with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Airline.

(G) The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Airline is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Airline herein agrees to indemnify and hold the City harmless, the City shall promptly notify Airline of such claim and, if Airline does not settle or compromise such claim, then Airline shall undertake the legal defense of such claim both on behalf of Airline and on behalf of the City, at Airline's expense; provided, however, that Airline shall immediately notify City if a conflict between the interests of Airline and City arises during the course of such representation. Airline shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement. It is specifically agreed,

however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Airline in accordance with this Section. Any final judgment rendered against the City for any cause for which Airline is liable hereunder shall be conclusive against Airline as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.

(H) The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.

(I) Notwithstanding the provisions of this Section, Airline shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements if the City is conclusively determined to be more than 50% liable due to contributory negligence.

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

#### **Section 1105. City Not Liable**

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

(A) any acts or omissions of Airline, its officers, directors, employees, agents, contractors, or suppliers, or for any conditions resulting from the operations or activities of Airline's directors, officers, employees, agents, contractors, or suppliers;

(B) Airline's failure to perform any of the obligations hereunder or for any delay in the performance thereof;

(C) any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Airline's business or other operations or activities, or which might otherwise cause damages to Airline through loss of business, destruction of property, or injury to Airline, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees except to the extent such conditions are caused by the City, its employees or agents; or

(D) bodily injury or any loss or damage to real or personal property or business income occasioned by flood, fire, smoke, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, vandalism, malicious mischief, or acts of war or terrorism, or for any injury, loss or damage not caused by the negligence, willful misconduct, or bad faith of the City.

### **ARTICLE XII MERGERS, ASSIGNMENT, AND SUBLETTING**

#### **Section 1201. Airline Mergers and Consolidations**

If Airline consolidates with or merges into another company or permits one or more other companies to consolidate with or merge into it, or transfers or conveys all or substantially all of its property, assets and licenses to another company, the business entity resulting from or surviving such merger (if other than Airline) or consolidation or the company to which such transfer or conveyance is made shall (i) expressly assume in writing and agree to perform all of Airline's obligations hereunder, (ii) be qualified to do business in the State of Missouri, and (iii) if such business entity is not organized and existing under the laws of the United States of America or any state or territory thereof or the District of Columbia, furnish to the City an irrevocable consent to service of process in, and to the jurisdiction of, the courts of the State of Missouri with respect to any action or suit, in law or at equity, brought by the City to enforce this Agreement. If Airline is the surviving business entity in such a merger, the express assumption referred to in this Section shall not be required.

#### **Section 1202. Airline Assignments**

Airline shall not assign, transfer, convey, sell, mortgage, pledge, or encumber (hereinafter collectively referred to as "Assignment") this Agreement other than in connection with a transaction referenced in Section 1201 or sublet its Leased Premises without the advance approval of the City, which is to be given by Notice to Airline. No Assignment of this Agreement or sublet of the Leased Premises shall be effective without advance approval of the City. If Airline fails to obtain advance approval from the City of any such Assignment or sublet, the City, in addition to the rights and remedies set forth in Article XIII and by law, shall have the right, in its sole discretion, to hold Airline responsible for continued performance of its obligations throughout the Term of this Agreement, or to immediately terminate this Agreement, and the assignee or sublessee shall acquire no interest herein or any rights to use the Leased Premises.

**Section 1203. City Approval of Assignments**

No Assignment of this Agreement other than in connection with a transaction referenced in Section 1201 shall be effective without advance approval by the legislative body of the City, which may approve, condition or deny such Assignment in its sole discretion.

**Section 1204. City Approval of Subleases**

No sublease of Airline's Leased Premises shall be effective without approval by the City, which approval is to be given to Airline by Notice, and shall take into consideration the best interest of the traveling public and the operations of the Airport. All subleases shall be subordinate to this Agreement. Without in any manner limiting the City's general right to approve, disapprove, or condition subleases, it shall not be unreasonable for the City to disapprove or condition a sublease of Airline's Leased Premises on any or all of the following circumstances, among others:

- (A) The proposed sublease imposes excessive or otherwise unfair terms and conditions on the sublessee.
- (B) An airline, including a Signatory Airline which is not leasing space directly from the City, proposes to sublease, in whole or in part, the Leased Premises, and the City determines that there is space in the Terminal Buildings available for lease directly from the City by the proposed sublessee; provided, however, that this paragraph shall not apply to subleases with Affiliates and Partners.
- (C) The proposed sublease does not contain a provision which permits it to be terminated upon Notice from the City to the parties thereto of the availability of City-controlled space; provided, however, that this paragraph shall not apply to subleases with Affiliates and Partners.
- (D) The proposed sublease does not recognize explicitly that it is subordinate to this Agreement.

The occasional use of a Preferential Use Gates by another airline to accommodate non-routine operational anomalies shall not be considered a sublease arrangement for purposes of this Section.

**Section 1205. Method of Obtaining Approval of Subleases**

When requesting approval of a sublease under Sections 1202 and 1204, Airline shall include with its request a copy of the proposed agreement, if prepared, or a detailed summary of the material terms and conditions to be contained in such agreement. Any proposed agreement or detailed summary thereof shall provide information required by the City, including the following:

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

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

**Section 1206. Charges to Sublessees**

The City shall not approve any sublease that includes charges other than the following:

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

**Section 1207. Airline to Remain Liable**

Airline shall remain fully and primarily liable during the term of this Agreement for the payment of all of the Rents, Fees, and Charges due and payable to the City for the Leased Premises that are subject to a sublease, and shall remain fully responsible for the performance of all the other obligations hereunder, unless otherwise agreed to by the City.

**ARTICLE XIII  
DEFAULT AND TERMINATION**

**Section 1301. Events of Default**

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

- (A) Airline fails to punctually pay when due any Rents, Fees, and Charges, or any other sum required to be paid hereunder, or fails to remit any PFC when due, or fails to comply with its PFC reporting requirements to the City, and such failure continues for a period of 15 days after Notice of non-payment or non-remittance has been given to Airline by the City.
- (B) Airline fails to keep, perform and observe any promise, covenant or other provision of this Agreement for a period of 30 days after Notice specifying such failure by the City; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, shall not give rise to the City's right to terminate this Agreement if corrective action is instituted by Airline within such 30 day period and diligently pursued until the failure is corrected.
- (C) Any representation or warranty of a material fact made by Airline herein or in any certificate or statement furnished to the City pursuant to or in connection herewith proves untrue in any material respect as of the date of issuance or making thereof, and such materiality is then continuing.
- (D) Airline discontinues its Air Transportation Business at the Airport for a period of 30 consecutive days or, after exhausting or abandoning any further appeals, Airline is prevented for a period of 30 consecutive days by action of any governmental agency other than the City from conducting its Air Transportation Business at the Airport.
- (E) Airline fails to meet and maintain any of the Security Deposit requirements in accordance with Section 506.
- (F) Airline fails to maintain the minimum required insurance coverage as required by Section 1101 for a period of 30 days after Notice specifying such failure by the City, provided that the City shall have the right to immediately suspend Airline's right to operate at the Airport until Airline has obtained the minimum required insurance coverage.
- (G) Airline fails to maintain true and accurate books, records, and accounts resulting in an underpayment of Rents, Fees, and Charges by Airline to the City, and such underpayment continues for a period of 6 months.
- (H) Airline becomes insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), or any successor statute thereto); or fails to pay its debts generally as they mature; or takes the benefit of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors.
- (I) Airline files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof, or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Airline under any chapter of the Bankruptcy Code.
- (J) Airline is adjudged a debtor or bankrupt and/or an order is made approving a petition filed by any of Airline’s creditors or stockholders seeking Airline’s liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within 60 days of its issuance.
- (K) A petition under any chapter of the Bankruptcy Code or an action under any federal or state insolvency law or statute, or an action under any insolvency law or statute of another country is filed against Airline and is not dismissed or stayed within 60 days after the filing thereof.
- (L) By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Airline and such possession or control continues in effect for a period of 60 days.
- (M) Airline becomes a corporation in dissolution.
- (N) The letting, license, or other interest of or rights of Airline hereunder is transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in subparagraphs (H) through (M) of this Section.
- (O) Airline enters into an assignment or sublease which is not approved by the City in accordance with the provisions

of Article XII, and, if a sublease, it is not terminated within 10 days after Notice from the City.

Notwithstanding any other provision of this Agreement, if, as of the Effective Date, Airline is a debtor in a Chapter 7 or Chapter 11 case under the Bankruptcy Code, such case shall not constitute an Event of Default, except for purposes of the Security Deposit requirements in accordance with Section 306.

### **Section 1302. Termination by the City**

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

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

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

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

(C) In accordance with the provisions of 14 C.F.R. Part 158, App. A(B)(7), as it may be amended from time to time, if any of Airline's Leased Premises is financed in whole or in part with PFC revenue, and if Airline has an exclusive lease or use agreement for facilities at the Airport ("Exclusive Facilities"), and if any portion of such Exclusive Facilities is not fully utilized and is not made available for use by potentially competing airlines, this Agreement may be terminated by the City.

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

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

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

### **Section 1303. Change of Term**

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

### **Section 1304. Termination by Airline**

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

(A) Any action of the FAA or any other federal, state, county, or municipal governmental agency refusing to permit Airline to operate into, from, or through the Airport such aircraft (licensed for use in scheduled air transportation) as Airline has previously operated regularly thereon, and the remaining in force of such refusal for a period of at least 60 days; provided however, that this provision shall not apply if occasioned by Airline's failure to comply with airworthiness or noise standards for aircraft as promulgated by FAA;

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

(C) Airline is prevented from conducting its Air Transportation Business at the Airport for a period in excess of 90 consecutive days for any reason other than causes directly controlled by Airline.

#### ARTICLE XIV SURRENDER OF PREMISES

##### Section 1401. Surrender of Premises

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

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

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

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

(B) *Removal of Personal Property.* Provided Airline is not in default for non-payment of Rents, Fees, and Charges, or any other payment due hereunder, or non-remittance of PFCs, Airline shall have the right, on expiration or early termination of this Agreement and within 30 days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline, in, on, or about the Airport. Airline shall not be entitled to remove non-trade fixtures without the advance consent of the City. If, following the expiration or early termination of this Agreement, the City has immediate need to accommodate a new tenant, the City may remove and store Airline's trade fixtures, equipment and personal property, at Airline's risk.

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

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

#### ARTICLE XV MISCELLANEOUS PROVISIONS

##### Section 1501. Relationship of Parties

Nothing herein contained is intended or shall be construed to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Airline the

general representative or agent of the City for any purpose whatsoever.

#### **Section 1502. Amendment**

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

#### **Section 1503. Subordination to Agreements with the United States**

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

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

#### **Section 1504. Subordination to Trust Indenture**

(A) This Agreement and all rights granted to Airline hereunder are expressly subordinated and subject to the lien and provisions of the pledges, covenants (including rate covenants), transfers, hypothecation, or assignments made by the City in the Trust Indenture and any Bond ordinance (including related documents authorized or approved by such ordinance) enacted by the City regarding the issuance of Bonds. The City expressly reserves the right to make such pledges and grant such liens and enter into covenants as it may deem necessary or desirable to secure and provide for the payment of Bonds, including the creation of reserves therefor; provided, however, that if the City adopts an amendment to the Trust Indenture that materially affects the method of calculation of Rents, Fees, and Charges as set forth in this Agreement, Airline may terminate this Agreement with Notice to the City no later than 30 days after the adoption of such amendment to the Trust Indenture.

(B) Airline understands that the City is and will be the issuer of Bonds. With respect to outstanding Bonds that may be issued in the future, the interest on which is intended to be excludable from gross income of the holders of such Bonds for federal income tax purposes under federal law, Airline shall not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of the Leased Premises, if the act or failure to act may cause the City to fail to be in compliance with the provisions of federal law with respect to those types of Bonds, as it now exists or may be amended, supplemented, or replaced, or the regulations or rulings issued thereunder, nor will Airline take, or persist in, any action or omission that may cause the interest on the tax-exempt Bonds either (i) not to be excludable from the gross income of the holders thereof for federal income tax purposes; or (ii) to become subject to the alternative minimum tax for federal income tax purposes.

#### **Section 1505. Certificate in Connection with Issuance of Bonds**

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

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

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

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

#### **Section 1506. No Third Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity (including other Signatory Airlines) other than the parties hereto and their assigns any legal or equitable rights hereunder.

#### **Section 1507. Counterparts**

This Agreement may be executed in one or more counterparts.

**Section 1508. Exhibits**

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

**Section 1509. Survival of Warranties**

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

**Section 1510. Quiet Enjoyment**

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

**Section 1511. No Personal Liability**

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

(B) No director, officer, employee, or agent of the City or Airline shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City relating to any aspect of this Agreement shall be brought against the City and not against named individual respondents.

**Section 1512. Governing Law and Forum Selection**

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

**Section 1513. Communications and Notices**

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

If to the City, to:

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

If to Airline, to:

Manager, Properties & Facilities  
AirTran Airways, Inc.  
9955 AirTran Boulevard  
Orlando, FL 32827

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

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

If to the City:

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

If to Airline:

Manager, Properties & Facilities  
AirTran Airways, Inc.  
9955 AirTran Boulevard  
Orlando, FL 32827

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

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

#### **Section 1514. Force Majeure**

(A) Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the City or Airline hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Airline to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended or shall be construed to abate, postpone or in any respect diminish Airline's obligations to make any payments due to the City pursuant to this Agreement.

(B) The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any law, ordinance, rule, regulation, requirement, order or directive of any federal, state, county or municipal government having jurisdiction.

#### **Section 1515. Invalid Provisions**

If any covenant, condition, or provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such covenant, condition, or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Airline in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

#### **Section 1516. No Waiver**

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

#### **Section 1517. City's Rights and Remedies are Cumulative**

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

#### **Section 1518. Construction of Agreement**

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

#### **Section 1519. Timing**

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

#### **Section 1520. Representatives**

The City and Airline shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for the City and Airline, respectively, with respect to any actions to be taken by either of them under the terms of this

Agreement. Except as specifically set forth herein, for the purposes of actions to be taken by it or by the City, the City's representative shall be the Airport Director. Airline's representative shall be designated in a Notice delivered to the City. Any party hereto may change its designated representative by Notice to the other party.

**Section 1521. Approvals**

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

(B) Unless otherwise required by state or local law, wherever in this Agreement the approval, authorization, consent, certification, determination, waiver, or any other action of the City is required, it may be performed by the Airport Director, unless otherwise provided herein. In taking such actions, the Airport Director shall act reasonably, and take into consideration the best interest of the traveling public and the operations of the Airport.

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

**Section 1522. Successors and Assigns**

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

**Section 1523. Authority to Execute**

The person(s) executing this Agreement on behalf of Airline warrants to the City that Airline is a duly authorized and existing corporation, that Airline is qualified to do business in the State of Missouri, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so.

**Section 1524. Entire Agreement**

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

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

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

Pursuant to Ordinance \_\_\_\_\_, approved \_\_\_\_\_, 2007.

The foregoing Agreement was approved by the Airport Commission at its meeting on \_\_\_\_\_, 2007.

By:

\_\_\_\_\_  
Airport Commission Chairman Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on \_\_\_\_\_, 2007.

By:

\_\_\_\_\_  
Secretary, Board of Estimate & Apportionment Date

APPROVED AS TO FORM ONLY:

COUNTERSIGNED:

\_\_\_\_\_  
City Counselor Date

\_\_\_\_\_  
Comptroller Date

ATTESTED:

\_\_\_\_\_  
Register Date

AIRTRAN AIRWAYS, INC.

By:

\_\_\_\_\_  
Title: Date

ATTESTED:

By:

\_\_\_\_\_  
Title: Date

**EXHIBITS A through H**  
Is on file in the Register's Office.

**Approved: May 31, 2007**