

ORDINANCE #69380
Board Bill No. 252

An Ordinance affirming adoption of a redevelopment plan, redevelopment area, and redevelopment project; authorizing the execution of redevelopment agreement between the City of St. Louis and Tri-Star Imports, Inc.; prescribing the form and details of said agreement; designating Tri-Star Imports, Inc. as developer of the redevelopment area; making certain findings with respect thereto; authorizing other related actions in connection with the redevelopment of certain property within the redevelopment area; and containing a severability clause.

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, on December 20, 1991, pursuant to Ordinance No. 62477, the Board of Aldermen of the City created the Tax Increment Financing Commission of the City of St. Louis, Missouri (the "TIF Commission"); and

WHEREAS, on October 30, 2012, after all proper notice was given, the TIF Commission held a public hearing in conformance with the TIF Act (hereinafter defined) and received comments from all interested persons and taxing districts affected by the Redevelopment Plan and the redevelopment project described therein; and

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri (2000), as amended (the "Act" or "TIF Act"), and after due consideration of the TIF Commission's recommendations, the Board of Aldermen of the City of St. Louis, Missouri adopted Ordinance No. _____ [Board Bill No. ____] on _____, 2012, which Ordinance: (i) adopted and approved a redevelopment plan entitled the "Northeast Hampton/Berthold Redevelopment Area TIF Redevelopment Plan" dated October 22, 2012 (the "Redevelopment Plan") (ii) designated the Redevelopment Area (as described in the Redevelopment Plan) as a "redevelopment area" as that term is defined in the TIF Act (the "Redevelopment Area"), (iii) adopted and approved the Redevelopment Project described in the Redevelopment Plan, (iv) adopted tax increment allocation financing within the Redevelopment Area, (v) established the City of St. Louis, Missouri "Northeast Hampton/Berthold Special Allocation Fund," and (vi) made certain findings with respect thereto, all as set forth in such Ordinance and in accordance with the requirements of the Act; and

WHEREAS, the Redevelopment Plan proposes to redevelop the Redevelopment Area by the acquisition of the property within the Redevelopment Area, the preparation of the site, and the development of commercial uses, as set forth in the Redevelopment Plan (the "Redevelopment Project," or "TIF Project") which Redevelopment Project shall consist of the redevelopment of the property generally described as properties east of Hampton Avenue, south of Clayton Avenue, west of Oakview Place and north of Berthold Avenue; and

WHEREAS, pursuant to Ordinance No. _____ [Board Bill No. _____], the Board of Aldermen has determined that completion of the Redevelopment Project is of economic significance to the City, will serve to benefit the general welfare, qualifies for the use of tax increment allocation financing to alleviate the conditions that qualify it as a "blighted area" as provided in the TIF Act, and further, that redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan is not financially feasible without the adoption of tax increment allocation financing and would not otherwise be completed; and

WHEREAS, the Redevelopment Area qualifies for the use of tax increment allocation financing to alleviate the conditions that qualify it as a "blighted area" as provided in the TIF Act and as set forth herein; and

WHEREAS, it is necessary and desirable and in the best interest of the City to enter into agreement with Tri-Star Imports, Inc., a Missouri corporation (the "Developer"), in order that Developer may complete the Redevelopment Project which will provide for the promotion of the general welfare through redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan which redevelopment includes, but is not limited to, assistance in the physical, economic, and social development of the City of St. Louis, providing for a plan for the optimal growth of the City of St. Louis, encouragement of a sense of community identity, safety and civic pride and the elimination of impediments to development in the City of St. Louis; and

WHEREAS, pursuant to the provisions of the TIF Act, the City is authorized to enter into a redevelopment agreement with the Developer, setting forth the respective rights and obligations of the City and Developer with regard to the redevelopment of the Redevelopment Area (the "Redevelopment Agreement"); and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Redevelopment Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City

and the Developer of their respective obligations under the Redevelopment Agreement is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act and the Redevelopment Plan.

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

SECTION ONE. The Board of Aldermen hereby ratifies and confirms its approval of the Redevelopment Plan, Redevelopment Area, and Redevelopment Project. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Redevelopment Agreement with Tri-Star Imports, Inc., as Developer of the Redevelopment Area, in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for completion of the Redevelopment Project.

SECTION TWO. The Board of Aldermen finds and determines that the assistance of tax increment financing is necessary and desirable in order to implement the Redevelopment Project and to enable Tri-Star Imports, Inc. as Developer of the Redevelopment Area, to carry out its proposal for completion of the Redevelopment Project.

SECTION THREE. The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Redevelopment Agreement by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Redevelopment Agreement and to affix the seal of the City thereto. The Redevelopment Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

SECTION FOUR. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

SECTION FIVE. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

SECTION SIX. 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 SEVEN. After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over his veto; provided that if, within ninety (90) days after the effective date of this Ordinance, the Developer has not (i) executed the Redevelopment Agreement; and (ii) paid all fees due to the City in accordance with the terms of said Redevelopment Agreement, the provisions of this Ordinance shall be deemed null and void and of no effect and all rights conferred by this Ordinance on Developer, shall terminate, provided further, however, that prior to any such termination the Developer may seek an extension of time in which to execute said Redevelopment Agreement, which extension may be granted in the sole discretion of the Board of Estimate and Apportionment of the City of St. Louis.

Exhibit A
NORTHEAST HAMPTON/BERTHOLD TIF REDEVELOPMENT AGREEMENT

[Attached hereto]

REDEVELOPMENT AGREEMENT
Between the
CITY OF ST. LOUIS, MISSOURI
And

TRI-STAR IMPORTS, INC.

Dated as of

_____, 201_

NORTHEAST HAMPTON/BERTHOLD REDEVELOPMENT PROJECT

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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of this _____ day of _____, 2012, by and between the **CITY OF ST. LOUIS, MISSOURI** (the “*City*”), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and **TRI-STAR IMPORTS, INC.** (the “*Developer*”), a corporation duly organized and existing under the laws of the State of Missouri. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in **Article I** of this Agreement.)

RECITALS

A. Pursuant to Ordinance No. 62477, adopted and approved on December 20, 1991, the Board of Aldermen duly formed the Tax Increment Financing Commission of the City of St. Louis, Missouri (the "TIF Commission"), in accordance with the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, (2000) (the "TIF Act"), and empowered the TIF Commission to transact business and exercise its powers as authorized by the TIF Act.

B. The City published a notice on _____ and _____, 2012 in the St. Louis Daily Record, a newspaper of general circulation within the City, soliciting proposals for the redevelopment of the Redevelopment Area (as hereinafter defined), and made such requests for proposals available for potential developers of the Redevelopment Area.

C. The Developer submitted its development proposal dated August 23, 2012 (as may be amended from time to time, the "Redevelopment Proposal") to the TIF Commission for redevelopment of the Redevelopment Area.

D. On October 30, 2012, following the close of a public hearing held on that date, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the Redevelopment Plan titled "Northeast Hampton/Berthold Area TIF Redevelopment Plan" dated October 5, 2012 and amended October 22, 2012 (as may be amended from time to time, the "Redevelopment Plan"), the Redevelopment Project described in the Redevelopment Plan (the "Redevelopment Project") and the Redevelopment Area, and recommending that the Board of Aldermen: (1) adopt tax increment financing with respect to the Redevelopment Area by passage of an ordinance complying with the terms of Section 99.845 of the Act; and (2) adopt an ordinance in the form required by the Act (a) approving the Redevelopment Plan, (b) approving and designating the Redevelopment Area as a "redevelopment area" as provided in the Act, (c) approving the Project as described within the Redevelopment Plan, and (d) approving the issuance of one or more TIF Notes in the amount up to that specified in the Redevelopment Plan.

E. On _____, 2012, after due consideration of the TIF Commission's recommendations, the Mayor signed Ordinance No. _____ [Board Bill No. ____] designating the Redevelopment Area as a "redevelopment area" as provided in the TIF Act, approving the Redevelopment Plan, approving the Redevelopment Project described in the Redevelopment Plan, adopting tax increment allocation financing within the Redevelopment Area, approving the issuance of one or more TIF Notes in the amount up to that specified in the Redevelopment Plan and establishing the Special Allocation Fund.

F. On _____, 2012, the Mayor signed Ordinance No. _____ [Board Bill No. ____] affirming adoption of the Redevelopment Area, Redevelopment Plan and Redevelopment Project, designating the Developer as developer of the Redevelopment Area, and authorizing the City to enter into this Agreement with Developer.

G. On _____, 2012, the Mayor signed Ordinance No. _____ [Board Bill No. ____] authorizing the issuance of TIF Notes as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project and pledging TIF Revenues to the payment of the TIF Notes.

H. The Board of Aldermen hereby determines that the acceptance of the Redevelopment Proposal and the fulfillment generally of this Agreement are in the best interests of the City, and the health, safety and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

I. Pursuant to provisions of the TIF Act and Ordinance Nos. _____, _____ and _____ [Board Bill Nos. _____, _____ and _____], the City is authorized to enter into this Agreement, to issue TIF Notes as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project, and to pledge TIF Revenues to the payment of the TIF Notes.

J. The City acknowledges and agrees that Developer is not performing the Work as a direct service to the City. Rather, the City has agreed to issue TIF Notes and Pledge TIF Revenues to the payment of the TIF Notes because the City will recognize indirect benefits, as set forth in the Approving Ordinance, which improve and benefit the general welfare of the community as a result of Developer's completion of the Redevelopment Project. Consequently, the City has agreed to pay for certain Redevelopment Project Costs as set forth in this Agreement, and in consideration therefor Developer has agreed to subject itself and the Property to the terms and conditions set forth below.

AGREEMENT

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I.
DEFINITIONS**

1.1. Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

“Acquisition Costs” means the consideration paid to a third party to acquire fee simple interest in the Property.

“Act” or *“TIF Act”* means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri (2000), as amended.

“Agreement” means this Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Approved Investors” means (a) the Developer or a Related Entity, (b) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (c) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933 or (d) any general business company or enterprise with total assets in excess of \$50,000,000.

“Approving Ordinance” means Ordinance No. _____ [Board Bill No. ____] designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Project, adopting tax increment allocation financing within the Redevelopment Area, and establishing the Special Allocation Fund.

“Authority” means The Industrial Development Authority of The City of St. Louis, Missouri, a public corporation duly organized under Chapter 349 of the Revised Statutes of Missouri, or such other entity organized and controlled by the City or SLDC.

“Authorizing Ordinance” means Ordinance No. _____ [Board Bill No. ____] affirming approval and adoption of the Redevelopment Plan, Redevelopment Project, and designation of the Redevelopment Area, designating Developer as the developer of the Redevelopment Area, and authorizing the City to enter into a Redevelopment Agreement with Developer.

“Available Revenues” means all monies on deposit from time to time (including investment earnings thereon) in (a) the PILOTS Account, and (b) subject to annual appropriation, the EATS Account that have been appropriated to the repayment of the TIF Notes, excluding (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

“Best Efforts” means actual, reasonable, good faith attempts to accomplish or achieve the required obligation which shall be documented by the party taking such action, and proof of such documentation may be requested in writing by the other party to verify that such actual, reasonable, good faith attempts occurred. The failure to provide such documentation upon written request within a reasonable period of time after receipt of such written request, not to exceed ten (10) business days, shall be deemed noncompliance with such obligation and a breach of this Agreement.

“Board of Aldermen” means the Board of Aldermen of the City.

“Bond Counsel” means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bond Proceeds” means the gross cash proceeds from the sale of TIF Bonds before payment of Issuance Costs, together with any interest earned thereon.

“Certificate of Commencement of Construction” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated by reference herein, delivered by Developer to the City in accordance with this Agreement and evidencing commencement of construction of the Redevelopment Project.

“Certificate of Reimbursable Redevelopment Project Costs” means a document substantially in the form of **Exhibit D**, attached hereto and incorporated herein by reference, provided by the Developer to the City in accordance with this Agreement and evidencing Reimbursable Redevelopment Project Costs incurred in connection with the Redevelopment Project.

“Certificate of Substantial Completion” means a document substantially in the form of **Exhibit E**, attached hereto and

incorporated herein by reference, issued by the Developer to the City in accordance with this Agreement and evidencing the Developer's satisfaction of all obligations and covenants to construct or cause the construction of the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement.

"CID" means a Community Improvement Districts created by Developer and maintained pursuant to the CID Act and **Section 3.9** hereof.

"CID Act" means the Missouri Community Improvement District Act, Sections 67.1401 – 67.1571, Revised Statutes of Missouri (2000), as amended.

"CID Project" means any community improvement project approved by the CID for an area within or benefitting the Redevelopment Area and in accordance with the CID Act and constituting a portion of the Work.

"CID Revenues" means revenues of the CID from the CID Sales Tax imposed in accordance with the CID Act and as described in this Agreement.

"CID Revenues Account" means the account receiving CID Revenues to be created in accordance with this Agreement.

"CID Sales Tax" means the community improvement district sales tax levied by the CID in accordance with the CID Act and this Agreement.

"City" means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

"City Clerk" means the Register of the City.

"Construction Plans" means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with applicable law.

"Developer" means Tri-Star Imports, Inc., a corporation duly organized and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest. The Developer submitted the Redevelopment Proposal and is also referenced as the developer in the Authorizing Ordinance, the Approving Ordinance, and the Note Ordinance.

"Disclosure Counsel" means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to offerings of municipal securities duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

"Economic Activity Taxes" or "EATs" shall have the meaning ascribed to such term in Section 99.805(4) of the TIF Act.

"EATS Account" the account within the Special Allocation Fund established by the City and the Finance Officer pursuant to **Section 6.1** hereof, into which the City shall promptly deposit all EATS, including, but not limited to, the gross receipts tax on electricity set forth in Section 23.30.030 of the St. Louis City Revised Code.

"Finance Officer" means the Comptroller of the City.

"Governmental Approvals" means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for the implementation of the Redevelopment Project related to the Redevelopment Area and consistent with the Redevelopment Plan and this Agreement.

"Issuance Costs" means the amount set forth in **Section 2.2(v)** of this Agreement incurred by the City in furtherance of the issuance of TIF Notes plus all costs reasonably incurred by the City in furtherance of the issuance of TIF Obligations, including without limitation the fees and expenses of financial advisors and consultants, the City's attorneys (including issuer's counsel, Disclosure Counsel, Bond Counsel and Developer's counsel), the City's administrative fees and expenses (including fees and costs of its planning consultants and the SLDC), underwriters' discounts and fees, the costs of printing any TIF Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TIF Obligations.

"MBE/WBE Compliance Officer" means the City's Assistant Airport Director, Department of MBE/WBE Certification

and Compliance.

“*MBE/WBE Subcontractor’s List*” means the form of City of St. Louis MBE/WBE Subcontractor’s List published by the Board of Public Service of the City, such form being attached hereto as **Exhibit G** and incorporated herein by this reference.

“*MBE/WBE Utilization Statement*” means the form of City of St. Louis MBE/WBE Utilization Statement prepared by the Board of Public Service of the City published by the Board of Public Service of the City, such form being attached hereto as **Exhibit H** and incorporated herein by this reference.

“*Maturity Date*” means the date that is twenty three (23) years after the effective date of the Approving Ordinance.

“*Note Ordinance*” means Ordinance No. ____ [Board Bill No. ____] adopted by the Board of Aldermen and signed by the Mayor authorizing the TIF Note(s) and TIF Obligations, any trust indenture relating thereto, and all related proceedings.

“*Original Purchaser*” the Developer, a Related Entity, the Project Lender or a Qualified Institutional Buyer; provided, however, that any such Related Entity or Project Lender shall also qualify as an Approved Investor and shall be designated in writing by the developer as the Original Purchaser.

“*Payments in Lieu of Taxes*” or “*PILOTS*” shall have the meaning ascribed to such term in Section 99.805(11) of the TIF Act.

“*PILOTS Account*” the account within the Special Allocation Fund established by the City and the Finance Officer pursuant to **Section 6.1** hereof, into which the City shall promptly deposit all PILOTS.

“Post Completion Funding Source” means each of the following sources:

(i) Tax Credits:

(a) the total value of the proceeds from the sale of any transferable tax credits approved for the Redevelopment Project, based on the amounts approved by the tax credit issuing authority and the purchase prices for such credits set forth in any tax credit purchase agreement; if, pursuant to such purchase agreement, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by **Section 4.3** is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate; if no tax credit purchase agreement has been executed, then the total value of such proceeds shall be calculated as 87% of the amount approved by the tax credit issuing authority.

(b) the equity and/or loan proceeds available from investor members or partners in the Redevelopment Project who will be entitled to receive any non-transferable tax credits approved for the Redevelopment Project, per the ownership documentation for the Redevelopment Project property; if, pursuant to such ownership documentation, any portion of the proceeds is to be paid subsequent to the date upon which the statement required by **Section 4.3** is submitted, the present value of such portion shall be calculated by the City using a time period determined by the City to be reasonable and a 7% present value rate ; provided, that, if the Project has been approved for a New Markets Tax Credit investment by a New Markets Tax Credit allocation, but has not yet entered into any agreement pursuant to which such loan or equity proceeds shall be made available, then the value of such proceeds shall be 25% of the face value of the approved New Markets Tax Credit investment.

The Developer shall substantiate the amount of any tax credits approved for the Redevelopment Project and the proceeds or equity related thereto by providing to the City documentation from accountants, tax credit authorities and tax credit purchasers or investors.

(ii) Sales Proceeds:

(a) all net sales proceeds actually derived from the sale of any portion of the Redevelopment Project, which net sales proceeds shall be documented by copies of the seller’s closing statements for such sales, and (b) if, at the time of the submittal required pursuant to **Section 4.3** of this Agreement, there remain units or portions of the Redevelopment Project which are being marketed and listed as for-sale but are unsold, ninety percent (90%) of the average sale price for all sold units or portions, taking into account the size, location and amenities associated with such sold units as compared to the unsold units or portion, discounted by (a) a percentage equal to the average sales commissions paid to unrelated third parties and applied to the discounted listing price; and (b) closing costs for sold units (stated as the average amount of

closing costs for such sold units).

(iii) TIF Financing: the maximum amount of TIF financing available to the Redevelopment Project, as such amount is set forth in **Section 4.1** hereof; and

(iv) Value of Income-Producing Space:

if the Redevelopment Project includes any leased space or space intended for lease (such space being the "Income-Producing Space"), the value of such Income Producing Space, which value shall be calculated by dividing the Stabilized Net Operating Income (as defined below) of such Income Producing Space by a capitalization rate of nine and one-half percent (9.5%). In addition to the other materials required to be submitted by subparagraph 4.3 hereof, Developer shall submit a 10-year operating proforma, including income and expense projections, for all Income-Producing Space in the Redevelopment Project, together with copies of all leases, letters of intent, and operating expense documentation, if any, related to such Income-Producing Space.

"*Project Fund*" means the Project Fund created in the Note Ordinance.

"*Project Lender*" means a commercial bank, savings bank, savings and loan association, credit union or other financial institution that has loaned funds to the Developer or a Related Entity to be used for construction of the Redevelopment Project and has secured such loan with a mortgage or security interest in the Redevelopment Project.

"*Property*" means the real property (including without limitation all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Redevelopment Area as set forth in the Redevelopment Plan.

"*Qualified Institutional Buyer*" means a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933.

"*Redevelopment Area*" means the real property described in **Exhibit A**, attached hereto and incorporated herein by reference.

"*Redevelopment Plan*" means the plan titled "Northeast Hampton/Berthold Area TIF Redevelopment Plan" dated October 5, 2012, revised October 22, 2012, as may be amended from time to time, approved by the City pursuant to the Approving Ordinance; as such plan may from time to time be amended in accordance with the TIF Act.

"*Redevelopment Project*" means the Redevelopment Project identified by the Redevelopment Plan, consisting of the rehabilitation and redevelopment of the building in the Redevelopment Area into commercial space, as further set forth in the Redevelopment Plan.

"*Redevelopment Project Costs*" shall have the meaning ascribed to such term in Section 99.805(15) of the TIF Act.

"*Redevelopment Proposal*" means the document on file with the City and incorporated herein by reference, titled "Northeast Hampton/Berthold Area TIF Redevelopment Application," dated August 23, 2012 and submitted by the Developer to the City.

"*Reimbursable Redevelopment Project Costs*" means those Redevelopment Project Costs as described in **Exhibit B**, attached hereto and incorporated herein by reference, which the City will pay for exclusively from the proceeds of TIF Obligations as provided in and subject to **Articles IV and V** of this Agreement.

"*Related Entity*" means any party or entity related to the Developer by one of the relationships described in Section 267(b), Section 707(b)(1)(A) or Section 707(b)(1)(B) of the Internal Revenue Code of 1986, as amended.

"*Relocation Plan*" means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, which relocation plan was adopted on December 20, 1991, pursuant to Ordinance No. 62481.

"*SLDC*" means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

"*Special Allocation Fund*" means the Northeast Hampton/Berthold Special Allocation Fund, created by the Approving

Ordinance in accordance with the TIF Act, and including the accounts and sub-accounts for the Redevelopment Project into which TIF Revenues are from time to time deposited in accordance with the TIF Act and this Agreement.

“*Stabilized Net Operating Income*” shall be calculated as follows:

(a) For any portion of the Income Producing Space which has actually been leased, the annualized rental income from such space, less annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service);

PLUS

(b) For any portion of the Income Producing Space which is available for lease but has not been leased, the result of the following equation:

(i) the amount of net leaseable square footage multiplied by the average annual rent per square foot of the Income Producing Space which has been actually leased, taking into account the size, location and amenities associated with such space not yet leased as compared to the space leased (provided, that if no such space has been actually leased, the lease rate(s) used shall be the lease rate(s) specified by the Developer in the TIF;

LESS

(ii) the amount of net leaseable square footage multiplied by the average annualized actual and/or reasonable operating expenses as determined by the City (excluding debt service) per square foot of the Income Producing Space.

The City shall incorporate a 7% vacancy rate for all Income-Producing Space.

“*TDD*” or “*Transportation Development District*” means a transportation development district under any name formed pursuant to Sections 238.200 to 238.275 RSMo. (2000) (the “*TDD Act*”), which includes a portion of the Redevelopment Area.

“*TDD Project*” means any transportation project approved by the TDD for an area benefitting the Redevelopment Area and in accordance with the TDD Act and constituting a portion of the Work.

“*TDD Project Costs*” means the costs incurred by or on behalf of Developer with respect to that certain “*Transportation Project*” as defined in that certain Petition to Establish a Transportation Development District filed with the Circuit Court of the City of St. Louis with respect to the TDD.

“*TDD Revenues*” shall mean the proceeds, after deduction for costs of collection and/or administration, from the imposition of the TDD Sales Tax which are not captured as EATs but are instead pledged by the TDD to the City for deposit in the TDD Revenues Account of the Revenue Fund of the Special Allocation Fund for the repayment of TIF Notes.

“*TDD Sales Tax*” means the sales and use tax levied by the TDD on the receipts from the sale at retail of all eligible tangible personal property on taxable services at retail within its boundaries pursuant to the TDD Act in the amount not to exceed one percent (1%).

“*TIF Bonds*” means tax increment revenue bonds, if any, authorized and issued by the Authority in accordance with the TIF Act and this Agreement.

“*TIF Commission*” means the Tax Increment Financing Commission of the City of St. Louis, Missouri.

“*TIF Notes*” means one or more series of tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance, to evidence the City’s limited obligation to pay for Reimbursable Redevelopment Project Costs incurred in connection with the Redevelopment Project on behalf of the City in accordance with the TIF Act and this Agreement.

“*TIF Obligations*” means TIF Bonds, TIF Notes or other obligations, singly or in series, issued by the City or the Authority, as the case may be, pursuant to the TIF Act and in accordance with this Agreement.

“*TIF Revenues*” means: (1) payments in lieu of taxes (as that term is defined in Section 99.805(11) of the TIF Act) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property

located within the Redevelopment Area over and above the initial equalized assessed value (as that term is used and described in Sections 99.845.1 and 99.855.1 of the TIF Act) of each such unit of property, as paid to the City Treasurer by the City Collector of Revenue during the term of the Redevelopment Plan and the Redevelopment Project, and (2) subject to annual appropriation by the Board of Aldermen, fifty percent (50%) of the total additional revenues from taxes which are imposed by the City or other taxing districts (as that term is defined in Section 99.805(17) of the TIF Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 201_ (subject to annual appropriation by the City as provided in the TIF Act), as defined and described in Sections 99.805(4) and 99.845 of the TIF Act, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, and licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, all as provided in Section 99.845 of the TIF Act. Notwithstanding the foregoing, TIF Revenues shall not include the operating levy for school purposes (as such term is defined in 163.011(12), RSMo) imposed by the Transitional School District of the City of St. Louis.

“*Trustee*” means the trustee or fiscal agent for any issue of TIF Obligations.

“*Verified Total Project Costs*” means the sum total of all reasonable or necessary costs incurred in connection with the Redevelopment Project, and any such costs incidental to the Redevelopment Project or the Work, including, but not limited to, all Acquisition Costs, Redevelopment Project Costs and Reimbursable Redevelopment Project Costs, as limited by the provisions of **Section 4.3** hereof.

“*Work*” means all work necessary to prepare the Redevelopment Area and to construct or cause the construction and completion of the Redevelopment Project described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, including but not limited to: (1) property acquisition; (2) site preparation and environmental remediation; (3) rehabilitation, renovation or reconstruction of existing structures or construction of new improvements within the Redevelopment Area; (4) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or public improvements, including without limitation surrounding roads, sidewalks, sewer, water, electrical, parking and other utilities; (5) professional services, including, but not limited to, architecture, engineering, surveying, financing, legal, planning and consulting; (6) and all other work described in the Redevelopment Proposal, Redevelopment Plan and this Agreement, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II. ACCEPTANCE OF PROPOSAL

2.1. Developer Designation. The City hereby selects the Developer to perform or cause the performance of the Work in accordance with the Redevelopment Plan and this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Redevelopment Plan shall govern. Any requirement imposed upon Developer shall be satisfied to the extent Developer takes such action or causes such action to be taken.

2.2 Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer’s right to abandon the Redevelopment Project and to terminate this Agreement as set forth in **Section 7.1** of this Agreement. Additionally, and not by way of limitation:

(i) the City acknowledges payment by the Developer of a Five Thousand Dollar and no/100 (\$5,000.00) TIF Application Fee;

(ii) the City acknowledges that, prior to the execution of this Agreement, the Developer paid the sum of Eight Thousand Five Hundred and Fifty Dollars and no/100 (\$8,550.00) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies have been paid one half to the Finance Officer and one half to the SLDC to reimburse the Finance Officer and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iii) the Developer shall, concurrently with the execution of this Agreement, pay the sum of Eight Thousand Five Hundred and Fifty Dollars and no/100 (\$8,550.00) (which sum represents 0.3% of the maximum amount of TIF Notes allowed to be issued by the City pursuant to **Section 4.1** of this Agreement), which monies shall be paid one half to the Finance Officer and one half to the SLDC to reimburse the Finance Officer and the SLDC for their administrative costs in reviewing the Redevelopment Plan and the Redevelopment Proposal;

(iv) the Developer shall pay to the Finance Officer an additional amount to reimburse the Finance Officer for its actual legal expenses incurred in connection with the review of the Redevelopment Proposal, the review and adoption of the Redevelopment Plan and the negotiation, execution and implementation of the Redevelopment Agreement, which amount shall be paid as follows: (i) all such costs incurred through the date of execution of the Redevelopment Agreement shall be paid concurrently with the execution of the Redevelopment Agreement, and (ii) all such costs incurred after the date of execution of the Redevelopment Agreement and prior to the date upon which the City receives from Developer a Certificate of Reimbursable Redevelopment Project Costs shall be paid concurrently with the initial issuance of the TIF Notes; and

(v) the Developer shall, concurrently with the issuance of any TIF Notes, pay to the City a flat fee to be reasonably determined by the City in its sole discretion at the time of issuance to pay for the City's Issuance Costs of such TIF Notes; and

(vi) any amounts advanced to the City shall represent Reimbursable Redevelopment Project Costs to be paid exclusively from the proceeds of TIF Obligations as provided in and subject to **Articles IV and V** of this Agreement.

ARTICLE III. CONSTRUCTION OF REDEVELOPMENT PROJECT

3.1 Acquisition of Property. Developer represents to the City that it has control by ownership or purchase option on all the Property necessary for the implementation of the Work. The Developer or its assignee shall have the right to encumber its interest in the Property concurrent with closing of the Property and payment of the Acquisition Costs. The Developer shall not be required to take title to any such properties except on such terms and conditions as it shall reasonably find acceptable.

3.2 [Intentionally Omitted.]

3.3 Relocation. The Developer shall identify any Displaced Person (as defined in Ordinance No. 62481 of the City) that is entitled to relocation payments or relocation assistance under the Relocation Plan. The City shall, at the Developer's sole cost and expense, subject to payment as a Reimbursable Redevelopment Project Cost in accordance with **Article IV** of this Agreement, coordinate such relocation payments and relocation assistance in accordance with the Relocation Plan.

3.4 Developer to Construct the Work. The Developer shall commence or cause the commencement of the construction of the Work within one hundred eighty (180) days of the date of this Agreement, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Redevelopment Plan. The Developer shall substantially complete or cause the Work to be substantially complete not later than June 30, 2014 absent an event of Force Majeure. In the event of any delay caused by an event of Force Majeure as defined in **Section 7.5** of this Agreement, Developer shall be granted additional time to complete the Work, but under no circumstance shall such time to complete the Work extend beyond December 31, 2014.

Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining to prevailing wage and hour apply to any portion of the Work the Developer agrees to take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

3.5 Governmental Approvals. The City and, at its direction, the SLDC agree to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri.

3.6 Construction Plans; Changes. The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances and regulations. During the progress of the Work, the Developer may make such reasonable changes, including without limitation modification of the construction schedule, subject to the provisions of **Section 3.4**, including but not limited to, dates of commencement and completion (subject to the time limitations set forth in this Agreement), modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of Work, and any and all such other changes as site conditions or orderly development may dictate or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that (a) the Developer shall comply with all laws, regulations and ordinances of the City and (b) prior to any material changes, the

Developer shall obtain the advance written consent of the SLDC, which consent shall not be unreasonably withheld or delayed. For purposes of this **Section 3.6**, “material changes” shall mean (i) any change that could reasonably be expected to result in a decrease in the aggregate amount of TIF Revenues generated within the Redevelopment Area to an amount less than 90% of the aggregate amount of TIF Revenues as projected in that certain Cost-Benefit Analysis for the Northeast Hampton/Berthold Area TIF Redevelopment Plan dated as of October 5, 2012, as amended on October 22, 2012 and October 30, 2012 (as may be amended), and placed on file with SLDC; or (ii) any change that would reduce the final total square footage of commercial space by more than ten percent (10%) of the estimated commercial square footage set forth in that certain Cost-Benefit Analysis for the Northeast Hampton/Berthold Area TIF Redevelopment Plan dated as of October 5, 2012, as amended on October 22, 2012 and October 30, 2012 (as may be amended), and placed on file with SLDC.

3.7. Certificate of Commencement of Construction. The Developer shall furnish to the SLDC, with a copy to the Finance Officer, a Certificate of Commencement of Construction, which certificate shall be submitted for the Redevelopment Project in accordance with the schedule set forth in **Section 3.4** of this Agreement and in the form of **Exhibit C** attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the SLDC upon receipt of the same.

3.8. Certificate of Substantial Completion. Promptly after substantial completion of the Work, the Developer shall furnish to the City and the SLDC a Certificate of Substantial Completion. The Mayor or his designee and the SLDC shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City and the SLDC unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the Mayor or his designee or SLDC furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. In the case where the Mayor or his designee or SLDC, within thirty (30) days following delivery of the Certificate of Substantial Completion provides the Developer with specific written objections to the status of the Work, the Developer shall have such amount of time as is reasonably necessary to address such objections and when addressed shall re-submit the Certificate of Substantial Completion to the Mayor or his designee or the SLDC in accordance with this Section and the thirty (30) day period shall begin anew. Upon acceptance of the Certificate of Substantial Completion by the Mayor or his designee and the SLDC for the Redevelopment Project, or upon the lapse of thirty (30) days after delivery thereof to the Mayor or his designee and the SLDC without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City’s Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to perform all the Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit E**, attached hereto and incorporated by referenced herein.

3.9. Community Improvement District (CID). Developer shall, following acquisition of all Property within the Redevelopment Area, pursue the creation of a community improvement districts pursuant to the CID Act. The CID shall be created for the purpose of providing tax revenues in addition to TIF Revenues for funding Redevelopment Project Costs paid or incurred in connection with CID Project and for funding costs associated with operating and maintaining any CID Project. The Developer shall use its Best Efforts to cause the CID to be created and to operate in accordance with the following:

- (i) The CID’s boundaries shall be the Redevelopment Area and may include additional parcels outside the Redevelopment Area.
- (ii) The CID shall be formed as a political subdivision of the State of Missouri.
- (iii) The CID shall be authorized to impose a community improvement district sales tax (the “CID Sales Tax”) in an amount not to exceed one percent (1%) on taxable sales within the CID pursuant to Section 67.1545 of the CID Act and such other tax or assessment as authorized by the CID Act.
- (iv) The CID’s Board of Directors shall consist of five (5) members. The number of persons constituting the Board of Directors shall not be increased by the District without the consent of both the Developer and the City.
- (v) Each member of the CID’s Board of Directors must have all the following characteristics: first, be at least eighteen (18) years of age, and be an owner as defined in the CID Act of a business operating within the District or property within the District classified as commercial, or be a legally authorized representative of an owner located within the District. The CID’s Board of Directors shall be appointed by the Mayor of the City pursuant to the CID Act. For so long as the District is in existence, two (2) of the five (5) members of the Board of Directors shall be selected by the City’s Mayor and Finance Officer (one each). The Developer agrees to include a provision requiring compliance with this section and binding in a proxy agreement upon its successors and assigns in any document transferring either Developer control

of a business operating within the District or any real property within the District classified as commercial.

(vi) The CID shall maintain accurate records of revenues received, which records shall be open to inspection by the City at all reasonably times.

(vii) The CID shall maintain its existence until all TIF Obligations have been paid in full, at which time the CID may dissolve.

(viii) All CID Revenues shall be deposited into the CID Revenues Account of the Special Allocation Fund to provide for the payment of principal of and interest on TIF Obligations issued in connection with CID Project.

(ix) All CID Revenues shall be used to pay debt service on the TIF Obligations for the CID Project in accordance with this Agreement, excepting therefrom the portion of the CID Sales Tax proceeds deducted by the State of Missouri for its reasonable and actual costs of administering, collecting, enforcing and operating the CID Sales Tax as provided in the CID Act and excepting such amount as is necessary to administer the CID.

3.10. City and Developer Actions with Respect to the CID. The City acknowledges that the Developer, at its sole cost and expense, intends to advance all costs necessary to design, develop and construct all CID Project, subject to the creation of the CID to finance such CID Project. The City further acknowledges the general economic benefit and the overall value to the community created by the construction of the CID Project. To that end, the City and the Developer agree as follows:

(i) The City and Developer shall use their Best Efforts and cooperate with each other in good faith in all proceedings relating to the creation and certification of the CID, including the execution and filing of all petitions, consents, approvals, authorizations or other documents required to create and certify the CID. The form of the petition for creation of the CID shall be subject to approval by the City Counselor, which approval shall not be unreasonably withheld, conditioned or delayed.

(ii) The Developer shall use Best Efforts to obtain approval for and levy of the CID Sales Tax and any other taxes or assessments contemplated by this Agreement.

(iii) The Developer shall use its Best Efforts to ensure that every retailer within the CID shall add the CID Sales Tax to the retailer's sales price and when so added such CID Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 67.1545 of the CID Act.

(iv) The City and the Developer shall waive the right to file suit to set aside the CID Sales Tax or otherwise question the validity of the proceedings relating thereto.

(v) The Director of the Department of Revenue for the State of Missouri shall administer and collect the CID Sales Tax pursuant to Section 67.1545.4 of the CID Act and the terms of a collection agreement mutually satisfactory to the State of Missouri and the CID.

3.11. Pledge of CID Revenues. The Developer shall use its Best Efforts to cause the CID to enter into an intergovernmental cooperation agreement with the City to pledge all CID Revenues that are from time to time on deposit in the Special Allocation Fund solely to the payment of debt service on the portion of the TIF Obligations related to CID Project. The CID's obligations under this Section shall be the exclusive responsibility of the CID payable solely out of the CID's funds and property as provided in the CID Act and shall not constitute a debt or liability of the State of Missouri or any agency or political subdivision of the State. Neither the CID nor the City shall be obligated to pledge any funds other than those specifically pledged to repayment of the TIF Obligations.

3.12. Transportation Development District.

(a) The City acknowledges that the Developer, at its sole cost and expense, intends to advance or cause to be advanced all costs necessary to design, develop and construct the TDD Project. The City further acknowledges the general economic benefit and the overall value to the community created by the construction of the TDD Project. To that end, the City and Developer agree as follows:

(i) The City and Developer shall use their Best Efforts and cooperate with each other in good faith in all proceedings relating to the creation and certification of the TDD, including the execution and filing of all petitions, consents, approvals, authorizations or other documents required to create and certify the TDD.

(ii) The Developer shall use its Best Efforts to ensure that every retailer within the Property and included within the TDD shall add the TDD Sales Tax to the retailer's sales price and when so added such TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in the TDD Act.

(iii) The City and Developer shall waive the right to file suit to set aside the TDD Sales Tax or otherwise question the validity of the proceedings relating thereto.

(b) Subject to any limitation set forth in the TDD Act, the Developer shall use its Best Efforts to cause the TDD to enter into an agreement within the City to pledge all TDD Revenues generated within the Property that are from time to time on deposit in the TDD Revenues Account of the Revenue Fund solely to the payment of debt service on the portion of the TIF Obligations related to the TDD Project. The TDD's obligations under this Section shall be exclusive responsibility of the TDD payable solely out of TDD Revenues and shall not constitute a debt or liability of the State of Missouri or any agency or political subdivision of the State. Neither the TDD nor the City shall be obligated to pledge any funds other than those specifically pledged to repayment of the TIF Obligations, and any pledge of TDD Revenues shall be subject to the limitations on the term of obligations issued by a TDD as set forth in the TDD Act.

ARTICLE IV. PAYMENT OF REIMBURSABLE REDEVELOPMENT PROJECT COSTS

4.1. City's Obligation to Pay Reimbursable Redevelopment Project Costs. Subject to the terms of the Note Ordinance and this Agreement, the City agrees to pay for the verified Reimbursable Redevelopment Project Costs and to issue TIF Notes to an Original Purchaser to evidence the City's obligation to pay for the verified Reimbursable Redevelopment Project Costs in an amount not to exceed Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000), plus Issuance Costs and interest as provided in **Section 5.2** of this Agreement, subject to the limitations of **Article IV** of this Agreement.

Notwithstanding, in the event the CID and/or TDD are not created as herein set forth in Article III, this amount shall be reduced by Two Hundred Seventy-Five Thousand Dollars (\$275,000) for each such entity not so created. By way of example and illustration, if the Developer does not to create the CID or TDD, the City agrees to pay for the verified Reimbursable Redevelopment Project Costs in a total amount not to exceed Two Million Five Hundred Seventy-Five Thousand Dollars (\$2,575,000) plus Issuance Costs. Further, by way of example and illustration, if the Developer does not to create the CID and TDD, the City agrees to pay for the verified Reimbursable Redevelopment Project Costs in a total amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) plus Issuance Costs.

4.2. Payment Limited to Reimbursable Redevelopment Project Costs; Developer's Right to Substitute. Nothing in this Agreement shall obligate the City to issue TIF Notes or to pay for any cost that is not incurred pursuant to Section 99.820.1 of the TIF Act or that does not qualify as a "redevelopment project cost" under Section 99.805(15) of the TIF Act. The Developer shall provide to the City (a) itemized invoices, receipts or other information evidencing such costs; and (b) a Certificate of Reimbursable Redevelopment Project Costs constituting certification by the Developer that such cost is eligible for payment under the TIF Act. Within thirty (30) days of the City's receipt from the Developer of a Certificate of Reimbursable Redevelopment Project Costs, the City shall review and act upon such Certificate of Reimbursable Redevelopment Project Costs. The parties agree that each of the categories of costs set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, shall constitute Reimbursable Redevelopment Project Costs which are eligible for payment by the City in accordance with the TIF Act and this Agreement. The City shall pay for Redevelopment Project Costs from any of the categories set forth in **Exhibit B** up to the maximum aggregate amount established in **Section 4.1** of this Agreement; provided, that the Developer shall be obligated to advance to the City the full amounts identified in **Section 2.2, clauses (i)-(v)**, of this Agreement. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a "redevelopment project cost" under Section 99.805(15) of the TIF Act, the City shall so notify the Developer in writing within the thirty (30) day period referenced in this **Section 4.2**, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs with a supplemental application for payment and the thirty (30) day period shall begin anew. If the City fails to approve or disapprove any Certificate of Reimbursable Redevelopment Project Costs within thirty (30) days after receipt thereof, the Certificate of Reimbursable Redevelopment Project Costs shall be deemed approved.

4.3. Cost Savings and Excess Profits. Within one hundred ninety (90) days after the submission of the Certificate of Substantial Completion by Developer in accordance with **Section 3.8** of this Agreement, Developer also shall furnish to the City for the City's review and approval, (a) a statement of Verified Total Project Costs, with evidence of billings and payments for each expenditure, including itemized invoices, receipts, and pay applications or other evidence of payment as appropriate for the type of cost; and (b) a statement of each and every Post Completion Funding Source for the Redevelopment Project.

Developer shall not include developer fees, project management, construction management or consultant fees for any service typically performed by the Developer in the Verified Total Project Costs. With respect to any other costs for any services provided by the Developer or any entity related to Developer, the amount of such costs shall not exceed the amount set forth in the Redevelopment Plan for such services, or, if the cost for such service is not explicitly set forth in the Redevelopment Plan as an individual line item, an amount determined by the City as acceptable. Moreover, if any of the owners, officers, principals or members of the construction contractor for the Redevelopment Project are the same as any owner, officer, principal or member of Developer or general partner in the owner of the development, amounts allowed for aggregate contractor fees shall not exceed eighteen percent (18%) of construction costs as provided for in the Missouri Housing Development Commission's 2005 Qualified Allocation Plan for the Low Income Housing Tax Credit Program, and Developer shall include documentation, including detailed invoices and receipts for payment, for each and every item of costs traceable to third parties with no relationship to Developer, in addition to summary pay applications submitted to Developer by the construction contractor. The City shall determine whether particular costs are general requirements and includable in the contractor's fee allowance or are construction costs to which the aggregate contractor's fee allowance shall be applied, using the Cost Certification Guide promulgated by the Missouri Housing Development Commission as a guide for such determinations. The City shall complete its review of the statements and other documentation provided by the Developer pursuant to this Section and shall notify Developer if such documentation is acceptable and complete within ninety (90) days of receipt by the City. Should the City notify Developer that the documentation submitted by the Developer is not acceptable or is not complete, the City shall specify which items of documentation are missing or unacceptable and the manner in which Developer may remedy such deficiencies, and Developer may make supplemental submissions to address such deficiencies, provided, however, that such supplemental submissions shall not include any materials with respect to costs incurred or other events that have taken place subsequent to the date the original submission was made. If requested by the City, Developer shall also submit an affidavit as to the accuracy of the statements as to the costs, the relationship of any payee to the Developer, the accuracy of the statements as to the amounts and types of tax credits received or other funding sources received, and the veracity of any other aspect of the statements of Verified Total Project Costs or Post-Completion Funding Sources. The City shall review any supplemental materials provided by the Developer within forty-five (45) days of receipt and shall notify Developer if such documentation is acceptable and complete within forty-five (45) days of receipt by the City. Developer shall respond to any notification by the City pursuant to this section within forty-five (45) days of receipt of such notification. Once the City has issued any such notification, the City shall not be required to make the calculations specified in the following paragraph until the City has received all documentation deemed necessary by the City in order to make such calculations, provided, however, that if Developer fails to respond to any notification within such forty-five (45) day period, the City shall have the right to finalize the calculations specified in the following paragraph based on the information and documentation then available to the City and the Developer shall accept the results of such finalized calculations for purposes of the discharge of TIF notes as specified in the following paragraph. Either the City or the Developer may waive or extend the time periods for notification and response set forth herein.

To the extent that, in the City's determination, the sum of Post Completion Funding Sources as identified by the City exceeds the sum of: (x) Verified Total Project Costs, plus (y) four percent (4%) of the Acquisition Costs, plus (z) fifteen percent (15%) of all Verified Total Project Costs other than Acquisition Costs, then Developer hereby agrees that the maximum amount of Reimbursable Redevelopment Project Costs for which the Developer shall be reimbursed by the City as provided for in **Section 4.1** of this Agreement and the maximum amount of any TIF Notes which shall be issued by the City in accordance with **Section 5.2** of this Agreement shall be reduced by an amount in the aggregate equal to seventy-five percent (75%) of the total amount of such excess, as calculated by the City in accordance herewith. Developer agrees that the City may discharge any TIF Notes already issued at the time of such calculation in an amount in the aggregate equal to seventy-five percent (75%) of the total excess.

4.4. City's Obligations Limited to Special Allocation Fund and Bond Proceeds. Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the Developer for Reimbursable Redevelopment Project Costs are payable only from the Special Allocation Fund and from Bond Proceeds, if any, and from no other source. The City has not pledged its full faith and credit relative to the City's obligation to issue the TIF Obligations or to pay any Reimbursable Redevelopment Project Costs. The TIF Obligations shall be special, limited obligations of the City, and shall not constitute debt to the City within any constitutional or statutory meaning of the word "debt."

ARTICLE V. TIF OBLIGATIONS

5.1. Conditions Precedent to the Issuance of TIF Notes. No TIF Notes shall be issued until such time as the City has (i) accepted a Certificate of Substantial Completion in accordance with the procedures set forth in **Section 3.8** of this Agreement; (ii) approved a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference, in accordance with the procedures set forth in **Section 4.2** of this Agreement; (iii) obtained an opinion of Bond Counsel regarding the taxable nature of the TIF Notes; (iv) received the full payment of all advances required to be paid under **Section 2.2** of this Agreement; (v) received such other documentation as the City shall reasonably require of Developer in order for the City to obtain an opinion of Bond Counsel as required by this **Section 5.1**; (vi) the completion of **Section 4.3** of this

Agreement; and (vii) determination of the final size of the TIF Notes.

5.2. Issuance of TIF Notes. The City agrees to issue one or more TIF Notes as provided in this Agreement and the Note Ordinance to pay for Reimbursable Redevelopment Project Costs up to the maximum amount established in **Section 4.1** of this Agreement, subject to the limitations of Article IV of this Agreement. The TIF Notes shall be in the form attached to the Note Ordinance as **Exhibit B**, provided that if the Note Ordinance is repealed or otherwise amended to amend such form of TIF Note, the TIF Notes shall not be amended for the purposes of this Agreement without the written consent of Developer.

5.2.1. Terms. Each TIF Note shall bear interest at a fixed rate per annum determined on the date that is not less than ten (10) and not more than sixty (60) business days prior to the scheduled closing date for issuance of the TIF Notes (the "Pricing Date") based on the municipal yield curve for general obligation bonds (the "MMD") compiled by Municipal Market Data Line ® (or its successors) and published by Thomson Financial, an operating unit of The Thomson Corporation (or its successors) using the MMD yield published as of the Issuance Date for general obligation bonds rated "AAA" that mature in the same year as the TIF Notes, (i) plus four percent (4%) if the interest on such TIF Note, in the opinion of Bond Counsel, is not exempt from Federal income taxation (the "Taxable Rate"), or (ii) plus two percent (2%) if the interest on such TIF Note, in the opinion of Bond Counsel, is exempt from Federal income taxation (the "Tax Exempt Rate"); provided, in no event shall the interest rate on the TIF Notes exceed ten percent (10%) per annum. All TIF Notes shall have a stated maturity of the Maturity Date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The TIF Notes shall bear interest from their registration date or from the most recent Payment Date to which interest has been paid or duly provided for.

5.2.2. Procedures for Issuance of TIF Notes. Within a reasonable period of time not to exceed ninety (90) days of Developer's satisfaction of the conditions of **Section 5.1** of this Agreement the City shall issue a TIF Note to an Original Purchaser evidencing payment of Reimbursable Redevelopment Project Costs. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance by the City of a TIF Note as provided in this **Section 5.2.2**, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have paid the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

5.2.3. Special Mandatory Redemption of TIF Notes. All TIF Notes are subject to special mandatory redemption by the City, in whole at any time or in part on each May 1 and November 1 (each, a "Payment Date") occurring after the acceptance by the City of the Certificate of Substantial Completion at a redemption price equal to 100% of the principal amount being redeemed, together with the accrued interest thereon to the date fixed for redemption.

5.3 Issuance of TIF Bonds.

5.3.1. The City may, in its sole and absolute discretion, issue, cause to be issued, TIF Bonds at any time in an amount sufficient to refund all or a portion of the outstanding TIF Notes.

5.3.2. Upon receipt of a written request by Developer and upon the City's underwriter's recommendation in favor of issuing TIF Bonds and recommendation of the principal amount thereof based on the criteria set forth below, the City shall use its Best Efforts to cause the Authority to issue TIF Bonds as described in this Section. The aggregate gross cash proceeds from the sale of the TIF Bonds before payment of Issuance Costs, together with any interest accrued thereon ("Bond Proceeds") of such TIF Bonds will be finally determined by the City after receiving the underwriter's recommendation based on the criteria set forth below. The City shall not be obligated to cause the Authority to issue such TIF Bonds unless the underwriter determines that all of the following criteria are satisfied as of the date of issuance of such bonds, unless such criteria are waived by the City's underwriter. Developer shall not have any liability for any costs associated with the issuance of TIF Bonds but shall bear its own costs and expenses, including any attorneys' fees and expenses, that Developer may incur in complying with this Section. Notwithstanding anything in this Section to the contrary, Developer shall be liable for all costs incurred by the City or the Authority in the event the Developer has requested the issuance of bonds and the City's underwriter has determined that such bonds cannot be issued at such time.

5.3.2.1. Criteria for Issuance. The underwriter's recommendation for issuance of TIF Bonds and the principal amount thereof shall be based on the following criteria:

- (i) Acceptance by the City of the Certificate of Substantial Completion;
- (ii) Review of projections of TIF Revenues available for debt service as proposed by an independent qualified consultant. Such projections must show that (A) if all available TIF Revenues were to be

applied to the immediate repayment of the TIF Bonds, the TIF Bonds would reasonably be anticipated to be retired within twenty-three (23) years from the effective date of the Approving Ordinance, and (B) based on a maturity date twenty-three (23) years from the effective date of the Approving Ordinance, the TIF Bonds are reasonably likely to achieve debt service coverage ratio reasonably acceptable to the City's underwriter;

- (iii) Developer's documentation of stabilization of the Redevelopment Project for a minimum period of two (2) years after substantial completion as evidenced in a report to the City prepared by a qualified independent consultant to be paid for by the City, which report also sets forth TIF revenue projections for the Redevelopment Project in connection with the issuance of the TIF Bonds;
- (iv) The aggregate net projected debt service on the TIF Bonds (taking into account the principal portion of the TIF Bonds that are issued to establish a reserve fund and to pay Issuance Costs, and including any reserve fund earnings) will be lower than the net average annual debt service on the outstanding TIF Notes, unless the Developer voluntarily elects to defer or forgive principal of and/or interest on the TIF Notes in an amount necessary to make the aggregate net projected debt service on the TIF Bonds lower than the net average annual debt service on the outstanding TIF Notes; and
- (v) The TIF Bonds can be sold at an aggregate net interest cost which is less than the aggregate net interest cost of the TIF Notes to be redeemed.

5.4. Application of TIF Bond Proceeds. Proceeds of any TIF Bonds shall be applied:

5.4.1. To the payment of costs relating to the issuance of the TIF Bonds;

5.4.2. To the payment of outstanding principal of and interest on the TIF Notes to be refunded;

5.4.3. To the payment of capitalized interest on the TIF Bonds; and

5.4.4. To the establishment of a debt service reserve fund for the TIF Bonds in a reasonable amount of the principal amount of TIF Bonds to be issued, as to be determined by the City's underwriter.

5.5. Cooperation in the Issuance of TIF Obligations. Developer covenants to cooperate and use Best Efforts necessary to assist the City and its Bond Counsel, the Authority, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases between Developer and such tenants. Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to Developer, but upon the execution of a confidentiality agreement acceptable to Developer, Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Developer shall make such compliance obligation a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement, provided, that Developer shall satisfy this and any other obligation under this Agreement to make any provision a covenant running with the land by recording this Agreement in the Office of the Recorder of Deeds of the City of St. Louis.

5.6. Subordinate Notes. TIF Notes may be issued in two series, with one series subordinate to TIF Notes of the other series issued hereunder (the "Subordinate Notes"), such that no payment of principal or interest on any such Subordinate Notes may be made while any TIF Notes are outstanding. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.2 and 6.3** of this Agreement.

If the amount of TIF Bonds issued pursuant to this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of Subordinate Notes. Each Subordinate Note shall have the same maturity and have the same outstanding principal amount and the same interest rate as the TIF Note it redeems. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in Sections 5.4 and 6.3 of this Agreement.

5.7. City to Select Underwriter and Financial Advisor; Term and Interest Rate. The City Finance Officer shall have the right to select the designated underwriter (and such financial advisors and consultants as the underwriter and the City deem necessary for the issuance of the TIF Bonds) and underwriter's counsel. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act. The TIF Bonds shall bear interest at such rates, shall be subject to redemption and

shall have such terms as the City shall determine in its sole discretion.

**ARTICLE VI.
SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES**

6.1. Creation of Special Allocation Fund. The City agrees to cause its Finance Officer to maintain the Special Allocation Fund, including a "PILOTs Account," an "EATs Account," and such further accounts or sub-accounts as are required by this Agreement or as the Finance Officer may deem appropriate in connection with the administration of the Special Allocation Fund pursuant to this Agreement. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit all Payments in Lieu of Taxes into the PILOTs Account and all Economic Activity Taxes into the EATs Account.

6.2. Certification of Base for PILOTS and EATS.

6.2.1. Upon the reasonable written request of the City, Developer shall use its Best Efforts to provide or cause to be provided to the Finance Officer or its authorized representative any documents necessary for the City to calculate the base for PILOTs and EATs including, but not limited to: (i) the address and locator number of all parcels of real property located within the Redevelopment Area; and (ii) information related to payment of utility taxes by any businesses, owners or other occupants of the Redevelopment Area in the calendar year ending December 31, 2012.

6.2.2. Within ninety (90) days after execution of the Redevelopment Agreement, the City shall provide to the Developer (i) a certificate of the City Assessor's calculation of the total initial equalized assessed valuation of the taxable real property within the Redevelopment Area based upon the most recently ascertained equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the Redevelopment Area; and (ii) a certification of the amount of revenue from taxes, penalties and interest which are imposed by the City and other taxing districts and which are generated by economic activities within the Redevelopment Area for the calendar year ending December 31, 2011, but excluding those personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, taxes levied for the purpose of public transportation, or licenses, fees or special assessments identified as excluded in Section 99.845.3 of the TIF Act.

6.3. Application of Available Revenues. The City hereby agrees for the term of this Agreement to apply the Available Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act or this Agreement to the repayment of TIF Notes issued under Article V of this Agreement as provided in the Note Ordinance and this Agreement.

Upon the payment in full of the principal of and interest on all TIF Notes (or provision has been made for the payment thereof as specified in the Note Ordinance), payment in full of the fees and expenses of the Finance Officer and the SLDC, and payment in full of any other amounts required to be paid under the Note Ordinance, all amounts remaining on deposit in the Revenue Fund shall be declared as surplus and distributed in the manner provided in the Act.

If monies available in Special Allocation Fund are insufficient to pay the City or the Developer as provided above on any Payment Date, then the unpaid portion shall be carried forward to the next Payment Date, with interest thereon.

The City agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year that TIF Obligations are outstanding and the City will request an appropriation of all Available Revenues on deposit in the Special Allocation Fund for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the TIF Obligations.

6.4. Cooperation in Determining TIF Revenues. The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues to be paid into the Special Allocation Fund, including, but not limited to, the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

6.5. Obligation to Report TIF Revenues. The Developer shall cause any purchaser or transferee of real property located within the Property, and any lessee or other user of real property located within the Property required to pay TIF Revenues shall use all reasonable efforts to timely fulfill such obligations as are required by **Section 6.4** of this Agreement, including completing and submitting to the City the forms attached hereto as **Exhibit I**. So long as any of the TIF Obligations are outstanding, the Developer shall cause such obligations to be covenants running with the land, which covenants shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

6.6. Notice to City of Transfer. The Developer agrees to notify the City in writing of any sale, transfer or other disposition of the Property or any interest therein as permitted by **Section 7.3.2** of this Agreement at least fifteen (15) days prior to such sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise. Notwithstanding the foregoing, Developer shall not be required to notify the City of the lease or transfer of a residential unit, commercial unit or parking space in the ordinary course of business except as may be required by **Section 4.3**.

ARTICLE VII. GENERAL PROVISIONS

7.1. Developer's Right of Termination. At any time prior to the delivery of a Certificate of Substantial Completion, the Developer may, by giving written notice to the City, abandon the Redevelopment Project and terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible. Upon such termination, the City shall have no obligation to pay the Developer for any amounts advanced under this Agreement or costs otherwise incurred in connection with the Redevelopment Project.

7.2. City's Right of Termination. The City may terminate this Agreement if the Developer fails to submit its Certificate of Substantial Completion, acceptable to the City, in accordance with **Section 3.8** of this Agreement and the schedule set forth in **Section 3.4** of this Agreement. Upon such termination, the City shall have no obligation to issue a TIF Note or to pay the Developer for any amounts advanced under this Agreement or costs otherwise incurred in connection with the Redevelopment Project.

7.3. Successors and Assigns.

7.3.1. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

7.3.2. Assignment or Sale. Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided, however, that until substantial completion of the Redevelopment Project, the fee title to the Property shall not be sold, transferred or otherwise disposed of to anyone other than a Related Entity) and the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof or its rights, duties and obligations under this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; and (b) the right of Developer to transfer the Property or to assign the Developer's rights, duties and obligations under this Agreement to any Related Entity; (c) the right of the Developer to sell, lease or transfer a residential unit, commercial unit or parking space in the ordinary course of business; provided that in each such event (i) the Developer named herein shall remain liable hereunder for the substantial completion of the Redevelopment Project, subject, however, to Developer's right of termination pursuant to **Section 7.1** of this Agreement, and shall be released from such liability hereunder only upon substantial completion of the Redevelopment Project and (ii) the Developer provides to the City fifteen (15) days' advance written notice of the proposed assignment or transfer other than of the sale or lease of a residential unit, commercial unit or parking space in the ordinary course of business which shall require no notice except as may be required by Section 4.3.

7.3.3. Assignment or Sale to Exempt Organization. Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes or to contest the City Assessor's equalized assessed value of that Property or any portion thereof or any interest therein sold, transferred or disposed of, for a period ending on the earlier of the date that all TIF Obligations are paid in full or

twenty-three (23) years from the effective date of the Approving Ordinance. The Developer shall make this requirement a covenant running with the land, enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement.

7.4. Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default or breach. In the event that the defaulting or breaching party (or successor) diligently and in good faith commences to cure or remedy such default or breach but is unable to cure or remedy such default or breach within thirty (30) days after receipt of notice, the defaulting or breaching party (or successor) shall, prior to the end of such thirty (30) days, provide notice to the other party that it has in good faith commenced to cure or remedy such default or breach, whereupon the defaulting or breaching party (or successor) shall have an additional thirty (30) days to cure or remedy such default or breach. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied prior to the end of the additional thirty (30) day period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party.

7.5. Force Majeure. Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure (except as expressly limited in **Section 3.4**), including without limitation damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project or the TIF Obligations or this Agreement; provided that (i) such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith, and (ii) the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

7.6. Notices. All notices, demands, consents, approvals, certificates and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, certificates and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

- (i) In the case of the Developer, to:

Tri-Star Imports, Inc.
16360 Truman Road
Ellisville, MO 63011
Attention: Tom Hennekes
Facsimile: (636) 458-6065

With a copy to:

Polsinelli Shughart PC
100 S. Fourth Street, Suite 1000
St. Louis, Missouri 63102
Attention: William J. Kuehling
Facsimile: (314) 622-6889

- (ii) In the case of the City, to:

City of St. Louis
Office of the Mayor

City Hall
 1200 Market Street, Room 200
 St. Louis, Missouri 63103
 Attention: Rodney Crim, Executive Director of Development
 Facsimile: (314) 622-4061

And

City of St. Louis
 Office of the Comptroller
 1520 Market Street, Room 3005
 St. Louis, Missouri 63103
 Attention: Ivy Neyland-Pinkston, Deputy Comptroller
 Facsimile: (314) 588-0550

With a copy to:

City of St. Louis
 City Counselor
 City Hall
 1200 Market Street, Room 314
 St. Louis, Missouri 63102
 Attention: Rebecca Wright, Assistant City Counselor
 Facsimile: (314) 622-4956

And

Armstrong Teasdale LLP
 7700 Forsyth Blvd., Suite 1800
 St. Louis, Missouri 63105
 Attention: Thomas J. Ray
 Facsimile: (314) 621-5065

(iii) In the case of the SLDC, to:

SLDC
 1520 Market Street, Suite 2000
 St. Louis, Missouri 63103
 Attention: Dale Ruthsatz
 Facsimile: (314) 657-3971

7.7. Conflict of Interest. No member of the Board of Aldermen, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Board of Aldermen the nature of such interest and seek a determination by the Board of Aldermen with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

7.8. Damage or Destruction of Redevelopment Project. In the event of total destruction or damage to the Redevelopment Project by fire or other casualty, during construction or thereafter during the term of this Agreement so long as any TIF Notes are outstanding and the Developer or a Related Entity owns the Property, the Developer shall determine and advise the City in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the Redevelopment Project will be completed or rebuilt in accordance with the Redevelopment Plan and this Agreement. Should the Developer determine not to restore, reconstruct and repair, all unaccrued liability of the City for any payments of principal or interest on the TIF Notes shall immediately terminate and the Developer shall promptly surrender the TIF Notes to the City for cancellation. In the event of such total destruction or damage during the term of this Agreement and after any TIF Bonds are issued or the issuance of a TIF Note to a purchaser other than the Developer or a Related Entity, the Developer shall, at the City's option after consultation with the Developer, tender to the City that portion of the insurance proceeds, if any, to which

Developer is entitled, after satisfaction of any terms or obligations of any deed of trust, promissory note or financing agreement entered into by the Developer for the financing of all or any part of the Redevelopment Project, from any fire or casualty insurance policy in an amount equal to the outstanding principal amount of the TIF Bonds or TIF Notes, plus accrued interest thereon to be deposited into the Special Allocation Fund.

7.9 Inspection. The City may conduct such periodic inspections of the Work as may be generally provided in the building code of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the Work site from time to time upon advance notice prior to the completion of the Work for inspection thereof. The Developer shall not unreasonably deny the City and its officers, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

7.10. Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

7.11. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

7.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

7.13. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

7.14. Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

7.15. Attorney's Fees. In any dispute arising out of or relating to this Agreement, including any action to enforce this Agreement against a defaulting or breaching party pursuant to **Section 7.4**, the prevailing party shall recover from the non-prevailing party the prevailing party's reasonable attorney's fees, in addition to any other damages to which it is entitled.

7.16. Actions Contesting the Validity and Enforceability of the Redevelopment Plan. In the event a third party brings an action against the City or the City's officials, agents, attorneys, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Plan, the TIF Obligations, or the ordinance approving this Agreement, Developer may, at its option, join the City in defense of such claim or action. The parties expressly agree that, so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding. The Developer shall be responsible for all reasonable and necessary costs and expenses incurred by the City and by the Developer in connection with the defense of such claim or action, provided that if the City does not approve a settlement or compromise to which the Developer would agree, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action. All cost of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to Article IV of this Agreement.

7.17. Release and Indemnification. The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

7.17.1. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

7.17.2. The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold

harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

7.17.3. The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

7.17.4. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

7.17.5. No governing body members, officers, agents, attorneys, employees or independent contractors of the City shall be personally liable to the Developer (i) in the event of a default or breach by any party under this Agreement or (ii) for any amount or any TIF Notes which may become due to any party under the terms of this Agreement.

7.17.6. The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement of this Agreement, the validity of the TIF Obligations or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed prior to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence or malicious acts or omissions of the City or its governing body members, officers, agents, attorneys, employees and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City following termination of this Agreement as to the Redevelopment Project or any particular portion thereof.

7.18. Survival. Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in **Section 2.2, clauses (iii)-(v), Article VI, Sections 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17 and Article VIII** of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by either party.

7.19. Maintenance of the Property. The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of the Redevelopment Project or any portion thereof. Upon substantial completion of the Redevelopment Project and so long as any TIF Obligations are outstanding, the Developer or its successor(s) in interest, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement (but subject to any delay caused by an event of force majeure as provided in **Section 7.5** of this Agreement), maintain or cause to be maintained the buildings and improvements within the Redevelopment Area which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations. If there are separately-owned or ground leased parcels of real estate on the Property during the term of this Agreement, each owner or lessee as a successor in interest to the Developer shall maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations.

7.20. Non-Discrimination. The Developer agrees that, during the term of this Agreement and as an independent covenant running with the land, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control within the Redevelopment Area or any portion thereof and said covenant may be enforced by the City or the United States of America or any of their respective agencies. The Developer further agrees that a provision containing the covenants of this paragraph shall be

included in all agreements pertaining to the lease or conveyance or transfer (by any means) of all or a portion of the Redevelopment Project and any of the facilities under its control in the Redevelopment Area. Except as provided in this Section, the Developer shall have no obligation to enforce the covenants made by any transferee or lessee, tenant, occupant or user of any of the facilities within the Redevelopment Area.

7.21. Fair Employment. Without limiting any of the foregoing, the Developer voluntarily agrees to observe the Equal Opportunity and Nondiscrimination Guidelines set forth as **Exhibit F**, attached hereto and incorporated herein by reference. By execution of this Agreement, the Developer certifies and agrees that it is under no contractual or other disability that would materially impair its ability to observe the Guidelines set forth as **Exhibit F**, attached hereto and incorporated herein by reference.

7.22. MBE/WBE Compliance and First Source. The Developer shall comply with the Mayor’s Executive Order #28, as amended as of the date of this Agreement, during the design and construction of the Redevelopment Project and with respect to ongoing services provided by third parties to the Developer in connection with the Redevelopment Project. The Developer shall submit to the MBE/WBE Compliance Officer a copy of Developer’s MBE/WBE Subcontractor’s List and its MBE/WBE Utilization Statement prior to the execution of this Agreement. Additionally, the Developer agrees to comply with Chapter 3.90 of the Revised Code of the City of St. Louis or the First Source Policy under Ordinance No. 60275.

**ARTICLE VIII.
REPRESENTATIONS OF THE PARTIES**

8.1. Representations of the City. The City hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, including without limitation the right, power and authority to issue and sell the TIF Notes, and all of the foregoing have been or will be, upon adoption of ordinances authorizing the issuance of the TIF Notes, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

8.2. Representations of the Developer. The Developer hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

“CITY”

CITY OF ST. LOUIS, MISSOURI

By: _____
Francis G. Slay, Mayor

By: _____
Darlene Green, Comptroller

(SEAL)

Attest:

Parrie May, City Register

Approved as to Form:

City Counselor

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective

names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

“DEVELOPER”

TRI-STAR IMPORTS, INC., a Missouri corporation

By: _____
Name: _____
Title: _____

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

On this _____ day of _____, 2012, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

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

On this _____ day of _____, 2012, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

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

On this _____ day of _____, 2012, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of Tri-Star Imports, Inc., a Missouri corporation, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company’s free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT A
Legal Description of the Redevelopment Area

To be supplemented

EXHIBIT B
TIF Reimbursable Redevelopment Project Costs

CATEGORY	
(a)	Acquisition Costs (as defined in Section 1.1 of this Agreement).
(b)	Demolition Costs (includes, but is not limited to, demolition of existing buildings and structures or parts thereof).
(c)	Site Preparation and Public Improvements Costs (includes, but is not limited to, street and sidewalk improvements, parking facilities, utility work and resetting of curbs and landscaping and lighting in the right of way areas).
(d)	Rehabilitation, renovation, or reconstruction of any existing structures or construction of new improvements.
(e)	Financing Costs (includes, but is not limited to, loan fees, disbursing fees, lender’s legal fees, loan appraisals, flood certificates, tax credit investor fees and any and all other costs incurred in connection with obtaining financing for and a tax credit investor in the Redevelopment Project).
(f)	Environmental Testing, Remediation and/or Abatement Costs (includes, but is not limited to, the testing for and removal and disposal of toxic or hazardous substances or materials).
(g)	Professional Service Costs (includes, but is not limited to, architectural, engineering, legal, marketing, financial, planning, sales commissions or special services).
(h)	TIF Costs & Issuance Costs incurred by the Developer pursuant to Section 2.2(i) – 2.2.(v) of this Agreement.

¹ Subject to the limitations set forth in **Article IV** of this Agreement, provided that such costs shall not exceed the aggregate amount of \$2,850,000 plus Issuance Costs as provided in the Agreement.

EXHIBIT C
Form of Certificate of Commencement of Construction

To: City of St. Louis
Office of Comptroller
1520 Market St., Room 3005
St. Louis, MO 63103
Attention: Ivy Neyland-Pinkston,

City of St. Louis
St. Louis Development Corp
1520 Market St., Suite 2000
St. Louis, MO 63103
Attention: Dale Ruthsatz
Deputy Comptroller

DELIVERED BY

TRI-STAR IMPORTS, INC.

The undersigned, Tri-Star Imports, Inc. (the “Developer”), pursuant to that certain Redevelopment Agreement dated as of _____, 201_, between the City of St. Louis, Missouri (the “City”) and Developer (the “Agreement”) hereby certifies to the City as follows:

1. All property within the Redevelopment Area necessary for the Redevelopment Project (as legally described on Appendix A attached hereto and by this reference incorporated herein and made a part hereof), has been acquired by Developer or a Related Entity in accordance with the Agreement.
2. Developer has entered into an agreement or caused an agreement to be entered into with a contractor or contractors to construct the Redevelopment Project.
3. Developer has submitted to the MBE/WBE Compliance Officer a copy of Developer’s MBE/WBE Subcontractor’s List and MBE/WBE Utilization Statement, which are attached hereto as Appendix B.
4. All necessary financing to complete the Redevelopment Project has been obtained.
5. This Certificate of Commencement of Construction is being issued by Developer to the City in accordance with the Agreement to evidence Developer’s satisfaction of all obligations and covenants with respect to commencement of construction of the Redevelopment Project.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this day of _____, 20__.

TRI-STAR IMPORTS, INC., a Missouri corporation

By: _____
 Name: _____
 Title: _____

EXHIBIT D
Form of Certificate of
Reimbursable Redevelopment Project Costs

TO:
 City of St. Louis
 Office of Comptroller
 1520 Market Street, Room 3005
 St. Louis, Missouri 63103
 Attention: Ivy Neyland-Pinkston, Deputy Comptroller

Re: City of St. Louis, Missouri, Northeast Hampton/ Berthold Area TIF Redevelopment Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of _____, 201_ (the “Agreement”), between the City and Tri-Star Imports, Inc., a Missouri corporation (the “Developer”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been paid from sources other than the Special Allocation Fund and are Reimbursable Redevelopment Project Costs under the Note Ordinance and the Agreement.
3. Each item listed on **Schedule 1** has not previously been paid from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.

6. All Work for which payment is requested has been performed in a good and workmanlike manner and in accordance with the Redevelopment Plan and the Agreement.

7. If any cost item to be paid under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.

8. The costs to be paid under this Certificate constitute advances qualified for Tax-Exempt TIF Notes:

Yes: _____ No: _____

9. The Developer is not in default or breach of any material term or condition of the Agreement beyond the applicable cure period, if any.

Dated this ____ day of _____, 20__.

TRI-STAR IMPORTS, INC., a Missouri corporation

By: _____
Name: _____
Title: _____

Approved for payment this ____ day of _____, 20__.

SLDC

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS

By: _____
Name: _____
Title: Comptroller

Schedule 1

The following Reimbursable Redevelopment Project Costs have been incurred in connection with the Redevelopment Project:

Payee: Amount: Description of Reimbursable Redevelopment Project Costs:

EXHIBIT E
Form of Certificate of Substantial Completion
CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Tri-Star Imports, Inc., a Missouri corporation (the "Developer"), pursuant to that certain Redevelopment Agreement dated as of _____, 201_, between the City of St. Louis, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of _____, _____, the construction of the Redevelopment Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work has been substantially completed or funded pursuant to Exhibit B to the Agreement.
3. The Work has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement).

4. This Certificate of Substantial Completion is accompanied by the project architect’s or owner representative’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and incorporated herein by reference, certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.

5. Mechanics lien waivers for applicable portions of the Work in excess of Five Thousand Dollars (\$5,000) have been obtained.

6. This Certificate of Substantial Completion is being issued by the Developer to the SLDC and the City in accordance with the Agreement to evidence the Developer’s satisfaction of all material obligations and covenants with respect to the Redevelopment Project.

7. The acceptance (below) or the failure of the SLDC and the Mayor or his designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the SLDC and the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer’s agreements and covenants to perform the Work or cause the work to be performed.

Upon such acceptance by the SLDC and the Mayor or his designee, the Developer may record this Certificate in the office of the City’s Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

TRI-STAR IMPORTS, INC.

By: _____
Name: _____
Title: _____

ACCEPTED:

SLDC

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS, MISSOURI

By: _____
Name: _____
Title: Mayor

(Insert Notary Form(s) and Legal Description)

**EXHIBIT F
Equal Opportunity and Nondiscrimination Guidelines**

In any contract for Work in connection with the Redevelopment Project related to any of the Property in the Redevelopment Area, the Developer (which term shall include the Developer, any transferees, lessees, designees, successors and assigns thereof, including without limitation any entity related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended), its contractors and subcontractors shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the “Laws”). Moreover, the Developer shall contractually require its contractors and subcontractors to comply with the Laws.

The Developer and its contractors or subcontractors shall not contract with any party known to have been found in violation of the Laws.

Contracting Agency: _____
 Project Name: _____
 Letting Number: _____ Date: _____
 Contract MBE/WBE Goal: 25% MBE and 5% WBE Participation
 Total Dollar Amount of Prime Contract: \$ _____
 Total Dollar Amount of Proposed MBE: \$ _____ Percent MBE _____
 Total Dollar Amount of Proposed WBE: \$ _____ Percent WBE _____

Obligation: The undersigned certifies that (s)he has read, understands and agrees to be bound by the bid specifications, including the accompanying exhibits and other items and conditions of the request for proposals regarding minority and women business enterprise utilization. The undersigned further certifies that (s)he is legally authorized by the respondent to make the statements and representations in the M/WBE Forms and Exhibits and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned will enter into formal agreements with the minority/women business enterprises listed in the Subcontractor List, which are deemed by the City to be legitimate and responsible. The undersigned understands that if any of the statements and representations are made by the respondent knowing them to be false, or if there is a failure of the successful respondent to implement any of the stated agreements, intentions, objectives, goals and commitments set forth herein without prior approval of the City, then in any such events, the contractor's act or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the City to terminate the contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the City may have for other defaults under the contract. Additionally, the contractor may be subject to the penalties cited in Section Twelve of the Mayor's Executive Order #28, as amended.

[Remainder of page intentionally left blank.]

Assurance: I, acting as an officer of the undersigned bidder or joint venture bidders, hereby assure the City that on this project my company will (check one):

- _____ Meet or exceed contract award goals and provide participation as shown above.
- _____ Fail to meet contract award goals but will demonstrate that good faith efforts were made to meet the goals and my company will provide participation as shown above.

Name of Prime Contractor(s): _____

Prime Contractor Authorized Signature
 Title: _____
 Date: _____

EXHIBIT I
TIF Reporting Forms

Tax Increment Financing (TIF) District: _____
Quarterly Information*

For Period: _____

Business Name: _____

Address:** _____

Contact Person: _____

Phone Number: _____

Federal I.D. Number: _____ State I.D. Number: _____

Sales Tax Site Number: _____

Earnings Tax withholding:
(Form W-10)

Earnings tax:
(Business Return Form 234 - Annual)

Payroll tax:
(Form P-10)

Please forward the above information to:

City of St. Louis, Comptroller's Office
Tax Increment Financing
1520 Market Street, Room 3005
St. Louis, Missouri 63103

I, _____, in my capacity as _____,
hereby certify that I am authorized by _____ to release
such confidential tax records referenced herein and that such records are true
and correct to my knowledge.

* This information will not be part of any public record.

Signature

** Information is required for this specific location only. Do not combine with any other location.

Tax Increment Financing (TIF)

Business Addition/Deletion Form

TIF District:

Business Addition

Name:

Address:

Federal I.D. number:

State I.D. number:

Sales tax site code:

Business Phone #

and contact name

Business Deletion

Name:

Address:

Please forward the above information to:

**City of St. Louis, Comptroller's Office
Tax Increment Financing
1520 Market Street, Room 3005
St. Louis, Missouri 63103
(314)589-6017**

EXHIBIT J

Not Applicable / No Condemnation Required

Approved: January 30, 2013

**ORDINANCE #69381
Board Bill No. 259**

An ordinance recommended by the Port Authority Commission of the City of St. Louis, repealing ordinance 68909, which authorized an Option to Lease Agreement and Lease Agreement between the City of St. Louis ("City") and Grace Hill Settlement House ("Grace Hill"), and enacting a new ordinance authorizing and directing the Mayor and the Comptroller to enter into a Lease Agreement between the City and Great Rivers Greenway District ("District") for certain land on the Unimproved Wharf for a period of ten (10) years commencing on the date of execution with three (3) five-year (5-year) mutual options, in substantially the form as Exhibit 1 and Appendix A attached hereto and incorporated by reference herein as Exhibit 1 and Appendix A.

WHEREAS, the City owns two (2) parcels of real estate along the Mississippi riverfront as particularly described on Exhibit 1, hereinafter referred to as the "Mary Meachum Site." The Mary Meachum Site is Missouri's first nationally recognized Underground Railroad Site where, according to 19th century newspaper accounts and the records of Henry Shaw, Mary Meachum, a free woman of color, assisted nine freedom seekers who attempted to escape slavery; and

WHEREAS, the Mary Meachum Site was commemorated by Mayor Slay in 2001 and an annual enactment of the event has occurred there every year since 2003; and

WHEREAS, ordinance 68909 authorized an Option to Lease Agreement and Lease Agreement between the City and Grace Hill to allow for the development of the Mary Meachum Site; and

WHEREAS, the Option to Lease Agreement was not exercised by Grace Hill; and

WHEREAS, the District desires to lease the Mary Meachum Site and move forward with its development into a national tourist destination to commemorate Mary Meachum's efforts to transport slaves to freedom; and

WHEREAS, the Port Authority of the City of St. Louis approved the Lease Agreement with the District, in substantially the form attached hereto as Exhibit 1 and Appendix A, by Port Resolution 12-PT-21 on November 13, 2012; and

WHEREAS, the Board of Public Service of the City of St. Louis approved the Lease Agreement with the District, in the form attached hereto as Exhibit 1 and Appendix A, on December 4, 2012; and

WHEREAS, the Board of Aldermen finds that the provisions of the Lease Agreement with the District are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes; and

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

SECTION ONE. Findings. The Board of Aldermen hereby adopts the foregoing recitals as findings.

SECTION TWO. Ordinance 68909 is hereby repealed and in lieu thereof the Mayor and the Comptroller of the City of St. Louis are authorized to enter into a Lease Agreement between the City of St. Louis and Great Rivers Greenway District for certain land on the Unimproved Wharf for a period of ten (10) years commencing on the date of execution with three (3) five-year (5-year) mutual options, in substantially the form as Exhibit 1 and Appendix A attached hereto and incorporated by reference herein as Exhibit 1 and Appendix A.

EXHIBIT I**LEASE AGREEMENT**

This Agreement made and entered into as of the ____ day of _____, 20____, by and between the City of St. Louis, a municipal corporation of the State of Missouri (hereinafter called "Lessor"), through its Mayor and Comptroller, and Great Rivers Greenway District, a political subdivision of the State of Missouri (hereinafter called "Lessee").

WITNESSETH:

1. The term "Lease" shall mean this Agreement, including amendments thereto, together with any Exhibits, and the attached APPENDIX "A", and any amendments thereto.

2. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to Lessor, and the mutual covenants and agreements herein contained, Lessor hereby leases and lets to said Lessee the following described land (the "Leased Premises"), to wit:

Parcel 1:

Commencing at a found cross, being 1828.92' feet east of the centerline intersection of East Grand (60'W) Avenue and Hall (80'W) Street on top of the flood wall at the flood wall gate over East Grand Avenue, said point also being on the centerline extension of East Grand Avenue; thence south 55 degrees 42 minutes 10 seconds west a distance of 67.71' feet along the centerline of Grand (60'W) Avenue to a point; thence south 26 degrees 41 minutes 41 seconds east a distance of 30.23' feet to a point of being on the south right-of-way of East Grand (60'W) Avenue, said point also being the POINT OF BEGINNING of the herein described property:

Thence north 55 degrees 42 minutes 10 seconds east along the south right of way of East Grand (60'W) Avenue a distance of 95.21' feet to a point on the west lease area of "American River Transportation Co. lease known as Lease #3 Wharf area north line of MSD lease north to East Grand Ave."; Thence continuing along the Lease #3 south 30 degrees, 24 minutes, 56 seconds east a distance of 902.31' feet to a point. Said line also being 25 feet offset east from the flood wall; thence north 55 degrees, 37 minutes, 22 seconds east a distance of 179.26 feet to a point. Said point being the south line of Lease #3, and the north line of the former lease to MSD; thence south 34 degrees, 22 minutes, 38 seconds east along the east line of the former lease to MSD 128' feet to the southeast corner of the former lease to MSD; thence south 55 degrees, 37 minutes, 22 seconds west 60' feet to a point at or near the top of bank of the Mississippi River; thence along or near the top of bank south 37 degrees, 35 minutes, 29 seconds east 363.21' feet to a point; thence continuing along or near the top of bank south 8 degrees, 55 minutes, 31 seconds east a distance of 138.27' feet to a point; thence to a point of the low water mark of the Mississippi River or north 81 degrees, 42 minutes, 05 seconds east a distance of 68.00' feet to a mathematical meandering line; thence a southerly direction along a mathematical meandering line south 24 degrees, 37 minutes, 13 seconds east a distance of 50.80' feet; thence continuing along said meandering line south 1 degree, 55 minutes, 30 seconds west a distance of 84.64' feet to a point; thence continuing to a point at or near the top of bank of Mississippi River south 81 degrees, 42 minutes, 05 seconds west a distance of 54.45' feet; thence continuing along a line at or near the top of bank of the Mississippi River south 10 degrees, 02 minutes, 56 seconds east 286.65' feet to a point on the north line of Ferry (60' foot wide Paper Street) Street; thence continuing along the north line of Ferry Street south 64 degrees, 57 minutes, 49 seconds west 210.00' feet to a point; thence leaving said right of way line north 24 degrees, 16 minutes, 11 seconds west a distance west to a distance of 1297.20' feet to a point; thence north 25 degrees, 38 minutes, 01 seconds west a distance of 105.94' feet to a point; thence north 29 degrees, 07 minutes, 01 seconds west a distance of 133.21' feet to a point; thence north 33 degrees, 19 minutes, 21 seconds west a distance of 176.48' feet to a point; thence north 31 degrees. 00 minutes, 01 seconds west a distance of 67.18' feet to a point; thence north 26 degrees, 41 minutes, 41 seconds west a distance of 172.93' feet to the point of beginning and containing 429,176 square feet or 9.853 acres and being subject to easements, deeds and other restrictions of record.

Parcel 2:

A tract of land in the east portion of Block 2506, City of St. Louis, Missouri being more particularly described as follow:

Commencing at the northeast corner of property conveyed to Terminal Railroad Association Property, also being the northeast corner of lot 1 in block 1 of Buschman Addition; thence continuing along the east line of Terminal Railroad Association property south 11 degrees, 23 minutes, 46 seconds east a distance of 59.33' feet; thence north 64 degrees, 57 minutes, 49 seconds east a distance of 70.00' feet to a point; thence south 1 degree, 41 minutes, 04 seconds east a distance

of 53.00' feet to the POINT OF BEGINNING of the following described tract of land:

Thence continuing along the south line of the Terminal Railroad Association of St. Louis Easement north 64 degrees, 51 minutes, 58 seconds east 188.87' feet to a point; thence continuing along the east line of the Port Authority Lease #1 Wharf area south 20 degrees, 31 minutes, 27 seconds east 178.56' feet to a point; thence continuing along the Port Authority Lease #1 south 10 degrees, 44 minutes, 46 seconds east 94.17' feet; thence south 72 degrees, 12 minutes, 13 seconds west 188.57' feet to a point; thence north 16 degrees 47 minutes, 59 seconds west 247.73' feet to the point of beginning and containing 50,202 square feet or 1.152 acres and being subject to easements, deeds, and other restrictions of record.

3. The term of this Lease shall be for a period of ten (10) years, beginning on the ____ day of _____, 201__, and terminating on the ____ day of _____, 20__, with three (3) five year options, each option to be exercised with the mutual consent of the Lessee and the Lessor's Port Authority Commission and Board of Public Service, which consent may be withheld for any reason or for no reason at all. Lessee must give six (6) months written notice to the Office of the Comptroller, 1200 Market Street, Room 212, St. Louis, Missouri 63103, prior to the expiration of this Lease or any extension thereof, if Lessee wishes to exercise an option to extend for an additional five (5) year period.

4. For the rights and privileges herein granted, the Lessee agrees to pay to Lessor rent in the amount of One Dollar (\$1.00) per year, notwithstanding and instead of the provisions of Section 1 of Appendix "A".

5. The Leased Premises shall be used only for the purposes of a park called the Mary Meachum Freedom Crossing and a riverfront trail.

6. The Leased Premises shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alterations shall be made in accordance with plans and specifications approved by Lessor through the Board of Public Service in accordance with APPENDIX "A", paragraph 2, and within the vicinity of 25 feet on either side of the Flood Wall/Levee, approval of the U.S Corps of Engineers, City of St. Louis Street Department and the Metropolitan St. Louis Sewer District shall also be required.

7. The Leased Premises includes levee and/or floodwall areas within the Flood Protection System. As such, the City retains the right to access the area for regular inspections, maintenance, repairs and/or improvements whenever deemed necessary. The System includes levees and floodwalls as well as 25 feet from the toe of the floodwall and levee on both east (wet) and west (city) sides of the System. The integrity of the System is a priority over any other approved development of the Leased Premises.

8. All other matters governing this Lease are set forth in said APPENDIX "A".

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Lease Agreement.

LESSEE:

GREAT RIVERS GREENWAY DISTICT

By: _____

ATTEST:

LESSOR:

CITY OF ST. LOUIS, MISSOURI

By: _____
Mayor

By: _____
Comptroller

ATTEST:

City Register

APPROVED AS TO FORM, ONLY:

City Counselor

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

On this ___ day of ___, 20___, before me appeared FRANCIS G. SLAY and DARLENE GREEN to me personally known, who being by me duly sworn did say that they are the Mayor and Comptroller of the City of St. Louis and that they are authorized to execute this Lease Agreement on behalf of the City of St. Louis under the authority of Ordinance No. ___ and acknowledged said instrument to be the free act and deed of the City of St. Louis.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City of St. Louis aforesaid the day and year first above written.

Notary Public

My Commission Expires:

(SEAL)

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

On this ___ day of ___, 20___, before me, a Notary Public in and for the City of St. Louis, Missouri, appeared ___ who, being sworn, did say that he/she is ___ of ___ and that said Lease Agreement was signed on behalf of said company by authority of instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my official seal in City and State aforesaid the day and year first above written.

Notary Public

My Commission Expires:

(SEAL)

APPENDIX "A"
STANDARD PROVISIONS
LEASES OF WHARF LAND AND MOORING RIGHTS

1. The base rate of \$0.0750 (current adjusted base rate \$0.1575) per square foot of land and \$7.50 (current adjusted base rate \$15.75) per linear foot of mooring may be adjusted at five year intervals beginning January 1, 2014, upon recommendation of the Port Commission and approval of the Board of Public Service. No such recommendation may be made by the Port Commission unless within 180 days before January 1 on which the adjusted rates are to become effective, the Port Commission shall conduct a public hearing with due notice to the public and to the users of City owned land and mooring rights. The maximum adjustment which can be recommended and approved shall be twenty-five percent (25%) of the base rates set out in the first sentence of this section. Each adjustment shall be added to the base rate plus any previous adjustments and the resultant rate shall be called the current adjusted base rate. If the recommended adjustment to the base rate by the Board of Public Service is in excess of fifteen percent (15%), the recommended raise of rate shall be approved by resolution of the Board of Aldermen. If the Board of Aldermen fails to act before the effective date of the rate increase, the rate then shall be automatically adjusted by fifteen percent (15%).

2. The mooring area or Leased Premises shall be used by Lessee only for purposes consistent with the lawful use of said area. Structures or major alterations shall be made in accordance with plans and specifications approved by Lessor through the Board of Public Service. Upon the expiration, termination, or cancellation of this Lease, the Lessee shall remove all and any vessels, boats, watercraft or other practical movable structures from the Leased Premises and mooring area, without expense to the Lessor. In the event said vessels, boats, watercraft or other practical movable structures are not removed within ninety (90) days after receipt of notice by the Lessee, the Lessor may take possession of said vessels, boats, watercrafts or other practical movable structures

or may cause same to be removed at the expense of the Lessee.

Written notice when required shall be deemed to be sufficient and delivered when deposited in the certified U.S. mail and sent to Lessee's last known address.

3. Definitions. As used in this Lease, the following terms shall have the meaning specified herein:

(1) The term "City" shall mean The City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter, the Constitution and laws of the State of Missouri.

(2) The term "Discharge" shall have the meaning ascribed to such term by §311(a)(2) of the Clean Water Act, 33 U.S.C. 1321(a)(2);

(3) The term "Environmental Law" shall mean any international, foreign, federal, state, regional, county, local, governmental, public or private statute, law, regulation, ordinance, order, consent decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention or other requirement, pertaining to protection of the environment, health or safety of person, natural resources, conservation, wildlife, waste management, any Hazardous Material Activity (as hereinafter defined), and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 9601 et seq.; Solid Waste Disposal Act (SWDA) of 1965, 42 U.S.C. 6901 et seq., as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1984; Federal Water Pollution Control Act (Clean Water Act) of 1948, 33 U.S.C. 1251 et seq, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987; Air Pollution Control Act of 1955, 42 U.S.C. 7401 et seq, as amended by the Clean Air Act of 1990; Toxic Substances Control Act (TSCA) of 1976, 15 U.S.C. 2601 et seq, as amended from time to time, and regulations promulgated thereunder; Occupational Safety and Health (OSH) Act of 1970, 29 U.S.C. 651 et seq, as amended from time to time, and regulations promulgated thereunder; Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, 42 U.S.C. 11001 et seq, as amended by the Debt Collection Improvement Act (DCIA) of 1996; National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq., as amended from time to time, and regulations promulgated thereunder; and any similar or implementing state law, and all amendments, rules, regulations, guidance documents and publications promulgated thereunder;

(4) The term "Hazardous Material" as used in this Lease shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated byphenyls, petroleum (including crude oil or any fraction thereof), and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which, is prohibited, controlled or regulated by any Environmental Law;

(5) The term "Improved Wharf" shall mean Improved Wharf as defined in Section 21.08.060 of the Revised Code of the City of St. Louis;

(6) The term "Infectious Waste" shall mean any substance designated or considered to be an Infectious Waste pursuant to any Environmental Law;

(7) The term "Lease" shall mean the Lease Agreement to which this Appendix A is attached together with any Exhibits and together with this Appendix A, and any amendments thereto;

(8) The term "Lease Agreement" shall mean the lease agreement, including amendments thereto, to which this Appendix A is attached;

(9) The term "Leased Premises" shall mean the leased premises and/or mooring area or leased area as defined in Section One (1) or other Sections, of the Lease Agreement;

(10) The term "Oil" shall mean any substance designated or considered to be an oil pursuant to any Environmental Law;

(11) The term "Port Commission" shall mean the Port Authority Commission of the City of St. Louis;

(12) The term "Solid Waste" shall mean any substance designated or considered as a solid waste pursuant to any Environmental Law.

4. During the Term of this Lease or renewal or extension thereof, the Lessee agrees to abide by all City Ordinances; Executive Orders; State Laws; Federal Laws; Coast Guard, Corps of Engineers, and any other properly applicable governmental regulatory requirements, including, but not limited to, any and all such provisions regulating and/or relating to the: (1) transportation, storage, use, manufacture, disposal, discharge, release or spilling of Hazardous Material; (2) transportation, storage, use, recovery, disposal, discharge, release or spilling of Oil; (3) Discharge of effluents, pollutants and/or toxic pollutants to either publicly owned treatment works or directly to waters of the United States or tributaries thereof; (4) emissions, release or discharges of pollutants and/or other substances into the air or land; (5) transportation, storage, treatment, disposal, discharge, and release or spilling of Infectious Waste; (6) transportation, storage, treatment, recycling, reclamation, disposal, discharge, and release or spilling of Solid Waste; and (7) transportation, storage, or disposal of waste tires, used white goods and other appliances, waste oil, and/or used lead-acid batteries. Violation of any provision of federal or state law or City ordinance by Lessee shall be considered a breach of the Lease Agreement between Lessee and the City for which the City, at its sole option, may terminate the Lease. In addition, Lessee shall call to the attention of the proper enforcement authorities, any violation of any federal or state law or local ordinance occurring on the Leased Premises of which Lessee has actual knowledge. Failure to do so on the part of the Lessee shall be considered a breach of this Lease for which the City, at its sole option, may terminate the Lease.

Should Lessee's operation on the Leased Premises violate any provision of federal and/or state laws or regulations, Lessee shall, immediately upon becoming aware of the existence of such violation, notify the Port Commission and undertake whatever action is necessary to remedy the violation and comply with the applicable provision(s), including but not limited to the institution of legal proceedings seeking an injunction in a court of competent jurisdiction. Should Lessee fail to remedy the violation, the City may notify Lessee of its intent to undertake remedial action. If Lessee fails to then institute reasonable remedial action within ninety-six (96) hours of receiving said notice, the City may take whatever action is necessary to bring the Leased Premises into compliance. In the event that the City remedies any such violation or remediates an environmental condition at the Leased Premises, the Lessee shall reimburse the City for all costs incurred by the City in remedying such violation, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, and costs of testing, remediation, removal and disposal.

5. Lessee agrees to hold Lessor harmless from and to defend the Lessor from any and all claims for injuries or damages resulting from or arising out of Lessee's use of the Leased Premises or mooring area described herein; furthermore Lessee will at all times during the Term of this Lease at its own cost, and for the benefit of the City, protect the City with Public Liability and Property Damage Insurance, issued in the name of Lessee and naming the City and Port Commission as additional non-contributing named insureds, covering each person up to One Million Dollars (\$1,000,000) with an overall limit as to all persons for each occurrence of Three Million Dollars (\$3,000,000) as well as coverage of Three Million Dollars (\$3,000,000) for property damage, approved by the City Counselor as to form and by the Comptroller as to surety and reserving the right of recovery by the City in the event of damage to City owned property.

Included in the insurance policy shall be coverage requiring immediate removal of the vessel when the vessel is damaged or sunken from any cause whatsoever. This clause shall be expressed as a specific warranty by the insurance company regardless of cause.

Lessee, and its successors and assigns, shall forever indemnify, defend and hold harmless, the City of St. Louis, the Port Commission, its governing members, directors, officers, agents, attorneys, employees, independent contractors, and successors and assigns, from and against all claims, without limitation, damages, punitive damages, liabilities, losses, demands, claims, cost recovery actions, lawsuits, administrative proceedings, orders, response costs, compliance costs, investigation expenses, consultant fees, attorneys fees, paralegal fees and litigation expenses, arising from: (i) any Hazardous Material activity by Lessee, its successors or assigns, or at the Leased Premises; (ii) the operation of any applicable Environmental Law against Lessee or Leased Premises; (iii) any environmental assessment, investigation, and environmental remediation expenses; (iv) the violation at the Leased Premises or by Lessee of any applicable Environmental Law; or (v) any third party claims or suits filed or asserted.

Promptly after receiving notice, the Lessee, and its successors or assigns, shall pay all costs and expenses incurred by Lessor and its successors and assigns to enforce the provisions of this indemnification, including without limitation, attorney and paralegal fees and litigation expenses. The obligations of Lessee under this Section Five (5) and this indemnification shall survive the termination of this Lease and shall remain in force beyond the expiration of any applicable statute of limitations and the full performance of Lessee's obligations hereunder.

Lessee shall be required to purchase and maintain environmental impairment liability insurance, during the term of this Lease, in the amount of Three Million Dollars (\$3,000,000.00), or such other amount as shall be determined solely by the Port Commission, and naming the City of St. Louis as an additional primary, non-contributing insured, if:

- (1) at any time more than the reportable quantity of a Hazardous Material, Oil or Infectious Waste will be stored or

otherwise present on the Leased Premises in any form whatsoever, including in any type of container(s) (including, but not limited to, drums, barrels, boxes, bags, tank trucks or trailers, rail cars or storage tanks, whether above or below ground);

(2) Lessee is required by federal or state law and/or regulation, as a result of or in connection with Lessee's operations on the Leased Premises, to obtain a permit for (a) any Discharge of effluents, pollutants, toxic pollutants or other substances into waters of the United States, tributaries thereof, sewer systems and/or publicly owned treatment works; (b) any Discharges of effluents, pollutants or toxic pollutants to a sewer system and/or publicly owned treatment works subsequent to pretreatment thereof; (c) any emission, release or Discharge of pollutants or other substances into the air or land; (d) treatment, storage or disposal of Hazardous Waste(s); (e) treatment, storage or disposal of Infectious Waste(s); (f) treatment, storage, processing, management, recycling or disposal of Solid Waste(s); (g) operation of a waste tire site or waste tire processing facility; or (h) placement of fill or dredged material into the waters of the United States or onto adjacent property;

(3) Lessee is required by Environmental Laws or is otherwise required to obtain a hazardous waste generator identification number from either the federal or a state government;

(4) Lessee engages in the recycling, recovery or reclamation of Solid Waste and/or Hazardous Material on the Leased Premises;

(5) Lessee engages in the manufacture of hazardous, extremely hazardous, or toxic substances, or Hazardous Material, in, on, or about the Leased Premises.

The environmental impairment liability insurance required pursuant to the terms of this Section Five (5) shall provide coverage for unexpected and unintended liability, damages and injuries arising or resulting from sudden and accidental, continuous or repeated Discharges, spills and releases, into or onto the air, water, soil, sewer system or similar media, of any hazardous substance, Hazardous Material, pollutant, toxic pollutant, extremely hazardous substance, toxic substance, Infectious Waste, Solid Waste, or similar material or substance, which disposal, Discharge, release or spill occurs in, on, from, or about the Leased Premises.

Any insurance policy which Lessee is required to obtain pursuant to the provisions of this Section Five (5) shall provide that said policy may not be canceled except upon the giving of thirty (30) days notice of such cancellation to the Comptroller's Office and the Port Commission. Furthermore, any policy limit requirements for any insurance policy which Lessee is required to obtain pursuant to this Section Five (5) maybe increased and adjusted upon recommendation and approval of the Board of Public Service. In the event that any policy which Lessee is required to obtain pursuant to the provisions hereof is canceled by the insurer or has an expiration date prior to the expiration of the Term of this Lease, Lessee shall be required to obtain replacement insurance, and provide proof thereof to the Comptroller's Office and the Port Commission, prior to the date that the cancellation or expiration becomes effective. Failure to do so shall be considered a breach of this Lease. The Lessee shall notify or cause the insurance company to notify the Comptroller's Office and the Port Commission of the renewal of all insurance required pursuant to the provisions of this section or of the cancellation of same. Failure to do so shall be considered a breach of this Lease.

For any type of insurance, Lessee is required to provide, pursuant to this Section Five (5), certificates evidencing such insurance and copies of the policy governing such insurance to the Comptroller's Office and to the Port Commission before the Lease is issued, and shall file replacement certificates of insurance and policies at least fifteen (15) days prior to the expiration of any original or replacement certificates. Lessee shall maintain said insurance coverage during the life of this Lease, and any renewal or extension thereof, and shall provide proof of same within five (5) days of request by the City or the Port Commission. If Lessee, at any time during the Term of this Lease after execution of this Lease, commences engagement in any of the activities or is required to obtain any permit or number referenced in subparagraphs (1) through (5) of this Section Five (5), Lessee shall furnish such certificates and policy copies to the Comptroller and to the Port Commission prior to engaging in any such activities or obtaining any such permit or number. Failure to do so shall be considered a breach of this Lease.

6. Upon the nonpayment of the rent due under the Lease at the time when the same becomes due, or upon the nonperformance by the Lessee of any of the provisions or requirements under the Lease, the Lessor, at its election, may terminate this Lease, provided that the Lessee shall, after notice of nonpayment, breach or default, have thirty (30) days to cure any such nonpayment, and ninety (90) days to cure any such other breach, unless the provisions hereof provide either that a specified breach is grounds for immediate termination of the Lease or that failure to cure within a specified time frame of less than thirty (30) days is grounds for immediate termination (such as violating a statute or other law). The failure and omission of the Lessor to declare this Lease forfeited upon the breach or default of said Lessee in the payment of said rents as the same become due, or the nonperformance of any of the substantive covenants to be performed by the Lessee, shall not operate to bar, abridge, or destroy the right of the Lessor to declare this Lease null and void upon any subsequent breach, forfeiture or cause therefore by the Lessee.

7. Lessee agrees to pay ad valorem taxes on boats, vessels, aircraft or watercraft and on operation of same that may

be moored on said Leased Premises or involved in any operations within said Leased Premises, including all other owned property and equipment, and it is agreed that the Lessee will not deny the authority of the proper assessing agency to assess ad valorem taxes on said improvements. Further, Lessee agrees to pay any and all taxes, fees and assessments due on any other aspect of Lessee's business operations or improvements within the Leased Premises. The Lessee reserves the right to question the amount of such assessment in any court of competent jurisdiction or other tribunal established by law to correct the valuation of the property on which the assessment of such tax is based. Failure to pay ad valorem and/or other taxes, fees and/or assessments due as and when due, whether or not such taxes, fees and/or assessments are appealed, shall be considered a breach of the terms of this Lease. All barges In Transit shall be exempt from the payment of taxes, fees and/or assessments. "In Transit" shall mean moored at the Leased Premises for not more than seven (7) calendar days in any 365-day period.

8. If the Lessee remains in possession of the Leased Premises after the expiration of the Term for which it is leased and the Lessee pays rent and the Lessor accepts said rent, such possession shall be construed as creating a month to month tenancy and not a renewal or extension of this Lease, but such month to month tenancy shall not continue for more than one (1) year. If the Lessee continues to occupy the Leased Premises on a month to month basis following the expiration of the Lease Term, Lessee's obligations under the Lease shall continue in full force and effect for the duration of Lessee's occupancy of the Leased Premises. Any such month to month tenancy may be terminated by Lessor at any time.

9. The Lessor reserves the right to modify, amend, or cancel this Lease as set forth in Section Ten (10) hereof in the event any portion of the Leased Premises is needed for any municipal purpose, which shall include, but is not limited to, right of way, sewer, Floodwall or Floodwall construction or repair, any other necessary or reasonable municipal purposes or use, and/or economic development in the Port District as defined by the Lessor in Lessor's sole discretion.

10. In the event that any portion of the Leased Premises or mooring area shall be needed for any municipal purpose as set forth in Section Nine (9) above, the Lessor shall have the right to modify, amend, or cancel this Lease upon one (1) year's written notice thereof to Lessee (or, in the case of an emergency, the existence of which shall be determined in Lessor's reasonable discretion, upon no less than fourteen (14) days' notice) and to eliminate from the Leased Premises such portion of the Leased Premises or mooring area as shall be needed for such purpose, which portion may include all of such Leased Premises or mooring area. In such event, it is agreed and understood by Lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such termination or modification, other than as set forth in Section Eleven (11) below. Written notice when required shall be deemed to be sufficient and delivered when sent by Certified U.S. Mail to Lessee's last known address.

11. If this Lease is amended or modified under the provisions of Sections Nine (9) and/or Ten (10), the current rent shall be adjusted in direct proportion to the change made in the Leased Premises. Lessee shall have the right to terminate this Lease without penalty by written notice within ninety (90) days after Lessor sends the notice to amend provided by Section Ten (10) if Lessee determines, in Lessee's sole discretion, that the portion of the Leased Premises which will remain after the elimination of the portion to be used for municipal purposes is not suitable to the Lessee. Lessee hereby acknowledges and agrees all other provisions of this Lease shall remain in effect for the duration of the Term for that remaining portion of the Leased Premises not used for municipal purposes under Sections Nine (9) and Ten (10). Lessee hereby acknowledges and agrees that the Lease shall be deemed terminated with respect to the portion of the Leased Premises eliminated pursuant to the notice referenced in Section Ten (10) above on the one-year anniversary of the date of the notice referenced in Section Ten (10) above, provided, however, that in the case of an emergency as described in Section Ten (10) above, the Lease shall be deemed terminated on the date specified in the notice.

12. In the event this Lease is canceled, modified or amended under the provisions of Sections Nine (9) and/or Ten (10) hereof, the Lessor shall cause the Lessee to be reimbursed, in accordance with the provisions of this Section Twelve (12), for the cost of capital improvements the Lessee has made and paid for on the Leased Premises pursuant to the written approval of the Board of Public Service including any such approved improvements in place on the commencement date of this Lease and made and paid for by Lessee during any prior lease term, **provided, however**, that Lessor shall not cause the Lessee to be reimbursed for any capital improvements: (a) the cost of which is or was expressly invoiced to the Lessee's customers via a separate surcharge for such improvements on any such customer's bill; or (b) removable from the Leased Premises and reusable at another location. It is agreed and understood that the term capital improvements shall not include wharf boats, vessels or other floating improvements. Lessee agrees that the amount of the anticipated profits shall not be a factor in the determination of any reimbursement. Furthermore, Lessee shall not be entitled to any reimbursement for any capital improvements during any period that Lessee remains in possession of the Leased Premises in a month to month tenancy after the expiration of the Term as described in Section Eight (8), above. No funds from the City of St. Louis general revenue shall be used for the purpose of providing any reimbursement required pursuant to this Section Twelve (12).

In the event that the rate/rates for service to Lessee's customer(s) has/have been increased expressly and by separate invoice line item to cover the cost of any capital improvement made by Lessee, Lessor and Lessee agree that the sum of all payments made by such customers with respect to such capital improvement and the terms of the financing for such capital improvement shall be

taken into account in determining the Lessee's cost of the capital improvement.

13. The Lessee shall have the right to terminate this Lease upon service of one (1) year's written notice and the payment of an additional one (1) year's rental which shall accompany such notice. The payment of the additional year's rental shall not relieve Lessee of the obligation to pay the current year's rental as provided herein. In the event Lessee shall terminate pursuant to this Section Thirteen (13), no reimbursement shall be made by Lessor under Section Twelve (12).

14. Any sublease, transfer, sale or assignment of Lessee's rights or interests under this Lease, and/or change in corporate structure of Lessee are expressly prohibited unless and until the Board of Public Service, the Port Commission and the Board of Aldermen of the City of St. Louis approves such action. Failure to obtain such approvals before taking any such action shall be considered a breach of this Lease. If such action is so approved, all parts of this Lease are binding on any sublessee, assignee, successor, or new or modified corporate entity.

15. This Lease may be canceled at the option of the City, in the City's sole discretion, if, at any time during the Term of this Lease, the person or persons who on the date of execution of this Lease owns or own a majority of the Lessee's voting shares of stock, ceases or cease to own a majority of such shares, except if such change in ownership is the result of transfer(s) by inheritance, or the result of a public offering pursuant to the Securities and Exchange Act of 1934, as amended, or the result of merger of the Lessee into or consolidation with another corporation.

This Lease may be canceled at the option of the City, in its sole discretion, if the Lessee sells a majority of or all of the assets of the Lessee without Board of Public Service and Port Commission approval, which approval shall not be unreasonably withheld. If sale, transfer or assignment of Lessee's stock is approved, all parts of this Lease are binding on the purchaser, transferee or assignee. If the approvals described in this Section are obtained with respect to an action described in this Section, or if no such approvals are required with respect to an action described in this section, all parts of this Lease are binding on any sublessee, assignee, or new or modified corporate entity.

16. The Lessee agrees not to erect any barrier, fence or supporting structures or store any materials on the Floodwall itself or within twenty-five (25) feet of either side of the Floodwall. Notwithstanding any other provision of this Lease, the City and any lawfully designated agent or representative of the City shall retain the right to enter onto any portion of the Leased Premises and to alter any portion of the Leased Premises as may be reasonably necessary to install, inspect, maintain or repair the Floodwall and relief wells whenever the City or its lawfully designated agent or representative deems necessary, in the City's sole discretion. Lessee shall not alter or modify any portion of the Leased Premises that lay within fifty (50) feet of any Floodwall or relief well without the express written consent of the President of the Board of Public Service.

17. Any payment due pursuant to this Lease which is not timely paid shall be delinquent and shall bear interest from the date due at prime rate plus two (2) percent. Prime rate shall be that average rate as established by U.S. Bank N.A. or Bank of America N.A., or any successors or assigns of such Banks.

18. The Lessee shall not store, or allow the storage of, any garbage or trash on the Leased Premises or mooring area. Further, Lessee shall ensure that Lessee, Lessee's customers, and employees and/or guests of Lessee do not throw trash or any articles or materials of any sort whatsoever into the river or onto any portion of the Wharf, mooring area, or Leased Premises. Lessee shall be responsible for enforcing this prohibition. Lessee shall also be responsible for ensuring that the Leased Premises and the adjoining river are at all times neat and free of all trash, rubble, and debris, regardless of whether or not such trash, rubble, and debris was deposited by Lessee. The Lessee shall enforce this clause on any craft or vehicle servicing, or being serviced by, the Lessee. Lessee's failure to abide by the provisions of this section shall be considered a breach of this Lease.

The Lessee shall have responsibility for the housekeeping on the Improved Wharf immediately in front of the mooring area and Leased Premises. Failure to maintain this area as required by this Lease or to abide by any other City ordinances shall result in the cancellation of this Lease upon approval by the Board of Public Service and the Port Commission.

19. Upon execution of this Lease, the Lessee shall, at his own expense, have this Lease recorded by the City's Recorder of Deeds.

20. EQUAL OPPORTUNITY AND NONDISCRIMINATION GUIDELINES.

Regarding any contract for work in connection with the improvement of any property included in the Leased Premises, the Lessee (which term shall include Lessee, any designees, successors and assigns thereof, any entity formed to implement a project in which the Lessee has a controlling interest), and Lessee's contractors and subcontractors shall include a clause requiring compliance with all federal, state and local laws, ordinances, or regulations governing equal opportunity and nondiscrimination, and

with all Executive Orders of the Mayor of the City St. Louis addressing participation by Minority Enterprises (“MBEs”) and Women Business Enterprises (“WBEs”) in City-assisted work. The Lessee and its contractor(s) shall not contract or subcontract with any party known to have been found in violation of any such laws, ordinances, regulations or Executive Orders.

Further, Lessee agrees, for itself and for its successors and assigns, that Lessee shall not discriminate in any way on the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of the Leased Premises or any improvements erected or to be erected in or on the Leased Premises or any part thereof. Further, Lessee agrees, for itself and for its successors and assigns, to include covenants in each and every contract entered into by Lessee with respect to the improvement or operation of the Leased Premises to ensure such discrimination by any of Lessee’s contractors is prohibited. The non-discrimination provisions embodied in this Section shall run with the land and shall be enforceable by the Port Commission, by the City, and by the United States of America, as their interests may appear. Lessee agrees that, if the improvement and use of the Leased Premises creates permanent jobs, it shall enter into a First Source Referral Agreement with the Saint Louis Agency on Training and Employment and the Port Commission for referral of Jobs Training Partnership Act-eligible individuals. Said Referral Agreement shall specify the number and types of jobs to be covered by the Referral Agreement, the target date for referrals to begin, and the procedure for referral.

21. On or within thirty (30) days before or after January 1 of each year, Lessee must present to the Port Commission a marine survey by a qualified marine engineer, acceptable to the Port Commission, attesting to the safety of all of the facilities operated by Lessee on, at or in the Leased Premises. Lessee’s failure to provide such survey and/or failure of the survey to unequivocally assert that all such facilities are safe shall be considered a breach of this Lease.

22. All vessels must be moored in line parallel to the Floodwall and all mooring activities shall be conducted only pursuant to and shall comply in all respects with all applicable permits.

23. No auxiliary craft shall be moored to any craft or vessel subject to this Lease except for clear and explicit emergency public safety reasons, except as expressly permitted by the Coast Guard and Army Corps of Engineers, and except temporarily for maintenance purposes. Maintenance craft may be moored to another craft or vessel only during the actual time period when maintenance is taking place.

24. After notice to the Board of Public Service and the Port Commission, after submission to the Board of Public Service and the Port Commission of drawings and specifications signed and sealed by a licensed marine engineer, and after issuance of all applicable permits from all applicable City, state and federal regulatory agencies, Lessee shall have the right to install, or modify the installation or use of, deadmen and mooring cells on the bank adjacent to Lessee’s mooring area and Leased Premises in accordance with said signed and sealed drawings and specifications and permits. Installations in existence on the date hereof shall be permitted to remain, but any and all modifications or replacement of such installations shall be subject to the requirements of this section.

Lessee shall have the right to ingress and egress to the mooring facilities over the land between the Floodwall and the Leased Premises.

25. Lessee accepts the property in “as is” condition, and, except as otherwise expressly stated elsewhere in this Lease, without any express or implied warranties of suitability, merchantability, fitness for a particular purpose or environmental fitness. The City and the Port Commission have made no representations or warranties, express or implied, and explicitly disclaims the same, concerning the absence of any pollution, contamination, Hazardous Material, Infectious Waste, Solid Waste, underground storage tanks, or hazardous building materials in, on or about the Lease Premises or its improvements, except as may be specifically and expressly stated elsewhere in this Lease.

26. Lessee shall not remove any underground or aboveground storage tanks located on the Leased Premises without first obtaining the written consent of the Port Commission, which consent shall not be unreasonably withheld. Any such removal shall be performed in accordance with any and all applicable laws, regulations and ordinances. During the term of this Lease or any extension thereto, Lessee shall not abandon an underground or aboveground storage tank in place, and Lessee shall remove or replace or repair any such tank within ninety (90) days of any discontinuation of use. Lessee shall not install any underground or aboveground storage tanks on the Leased Premises without first obtaining the permission of the Port Commission. Unless specifically stated elsewhere in this Lease, the Port Commission shall have absolute discretion to approve or deny a request by Lessee to install a new underground or aboveground storage tank. Notwithstanding the foregoing provision, where the Lessee proposes to replace an existing underground or aboveground storage tank with a new tank, the Port Commission shall not unreasonably withhold permission therefor.

27. Lessee must obtain the explicit written permission of the Port Commission prior to applying to an agency or agencies of the state and/or federal governments for a permit or license to:

- (1) treat, store or dispose of Hazardous Material(s);
- (2) treat, store or dispose of waste Oil;
- (3) treat, store, process, manage, recycle or dispose of Solid Waste(s);
- (4) operate a waste tire site or waste tire processing facility; or
- (5) manufacture Hazardous Material(s);

on all or any portion of the Leased Premises. Further, Lessee shall not apply for a permit or license to allow it to place, nor shall Lessee place, any fill or dredged material into the waters of the United States or tributaries thereof which are adjacent to or on the Leased Premises without first obtaining the explicit written approval of the Port Commission therefor. The Port Commission may, in its absolute and unfettered discretion, grant or deny approval for any activity referenced in this Section. Should the Port Commission deny permission for any such activity, Lessee shall abandon plans for such activity on, in or at the Leased Premises and shall not conduct such activity on, in or at the Leased Premises unless and until the Port Commission grants express written approval for such activity.

28. Upon the expiration or earlier termination of this Lease, Lessee shall quit and peacefully surrender the Premises to Lessor, and Lessor, upon or at any time after any such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by summary proceedings, ejectment or otherwise, and may dispossess Lessee and remove Lessee and all other persons and property from the Leased Premises and may have, hold and enjoy the Leased Premises and the right to receive all rental income of and from the same. Lessee shall leave and surrender the Leased Premises to the Lessor in the same condition in which the Leased Premises was at the commencement of this Lease, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease, and except for ordinary wear and tear. Upon such surrender, Lessee shall (a) remove from the Leased Premises all property which is owned by Lessee or third parties other than the Lessor and (b) repair any damage caused by such removal. Lessee further agrees and warrants that, upon the expiration or earlier termination of this Lease, Lessee shall return the Leased Premises to the City free of any and all Hazardous Material, Infectious Waste, Solid Waste (unless disposal of solid waste on the Leased Premises was specifically permitted by the terms of this Lease or a subsequent written document executed on behalf of, and authorized by, the Port Commission), pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on, into, or about the Leased Premises. Lessee shall, upon the expiration or earlier termination of this Lease, remove all product(s) or waste(s) stored in underground and aboveground storage tanks located on the Leased Premises which were installed or used during the term of the Lease. Upon termination or expiration of the Lease, Lessee shall also perform tank tightness testing on all underground and aboveground storage tanks and connecting piping, installed or used during the term of the Lease, and shall, upon request and at the sole discretion of the Port Commission, remove any tanks that were installed by Lessee pursuant to this Lease or a prior lease agreement between the City and the Lessee. Lessee shall also either remove or decontaminate any soil contaminated by leaks from storage tanks or connecting piping installed or used during the term of the Lease. Any such removal and/or decontamination shall be performed in accordance with any and all applicable laws, regulations and ordinances at Lessee's sole cost and expense, which obligation shall survive the expiration or termination of this Lease. In the event that Lessee fails to perform its obligations pursuant to this Section of the Lease, the City shall give Lessee notice of said failure within thirty (30) days of discovering the Lessee's default of its obligations under this section. If Lessee fails to fully comply with its obligations hereunder within thirty (30) days of such notice, the City may undertake any and all legal actions, including but not limited to, injunction and/or specific performance, as are necessary to bring the Leased Premises into compliance with the standards set out herein. In the event that the City is required to undertake actions to bring the Leased Premises into compliance with said standards, Lessee shall reimburse the City for all costs thereof, including, but not limited to, reasonable attorneys fees and expenses, litigation costs, fees for engineering and consulting services, costs of testing, removal, and/or remediation, and disposal costs. The Lessee expressly agrees that the City may attach liens to any of Lessee's real and personal property located in the City of St. Louis in order to recover the City's costs of bringing the Leased Premises into compliance with the standards set out herein.

29. Lessee shall, with respect to its use of the Leased Premises, periodically furnish the Port Commission with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, Lessor shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if Lessor has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur. Should Lessee fail to comply with this provision, the City, after reasonable notice, may terminate this Lease.

30. During the term of this Lease and any extension thereof, Lessee shall be prohibited from conducting gaming

activities on, within or from the Leased Premises or mooring area, or on, within or from any vessel or other facility moored within the Leased Premises or mooring area, and Lessee shall be prohibited from taking any action (including, without limitation, application for a Gaming License, application for appropriate zoning classification, or any other action of any kind or nature) which is in any way related to any possible use of the mooring, docking or other rights granted to Lessee herein for gaming purposes of any kind, without the prior express written consent of the City and Port Commission.

31. The terms and conditions of this Lease shall be binding on Lessee's heirs, successors and assigns.

32. No expiration or early termination of this Lease shall relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any expiration or early termination. In the event of any such expiration or early termination, whether or not the Leased Premises or any part thereof shall have been relet, Lessee shall continue to pay to the Lessor the Base Rental and all other sums, amounts and charges required to be paid by Lessee during the Term of this Lease.

Except as otherwise expressly provided herein, this Lease and the rights of Lessor and the obligations of Lessee hereunder shall not be affected by: (i) any damage to or theft, loss or destruction of any of the Leased Premises, (ii) any default on the part of Lessee hereunder or under any Note, Mortgage, Assignment or any other agreement, (iii) any latent or other defect in any of the Leased Premises, (iv) any violation of any provision of this Lease by Lessor, (v) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation or winding-up of, or other proceeding affecting, Lessee, (vi) the exercise of any remedy, including foreclosure, under any Mortgage or Assignment, (vii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Lessee, any trustee, receiver or liquidator of Lessee or any court under the Federal Bankruptcy Code or otherwise, (viii) market or economic changes, or (ix) any other cause, whether similar or dissimilar to the foregoing, any present or future Law to the contrary notwithstanding.

In the event that either (a) Lessee's business fails to operate for any reason for any period in excess of ninety (90) days and Lessee fails to use due diligence to resume its operations, or (b) Lessee's business fails to operate for any reason for any period in excess of one-hundred eighty (180) days regardless of Lessee's due diligence, Lessor may terminate this Lease at the end of either such period. In the event that Lessee or any corporate entity or individual holding a majority of control over Lessee declares bankruptcy, Lessor may terminate this Lease unless such termination is expressly prohibited by a court of law.

33. This Lease, including any exhibits and this Appendix in their collective entirety, includes all the covenants and agreements between the Lessor and Lessee. This Lease and its exhibits and this Appendix can be changed, renewed, or extended only by amendment in writing signed by Lessor and Lessee and approved by the Port Commission and Board of Public Service, and only when such amendment is authorized by an ordinance enacted for that purpose. In no event shall the lease of wharf property be extended to cover a period of time exceeding a total of twenty-five (25) years as provided by City Charter Article I, Section 1(16).

Approved: January 30, 2013

ORDINANCE #69382
Board Bill No. 261

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment repealing certain ordinances pertaining to the regulation of and schedule of fees and charges for ground transportation operators at Lambert-St. Louis International Airport (the "Airport"), to wit: Ordinance 64406, approved July 1, 1998, Ordinance 65492, approved July 15, 2003 and Ordinance 66855, approved October 3, 2005; and enacting a new ordinance having the same subject matter: (i) containing a definitions section; (ii) authorizing the Airport Director to issue regulations governing the conduct of ground transportation operators at the Airport, to enter into, execute, issue and amend Airport ground transportation use agreements ("Permits") and renew Permits to ground transportation operators, and to establish procedures for determining adjusted gross receipts; (iii) requiring any ground transportation operator to secure a Permit to use designated areas at the Airport to conduct its business; (iv) establishing a schedule of fees and charges which must be paid by ground transportation operators to conduct business at the Airport; (v) establishing a schedule of fees and charges which must be paid by ground transportation operators at the Airport as a condition precedent to the rights granted to the operator under the Permit; (vi) prohibiting solicitation by ground transportation operators, off-Airport rental car operators and off-Airport parking operators; (vii) providing for the filing by ground transportation operators of certain reports with the Airport Director and for the auditing of the reports; and (viii) providing for denial, suspension or revocation of a Permit for cause and a procedure for appealing the denial, suspension or revocation; containing a severability clause; and containing an emergency clause.

WHEREAS, The City of St. Louis, Missouri (the "City") has constructed airport facilities and adjoining airport roadways and curbsides at Lambert-St. Louis International Airport (the "Airport") for the purpose of moving airline passengers and others to and from the Airport terminals; and

WHEREAS, by enactment of this ordinance the City and the Airport Authority seek to: improve the safety and efficiency of the operation of Airport roadways and curbsides; preserve Airport revenues by recovering the costs of providing, maintaining and operating Airport roadways and curbsides; and generate additional revenues to offset the general costs of providing and maintaining Airport facilities, all of which the Airport Commission, the Board of Estimate and Apportionment and this Board of Aldermen find are in the best interests of the City, the operation of the Airport and the traveling public; and

WHEREAS, those who operate commercial ground transportation services and those who provide off-Airport parking and off-Airport rental cars benefit from the privilege of access to and use of the Airport and access to air travelers, and it is usual and customary for airports to charge fees for this privilege and access.

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

SECTION ONE. The Board of Aldermen for The City of St. Louis, Missouri (the "City") hereby adopts and incorporates the foregoing recitals as findings.

SECTION TWO. Ordinance 64406, approved July 1, 1998, Ordinance 65492, approved July 15, 2003 and Ordinance 66855, approved October 2, 2005 pertaining to the regulation of, and schedule of fees and charges for, ground transportation operators at Lambert-St. Louis International Airport are hereby repealed and the following is enacted in lieu thereof.

SECTION THREE. Definitions: The following words and phrases, when used in this Ordinance, shall have the meanings respectively ascribed to them in this section:

- A. "Adjusted Gross Receipts" means Gross Receipts less the "fixed dollar amount" established in Section 4C of this Ordinance.
- B. "Airport" means Lambert-St. Louis International Airport, which is owned and operated by the City of St. Louis.
- C. "Airport Authority" means the City of St. Louis department responsible for managing and operating the Airport.
- D. "Airport Director" means the Director of Airports for Lambert-St. Louis International Airport or her/his designee.
- E. "Airport Taxicab" means a taxicab licensed by the authorized governmental agency for the jurisdiction where the Airport is situated to provide taxicab service only from the Airport, unless other service is authorized by said governmental agency.
- F. "Charter Bus" means transportation pre-arranged by a group or organization to take individuals to a single determined destination.
- G. "City" means the City of St. Louis, a municipal corporation of the State of Missouri.
- H. "Designated Area" means those areas of the Airport roadways and parking areas designated by St. Louis County Ordinance, by the governmental agency authorized to issue taxicab licenses for the jurisdiction where the Airport is situated, by the City, by the Airport Authority, or by the Airport Director, for specified uses by specified Ground Transportation Operators or classes of Ground Transportation Operators.
- I. "Gross Receipts" means the total amount charged to customers, except as otherwise provided below:
 - 1. Gross Receipts shall include, but are not limited to, the following: charges for all rental car services including all time and mileage charges, net of any discounts, on vehicles rented at an Off-Airport Facility or on vehicles taken by customers from an Off-Airport Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at an Off-Airport Facility; drop charges charged to customers renting vehicles at an Off-Airport Facility but delivering them to another location; all monies paid or payable for personal accident insurance coverage; surcharges or other miscellaneous fees (e.g. recovery of automobile property taxes, vehicle title and registration fees or sales tax on purchase of rental vehicle); all other monies charged to or collected from customers for associated service and equipment (e.g., child restraint devices and telecommunications devices); and shall include all monies or charges separately stated and collected to recover the Airport permit fee, Airport rent, or any other Airport fee or charge, except those specifically excluded below.
 - 2. Gross Receipts shall not include the following: monies recovered from insurance or otherwise for

damage to or for loss, conversion or abandonment of vehicles or other property; taxes or payments in lieu of taxes levied by an Off-Airport Rental Car Operator on behalf of competent governmental authority which taxes or payments are required by law to be separately stated and collected from customers; monies separately stated and collected from customers for collision damage waivers and loss damage waivers; monies separately stated on customers' rental agreements and collected from customers for refueling of vehicles; proceeds from the disposal of an Off-Airport Rental Car Operator's owned equipment or vehicles sold wholesale; payments by customers for vehicles dropped off at an Off-Airport Facility and originally rented at another Airport facility to which the Off-Airport Rental Car Operator pays a fee; and credits for refunds to customers for sales made at an Off-Airport Facility; all monies paid for non-Airport rentals, supported by certification on the rental agreement that the customer was not transported, either by the Off-Airport Rental Car Operator or by others, from the Airport to the Off-Airport Rental Car Operator's Off-Airport Facility and that the customer had not arrived by passenger aircraft at the Airport within the 24 hours preceding the rental.

J. "Ground Transportation Operator" means any individual, partnership, corporation or other business entity (except any public, tax-supported transit agency or authority) that provides ground transportation services at, to or from the Airport, or that uses Airport roadways or parking areas in providing ground transportation services. Ground Transportation Operators include, but are not limited to, all of the following which operate at, to or from the Airport or use Airport roadways or parking areas: Airport Taxicabs, Reserved Taxicabs, scheduled and non-scheduled vans, custom limousines, scheduled buses, Off-Airport Parking Operators, Off-Airport Rental Car Operators, courtesy vehicles (including commercial and/or non-commercial vehicles, including hotel/motel, off-Airport parking, and Off-Airport Rental Car Operator shuttles), and Charter Buses.

K. "Non-Airport Related Business" means Gross Receipts from business transacted with customers that have not arrived at, and will not depart from, the Airport within 24 hours of any aspect of the business transaction.

L. "Off-Airport Facility" means any business establishment or facility that is owned, operated or used by an Off-Airport Rental Car Operator or an Off-Airport Parking Operator in conducting its business.

M. "Off-Airport Parking Operator" means any individual, partnership, corporation or other business entity (except any public, tax-supported transit agency or authority) that provides vehicle parking and related services, e.g., vehicle washing, at a facility located off the Airport's property and that draws customers from the Airport, whether it picks up and drops off passengers with its own employees and equipment or otherwise. This includes hotels, Off-Airport Rental Car Operators or other ground transportation operators, which provide parking services to the public.

N. "Off-Airport Rental Car Operator" means any individual, partnership, corporation or other business entity (except any public, tax-supported transit agency or authority) that provides rental car services and does not have an Airport concession agreement with the City and that draws customers from the Airport, whether it picks up and drops off passengers with its own employees and equipment or otherwise.

O. "Operator" means a Ground Transportation Operator.

P. "Permit" means the ground transportation use agreement provided for in Section 4 of this Ordinance.

Q. "Public Parking Space" means a parking stall or space used by an Off-Airport Parking Operator to park customer vehicles.

R. "Reserved Taxicab" means a taxicab other than those licensed as Airport Taxicabs.

S. "Solicit" or "Soliciting" means any action taken at the Airport by an individual or business entity to sell or promote goods or services except as otherwise provided by contract or Permit with the City.

T. "Trip Fee" means the fee assessed for each exit from the Designated Area by a Ground Transportation Operator picking up a fare at the Airport.

U. Words and phrases not defined in this Ordinance shall have their customary meanings. Singular terms shall be construed to include the plural, and vice versa.

SECTION FOUR. Airport Director's Authority:

A. Authorization to Issue Regulations: The Airport Director is hereby authorized to issue regulations in the best interest of the City, the Airport, and the traveling public, governing the conduct of Ground Transportation Operators at the Airport. Such regulations, which may be amended from time to time by the Airport Director, shall: (1) provide uniform operating requirements

consistent with this Ordinance for all Ground Transportation Operators providing similar transportation services; (2) set out a procedure for the collection of payments to the City in accordance with the schedule of rates, fees, and charges provided for in Section 6. below, including, but not limited to billing methods, due dates, interest and penalty charges for late payments, and auditing and reporting requirements; and (3) contain provisions which: (a) regulate ingress and egress to and from the entrances to the Airport's property and buildings; (b) preserve good order and peace at the Airport; (c) provide for the public health, safety or welfare; or (d) otherwise facilitate the Airport's governance, financial integrity and operation as a service to the public. In the event that an interpretation of any provision of these regulations or rules is required, the Airport Director shall render such interpretation, and her/his determination shall be considered as final authority on the matter.

B. Authorization to Issue Permits: The Airport Director is hereby authorized to enter into, execute, issue, amend, and renew Permits to Ground Transportation Operators. The Permits shall incorporate the requirements to be established by regulation as provided in Section 4.A. of this Ordinance and shall contain such other terms, covenants, and conditions that are in the best interest of the City, the Airport, and the traveling public in order to: (1) regulate ingress and egress to and from the entrances to the Airport's property and buildings; (2) preserve good order and peace at the Airport; (3) provide for the public health, safety or welfare; or (4) otherwise facilitate the Airport's governance, financial integrity and operation as a service to the public. At the time of issuance or renewal of a Permit, the Airport Director shall specify the time period for validity of the Permit, such period shall not exceed two (2) years.

C. Authorization to Determine Adjusted Gross Receipts: The Airport Director is hereby authorized to establish and specify and later amend, modify or cancel a "fixed dollar amount", based upon an amount customary in the Airport industry or otherwise to facilitate the Airport's governance, financial integrity and operation as a service to the public, to be deducted from Gross Receipts by all Off-Airport Rental Car Operators, in order to determine Adjusted Gross Receipts. The initial monthly "fixed dollar amount" to be deducted from Gross Receipts shall be ten thousand dollars (\$10,000) per month.

SECTION FIVE. Ground Transportation Use Agreement ("Permit"): No Ground Transportation Operator will be allowed to use Designated Areas at the Airport to conduct its business unless the Ground Transportation Operator has secured a current Permit. Any Ground Transportation Operator that provides multiple services, e.g., a hotel shuttle and an off-Airport parking operation will be required to secure multiple Permits. The Ground Transportation Operator's Permit is separate from and does not replace any City, County, State, or Federal licenses, registrations or permits.

SECTION SIX. Fees and Charges.

A. The fees and charges for the various Ground Transportation Operators at the Airport shall be:

1. For Ground Transportation Operators other than Charter Buses, Off-Airport Parking Operators, Off-Airport Rental Car Operators, Airport Taxicabs, and Reserved Taxicabs the monthly permit fee for vehicles operated at or to or from the Airport by the Ground Transportation Operator during each month:

- a. Through March 31, 2013, the greater of \$150.00 per month or \$30.00 per vehicle;
- b. From April 1, 2013 through March 31, 2014, the greater of \$175.00 per month or \$35.00 per vehicle;
- c. From April 1, 2014 through March 31, 2018, the greater of \$200.00 per month or \$40.00 per vehicle;
- d. From April 1, 2018 through March 31, 2020, the greater of \$225.00 per month or \$45.00 per vehicle;
- e. From April 1, 2020 through March 31, 2022, the greater of \$275.00 per month or \$55.00 per vehicle; and
- f. From April 1, 2022 thereafter, the greater of \$300.00 per month or \$60.00 per vehicle.

2. For Charter Bus Operators with or without an executed Charter Bus Operator Ground Transportation Permit, the fee per bus per entry to the Airport:

- a. Through March 31, 2013, \$25.00; and

- b. From April 1, 2013 and thereafter, \$35.00.
 3. For Off-Airport Parking Operators, the fee per Public Parking Space per year, one-twelfth of which is to be paid each month:
 - a. Through March 31, 2013, \$40.00;
 - b. From April 1, 2013 through March 31, 2014, \$50.00;
 - c. From April 1, 2014 through March 31, 2016, \$55.00;
 - d. From April 1, 2016 through March 31, 2018, \$60.00;
 - e. From April 1, 2018 through March 31, 2020, \$65.00;
 - f. From April 1, 2020 through March 31, 2022, \$70.00; and
 - g. From April 1, 2022 and thereafter, \$75.00.
 4. For Off-Airport Rental Car Operators:
 - a. Through December 31, 2013, the monthly permit fee shall be the greater of: i) \$150.00 per month or \$30.00 per vehicle operated at or to or from the Airport whichever is greater or ii) 8% of the monthly Adjusted Gross Receipts.
 - b. Beginning January 1, 2014 and thereafter the greater of \$200.00 per month or 9% of the Adjusted Gross Receipts for the preceding month.
 5. For Ground Transportation Operators of Airport Taxicabs:
 - a. Through March 31, 2016, a fee of \$246.00 per month per Airport Taxicab operated at or to or from the Airport by the Ground Transportation Operator in that month and, in addition, a Trip Fee of \$2.00 for each exit from the Designated Area by an Airport Taxicab operated by the Ground Transportation Operator during the month; and
 - b. Beginning April 1, 2016 and thereafter, a fee of \$246.00 per month per Airport Taxicab operated at or to or from the Airport by the Ground Transportation Operator in that month and, in addition, a Trip Fee of \$3.00 for each exit from the Designated Area by an Airport Taxicab operated by the Ground Transportation Operator during the month.
 6. For Ground Transportation Operators of Reserved Taxicabs:
 - a. Through March 31, 2016, a Trip Fee of \$2.00 for each exit from the Designated Area by a Reserved Taxicab operated by the Ground Transportation Operator during the month; and
 - b. Beginning April 1, 2016 and thereafter, the Trip Fee shall be \$3.00 for each exit from the Designated Area.
- B. Fees and charges for any Ground Transportation Operator providing services under multiple Permits shall be calculated and paid separately for each service for which the operator holds a Permit.

SECTION SEVEN. Soliciting: Ground Transportation Operators, Off-Airport Rental Car Operators and representatives shall not Solicit, in any manner, from the Airport terminals, garages and parking lots, roadways or anywhere else on the Airport, except through authorized advertising arranged through the Airport's advertising agent, or as allowed by a written agreement between the City and the Ground Transportation Operator.

SECTION EIGHT. Reports and Audits: The regulations and Permits authorized and established herein shall provide in substance that: a) each Ground Transportation Operator will, at its own cost and expense, provide the Airport Director such documentation as needed and required by the Airport Director to verify the fee amounts due and payable and b) reserve for the Airport Director the right to audit documents, records, and receipts for the purpose of verifying the fee amounts due and payable, including, but not limited to, the right to verify Gross Receipts of Off-Airport Rental Car Operators and the number of public parking

spaces devoted to off-Airport parking.

SECTION NINE. Denial, Suspension or Revocation of Permit:

A. The Airport Director may deny a Permit to any Ground Transportation Operator that has had a Permit revoked, or that is owned, operated or substantially controlled by a Ground Transportation Operator that had a Permit revoked, or that fails to complete required application forms and provide required information, or otherwise for good cause.

B. The Airport Director may suspend or revoke Permits issued pursuant to this Ordinance for the failure to: (1) pay fees established or authorized pursuant to this Ordinance; or (2) comply with rules and regulations established or authorized pursuant to this Ordinance; or (3) comply with any other rule, regulation, or ordinance of the City or the Airport Authority or any federal, state, or local law or ordinance applicable to the Permit holder; or (4) comply with the terms or conditions of the Permit or otherwise for good cause.

SECTION TEN. Challenges and Appeals:

If the Airport Director denies a permit application, suspends or revokes a Permit, the Ground Transportation Operator whose Permit has been denied, suspended, or revoked may upon written request (1) obtain a written statement from the Airport Director providing the basis of the denial, suspension, or revocation and (2) appeal that denial, suspension or revocation in writing and appear before the Airport Director to argue the appeal.

B. Notwithstanding the above, the Airport Director may immediately (effective upon the issuance of a written notice) suspend, revoke or terminate a Permit for failure of the Ground Transportation Operator whose Permit has been denied, suspended, or revoked to (1) make any payments when due under the Permit; (2) maintain and timely provide proof of any insurance coverage required under the Permit; (3) maintain and timely provide required approvals, licenses, certificates, security or badge identification requirements; or (4) comply with any term or provision on subcontracting in the Permit.

SECTION ELEVEN. 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 parts of this Ordinance.

SECTION TWELVE. 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 Charter of the City and shall become effective immediately upon passage and approval by the Mayor of the City.

Approved: February 6, 2013

ORDINANCE #69383
Board Bill No. 263

An ordinance recommended and approved by the Airport Commission, the Comptroller and the Board of Estimate and Apportionment, making certain findings with respect to the transfer of up to Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) of excess moneys that The City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport® (the "Airport"), intends to transfer from the Debt Service Stabilization Fund (the "DSSF") to the Airport Revenue Fund (the "Revenue Fund") in accordance with Section 516.B of the Lambert-St. Louis International Airport® Indenture of Trust between the City, as Grantor, and UMB Bank, N.A., as Trustee, dated as of October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented (the "Indenture"); authorizing a transfer in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the DSSF into the Revenue Fund to be used to make funds available to mitigate rates on an annual basis during the term of the Airport Use and Lease Agreement commencing July 1, 2011; containing a severability clause; and containing an emergency clause.

WHEREAS, The City of St. Louis, Missouri (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, the City has entered into a five year Airport Use and Lease Agreement with various airlines for the use of the Airport commencing July 1, 2011 (the "AUA");

WHEREAS, implementation of the AUA contemplates that the City use a portion of the Debt Service Stabilization Fund (the "DSSF") under the Lambert-St. Louis International Airport Indenture of Trust between the City, as Grantor, and UMB Bank,

N.A., as Trustee, dated October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented, (the "Indenture") in order to mitigate rates on an annual basis during the term of the AUA and that, in each fiscal year in which the City determines to mitigate rates, the City will withdraw an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the DSSF and deposit such amount in the Airport Revenue Fund (the "Revenue Fund"), with the expectation that such amount will, pursuant to the flow of funds specified in the Indenture, be re-deposited in the DSSF prior to the end of such fiscal year;

WHEREAS, pursuant to Section 516.B of the Indenture, the City may withdraw and use amounts on deposit in the DSSF for emergency debt service needs with respect to indebtedness issued for Airport purposes and for Airport operational emergencies;

WHEREAS, the Airport Commission, the Comptroller and the Board of Estimate and Apportionment have determined that the need to mitigate rates in connection with the AUA in order to maintain and enhance airline operating levels at the Airport constitutes an Airport operating emergency within the meaning of Section 516.B(2) of the Indenture, that the transfer of funds from the DSSF to the Revenue Fund as set forth herein is an appropriate and desirable use of such funds and is essential for the operation of the Airport and that such use is consistent with the requirements of the Indenture;

WHEREAS, there is a balance in excess of Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) available for transfer from the DSSF into the Revenue Fund established in the Indenture;

WHEREAS, it is in the best interest of the City and the operation of the Airport to authorize the transfer of funds from the DSSF into the Revenue Fund in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769); and

WHEREAS, this Ordinance, authorizing the transfer of funds in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769), as set out herein, is recommended and approved by the City's Airport Commission, the Comptroller 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, Missouri (the "City") hereby adopts and incorporates herein the foregoing recitals as findings.

SECTION TWO. There is hereby authorized a transfer of funds in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the Airport Debt Service Stabilization Fund into the Airport Revenue Fund of the Lambert-St. Louis International Indenture of Trust between the City, as Grantor, and UMB Bank, N.A., as Trustee, dated as of October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented, during the fiscal year beginning July 1, 2012 for the purpose of making funds available to mitigate rates on an annual basis during the term of the City's Airport Use and Lease Agreement commencing July 1, 2011.

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 making an appropriation for current expenses of the City government, 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: February 6, 2013

**ORDINANCE #69384
Board Bill No. 264**

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® Lease Agreement AL-226 (the "Lease Agreement"), between the City and Jet Linx St.

Louis, LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of Delaware, granting to the Lessee, subject to and in accordance with the terms, covenants, and conditions of the Lease Agreement, certain rights and privileges in connection with the occupancy and use of the Leased Premises, which is defined and more fully described in Section 201 of the Lease Agreement that was approved by the Airport Commission and is attached hereto as ATTACHMENT "1" and made a part hereof; containing a severability clause; and containing an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert–St. Louis International Airport® Lease Agreement AL-226 (the "Lease Agreement"), between the City and Jet Linx St. Louis, LLC (the "Lessee"), a limited liability company organized and existing under the laws of the State of Delaware, granting to the Lessee, subject to and in accordance with the terms, covenants, and conditions of the Lease Agreement, certain rights and privileges in connection with the occupancy and use of the Leased Premises, which is defined and more fully described in Section 201 of the Lease Agreement that was approved by the Airport Commission and is to read in words and figures substantially as set out in ATTACHMENT "1", which is attached hereto and made a part hereof.

SECTION TWO. The sections or provisions of this Ordinance or portions thereof shall be severable. In the event that any section or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections or provisions of this Ordinance unless the court finds the valid sections or provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the illegal, unconstitutional or ineffective section or provision that it cannot be presumed that the Board of Aldermen would have enacted the valid sections or provisions without the illegal, unconstitutional or ineffective sections or provisions; or unless the court finds that the valid sections or provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

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



ATTACHMENT "1"

THE CITY OF ST. LOUIS

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®

JET LINX ST. LOUIS, LLC

LEASE AGREEMENT

NO. AL- 226

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AIRPORT NUMBER AL- 226

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

THIS LEASE AGREEMENT, made and entered into as of the ____ day of _____, 2013, by and between The City of St. Louis, a municipal corporation of the State of Missouri, as lessor, and Jet Linx St. Louis, LLC, a limited liability company organized and existing under the laws of the State of Delaware, as Lessee.

WITNESSETH, THAT:

WHEREAS, the City owns, operates and maintains the Lambert-St. Louis International Airport®, located in the County of St. Louis, Missouri;

WHEREAS, the City currently leases certain Airport premises to the Government for use by the MoANG under Lease Agreement AL-53, as amended;

WHEREAS, the MoANG has stated that it is willing to relinquish to the City a portion of the premises it leases under Lease Agreement AL-53, as amended, including the Leased Premises (“**Relinquished Premises**”);

WHEREAS, Lessee wishes to lease a portion of the Relinquished Premises but understands that the City may not lease such property until it has been relinquished and vacated by the Government to the City, and the City has gained possession and control of it upon terms and conditions acceptable to and authorized by the City; and

WHEREAS, the City is willing to lease the Leased Premises to Lessee and the Lessee is willing to lease the Leased Premises from the City under terms as set forth herein.

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

**ARTICLE I
DEFINITIONS**

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

“**Access Area**” means the landside access to the Leased Premises that is located within the Premises leased by the City to Lessee and consisting of a roadway connecting the public roadway known as Lambert International Boulevard to the remainder of the Lessee’s Leased Premises, which is more fully described in Section 201 entitled “Leased Premises”.

“**Affiliate**” or “**Affiliate of Lessee**” shall mean any entity which directly or indirectly through one or more intermediaries, controls or is controlled by or is under the common control with the Lessee.”

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

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

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

“**Approval Date**” shall mean the later of the following: (a) the Effective Date and (b) the date the Government has relinquished and vacated the Leased Premises to the City and the City gains possession and control of the Leased Premises upon terms and conditions acceptable to and approved and authorized by the City.

“**Bankruptcy Code**” means the Federal Bankruptcy Code as set forth in 11 U.S.C. §§ 101 *et seq.*, and as it may be amended from time to time.

“**Build-Out Period**” shall mean the period of time beginning on the Commencement Date in which the construction or modification of the Leased Premises hereof is ongoing and which shall end on substantial completion of such construction or modification, as evidenced by a certificate of occupancy, temporary certificate of occupancy, or similar governmental approval, not to exceed ninety (90) days (see Article IV).

“**City**” means The City of St. Louis, Missouri, the owner and operator of the Airport.

“**Commencement Date**” shall mean no later than the tenth (10) day following the Approval Date; provided, however, that unless otherwise agreed to in writing by the City and Lessee as provided for in Section 301, the Commencement Date shall be no later than one hundred and fifty (150) days after the Effective Date. The City shall promptly notify Lessee in writing of the Approval Date and the Commencement Date (the “**Commencement Date Notice**”).

“**Construction Costs**” mean Construction Cost as defined in Section 602 below.

“**Contract Year**” means a consecutive twelve (12) month period commencing on the first day after the last day of the Build-Out Period and each successive twelve (12) month period thereafter during the term of this Lease Agreement.

“**days**” or “**Days**” means consecutive calendar days unless otherwise expressly provided herein.

“**Director**” means the Director of Airports of the City of St. Louis or his/her authorized or designated representatives.

“**Effective Date**” means the date on which this Lease Agreement has been signed and executed by both the Lessee and the City as shown on the signature page of this Lease Agreement and written by the City on page 3 of this Lease Agreement.

“**Environmental Laws**” means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, Environmental Permits, permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances, or chemicals or the preservation or regulation of the environment or natural resources including, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §5101 *et seq.*; the Endangered Species Act, 16 U.S.C. §1531 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §10101 *et seq.*, as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist

or may be amended from time to time.

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

“Event of Default” means an Event of Default as defined in Section 1101.

“Existing Environmental Conditions” means as stated in Article VII, Section 703 of this Lease Agreement entitled “Existing Environmental Conditions”.

“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.

“Government” means the United States of America that currently leases the Relinquished Premises from the City for use by the Missouri Air National Guard (**“MoANG”**).

“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, byproducts, pesticides, hazardous waste, toxic substance, or any material defined or treated as a hazardous substance, regulated special waste, pollutant or contaminant (or comparable term) under any of the Environmental Laws. City and Lessee stipulate and agree that the existence and definition of Hazardous Materials shall be construed herein in accordance with all applicable federal, state, City or local laws statutes or regulations relating to the protection of human health or the environment.

“Improvements” means, without limitation, buildings, structures, facilities, fixtures or any appurtenances thereto existing on the Leased Premises, including but not limited to concrete aircraft ramp, parking lot, buildings and hangars, or any other structures or facilities which exist as of the Commencement Date, or may be built, installed, refurbished, modified, or constructed by the City or the Lessee, including any sublessee, on the Leased Premises in accordance with the terms of this Agreement, including, without limitation, Article VI.

“Indemnified Parties” or **“Indemnitees”** means the Indemnified Parties or Indemnitees as defined in Section 903(A).

“Itinerant Aircraft” means any aircraft that is operating at the Airport whose owner does not have a written agreement with Lessee or an Affiliate of the Lessee to manage, utilize, maintain, or operate such aircraft or utilized in support of Lessee’s charter business or an Affiliate of the Lessee’s charter business.

“Leased Premises” means the Leased Premises including Improvements, as defined in Section 201.

“Lease Agreement” means this Lease Agreement AL-226 and any subsequent amendments thereto, duly approved by the City and Lessee.

“Lessee” means Jet Linx St. Louis, LLC, a limited liability company organized and existing under the laws of the State of Delaware and a party to this Lease Agreement.

“Minimum Capital Investment” means the minimum investment required of the Lessee for the refurbishment and improvement of the Leased Premises as set forth in Section 602 and as outlined in Exhibit “C”.

“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 applicable Environmental Laws or Environmental Permits, and/or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of, Lessee’s operations at the Airport or the Lessee’s operations, activities, use, occupancy and/or lease of the City’s property during the term of this Lease Agreement. Remediation Costs include reasonable investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys’ fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out

of Lessee's handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Leased Premises.

"Remediation Work" means the Remediation Work as defined in Section 702.C.

"Removable Fixtures" shall mean all personal property, trade fixtures, furnishings, equipment and fixtures installed by the Lessee that are not permanently affixed to any wall, floor or ceiling in the Lease Premises and identified as Removable Fixtures as provided for in Section 601.J.

"Rules and Regulations" means those lawful rules and regulations including, without limitation, ordinances, and operating directives promulgated by the Director, the Airport Commission, and/or the City from time to time, as the case may be, for the orderly operation of the Airport.

"Security Deposit" means the Security Deposit as defined in Section 411.

"Term" means the Term of this Lease Agreement as provided for in Section 301.

ARTICLE II LEASED PREMISES

Section 201. Leased Premises. The City hereby leases and demises to Lessee, and Lessee takes from the City, separate tracts of land containing in the aggregate approximately 2.1 acres together with all Improvements existing or that may be constructed or made therein in accordance with Article VI, hereinafter collectively referred to as the "**Leased Premises**" and more fully described on **Exhibit "A"** and shown on **Exhibit "B"**.

Section 202. Acceptance of Leased Premises. Subject to the Government relinquishing and vacating the Leased Premises as provided for herein, Lessee hereby acknowledges that it accepts and receives the Leased Premises in an "**AS IS**" condition with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives with respect to the physical, environmental or structural conditions of the Leased Premises or any portion thereof or otherwise including but not limited to: soil conditions of the land, structural conditions of the buildings or facilities, the geotechnical condition of the Leased Premises, the presence or absence of any Hazardous Materials, any underground or aboveground storage tanks or repositories and related equipment, asbestos and asbestos related materials, water, sewage utilities serving the Leased Premises, or any other matter or thing affecting or relating to the Leased Premises, except as expressly set forth in this Lease Agreement. The City without limitation expressly disclaims and negates, as to the Leased Premises: any implied or expressed warranty of fitness for a particular purpose; any implied warranty with respect to the condition of the Leased Premises; its compliance with any zoning or other rules, regulations, laws or statutes applicable to the Leased Premises, including but not limited to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*); the uses permitted on the Leased Premises; or any other matter or thing relating to the Leased Premises or any portion thereof. Lessee may terminate this Lease Agreement without cause at any time prior to the Commencement Date, as provided for in Section 305 entitled "Termination Prior to the Commencement Date."

Section 203. Reservations. The grant of lease hereunder is subject to the following reservations and conditions.

- A. The City reserves the right, but shall not be obligated, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee or Sublessee in this regard.
- B. The City reserves the right to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as the City in its sole and absolute discretion sees fit, regardless of the desires or views of Lessee, and without interference or hindrance of any kind.
- C. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport, including the Leased Premises, which in the sole and absolute opinion of the City would limit the usefulness of the Airport or constitute a hazard to aircraft.
- D. The rights granted by this Lease Agreement to Lessee shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport.
- E. The City reserves, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in

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

- F. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, shall not unreasonably or materially impair or interfere with Lessee's use of the Leased Premises.
- G. The City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Leased Premises; provided, however, that such use will not unreasonably or materially impair or interfere with Lessee's use of the Leased Premises, or result in any material added expense to Lessee in conducting its operations hereunder.

Section 204. Access to the Leased Premises.

- A. Subject to the provisions of this Lease Agreement, the Lessee shall have the right of ingress to and egress from the Airport, including the Leased Premises, for Lessee's employees, agents, contractors, guests, members, aircraft owner's 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 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; and further provided 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.
- B. Lessee expressly acknowledges and agrees that land side ingress to and egress from the Leased Premises shall be through the Access Area, which is wholly contained within the Leased Premises and which connects public roadways to the remainder of the Leased Premises. Lessee further acknowledges and agrees that before exercising any rights to transit through the Access Area in the regular course of business, Lessee shall, at its sole cost and expense, make and install the improvements and alterations to the Access Area and to the Leased Premises sufficient to ensure Lessee's safe access through the Access Area in accordance with the provisions of this Lease Agreement. Such improvements may include, but shall not necessarily be limited to: (i) installing, operating, and maintaining such gate and access control modifications as may be necessary in accordance with security regulations and restrictions, (ii) paving of connections between Access Area and the remainder of the Leased Premises, (iii) re-striping the pavement within Access Area to establish clearly demarcated ingress and egress lanes, and (iv) making all paving and curb cuts necessary to connect public and other roadways to the Access Area and throughout the remainder of the Leased Premises. All plans and specifications for any improvement or alterations to be made to the Access Area shall be performed in accordance with and subject to the provisions of this Lease Agreement including, without limitation, the requirements of Article VI. Lessee acknowledges and understands that the City is also contractually required to submit to American Airlines Inc. for its review and approval all design, specs, or construction plans regarding any pathway or roadway improvements made within or to the Access Area. It shall be the City's responsibility to request the necessary approvals from American Airlines, Inc.
- C. The City, at the City's cost, shall relocate and reinstall fencing required to separate the Access Area from other premises owned by the City but not included in the Leased Premises. Lessee shall cooperate in good faith with the City regarding the City's relocation of such fencing.
- D. The Lessee, subject to and in accordance with the provisions of this Lease Agreement, shall have the non exclusive right for ingress and egress for pedestrians, vehicles and aircraft over the paved area between Building 115 and Building 121 at all times ("**121 Access Area**"). The Lessee agrees that, at Lessee's cost, the Lessee shall keep the paved area between Building 115 and Building 121 and the AOA free of ice and snow to the extent necessary for Lessee's business operations (see Section 502 entitled "Snow Removal").

Section 205. Access to the Leased Premises by the City. The City reserves and shall have the right to access, ingress to and egress from the Leased Premises without charge therefore, for its employees, contractors, agents, guests, patrons and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, as may be reasonable under the circumstances, and with as little interruption of Lessee as may be reasonably practical, and upon compliance with Lessee's reasonable security procedures. If Lessee is not present to permit entry and entry is necessary, the City may, in case of emergency, forcibly enter the Leased Premises without rendering the City liable therefore, except for any damage caused to Lessee's property as a result of such entry or any costs, damages or liabilities arising from City's negligence or willful misconduct.

The City's right to access the Leased Premises shall be without charge therefore, and shall be for any purpose necessary for, incidental to, or connected with the City's rights and obligations hereunder, or the City's capacity as the Airport owner or operator, including, but not limited to, collecting environmental samples and/or performing environmental studies, inspections and/or the remediation. Lessee shall in good faith coordinate and cooperate with the City's environmental sampling, studies, inspections, and remediation efforts.

Section 207. Section 206. Security. Lessee hereby acknowledges that the City is required by 49 C.F.R. Part 1500, as amended from time to time ("**TSA 1500**"), to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the Security Identification Display Area ("**SIDA**") as defined in TSA 1500 and/or the AOA. Lessee understands that the City has met said requirements by developing an Airport Security Program ("**ASP**") for the Airport, and Lessee warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of TSA 1500 and the ASP in connection with Lessee's exercise of the privileges granted hereunder during the Term, and to impose similar requirements on any sublessees. Lessee, at its own cost, shall cause facilities and procedures to be prepared, reasonably satisfactory to the City, designed to prevent and deter persons and vehicles from unauthorized access to the SIDA and/or the AOA from and through any Leased Premises in accordance with the provisions of TSA 1500 and the ASP. Lessee hereby acknowledges that it understands that its security procedures and facilities on the Leased Premises to meet the requirements of TSA 1500 and the ASP, shall include but not be limited to:

- A. fencing and locked gates;
- B. City-approved badging, badge display, escort and challenge procedures applicable to persons authorized to enter the SIDA and/or the AOA;
- C. an electronic entry control system or a manned guard system where gates or doorways cannot reasonably be controlled by locks; and
- D. other facilities and procedures as may be required to control the entrance of persons and vehicles onto the SIDA and/or AOA.

Lessee shall not do or permit its agents, employees, contractors, licensees, invitees, or suppliers, 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, TSA 1500, or the ASP, as they may be amended from time to time. Lessee shall be responsible for obtaining and coordinating any security badging, vehicle decals, and/or any other actions required to ensure that Lessee's agents, employees, contractors, licensees, invitees, suppliers are in compliance with all security requirements. Lessee shall be responsible for all costs associated with obtaining such badge and/or access privileges.

Section 208. Encumbrances on Leased Premises. Lessee accepts the Leased Premises subject to any and all then existing easements or other encumbrances and the City shall retain the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, utilities, pipelines, manholes, connections, water, oil or gas pipelines, and telephone, communication or telegraph lines, power lines and such other appliances and appurtenances necessary or convenient in connection therewith, over, in, upon, through, across and along the Leased Premises, or any part thereof, and to enter thereupon at reasonable times for any and all such purposes; provided, however, that no right of the City provided for in this Section 207 shall unreasonably or materially impair or interfere with Lessee's use of the Leased Premises, or result in any material added expense to Lessee in conducting its operations hereunder.

ARTICLE III AGREEMENT TERM

Section 301. Term. The term ("**Term**") of this Lease Agreement shall begin on the Commencement Date and shall end at 11:59 p.m. (local prevailing time) on the last day of the eighth (8) Contract Year, unless sooner terminated in accordance with other provisions of this Lease Agreement; provided, however, that this Lease Agreement shall be deemed null and void if: (a) the Commencement Date is more than one hundred and fifty (150) days after the Effective Date, and/ or (b) the Government fails or refuses to timely vacate the Leased Premises and timely relinquish possession and control of the Leased Premises to the City upon terms and conditions acceptable to and authorized and approved by the City (see Section 305 below). The Lessee and City agree that the Commencement Date may be extended up to an additional ninety (90) days (up to a total of two hundred and forty (240) days) from the Effective Date with the written approval of the Director, on behalf of the City, and the Lessee.

Section 302. Surrender of Possession. The City shall not be required to notify Lessee to quit possession of the Leased Premises at the expiration of this Lease Agreement. Upon the expiration or the early termination as hereinafter provided, Lessee shall peaceably

surrender possession of the Leased Premises in good condition, reasonable wear and tear excepted, and the City shall have the right to take possession of the Leased Premises with or without due process of law (see Section 601.J, entitled "Title to Improvements"). If Lessee does not vacate the Leased Premises as set forth herein, Lessee does hereby agree that the City may use any remedy at law or in equity including, but not limited to, a writ of possession to carry out the transfer of possession. Before acceptance by the City of the Leased Premises as set forth herein, the City and Lessee shall perform a joint inspection of the Leased Premises being surrendered to the City. Lessee shall perform any reasonable maintenance work requested by the City so that all mechanical systems are fully functional and all facilities are protected from the weather. Said inspection shall be conducted at the early termination, or within ninety (90) calendar days prior to the expiration, of this Lease Agreement. Upon surrendering of possession, Lessee shall give to the City, without charge, all building plans (i.e., as-built drawings) and mechanical specification manuals on all systems built or installed in the Leased Premises by Lessee.

Lessee covenant, warrants, and agrees that all obligations of Lessee pursuant to Section 702.C entitled "Environmental Remediation" and any closure or other obligations under Environmental Laws shall be timely completed by Lessee prior to the expiration of the Term, or as soon as practicable after the earlier termination hereof, in accordance with and subject to the terms, covenants, and conditions of this Lease Agreement including, without limitation, Article VII. Lessee covenants, warrants and agrees that no less than six (6) months prior to the expiration of the Term, or as soon as practicable after the earlier termination hereof, unless otherwise agreed to in writing by the City, Lessee shall timely submit its written plan for completing its Remediation Work in accordance with this Lease Agreement including, without limitation, Article VII.

Section 303. Removal of Above-Ground Fuel Storage Tanks. Lessee covenants, stipulates, warrants, and agrees that at the expiration of the Term, or as soon as practicable after the earlier termination hereof, unless otherwise agreed to in writing by the City, Lessee, at Lessee's sole expense, shall promptly and timely: (i) remove all products or wastes stored in any above ground storage tanks located on the Leased Premises, which were installed, operated, and/or used by the Lessee and/or any other person or entity during the Term of this Lease Agreement ; (ii) remove any above ground tanks including, without limitations, any connecting piping, tubing structures, facilities, secondary containment structures or facilities, or other related equipment or fixtures; and (iii) promptly remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water affected by leaks, spills, discharges, or releases from such above ground storage tanks or connecting piping, tubing, structures, facilities, or other related equipment or fixtures. Such removal, remediation, decontamination, and/or restoration shall be performed by Lessee in a manner consistent with all Environmental Laws and Environmental Permits. In addition, any obligations of Lessee pursuant to Section 702.C entitled "Environmental Remediation" hereof shall be promptly and timely completed by Lessee in accordance with the provisions of this Lease Agreement including, without limitation, Article s VI and VII. In the event that City is required to undertake actions to bring the Leased Premises into compliance with the foregoing provision or any applicable Environmental Laws or Environmental Permits, as a result of any of the above described leaks, spills, discharges or releases, and Lessee's failure to promptly and timely correct same, Lessee shall timely reimburse City for any expenses in accordance with Section 702.E entitled "Corrected Action by City".

Section 304. Early Termination. Lessee shall have a right to terminate this Lease Agreement (the "**Right to Terminate**") effective on a date after the third (3) Contract Year of the Term by delivering written notice of the exercise of its Right to Terminate at least ninety (90) days prior to the termination date.

Section 305. Termination Prior to the Commencement Date. Either Party may, by written notice, terminate this Lease Agreement without cause at any time prior to the Commencement Date. (See Section 202 entitled "Acceptance of Leased Premises".

ARTICLE IV RENT AND FEES

Section 401. General. Lessee, for and in consideration of the rights and privileges granted herein, agrees to promptly and timely pay the rents and fees and any other charges, expenses, or other payments due the City as set forth in this Lease Agreement, without demand during the Term.

Section 402. Rent Payment. Beginning on the first day after the Build-Out Period, Lessee shall pay rent to the City for the Leased Premises equal to a ground rental rate of Eighty Five Thousand Dollars (\$85,000.00) per annum. Rent payments shall be due in twelve (12) equal monthly installments, paid in advance, on or before the first day of each month.

Section 403. Landing Fees. Lessee shall timely report and remit to the City any Landing Fees related to Lessee's activities at the Airport that the City may establish or impose from time to time in accordance with the City's Rules and Regulations ("**Landing Fees**"). The Landing Fees to be remitted to the City shall be for each aircraft landing operated by Lessee or by any other aircraft operator that is operating at the Airport from the Leased Premises and that is not listed on the most current list issued by the City of aircraft operators having an agreement with the City for use of the Airport.

Section 404. Unpaid Rent and Fees. All unpaid rents, fees, or charges due to the City hereunder shall bear a service charge of one and one-half percent (1½%) per month if same are not paid and received by the City when due, and Lessee agrees that it shall pay and discharge all costs and expenses including reasonable attorneys' fees, court costs and expenses incurred or expended by City in collection of said delinquent amounts due including service charges.

Section 405. Notice, Place and Manner of Payments. Payments to the City required by this Lease Agreement shall be made at the office of the Director at the address as set forth in Section 1201 below, or at such other place or by whatever payment method that the City may determine as the City may hereafter notify Lessee, and shall be made in legal tender of the United States.

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

- A. if the City has paid any sum or sums or has incurred any obligation or expense for which Lessee has agreed to pay or reimburse the City; or
- B. if the City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Lessee to perform or fulfill any of the terms, covenants or conditions of this Lease 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 rent 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 rent payments as set forth herein.

Section 407. Prompt Payment of Taxes and Fees. Lessee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and acquire and keep current all permits, licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport.

Section 408. Security Deposit

- A. Amount and Form of Security Deposit. Upon execution of this Lease Agreement, Lessee shall provide the City with an irrevocable letter of credit, or other security or instrument acceptable to the City ("**Security Deposit**") in an amount equal to three (3) months of estimated rents, Landing Fees, and any other estimated payments due the City pursuant to this Lease Agreement, as reasonable determined by the City. The amount of the Security Deposit may be adjusted from time to time by the City to reflect changes in the Lessee's financial obligations to the City under this Lease Agreement. The Security Deposit shall guarantee the faithful performance by Lessee of all of its obligations hereunder and the payment of all rents, Landing Fees, and other charges and payments 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 Lessee's future performance.
- B. Term of Security Deposit. The Security Deposit shall remain in full force and effect throughout the term of this Lease Agreement and shall extend at least one hundred and twenty (120) days following the expiration or early termination of this Lease Agreement. Lessee 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 Lessee commits or is under an Event of Default pursuant to Section 1101, the City shall have the right to use the amounts of such Security Deposit to pay Lessee's rents, Landing Fees, or any other fees, charges, expenses or amounts owed to the City by Lessee 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 Lessee's default, or Event of Default under Section 1101. If any such Security Deposit, or portion thereof, is used as stated in this Subsection, Lessee shall replenish or provide a renewal or replacement Security Deposit up to the full amount set forth in Subsection 408.A within 10 days of being notified to do so by the City. The City's rights under this Section shall be in addition to all other rights and remedies provided to the City hereunder.

Section 409. Collection and Payment of Airport Fees and Charges. When applicable, Lessee or its designee shall timely report, collect, and remit Airport fees and charges assessed by the City to the Lessee and/or any sublessees and/or third party suppliers/operators conducting aeronautical services and/or other business to the public on the Leased Premises. Such Airport fees

and charges may include, without limitation, aircraft Landing Fees, Fuel Flowage Fees, and other fees and charges that the City may establish or impose from time to time in accordance with the City's Rules and Regulations or due and payable under the terms of this Lease Agreement.

If applicable, Lessee or its designee shall timely submit to the City by the fifteenth (15th) day of each month, two (2) copies of an accurate landing report and a fuel flowage report for the preceding month and the fees associated with those reports, as the case may be, regardless of whether such fees were actually collected by the Lessee or its designee. Lessee acknowledges, stipulates and agrees that if the Lessee fails to collect said Landing Fees or Fuel Flowage Fees, Lessee will timely promptly pay the fees from its own resources. Said landing reports and fuel flowage reports shall be in a form acceptable to the City.

The "**Fuel Flowage Fee**" to be remitted to the City shall be for each gallon of aviation fuel, as measured by a metering system acceptable to the Director, delivered on the Leased Premises into the aircraft of aircraft operators that are not listed on the most current list issued by the City of aircraft operators having an agreement with the City for use of the Airport, as established by the City from time to time.

ARTICLE V USE OF LEASED PREMISES

Section 501. Use. The City hereby grants to Lessee, subject to all the terms, covenants, and conditions of this Lease Agreement, permission to occupy and use the Leased Premises to conduct aircraft management, storage, servicing and maintenance and aircraft charter business at the Airport for aircraft it or an Affiliate of the Lessee owns, leases, charters, maintains or manages and the aircraft is utilized in support of its charter business, including the right to make new Improvements in accordance with Article VI.

Section 502. Repairs and Maintenance. Lessee shall, throughout the Term, at its own cost, and without any expense to the City, keep, repair and maintain the Leased Premises, including the interior and exterior, structural and non-structural portions of all Improvements, including, without limitation, the plumbing, heating, lighting, air conditioning, fire protection systems, and other systems in connection therewith, in good and safe condition, sanitary and neat order, and shall make all necessary repairs and maintenance thereto, ordinary and extraordinary, foreseen and unforeseen, and shall make all necessary replacements thereto of like quality when beyond repair, including but not limited to offices, hangars, buildings, aircraft ramp, parking lots and fuel facilities. Lessee shall restore, rehabilitate, or replace all Improvements that may be destroyed or damaged by fire, casualty or any other cause whatsoever (see Article IX). The City shall not be obligated to perform any maintenance or make any repairs or replacements of any kind, nature or description, to the Leased Premises, or any Improvements, unless and to the extent such damage is the result of the act or omissions of the City or its employees, contractors, or agents.

- A. Custodial Services. Lessee shall be responsible for all cleaning, custodial and janitorial services required to meet its obligations hereunder. Without limiting the generality of the foregoing, Lessee shall keep all portions of the Leased Premises in an orderly, neat, clean and safe condition and in good repair. Lessee shall keep all papers and debris picked up from the Leased Premises and sweep the pavements thereon as often as reasonably necessary to keep clean, and keep all grass mowed, and shrubbery and other plantings pruned, trimmed and maintained to high standards.
- B. Snow Removal. Lessee warrants, represents, and agrees that it is solely responsible for removal of all snow and ice from within the Leased Premises as necessary for Lessee's business operations to access the airfield and/or any portion of the Leased Premises (see Section 204.D entitled "121 Access Area"). Lessee shall provide for snow and ice removal to allow, at a minimum, emergency or fire protection access to the Leased Premises.
- C. Trade Fixtures. Lessee shall keep all trade fixtures on the Leased Premises in good and safe condition, order and repair at all times. Should damage occur, repair and/or replacement shall be made by Lessee on a timely basis. All trade fixtures that become damaged so as not to present a good appearance or that become incapable of being kept in good and safe working order shall be removed and, if applicable, replaced by Lessee. All maintenance, repair and replacement of trade fixtures shall be at Lessee's sole cost and expense.
- D. Security of Leased Premises. In addition to the security requirements set forth in Section 206, Lessee shall, at its sole cost and expense, take such measures as may be necessary to cause the Leased Premises to be kept secure and safe at all times. The City shall have no obligation or responsibility to keep the Leased Premises policed, secure or safe.
- E. Repair & Maintenance Reports. Lessee shall, throughout the Term, if any, within thirty (30) days of the end of each Contract Year and within thirty (30) days after the expiration or early termination of this Lease Agreement, submit to the City a report identifying any and all repair and maintenance in excess of \$25,000 completed on the Leased Premises during the preceding Contract Year.

- F. Pavement Maintenance. Lessee shall, within sixty (60) days of the start of the third Contract Year and the Seventh Contact Year, submit to the City a detailed and sealed report prepared by a independent and qualified State of Missouri registered professional engineer who shall conduct an annual pavement inspection of all aircraft pavement within the Leased Premises in compliance with FAA Advisory Circular 150/5380-6 Guidelines and Procedures for Maintenance of Airport Pavements (“**FAA AC 150/5380-6**”), as amended from time to time, and ASTM D 5340 Standard Test Method for Airport Pavement Condition Index Surveys (“**ASTM D 5340**”), as amended from time to time. The detailed and sealed report submitted to the City shall also include, if applicable, plans and schedules for repair or replacement of any found defects or deficiencies in accordance with FAA AC 150/5380-6 and ASTM D 5340.
- G. Waste Disposal. Lessee, at its sole cost and expense, shall also provide for complete, sanitary handling and disposal of all solid waste, trash, garbage and refuse (liquid or solid) in accordance with all local, state and federal rules and regulations and the standards established by the Director applicable to all City tenants at the Airport. Such standards may require the use of special devices including, but not limited to, special containers, compactors, and disposal systems. Lessee agrees, at its cost, to promptly provide and install same and to abide by such standards.
- H. Recycling. If the City establishes a recycling program, Lessee will fully participate in said recycling program. Lessee must comply with all applicable City, local, county, state and federal regulations regarding recycling.
- I. Obstruction Lights. Lessee shall, at its sole cost and expense, provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable Rules and Regulations, law, rule or regulation or ordinance, or any municipal, state or federal regulation.
- J. Storage. No unscreened storage will be permitted on the exterior areas of the Leased Premises.

Section 503. Utilities. Lessee at its cost shall install and/or otherwise provide for and pay for all utilities used on the Leased Premises.

Section 504. Interference to Operations of Airport. Lessee warrants, covenants, and agrees that no obstructions to air navigation, as such are defined from time to time by application of the criteria of 14 C.F.R. Part 77, or subsequent and additional regulations of the FAA, will be constructed, permitted to be constructed, or permitted to remain on the Leased Premises, and if any such obstructions are constructed, Lessee shall immediately remove them at its expense. Lessee shall not increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower of the Airport and its operations. Lessee shall not install any structures, objects, machinery or equipment that would interfere with operation of navigation aids or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

Section 505. Inoperable Aircraft. The Lessee agrees that any aircraft left in non-flyable condition shall not be parked or stored on the Leased Premises for a period in excess of sixty (60) days without the prior written approval of the City, unless the aircraft is undergoing maintenance that despite commercially reasonable efforts takes longer than sixty (60) days to complete. Non-flyable aircraft shall not be moved from the Leased Premises to other areas of the Airport without the express written approval of the Director.

Section 506. City’s Right to Enter, Inspect, and Perform Corrective Actions. The City shall have the right to enter upon the Leased Premises: (i) to inspect the Leased Premises for any purpose necessary for, incidental to, or connected with Lessee’s obligations hereunder; and (ii) to perform any work therein that may be necessary by reason of Lessee’s failure to make any repairs, perform any work or maintenance, or do anything required of Lessee under this Lease Agreement; provided, however, that except in cases of emergency, the City shall give Lessee notice of such failure, and shall not perform such work unless Lessee has failed to do so within thirty (30) days after receipt of such notice; and further provided that if such work is not reasonably capable of being performed within thirty (30) days, Lessee shall have as much time as it reasonably takes, provided Lessee is diligently pursuing the necessary work. Lessee shall pay to the City all reasonable costs and expenses related to such work by the City plus an administrative charge of fifteen percent (15%) immediately upon demand thereof. Nothing herein shall imply any duty on the part of the City to perform such inspections, make any repairs or perform any work on the Leased Premises, and the performance thereof by the City shall not constitute a waiver of Lessee’s default in failing to make any repairs or performing any work required of Lessee under this Lease Agreement. The City shall not in any event be liable for cessation of revenues, inconvenience, annoyance, disturbance, loss of profits or any other damage or loss whatsoever to Lessee or any other party by reason of making such repairs or performing such work or maintenance on the Leased Premises or on account of bringing materials, supplies and equipment onto or through the Leased Premises during the course thereof, and the obligations and duties of Lessee under this Lease Agreement shall not thereby be waived or affected in any manner whatsoever. Except in the case of an emergency, the City shall provide twenty-four (24) hours prior written notice to the Lessee before any entry or inspection of the Leased Premises.

**ARTICLE VI
CONSTRUCTION OR MODIFICATION OF THE LEASED PREMISES**

Section 601. Obligations, Rights and Procedures.

- A. General. Lessee may, at its sole cost and expense, refurbish, install, construct or make Improvements on the Leased Premises in accordance with plans prepared by Lessee; provided, however, that any plans to demolish, excavate, refurbish, install, construct or make any Improvements or any environmental or geotechnical testing or assessments, shall be submitted to the Airport Properties Department for the City's review and approval as provided for in this Article VI. Additionally, any demolishing, excavation, refurbishing, construction on, or alteration to, the Leased Premises that requires permitting from St. Louis County, Missouri, or any municipality in which the Leased Premises are located must also receive the prior written approval of the City as provided for in this Article VI. Lessee shall comply with the requirements of all applicable laws, Environmental Permits, Environmental Laws, and building codes and the City's Rules and Regulations governing tenant construction, alterations, and improvements. Notwithstanding anything to the contrary in this Lease Agreement including, without limitation, Article VII and this Article VI, Lessee acknowledges, warrants, stipulates, and agrees that the Lessee shall not build, install, or construct any new buildings or new structures within the Leased Premises and/or excavate or disturb any soil within the Leased Premises, except as expressly authorized and provided for in: i) Section 204.B regarding the improvements and alternations to the Access Area, ii) Section 605 entitled "Installation of Above-Ground Fuel Storage Tank", and Section 606 entitled "Addition to Building 115", all subject to the applicable provisions of this Lease Agreement.
- B. Submittals to the City. Lessee covenants, stipulates, warrants and agrees that all such work that requires the City's approval shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director. In additions Lessee shall:
- i. submit a signed Tenant Construction or Alteration Application (TCA) including complete plans, construction drawings and specifications, and construction schedules to the Airport Properties Department for the City's review and approval. Lessee will begin work on proposed improvements only after it has received the written approval of its TCA including its detailed project plans and specifications and construction schedules from the City;
 - ii. 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 shall be required prior to the start of any construction or modification to the Leased Premises. (A building permit number is required before the TCA can be approved.);
 - iii. submit the contractor's Builders Risk Insurance, Commercial General Liability and Automobile Liability Insurance certificates in accordance with Section 901.B(v) and the required performance and payment bonds 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 (see Sections 601.C & 601.D below);
 - iv. submit a certificate of completion and a certified copy of a St. Louis County occupancy or use permit to the Airport Properties Department promptly after the completion of the Improvement (see Section 601.I); and
 - v. submit to the Airport Properties Department a copy of its Environmental Impact Statement not more than thirty (30) days following submission of the TCA, if an Environmental Impact Statement is required by any municipality, political jurisdiction, or federal or state regulatory agency with respect to the Leased Premises.
- C. Contractor's Builders Risk and Liability Insurance. In any contract relating to the excavation or demolition at, construction or modification of, refurbishment or improvement to the Leased Premises, Lessee shall require each of its contractors and suppliers to carry policies of Builders Risk Insurance, Commercial General Liability and Automobile Liability Insurance in accordance with Section 901B(v).
- D. Payment & Performance Bonds. Lessee shall require each of its contractors and suppliers of construction materials to furnish a Performance Bond and a Payment Bond each in the full amount of any contract and in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

- E. Federal Aviation Administration Review. Prior to commencement of any excavation on, demolition of, construction at, or alteration or refurbishment to the Leased Premises, Lessee shall submit all preliminary plans, drawings and specifications to the FAA for any review and approval that may be required, with a copy to the Airport Properties Department. The preliminary plans shall show plot plans, the location and elevations of buildings and other structures, shall indicate proposed exterior materials and finishes for all structures, and shall include any additional information that may be required by FAA.
- F. Landscaping and Screening. Lessee shall provide and install appropriate landscaping and screening, including lawn, shrubbery, trees, bushes, vines and other plantings and screenings on the Leased Premises as part of the construction of any new Improvements. All proposed landscaping plans and screening designs shall be submitted to the Director for review and approval. Lessee further agrees to provide any further landscaping and fencing that may be required, during the term hereof, by the Director, for security purposes.
- G. TCA Review and Approval by City. Lessee acknowledges, stipulates, and agrees that following receipt of the TCA including detailed project documents, the City in its sole determination may perform on the Leased Premises certain environmental investigations, sampling, or testing and, if necessary or desirable, remediation of Existing Environmental Conditions at the City's cost, and the City shall obtain, any required approvals related thereto, in accordance with Environmental Laws. Lessee covenants, warrants, stipulates and agrees to cooperate in good faith with the City throughout this process. Lessee acknowledges, understands, and agrees that the City's approval of any excavation or the disturbance of the soil as expressly authorized herein (see Section 601.A), the demolition, construction, alteration, and/or refurbishment to the Leased Premises, may be subject to the City's completing the work described herein and complying with Environmental Laws, as well as other City applicable reviews and approvals. Lessee acknowledges, stipulates, and agrees that the City's approval of Lessee's TCA or plans, the City's pre-job sampling, investigations, or testing including, if necessary or desirable, the remediation of Existing Environmental Conditions at the City's costs, and the City's obtaining of approvals from the appropriated governmental agency responsible for enforcing applicable Environmental Laws, could require significant changes and/or delays to the Lessee's excavation, demolition, construction, alteration or refurbishment schedule. Lessee shall take into consideration the City's approval process and remediation obligations hereunder when developing its demolition and/or construction schedules especially if an authorized excavation or disturbance of soil is contemplated. Lessee shall hold the City harmless from any expenses or costs including, without limitation, loss of profits associated with any delay related to the City's approval process or remediation obligations hereunder. In the event of significant delays (thirty (30) days or more), resulting directly from the City's remediation obligations, the Director, on behalf of the City, shall in good faith agree to a reasonable extension of time for performance of Lessee's obligations under this Lease Agreement including, if applicable, a reasonable extension of the Build-Out Period.
- H. Conduct of Work Following Approval of TCA. No authorized excavation or disturbance of soil under this Lease Agreement (see Section 601.A), or demolition at, construction or modifications of, refurbishment or Improvement to, the Leased Premises, or any environmental or geotechnical test or assessment, shall commence until after Lessee has received the written approval of its TCA from the City. Lessee also understands and agrees that certain work elements described in the TCA may require separate or additional approval from the City and/or the FAA before proceeding with the specific work element. As such, Lessee understands and agrees that ongoing coordination with the City at all times is crucial. Lessee agrees to provide the City at least thirty (30) days written notice prior to commencement of any work at the Lease Premises involving the excavation or disturbance of soils for the City's review and prior written approval. The City reserves the right to have a representative(s) present at the work site during such excavation.
- I. Hazardous Materials Discovered During Work.
1. City shall receive at least thirty (30) days written notice prior to commencement of any work at the Leased Premises involving an authorized excavation of soils. The Lessee's TCA noting the Lessee plans regarding the excavate of soil and requesting the City's prior written approval in accordance with the terms of this Agreement can constitute such required notice; provided Lessee also provides at least ten (10) days written notice prior to commencement of any work at the Leased Premises involving an authorized excavation of soil so that the City may have a representative present at the work site during such authorized excavation. In the event Hazardous Materials are encountered during any excavation, demolition, construction, modification or refurbishment of the Leased Premises, Lessee shall promptly notify the City, and a determination will be made by the City regarding whether the Hazardous Materials are an Existing Environmental Condition to be remediated by the City. If the Hazardous Materials constitute an Existing Environmental Condition, the City shall investigate and, if necessary, remediate said Hazardous Materials, in accordance with applicable Environmental Laws and then seek reimbursement from the Government. Lessee shall, in good faith but at no direct cost, cooperate with the City in all respects to ensure that the City receives appropriate reimbursement from the Government, if applicable.

The City and Lessee may agree in writing that Lessee or its designee is to perform certain environmental investigation and remediation of Hazardous Materials that constitute an Existing Environmental Condition within the Leased Premises. Such work shall only be performed by Lessee or its designee subject to the prior written approval by the City of detailed work plans submitted by Lessee, and with ongoing consultation and cooperation with the City during the performance of the work. The City shall timely reimburse or pay to Lessee or its designee such approved reimbursable costs related to the investigation and remediation work by Lessee or its designee that is requested and authorized in writing by the City, in accordance with the provisions more fully described in Section 601.I.2 below. Whether performed by the City or by Lessee or its designee, such investigations, remediation, and required approvals may result in construction delays for the Lessee; Lessee shall hold the City harmless from any expenses or costs including, without limitation, loss of profits associated with such delays. However, in the event of a delay of thirty (30) days or more as a direct result of such investigation and/or remediation, the Director, on behalf of the City, shall in good faith negotiate and agree to a reasonable extension of time for performance of Lessee's obligations under this Lease Agreement including, if applicable, an extension of the Build-Out Period.

2. Lessee shall cause all requests for reimbursement or disbursements of funds ("**Request for Reimbursement**") for authorized reimbursable costs incurred by the Lessee or its designee on behalf of the City pursuant to Section 601.I.1 above to be submitted to the City within ninety (90) calendar days of payment of the charges by the Lessee or its designee. Each Request for Reimbursement shall include the following: (1) adequate documentation and explanation supporting that the costs for which reimbursement are sought are authorized reimbursable costs in accordance with the terms of this Lease Agreement; (2) a detailed breakdown of the billing totaling the amount of the Request for Reimbursement; (3) copies of invoices, contracts, and/or such other proof of payment or documentation supporting the Lessee's Request for Reimbursement; and (4) such other documentation as may be reasonably requested in writing by the City to determine whether the costs are an authorized reimbursable cost in accordance with the terms of this Lease Agreement. The City shall have sixty (60) calendar days from the date of its receipt of the Request for Reimbursement to process and pay the amount of the Request for Reimbursement. Should City reasonably dispute or object to any claimed reimbursable cost or any item or amount shown on any Request for Reimbursement and/or supporting documentation or explanation provided by the Lessee, or reasonably dispute or object to the adequacy of such supporting documentation and explanation, the City may withhold payment in part or in full; provided that the City shall, within that same sixty (60) calendar day period, timely pay the balance to which the City has no reasonable objection or dispute. If the City reasonably disputes or objects to a Request for Reimbursement or any cost item therein, such dispute or objection shall be set forth in writing and submitted to the Lessee; after which the matter shall be addressed in good faith by the parties as quickly as reasonably possible. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be promptly resolved by upper management of both parties hereto.
- J. Mechanics' and Materialmen's Liens. Lessee covenants and agrees to use its best efforts to prevent or not permit any mechanic's or materialmen's or any other liens or encumbrances to be attached to or foreclosed upon the Leased Premises or any part thereof, including, without limitation, any Improvements, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason. If such lien or encumbrance is filed, Lessee warrants, represents and agrees that Lessee will take immediate steps to have the lien promptly removed.
- K. Certificates of Completion. Upon the completion of any new Improvements hereunder, Lessee shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit that may be required by any federal, state, or local government or agency in connection with the completion or occupancy thereof by Lessee. Lessee, at its cost, shall deliver to the City duplicate copies of as-constructed plans and specifications of the Improvements within sixty (60) days after the date on which Lessee has certified completion thereof. If Lessee fails to provide as-constructed or "as built" drawings, Lessee shall pay to the City all reasonable costs and expenses related to recreating plans and specifications by the City plus an administrative charge of twenty percent (20%) immediately upon demand thereof.
- L. Title to Improvements. Title to the Leased Premises including all new Improvements constructed, installed, or placed in or on the Leased Premises by Lessee (including all alterations, modifications, refurbishments, and enlargements thereof), that are not Removable Fixtures, shall become part of the Leased Premises with title vesting in City upon expiration or earlier termination of this Lease Agreement, unless otherwise agreed to in writing by the City; subject, however, to Lessee's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the Term and in accordance with this Lease Agreement (see Section 302 entitled "Surrender of Possession"). For purposes of this Lease Agreement "Removable Fixtures" shall mean all personal property, trade fixtures, furnishings, equipment and fixtures

installed by the Lessee that are not permanently affixed to any wall, floor or ceiling in the Leased Premise and for purposes of this Lease Agreement shall also include any above ground fuel storage tanks including, without limitation, any connecting piping, tubing, secondary containment structures, facilities or other related structures, equipment or fixtures (see Section 303 entitled “**Removal of Above-Ground Fuel Storage Tank**”). Within one hundred fifty (150) calendar days of the Commencement Date, Lessee shall submit a list of such Removable Fixtures in writing to the Director for the Director’s review and approval, and Lessee shall periodically update such list as necessary or as requested by City.

All Removable Fixtures shall remain the property of Lessee, and shall be removed by Lessee at date of expiration or the early termination of this Lease Agreement unless otherwise agreed to in writing by the City and Lessee. Lessee shall be entitled to remove from the Leased Premises its Removable Fixtures upon the expiration or early termination of this Lease Agreement; provided, however, that if after thirty (30) days following the expiration or early termination of this Lease Agreement, Lessee fails to remove its Removable Fixtures from the Leased Premises, such Removable Fixtures may at the City sole determination be deemed by the City as being abandoned by the Lessee (see Section 302 entitled “Surrender of Possession”), subject to any extension of time hereafter granted in writing by City to Lessee. In addition to whatever other rights are available to the City, with prior notification of Lessee, the City may: (i) remove, sell or store Lessee’s property at Lessee’s expense, or (ii) take title to Lessee’s property in lieu of removal on behalf of Lessee. If the City takes title to such property or otherwise dispose of the property, the City shall be entitled to all proceeds of sale of such Lessee property as liquidated damages for its failure to timely remove its Removable Fixture in accordance with the terms of this Lease Agreement.

Section 602. Minimum Capital Investment. Lessee shall expend a “**Minimum Capital Investment**” of Five Hundred Thousand Dollars (\$500,000) for the construction, refurbishment and improvement of the Leased Premises as outlined on **Exhibit “C”**, which is attached hereto and titled “Construction/Improvement Plan & Schedule”, which costs shall include, without limitation: (i) site refurbishment and improvement costs, (ii) construction costs, (iii) demolition costs, (iv) cost of an above ground fuel storage tank but excluding any other Removable Fixtures, (v) financing costs, and (vi) associated architectural, legal, permit, insurance, construction bonds and engineering fees (“**Construction Costs**”); provided, however, that all such costs may be properly capitalized in accordance with generally accepted accounting principles. Lessee agrees that Three Hundred and Fifty Thousand Dollars (\$350,000) must be spent within eighteen (18) months of the Commencement Date.

Lessee further agrees that an additional One Hundred and Fifty Thousand Dollars (\$150,000) must be spent by the end of the Sixth Contract Year.

Lessee and City acknowledge and agree that the parties may agree to change, modify and/or amend Exhibit C titled “Construction/Improvement Plan & Schedule” administratively in writing without a formal amendment to this Lease Agreement. The Director, on behalf of the City and in the best interest of the City and the traveling public, is hereby authorized to make such changes, modifications, or amendments.

Section 603. Certification of Minimum Capital Investment. Within ten (10) calendar days after the end of the second Contract Year, Lessee shall provide to the Director a Capital Expenditures Report (“**Report**”) detailing the Construction Costs incurred by Lessee for the construction, refurbishment and improvement of the Leased Premises in regard to the Minimum Capital Investment (see Section 602). The Report shall be prepared from records of the Lessee, in accordance with generally accepted accounting principles, and supported appropriate documentation as reasonably requested by the Director. The Report shall be verified by a sworn statement of an authorized officer of the Lessee, including a certification that the Construction Costs were made for the construction, refurbishment and improvement of the Leased Premises. Lessee is encouraged by City to productively expend the Minimum Capital Investment; however, in the event Lessee actual expenditures for Construction Costs expended in the first eighteen months are less than Three Hundred Fifty Thousand Dollars (\$350,000.00), the difference shall be an item of additional payment due and payable to the City within thirty (30) days after receipt of an invoice for such difference from the City (“**18 Month Shortfall**”).

Within one hundred and twenty days of the end of the Sixth Contract Year, Lessee shall provide to the Director a subsequent Report detailing the Construction Costs incurred by Lessee for the construction, refurbishment and improvement of the Leased Premises in regard to the additional One Hundred and Fifty Thousand Dollars (\$150,000) of the Minimum Capital Investment (see Section 602). The Report shall be prepared from records of the Lessee, in accordance with generally accepted accounting principles, and supported appropriate documentation as reasonably requested by the Director. The Report shall be verified by a sworn statement of an authorized officer of the Lessee, including a certification that the Construction Costs were made for the construction, refurbishment and improvement of the Leased Premises. In the event Lessee actual total expenditures for Construction Costs expended by the end of the Sixth Contract Year are less than the Minimum Capital Investment, the difference (less any 18 Month Shortfall previously paid by Tenant to the City) shall be an item of additional payment due and payable to the City within thirty (30) days after receipt of an invoice for such difference from the City.

Section 604. Signs. Lessee shall not, without the prior written approval of the Director erect, maintain or display any signs on the Leased Premises. The term "sign" as used herein, shall mean advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Lessee shall have the right to install such identification signs as may be necessary for the proper conduct of its services as contemplated hereunder. Lessee shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Leased Premises. Prior to the erection, construction or placing of any sign, Lessee shall submit to the Director and the FAA, if applicable, for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions, or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of this Lease Agreement.

Section 605. Installation of Above-Ground Fuel Storage Tank. Consistent with the Airport Rules and Regulations, Environmental Permits, Environmental Laws, and the provisions of this Lease Agreement, Lessee may construct one (1) above-ground storage tank of no more than 20,000 gallons to store jet fuel on the Leased Premises, provided that the City approves the location, materials of construction, operating plan, spill control measures and coordination with all Environmental Permits and Environmental Laws applicable to the City and the Airport. No part of the tank and its associated piping or equipment may be located below the ground surface and no soil may be disturbed or excavated in the construction or maintenance of the tank, piping or containment. Lessee shall provide secondary containment to prevent release of the tank and associated piping and equipment contents to soil, ground water or surface water of sufficient volume to contain the entire capacity of the tank, plus additional capacity to contain accumulated precipitation. Accumulated precipitation shall not be released from the containment unless such accumulated precipitation is not impacted by the tank contents. Lessee shall take all measures specified by American Petroleum Institute standards for construction, design, maintenance and operation of petroleum above-ground storage tanks. The tank shall be operated in full conformance with Environmental Permits and Environmental Laws. Upon lease termination, unless otherwise agreed to and directed by the Director, Lessee shall remove the tank, associated piping and equipment, and secondary containment from the Leased Premises and shall assess the potential that released Hazardous Materials may be present at the Leased Premises from the operation of the tank, piping and equipment (see Section 303 entitled "Removal of Above-Ground Fuel Storage Tanks"). Any assessment plan must be timely submitted to the City for its review and approved by the City. If Hazardous Materials are released from the tank, Lessee shall immediately notify the City and fully contain and clean up such Hazardous Materials to the satisfaction of the City (see Article VII entitled "Compliance with Laws and Regulations").

Section 606. Addition to Building 115. The City hereby agrees that the Lessee may add an addition of up to 3,000 square feet to Building 115, subject to and in accordance with the provisions of this Lease Agreement.

ARTICLE VII COMPLIANCE WITH LAWS AND REGULATIONS

Section 701. Observance and Compliance With Laws

- A. Lessee, its officers, directors, employees, agents, and its contractors and suppliers while such contractors and suppliers are providing services to Lessee, shall comply with:
- i. all applicable federal, state and local laws and ordinances, including directives of the FAA applicable to the Lessee's operation within the Leased Premises and 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.
- Lessee shall make reasonable efforts to cause its passengers, guests, members, and invitees to comply as well.
- B. Upon Lessee's request, the City shall promptly provide a copy of the Rules and Regulations and the Airport certification manual.
- 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, and (ii) all ordinances, regulations, rules, executive orders, policies and instructions pertaining, and lawfully promulgated pursuant, to such statute or law as they now exist or may be amended from time to time.

Section 702. Compliance with Environmental Laws

Lessee warrants, covenants, and agrees that Lessee shall comply with any and all applicable Environmental Laws including any plans,

monitoring, recordkeeping or programs prepared in conformance with Environmental Laws or Environmental Permits. Further, Lessee, on behalf of itself, does hereby covenant, stipulate, represent, and warrant as follows:

A. Environmental Permits.

- I. Lessee shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Lessee engages within the Leased Premises or at the Airport.
- ii. Lessee shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Lessee or Lessee's activities within the Leased Premises or at the Airport, including any plans, monitoring, recordkeeping or programs prepared in conformance with such Environmental Permits or Environmental Laws; provided, however that the City shall adequately give notice to Lessee of applicable Environmental Permits and associated requirements, including all applicable deadlines for compliance set forth in such Environmental Permits.
- iii. The City and Lessee shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit, Environmental Law and any associated requirements to 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, handled or owned by Lessee, its employees, agents, contractors, suppliers, passengers, guests, licensees, or invitees, and which is required by applicable Environmental Laws, Environmental Permits, Rules and Regulations, or any plan or program prepared in response to Environmental Laws or Environmental Permits to be reported by Lessee or by City, whether as a result of negligent conduct or otherwise, at, on, under or about the Leased Premises or the Airport, or any portion thereof, or in the event any written claim, demand, complaint or action is made or taken against Lessee that pertains to Lessee's failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport or which pertains to the release of Hazardous Materials by Lessee at the Airport including the Leased Premises, Lessee shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Lessee is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Leased Premises or the Airport, or any part thereof, Lessee shall simultaneously provide a copy of such notice or report to the City.

C. Environmental Remediation. Lessee shall promptly undertake with all due diligence all necessary steps to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of Lessee or its agents, employees, contractors, licensees, invitees, or suppliers at the Airport including the Leased Premises, whether resulting from negligent conduct or otherwise during the Term of this Lease Agreement ("**Remediation Work**"). Such Remediation Work shall be consistent with remediation standards established by or derived from the appropriate government agency responsible for enforcing Environmental Laws or Environmental Permits at the Airport. Except in the event of an emergency, such Remediation Work shall be performed after Lessee 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, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument or the land title. Specific cleanup levels for any Remediation Work by Lessee shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits or for establishing cleanup levels. 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 Airport users or tenants. Upon reasonable notice, 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 at City's sole expense. Such inspection shall not unreasonably interfere with Lessee's operations. The City shall have sole discretion to determine if it will agree to impose any environmental covenants, deed restrictions or other institutional controls on land owned by the City (see Section 702.J below).

D. Access for Environmental Inspection. Upon reasonable notification to Lessee, the City shall have access, ingress to, and egress from the Leased Premises without charge therefore, as may be reasonable upon the circumstances, and with as little interruption of Lessee's operations as reasonably practical, and upon compliance with Lessee's reasonable security

procedures to inspect the same in order to confirm that Lessee is using the Leased Premises in accordance with the requirements of this Section 702. Lessee shall cooperate fully with any such inspections. If Lessee is not present to permit entry and entry is necessary, the City may, in case of emergency, forcibly enter the Leased Premises without rendering the City liable therefore, except for any damage caused to Lessee's property as a result of such entry or any costs, damages or liabilities arising from the City's negligence or willful misconduct. If the City's inspection results in any type of written report, the City shall provide Lessee a reasonable opportunity to timely review and comment on a draft of the report. Lessee shall provide to City for its review and comment copies of: any and all notices to Lessee of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Lessee responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or 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 Lessee fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport including the Leased Premises, or if Lessee fails to conduct necessary Remediation Work in a timely manner as required under this Lease Agreement including, without limitation, Sections 302 & 702, the City, 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 for which Lessee is responsible under this Lease Agreement and remedy Lessee's non-compliance with this Lease Agreement. All Remediation Costs incurred by the City shall be paid or reimbursed by Lessee as provided for herein. The City shall add the cost of the Remediation Work plus actual administrative costs, to the rent, fees or 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 said rent, fees, or charges. Subsequent to receipt of the City's notice to perform the Remediation Work, the Lessee shall not undertake performance of such Remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, and any other actions taken by the City pursuant to this Section, shall be performed in accordance with the provisions of Subsection 702(C), but only after first having provided notice to Lessee of such failure to comply, and 30 days within which Lessee may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Lessee's compliance reasonably requires more than thirty (30) days to complete, the City may enter the Leased Premises and take such reasonable and necessary measures to achieve compliance only upon Lessee'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, and at City's expense, Lessee shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Lessee has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to Environmental 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, Hazardous Materials releases, or any actual or threatened violations of any applicable 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 termination of this Lease Agreement.
- H. Pollution Control. In addition to all other requirements of this Lease Agreement, Lessee, at its cost, shall manage all its operations at the Airport including the Leased Premises in compliance with all applicable Environmental Laws, Environmental Permits, and with applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and Storm Water Management Plan, which shall be provided to Lessee at Lessee request. Lessee shall prepare and submit its own SWPPP to the Airport Environmental Office within thirty (30) calendar days of the City's written request for the City's review and possible comments.
- I. Spill Prevention Control and Countermeasures ("SPCC") Plan. Lessee shall comply with all applicable Environmental Laws pertaining to the proper storage of any Hazardous Materials including, without limitation, oil or petroleum based products within the Leased Premises. Lessee shall prepare and submit a SPCC Plan to the Airport Environmental Office within thirty (30) calendar days of the City's written request for the City's review and possible comments. The SPCC must comply with the requirements of 40 C.F.R. Part 112, regardless of the quantity of petroleum stored, and provide the same level of protection concerning the proper storage and use of any Hazardous Materials on the Leased Premises as is provided for petroleum or oil in 40 C.F.R. Part 112.
- J. Environmental Covenants. Lessee will not object to and, if requested by the City, will subordinate any rights it has under

this Lease Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Leased Premises or the Airport; (ii) limits the use of the Leased Premises to nonresidential uses; (iii) restricts access to soil underlying the Leased Premises or the Airport; or (iv) any other restriction requested by the City to address the presence of Hazardous Materials at the Leased Premises, regardless of when such Hazardous Materials became present at the Leased Premises, provided that such restriction does not prohibit the Lessee's operations at the Leased Premises.

- K. Investigation and Remediation by the Department of Defense. Lessee is hereby notified that the Leased Premises were formally operated by the MoANG and/or other military agencies of the Government. The Department of Defense is presently in the process of assessing the presence of Hazardous Materials at, on, under or emanating from the Leased Premises as a result of such military operations, such assessment may not be complete, and additional Hazardous Materials may be identified after the Effective Date. Upon reasonable notice, Lessee shall grant full and complete access to the Leased Premises, without charge therefore, to the Department of Defense, the Missouri Department of Natural Resources ("MoDNR"), or any other governmental agencies or departments responsible for enforcing and/or implementing Environmental Laws or Environmental Permits ("Governmental Authority"), and its, or their respective employees, authorized agents, consultants, contractors, and subcontractors, and its, or their equipment, vehicles, and machinery, as may be reasonable under the circumstances, and with as little interruption of Lessee's operations as may be reasonably practical, and upon compliance with Lessee's reasonable security procedures, at such times and locations as designated by the Governmental Authority for the purposes of performing environmental investigations, test, studies, sampling, and removal or remediation activities, as determined by the Governmental Authority, in its sole discretion. Lessee shall cooperate with such Governmental Authority and shall allow such access and shall not interfere with the conduct of the Governmental Authority's investigations, testing, studies, sampling, and removal or remediation activities. Lessee shall take any reasonable measure required by such Governmental Authority to reduce exposure to Hazardous Materials identified by the Governmental Authority, if any. The City makes no warranties or representations of any kind regarding the scope of or conduct of the investigation, removal, studies, sampling, testing, or remediation to be conducted by the Governmental Authority at the Leased Premises, which shall be conducted at the Governmental Authorities' discretion.

Section 703. Existing Environmental Conditions. Notwithstanding anything to the contrary in this Lease Agreement including, without limitation, this Article VII, Lessee shall have no liability for, and no responsibility or obligation to, City, its Board of Aldermen, or the Airport Commission to remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water affected by any Hazardous Materials which: (i) are or were released, discharged, disposed, and/or spilled on, in, under, about, around, or from the Leased Premises by City, its officers, agents, employees, consultants, lessees, sublessees, licensees, independent contractors, lessees, guests, patrons, tenants, and invitees, excluding the Lessee, any of its sublessees, and/or the officers, employees, agents, consultants, contractors, lessees, sublessees, licensees, independent contractors, invitees, assigns, representatives, guests, patrons, and invitees of the Lessee or any of its sublessees; (ii) migrate or move or migrated or moved onto, into, or under the Leased Premises from other property owned or operated by City or any of its tenants (excluding Lessee), or another third-party not affiliated with Lessee, except and to the extent such migration or movement is caused or contributed to by Lessee; or (iii) were present prior to the Commencement Date (collectively, "**Existing Environmental Conditions**"). Lessee acknowledges and agrees that the term "Existing Environmental Conditions" and this Section 703 shall not apply to Hazardous Materials located in, on, within or as a part of the Improvements, and that the City, its Board of Aldermen, and the Airport Commission shall have no responsibility for any costs associated with addressing Hazardous Materials as part of the maintenance, demolition, renovation, or disposal of Improvements; or any part thereof, or the maintenance, removal, abatement, mitigation or remediation of Hazardous Materials located in, or, within or as a part of the Improvements, and that all such cost and expenses, including any costs to comply with Environmental Laws, shall be the responsibility of Lessee.

ARTICLE VIII OPERATIONS

Section 801. Standards of Service. Lessee shall furnish a first class, limited service operation serving the needs of Lessee's members and customers at the Airport, and offer high quality, prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all Lessee's members or customers (but not including the general public or Itinerant Aircraft) and in a manner that will reflect credit upon Lessee and City. Lessee shall provide quality services and products and shall equip, organize, put into service and manage efficiently their aircraft management, storage, servicing, and maintenance and aircraft charter business at the Airport for aircraft it or an Affiliate of the Lessee owns, leases, charters, maintains or manages and the aircraft is utilized in support of its charter business.

Section 802. Hours of Operation. Lessee shall inform the Airport Properties Division of its hours of operation and changes thereto.

Section 803. Pricing. Lessee will charge fair, reasonable and nondiscriminatory prices on a basis substantially similar to the prices charged for similar services at this and other airports serving like users; provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar price reductions to volume purchasers as may be allowed under law.

Lessee represents, warrants and agrees that if the City receives a complaint alleging that the Lessee has or is charging unfair, unreasonable and/or discriminatory prices for services or products provided by the Lessee at the Airport, that the Lessee will, within ten (10) days of written notice from the Director of such complaint, provide the Director without limitation schedules of fees for all services and products offered at the Airport, and any other information or documentation requested by the Director in order to determine whether the Lessee is in compliance with this section's requirements regarding fair, reasonable and nondiscriminatory pricing.

Section 804. Personnel.

- A. Lessee 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 this Lease Agreement. Lessee agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Lessee shall use its best efforts to prohibit and restrain its visitors and employees from objectionable behavior. Upon notice from the Director concerning objectionable conduct or appearance of any persons, Lessee shall immediately take all steps necessary to correct the cause of the objection.
- B. Lessee shall provide staff in adequate numbers to provide a high level of service.

Section 805. Manager. Lessee shall at all times retain one or more qualified, competent and experienced managers who shall manage and supervise the operations and the facilities and represent and act for Lessee. The manager shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 806. Equipment. Lessee shall provide for all equipment in sufficient number necessary to perform its business activity at the Airport.

Section 807. Fueling. Lessee shall have the right to fuel within the Leased Premises the aircraft it or an Affiliate of the Lessee owns, leases, charters, maintain, or manage and the aircraft is utilized in support of its charter business. Lessee, subject to and in accordance with the provisions of this Lease Agreement, shall also have the right to contract with aircraft fuelers that have the contractual right to sell fuel and/or put fuel into aircraft at the Airport. Lessee acknowledges, stipulates and agrees that the Lessee shall not have the right to fuel Itinerant Aircraft and that no Itinerant Aircraft shall be fueled within the Leased Premises.

Section 808. Aircraft Maintenance. Lessee shall have the right to conduct aircraft maintenance on its Leased Premises; provided, however, that aircraft maintenance shall not be performed on Itinerant Aircraft.

Section 809. Transition Period. During any future transition of the Leased Premises to another lessee, if applicable, Lessee does hereby warrant, represent and agree to use its best efforts to assure a smooth transition. Lessee agrees to closely coordinate the planning and execution of the transition with the Director.

Section 810. Communication.

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

Section 811. Separate Agreements. The City reserves the right to require third-party suppliers/operators of materials or furnishers of services doing business at the Airport including the Leased Premises to secure an agreement or 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 including the Leased Premises.

**ARTICLE IX
INSURANCE AND INDEMNIFICATION**

Section 901. Insurance.

- A. *General.* Lessee at all times during the term hereof, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, its officers, agents and employees and Lessee to be insured on an occurrence basis against the risk of claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the acts or omissions of Lessee, its officers, agents, and employees pursuant to this Lease Agreement both on the Leased Premises and the Airport.
- B. *Risks and Minimum Limits of Coverage.* Lessee shall procure and maintain the following policies of insurance:
- i. Commercial General Liability Including Aircraft Liability in an amount not less than \$10 million per occurrence and in aggregate, where applicable. Such coverage shall be single limit liability with no annual aggregate.
 - ii. Automobile Liability Insurance in an amount not less than \$10 million primary (no excess), combined single limit per occurrence for automobiles used by Lessee in the course of its performance hereunder, including Lessee's non-owned and hired autos.
 - iii. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Lessee elects to be self-insured, Lessee shall comply with the applicable requirements of law. Lessee shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Lessee's failure to comply with the provisions of this Subparagraph. The indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Lessee are not employees of the City for any purpose, and that employees of the City are not employees of Lessee.
 - iv. Contents Insurance. Lessee shall be solely responsible for obtaining insurance policies that provide coverage for losses of Lessee owned property.
 - v. Builders Risk Insurance. During any period of construction, alteration, refurbishment, demolition, excavation, installation, renovation, or reconstruction for which Lessee contracts, Lessee shall carry, or shall require its contractors or suppliers 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 Lessee's equipment and personal property). Lessee may elect to self-insure for individual projects with a total cost of \$50,000 or less. In addition, Lessee or its contractor(s) or supplier(s) shall carry not less than \$3 million of commercial general liability (single limit liability with no annual aggregate) and not less than \$3 million of automobile liability insurance coverage (including owned, non-owned and hired vehicles) during the period of construction, alteration, refurbishment, demolition, excavation, installation, renovation, or reconstruction. The policy limits set forth in this subsection shall be per occurrence/aggregate (see Section 601.C).
 - vi. Other Property Coverage. Lessee 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 all Improvements which are existing as of the Effective Date or may be hereafter erected, placed, installed, or constructed on the Leased Premises including, without limitation, any trade fixtures and equipment or Removable Fixtures. Coverage shall be for one hundred percent (100%) of the full replacement value of such Improvements and shall include loss of use coverage. 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 Lessee's equipment, personal property or Removable Fixtures). Such property insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, caused by or resulting from work, acts, operations, or omissions of Lessee or its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees, and contractual liability.
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to do business in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A-," or other insurers or insurance syndicates of similar recognized responsibility.

- i. Form of Policies. The insurance may be in one or more policies of insurance.
 - ii. Non-waiver. Nothing the City does or fails to do shall relieve Lessee from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 - iii. Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, 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 Lessee's indemnification obligations hereunder. Upon City's request, Lessee shall provide City with an endorsement consistent with the requirements of this Subsection. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Lessee in its operations.
 - iv. Deductibles. Lessee 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 Lessee's rights or increase Lessee's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 903 hereof.
 - v. Cancellation. Each policy shall expressly state that it may not be cancelled or materially modified unless the insurance company endeavors to give thirty (30) days advance Notice to the City.
 - vi. Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 - vii. Certification of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 - viii. Liability for Premium. Lessee shall be solely responsible for payment of all insurance premiums required pursuant to this Lease Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Lessee fails to obtain the insurance as required herein or make premium payments, the City may, with written notification, effect such insurance or make such payments on Lessee's behalf and, after notice to Lessee, the City may recover the cost of those payments plus 15% administrative charge, from Lessee.
 - ix. Proof of Insurance. Prior to the Commencement Date of this Lease Agreement and at any time during the term hereof, Lessee shall furnish the City with certificates of insurance. Lessee shall use its best efforts to submit to the City a certificate showing that such insurance coverage has been renewed at least 5 days prior to the expiration of any such policy. If such coverage is canceled or materially modified, Lessee shall, within 15 days after the date of such notice from the insurer of such cancellation or material modification, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Lessee, the City shall have the right to examine Lessee's insurance policies at the Lessee's offices at the Airport.
- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Lessee, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Lease Agreement to cause the insurance requirements set forth herein to be reviewed, at its sole cost, by an insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airport industry as well as that of Lessee, and, based on the written recommendations of such consultant, and in consultation with Lessee, to reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

Section 902. Lessee Actions Affecting Insurance.

Lessee shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Lease Agreement. If such Lessee's act, or failure to

act, causes cancellation of any policy, then Lessee shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Lessee does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Lessee shall immediately remedy such actions and/or pay the increase in premiums, upon notice from the City to do so; but in any event, Lessee will hold the City harmless for any expenses and/or damage resulting from any such action.

Section 903. Indemnification.

- A. Lessee shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the "**Indemnified Parties**" or "**Indemnitees**") 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 Lease Agreement or the Lessee's prior use or occupancy of the Leased Premises, the conduct of Lessee's business, or Lessee's use of its Leased Premises, the Access Area, or other areas or facilities at the Airport by Lessee, its agents, employees, contractors, representatives, or subcontractors, including, but not limited to:
- i) the acts or omissions of Lessee, its agents, employees, contractors, independent contractors, representatives, licensees, or suppliers;
 - ii) Lessee's use or occupancy of the Airport, the Leased Premises, and the Access Area; and
 - iii) any violation by Lessee in the conduct of Lessee's business or its use of its Leased Premises, the Access Area, or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Lease Agreement.

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

- B. Lessee shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Leased Premises, or which arise out of the operations of Lessee or by reason of Lessee's occupancy of its Leased Premises under this Lease Agreement or any prior use or occupancy of the 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 lessee-related receipts. However, Lessee may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Lessee to contest or appeal the same. Lessee 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 Lessee. Lessee shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Leased Premises, the Access Area, or the Airport, by Lessee, its agents, employees, contractors, or suppliers, in conjunction with Lessee's use and/or occupancy of the Leased Premises under this Lease Agreement or any prior use or occupancy of the Leased Premise or its operations at the Airport. Lessee will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Lessee shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Lessee may enter into related to its activities within the Leased Premises or 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 Lease Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Lessee shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment, the Leased Premises, the Access Area,

or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Lessee or its agents, employees, contractors, independent contractors, invitees, licensees, representatives, or suppliers whether resulting from negligent conduct or otherwise.

- E. 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 Lessee's employees, agents, contractors, independent contractors, invitees, licensees, representatives, or suppliers, and such incursion or breach results in a civil penalty action against the City, Lessee shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.
- F. Lessee's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Lessee of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Lessee hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Lessee with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Lessee.
- H. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Lessee is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the City harmless, the City shall promptly notify Lessee of such claim and, if Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim both on behalf of Lessee and on behalf of the City, at Lessee's expense; provided, however, that Lessee shall immediately notify City if a conflict between the interests of Lessee and City arises during the course of such representation. Lessee shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder. The provisions of this Section shall survive the expiration or early termination of this Lease Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Lessee in accordance with this Section. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.
- I. The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.
- J. Notwithstanding the provisions of this Section, Lessee shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than 10% liable due to contributory negligence.
- K. This Section shall survive the expiration or early termination of this Lease Agreement. Lessee understands and agrees that any insurance protection furnished by Lessee pursuant to this Article IX shall in no way limit Lessee's responsibility to indemnify and hold harmless the City under the provisions of this Lease Agreement.

Section 904. City Not Liable.

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

- A. any acts or omissions of Lessee, its officers, directors, employees, agents, contractors, independent contractors, licensees, representatives, or suppliers, or for any conditions resulting from the operations or activities of Lessee's directors, officers,

- employees, agents, contractors, independent contractors, licensees, representatives, or suppliers;
- B. Lessee's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. any environmental conditions in existence at the Airport, or any part thereof, which condition may interfere with Lessee's business or other operations or activities, or which might otherwise cause damages to Lessee through loss of business, destruction of property, or injury to Lessee, its officers, directors, employees, agents, contractors, suppliers, 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 X ASSIGNMENT AND SUBLETTING

Section 1001. Assignment. Lessee shall not assign, transfer, convey, sell, mortgage, pledge, or encumber (collectively "**Assign or Assignment**") this Lease Agreement or any portions thereof without first obtaining the written approval of the City, which Assignment may be approved, conditioned, or denied by the City in its sole discretion.

Section 1002. Collateral Assignments. Subject to the prior written approval of the Director, which shall not be unreasonably withheld, and notwithstanding the provisions of Section 1001 above, Lessee may Assign, mortgage or otherwise pledge all or any portion of its rights, title or interest in the Leased Premises pursuant to this Lease Agreement, or any of its other rights under this Lease Agreement, as collateral to secure Lessee's payment of a debt or performance of any other obligation of Lessee, but only as provided herein:

- A. An agreement pursuant to which Lessee pledges, Assigns or grants an interest in its rights under this Lease Agreement as collateral for the payment of a debt or performance of some other obligation of Lessee must take the form of a leasehold mortgage ("**Leasehold Mortgage**"), which may not extend beyond the Term of this Lease Agreement.
- B. Lessee may only grant a Leasehold Mortgage to secure the repayment of a loan, 100% of the proceeds of which i) Lessee (or an approved Assignee) uses to finance the construction of new improvements or the purchase of fixtures and equipment to be installed or placed on the Leased Premises or ii) an approved Assignee uses to purchase the leasehold estate of the Lessee hereunder.
- C. In the Leasehold Mortgage, the mortgagee ("**Leasehold Mortgagee**") must expressly acknowledge, for the benefit of the City, that the Leasehold Mortgagee is acquiring no right, title or interest in the City's fee title to the Leased Premises and that the Leasehold Mortgagee's rights in and to any new improvements, fixtures or equipment are, at all times, subject to the terms and conditions of this Lease Agreement.
- D. Lessee must execute and record a memorandum of this Lease Agreement in the appropriate county land records, and Lessee must record the Leasehold Mortgage in the appropriate county land records.
- E. If Lessee grants a Leasehold Mortgage satisfying the requirements of this Section 1002, the City agrees to execute a subordination agreement with the Leasehold Mortgagee pursuant to which the City subordinates any statutory or common law lien that the City may have on the personal property of Lessee or on the new improvements. The Director on behalf of the City and in its best interest is hereby authorized to execute such a subordination agreement that is in accordance with this Section 1002. The City will not subordinate its fee interest in the Leased Premises, its interest under this Lease Agreement, or any rights which the City may have to the Improvements upon the expiration or early termination of this Lease Agreement. In the Leasehold Mortgage, the Leasehold Mortgagee must expressly acknowledge and agree that notwithstanding any other provision of the mortgage or related loan documents, the Leasehold Mortgagee will permit the Lessee to retain sufficient insurance proceeds available as a result of any damage to or destruction of the Improvements, fixtures, equipment, or Removable Fixtures located on the Leased Premises to permit Lessee to fully perform its obligations under this Lease Agreement.
- F. At the time that the City gives Lessee written notice of the occurrence of an Event of Default, the City shall simultaneously give the Leasehold Mortgagee a copy of that notice in a manner established for the delivery of notices hereunder at the

- address for the Leasehold Mortgagee provided to the City by Lessee. No notice of default to Lessee will be effective until the City delivers the notice required by this subparagraph.
- G. The Leasehold Mortgagee may rectify an Event of Default on Lessee's part, but shall have no obligation to do so. The City will accept the Leasehold Mortgagee's performance of any of Lessee's obligations to the same extent as though the Lessee has performed. The City may exercise a remedy available to it by reason of an Event of Default on Lessee's part only if Lessee and the Leasehold Mortgagee fail to rectify such an Event of Default within (a) any time period specifically set forth in this Lease Agreement for a cure of a particular default; or (b) if no such time period is set forth, then within thirty (30) days after the date of the delivery of the notice required by virtue of Section 1002.F above; or (c) if such failure cannot with due diligence be cured within such thirty (30) day period, corrective action is timely instituted by Lessee or Leasehold Mortgagee within such thirty (30) day period and diligently and in good faith continuously pursued until the failure is properly corrected.
- H. Even though an Event of Default has occurred and neither the Lessee nor the Leasehold Mortgagee has provided for a cure within the times permitted by this Lease Agreement, the City will not terminate the Lease for a reasonable period of time, not to exceed two (2) years, from the date of the notice required by Section 1002.F above, if the Leasehold Mortgagee is then making: (I) prompt, diligent and continuous efforts to gain possession of the Leased Premises and to succeed to Lessee's interest in the Leased Premises by means of a foreclosure or the exercise of any other remedy available to the Leasehold Mortgagee by virtue of Lessee's default in respect of any of its obligations under the terms of the Leasehold Mortgage; provided that Leasehold Mortgagee avails itself of any such remedy, including commencing a foreclosure action, within ninety (90) days from the date of the City's notice required by Section 1002.F above; together with (ii) the payment to the City of all rent and fees due hereunder with respect to which Lessee becomes delinquent; and (iii) good faith efforts to rectify any other Events of Default contemporaneously with the efforts to gain possession of the Leased Premises.
- I. Upon the early termination of this Lease Agreement in bankruptcy, or otherwise, the Leasehold Mortgagee may request the City to approve an Assignment to a successor lessee meeting the criteria of this subparagraph (a "**Successor Lessee**"). In order for the City to be obligated to approve an Assignment in accordance with this subparagraph, the Leasehold Mortgagee must: (i) upon the date of the early termination of this Lease Agreement give written notice to the City that the Leasehold Mortgagee will request the approval of a Successor Lessee in accordance with Section 1004 below; and (ii) no later than sixty (60) days thereafter, timely request in writing that the City Assign this Lease Agreement to a Successor Lessee, which shall then be identified by the Leasehold Mortgagee; provided, however, that such a Successor Lessee must be reasonably acceptable to the City in terms of, but not limited to, experience, qualifications, technical competence (relative to comparable activities at other airports with leaseholds containing airfield access), and financial and administrative capacity. Simultaneously with Leasehold Mortgagee's request for this Lease Agreement to be assigned to a Successor Lessee, the Successor Lessee must also execute and deliver to the City a written plan to rectify within a reasonable period of time any default that exists at that time in respect of any of Lessee's obligations under the terms of this Lease Agreement. The provision of this subparagraph shall survive the early termination, or rejection or disaffirmance of this Lease Agreement by Lessee, and will continue in full force and effect thereafter for a period of sixty (60) days from such early termination, rejection or disaffirmance to the same extent as if this subparagraph were a separate and independent contract made by the City, Lessee, and the Leasehold Mortgagee. It being understood and agreed that the Assignment of this Lease Agreement to a Successor Lessee must be approved by the City's Airport Commission and its Board of Estimate and Apportionment and authorized by a City ordinance approved by the City's Board of Aldermen in accordance with City Ordinance 63687. The City agrees that the Leasehold Mortgagee shall be a third-party beneficiary to the terms of this Lease Agreement, but only to the extent required to fulfil the requirements of this Section 1002.
- J. Subject to and in accordance with the terms, covenants, and conditions of this Lease Agreement, the Leasehold Mortgagee will have the right to participate in the adjustment of any insured losses that become necessary by reason of damage or destruction occurring to Improvements, and the right to supervise and control the receipt and disbursement of insurance proceeds to the extent provided in agreements among Lessee, Leasehold Mortgagee, and any sublessees; provided, however, that any distribution of insurance proceeds must strictly comply with the requirements of this Lease Agreement.
- K. If a taking of any part of the Leased Premises occurs, the Leasehold Mortgagee subject to and in accordance with the terms, covenants, and conditions of this Lease Agreement will have the right to participate in any condemnation proceedings or settlement discussions pertaining to the Lessee's interests hereunder and the right to supervise and control the receipt and disbursement of all condemnation awards arising from such interests to the extent provided in agreements between or among the City, Lessee or Successor Lessee (if any), Leasehold Mortgagee, and any sublessees.
- L. The City will have no right, and expressly waives any right arising under applicable law, in and to the rentals that will become due to Lessee from any sublessee as long as Lessee's payments to the City are current and not delinquent; Lessee

may Assign those rentals to the Leasehold Mortgagee without any consent or approval of the City. Nothing in this subparagraph shall alter the City's ownership of any Improvements as provided herein.

- M. Upon written request from time to time by Lessee, a Leasehold Mortgagee, a prospective Leasehold Mortgagee, or a prospective Successor Lessee, the City shall execute and deliver to the requesting party an estoppel certificate in the form reasonably requested by the requesting party. In each such certificate, the City shall certify, to the extent that it then has knowledge: (i) the amount of the monthly rents and fees that Lessee is then obligated to pay under the terms of this Lease Agreement and the date through which Lessee has paid those rents and fees, (ii) that this Lease is in full force and effect, (iii) the specific nature of any Event of Default that the City knows to exist in respect of either party's performance of its respective obligations under the terms of this Lease Agreement, and (iv) the specific nature of any defence or offset that the City may assert in connection with any effort on Lessee's part to enforce any of the obligations the City undertakes under the terms of this Lease Agreement. The Director in the best interest of the City is hereby authorized to execute and deliver said estoppel certificates on behalf of the City.
- N. City acknowledges that without the Leasehold Mortgagee's prior written consent, Lessee may not: (1) be bound by an amendment to this Lease Agreement, (2) exercise any right available to it under the terms of this Lease Agreement or at law to cancel this Lease Agreement, or (3) voluntarily surrender possession of the Leased Premises to the City. City further acknowledges that the Leasehold Mortgagee may not be bound by any amendment, cancellation or surrender that occurs in contravention of the foregoing provisions of this subparagraph.

Section 1003. Subleases. Any sublease for space or granting of rights acquired hereunder shall be subject to the review and prior written approval of Director, which approval shall not be unreasonably conditioned or denied. At least sixty (60) days prior to any contemplated sublease of all or any part of the Leased Premises, Lessee must submit in writing a request to the Director. Such a request shall include a copy of the proposed sublease. No sublease shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved sublease agreement as provided for above. All subleases shall, at a minimum, include provisions: (i) requiring strict compliance with all applicable provisions of this Lease Agreement; (ii) that the sublessee will use the facilities solely for the purposes identified in this Lease Agreement; (iii) that all terms of the sublease are subject to and subordinate to the provisions of this Lease Agreement; and (iv) that the term of the sublease shall expire immediately at the expiration or early termination of this Lease Agreement. Lessee shall be responsible for the performance of its sublessees and shall initiate and take all corrective action immediately should a sublessee fail to strictly comply with its sublease or any applicable provision of this Lease Agreement.

Section 1004. Request for Consent. If Lessee fails to obtain advance approval from the City for any Assignment or sublease, the City, in addition to the rights and remedies set forth elsewhere in this Lease Agreement and by law, shall have the right, in its sole discretion, to hold Lessee responsible for continued performance of its obligations throughout the Term, or to immediately terminate this Lease Agreement, and the assignee or sublessee shall acquire no interest or any rights to use the Leased Premises.

ARTICLE XI DEFAULT AND TERMINATION

Section 1101. Events of Default. Each of the following constitutes an “**Event of Default**” under this Lease Agreement if Lessee fails (unless otherwise expressly addressed in this Section 1101) for a period of thirty (30) days after written notice specifying such default by the City to cure such default; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such thirty (30) day period, shall not give rise to an Event of Default if corrective action is instituted by Lessee within such thirty (30) day period and diligently pursued until the failure is corrected (“**Cure Period**”):

- A. Lessee fails to punctually pay when due any Initial Rent, Adjusted Rent, or any other fee, charge or money payments required to be paid hereunder.
- B. Lessee fails or refuses to keep, perform and observe any promise, term, covenant, warranty, conditions, or other provision of this Lease Agreement, not otherwise expressly addressed in this Section 1101.
- C. Lessee fails to seek approval or consent from the City or Director whenever such approval or consent is required by this Lease Agreement.
- D. Any representation or warranty of a material fact made by Lessee in its dealings with the City, or in any certificate, affidavit, statement or report 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 at the time of the City's notice or an Event of Default.

- E. Lessee becomes insolvent (as such term is defined under Section 101 of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the “**Bankruptcy Code**”) or any successor statute thereto) and takes the benefit of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors. There shall be no Cure Period for this default.
- F. Lessee files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof, or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Lessee under any chapter of the Bankruptcy Code. There shall be no Cure Period for this default.
- G. Lessee is adjudged a debtor or bankrupt and/or an order is made approving a petition filed by any of Lessee’s creditors or stockholders seeking Lessee’s liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within 60 days of its issuance.
- H. A petition under any chapter of the Bankruptcy Code or an action under any federal or state insolvency law or statute, or an action under any insolvency law or statute of another country is filed against Lessee and is not dismissed or stayed within 60 days after the filing thereof.
- I. By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Lessee and such possession or control continues in effect for a period of 60 days.
- J. Lessee becomes an entity in dissolution.
- K. The letting, license, or other interest of or rights of Lessee hereunder is transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in Section 1001.E - J.
- L. Lessee fails to pay when due any taxes or assessments relating to its operation or its employees; provided, however, that any such failure shall not give rise to the City’s right to terminate this Lease Agreement if Lessee is actively prosecuting or defending a related claim or suit in a court of competent jurisdiction or by appropriate government administrative procedure or by arbitration or mediation conducted by a recognized alternative dispute resolution organization.
- M. Lessee enters into an assignment or sublease which is not approved by the City in accordance with the provisions of Article X, and, if a sublease, it is not terminated within 10 days after notice by the City.

Section 1102. Termination by the City. Whenever an Event of Default has occurred, the City may, immediately and without further notification of such Event of Default, except as provided for in Section 1001, terminate this Lease Agreement and/or Lessee’s rights granted hereby. The remedies set forth herein shall be in addition, and not concurrent, to all other remedies that 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 Lessee hereunder. In no event shall this Lease Agreement or any rights or privileges hereunder be an asset of Lessee under any bankruptcy, insolvency, or reorganization proceeding.

Section 1103. Termination by Lessee. At any time that Lessee is neither in default nor has committed an Event of Default hereunder, Lessee may terminate this Lease Agreement by giving the City 30 days’ advance notice upon or after the happening, and during the continuance of any failure by the City to keep, perform and observe any material promise, covenant, or other provision of this Lease Agreement for a period of 30 days after notice, specifying such failure and requesting that it be remedied, is given to the City by Lessee; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, shall not give rise to Lessee’s right to terminate this Lease Agreement if corrective action is instituted by the City within such 30 day period and diligently pursued until the failure is corrected.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Lessee specified in this Article XI 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 right that either party may have at law or in equity.

**ARTICLE XII
MISCELLANEOUS PROVISIONS**

Section 1201. Notice. Except as otherwise expressly provided in this Lease Agreement, all notices, including notifications, requests, authorizations, approvals, demands, and consents provided for hereunder shall be in writing and shall be delivered personally, or shall be sent by overnight mail with receipt, or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, and, shall be addressed to the parties at the respective addresses set forth below. A party may change its address for receipt of notice by service of notice of such change in accordance herewith. Notice shall be deemed made, given, or received as follows: (i) if delivered by personal service, when delivered to the addressee; (ii) if by overnight mail, the next business day; and (iii) if by certified mail, three days after being deposited in the mails, postage prepaid and properly addressed.

If to the City:

Director of Airports,
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
10701 Lambert International Blvd.
St. Louis, Missouri 63145

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

If to the Lessee:

James F. Mauze, Jr.
Jet Linx St. Louis, LLC
112 S. Hanley Rd., 2nd Floor
St. Louis, Missouri 63105

With a copy to:

Daniel Wofsey
Armstrong Teasdale LLP
7700Forsyth Blvd., #1800
St. Louis, Missouri 63105

Section 1202. Condemnation.

- A. Total Take - If the whole of the Leased Premises should be taken by the exercise of the power of eminent domain by any public entity, including the City, this Lease Agreement shall terminate as of the date of vesting of title in the condemning authority.
- B. Partial Take - If less than the whole of the Leased Premises, including any Improvements, should be taken by the exercise of the power of eminent domain by any public entity, including the City, then this Lease Agreement shall terminate only as to that portion of the Leased Premises so taken as of the date of the vesting in the condemning authority of title to such portion, but this Lease Agreement shall remain in full force and effect with respect to that portion of the Leased Premises not so taken, provided that the Director and the Lessee, after good faith discussions, determine that the remainder of the Leased Premises may be feasibly used for the purposes contemplated by this Lease Agreement. After a partial condemnation of the Leased Premises, the Initial Rent or Adjusted Rent, as applicable, shall be adjusted pro tanto.
- C. Possession by Lessee - Notwithstanding any termination of this Lease Agreement in whole or in part under Paragraphs A and B of this Section 1202, Lessee may remain in possession of each portion of the Leased Premises as shall be so taken at the applicable rent herein provided, until the condemning authority shall require Lessee to surrender such possession. Any rent or charge in the nature of rent which Lessee is required to pay to the condemning authority in consideration of such remaining in possession shall be paid by Lessee and shall reduce pro tanto the obligation of Lessee to payment hereunder.
- D. Whether all or a portion of the Leased Premises should be taken in a condemnation proceeding, Lessee shall be entitled to receive from the City that portion of the condemnation award allocable to the then-remaining value, calculated in accordance with Missouri condemnation law, of any new Improvements made or installed by Lessee (taking into account the value of the City's ownership interest in such new Improvements at the expiration of this Lease Agreement in

accordance with Section 601.J), as well as the value of Lessee's leasehold interest in the Leased Premises.

Section 1203. NonDiscrimination and Affirmative Action Program.

- A. Lessee hereto understands and agrees that the City in operation and use of the Airport will not discriminate or permit discrimination against any person or group of persons on the grounds of race, creed, color, religion, sex, age, disability, national origin or ancestry, in a manner prohibited by 49 C.F.R. Part 21. Lessee shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws. Lessee hereby agrees that its Leased Premises shall be posted to such effect as required by such regulation.
- B. Lessee agrees that in performing under this Lease Agreement, neither it nor anyone under its control including, without limitation, any sublessee, shall permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, age, disability, national origin or ancestry. Lessee shall take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, disability, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- C. Lessee shall state in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Lessee, and shall cause such solicitations, advertisement or publications made by any sublessees to state, that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, disability, national origin or ancestry. All advertisements or solicitations for applicants for employment shall contain the phrase "An Equal Opportunity Employer." Lessee shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Lessee agrees that should it be determined by Lessee or the City that Lessee will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the Revised Code of the City of St. Louis, Lessee shall notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency within ten (10) days of such determination, as to the steps to be taken by Lessee to achieve the provisions of its program.
- E. Lessee shall permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining Lessee's or sublessees, if any, compliance with fair employment practices.
- F. Paragraphs B through E of this Section 1203 covering discrimination and equal opportunity practices in all matters of employment and training for employment shall be incorporated by Lessee in all subleases, contracts or agreements it enters into with sublessees, suppliers, of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Lease Agreement.
- G. Whenever Lessee is sued by a Sublessee, tenant, subcontractor, vendor, individual, group or association as a result of compliance with the paragraphs (A through F) of these provisions relating to fair employment practices, Lessee shall notify the City in writing of such suit or threatened suit within ten (10) business days.
- H. In event of Lessee's or its sublessees', if any, noncompliance with nondiscrimination clauses of this Lease Agreement, or to furnish information or permit Lessee's books, records and account to be inspected within twenty (20) days from date requested, this Lease Agreement may be terminated or suspended, in whole or in part subject to Article XI above, and Lessee may be declared ineligible for further City contracts for a period of one year by option of the City; provided that if this Lease Agreement is terminated or suspended for failure to comply with fair employment practices, Lessee shall have no claims for any damages or loss of any kind whatsoever against the City.
- I. Lessee will establish and maintain for the Term of this Lease Agreement, and shall cause any sublessees to establish and maintain, an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and the City reserves the right to take such action as the City and the U.S. Government may direct to enforce the above covenants.
- J. Lessee assures that it shall undertake an affirmative action program as required by 14 C.F.R. 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 C.F.R. Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sublessees, if any, 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 C.F.R. Part 152, Subpart E, to the same effect.

Section 1204. No Personal Liability. No Alderman of the City, Commissioner of the Airport Commission, Director, officer, board member, employee or other agent of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease Agreement or because of any breach hereof or because of its or their execution of the Lease Agreement. Any administrative complaint brought against the City relating to any aspect of this Lease Agreement shall be brought against the City and not against named individual respondents.

Section 1205. Force Majeure. 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 Lessee hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Lessee to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended or shall be construed to abate, postpone or in any respect diminish Lessee's obligations to make any payments due to the City pursuant to this Lease Agreement.

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 1206. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions, warranties, and considerations of this Lease Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto. This provision shall not constitute a waiver of any conditions regarding assignment or subletting contained in this Lease Agreement.

Section 1207. Quiet Enjoyment. Upon payment of all amounts due hereunder and performance of the covenants and agreements on the part of Lessee to be performed hereunder, the City shall not act or fail to act, except as otherwise provided by this Lease Agreement, in a manner that will prevent Lessee from peaceably having and, in accordance with the terms hereof, enjoying the quiet and peaceful possession of the Leased Premises.

Section 1208. Title to the Lease Premises. The Leased Premises from the date hereof until the expiration or early termination of this Lease 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 letting thereof by the City as herein provided for the full term provided in this Lease Agreement.

Section 1209. Subordination to Agreements with the United States. This Lease Agreement is subject and subordinate to any existing or future agreements between the City and the United States of America 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 and use Passenger Facility Charges (14 C.F.R. Part 158) ("PFCs") for the improvement or development of the Airport. Neither Lessee nor any sublessee shall cause the City to violate any assurances made by the City to the United States of America in connection with the granting of federal funds or the approval of such PFCs.

This Lease Agreement is also 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 Lease Agreement inconsistent with the operation of the Airport by the United States of America.

Section 1210. Modifications to Maintain Federal Compliance. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement, development, or expansion of the Airport, modifications or changes to this Lease Agreement or determines this Lease Agreement to be inconsistent with City's grant assurances, current or future, Lessee agrees to consent to such reasonable amendments, modifications, or changes to this Lease Agreement as may be reasonably required to enable the City to obtain said funds or comply with the City's grant assurances.

Section 1211. Governing Law/Compliance/Venue. This Lease Agreement shall be deemed to have been made in, and be

construed in accordance with the laws of the State of Missouri and is subject to the City's Charter laws and ordinances, as may be amended from time to time. The parties shall perform and comply in all material respects with laws, rules, orders, ordinances, regulations, Environmental Laws, Environmental Permits, decrees, judgments and requirements now or hereafter enacted or promulgated which are applicable to the Leased Premises. It is agreed by the parties hereto that any action at law, suit in equity, claim, demand or other judicial proceeding to enforce or construe this Lease Agreement, or regarding its alleged breach, shall be instituted only in a federal or state court in the City of St. Louis, Missouri. Lessee and the City hereby admit and consent to the jurisdiction and venue of such courts. The provisions of this section shall survive the expiration or termination of this Lease Agreement

Section 1212. Headings. The headings of the Articles and Sections of this Lease Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Lease Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1213. Amendments. Except as expressly provided for herein, this Lease Agreement may only be amended by a written agreement, duly authorized and executed by all the signatories to this Lease Agreement. It being understood that any amendment to this Lease Agreement must be approved by the City's Airport Commission and its Board of Estimate and Apportionment and authorized by a City ordinance approved by the City's Board of Aldermen.

Section 1214. Previous Agreements. It is expressly understood by the Parties that the provisions of this Lease Agreement shall in no way affect or impair the terms, covenants, conditions, or obligations of any other existing or prior agreement between the Lessee and the City.

Section 1215. Withholding Required Approvals. Unless otherwise expressly provided for herein, whenever the approval of the City, or Director, or of Lessee is required herein, no such approval shall be unreasonably requested, delayed, or withheld. The parties hereto shall cooperate with each other in all aspects and use best efforts to reach consensus and expedite any reviews.

Section 1216. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. No waiver shall be binding unless executed in writing by the party granting the waiver.

Section 1217. Invalid Provisions. If any covenant, conditions, or provision in this Lease 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 Lease 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 Lessee in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Lease Agreement.

Section 1218. Americans with Disabilities Act ("ADA"). Lessee shall be responsible for compliance with the ADA, and any other federal, state, or local laws or City Ordinances or regulations pertaining to the disabled individual having access to the Leased Premises.

Section 1219. Advertising. Neither Lessee nor any sublessee shall have the right to use trademarks, symbols, trade names or name of the Airport or the City, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1220. Time is of the Essence. The parties hereto expressly agree that time is of the essence in this Lease 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 1221. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Lease Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Lease Agreement. As such, the terms of this Lease 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 Lease Agreement or any amendments, modifications or exhibits thereto.

Section 1222. Entire Agreement. The terms, covenants, warranties, conditions, and provisions of this Lease Agreement are

intended by the parties as a final expression of their agreement with respect to said provision as are included in this Lease Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Lease Agreement, together with all exhibits attached hereto and all documents incorporated herein by reference, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein. Except as expressly provided for in this Lease Agreement, this Lease Agreement may be amended only by written agreement duly authorized and executed by all the signatories to this Lease Agreement.

Section 1223. Required Approvals. When the consent, approval, waiver, certification, or extension in time of performance of other party is required under the terms of this Lease Agreement, unless otherwise expressly stated herein (an “**Approval**”), the Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director is required, the Approval must be from the Director, which action the Director may take subject to applicable laws, regulations and ordinances of the City, and in the best interest of the City and the traveling public. Whenever the Approval of Lessee is required, the Approval must be from James Mauze or his authorized or designated representative.

Section 1224. Memorandum of Lease. The City and Lessee agree at the request of either party to execute a memorandum of this Lease Agreement in a recordable form for the sole purpose of giving notice of this Lease Agreement. The Director, on behalf of the City and in its best interest, is hereby authorized to enter into, execute and deliver said memorandum of lease.

Section 1225. Binding Contract; Counterparts. This Lease Agreement shall become effective and binding only upon the execution and delivery hereof by the City and Lessee. Lessee acknowledges and agrees that this Lease Agreement is contingent upon the approval of the City Board of Estimate and Apportionment and must be authorized by the City’s Board of Aldermen. This Lease Agreement and any companion document or instruments referred to herein, may be executed in any number of counterparts, each of which shall be original, but all of which together shall constitute one document or instrument.

Section 1226. Exhibits and Attachments. All exhibits attached hereto or described and expressly incorporated herein are fully incorporated into this Lease Agreement by this reference as if fully set out herein. The City and Lessee shall reasonably and in good faith finalize and attach all such exhibits and attachments to this Lease Agreement, which may not have been in final form as of the Effective Date.

Section 127. Prevailing Wage. Lessee and any sublessees shall comply with the applicable provisions of the City’s Prevailing Wage Law in accordance with and subject to City Ordinance No. 62124, as a condition of this Lease Agreement.

Section 1228. Right to Audit.

- A. The Lessee “records” shall be open to inspection and subject to audit and/or reproduction during normal working hours (upon not less than five (5) business days prior notice) and kept within the greater St. Louis metropolitan area. A City representative may perform such audits or an outside representative engaged by the City. The City or its designee may conduct such audits or inspections throughout the term of this Lease Agreement, and for a period of five (5) years after the early termination or the expiration of the Lease Agreement, or longer if required by law.
- B. The Lessee’s “**records**” as referred to in this Lease Agreement shall include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, communities, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City’s reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Lease Agreement.
- C. If the result of an audit(s) reveals a discrepancy of more than five percent (5%) between the Landing Fees or other payments, rents or charges payable by Lessee and Landing Fees or other payments, rents, or charges determined by the audit, the cost of the audit shall be borne by the Lessee.
- D. If as a result of an audit by the City or any other entity, Lessee is required to restate Landing Fees or any other payments, rents or charges payable to the City under this Lease Agreement; Lessee will, within thirty (30) days of finalization of the audit, report the change to the City. If the change in Landing Fees or other payments rents or charges results in Lessee owing additional fees, Lessee will, within thirty (30) days remit to the City the additional fees.

Section 1229. Survival of Warranties. All warranties and covenants set forth in this Lease Agreement shall survive the execution and performance of this Lease Agreement.

EXHIBIT "A"

DESCRIPTION OF LEASED PREMISES

LEASE AREA A

A tract of land being part of U.S. Survey 1993, Township 46 North, Range 6 East, St. Louis County Missouri, said tract being more particularly described as follows:

Commencing at the Southeast corner of Lot 1 of Natural Bridge Acres, as per plat recorded in Plat Book 15 Page 26 of the St. Louis County Recorder's Office, thence in a Northwestwardly direction North 65 degrees 02 minutes 38 seconds East 311.63 feet more or less to the Southeastern corner of a fence around the area used by American Airlines for parking, said point being the ACTUAL POINT of BEGINNING of the description herein; thence along said fence South 53 degrees 37 minutes 44 seconds West 94.33 feet to a point, thence leaving said fence line; South 35 degrees 25 minutes 51 seconds East 8.81 feet to a point of curve to the left, whose radius point bears North 53 degrees 37 minutes 44 seconds East 20.00 feet from the last described point, thence along the arc of said curve 22.51 feet to a point being on the asphalt for the West bound lines of the road known as Lambert International Blvd. thence along said asphalt line, South 63 degrees 01 minutes 17 seconds West 59.99 feet to a point of curve to the left, whose radius point bears North 41 degrees 30 minutes 25 seconds West 20.00 feet from the last described point, thence leaving said asphalt line along the arc of said curve 29.81 feet to the point of tangent, thence North 36 degrees 54 minutes 58 seconds West 25.78 feet, thence North 53 degrees 37 minutes 44 seconds East 67.96 feet to a point of curve to the left, whose radius point bears North 36 degrees 22 minutes 16 seconds West 16.00 feet from the last described point, thence along the arc of said curve, 24.93 feet to the point of tangent, thence North 35 degrees 39 minutes 09 seconds West 111.11 feet to a point, thence North 54 degrees 47 minutes 57 seconds East 40.51 feet to a point being in an existing fence line; thence along said fence line South 36 degrees 50 minutes 42 seconds East 20.01 feet, and South 35 degrees 39 minutes 09 seconds East 134.71 feet to the point of beginning and containing 9,670 Square Feet as per calculations by Doering Engineering during December 2012, this description is based upon field locations of the existing fences in the area, no boundary survey work was done for this description, bearings are base upon State Plane Coordinates, but the tie to the subdivision is calculated only and to be used for reference only.

LEASE AREA B

A tract of land being part of U.S. Survey 1993, Township 46 North, Range 6 East, St. Louis County Missouri, said tract being more particularly described as follows:

Commencing at the Southeast corner of Lot 1 of Natural Bridge Acres, as per plat recorded in Plat Book 15 Page 26 of the St. Louis County Recorder's Office, thence in a Northwestwardly direction North 65 degrees 02 minutes 38 seconds East 311.63 feet more or less to the Southeastern corner of a fence around the area used by American Airlines for parking, thence along the existing fence North 35 degrees 39 minutes 09 seconds West 134.71 feet to the ACTUAL POINT of BEGINNING of the description herein: thence continuing along said fence line the following courses and distances North 36 degrees 50 minutes 42 seconds West 10.00 feet, thence North 35 degrees 09 minutes 12 seconds West 71.67 feet, North 13 degrees 12 minutes 02 seconds East 2.56 feet, North 35 degrees 52 minutes 41 seconds West 22.37 feet, North 35 degrees 35 minutes 22 seconds West 22.64 feet, North 35 degrees 25 minutes 05 seconds West 103.49 feet, North 04 degrees 27 minutes 24 seconds West 29.34 feet and North 54 degrees 07 minutes 52 seconds East 57.66 feet, thence leaving said fence line, North 85 degrees 24 minutes 51 seconds East 25.67 feet, thence North 21 degrees 56 minutes 16 seconds East 60.12 feet, thence South 67 degrees 58 minutes 29 seconds East 277.18 feet, thence South 21 degrees 54 minutes 55 seconds West 174.33 feet, thence North 68 degrees 02 minutes 33 seconds West 36.19 feet and South 54 degrees 47 minutes 57 seconds West 129.57 feet to the actual point of beginning and containing 65,145 Square feet or 1.496 Acres as per calculations by Doering Engineering during December 2012, this description is based upon field locations of the existing fences in the area, no boundary survey work was done for this description, bearings are base upon State Plane Coordinates, but the tie to the subdivision is calculated only and to be used for reference only.

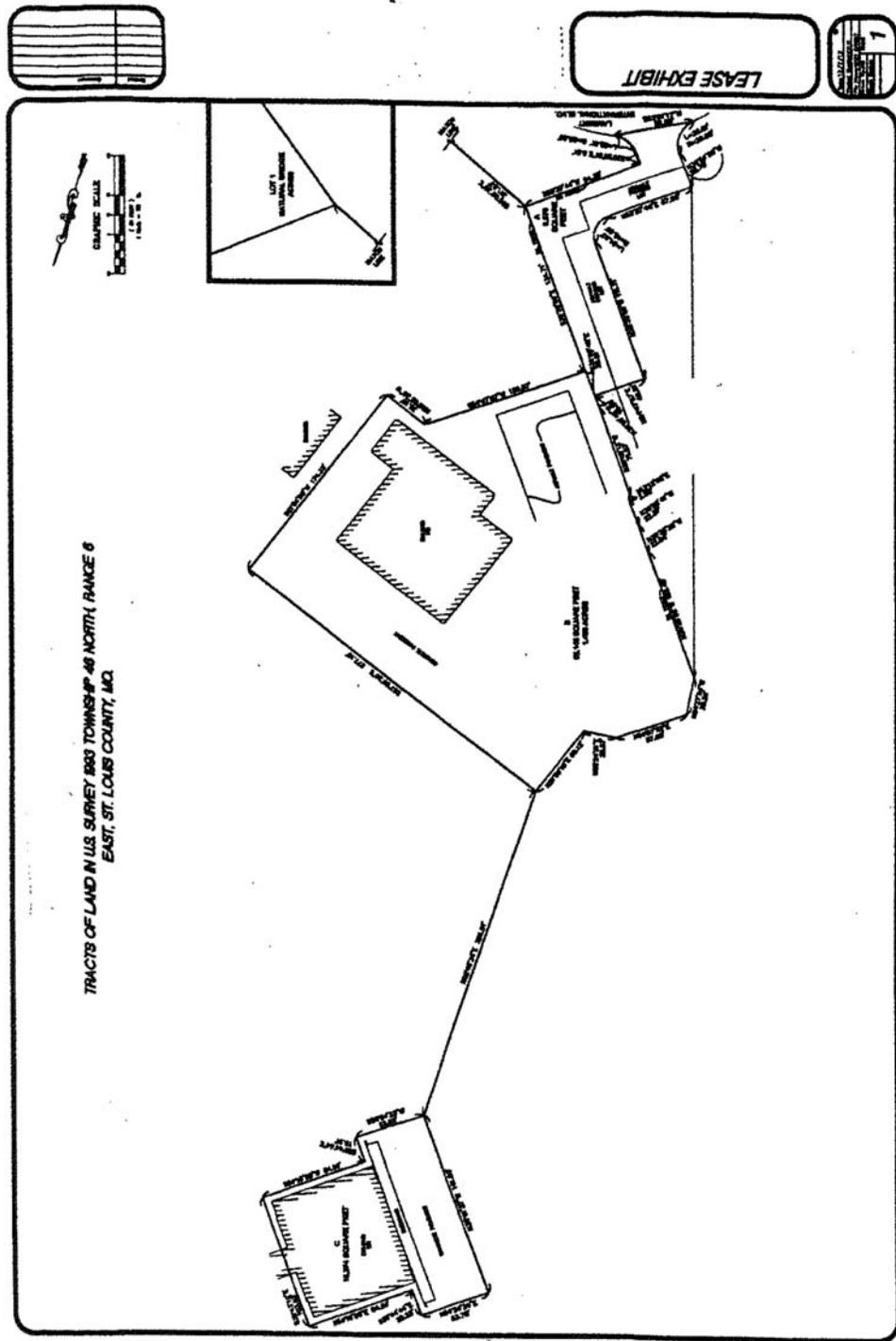
LEASE AREA C

A tract of land being part of U.S. Survey 1993, Township 46 North, Range 6 East, St. Louis County Missouri, said tract being more particularly described as follows:

Commencing at the Southeast corner of Lot 1 of Natural Bridge Acres, as per plat recorded in Plat Book 15 Page 26 of the St. Louis County Recorder's Office, thence in a Northwestwardly direction North 65 degrees 02 minutes 38 seconds East 311.63 feet more or less to the Southeastern corner of a fence around the area used by American Airlines for parking, thence along the existing fence North 35 degrees 39 minutes 09 seconds West 134.71 feet, North 36 degrees 50 minutes 42 seconds East 30.01 feet, North 35 degrees 09 minutes 12 seconds West 71.67 feet, North 13 degrees 12 minutes 02 seconds East 2.56 feet, North 35 degrees 52 minutes 41 seconds West 22.37 feet, North 35 degrees 35 minutes 22 seconds West 22.64 feet North 35 degrees 25 minutes 05 seconds West 103.49 feet, North 04 degrees 27 minutes 24 seconds West 29.34 feet, North 54 degrees 07 minutes 52 seconds East 57.66 feet, thence leaving said fence line, North 85 degrees 24 minutes 51 seconds East 25.67 feet, North 21 degrees 56 minutes 16 seconds East 60.12 feet, and North 02 degrees 45 minutes 34 seconds East 266.61 feet to the ACTUAL POINT of BEGINNING of the description herein: thence North 35 degrees 41 minutes 37 seconds West 141.60 feet, thence North 54 degrees 24 minutes 24 seconds East 53.78 feet, North 35 degrees 44 minutes 44 seconds East 20.23 feet, thence North 54 degrees 16 minutes 50 seconds East 84.54 feet, thence South 35 degrees 43 minutes 10 seconds East 103.03 feet, thence South 54 degrees 16 minutes 50 seconds West 84.50 feet, thence South 35 degrees 44 minutes 44 seconds

East 19.91 feet, thence South 56 degrees 04 minutes 23 seconds West 53.93 feet to the actual point of beginning and containing 16,374 Square feet as per calculations by Doering Engineering during December 2012, this description is based upon field locations of the existing fences in the area, no boundary survey work was done for this description, bearings are base upon State Plane Coordinates, but the tie to the subdivision is calculated only and to be used for reference only.

EXHIBIT "B"
Depiction of Leased Premises



TRACTS OF LAND IN U.S. SURVEY 883 TOWNSHIP 48 NORTH, RANGE 6
EAST, ST. LOUIS COUNTY, MO.

EXHIBIT C
Construction/Improvement Plan & Schedule

Construction of Access Road from Lambert International Blvd., including signage, to leased premises

Construction of up to 3,000 square foot addition on the west-side of Building 115

Remodel of interior of Building 115

Construction related to the installation of up to 20,000 Above Ground Fuel Storage Tank

Access Road and Addition and remodel to be completed within 90 days of commencement of construction.

EXHIBIT C

Approved: February 6, 2013