

ORDINANCE #69433
Board Bill No. 37

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® Restated & Amended Lease Agreement AL-223 (the "Lease Agreement") with a term beginning on the Commencement Date and ending on the last day of the twentieth Contract Year as provided for in Section 301 of the Lease Agreement, between the City and Signature Flight Support Corporation (the "Lessee"), a State of Delaware corporation, 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 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® Restated & Amended Lease Agreement AL-223 (the "Lease Agreement") with a term beginning on the Commencement Date and ending on the last day of the twentieth Contract Year as provided for in Section 301 of the Lease Agreement, between the City and Signature Flight Support Corporation (the "Lessee"), a State of Delaware corporation, 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

Is on file in the Register's Office.

Approved: May 28, 2013

ORDINANCE #69434
Board Bill No. 38

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-222 (the "Lease Agreement") with an Initial Term beginning on the Commencement Date and ending on the last day of the twentieth Contract Year as defined and provided for in Section 301 of the Lease Agreement, between the City and MHS Travel & Charter, Inc. (the "Lessee"), a State of Wisconsin corporation, 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 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-222

(the "Lease Agreement") with an Initial Term beginning on the Commencement Date and ending on the last day of the twentieth Contract Year as defined and provided for in Section 301 of the Lease Agreement, between the City and MHS Travel & Charter, Inc. (the "Lessee"), a State of Wisconsin corporation, 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®**



**MHS TRAVEL & CHARTER, INC.
LEASE AGREEMENT
NO. AL- 222**

TABLE OF CONTENTS

ARTICLE I:	DEFINITIONS	Page 4
ARTICLE II:	LEASED PREMISES	Page 8
ARTICLE III:	AGREEMENT TERM	Page 11
ARTICLE IV:	RENT AND FEES	Page 13
ARTICLE V:	USE OF LEASED PREMISES	Page 15
ARTICLE VI:	CONSTRUCTION OR MODIFICATION OF THE LEASED PREMISES	Page 18
ARTICLE VII:	COMPLIANCE WITH LAWS AND REGULATIONS	Page 22
ARTICLE VIII:	OPERATIONS	Page 27
ARTICLE IX:	INSURANCE AND INDEMNIFICATION	Page 28
ARTICLE X:	ASSIGNMENT AND SUBLETTING	Page 34
ARTICLE XI:	DEFAULT AND TERMINATION	Page 38
ARTICLE XII:	MISCELLANEOUS PROVISIONS	Page 41
SIGNATURES		Page 49

TABLE OF EXHIBITS

AIRPORT NUMBER AL-222

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®

LEASE AGREEMENT

THIS LEASE AGREEMENT (“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 MHS Travel and Charter, Inc., organized and existing under the laws of the State of Wisconsin, 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 Signature Flight Support, Corporation (“**Signature**”) for use as a fixed base operation under the Signature Lease Agreement;

WHEREAS, Lessee currently subleases space from Signature but now it wishes to lease space directly from the City;

WHEREAS, Signature has stated that it is willing to relinquish to the City a portion of the premises it leases under the Signature Lease Agreement so that the City may lease said relinquished premises to Lessee;

WHEREAS, the City intends and is willing to lease directly to Lessee the premises to be relinquished by Signature, which premises include an aircraft hangar, Improvements, and certain land adjacent to the hangar, and is more fully described in Section 2 of this Lease Agreement, and is referred to herein as the Leased Premises;

WHEREAS, the City intends to enter into a new restated and amended lease agreement with Signature (the “**Restated and Amended Lease Agreement AL-223**”) that no longer includes the Leased Premises; and

WHEREAS, Lessee is willing to lease the Leased Premises from the City.

NOW, THEREFORE, for and in consideration of the Leased Premises, 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 Rights-of-Way**” means the rights-of-way through Signature’s leasehold necessary for aircraft, vehicular, and pedestrian ingress to and egress from the Leased Premises, as shown on **Exhibit D** (see Section 204.B).

“**Adjusted Rent**” means the rent adjusted in accordance with Sections 404 and 405.

“**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, 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.

“**Anniversary Month**” means the month on which the fifth anniversary of the Commencement Date occurs, and each fifth anniversary thereafter during the Term (see Section 404).

“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.

“Base Index” means the Index in effect on the first month in which the Commencement Date occurs, and then, after computation of the first Index Rent Escalation (see Sections 404 and 405), the Index in effect on each previous Anniversary Month (see Section 404).

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

“Commencement Date” shall mean the first day of the term of this Lease Agreement and is defined and written in Article III, Section 301.

“Contract Year” means a consecutive twelve (12) month period commencing on the Commencement Date and each successive twelve month period.

“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.

“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.

“Ground Area” means the number of square feet of land comprising the Leased Premises which is agreed to be One Hundred Thirty Thousand Six Hundred and Eighty (130,680) square feet (see Section 402).

“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, hangars or any other structures or facilities which exist as of the Commencement Date or built, or may be built, installed, refurbished, modified, or constructed by the City, or the Lessee or any sublessee on the Leased Premises.

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

“Index” means the “Consumer Price Index for all Urban Consumers” relating to “U.S. City Average” and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase (defined below) shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication, by any other nationally chosen recognized publisher of similar statistical information as reasonably selected by the Director. In the event the Index shall cease to be published, then the City and Lessee shall agree upon a new index to be used, and if they are unable to agree within ninety (90) days after the Index ceases to be published, such matter shall be reasonably decided by the Director (see Section 404).

“Initial Rent” means the Initial Rent as defined in Section 402.

“Initial Term” means the Initial Term as defined in Section 301.

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

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

“Lessee” means MHS Travel and Charter, Inc. organized and existing under the laws of the State of Wisconsin and a party to this Lease Agreement.

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

“Percentage Increase” means the percentage equal to the fraction, the numerator of which is the Index in the Anniversary Month less the Base Index, and the denominator of which is the Base Index (see Section 404).

“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 or lease of the City’s property during the term of this Lease Agreement or any prior use or occupancy of the City’s Property, the Leased Premises or the Airport. 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.

“Renewal Term” means the Renewal Term as defined in Section 302.

“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.

“**Signature**” means Signature Flight Support Corporation, a Delaware Corporation.

“**Signature Lease Agreement**” means that certain Restated and Amended Lease Agreement AL-34 between the original lessee, Midcoast Aviation, Inc, a Missouri corporation, and the City, dated March 21, 2000, as assigned to Signature Flight Support Corporation by Midcoast Aviation, Inc., and consented to by the City pursuant to that certain Consent to Assignment of Lease Agreement among Midcoast Aviation, Inc, Signature, and the City, dated July 16, 2003.

“**Term**” means the Initial Term of this Lease Agreement including the Renewal Term, if applicable (see Article III).

ARTICLE II LEASED PREMISES

Section 201. Leased Premises. The City hereby leases and demises to Lessee, and Lessee takes from the City, a tract of land containing the Ground Area, together with all Improvements existing or that may be constructed or made therein, 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. 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.

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, 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 access to the Leased Premises shall be exclusively through the Access Rights-of-Way. Lessee's rights to the Access Rights-of-Way shall be limited to aircraft, vehicular and pedestrian ingress to, and egress from, the Leased Premises in the regular course of Lessee's business and as otherwise permitted by this Lease Agreement for Lessee and its contractors, suppliers, and invitees.
- i. Lessee accepts the use of the Access Rights-of-Way in their "AS IS" condition, with no warranties or representations of any kind, express or implied, either oral or written, made by the City of any of its officers, employees, agents, or representatives, not otherwise expressly set forth in this Lease Agreement.
 - ii. Lessee shall not unreasonably interfere with the operations of Signature or any other tenants occupying the premises upon which the Access Rights-of-Way are located. Lessee and its employees, contractors, and invitees, shall comply with all reasonable rules established by Signature for the use of the Access Rights-of-Way.
 - iii. Lessee further acknowledges and agrees that, from time to time, the Access Rights-of-Way may be rendered operationally unusable by other users transiting through them or by snow and/or ice accumulation, and that Signature will be solely responsible for removal of snow and ice from the Access Rights-of-Way in accordance with the requirements set forth in Signature' Restated and Amended Lease Agreement AL-223.

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 right and obligation 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 and its sublessees shall in good faith coordinate and cooperate with the City's environmental sampling, studies, inspections, and remediation efforts.

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, Sublessees, 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, and Sublessees are in compliance with all security requirements. Lessee shall be responsible for all costs associated with obtaining such badge and/or access privileges.

Section 207. 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 and telegraph or communication 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 initial term ("**Initial Term**") of this Lease Agreement shall begin on the commencement date of the Restated and Amended Lease Agreement AL-223, which shall be written by the City below, and shall end at 11:59 p.m. (local prevailing time) on the last day of the twentieth Contract Year, unless sooner terminated in accordance with other provisions of this Lease Agreement. The Commencement Date of this Lease Agreement may be changed in writing by the mutual agreement of the Lessee and the Director on behalf of the City.

"**Commencement Date**": _____

City and Lessor agree that this Lease Agreement shall be deemed **null and void** if the City and/or Signature fail or refuse to enter into and execute the Signature Restated and Amended Lease Agreement AL-223 that no longer includes the Leased Premises within 30 days of the Effective Date of this Lease Agreement, unless otherwise agreed to in writing by the Director on behalf of the City and the Lessee.

Section 302. Renewal Term. If Lessee so requests, and provided Lessee is not under an Event of Default and otherwise is in compliance with all the terms, covenants, and conditions of this Lease Agreement, the Director, on behalf of the City, may, at its option, renew this Lease Agreement in writing upon all the same terms, covenants and conditions, for up to one (1) additional five (5) year term ("**Renewal Term**"). The request by the Lessee shall be exercised by written notice to the Director not later than one (1) Contract Year prior to the last day of the Initial Term. The Director, on behalf of the City, shall then have up to ninety (90) days to approve or reject the Lessee's request for a Renewal Term.

Section 303. 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, acts of God, and other casualties 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 of Lessee under Environmental Laws with respect to the Leased Premises or its operations at the Airport 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, Section 303 and 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 (if any is required hereunder) in accordance the terms, covenants, and conditions of this Agreement including, without limitation, Section 303 and Article VII. In addition, at the expiration of the Term, or as soon as practicable after the earlier termination hereof, Lessee, at Lessee's sole expense, shall promptly and timely remove in accordance with all Environmental Laws any underground storage tanks, above-ground storage tanks, and/or related piping, tubing, structures, facilities, or other related and /or associated equipment or systems installed in the Leased Premises by Lessee or Sublessees during the Term of this Agreement or any prior use or occupancy of the Leased Premises, unless otherwise agreed to in writing by the City.

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 as of the Commencement Date, Lessee shall pay rent to the City for the Leased Premises equal to an annual ground rental rate of One Dollar and Fifty Cents (\$1.50) per square foot per annum multiplied by the total Ground Area, stated in square feet (the "**Initial Rent**"). Rent payments shall be due in twelve equal monthly installments, in advance, on or before the first day of each month. Rent for any partial month during the Term shall be prorated.

Section 403. Rent Escalation. The Initial Rent shall be increased (but not decreased) on the fifth anniversary of the Commencement Date, and on each fifth anniversary thereafter during the Term, in accordance with the provisions of Section 404.

Section 404. Index Rent Escalation. If the Index in an Anniversary Month exceeds the Base Index, then the Initial Rent or the previously Adjusted Rent shall be increased by the Percentage Increase to calculate the new **Adjusted Rent**.

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

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

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

An example of the rent escalation outlined in this Section 404, wherein the Initial Rent on the Commencement Date is \$100,000, the Base Index on the Commencement Date is 10, and the Index on the Anniversary Month is 11.

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

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

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

Section 405. Landing Fees. Lessee or its designee 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**").

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 any other relevant 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. Said landing reports shall be in a form acceptable to the City. The parties understand and agree that such reports may be submitted on Lessee's behalf by another Airport tenant, including Signature.

The Landing Fee 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, as established by the City from time to time.

Section 406. Unpaid Rent and Fees. All unpaid Initial Rent, Adjusted Rent, Landing Fees, and other fee payments or charges or amounts 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 407. 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 408. 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 under this Lease Agreement or otherwise in writing 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 409 Prompt Payment of Taxes and Fees. Lessee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excise taxes, 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 410. 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 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 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 411(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.

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 for the conduct of business as a private aviation business at the Airport that does not offer aeronautical services to the public, including the right and obligation to make new Improvements in accordance with Article VI. Such permitted use includes, but is not limited to, storage, maintenance and repair of the Lessee's aircraft and aircraft managed and/or operated by Lessee under a management agreement and other offices and services for passengers and employees of Lessee and managed and/or operated aircraft, related to activities authorized herein.

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 other facilities. Subject to the terms of this Lease Agreement including, without limitation, Article IX, Lessee shall restore, rehabilitate, or replace all Improvements that may be destroyed or damaged by fire, casualty or any other cause whatsoever. 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 acts or omissions of the City, or its employees, contractors, or agents.

- A. Custodial Services and Snow Removal. 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. Lessee shall provide for essential streets, walkways, and pavement maintenance within the Leased Premises and, in addition, provide for snow and ice removal within the Leased Premises to allow, at a minimum, emergency or fire protection access to the Leased Premises.
- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.
- G. 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.
- H. Storage. No unscreened storage will be permitted on the exterior areas of the Leased Premises.

Section 503. Utilities. Lessee shall 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 aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport. 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. 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 505. City's Right to Enter, Inspect, and Perform Corrective Actions. The City shall have the right to enter upon the Leased Premises:

- A. to inspect the Leased Premises for any purpose necessary for, incidental to, or connected with Lessee's obligations hereunder; and
- B. 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. Unless in the case of an emergency, the City shall provide twenty four (24) hours prior notice to the Lessee before any entry or inspection of the Leased Premises under this Section 505.

ARTICLE VI
CONSTRUCTION OR MODIFICATION OF THE LEASED PREMISES

Section 601. Obligations, Rights and Procedures.

- A. General. Lessee, at its sole cost and expense, refurbish, install, construct or make Improvements on the Leased Premises in accordance with Section 602 and 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 prepared by Lessee and submitted to the Director for 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 Director 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.
- 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:
- 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;
 - 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.);
 - 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);
 - 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
 - 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. Conduct of Work Following Approval of TCA. No excavation 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 ten (10) days written notice prior to commencement of any work at the Lease Premises involving excavation of soils so that the City may have a representative present at the work site during such excavation.
- H. 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; provided, however, that Lessee shall have the right to contest any mechanic's or materialman lien if Lessee first submits to the City a bond or other reasonable security in the amount of such mechanic's or materialman lien, which bond or other security shall remain in full force and effect until the lien is removed or satisfied.
- I. 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.
- J. 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. 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 Premises. Within sixty (60) 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 303 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. Before the end of the third Contract Year, Lessee shall expend a “**Minimum Capital Investment**” of **Three Million Dollars (\$3,000,000.00)** for the redevelopment and reconstruction of the Leased Premises as outlined on **Exhibit “C,”** which is attached hereto and titled “Redevelopment Plan & Schedule”, which costs shall include, without limitation: (i) site development costs, (ii) construction costs, (iii) demolition costs, (iv) financing costs, and (v) associated architectural and engineering fees; provided, however, that all such costs may be properly capitalized in accordance with generally accepted accounting principles.

Lessee and City acknowledge and agree that the parties may amend or modify **Exhibit “C”** without a formal amendment to this Lease Agreement. The Director, on behalf of the City and in the best interest of the traveling public, is hereby authorized to make such changes or modifications. Lessee acknowledges and agrees that any deviation or modification to Exhibit C shall require the Director’s prior written approval.

Section 603. Certification of Minimum Capital Investment. Within 120 calendar days after the end of the third Calendar Year, Lessee shall provide to the Director a Capital Expenditures Report (“**Report**”) detailing the costs incurred by Lessee for redevelopment and reconstruction of the Leased Premises in accordance with 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 costs were made for redevelopment of the Leased Premises.

Lessee is encouraged by City to timely and productively expend the entire Minimum Capital Investment; however, in the event Lessee’s actual expenditures or cost for the redevelopment and reconstruction of the Leased Premises as outlined on Exhibit C are less than the Minimum Capital Investment, the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from 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 and directional signs within its Leased Premises 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.

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 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 and any sublessees 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 and any sublessees, 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 such applicable Environmental Permit, Environmental Law and associated requirements, including all applicable deadlines for compliance.
- 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, 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 ("**Remediation Work**") during the term of this Lease Agreement or any prior use or occupancy of the City's property, the Airport or the Leased Premises. 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. 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.

D. Access for Environmental Inspection. Upon reasonable notification to Lessee, the City shall have reasonable access to the Leased Premises 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 provided that such inspections shall not unreasonably interfere with Lessee's operations. If the City's inspection results in any type of written report, the City shall provide Lessee a reasonable opportunity to timely review and comment on a draft of the report. Lessee shall provide to 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, Section 303 and Section 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 thirty (30) days within which Lessee may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Lessee's compliance reasonably requires more than thirty (30) 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 thirty (30) day period and to continue diligently working to achieve compliance thereafter.
- F. Review of Environmental Documents. At the reasonable request of the City, 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) days of the City's written request for the City's review and possible comments.
- I. Spill Prevention Control and Countermeasures Plan ("SPCC"). 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 submit its SPCC to the Airport Environmental Office within thirty (30) calendar days of the City's written request for the City's review and possible comments. If requested, the SPCC must provide information concerning the proper storage and use of any Hazardous Materials on the Leased Premises.
- J. Environmental Covenants. So long as they do not adversely impact Lessee's day-to-day operations at the Airport, 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; and/or (iii) reasonably restricts access to soil underlying the Leased Premises or the Airport.

Section 703. Hazardous Materials Within Improvements. Notwithstanding any other provision of this Lease Agreement, Lessee acknowledges, stipulates and agrees that the City and its officers, employees, agents, and representatives 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 cost to comply with Environmental Laws, shall be the responsibility of Lessee.

ARTICLE VIII OPERATIONS

Section 801. Standards of Service. Lessee shall ensure that while operating, Leased Premises are operated as a first class facility and in full accordance with the terms and conditions of this Agreement.

Section 8002. Personnel. Lessee agrees that it will be responsible for ensuring that its employees abide by all applicable laws, and Rules and Regulations. Lessee shall use its best efforts to prohibit and restrain its and, if any, sublessees' employees, agents, visitors and invitees from unreasonably 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.

Lessee and Sublessees shall conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint if required by the Transportation Security Administration, the FAA, and/or the City. Lessee recognizes and agrees that the security requirements may change and Lessee agrees that it and Sublessees shall comply with all such changes throughout the Term.

Section 803. Manager. Lessee shall at all times retain one or more qualified, competent and experienced managers who shall manage and supervise the Leased Premises and represent and act for Lessee.

Section 804. Communication.

- A. Lessee's Manager or an assistant Manager (if the Manager is unavailable) shall be available for meetings in person or via teleconference with Airport personnel as necessary upon forty-eight (48) hours prior written notice.
- B. Lessee shall be responsible for notifying the Airport Properties Department of any problem that substantially or materially impairs the use of the Leased Premises.

Section 805. 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 (on a non discriminatory basis) for conducting such activity at the Airport including the Leased Premises. No such Fees shall be payable by Lessee's contractors, engineers, and architects working on Improvements required in accordance with Section 602 of this Lease Agreement.

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, their 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 30 days

advance Notice is given to the City by the insurance company, or authorized representative of Lessee.

- 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. Lessee shall require similar waivers of subrogation in all insurance policies obtained by Sublessees.
 - 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 Lessees' 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 thirty six (36) 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 Lessees the conduct of Lessee's business, or Lessee's use of its Leased Premises 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 and the Leased Premises; and
- iii. any violation by Lessee in the conduct of Lessee's business or its use of its Leased Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this 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 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, or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Lessee or its agents, employees, contractors, invitees, licensees, 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. The City shall cooperate with Lessee in defense of any such claim.
- 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 condition in existence at the Airport, or any part thereof, which condition may interfere with Lessee's business or other operations or activities, or which might otherwise cause damages to Lessee through loss of business, destruction of property, or injury to Lessee, its officers, directors, employees, agents, contractors, suppliers, 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. Except as provided in Section 1002, Lessee shall not assign, transfer, convey, sell, mortgage, pledge, or encumber, whether voluntarily or involuntarily, (collectively "Assignment") this Lease Agreement without first obtaining the written approval of the City, which Assignment may be approved, conditioned, or denied by the City at 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 Initial 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 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 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 the this Lease Agreement 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 becomes 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 the 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 for all or a portion of the Leased Premises shall be subject to the review and prior written approval of Director, which approval may be conditioned or denied in the Director's sole discretion. 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, and the assignee or sublessee shall acquire no interest or any rights to use the Lease 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 other wised expressly address 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 1101.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 1101, 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 which remains uncured, Lessee may terminate this Lease Agreement by giving the City thirty (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 thirty (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 thirty (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 thirty (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, MO 63145

with a copy to the Deputy Director of Airports and the Airport Properties Division Manager at the same address.

If to the Lessee: David Craig
MHS Travel & Charter, Inc.
7700 Forsyth
St. Louis, Missouri 63105

With a copy to: Daniel R. Wofsey

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

with a copy to the Leasehold Mortgagee if required by Section 1002.F.

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 Non Discrimination 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' 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' 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 disabled individuals 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 the Lessee’s Manager, currently Mr. David Craig, or his/her 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.

ATTEST TO BY:

Register Date
City of St. Louis

MHS TRAVEL & CHARTER, INC.:

BY: _____
NAME: _____
TITLE: _____
DATE: _____

TABLE OF EXHIBITS

- EXHIBIT "A"** Description of the Leased Premises
- EXHIBIT "B"** Depiction of the Leased Premises
- EXHIBIT "C"** Redevelopment Plan & Schedule
- EXHIBIT "D"** Access Rights-of-Way

EXHIBIT C

AL-222

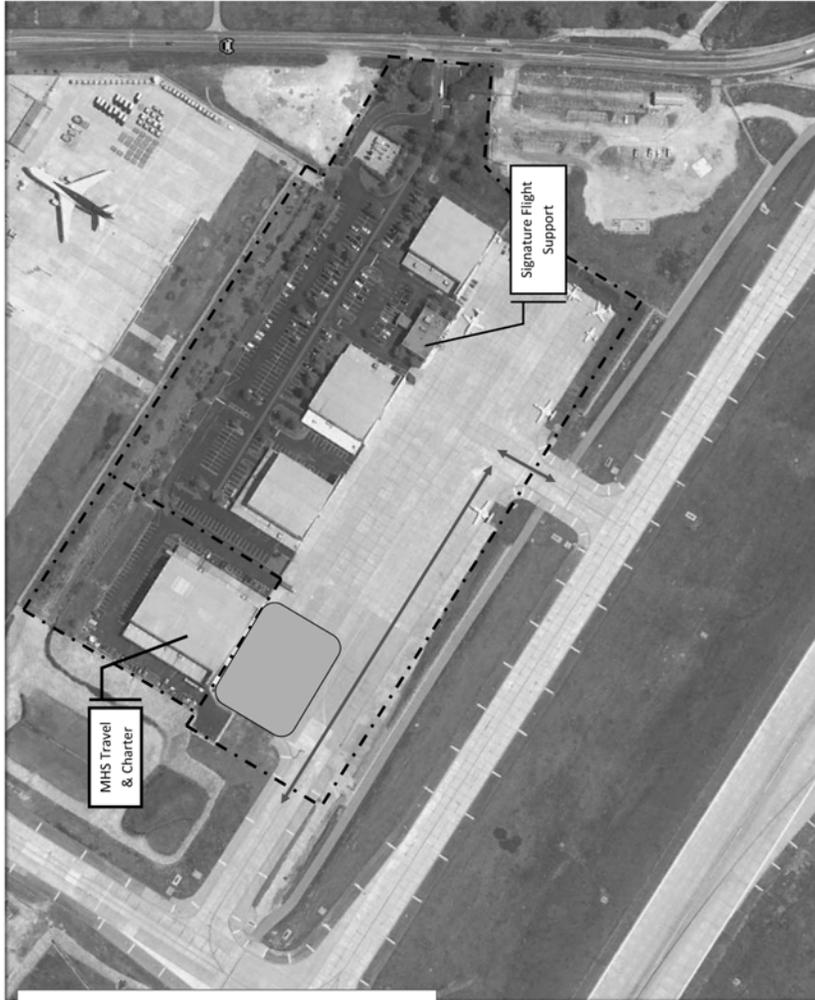
Lessee's Proposed Improvements and Schedule

The Lessee's planned improvements include:

- New fencing, site lighting and utility relocation
- Parking lot paving, sidewalks and landscaping
- Executive parking canopy & building façade
- Interior office improvement
- New epoxy surface of hangar and shop areas
- New exterior paint
- New HVAC/Mechanical systems for hangar and offices
- New hangar cooling
- New back up generator and electrical work
- Security system and data cabling

The Lessee anticipates that the completion date of the proposed improvements will be approximately six months after the Lease Commencement Date, and in no event later than the end of the third Contract Year, in accordance with Section 602.

EXHIBIT "D"



Lambert St Louis International Airport
MHS Travel & Charter

Rights of Access

Apron Parking

Aircraft Travel

Vehicle Travel

July 19, 2012

Approved: May 28, 2013

ORDINANCE #69435
Board Bill No. 4

An Ordinance to provide for the borrowing of funds in anticipation of the collection of tax payments levied by the City of St. Louis, Missouri for deposit in its General Revenue Fund for the calendar year ending December 31, 2013, and remaining uncollected and other revenues remaining to be collected and deposited in the General Revenue Fund for fiscal year ending June 30, 2014, all such revenues for the General Revenue Fund in the Treasury of the City of St. Louis, Missouri through the issuance by the City of St. Louis, Missouri of its Tax and Revenue Anticipation Notes, and the acquiring of credit enhancement, if necessary, in order to lower the cost of such borrowing; prescribing the form and details of such Notes; authorizing and approving certain documents and other actions; and containing an emergency clause.

WHEREAS, it now appears and the Board of Aldermen of The City of St. Louis, in the State of Missouri (the "City"), so finds that the estimate of the total receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013, and remaining uncollected and other revenues remaining to be collected and deposited in the General Revenue Fund in the fiscal year ending June 30, 2014 is Four Hundred Seventy-Nine Million Three Hundred Thirteen Thousand Four Hundred Fifty Dollars (\$479,313,450); and

WHEREAS, there have become and will become due and payable on and prior to the 31st day of December, 2013, expenses and obligations of the City, payable from the General Revenue Fund, aggregating not less than the sum of Two Hundred Sixty Three Million Fifty-Nine Thousand Five Hundred Seventy-Seven Dollars (\$263,059,577); and

WHEREAS, it is the opinion of this Board of Aldermen, and this Board of Aldermen so finds, that sufficient taxes will be collected from the delinquent taxes for the year 2012 and years prior thereto, together with the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, to provide for such expenditures; and

WHEREAS, this Board of Aldermen finds that sufficient funds are not and will not be available in the General Revenue Fund in the Treasury of the City on or prior to the 31st day of December, 2013, to pay all of such legal obligations chargeable to the General Revenue Fund as they will become due and payable on and prior to such date and to maintain reasonable reserves in the General Revenue Fund; and

WHEREAS, the Comptroller of the City has informed this Board of Aldermen that a cash flow deficiency amounting to a sum in excess of Fifty Five Million Dollars (\$55,000,000) may be anticipated in the aforesaid General Revenue Fund at a time or times during the remainder of the aforesaid calendar year 2013; and

WHEREAS, this Board of Aldermen deems it desirable to maintain a reasonable reserve in the General Revenue Fund at all times during the fiscal year ending June 30, 2014; and

WHEREAS, this Board of Aldermen is authorized, under and by the Charter of The City of St. Louis (the "Charter") and the laws of the State of Missouri, to borrow funds in anticipation of the collection of the sums to be derived from City taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, provided the amount of such loans at no time shall exceed this Board of Aldermen's estimate of the receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014; and

WHEREAS, this Board of Aldermen is authorized, under and by such Charter and other relevant laws to determine the amount of such loans and the terms thereof and to execute and issue notes of the City for all funds so borrowed to the lenders thereof as evidence of such loans and of the terms of the City's obligation to repay the same; and

WHEREAS, this Board of Aldermen does now find and determine that it is necessary and advisable that the City proceed to borrow a sum not to exceed Seventy-Five Million Dollars (\$75,000,000) in anticipation of the collection of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, in order to maintain a reasonable reserve in, and to provide funds with which to pay and discharge the expenses and obligations properly payable from the General Revenue Fund of the City in the fiscal year ending June 30, 2014, which expenses and obligations

will become due and payable on and prior to the 31st day of December 2013, but for the payment and discharge of which it is hereby estimated that funds will not be available otherwise in such General Revenue Fund; and

WHEREAS, no funds heretofore have been borrowed in anticipation of the collection of such taxes and revenues; and

WHEREAS, this Board of Aldermen does now find and determine that such sum of Seventy-Five Million Dollars (\$75,000,000) will not exceed the aforesaid estimate of the receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014; and

WHEREAS, to the end that such sum may be borrowed for such purpose, it is necessary that this Board of Aldermen shall determine the terms and other incidents of such borrowing; and

WHEREAS, this Board of Aldermen hereby finds and determines that credit enhancement (guaranteeing the payment when due of the principal of and interest on the notes issued to evidence the loan hereinafter authorized) may be necessary to improve the marketability of such notes and may decrease the net interest cost of such loan to the City; and

WHEREAS, this Board of Aldermen hereby finds and determines that it is in the best interests of the City that the City issue its tax and revenue anticipation notes payable from the General Revenue Fund, Series 2013 (the "Notes") in order to ease the City's cash flow difficulties for the current calendar year; and

WHEREAS, this Board of Aldermen authorizes the City, upon the approval of the Board of Estimate and Apportionment, to issue the Notes; and

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

SECTION 1. Definitions. Capitalized terms used in this Ordinance and not otherwise defined in this Ordinance shall be as defined in preambles hereto or in the Indenture (as defined below).

SECTION 2. Findings, Determinations and Declarations. The findings, determinations and declarations set forth in the preambles hereto are incorporated herein by this reference. In addition, the Board of Aldermen hereby finds, determines and declares as follows:

- (a) The issuance of the Notes, the sale and delivery thereof through a negotiated sale to certain underwriters and the use of the proceeds thereof as set forth in this Ordinance is necessary and desirable for the use and benefit of the City.
- (b) In approving the issuance of the Notes and the sale and delivery thereof, it is the intention of the Board of Aldermen, that:
 - (i) the aggregate principal amount of the Notes shall not exceed the amount set forth in this Ordinance; and
 - (ii) no additional notes, bonds or other obligations of any kind or description for such purpose shall be issued or sold without authorization by a subsequent City ordinance; and
 - (iii) this Ordinance authorizes the issuance and sale of the Notes only.
- (c) It is necessary and appropriate in connection with the issuance of the Notes that the City agrees to carry out the provisions set forth in the Indenture.

SECTION 3. Authorization of Borrowing. In order to maintain a reasonable reserve in, and to provide funds with which to pay and discharge the expenses and obligations properly payable from the General Revenue Fund in the Treasury of the City for the fiscal year ending June 30, 2014, which expenses and obligations will become due and payable on and prior to the 31st day of December, 2013, but for the payment and discharge of which it is estimated that funds will not be available otherwise in the General Revenue Fund, a principal sum not to exceed Seventy Five Million Dollars (\$75,000,000), such principal sum to be determined by the Mayor and the Comptroller and evidenced by the execution of the Note Purchase Agreement, shall, upon approval of the Board of Estimate and Apportionment, be borrowed by the City for such deposit in the General Revenue Fund within the Treasury of the City in anticipation of the revenues derived from taxes levied by the City for deposit in its General Revenue Fund for the calendar

year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014.

SECTION 4. Authorization of Notes. Upon approval by the Board of Estimate and Apportionment, the borrowing shall be evidenced by the Notes to be designated "Tax and Revenue Anticipation Notes Payable from the General Revenue Fund, Series 2013," numbered from one upward, of the denomination of Five Thousand Dollars (\$5,000) and any integral multiple thereof. The Notes shall bear interest on either a variable or fixed rate basis at a rate not to exceed ten percent (10%) per annum, as may be determined by the Mayor and Comptroller, subject to the interest rate and par value limitations set forth in Chapter 108.170, Missouri Revised Statutes, as amended, computed on the basis of a three hundred sixty (360) day year comprised of twelve (12) thirty (30) day months, payable on the date of maturity of the Notes. The Notes shall be dated as of the date of original issue, and shall mature less than three hundred sixty-four (364) days from the date of original issue with final terms as set forth in the Indenture. The Notes shall be payable, both as to principal and interest, in lawful money of the United States at UMB Bank, N.A., as Registrar and Paying Agent (the "Registrar and Paying Agent"), in The City of St. Louis, State of Missouri.

SECTION 5. Book-Entry System; Appointment of Registrar and Paying Agent. The Notes shall be issuable as book entry notes in the form of fully registered Notes, without coupons, and the Registrar and Paying Agent may treat the person in whose name any Note is registered on the note register as the absolute owner thereof for all purposes and payment of or on account of the principal of or interest on any Note shall be made only to or upon the order of the registered owner thereof or his/her legal representative, and the City and the Registrar and Paying Agent shall not be affected by any notice to the contrary. UMB Bank, N.A., in the City of St. Louis, State of Missouri, is hereby appointed Registrar and Paying Agent for the Notes. With respect to all Notes registered in the name of The Depository Trust Company or its nominee, the City and the Registrar and Paying Agent shall recognize The Depository Trust Company or its nominee as the owner of the Notes for all purposes under this Ordinance and the Indenture.

SECTION 6. Equality of Benefits, Protection and Security. The covenants and agreements of the City contained herein, in the Indenture and in the Notes and any related document (including, without limitation, the pledge contained in Section 11 hereof) shall be for the equal benefit, protection and security of: (a) the holders of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of one Note over any other Note in the application of the funds hereinafter pledged to the payment of the principal of and the interest on the Notes, or otherwise; and (b) the bank, banking institution, insurance company or other provider of credit enhancement, if any, selected by the Mayor and the Comptroller of the City pursuant to Section 13 hereof (collectively, the "Provider") after payment in full by the Provider of the principal of and interest on the Notes pursuant to any credit enhancement agreement (collectively, the "Credit Enhancement") and any related Reimbursement Agreement (the "Reimbursement Agreement") as authorized by Section 13 of this Ordinance.

SECTION 7. Execution of Notes. All Notes issued hereunder shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor, the Comptroller and the Treasurer, and approved as to form by the City Counselor and attested by the manual or facsimile signature of the Register of the City, under the manual or facsimile corporate seal of the City.

SECTION 8. Form of Notes. The Notes and the certificates to be endorsed thereon shall be in substantially the form and executed in the manner as hereinafter set forth, with such changes therein as may be required by the Indenture with such modifications as appropriate relating to determination of whether to utilize credit enhancement, consistent with this Ordinance, all as approved by the officials executing the same:

**UNITED STATES OF AMERICA
STATE OF MISSOURI
THE CITY OF ST. LOUIS
%
TAX AND REVENUE ANTICIPATION NOTE
PAYABLE FROM THE GENERAL REVENUE FUND
SERIES 2013**

\$ _____

No. _____
CUSIP: _____
Registered Owner: _____

The City of St. Louis, in the State of Missouri (the "City"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns, on the _____ day of _____, 2014, the sum of _____ Dollars (\$ _____), in lawful money of the United States of America, but only out of money in the Treasury of the City standing to the credit of the General Revenue Fund, together with interest thereon from the date hereof until the principal hereof shall have been paid,

at the rate of _____ percent (____%) per annum, computed on the basis of a three hundred sixty (360) day year, comprised of twelve (12) thirty (30) day months. Both principal of and interest on this Note are payable upon presentation and surrender at UMB Bank, N.A., as registrar and paying agent (the "Registrar and Paying Agent"), in The City of St. Louis, State of Missouri, to the person in whose name this Note is registered on the note register on the Business Day immediately preceding the maturity date thereof.

This Note and the series of which it is one are authorized to be issued by the City in anticipation of the collection of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014 and are issued under and pursuant to the Charter of the City and the laws of the State of Missouri and pursuant to Ordinance No. ____ adopted by the Board of Alderman of the City on , 2013 and approved by the Mayor of the City on , 2013 (the "Ordinance") and an Indenture of Trust dated as of July 1, 2013 (the "Indenture"), between the City and the Registrar and Paying Agent, as Trustee.

The obligations evidenced by this Note and the series, numbered from one upward, of which it is a part (the "Notes"), constitute obligations for a like amount of money borrowed by the City for the General Revenue Fund in anticipation of the collection of the revenues to be derived from taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014 and constitute a charge upon the incoming taxes and revenues for such General Revenue Fund for such fiscal year ending June 30, 2014.

The Notes are valid and binding, special, limited obligations of the City payable solely out of and secured by a pledge of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014. The Notes and the interest thereon do not constitute an indebtedness of the City, the State of Missouri or any political subdivision thereof, and the Notes do not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

This Note may be transferred only upon the note register upon surrender hereof to the Registrar and Paying Agent duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his/her attorney or legal representative in such form as shall be satisfactory to the Registrar and Paying Agent.

The City may cause to be delivered to the Registrar and Paying Agent credit enhancement (the "Credit Enhancement") issued by the selected Credit Enhancement provider (if utilized) (the "Provider"). The Registrar and Paying Agent shall be entitled under the Credit Enhancement to receive an amount sufficient to pay the principal of the Notes and the interest due thereon.

Upon the occurrence of the events set forth in that certain agreement (the "Reimbursement Agreement") between the City and the Provider, payment of the principal of and interest on the Notes may be accelerated by declaration made by the Provider to the City and the Registrar and Paying Agent.

Reference is made hereby to the Ordinance, the Indenture, the Reimbursement Agreement (if utilized) and the Credit Enhancement (if utilized), conformed copies of which are being held by the Registrar and Paying Agent, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the City, the Registrar and Paying Agent, the Provider (if utilized) and the holders of the Notes. The holder of this Note, by acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Ordinance, the Indenture, the Reimbursement Agreement (if utilized) and the Credit Enhancement (if utilized). The holder of this Note, by acceptance hereof, shall have no right to enforce the provisions of the Ordinance, the Indenture, the Reimbursement Agreement (if utilized) or the Credit Enhancement (if utilized), to institute action to enforce the covenants contained in those documents, to take any action with respect to any failure to perform any act hereinabove set forth, or to institute, appear in, or defend any suit or other proceeding with respect thereto.

It is hereby certified, warranted and represented that all acts, conditions and things required to be done, to happen and to exist, precedent to and in the issuance of this Note and the series of which it is a part, in order to make the same legal, valid and binding special, limited obligations of the City, have been done, have happened and do exist in proper form, time and manner, as required by law; that the aggregate principal amount of the borrowing evidenced by this Note and the series of which it is a part does not exceed the estimate of the receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014 or an amount which would alter the tax-exempt status of the interest on this Note; and that the proceeds of the taxes levied and collected in such fiscal year and other revenues for the General Revenue Fund, or so much thereof as may be necessary, and the proceeds of such taxes and revenues are hereby irrevocably pledged to the payment of this Note and

the other Notes of which it is a part and the interest to accrue thereon.

IN TESTIMONY WHEREOF, The City of St. Louis, in the State of Missouri, has caused this Note to be executed on its behalf by the manual or facsimile signatures of the Mayor, the Comptroller and the Treasurer and, approved as to form by the City Counselor and attested by the manual or facsimile signature of the Register of the City, under the manual or facsimile corporate seal of the City, this day of July, 2013.

THE CITY OF ST. LOUIS, MISSOURI

Francis G. Slay, Mayor

Darlene Green, Comptroller

Tishaura O. Jones, Treasurer

Attest:

Parrie L. May, Register

(SEAL)

Approved as to form:

City Counselor

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto:

(Please Print or Typewrite Name, Address and Social Security Number or Taxpayer Identification Number of Transferee)

_____ the within mentioned Note and all rights thereunder, and hereby constitutes and appoints _____ to transfer the within mentioned Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: No transfer will be registered and no new Note will be issued in the name of the transferee unless the signature(s) to this assignment correspond with the name as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the transferee is supplied.

(Name of Eligible Guarantor Institution as defined by SEC Rule 18 Ad-15 (17 CFR 240.17 Ad-15))

By _____
Title: _____

SECTION 9. Registration of Notes. When the Notes shall have been prepared and executed as hereinabove directed, they shall be registered in the office of the Treasurer of the City in a book to be provided for that purpose, showing the number of each Note, the denomination thereof, the interest rate, the place of payment, the due date, and to whom sold and delivered, with the date of such sale and delivery, and there shall be attached to each of such Notes a form of certificate of authentication for manual execution by the Treasurer substantially as follows:

CITY TREASURER'S AUTHENTICATION

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

It is hereby certified that the attached Note has been authenticated and registered in my office in a book kept for that purpose.

 Treasurer, The City of St. Louis, Missouri

SECTION 10. Limited Obligations. The Notes and the interest thereon shall constitute special, limited obligations of the City, payable solely and only from the General Revenue Fund taxes and revenues herein pledged, and such Notes shall be negotiable in all respects in accordance with the Uniform Commercial Code of the State of Missouri, as amended. The Notes and the interest thereon do not constitute an indebtedness of the City, the State of Missouri or any political subdivision thereof, and the Notes do not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

SECTION 11. Charge on Taxes. The Notes herein authorized to be issued and any obligations of the City under any Reimbursement Agreement shall be and the same are established and regarded hereby as a charge upon the incoming taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected and deposited in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, in anticipation of which the Notes are issued, and the incoming taxes and revenues, or so much thereof as may be necessary, shall be and are irrevocably pledged hereby for and to the payment of the Notes herein authorized to be issued and to the repayment of any amounts owed under any Reimbursement Agreement.

SECTION 12. Manner of Sale of Notes. The Mayor and the Comptroller of the City shall sell such Notes for the best price obtainable, either at private or public sale, as they may deem most expedient. The Comptroller and the Treasurer of the City shall be and are hereby authorized and directed to sell and deliver the Notes to the purchaser or purchasers of such Notes, upon receipt of payment from such purchaser or purchasers, of the aggregate face value of the Notes. None of the Notes shall be sold for less than par and accrued interest, if any, to the date of delivery.

SECTION 13. Authorization of Credit Enhancement. The Mayor and the Comptroller of the City are hereby authorized to enter into such an agreement with a Provider deemed by them to be appropriate for the purpose and for such a fee deemed by the Comptroller to be reasonable (but not in excess of one and one-half percent (1.50%) of the principal amount of and accrued interest, from original issue date to maturity date, on the Notes issued hereunder), as may be required to induce such Provider to issue the Credit Enhancement in which it agrees to pay the principal of and interest on the Notes issued hereunder when due. The Mayor and the Comptroller also are authorized hereby to enter into such additional concurrent agreement or agreements with any Provider providing the Credit Enhancement as may be required by that Provider in order to provide for the payment of additional interest (but at an aggregate rate not in excess of the highest rate permitted by Missouri law) for each day the obligations under any applicable Reimbursement Agreement remain unpaid should that Provider not be reimbursed promptly or fully for the payment of such principal and interest when due. To the extent that the Mayor and the Comptroller determine not to obtain the Credit Enhancement, then all references to the Credit Enhancement, the Provider and the Reimbursement Agreement shall be deemed to be omitted from this Ordinance.

SECTION 14. Purpose of the Notes. The Notes herein authorized to be issued shall be prepared and executed to provide funds with which to meet and discharge the obligations of the General Revenue Fund in the Treasury of the City as such obligations accrue from time to time.

SECTION 15. Deposit and Use of Proceeds of the Notes. The proceeds received from the sale and delivery of the Notes shall be deposited immediately in the Treasury of the City to the credit of the General Revenue Fund, and the amount so credited, or so much thereof as may be necessary, shall be used and expended only in payment of the expenses and obligations properly payable from such General Revenue Fund for the fiscal year ending June 30, 2014, which have and will become due and payable on or prior to the 31st day of December, 2013.

SECTION 16. Establishment of Sinking Fund. In order to assure the availability of adequate funds on the maturity date of the Notes, to pay the Notes or, if applicable, to reimburse the Provider as contemplated by any Reimbursement Agreement, the Comptroller of the City is hereby directed to set aside (into a separate and distinct account called the "Tax and Revenue Anticipation Notes of 2013 Sinking Fund") on her books, out of the incoming taxes levied by the City for deposit in its General Revenue Fund

for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, the sum of Fifteen Million Dollars (\$15,000,000) on or before April 30, 2014 and the remainder of the principal outstanding on or before the maturity date of the Notes, plus the interest which then will be due on all of such Notes on the maturity date of the Notes. Any sums on deposit in such Sinking Fund may be invested and reinvested by the Treasurer of the City.

SECTION 17. Authorization of Payment of Fees. The Registrar and Paying Agent shall be paid the usual and customary fees for its services in connection herewith, which fees shall be paid from the General Revenue Fund in the Treasury of the City, the amount of which fees shall be subject to approval by the Comptroller of the City.

SECTION 18. Tax Law Compliance. The Internal Revenue Code of 1986, as amended, imposes various requirements to maintain the exclusion from gross income for federal income tax purposes of interest on the Notes. Some of these requirements may be complied with only after the issuance of the Notes, and failure so to comply could cause interest on the Notes to be included in gross income for federal income tax purposes retroactive to the date of issuance. The City hereby covenants to comply with all such requirements.

SECTION 19. Approval of Documents.

(a) **Notes.** The Note form, as provided in Section 8 herein, is hereby approved on behalf of the City. The proper officials of the City are hereby authorized and directed to execute and deliver the Notes on behalf of the City in the manner provided in this Ordinance and the Indenture in such form and with such changes, modifications or completions thereof, not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the signatures of the City officials executing the same shall be conclusive as to their approval of such changes, modifications or completions on behalf of the City. If any of the officials who shall have signed or sealed any of the Notes shall cease to be such officials of the City before the Notes so signed and sealed have been actually authenticated by the Treasurer, or delivered by the City, such Notes nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Notes had not ceased to be such official or officials of the City; and any such Notes also may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Notes, shall be the proper officials of the City, although at the date of such Notes any such person shall not have been such official of the City.

(b) **Indenture.** The Indenture, in the form attached hereto as EXHIBIT A, is hereby approved on behalf of the City. The Mayor, the Comptroller, the Treasurer and other appropriate officials of the City, with the approval as to form by the City Counselor and after approval of the Board of Estimate and Apportionment, are hereby authorized and directed to execute and deliver the Indenture in such form and with such changes, modifications or completions thereof, not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the Register is hereby authorized and directed to affix the corporate seal of the City thereto and to attest the same, and the signatures of the City officials executing the same shall be conclusive as to their approval of such changes, modifications or completions on behalf of the City.

(c) **Note Purchase Agreement.** The Mayor, the Comptroller, the Treasurer, and other appropriate officials of the City, with the approval as to form by the City Counselor, are hereby authorized and directed to execute and deliver the Note Purchase Agreement with Wells Fargo Bank, National Association, on behalf of itself and the other purchasers listed therein, in such form not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and to take such further actions and to execute and deliver such other documents as are required by the City thereunder with the signature of the City officials executing the same to be conclusive of such approval by the City.

(d) **Official Statement.** The Mayor, the Comptroller, the Treasurer and other appropriate City officials are hereby authorized and directed to participate in the preparation of the preliminary official statement and the final official statement for the issuance and sale of the Notes and are further authorized and directed to execute and deliver such documents with their signature thereon to be conclusive of such approval by the City.

(e) **The Note Documents.** The Mayor, the Comptroller, the Treasurer, and other appropriate officials of the City, with the approval as to form by the City Counselor and after approval of the Board of Estimate and Apportionment, are hereby authorized to execute and deliver the Note documents, including a Reimbursement Agreement, if required, in such form not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the Register is hereby authorized to affix the corporate seal of the City thereon and to attest the same, and the signatures of the City officials executing the same shall be conclusive as to their approval of such document on behalf of the City.

(f) **The Continuing Disclosure Certificate.** The Continuing Disclosure Certificate, in the form attached hereto as EXHIBIT B, is hereby approved on behalf of the City. The Mayor, the Comptroller, the Treasurer, and other appropriate officials

of the City, with the approval as to form by the City Counselor and after approval of the Board of Estimate and Apportionment, are hereby authorized and directed to execute and deliver the Continuing Disclosure Certificate in such form and with changes, modifications or completions thereof, not inconsistent with the provisions of this Ordinance, as the City officials executing the same shall approve, and the signatures of the City officials executing the same shall be conclusive as to their approval of the Continuing Disclosure Certificate by the City.

(g) Tax Documents. The Mayor, the Comptroller, the Treasurer and other appropriate officials of the City with the approval as to form by the City Counselor, and other appropriate City officials are authorized and directed to execute and deliver the Tax Documents in such forms, not inconsistent with the provisions of this Ordinance, as the City officials executing the same may approve, with such changes, modifications or completions thereof, as the Mayor, the Comptroller and the Treasurer, with the approval as to form by the City Counselor, shall approve, and the Register is hereby authorized and directed to affix the corporate seal of the City thereto and to attest the same, and the signatures of the City officials executing the same shall be conclusive as to their approval of such documents on behalf of the City.

SECTION 20. Appointment of Disbursing Agent. The Board of Aldermen hereby appoints the Trustee under the Indenture to act as disbursing agent on behalf of the City, and in such capacity, to receive, hold, invest and disburse all money and securities deposited with it on behalf of the City in accordance with the Indenture.

SECTION 21. Further Action. The Mayor, the Comptroller, the Treasurer, and other appropriate officers, agents and employees of the City, upon approval of the Board of Estimate and Apportionment, are hereby authorized and directed to take such other and further action, and to execute, deliver and file such other and further documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Notes and the Indenture.

SECTION 22. Amendments. This Ordinance has been adopted to provide for and induce the sale of the Notes and may not be repealed, amended or modified while any Notes are outstanding, except for such amendments which, in the opinion of the City Counselor and nationally recognized bond counsel, (i) shall not materially adversely affect the interests of the holders of the Notes; (ii) are required by existing or future laws; or (iii) are necessary to clarify any ambiguity, inconsistency or defective provision contained herein; provided, however, the City shall obtain the prior consent of the Provider, if any, which consent will not be unreasonably withheld.

SECTION 23. Severability. If any term or provision of this Ordinance, the Notes, or the application thereof for any reason or circumstances shall to any extent be held invalid or unenforceable, the remaining provisions or the application of such term or provision to persons in situations other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision hereof and thereof shall be valid and enforceable to the fullest extent permitted by law.

SECTION 24. Emergency. The passage of this Ordinance and the payment of the obligations to be provided for hereunder are necessary for the immediate preservation of the public peace, health and safety; an emergency is hereby declared to exist under the terms and provisions of Article IV, Sections 19 and 20, of the Charter; and this Ordinance shall take effect immediately upon its approval by the Mayor.

**EXHIBIT A
INDENTURE OF TRUST**

**INDENTURE OF TRUST
FROM
THE CITY OF ST. LOUIS, MISSOURI
TO
UMB BANK, NA.
DATED AS OF JULY 1, 2013
AUTHORIZING THE ISSUANCE OF
\$ _____**

**TAX AND REVENUE ANTICIPATION NOTES
PAYABLE FROM THE GENERAL REVENUE FUND
SERIES 2013**

**INDENTURE OF TRUST
TABLE OF CONTENTS**

Recitals 4

**ARTICLE I
DEFINITIONS**

Section 101. Definitions of Words and Terms 4

**ARTICLE II
AUTHORIZATION OF THE NOTES**

Section 201. Authorization of the Notes 7
Section 202. Description of the Notes 7
Section 203. Designation of Paying Agent and Note Registrar 7
Section 204. Method and Place of Payment of Notes 7
Section 205. Registration Provisions 8
Section 206. Execution and Delivery of the Notes 9
Section 207. Mutilated, Lost, Stolen or Destroyed Notes 9
Section 208. Destruction of Notes 10
Section 209. Securities Depository 10
Section 210. Payments Due on Saturdays, Sundays and Holidays 11
Section 211. Nonpresentment of Notes 11

**ARTICLE III
REDEMPTION**

Section 301. Redemption 12

**ARTICLE IV
FORM OF NOTES**

Section 401. Form of Notes 12

**ARTICLE V
APPLICATION OF NOTE PROCEEDS**

Section 501. Disposition of Note Proceeds 12
Section 502. Sinking Fund Deposits 12

**ARTICLE VI
PAYMENT OF THE NOTES**

Section 601. Security for the Notes 13
Section 602. Equal Benefit, Protection and Security 13
Section 603. Transfer of Funds for Payment 13

**ARTICLE VII
DEPOSIT AND INVESTMENT OF FUNDS**

Section 701. Deposits of Moneys 14
Section 702. Investment of Funds 14
Section 703. Tax Covenant 14
Section 704. Tax Document 14
Section 705. Transfer of Funds Upon Payment of Notes 14

**ARTICLE VIII
DEFAULTS AND REMEDIES**

Section 801. Remedies 15
 Section 802. Limitation on Rights of Registered Owners 15
 Section 803. Remedies Cumulative 16
 Section 804. No Acceleration 16
 Section 805. Limitation on Suits by Noteholders 16

**ARTICLE IX
TRUSTEE, PAYING AGENT AND NOTE REGISTRAR**

Section 901. Duties Immunities and Liabilities of Trustee 17
 Section 902. Successor Trustee, Paying Agent and Note Registrar 18

**ARTICLE X
DEFEASANCE**

Section 1001. Defeasance 20

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

Section 1101. Governing Law 20
 Section 1102. Official Statement 20
 Section 1103. Continuing Disclosure 21
 Section 1104. Amendment and Modification 21
 Section 1105. Copy of Indenture to the Treasurer 21
 Section 1106. Provision of Information and Reports to the Treasurer 21
 Section 1107. Notices 21
 Section 1108. Suspension of Mail Service 22

INDENTURE OF TRUST

This INDENTURE OF TRUST (this “Indenture”) is dated as of July 1, 2013 from The City of St. Louis, Missouri (the “City”) to UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”).

PREAMBLES:

WHEREAS, the City has found that the estimate of the total receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City’s General Revenue Fund for the fiscal year ending June 30, 2014 is Four Hundred Seventy Nine Million, Three Hundred Thirteen Thousand, Four Hundred Fifty Dollars (\$479,313,450); and

WHEREAS, there have become and shall become due and payable on and prior to the 31st day of December, 2013, expenses and obligations of the City, payable from the General Revenue Fund, aggregating in excess of Two Hundred Sixty Three Million, Fifty Nine Thousand, Five Hundred Seventy Seven Dollars (\$263,059,577); and

WHEREAS, the City has determined that sufficient taxes shall be collected from the delinquent taxes for the calendar year 2012 and years prior thereto, together with the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City’s General Revenue Fund for the City’s fiscal year ending June 30, 2014, to provide for the aforesaid expenditures; and

WHEREAS, the City has determined that funds are not and shall not be available in the General Revenue Fund in the Treasury of the City on or prior to the 31st day of December, 2013, to maintain a reasonable reserve in the City’s General Revenue Fund and to pay all legal obligations chargeable to the General Revenue Fund as they shall become due and payable on and before such date; and

WHEREAS, the City has determined that a cash flow deficiency amounting to a sum in excess of Fifty-Five Million Dollars (\$55,000,000) can be anticipated in the General Revenue Fund at a time or times during the remainder of such calendar year 2013; and

WHEREAS, the City has maintained and intends to maintain in the future as a reasonable reserve a beginning fiscal year cash balance in the General Revenue Fund of an amount in excess of _____ Million Dollars (\$ _____), approximately five percent (5%) of the General Revenue Fund's annual expenditures; and

WHEREAS, the City deems it desirable to maintain a reasonable reserve in the General Revenue Fund at all times during the remainder of the fiscal year ending June 30, 2014; and

WHEREAS, the City is authorized, under and by the Charter of The City of St. Louis and the laws of the State of Missouri, to borrow funds in anticipation of the collection of the sums to be derived from taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, provided the amount of such loans at no time shall exceed the City's estimate of the receipt of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014; and

WHEREAS, the City is authorized, under and by such Charter and laws to determine the amount of such loans and the terms thereof and to execute and deliver tax and revenue anticipation notes of the City for all funds so borrowed to the lenders thereof as evidence of such loans and of the terms of the City's obligation to repay the same; and

WHEREAS, the City has found and determined that it is necessary and advisable that the City proceed to borrow the sum set forth below in anticipation of the collection of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, in order to maintain a reasonable reserve in the City's General Revenue Fund and to provide funds to pay and discharge the expenses and obligations properly payable from the General Revenue Fund of the City for the fiscal year ending June 30, 2014, which expenses and obligations shall become due and payable on and prior to the 31st day of December, 2013, but for the payment and discharge of which it is estimated that funds shall not be available otherwise in the General Revenue Fund; and

WHEREAS, the City has not heretofore issued any notes or borrowed in anticipation of the collection of such taxes and revenues; and

WHEREAS, the City has determined that the amount of _____ Million Dollars (\$ _____) shall not exceed the estimate of the receipts of taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014; and

WHEREAS, to the end that the Notes (as herein defined) may be issued for such purpose, it is necessary that the City shall determine the terms and other incidents of such borrowing; and

WHEREAS, the City has determined that it is in the best interest of the City to sell the City's Tax and Revenue Anticipation Notes Payable from the General Revenue Fund, Series 2013 (the "Notes") upon such terms as set forth herein; and

WHEREAS, Ordinance No. _____ authorizing the issuance of the Notes (the "Ordinance") was adopted by the Board of Aldermen of the City on May ____, 2013 and was approved by the Mayor of the City on May ____, 2013; and

WHEREAS, all things necessary to make the Notes, when authenticated by the Treasurer of the City as one of the Notes issued under this Indenture provided, the valid, legal and binding special, limited obligations of the City, and to constitute this Indenture a valid, legal and binding pledge and assignment of the property, rights, interests and revenues herein made for the security of the payment of the principal of and interest on the Notes issued hereunder have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Notes, subject to the terms hereof have in all respects been duly authorized;

NOW THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Notes by the owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Notes issued and Outstanding (as defined below) under this Indenture from time to time according to their tenor and effect and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Notes contained, does hereby transfer, pledge and assign to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors and assigns in trust, in and to all and singular the property described in paragraphs (a) and (b) below (said property being herein referred to as the "Trust Estate"), to wit:

- (a) Incoming taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, in anticipation of which the Notes are issued; and
- (b) All moneys and securities, from time to time held by the Trustee under the terms of this Indenture, and any and all other property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and pro rata benefit and security of each and every owner of the Notes, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Note over or from the others, by reason of priority in the issue or negotiation thereof; or for any other reason whatsoever, except as herein otherwise expressly provided, so that each and all of such Notes shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been made, issued and negotiated simultaneously with the delivery hereof;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that, if the City or its successors or assigns shall well and truly pay or cause to be paid the principal of such Notes with interest, according to the provisions set forth in the Notes or shall provide for the payment of such Notes by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment thereof when and as authorized by the provisions hereof, and shall also pay or cause to be paid all other sums payable hereunder by the City, then these presents and the estate and rights hereby granted shall cease, determine and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the City and upon the payment of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the City such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the City, its successors or assigns, all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefore, or any part thereof; not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Notes issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective owners from time to time of the Notes, as follows:

ARTICLE I DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

"Beneficial Owner" means, whenever used with respect to a Note, the person in whose name such Note is recorded as the beneficial owner of such Note by a Participant on the records of such Participant, or such person's subrogee.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday or Friday on which the Paying Agent is open for business.

“Cede & Co.” means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Notes.

“Charter” means the Charter of the City.

“City” means The City of St. Louis, Missouri, its successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended, or any corresponding provisions of succeeding law, and the applicable temporary, proposed and final regulations and procedures related thereto.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate executed by the City and dated as of July 1, 2013, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“DTC” means The Depository Trust Company of New York, New York

“General Revenue Fund” means the General Revenue Fund in the Treasury of the City.

“Indenture” means this Indenture as from time to time amended in accordance with the terms hereof.

“Non-Arbitrage Certificate and Tax Agreement” means the certificate delivered by the City evidencing observance and compliance with provisions of the Code applicable to the Notes.

“Noteholder,” “Owner,” or “Registered Owner” means the person in whose name a Note is registered on the registration books maintained by the Note Registrar

“Note Registrar” means UMB Bank, N.A., St. Louis, Missouri and any successor.

“Notes” means the Tax and Revenue Anticipation Notes Payable from the General Revenue Fund, Series 2013, of the City in the principal amount of _____ Million Dollars (\$_____) authorized by the Ordinance and this Indenture.

“Ordinance” means Ordinance No. _____ adopted by the Board of Aldermen of the City on May ____, 2013 and approved by the Mayor of the City on May ____, 2013.

“Outstanding” means, when used with reference to Notes, as of any particular date of determination, all Notes theretofore authenticated and delivered hereunder, except the following Notes:

- (a) Notes theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (b) Notes deemed to be paid in accordance with the provisions of Section 1001 hereof; and
- (c) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered hereunder.

“Participant” means any broker-dealer, bank or other financial institution for which DTC holds Notes as securities depository.

“Paying Agent” means UMB Bank, N.A., St. Louis, Missouri, and its successors and assigns.

“Rating Agencies” means Moody’s Investors Service, Inc., Standard & Poor’s Ratings Group (a division of The McGraw Hill Companies), Fitch Ratings or any other nationally recognized securities rating agency that will have assigned a rating that is then in effect with respect to the Notes, their successors and their assigns, and “Rating Agency” means each such Rating Agency.

“Representation Letter” means the Representation Letter of the City on file with DTC or filed with respect to the Notes.

“Rules of Interpretation” means for all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.
- (c) The table of contents hereto and the headings and captions herein are not a part of this Indenture.
- (d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by generally accepted principles of accounting.
- (e) Whenever an item or items are listed after the wording "including," such listing is not intended to be a listing that excludes items not listed.

"Trustee" means UMB Bank, N.A., St. Louis, Missouri, and its successors and assigns.

ARTICLE II AUTHORIZATION OF THE NOTES

Section 201. Authorization of the Notes. The Notes are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Missouri, the Charter and the Ordinance.

The Notes are hereby authorized to be issued in the aggregate principal amount of _____ Dollars (\$_____) to maintain a reasonable reserve in the City's General Revenue Fund and to provide funds to pay and discharge expenses and obligations properly payable from the General Revenue Fund of the City in the fiscal year ending June 30, 2014, and all moneys and securities held under the Indenture and any other property pledged or transferred to the Trustee for the benefit of the Note owners, in accordance with the trust estate created under this Indenture.

The Notes shall be valid special, limited obligations of the City, payable as to both principal and interest from the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014.

Section 202. Description of the Notes. The Notes shall consist of fully registered Notes without coupons, in the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof, numbered from R-1 consecutively upward in the order of issuance. All of the Notes shall be dated the date of their original issuance and delivery, shall become due on _____, 2014, and shall bear interest from their dated date at a rate of _____ percent (____%) per annum at a price of _____% per annum.

Interest on the Notes shall be payable at maturity. Interest shall be calculated on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. The Notes shall be substantially in the form provided in Article IV hereof, and shall be subject to registration, transfer and exchange as provided in Section 205 hereof.

Section 203. Designation of Paying Agent and Note Registrar. The Trustee is hereby designated as the City's Paying Agent for the payment of principal of and interest on the Notes and the Note Registrar and transfer agent with respect to the registration, transfer and exchange of Notes.

Section 204. Method and Place of Payment of Notes. The principal of and interest on the Notes shall be payable by check or draft to the Registered Owners thereof in lawful money of the United States of America upon presentation and surrender of such Notes as they become due at the principal corporate trust office of the Paying Agent and Note Registrar or such other office as the Paying Agent and Note Registrar shall designate to the person in whose name such Note is registered on the Business Day immediately preceding the maturity date thereof. A Registered Owner of One Hundred Thousand Dollars (\$100,000) or more principal amount of Notes may elect, in lieu of payment by check or draft as provided above, to receive payment of principal and interest by electronic transfer to an account designated by such Owner in writing to the Paying Agent not less than five days prior to the payment date, such designation to include the name of the bank, its ABA number and the account number to which such payment shall be deposited.

Section 205. Registration Provisions. The City shall, as long as any of the Notes herein authorized remain Outstanding, cause to be kept at the office of the Note Registrar, books for the registration of Notes as herein provided (the "Note Register").

The Notes when issued shall be registered in the names of the Owners thereof on the Note Register to be kept in the principal payment office of the Note Registrar for that purpose.

Each Note shall be made payable to the Registered Owner thereof. Each Note shall be transferable only upon the Note Register maintained by the Note Registrar by the Registered Owner thereof in person or by his/her attorney duly authorized in writing, upon surrender thereof at the principal corporate trust office of the Note Registrar together with a written instrument of transfer and with guarantee of signature satisfactory to the Note Registrar duly executed by the Registered Owner or his/her duly authorized attorney. Upon the transfer of any Note and the payment of any fee, tax or governmental charge, the Note Registrar shall issue in the name of the transferee a Note or Notes of the same aggregate principal amount and maturity as the surrendered Note, registered in the name of the transferee, in any denomination herein authorized.

Notes, upon surrender thereof at the principal payment office of the Note Registrar with a written instrument of transfer and with guarantee of signature satisfactory to the Note Registrar, duly executed by the Registered Owner or his/her duly authorized attorney, may, at the option of the Registered Owner thereof, and upon payment of any fee, tax or governmental charge required to be paid, be exchanged for an equal aggregate principal amount of Notes of the same maturity, in any denomination herein authorized.

The City, the Trustee, the Note Registrar and the Paying Agent may deem and treat the person in whose name any Note shall be registered on the Note Register as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal amount of and interest on such Note and for all other purposes, and all such payments so made to any such Registered Owner or upon his/her order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the City, the Trustee, the Note Registrar nor the Paying Agent shall be affected by any notice to the contrary, but such registration may be changed as herein provided.

In the event any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent and the Note Registrar, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Registered Owner hereunder or under the Notes.

In all cases in which the privilege of exchanging Notes or transferring Notes is exercised, the Note Registrar shall cause the Treasurer of the City to authenticate and deliver Notes in accordance with the provisions of this Indenture. For every such exchange or transfer of Notes, the Note Registrar may make a charge to the Owner of the Notes sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. The fees and charges of the Note Registrar for making any exchange or transfer provided for by this Indenture and the expense of any Note printing necessary to effect the subsequent exchange or transfer of any Note shall be paid by the City. The Note Registrar shall not be required to register, transfer or exchange Notes for a period of fifteen (15) days next preceding the maturity date of Notes.

Section 206. Execution and Delivery of the Notes. The Mayor, the Comptroller, the Treasurer and the Register of the City are hereby authorized and directed to prepare and execute the Notes in the manner hereinbefore specified, with the City Counselor's approval of the form of the Notes, and the Treasurer of the City is hereby authorized and directed to authenticate the Notes in the manner specified in the Ordinance and, when duly executed and authenticated, to deliver the Notes to the Note Registrar with instructions to deliver the Notes to or upon the order of the original purchasers thereof on payment of the purchase price to the City.

The Notes shall be executed in the name and for and on behalf of the City by the manual or facsimile signature of the Mayor, the Comptroller and the Treasurer of the City and attested by the manual or facsimile signature of the Register of the City, and the seal of the City shall be affixed to or imprinted on each Note, with the City Counselor's manual or facsimile signature thereon approving the Notes as to form. In case any official whose signature or facsimile thereof appears on any Notes shall cease to be such official before the delivery of such Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Note may be signed by such persons who at the actual time of the execution of such Note shall be the proper officials to sign such Note although at the date of such Note such persons may not have been such officials.

The Notes shall have endorsed thereon a certificate of authentication substantially in the form provided in Section 401 hereof, which shall be manually executed by the Treasurer of the City. No Note shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Treasurer of the City. Such executed certificate of authentication upon any Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Indenture.

The Notes signed, sealed and authenticated as herein provided shall be and constitute valid and binding special, limited obligations of the City according to the terms hereof, although the exchange or transfer thereof may be made at a date or dates after

any official whose signature is affixed thereto shall have ceased to be the incumbent of his/her office.

Section 207. Mutilated, Lost, Stolen or Destroyed Notes. In the event any Note is mutilated, lost, stolen or destroyed, the City shall execute a new Note of like date and denomination as that mutilated, lost, stolen or destroyed, provided that, in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Paying Agent and the Note Registrar, and in the case of any lost, stolen or destroyed Note, there first shall be furnished to the Paying Agent and the Note Registrar evidence of such loss, theft or destruction satisfactory to the Paying Agent and the Note Registrar, together with an indemnity of the City and the Paying Agent and the Note Registrar satisfactory to the Paying Agent and the Note Registrar which indemnity shall, in any event, name the Paying Agent and the Note Registrar as a beneficiary. In the event any such Note shall have matured or is about to mature, the Paying Agent and the Note Registrar, instead of delivering a duplicate Note, may pay the same without surrender thereof, making such requirements as it deems fit for its protection, including a lost instrument bond. The City and the Paying Agent and the Note Registrar may charge the owner of such Note with their reasonable fees and expenses for such service. In executing a new Note, the City may rely conclusively upon a representation by the Paying Agent and the Note Registrar that the Paying Agent and the Note Registrar are satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Note.

Section 208. Destruction of Notes. Whenever any Outstanding Note shall be delivered to the Paying Agent and the Note Registrar for cancellation pursuant to this Indenture, or for replacement pursuant to Section 207 hereof, such Note shall be promptly cancelled and thereafter destroyed by the Note Registrar in accordance with then applicable record retention requirements, and counterparts of a certificate of cancellation shall be furnished by the Paying Agent and the Note Registrar to the City.

Section 209. Securities Depository.

(a) The Notes shall be initially issued as one authenticated fully registered note. Upon initial issuance, the ownership of such Notes shall be registered in the Note Register in the name of Cede & Co., as nominee of DTC. The Paying Agent and the Note Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Notes registered in its name for the purposes of payment of the principal of or interest on the Notes, selecting the Notes or portions thereof to be redeemed, giving any notice permitted or required to be given to owners of Notes under this Indenture, registering the transfer of Notes, and for all other purposes whatsoever; and neither the Paying Agent and the Note Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Notes under or through DTC or any Participant, or any other person which is not shown on the Note Register as being an owner of any Notes, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Notes, with respect to any notice which is permitted or required to be given to owners of Notes under this Indenture, with respect to any consent given or other action taken by DTC as the owner of the Notes. So long as any Note is registered in the name of Cede & Co., as nominee of DTC, the Paying Agent shall pay all principal of and interest on such Notes, and shall give all notices with respect to such Notes, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Notes to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Note evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Paying Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Notes shall be transferable to such new nominee in accordance with paragraph (d) hereof.

(b) In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Note certificates, the City may notify DTC and the Paying Agent and the Note Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Note certificates. In such event, the Notes shall be transferable in accordance with paragraph (d) hereof. DTC may determine to discontinue providing its services with respect to the Notes at any time by giving notice to the City and the Paying Agent and the Note Registrar and discharging its responsibilities with respect thereto under applicable law. In such event, the Notes shall be transferable in accordance with paragraph (d) hereof. The City and the Paying Agent and the Note Registrar shall be entitled to rely conclusively on the information provided to it by DTC and its Participants as to the names and addresses of and principal amounts held by the Beneficial Owners of the Notes.

(c) The execution and delivery of the Representation Letter to DTC by the Mayor and the Comptroller of the City is hereby authorized, and the execution of the Representation Letter by the Mayor and the Comptroller of the City shall be conclusive evidence of such approval. The Representation Letter shall set forth certain matters with respect to, among other things, notices, consents and approvals by owners of the Notes and Beneficial Owners and payments on the Notes. The Paying Agent and the Note Registrar shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Indenture.

(d) In the event that any transfer or exchange of Notes is permitted under paragraph (a) or (b) hereof, such transfer or exchange shall be accomplished upon receipt by the Paying Agent and the Note Registrar of the Notes to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this Indenture.

In the event Note certificates are issued to holders other than Cede & Co., or its successor as nominee for DTC as holder of all of the Notes, the provisions of this Indenture shall also apply to all matters relating thereto, including, without limitation, the printing of such certificates and the method of payment of principal of and interest on such certificates.

Section 210. Payments Due on Saturdays, Sundays and Holidays. In any case when the date for the payment of the principal of or interest on the Note is not a Business Day, then payment of such principal or interest need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date.

Section 211. Nonpresentment of Notes. If the Notes are not presented for payment when the principal then becomes due, if funds sufficient to pay the Notes have been made available to the Paying Agent, all liability of the City to the Registered Owner thereof for the payment of the Notes shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Note, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Note. If any Note is not presented for payment within four (4) years following the date when such Note becomes due, the Paying Agent shall repay to the City without liability for interest thereon the funds theretofore held by it for payment of such Note, and such Note shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Registered Owner thereof shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the City shall not be liable for any interest thereon and shall not be regarded as a trustee of such moneys.

ARTICLE III REDEMPTION

Section 301. Redemption. The Notes shall not be subject to redemption prior to maturity.

ARTICLE IV FORM OF NOTES

Section 401. Form of Notes. The Notes and the certificate of authentication to be endorsed thereon shall be in substantially the form set forth in the Ordinance, with appropriate variations, omissions and insertions as permitted or required by this Indenture and the Ordinance.

ARTICLE V APPLICATION OF NOTE PROCEEDS

Section 501. Disposition of Note Proceeds. The proceeds derived from the sale of the Notes net of underwriters' discount, plus original issue premium shall be deposited immediately in the Treasury of the City to the credit of the General Revenue Fund, and the amount so credited, or so much thereof as may be necessary, shall be used and expended only in payment of the expenses and obligations properly payable from the General Revenue Fund of the City, which have and shall become due and payable on or prior to the 31st day of December, 2013, for which the Notes have been authorized, as hereinbefore provided.

Section 502. Sinking Fund Deposits. In order to assure the availability of adequate funds on _____, 2014, to pay the Notes, the Comptroller of the City has been directed pursuant to the Ordinance and is hereby authorized to set aside (into a separate and distinct account called the "Tax and Revenue Anticipation Notes, Series 2013 Sinking Fund") on his/her books, out of the incoming taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, the principal of and interest on the Notes on or before _____, 2014, [maturity date] including the requirement to set aside certain balances in accordance with Section 16 of the Ordinance, such that the sum of \$15,000,000 shall be paid on April 30, 2014 and the balance paid on or before the maturity date of _____, 2014. Sums on deposit in the Tax and Revenue Anticipation Notes, Series 2013 Sinking Fund may be invested and reinvested by the Treasurer of the City. The Comptroller may, but is not required to, deposit moneys from such fund with the Trustee hereunder.

ARTICLE VI PAYMENT OF THE NOTES

Section 601. Security for the Notes; Limited Obligations. The Notes shall be valid and binding special, limited obligations of the City payable solely out of and secured by a pledge of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's

General Revenue Fund for the City's fiscal year ending June 30, 2014, and all moneys and securities held under the Indenture and any other property pledged or transferred to the Trustee for the benefit of the Note owners, in accordance with the trust estate created under this Indenture. The Notes and the interest thereon do not constitute an indebtedness of the City, the State of Missouri or any political subdivision thereof and the Notes do not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness.

The Notes herein authorized to be issued shall be and the same are established and regarded hereby as a charge upon incoming taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014, in anticipation of which the Notes are issued, and the incoming taxes and revenues, or so much thereof as may be necessary, shall be and the same are irrevocably pledged hereby for and to the payment of the Notes herein authorized to be issued.

Section 602. Equal Benefit, Protection and Security. The covenants and agreements of the City contained herein, the Ordinance, the Notes and any related document (including the pledge contained in Section 601 hereof) shall be for the equal benefit, protection and security of the holders of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of one Note over any other Note in the application of the funds herein pledged to the payment of the principal of and the interest on the Notes, or otherwise.

Section 603. Transfer of Funds for Payment. Sinking fund payments for the Notes shall be made on or before the dates provided for under the Ordinance. Notwithstanding any other provisions contained in this Indenture to the contrary, the principal of and interest due on the Notes on _____, 2014 shall be transferred by the City from the General Revenue Fund and the Tax and Revenue Anticipation Notes, Series 2013 Sinking Fund to the Trustee no later than one (1) Business Day prior to maturity.

ARTICLE VII DEPOSIT AND INVESTMENT OF FUNDS

Section 701. Deposits of Money. Cash moneys held by the City or the Trustee in trust hereunder shall be deposited with a bank or banks located in the State of Missouri which is a member of the Federal Deposit Insurance Corporation, and all such bank deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the State of Missouri. All moneys held by the Trustee in trust hereunder shall be kept in a trust account separate and apart from all other funds of the City so that there shall be no commingling of such funds with any other funds of the City.

Section 702. Investment of Funds. All moneys and funds held by the City or the Trustee in trust hereunder may be invested by or at the written direction of the Treasurer of the City pursuant to and in compliance with the provisions hereof and as permitted by applicable law in (i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, or (ii) in such other obligations permitted by applicable law and as shall be acceptable to the Rating Agencies; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed to pay the Notes. All such investments shall be titled in the name of or if held by the Trustee in trust for the account of the "Treasurer of The City of St. Louis, Missouri." All interest on any investments held by the Trustee hereunder shall accrue to and become a part of such investments. Any investment losses on funds held by the Trustee hereunder shall be borne by the City.

Section 703. Tax Covenant. The City covenants that it shall not take any action or permit any action to be taken or omit to take any action or permit the omission of any action reasonably within its control which action or omission shall cause interest on the Notes to be included in gross income for federal income taxation purposes or otherwise adversely affect the exemption of interest on the Notes from federal and State of Missouri taxation. This covenant shall survive the payment of the Notes and the termination of this Indenture as provided in Article X of this Indenture.

Section 704. Tax Document. Authorized officials of the City are hereby authorized to execute the Non-Arbitrage Certificate and Tax Agreement on the date of delivery of the Notes, the execution thereof by such officials to be conclusive evidence of such approval.

Section 705. Transfer of Funds Upon Payment of Notes. After payment in full of the principal of and interest on the Notes (or provision has been made for the payment thereof as specified in this Indenture), and the fees, charges and expenses of the Trustee and any Paying Agent and any other amounts required to be paid under this Indenture, all remaining amounts held by the Trustee or the Paying Agent shall be paid to the City free and clear of the lien of this Indenture.

**ARTICLE VIII
DEFAULTS AND REMEDIES**

Section 801. Remedies. The provisions of this Indenture, including the covenants and agreements herein contained, shall constitute a contract between the City and the Registered Owners of the Notes. The Trustee, on behalf of the Registered Owner or Registered Owners of any of the Notes at the time Outstanding, shall have the right, for the equal benefit and protection of all Registered Owners of Notes similarly situated:

(a) By mandamus or other suit, action or proceedings at law or in equity to enforce his, her or their rights against the City and its officials, agents and employees, and to require and compel duties and obligations required by the provisions of this Indenture or by the Constitution and laws of the State of Missouri;

(b) By suit, action or other proceedings in equity or at law to require the City, its officials, agents and employees to account as if they were trustees of an express trust; and

(c) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Notes.

Section 802. Limitation on Rights of Registered Owners.

(a) No one or more Registered Owners of the Notes secured hereby shall have any right in any manner whatever by his, her or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Notes.

(b) The owners of a majority in principal amount of the Notes Outstanding shall have the right, during the continuance of an event of default:

(i) to require the Trustee to proceed to enforce this Indenture, either by judicial proceedings for the enforcement of the payment of the Notes and the foreclosure of this Indenture, or otherwise; and

(ii) to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture, provided that:

(1) such direction shall not be in conflict with any rule of law or this Indenture;

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction;

(3) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the owners not taking part in such direction;

(4) indemnity shall have been provided to the Trustee in accordance with Section 901(b) hereof; and

(5) the Trustee shall have the right to decline to follow any such direction if the Trustee shall in good faith determine that the proceedings so directed would involve the Trustee in personal liability.

Section 803. Remedies Cumulative. No remedy conferred herein upon the Registered Owners of the Notes is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Note shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Registered Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Notes by this Indenture may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by any Registered Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to such Registered Owner, then, and in every such case, the City and the Registered Owners of the Notes shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers

and duties of the Registered Owners of the Notes shall continue as if no such suit, action or other proceedings had been brought or taken.

Section 804. No Acceleration. Notwithstanding anything herein or in the Ordinance to the contrary, the Notes are not subject to acceleration.

Section 805. Limitation on Suits by Noteholders. Except as provided in Section 1103 hereof, no owner of any Note shall have any right to institute any proceeding, judicial or otherwise, under or with respect to this Indenture, or for the appointment of a receiver or trustee or for any other remedy under this Indenture, unless:

- (a) such owner has previously given written notice to the Trustee of a continuing event of default;
- (b) the owners of not less than **25%** in principal amount of the Notes Outstanding shall have made written request to the Trustee to institute proceedings in respect of such event of default in its own name as Trustee under this Indenture;
- (c) such owner or owners have offered to the Trustee indemnity as provided in this Indenture against the fees, costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for **60** days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such **60**-day period by the owners of a majority in principal amount of the Outstanding Notes;

such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the exercise of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more owners of the Notes shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the lien of this Indenture or the rights of any other owners of the Notes, or to obtain or to seek to obtain priority or preference over any other owners or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all Outstanding Notes.

Notwithstanding the foregoing or any other provision in this Indenture, however, the owner of any Note shall have the right which is absolute and unconditional to receive payment of the principal of and interest on such Note on the respective stated maturity expressed in such Note and nothing contained in this Indenture shall affect or impair the right of any owner to institute suit for the enforcement of any such payment.

ARTICLE IX TRUSTEE, PAYING AGENT AND NOTE REGISTRAR

Section 901. Duties, Immunities and Liabilities of Trustee.

- (a) The Trustee, the Paying Agent and the Note Registrar (for purposes of this subsection the "Trustee") shall perform only such duties as are specifically set forth in this Indenture. The Trustee will have no implied duties. The permissive right or power to take any action may not be construed as a duty to take action under any circumstances, and the Trustee will not be liable except in the event of its negligence or willful misconduct.
- (b) The Trustee will not be obligated to risk its own funds in the administration of the Trust Estate. Notwithstanding any provision herein to the contrary, the Trustee need not take any action under this Indenture which may involve it in any expense or liability until indemnified to its satisfaction for any expense or liability it reasonably believes it may incur.
- (c) The Trustee is not responsible for any recitals contained in this Indenture or in the Notes, or for the filing or refiling of the Indenture or security agreements in connection therewith, or for the sufficiency of the security of the Notes. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the City of any of the Notes or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.
- (d) Unless specifically required by this Indenture, the Trustee will not be required to give any bond or surety or report to any court despite any statute, custom or rule to the contrary.

(e) The Trustee may execute any of the duties under this Indenture by or through agents, attorneys, trustees or receivers, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, trustee or receiver appointed with due care by it hereunder.

(f) The Trustee may consult legal counsel, may conclusively rely on the advice or the opinion of such legal counsel and will not be liable for any act or omission taken or suffered pursuant to the advice or the opinion of such counsel. The fees and expenses of the counsel will be deemed to be a proper expense of the Trustee.

(g) Notwithstanding any other provision of this Indenture to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee shall be interpreted to include any action of the Trustee whether it is deemed to be in its capacity as Trustee, Note Registrar or Paying Agent.

(h) The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 702 hereof.

(i) The Trustee shall not be responsible for the use of any Notes executed and delivered hereunder.

Section 902. Successor Trustee, Paying Agent or Note Registrar.

(a) Any corporation or association into which the Trustee, Paying Agent or Note Registrar may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, provided that such surviving corporation or association shall maintain an office in the State of Missouri, shall be and become the successor Trustee, Paying Agent or Note Registrar hereunder, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereof, anything herein to the contrary notwithstanding.

(b) The Trustee, Paying Agent or Note Registrar may at any time resign by giving thirty (30) days' notice to the City. Such resignation shall not take effect until the appointment of a successor Trustee, Paying Agent or Note Registrar and acceptance of such appointment pursuant to paragraph (d) below.

(c) The Trustee, Paying Agent or Note Registrar may be removed at any time by an instrument in writing delivered to the Trustee, Paying Agent or Note Registrar by the Treasurer. In no event, however, shall any removal of the Trustee, Paying Agent or Note Registrar take effect until a successor Trustee, Paying Agent or Note Registrar shall have been appointed and accepted such appointment pursuant to paragraph (d) of this Section 902.

(d) In case the Trustee, Paying Agent or Note Registrar shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting as Trustee, Paying Agent or Note Registrar, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the City. Every successor Trustee, Paying Agent or Note Registrar appointed pursuant to the provisions of this Section shall be, if there be such an institution willing, qualified and able to accept the duties of the Trustee, Paying Agent or Note Registrar upon customary terms, a bank or trust company within the State of Missouri, in good standing and having reported capital and surplus of not less than Fifty Million Dollars (\$50,000,000). Written notice of such appointment shall immediately be given by the City to the Owners of the Notes. Any successor Trustee, Paying Agent or Note Registrar shall execute and deliver an instrument accepting such appointment and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of its predecessor, with like effect as if originally named as Trustee, Paying Agent or Note Registrar and the duties and obligations of the predecessor Trustee, Paying Agent or Note Registrar shall thereafter cease and terminate; but such predecessor and successor shall nevertheless, on the written request of the City, or of the successor or predecessor, execute and deliver such instruments and do such other things as may reasonably be required to more fully and certainly vest and confirm in such successor all rights, powers, duties and obligations of such predecessor. If no successor Trustee, Paying Agent or Note Registrar has accepted appointment in the manner provided above within ninety (90) days after the Trustee, Paying Agent or Note Registrar has given notice of its resignation or has been removed as provided above, the retiring Trustee, Paying Agent or Note Registrar may petition any court of competent jurisdiction for the appointment of a temporary successor Trustee, Paying Agent or Note Registrar; provided that any Trustee, Paying Agent and Note Registrar so appointed shall immediately and without further act be superseded by a Trustee, Paying Agent or Note Registrar appointed by the City as provided above.

ARTICLE X DEFEASANCE

Section 1001. Defeasance. When all of the Notes shall have been paid and discharged, then the requirements contained in this Indenture, except as otherwise provided in Section 703 hereof; and the pledge of the taxes levied by the City for deposit in its General Revenue Fund for the calendar year ending December 31, 2013 and remaining uncollected and other revenues remaining to be collected in the City's General Revenue Fund for the City's fiscal year ending June 30, 2014 made hereunder and all other rights granted hereby shall terminate. The Notes shall be deemed to have been paid and discharged within the meaning of this Indenture if there shall have been deposited with the Paying Agent and the Note Registrar, at or prior to the maturity date of the Notes, in trust for and irrevocably pledged thereto, monies and/or direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America or securities which represent an undivided interest in such obligations or securities to the extent that the Treasury of the United States of America is ultimately responsible for payment thereof; which, together with the interest to be earned on any such obligations, shall be sufficient for the payment of the principal of the Notes and interest accrued to the date of maturity or, if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any monies and obligations which at any time shall be deposited with the Paying Agent and the Note Registrar by or on behalf of the City, for the purpose of paying and discharging any of the Notes, shall be and are hereby assigned, transferred and set over to the Paying Agent and the Note Registrar in trust for the respective Owners of the Notes, and such monies shall be and are hereby irrevocably pledged to the payment and discharge hereof. All monies deposited with the Paying Agent and the Note Registrar shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Indenture.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1101. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 1102. Official Statement. The use of the Preliminary Official Statement in substantially the form approved by the Mayor and the Comptroller (the "Preliminary Official Statement") by the City and provided for use by Wells Fargo Bank, National Association, Loop Capital Markets, LLC and Backstrom McCarley Berry & Co., LLC (collectively, the "Underwriters") in connection with the sale of the Notes is hereby authorized, and the City hereby approves the preparation and use by the City and by the Underwriters of such Preliminary Official Statement and a final Official Statement in substantially the form of the Preliminary Official Statement (and together with the Preliminary Official Statement, the "Official Statement") in connection with the sale of the Notes and the execution thereof by the Mayor and the Comptroller of the City. The officials of the City have participated in the preparation of the Official Statement and have determined that the Preliminary Official Statement was true, correct and complete in all material respects as of the date thereof. For the purpose of enabling the Underwriters to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the City hereby deems the information regarding the City contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the appropriate officials of the City are hereby authorized, if requested to provide the Underwriters a letter or certification to such effect and to take such other actions or execute such other documents as such officials in their reasonable judgment deem necessary to enable the Underwriters to comply with the requirements of such Rule.

Section 1103. Continuing Disclosure. The City hereby covenants and agrees that it shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered a default hereunder; however, any holder of the Notes may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Section.

Section 1104. Amendment and Modification. This Indenture has been executed and delivered to provide for and induce the sale of the Notes, and may not be repealed, amended or modified while any of the Notes are Outstanding, except for such amendments which, in the opinion of counsel to the City and nationally recognized bond counsel, (i) shall not materially adversely affect the interests of the holders of the Notes, (ii) are required by existing or future laws, or (iii) are necessary to clarify any ambiguity, inconsistency or defective provision contained herein; provided, however, that there shall be no amendment or modification of this Indenture which modifies the duties, obligations, rights and privileges of the Trustee without the prior written consent of the Trustee, which consent shall not be unreasonably withheld.

Section 1105. Copy of Indenture to the Treasurer. Immediately upon the execution and delivery of this Indenture, a certified copy hereof shall be filed with the Treasurer of the City for his information and guidance.

Section 1106. Provision of Information and Reports to the Treasurer. The Trustee shall provide a copy of all statements

and documentation relating to the purchase or sale of investments held by the Trustee in trust hereunder to the Treasurer of the City as soon as practicable after each such purchase or sale. Monthly reports of the funds and accounts, if any held by the Trustee with respect to the Notes, including investment information with respect thereto, shall be provided by the Trustee to the Treasurer of the City within fifteen (15) days after the end of each month. In addition, the Trustee shall promptly provide the Treasurer with such additional information regarding the Notes, the registration of the Notes and the funds and accounts held by the Trustee with respect to the Notes, including information regarding the investment of such funds and accounts, as shall be reasonably requested by the Treasurer of the City.

Section 1107. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, addressed as follows:

- (a) To the City:

The City of St. Louis, Missouri
City Hall
1200 Market Street
St. Louis, Missouri 63103
Attention: Comptroller, Room 212

With a copy to the Mayor, Room 200

- (b) To the Trustee:

UMB Bank, N.A.
2 South Broadway, Suite 435
St. Louis, Missouri 63102
Attention: Corporate Trust Department

(c) To the Note Owners if the same shall be duly mailed by registered or certified mail addressed to each of the Owners of Notes at the time Outstanding as shown by the note registration books kept at the principal corporate trust office of the Trustee or such other office as the Trustee shall designate.

All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. The City and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent

Section 1108. Suspension of Mail Service. If, because of the suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

IN WITNESS WHEREOF, THE CITY OF ST. LOUIS, MISSOURI and UMB BANK, N.A., have caused this Indenture to be executed by their respective duly authorized representatives and their official seals to be affixed hereon as of the date set forth above.

THE CITY OF ST. LOUIS, MISSOURI

Francis G. Slay, Mayor

Darlene Green, Comptroller

Tishaura O. Jones, Treasurer

[SEAL]

Attest:

Parrie L. May, Register

Approved as to Form:

City Counselor

UMB BANK, N.A., AS TRUSTEE

By: _____
Vice President

[SEAL]

Attest:

Assistant Secretary

**EXHIBIT B
CONTINUING DISCLOSURE CERTIFICATE**

This Continuing Disclosure Certificate (this “Disclosure Certificate”) dated as of July 1, 2013 is executed and delivered by **THE CITY OF ST. LOUIS, MISSOURI** (the “City”) in connection with the issuance of \$[Principal Amount] Tax and Revenue Anticipation Notes Payable from the General Revenue Fund, Series 2013 (the “Notes”). The Notes are being issued pursuant to Ordinance No. ____ adopted by the Board of Aldermen of the City on May __, 2013 and approved by the Mayor of the City on May __, 2013 (the “Ordinance”) and an Indenture of Trust dated as of July 1, 2013 (the “Indenture”), between the City and UMB Bank, N.A., St. Louis, Missouri, as Trustee (the “Trustee”). The City covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the Holders and Beneficial Owners of the Notes and in order to assist the Participating Underwriters in complying with the Rule (all as defined below). The City has determined that the City is the only “obligated person” with responsibility for continuing disclosure within the meaning of the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Ordinance and the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Notes (including persons holding Notes through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Notes for federal income tax purposes.

“Dissemination Agent” shall mean any dissemination agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access system for municipal securities disclosures, accessible at www.emma.msrb.org.

“Listed Events” shall mean any of the events listed in Section 3(a) herein.

“National Repository” shall mean the Municipal Securities Rulemaking Board via EMMA or such other repository then authorized by the Securities and Exchange Commission to receive disclosure submissions under the Rule.

“Participating Underwriter” shall mean any of the original underwriters of the Notes required to comply with the Rule in connection with the offering of the Notes.

“Repository” shall mean each National Repository and each State Repository.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time including any official interpretations thereof issued either before or after the effective date of this Disclosure Certificate which are applicable to this Disclosure Certificate.

“State” shall mean the State of Missouri.

“State Repository” shall mean any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

SECTION 3. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 3, the City shall give, or cause to be given in a timely manner not in excess of 10 business days after the occurrence of the event, notice of the occurrence of any of the following events with respect to the Notes:

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. modifications to rights of Noteholders, if material;
4. (a) Note calls, if material, and (b) tender offers;
5. defeasances;
6. rating changes;
7. (a) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or (b) other material notices or determinations with respect to the tax status of the Notes, or (c) other material events affecting the tax-exempt status of the Notes;
8. unscheduled draws on debt service reserves reflecting financial difficulties;
9. unscheduled draws on credit enhancements reflecting financial difficulties;
10. substitution of credit or liquidity providers, or their failure to perform;
11. release, substitution or sale of property securing repayment of the Notes, if material;
12. bankruptcy, insolvency, receivership, or similar event of the obligated person (consistent with the provisions of the Rule);
13. the consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event described in 2, 3, 4(a), 7(b), 7(c), 11, 13 or 14 of Section 3(a) of this Disclosure Certificate, the City shall, as soon as possible, determine if such event would be material under applicable federal securities laws.

(c) The City shall promptly file a notice of the occurrence of any Listed Event (provided, however, that if the Listed Event is one described in 2, 3, 4(a), 7(b), 7(c), 11, 13 or 14 of Section 3(a) of this Disclosure Certificate, then the City shall only be obligated to file such notice to the extent that it determines such Listed Event is material, as described in Section 3(b) of this Disclosure Certificate) with each Repository, with a copy to the Trustee and the Participating Underwriters.

SECTION 4. Termination of Reporting Obligation. The City’s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior to redemption or payment in full of all the Notes. If such termination occurs prior to the final maturity of the Notes, the City shall give notice of such termination in the same manner as for a Listed Event under Section 3(a) herein.

SECTION 5. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice prepared by the City pursuant to this Disclosure Certificate. The Dissemination Agent may resign at any time by providing thirty (30) days’ written notice to the City. The Dissemination Agent shall also have no duty or obligation to determine the materiality

of the Listed Events and shall not be deemed to be acting in any fiduciary capacity for the City, any Beneficial Owner or any other party. If at any time there is not any other designated Dissemination Agent, the City shall be the Dissemination Agent.

SECTION 6. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a) herein, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Notes, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Notes, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Notes in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Notes.

SECTION 7. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future notice of occurrence of a Listed Event.

SECTION 8. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any Holder or Beneficial Owner of the Notes may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default under the Ordinance or the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 9. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate and the City, to the extent permitted by law, agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no responsibility for the City's failure to report a Listed Event. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Notes. No provision of this Disclosure Certificate shall be interpreted to limit, prohibit or affect any right of the City or the Trustee to provide notice to the Holders of the Notes or any other person pursuant to the terms of the Indenture.

SECTION 10. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters and Holders and the Beneficial Owners from time to time of the Notes, and shall create no rights in any other person or entity.

SECTION 11. Governing Law. This Disclosure Certificate shall be governed by the laws of the State.

This Continuing Disclosure Certificate is dated as of the date set forth above.

THE CITY OF ST. LOUIS, MISSOURI

Francis G. Slay, Mayor

Darlene Green, Comptroller

Tishaura O. Jones, Treasurer

(SEAL)

Attest:

Parrie L. May, Registrar

Approved as to form:

City Counselor

Approved: May 30, 2013

**ORDINANCE #69436
Board Bill No. 9**

An ordinance pertaining to parking within "The 1600 Block Belt Avenue Residential Parking District"; authorizing the Traffic Administrator to designate the location and restrictions for curb parking of residential parking zones within the 1600 Block Belt Avenue Residential Parking District; authorizing the placement of Residential Permit Parking Only signs within the District; and prohibiting the parking, within the District, of any vehicle which does not display the authorized permit; containing definitions, a penalty clause and an emergency clause.

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

Section One. Definitions.

A. "The 1600 Block Belt Residential Parking District" is the east side of 1600 Block Belt Avenue that is bounded on the north by Cote Brillante Avenue and bounded on the south by Martin Luther King Drive.

B. "Parking permit" is a valid resident or visitor parking permit issued for the east side 1600 Block of Belt Avenue Residential Parking District by the Traffic and Transportation Administrator of the City of St. Louis on Sundays Only from 6:00 a.m. to 7:00 p.m.

C. "Resident" is a person who lives in property abutting a street designated in whole or in part as a residential parking zone.

D. "Residential parking zone" is any street, or any portion of a street, within the boundaries of the 1600 Block of Belt Avenue Residential Parking District which is designated and posted by the Traffic and Transportation Administrator as a residential parking zone with specific parking restrictions.

E. "Visitor" is any person who is a household guest, a visitor, a worker performing services for, or domestic help for, a resident.

Section Two. Designation of residential parking zones.

The Traffic and Transportation Administrator is hereby authorized to designate the location and restrictions for curb parking of residential parking zones within the east side of 1600 Block of Belt Avenue Residential Parking District on any street, or any portion of a street, on which the predominant land used is zoned A single-family dwelling district, when 65 percent of the registered voters living on said street indicate by petition that they desire a street, or a portion of a street, to be made a residential parking zone and when the Alderman from the ward, wherein the street is located, indicate that such alderman recommends the designation.

Section Three. Permit use.

A. When signs are erected upon streets in residential parking zones designating "Residential Permit Parking Only"

during certain hours of the day on certain days, no person, firm or corporation shall park or cause to be parked any vehicle during such hours of such days that does not display either a resident or visitor parking permit.

B. When signs are erected upon streets in residential parking zones restricting public curb parking to certain amounts of time during certain hours of the day on certain days, no person, firm or corporation shall park or cause to be parked in excess of the prescribed parking time limit any vehicle that does not display either a resident or visitor parking permit.

Section Four. Permit issuance.

The Traffic and Transportation Administrator may issue annual parking permits to the residents of any designated residential parking zone. The Traffic and Transportation Administrator may designate an individual or group of individuals residing within the 1600 Block of Belt Avenue Residential Parking District, at no cost to the City, to procure, assign and distribute such annual parking permits, and to procure and install such signs.

Section Five. Penalty for violation.

A. Any person, firm or corporation who shall park or cause to be parked any vehicle in violation of the provisions of this ordinance shall upon the conviction thereof be fined twenty dollars (\$20.00) for each such offense.

B. Any person, firm or corporation who shall distribute a resident or visitor parking permit to any person, firm or corporation not authorized to display such parking permit shall have his or her parking permits suspended by the Traffic and Transportation Administrator for a period not to exceed one year.

Section Six. Emergency Clause.

This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

Approved: May 30, 2013

ORDINANCE #69437 Board Bill No. 11

An ordinance recommended by the Airport Commission, the Board of Public Service, and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis ("St. Louis") to enter into and execute on behalf of St. Louis an Agreement and Contract of Sale for the Exchange of Property ("Agreement") substantially in the form as set out in **ATTACHMENT "I"** to this Ordinance, which is attached hereto and incorporated herein, between St. Louis, the owner and operator of Lambert-St. Louis International Airport® ("Airport"), which is located in St. Louis County, Missouri, and NorthPark Partners, LLC, a Missouri corporation ("NorthPark"), providing for the sale and exchange of approximately 1.23 acres of property owned by St. Louis and located in St. Louis County ("St. Louis Property"), which is more fully described in Section 1.A of the Agreement and Exhibit "A" thereto entitled "Legal Description of St. Louis Property", for approximately 1.23 acres of property owned by NorthPark and located in St. Louis County (the "NorthPark Property"), which is more fully described in Section 1.B of the Agreement and Exhibit "B" thereto entitled "Legal Description of NorthPark Property", subject to and in accordance with its provisions, and to the applicable rules and regulations of the Federal Aviation Administration ("FAA") and the applicable provision of the Airport's Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated October 15, 1984 as amended, and Restated on September 10, 1997 as amended; authorizing and directing the Mayor and the Comptroller of St. Louis to enter into and execute on behalf of St. Louis the quit claim deed substantially in the form as set out in Exhibit "E" to the Agreement entitled "Form of Quit Claim Deed for St. Louis Property", remising, releasing, conveying, and forever quit-claiming unto NorthPark, its successors in interest and assigns, the St. Louis Property subject to the easement and restrictive covenants as defined and provided for in said quit claim deed; authorizing and directing the Mayor and the Comptroller of St. Louis to enter into and execute on behalf of St. Louis, a quit claim deed substantially in the form as set out in Exhibit "F" to the Agreement entitled "Form of Quit Claim Deed for NorthPark Property", remising, releasing, conveying, and forever quit-claiming unto St. Louis its successors in interest and assigns, the NorthPark Property subject to its provisions; authorizing and directing the Mayor and the Comptroller of St. Louis to enter into and execute on behalf of St. Louis an "Easement Agreement", substantially in the form as set out in Exhibit "C" to the Agreement entitled "Form of Utility Easement Agreement", whereby NorthPark is granting to St. Louis a perpetual and exclusive easement under certain property owned by NorthPark and more fully described in the Easement Agreement for the purpose of installing, repairing and maintaining St. Louis' glycol recovery lines, subject to the provisions of the Easement Agreement; authorizing and directing the President of the Board of Public Service and the Director of Airports to enter into and execute on behalf

of St. Louis a "Temporary Use Permit", substantially in the form as set out in Exhibit "D" to the Agreement entitled "Form of Temporary Use Permit", between St. Louis and NorthPark, whereby St. Louis is granting to NorthPark a temporary right of access over the "Permit Area" (as defined and provided for in Section 3 and Exhibit D of the Agreement) for the purpose of making cuts and sloping of the property within the Permit Area, subject to the provisions of the Temporary Use Permit; conditioning the execution and delivery by St. Louis of the agreements, documents, and instruments contemplated in this Ordinance on the FAA's prior written approval of: a) the sale and exchange of the St. Louis Property for the NorthPark Property and b) any other related matter required to be submitted to and approved by the FAA; authorizing the Mayor, the Comptroller, the Register, the City Counselor, the Director of Airports, and other appropriate officers, agents, and employees of St. Louis, with the advice of the Director of Airports, to enter into and execute on behalf of St. Louis and in St. Louis' best interest any attendant or related documents, agreements, permits, amendments, affidavits, certifications, or instruments deemed necessary to effectuate the terms set forth in the Agreement, and/or deemed necessary to preserve and protect St. Louis' interest, and/or to take such actions as may be necessary or appropriate in connection with the consummation of the transactions contemplated herein; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the agreements, documents, permits, and instruments approved and/or authorized by this Ordinance; and containing a severability clause and an emergency clause.

WHEREAS, pursuant to certain ordinances of the City of St. Louis, Missouri ("St. Louis") approving the purchase of real estate required for noise abatement purposes and/or the development or improvement of Lambert-St. Louis International Airport® ("Airport"), and in accordance with any applicable rules and regulations under the Federal Aviation Regulation ("FAR") part 150 Noise Compatibility Program, the Federal Aviation Administration ("FAA") Airport Improvement Program ("AIP"), the Passenger Facility Charge ("PFC") Program, and/or any other applicable federal, state, or local laws and regulations, St. Louis, acting through the Airport Authority of St. Louis ("Airport Authority"), has acquired and St. Louis is the fee owner of approximately 1.23 acres of real property ("St. Louis Property") located in St. Louis County, Missouri and is more fully described in Section 1.A and EXHIBIT "A" to the Agreement and Contract of Sale for the Exchange of Property ("Agreement"), between St. Louis and NorthPark Partners, LLC ("NorthPark"), which is attached hereto as **ATTACHMENT "1"** and incorporated herein;

WHEREAS, pursuant to Section 809 of the Lambert-St. Louis International Airport® Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated October 15, 1984 as amended, and restated on September 10, 1997 as amended, St. Louis may and hereby determines that the St. Louis Property is not necessary or useful in the operation of the Airport and is not needed for further aviation purposes of the Airport and, therefore, St. Louis may dispose of, transfer, or exchange the St. Louis Property in order that it may be redeveloped for uses compatible with the Airport's operations;

WHEREAS, pursuant to the AIP, St. Louis may dispose of real property only upon a showing that such disposition is at a fair market value, and is in accordance with a land use plan and/or deed restrictions approved by the Federal Aviation Administration ("FAA") which permit only commercial or development uses of the St. Louis Property that are compatible with the operations of the Airport, due to Airport noise, over-flight patterns, and height restrictions; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Agreement are acceptable and that the execution, delivery and performance by St. Louis and NorthPark of their respective obligations under the Agreement are in the best interests of St. Louis and the Airport and promote the peace, health, safety, and welfare of its residents and the traveling public.

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

SECTION ONE. The Board of Aldermen hereby adopts the foregoing recitals, which are incorporated herein by this reference, as findings.

SECTION TWO. The Director of Airports and the Comptroller of the City of St. Louis ("St. Louis") are hereby authorized and directed to enter into and execute on behalf of St. Louis an Agreement and Contract of Sale for the Exchange of Property ("Agreement") substantially in the form as set out in **ATTACHMENT "1"** to this Ordinance, which is attached hereto and incorporated herein, between St. Louis, the owner and operator of Lambert-St. Louis International Airport® ("Airport"), which is located in St. Louis County, Missouri, and NorthPark Partners, LLC, a Missouri corporation ("NorthPark"), providing for the sale and exchange of approximately 1.23 acres of property owned by St. Louis and located in St. Louis County ("St. Louis Property"), which is more fully described in Section 1.A of the Agreement and Exhibit "A" thereto entitled "Legal Description of St. Louis Property", for approximately 1.23 acres of property owned by NorthPark and located in St. Louis County (the "NorthPark Property"), which is more fully described in Section 1.B and Exhibit "B" of the Agreement entitled "Legal Description of NorthPark Property", subject to and in accordance with its provisions, and to the applicable rules and regulations of the Federal Aviation Administration ("FAA") and the applicable provision of the Airport's Amended and Restated Indenture of Trust between UMB Bank, N.A., Trustee, dated October 15, 1984 as amended, and Restated on September 10, 1997 as amended;

SECTION THREE. The Mayor and the Comptroller of St. Louis are hereby authorized and directed to enter into and

execute on behalf of St. Louis, subject to and in accordance with the terms of the Agreement, a quit claim deed substantially in the form as set out in Exhibit "E" to the Agreement entitled "Form of Quit Claim Deed for St. Louis Property", remising, releasing, conveying, and forever quit-claiming unto NorthPark, its successors in interest and assigns, the St. Louis Property subject to the easement and restrictive covenants as defined and provided for in said quit claim deed.

SECTION FOUR. The Mayor and the Comptroller of St. Louis are hereby authorized and directed to enter into and execute on behalf of St. Louis, subject to and in accordance with the terms of the Agreement, a quit claim deed substantially in the form as set out in Exhibit "F" to the Agreement entitled "Form of Quit Claim Deed for NorthPark Property", remising, releasing, conveying, and forever quit-claiming unto St. Louis, its successors in interest and assigns, the NorthPark Property subject to its provisions.

SECTION FIVE. The Mayor and the Comptroller of St. Louis are hereby authorized and directed to enter into and execute on behalf of St. Louis in accordance with the terms of the Agreement an "Easement Agreement", substantially in the form as set out in Exhibit "C" to the Agreement entitled "Form of Utility Easement Agreement", whereby NorthPark is granting to St. Louis a perpetual and exclusive easement under certain property owned by NorthPark and more fully described in the Easement Agreement for the purpose of installing, repairing and maintaining St. Louis' glycol recovery lines, subject to and in accordance with the provisions of the Easement Agreement.

SECTION SIX. The President of the Board of Public Service and the Director of Airports are hereby authorized to enter into and execute on behalf of St. Louis, in accordance with the terms of the Agreement, a "Temporary Use Permit", substantially in the form as set out in Exhibit "D" to the Agreement entitled "Form of Temporary Use Permit", between St. Louis and NorthPark, whereby St. Louis is granting to NorthPark a temporary right of access over the "Permit Area" (as defined and provided for in Section 3 and Exhibit D of the Agreement) for the purpose of making cuts and sloping of the property within the Permit Area, subject to and in accordance with the provisions of the Temporary Use Permit.

SECTION SEVEN. The execution and delivery by St. Louis of the agreements, documents, and instruments contemplated in this Ordinance are hereby expressly conditioned on the FAA's prior written approval of: a) the sale and exchange of the St. Louis Property for the NorthPark Property and b) any other related matter required to be submitted to and approved by the FAA.

SECTION EIGHT. The Mayor, the Comptroller, the Register, the City Counselor, the Director of Airports, and other appropriate officers, agents, and employees of St. Louis, with the advice of the Director of Airports, are hereby authorized to enter into and execute on behalf of St. Louis and in St. Louis' best interest any attendant or related documents, agreements, permits, amendments, affidavits, certifications, or instruments deemed necessary to effectuate the terms set forth in the Agreement, and/or deemed necessary to preserve and protect St. Louis' interest, and/or to take such actions as may be necessary or appropriate in connection with the consummation of the transactions or agreements contemplated herein.

SECTION NINE. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the agreements, documents, permits and instruments approved or authorized by this Ordinance and shall not be applicable to any other existing or future agreements, documents, permits, or instruments unless specifically authorized by an ordinance enacted after the effective date of this Ordinance. All provisions of other ordinances of St. Louis which are in conflict with this Ordinance shall be of no force or effect as to the agreements, documents, permits, and instruments approved and/or authorized by this Ordinance.

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

ATTACHMENT "1"

Is on file in the Register's Office.

Approved: May 30, 2013

ORDINANCE #69438
Board Bill No. 12

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® ("Airport") Local Concept Food & Beverage Concession Agreement AL-231 (the "Agreement"), between the City and OHM Concession Group, LLC, a limited liability corporation organized and existing under the laws of the State of Missouri (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, and privilege to design, construct, operate, manage, and maintain a Local Concept Food & Beverage Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, warranties, and conditions of the Agreement, which was awarded and approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; and containing a severability clause and an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller 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® ("Airport") Local Concept Food & Beverage Concession Agreement AL-231 (the "Agreement"), between the City and OHM Concession Group, LLC, a limited liability corporation organized and existing under the laws of the State of Missouri (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, and privilege to design, construct, operate, manage, and maintain a Local Concept Food & Beverage Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, warranties, and conditions of the Agreement, which was awarded and 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 to be an emergency measure as defined in Article IV, Section 20 of the City Charter, and shall become effective immediately upon approval of the Mayor of the City.



LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT®

ATTACHMENT "1"

OHM CONCESSION GROUP, LLC
LOCAL CONCEPT FOOD & BEVERAGE
CONCESSION AGREEMENT
AL#-231

TABLE OF CONTENTS

INTRODUCTION Page 2

ARTICLE I: DEFINITIONS AND INTERPRETATIONS Page 3

ARTICLE II: PREMISES Page 9

ARTICLE III: CONCESSION RIGHTS Page 11

ARTICLE IV: CONCESSION TERM Page 12

ARTICLE V: FEES AND RENTALS Page 13

ARTICLE VI: CONCESSIONAIRE’S OPERATIONS Page 18

ARTICLE VII: IMPROVEMENTS AND ALTERATIONS Page 30

ARTICLE VIII: USE OF PREMISES Page 36

ARTICLE IX: INSURANCE, DAMAGE, AND INDEMNIFICATION Page 41

ARTICLE X: ASSIGNMENT AND SUBCONTRACTING Page 50

ARTICLE XI: TERMINATION OF AGREEMENT IN ENTIRETY Page 51

ARTICLE XII : AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE
(ACDBE) PARTICIPATION Page 54

ARTICLE XIII : LIQUIDATED DAMAGES Page 55

ARTICLE XIV : COMPLIANCE WITH ENVIRONMENTAL LAWS Page 56

ARTICLE XV: MISCELLANEOUS PROVISIONS Page 60

SIGNATURES Page 69

EXHIBIT “A” PREMISES 1 Page

EXHIBIT “B” LIVING WAGE ADJUSTMENT BULLETIN 1 Page

AL#-231

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(Local Concept Food & Beverage)

THIS AGREEMENT, made and entered into as of the ____ day of _____ 2013, (“**Agreement**”) by and between the CITY OF ST. LOUIS (“**City**”), a municipal corporation of the State of Missouri and OHM CONCESSION GROUP, LLC (“**Concessionaire**”), a corporation organized and existing under the laws of the State of Missouri and qualified to do business in the State of Missouri.

WITNESSETH, THAT:

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

WHEREAS, a Local Concept Food & Beverage Concession at the Airport is essential for proper accommodation of the public;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of a Local Concept Food & Beverage Concession:

- to provide a first-class, full service, sit down food & beverage Concession that meets or exceeds Airport user needs and adds value to other Airport and airline services;
- to feature a Local Concept reflective of the St. Louis Metropolitan Area;
- to be responsive to the Federal Aviation Administration (“FAA”) and City goals for Airport Concession Disadvantaged Business Enterprise (“ACDBE”) participation in concessions;
- to provide a high level of service at prices that are attractive to Airport users and competitive with local prices;
- to provide a Local Concept Food and Beverage Concession that is operated by highly motivated, well trained, efficient and courteous staff;
- to provide an environment where both Concessionaire and Airport can be financially successful; and
- to optimize concession revenues for Lambert-St. Louis International Airport®.

WHEREAS, the City desires to maximize opportunities for disadvantaged, minority and women-owned enterprises in the Local Concept Food & Beverage Concession at the Airport as well as additional revenue and more favorable terms to the City; and

WHEREAS, the City has advertised and received bids for the right to develop, manage and operate a Local Concept Food & Beverage Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified and responsive bidder that submitted the highest and best bid deemed most advantageous to the City for the development, management, and operation of a first-class Local Concept Food & Beverage Concession (“**Concession**”) at the Airport, and best meets the City objectives.

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

ARTICLE I DEFINITIONS AND INTERPRETATIONS

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

“**Agreement**” shall mean this concession contract for Local Concept Food & Beverage service and any amendments thereto, duly approved by the City.

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

“**Airport Operations Area**” or “**AOA**” shall mean those areas of the Airport used for 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 Concession Disadvantaged Business Enterprise**” or “**ACDBE**” shall mean a small business concern:

- That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged; or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

“**Build-Out**” or “**Build-Out Costs**” shall mean costs incurred for the demolition, redevelopment, Refurbishment, or modification of Existing Improvements and/or the installation or construction of New Improvements to the Premises, including (but not limited

to) furnishings, fixtures, equipment and finishes including Removable Fixtures, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest during construction and internal costs of Concessionaire's employees.

"Build-Out Period" shall mean the six (6) month period beginning on the Commencement Date (see Article IV).

"City" as stated in the preamble hereof.

"Commencement Date" shall mean the first day of the month following the full execution of the Agreement by the City (see Article IV, Section 401).

"Concession" as stated in the preamble hereof.

"Concessionaire" as stated in the preamble hereof.

"Concession Fee Payments" shall have the meaning stated in Article V, Section 502.

"Contract Year" shall mean a twelve (12) consecutive month period beginning immediately following the expiration of the Build-Out Period, and each twelve (12) month period thereafter during the Term of this Agreement (see Article IV).

"Days" or **"days"** shall mean consecutive calendar days unless otherwise expressly provided herein.

"Director" shall mean the Director of Airports of the City of St. Louis Airport Authority or his/her designee, and incorporates the granting of approval requirements of Section 1515 hereof.

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

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

"Existing Improvements" shall mean, without limitation all equipment, fixtures and related installations, and improvements including all appurtenances thereto existing within the Premises as of the Commencement Date and owned by the City.

"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.

"Food/Beverage Category" as stated in Article V, Section 502.C hereof.

"Good Faith Efforts" shall mean efforts to achieve an ACDBE goal or other requirement that, by their scope, intensity and appropriateness to this objective, can reasonably be expected to meet the program requirements.

"Gross Receipts" shall mean the total revenues from all sources and all types at this Airport under the Agreement performed by

Concessionaire, its subcontractors, sublessees, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order; and, only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for returned products or unperformed services purchased at the Airport;
- receipts in the forms of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- sale or trade-in value of any equipment or fixtures that were sold or transferred from the Premises provided the sale or transfer was approved for removal by the Director and the equipment or fixture was owned by Concessionaire; and
- revenues derived from payments received by Concessionaire for loans made to sublessees, fees charged for services provided sublessees, or other fees assessed by the Concessionaire for the use of Airport facilities for which Concessionaire has a direct lease, so long as the charge is assessed in accordance with this Agreement.

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

“Initial Concession Period” shall mean seven (7) Contract Years immediately following the Build-Out Period (see Article IV, Section 401).

“Initial Minimum Investment” shall have the meaning stated in Article VII, Section 702 hereof.

“Initial Term” shall have the meaning stated in Article IV, Section 401 hereof.

“Local Concept” shall mean a food & beverage concept (including table service and a full liquor bar) based upon or identical to a currently existing concept(s) indigenous to the St. Louis Metropolitan Area.

“Mid-Term Reinvestment” shall have the meaning stated in Article VII, Section 704 hereof.

“Minimum Annual Guarantee” or **“MAG”** as stated in Article V, Section 502 hereof.

“New Improvements” shall mean, without limitation, all improvements, Refurbishments, modifications, installations, construction, equipment, and fixtures built, installed, constructed, or erected by the Concessionaire or sublessees, and forming a part of and which are permanently affixed or attached to any portion of Airport’s real property or Existing Improvements within the Premises.

“Option Term” shall have the meaning stated in Article IV, Section 402 hereof.

“Percentage Fee” shall mean the product of (i) Gross Receipts for each Food & Beverage Category for the appropriate period multiplied by (ii) Percentage Fee Rates set out in Article V, Section 502 hereof for each Food & Beverage Category.

“Percentage Fee Rates” shall mean the designated portion or percentage of Concessionaire’s Gross Receipts that are payable to the City as set out in Article V, Section 502 hereof for each Food & Beverage Category.

“Premises” shall mean a location or locations described in Section 201, and shown on Exhibit “A,” that has or have been designated by the City for the sale of Concessionaire’s food and beverage items or for other uses provided specifically herein, together with all Existing Improvements thereon.

“Provisions” shall mean the terms, covenants, conditions, warranties, and specifications of this Agreement.

“Refurbish” or **“Refurbishment”** shall mean to construct, install, refurbish, improve, upgrade the Premises including Existing

Improvements and/or return the Premises to original condition, including modernization/redesign by replacement of furnishings, fixtures including Removable Fixtures, and finishes, and/or the installation or construction of New Improvements.

“Refurbishment Costs” shall mean costs incurred to upgrade, Refurbish or improve the Premises including Existing Improvements and/or return the Premises to original condition, including modernization/redesign by replacement of furnishings, equipment, fixtures including Removable Fixtures, and finishes and/or the installation or construction of New Improvements, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest during construction and the internal costs of Concessionaire’s employees.

“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 or activities at the Premises or the Lessee’s use of the City’s property. Remediation Costs include reasonable investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys’ fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out of Lessee’s handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

“Removable Fixtures” shall mean all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor or ceiling within the Premises or Existing Improvement, and identified and listed by Concessionaire on its Removable Fixtures list approved by the Director, as provided for in Section 714 of this Agreement.

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

“St. Louis Metropolitan Area” shall mean St. Louis City, Missouri, St. Louis County, Missouri, St. Charles County, Missouri and St. Clair County, Illinois.

“Term” shall mean the entire term of this Agreement, including the Initial Term and, if applicable, any Option Term.

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

“Unamortized Investment” shall mean the undepreciated value of Concessionaire’s investment in Build-Out Costs as set out in Article II, Section 201 hereof.

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

1. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
2. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
3. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
4. Words importing the singular shall include the plural and vice versa. Words of any gender shall be deemed to

include correlative words of the other gender.

5. The term **“including”** shall be construed to mean “including without limitation,” unless otherwise expressly indicated.
6. All references to number of days shall mean calendar days.
7. Words used in the present tense include the future.

ARTICLE II PREMISES

SECTION 201. PREMISES. City hereby permits the Concessionaire to install, maintain and operate at the location on Airport property, in Terminal 2, in accordance with rights granted under Section 301 entitled “Rights”, as described in **Exhibit “A”** entitled “Premises”, which is attached hereto and made a part hereof. The rights granted in Section 301 hereof must only be exercised within the Premises.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises. In the event that the Premises are relocated or reclaimed, Concessionaire will be reimbursed the Unamortized Investment of the relocated Premises. In addition, the City will make reasonable efforts to find replacement space that is of equal size and value as that of the reclaimed Premises. If replacement space is developed by Concessionaire with less than three (3) years remaining on the Term then the Build-Out Costs of the replacement space will be amortized on a straight-line basis over a five (5) year life, with any Unamortized Investment being paid to Concessionaire upon contract termination

Concessionaire accepts the Premises **“AS IS”** with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its officers, employees, agents, or representatives. The City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty of merchantability, any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Premises or any portion thereof and/or the use or condition of the Premises.

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

- A. Concessionaire shall not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire’s use of the Premises, and provided further that such reservation or grant of rights shall not directly result in additional cost or expense to Concessionaire.
- D. The City reserves the right (but shall not be obligated to Concessionaire) 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 Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport

against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.

- G. During the time of war or national emergency the City shall have the right to enter into an agreement with the Government of the United States of America (“**U.S. Government**”) for use of part of all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt written notice from the City.
- H. This Agreement shall become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. 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 substantially or materially interfere with the surface of the soil or with Concessionaire’s use of improvements thereon.

SECTION 203. ACCESS. Subject to the Provisions of this Agreement hereof, Concessionaire has the right of free access, ingress to and egress from the Premises for Concessionaire’s employees, agents, guests, patrons, licensees and invitees.

SECTION 204. PREMISES ADJUSTMENTS. If Premises are increased, reduced or changed as provided for in Section 201 of this Agreement, revised exhibits may be substituted for those herein without the necessity to amend this Agreement, which substitution shall be made by notice to Concessionaire from the Director on behalf of the City.

SECTION 205. STORAGE, CLOSET, OFFICE & EMPLOYEE BREAKROOM SPACE. Storage space, closet space, Concessionaire employee break room space and/or office space are **NOT** included in or provided for as part of this Agreement. If such space is required by the Concessionaire, the Concessionaire will be required to execute a separate agreement for any such space.

ARTICLE III CONCESSION RIGHTS

SECTION 301. RIGHTS. City hereby grants to Concessionaire, subject to and in accordance with all of the Provisions of this Agreement the **non-exclusive** right, license and privilege and Concessionaire hereby assumes the obligation to design, construct, operate, manage and maintain a Local Concept Food & Beverage Concession within the Premises, subject to and in accordance with all the Provisions of this Agreement (see Article VI entitled “Concessionaire’s Operations”).

SECTION 302. LIMITATION OF RIGHTS. Concessionaire is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in this Agreement and/or approved by the Director, are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director. The Director’s decision shall be final and binding.

The Concessionaire acknowledges, stipulates and agrees that the City reserves the right, at any time during the Term of the Agreement, to enter into other agreements for concepts similar to those in operation at the Airport including those of the Concessionaire.

The use of areas not specifically included in Exhibit “A” must be approved in advance and in writing by the Director (see Section 1515 entitled “Required Approvals”).

This Agreement grants no real or implied rights to any concession privileges at or on the Airport other than in the designated areas.

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself (or the brands which it operates under certain license and/or franchise agreements). City shall be the sole judge whether the conduct of Concessionaire’s representative in the solicitation of business constitutes a violation of this paragraph, and

upon notice from the City, Concessionaire shall forthwith take all steps necessary to eliminate the undesirable condition. Notwithstanding, Concessionaire may advertise and promote its offerings (including special promotions) in an attempt to maximize Gross Receipts and provide the highest customer satisfaction for Airport passengers (see Section 710 entitled "Signs").

SECTION 303. **PRODUCT RIGHTS.** The City reserves the right to enter into any marketing revenue producing agreements which grant exclusive advertising/sponsorship rights for certain products, brands or services ("**official brands**") at the Airport. To the extent permitted by law, Concessionaire shall not sell, serve, advertise, promote or display at the Airport within or outside its Premises any products, brands or services that compete with designated official brands. If the City enters into any marketing revenue producing concession agreement, Concessionaire will agree to sell, advertise, feature, promote and display the official brand or brands covered under the advertising/sponsorship agreement and no others within the same product category, in accordance with the Provisions of this Agreement. The above will not require Concessionaire to change any of its corporate supply agreements or violate the terms of any of its franchise, procurement and/or license agreements. For example: Concessionaire currently has a national agreement to offer and sell Pepsi products in its facilities, this Section 303 will not impact Concessionaire's ability to continue to sell Pepsi products.

ARTICLE IV CONCESSION TERM

SECTION 401. **INITIAL TERM.** The "**Initial Term**" of this Agreement shall consist of **Six (6) months "Build-Out Period"** beginning on the Commencement Date, and followed by the "**Initial Concession Period**" consisting of **Seven (7) Contract Years**, unless sooner terminated in accordance with other Provisions of this Agreement. The Commencement Date, Build-Out Period and the Initial Concession Period shall be written by the City below.

"Commencement Date": _____

"Build-Out Period": _____ to _____

"Initial Concession Period": _____ to _____

SECTION 402. **OPTION TERM.** The Director, at his/her sole discretion, may grant one (1) additional Two (2) Year "**Option Term**" by giving the Concessionaire not less than one (1) year's written notice, prior to the expiration date of the Initial Term of this Agreement. The Concessionaire shall then have thirty (30) days to accept or decline the Option Term. The MAG during the Option Term shall be the same as the MAG for Contract Year 7 (see Section 502).

SECTION 403. **SURRENDER OF POSSESSION.** No notice to quit possession at the expiration date of the Term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the Term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in a clean, sanitary, and good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear (taking into account the improvements, repair and maintenance required to be done by Concessionaire), acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 714 entitled "Title to Improvements, Equipment and Removable Fixtures").

SECTION 404. **HOLDOVER PROVISION.** If Concessionaire shall, with the prior written approval of the Director, holdover after the expiration of the Term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fee Payments for Contract Year 7 of the Initial Concession Period and other fees and charges as set forth herein, unless different fees shall be agreed upon in writing by the Director on behalf of the City and the Concessionaire, and both parties shall be bound by all the Provisions of this Agreement.

ARTICLE V FEES AND RENTALS

SECTION 501. **GENERAL.** Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fee Payments and other fees and charges as set forth in this Agreement including, without limitation, in Sections 502, 503, 504, 506, 505, 507, 509, 510, 512, Sections 702, 703, 704, the utilities described in Section 804 and the liquidated damages described in Article XIII, without demand, during the Term of this Agreement.

SECTION 502. **CONCESSION FEE PAYMENTS.** Concessionaire agrees to pay to City for each Contract Year during the entire Term of this Agreement, a sum equal to the greater of the "**Minimum Annual Guarantee**" ("**MAG**") as set forth in Section 502.A

and Section 502.B below or the aggregate of the applicable Percentage Fee for each **“Food & Beverage Category”** as set forth in Section 502.C below which shall be applied to the Gross Receipts of Concessionaire for each Contract Year or portion thereof (the **“Concession Fee Payments”**).

- A. For the Initial Concession Period, Contract Years One (1) through Seven (7), the **MAG** shall be as follows:

<u>Contract Year</u>	<u>Minimum Annual Guarantee (MAG)</u>
1	\$250,000
2	\$275,000
3	\$275,000
4	\$325,000
5	\$375,000
6	\$375,000
7	\$375,000

- B. For the Option Term, the MAG shall be the same as the MAG for Contract Year 7 of the Initial Concession Period (see Section 402 entitled “Option Term”).

<u>Option Term</u>	<u>Minimum Annual Guarantee (MAG)</u>
Year 1	\$375,000
Year 2	\$375,000

- C. **Percentage Fee Rates by Food & Beverage Category** for the entire Term of the Agreement, as applied to Gross Receipts.

Food & Beverage Category	Percentage Fee
Food	10%
Non-Alcohol Beverage	10%
Alcoholic Beverage	15%
Approved Merchandise	20%

Items not clearly belonging to one of the Food & Beverage Categories listed above will be assigned a Food & Beverage Category by the Director. The Director’s decision shall be final and binding.

SECTION 503. PAYMENT. Payments for each month of each Contract Year shall consist of the following:

- A. MAG Payments. The **“MAG Payment”** shall consist of an amount equal to 1/12 of the MAG for the applicable Contract Year paid in advance on or before the first (1st) day of each month during the applicable Contract Year during the Term of the Agreement.
- B. Percentage Fee Payments. The Percentage Fee payment shall consist of an amount equal to the portion of the aggregate, applicable Percentage Fee Rates for each Food & Beverage Category applied to the Gross Receipts for the previous month to be paid on or before the 15th day of the second month and each succeeding month during each Contract Year during the Term of the Agreement (see Section 505 entitled “Unpaid Fees” and Article XIII entitled “Liquidated Damages” for the amount of any applicable service charge or liquidated damages.)

SECTION 504. REPORTS.

- A. Statement of Gross Receipts. Concessionaire shall submit to the City, by the fifteenth (15th) day of the second and each succeeding month of each Contract Year hereof, during the Term of the Agreement, two (2) copies of

an accurate statement of Gross Receipts certified by an officer of the Concessionaire. The statement of Gross Receipts shall separately state Gross Receipts by location. Concessionaire shall report Gross Receipts on a form approved by the Director. The Director reserves the right to request Concessionaire to provide documentation in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in future solicitations for this or similar concessions.

- B. Final Statement of Gross Receipts. The final statement of Gross Receipts shall be due fifteen (15) days following expiration or early termination of this Agreement. The City reserves the right to use these statements as a source of information to bidders in future solicitations for this or similar concessions.
- C. Certified Audited Report of Gross Receipts. Concessionaire shall submit to the *Airport Properties Department* an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year, during the Term of the Agreement. This audit report must be prepared by an independent Certified Public Accountant. The audit report shall, at a minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report shall also include a schedule showing the total of actual Concession Fee Payments to the City during the Contract Year and shall state an opinion as to the correctness of the Concession Fee Payments without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein.
- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Concessionaire shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Concessionaire shall, upon City verification and approval, deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year of the Term of the Agreement, the City will pay the amount of the overpayment to Concessionaire within thirty (30) days of receipt of the final audit report.
- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Concessionaire, the City will waive the annual Certified Audited Report of Gross Receipts requirement if, during the previous Contract Year, Concessionaire paid to the City **only** the Minimum Annual Guarantee (MAG) as set forth in Section 502 and 503. The City will review Concessionaire's payment history prior to approving the waiver request.
- F. Quarterly ACDBE Activity Reports. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) two (2) copies of an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement shall be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.
- G. ACDBE Documentation. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance.

SECTION 505. UNPAID FEES. All unpaid Concession Fee Payments or any other fees, charges or payments due the City hereunder shall bear a service charge of 1½% per month if same is not paid and received by the City on or before the twentieth (20th) day of the month in which said payments are due; and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

SECTION 506. PERFORMANCE AND PAYMENT BOND. Concessionaire agrees to furnish a Performance and Payment Bond or other security in a form acceptable to City in the principal amount equal to **Two Hundred Fifty Thousand Dollars (\$250,000)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the Term of this Agreement **and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond sixty (60) days prior to the expiring bond's expiration

date. Such bond shall guarantee the payment of all fees and performance of all Provisions of this Agreement. The Performance and Payment Bond shall be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the Term hereof, **and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** City may agree to another form of deposit which shall provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within twenty (20) days.

SECTION 507. PROMPT PAYMENT OF TAXES AND FEES. Concessionaire warrants, covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses (municipal, state or federal) required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

SECTION 508. ACCOUNTING RECORDS AND REPORTS. During the Term hereof, Concessionaire shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Concessionaire shall make same records available in the St. Louis area for three (3) years following the expiration or early termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Concessionaire's place of records.

SECTION 509. RIGHT TO AUDIT.

- A. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire's, subcontractor's, or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the Gross Receipts hereunder. If the audit reveals a change in Gross Receipts that results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by Concessionaire.
- B. If, as a result of an audit by any governmental entity, Concessionaire is required to restate Gross Receipts as defined herein, Concessionaire will, within thirty (30) days of finalization of the audit, report the change in Gross Receipts to the Airport. If the change in Gross Receipts results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments.

SECTION 510. ADDITIONAL FEES, CHARGES AND RENTALS. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

- A. If the City has paid any sum(s) or has incurred any obligations or expenses for which Concessionaire has agreed to pay or reimburse the City for; or
- B. If the City is required or elects to pay any sum(s) or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the Provisions of this Agreement.

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

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

SECTION 511. NOTICE, PLACE AND MANNER OF PAYMENT. Payments to the City required by this Agreement shall be made at the Airport Administrative Office at the address as set forth in Section 1501, or at such other place or by whatever payment

method that the City may determine as the City may hereafter notify Concessionaire, and shall be made in legal tender of the United States of America.

Section 512. COLLECTION OF SUBTENANT FEES. If applicable, Concessionaire is responsible for the collection of all subtenant fees and/or charges, and is responsible for any uncollected funds. Failure by a subtenant to pay Concessionaire shall not relieve Concessionaire from paying to the City the fees and payments set forth herein.

ARTICLE VI CONCESSIONAIRE' S OPERATIONS

SECTION 601. STANDARDS OF SERVICE.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof.
- B. The Concessionaire shall furnish a first-class Local Concept Food & Beverage Concession serving the needs of all Airport users.
- C. Concessionaire shall ensure that each passenger and Airport customer receives prompt, efficient and courteous service. In conjunction with this requirement, Concessionaire shall ensure that the location has adequate staff to provide this level of service. Concessionaire shall ensure the Local Concept Food & Beverage Concession location has adequate staff available during normal peak operating hours and during any special or emergency circumstances.
- D. Concessionaire shall have a sufficient quantity of inventory available and ensure that the Premises is fully stocked and available to passengers at all times. All inventories must be top quality and displayed in an "opening day fresh" manner.
- E. Concessionaire shall have procedures in place to handle unusual situations such as excessive lines, weather delays, etc.
- F. Concessionaire shall label and detail the price of merchandise and products in an area clearly visible to the passenger and in a manner consistent with street side locations for the same brand, business, franchise or trade name.
- G. The Premises shall be kept clean, neat, and businesslike and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- H. Concessionaire shall ensure all necessary licenses, permits, notices and inspection certificates shall be on the Premises and/or posted as required.
- I. Concessionaire shall ensure promotional/informational signs, menu/menu boards and displays clearly identify menu items available in the unit. Displays, menus, menu boards and promotional/informational signs shall be kept clean and up-to-date at all times.
- J. Concessionaire shall ensure all signage shall be professionally designed and produced—no homemade signs are permitted and, illuminated signage shall be fully illuminated at all times (see also Article VII, Section 710 entitled "Signs").
- K. Concessionaire shall ensure the restaurant entrances are clean and free from obstruction and debris. Concessionaire shall ensure all doors, windows, walls and fixtures shall be clean, free of smudges, dirt, grime and/or chipped or peeling paint, floor surfaces shall be clean and swept at all times, walls, ceilings, glass surfaces, awnings, blade signs, ceilings and facades shall be clean and free of dirt and dust at all times, ceiling lights and vents shall be kept dust free and operational and all lights and light fixtures shall be clean and operational.
- L. Concessionaire shall ensure counter, condiment and register areas shall be clean, orderly and free of excessive signage.

- M. Concessionaire shall ensure equipment in the unit is clean, operational and maintained to ensure proper and safe food handling.
- N. Concessionaire shall ensure storage and employee hand washing sinks, soap/sanitizer dispensers and hand drying devices are available and operational.
- O. Concessionaire shall ensure all cooking ventilation hoods, filters and related ductwork shall be cleaned and maintained on a regular basis to prevent health or safety issues.
- P. Concessionaire shall ensure refuse containers and refuse areas are available in the unit, adequate to handle volume of unit, wiped clean and not overflowing.
- Q. Concessionaire shall ensure cashiers and/or staff record each individual sale on the register; all sale totals shall be visible to the customer; itemized register receipts shall be offered with every transaction; sale shall be rung up efficiently and effectively; cashier and/or staff shall be proficient with the operation of cash register and credit card machines; an appropriate number of registers shall be open to meet sales volume; and all locations shall provide cash and credit card transactions.
- R. Concessionaire shall accept, at minimum, cash, four (4) major credit cards, debit cards, and other legal tender. The Concessionaire is also encouraged, but not required, to accept electronic expedited payment options.
- S. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may warrant.
- T. Concessionaire is not permitted to store items including, but not limited to trash, boxes, and/or merchandise under tables or other locations on the floor of the Premises in view of the traveling public.
- U. Concessionaire shall assure that its agents and employees do not engage in the solicitation of or use pressure sales tactics for products offered on or about the Airport.
- V. All items, merchandise and/or products sold or used must meet and/or comply with Transportation Security Administration (**TSA**) and/or Federal Aviation Administration (**FAA**) security regulations.
- W. Concessionaire's operations shall fully comply with all Federal Aviation Administration (**FAA**) regulations including security requirements, Airport rules and regulations and Airport security plan.
- X. Concessionaire shall offer bags and packaging that will enable customers to more easily transport food-to-go items through the Airport. Environmentally friendly and/or innovative packaging or transportation devices that facilitate travel are highly encouraged, but not required.
- Y. Deliveries of supplies, cash and coin to the Concession Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.

SECTION 602. ONSET OF SERVICE. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of any Existing Improvements, all New Improvements, all Removable Fixtures, equipment and fixtures as is necessary to provide service pursuant to this Agreement.

Concessionaire is encouraged to incorporate environmentally responsible and resource-efficient "green" design and construction methods when construction and designing this unit (see Article VII).

SECTION 603. HOURS OF OPERATION.

- A. The Local Concept Food & Beverage Concession must be open seven (7) days a week, three hundred sixty five (365) a year, including all holidays, with operating hours, staffing levels and inventory that support passenger activity at the Airport.
- B. The minimum hours of operation for serving the public shall be **sixty (60) minutes** prior to the first scheduled departure each morning until the last scheduled departure each evening. The first scheduled departure and the last scheduled departure will be based on the specific flight schedules of each airline and may vary by Concourse

and/or Terminal.

- C. In the event that scheduled flights are delayed past the normal last scheduled departures due to weather or other causes, Concessionaire will remain continuously open and provide all services as provided for in the Agreement to accommodate the needs of the public and employees until such time that the delayed flights have departed, been canceled or otherwise directed by the Director.
- D. Concessionaire may *not* change the hours of operation without written application to, and the written approval of, the Director. The Director may require Concessionaire to change its hours of operation, with very limited notice, to reflect changing operational circumstances at the Airport.
- E. Specific requests for exceptions to the approved operating hours for holidays and/or other reasons (refurbishments) must be submitted in writing to the City not less than five (5) days prior to the proposed change and must be approved in writing by the Director.
- F. On or before the fifteenth (15th) day of the second calendar month and each month thereafter, Concessionaire shall submit to the City a report generated from Concessionaire's point-of-sale (POS) system, or by such other means as approved by the Director, showing the time of the first and last Gross Receipts generated for the specified period.

SECTION 604. PROMOTION.

- A. Concessionaire shall implement a marketing and promotion plan that includes, but is not limited to, advertising within the Airport and social media outlets, the use of coupons, frequent patron cards, frequent flyer passengers, senior citizen programs and Essential Air Service ("EAS") passenger programs for the Local Concept Food & Beverage Concession location.
- B. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder.
- C. Concessionaire shall not divert, cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Concessionaire to diminish the Gross Receipts of Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 605. INSPECTION REPORTS. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) one (1) copy of any health inspection, secret shopper report or brand inspection, if applicable, conducted during that respective calendar quarter to the Airport Properties Office. If said inspection does not result in a written report, Concessionaire shall submit a written summary of the nature and findings of such inspection as they were communicated to the Concessionaire. Concessionaire shall also provide the Director with any required corrective actions and timeframes for each corrective action to be implemented.

SECTION 606. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and fully represent and act on behalf of the Concessionaire in all matters pertaining to its business operation. The manager(s) shall be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence. The manager and/or subordinate shall be available after hours to resolve any issues pertaining to the Concession operations.

SECTION 607. PERSONNEL.

- A. Concessionaire shall ensure, *at its sole cost and expense*, all employees obtain an Airport-issued ID badge from the Airport Police Department and shall ensure all employees wear and display in an acceptable manner their Airport ID at all times while on Airport property. Employees shall fully comply with TSA regulation 1542 regarding conduct and access to the AOA.
- B. Concessionaire, *at its cost*, acknowledges and agrees that all employees applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
- C. Concessionaire, *at its cost*, acknowledges and agrees that it shall conduct employee background checks of each

of its personnel if required by the FAA, TSA and/or the City. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it shall comply with all such changes throughout the Term of this Agreement.

- D. Concessionaire acknowledges only direct support vehicles and/or equipment will be allowed on the AOA. Qualifying, direct support vehicles and/or equipment must be approved by the Airport Police Department and all drivers must attend Airport-sponsored driver training prior to driving on the AOA, and attend any recurrent driver training required by the Airport.
- E. Concessionaire understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Concessionaire shall promptly reimburse the City, within thirty (30) days of the City's request, for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.
- F. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and company-issued name tags so they may be identified by the public and indicates the fact and nature of their employment. Uniforms will be clean, neat, and worn according to company standards during the entire time the employee is on Airport property.
- G. Concessionaire 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 Concession.
- H. Concessionaire shall ensure staff and cashiers demonstrate customer service by presenting a pleasant greeting and smile upon customer's arrival, having excellent product and menu knowledge and providing prompt service.
- I. Concessionaire shall ensure staff and cashiers cease any personal conversations and promptly assist the customer, and shall practice "customer comes first."
- J. Concessionaire shall ensure staff shall be knowledgeable about and adhere to customer service policies for redemption of gift certificate, gift cards and/or airline vouchers.
- K. All employees shall act in a courteous and helpful manner at all times with customers and fellow employees. Employees are expected to behave in businesslike and professional manner at all times while in uniform and on Airport property.
- L. Employees shall provide a friendly and professional greeting to customers whenever and wherever contact is made; employees shall display a positive attitude toward passengers and fellow employees; English shall be spoken by staff, except when necessary to accommodate customer; the use of foul or inappropriate language in public areas at any time is prohibited; employees shall smile and use a pleasant tone of voice when conversing with the customers; employees shall be actively working while on duty and refrain from gathering and "chatting" in groups while on duty, unless necessary; employees shall refrain from the use of cell phones while on duty; employees shall not nap or sleep in public areas while in uniform; and employees shall be attentive to customers.
- M. Employees are not permitted to utilize public seating, boarding areas, gate areas and/or lounge areas with the Terminal and Concourses. The above areas are intended for use by the traveling public and not as rest or lounge facilities for employees.
- N. Concessionaire shall provide proper training to all employees including on-going customer service training and for the certification and/or licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport's customer service program.
- O. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable federal, state, City, and local laws, rules and regulations including, without limitation, the Airport's Rules and Regulations, the Airport's Security Plan and all applicable FAA, TSA, & City security rules, regulations, plans orders, directives, requirements, and procedures.
- P. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of

any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

- Q. The Airport will provide the Concessionaire, at no cost or expense, **one (1) Terminal 1 Short Term Parking Garage** parking pass. Additional parking passes shall be at *the sole cost and expense* of the Concessionaire.
- R. Lambert-St. Louis International Airport® is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 608. KNOWLEDGE OF AIRPORT. Employees of Concessionaire are expected to be able to assist Airport users with way-finding within the Airport. Concessionaire shall ensure that each of its employees (i) have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Airport and provide such information upon request, with courtesy and accuracy, and (ii) have a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers' requests for information.

SECTION 609. PRICING.

- A. Lambert-St. Louis International Airport has established a "street pricing" policy for all concessions at the Airport. This policy requires the Concessionaire to charge fair, reasonable and nondiscriminatory prices that are attractive to the public and no more than ten percent (10%) over prices charged at comparable non-Airport locations ("**street locations**") within the St. Louis Metropolitan Area, excluding resort destinations, attractions, hotels, theaters, sports and entertainment venues. Concessionaire is encouraged, but not required, to offer the same prices as street locations. For purposes of this Agreement, the term "street location" shall mean the regular price of the product or service at a non-Airport location or comparable location, determined as follows:
1. If an entity of the same business, franchise or trade name as Concessionaire operates in a non-Airport location within the St. Louis Metropolitan Area, the price charged for a product shall be no more than ten percent (10%) over the average price of the same product at three (3) non-Airport locations designated by Concessionaire and approved by the Director. Requests for changes to the comparable location or locations for the determination of street pricing and the reasons for such changes shall be provided to the Director for approval and shall become effective only upon receipt of the Director's approval.
 2. If an entity of the same business, franchise or trade name as Concessionaire does not operate within the St. Louis Metropolitan Area, the street price for a product shall be no more than ten percent (10%) over the average price of the product at three (3) non-Airport locations of the same business, franchise or trade name, as agreed to by the Director and Concessionaire.
 3. If a product is not available from an entity of the same business, franchise or trade name as stated in Section 609.A.1 and Section 609.A.2 hereof, the street price for such product shall be determined by reference to a range of the regular prices of three (3) separate businesses for such product, of comparable nature, ambiance and product and service lines, within the St. Louis Metropolitan Area as agreed to by the Director and Concessionaire.
 4. If Concessionaire is a franchisee or retail outlet of an entity with a national pricing structure identical for all franchisees or outlets, the street price for a product shall be determined in accordance with such pricing structure.
 5. Products containing selling prices printed by the manufacturer are excluded and shall not be sold for more than published prices.
 6. Where an identical product is not available at an agreed comparable location, any difference in size or quality shall constitute a price differential.
 7. Concessionaire shall submit a menu for the Local Concept Food & Beverage Concession location along with the prices to be offered. Concessionaire shall also submit a list of comparable locations and prices which support the pricing to be charged by Concessionaire. Concessionaire shall not begin operating the unit until the Director has approved in writing the comparable locations, menu and pricing in accordance with Section 609.A of this Agreement.

- B. During the Term of this Agreement, no less than one (1) time per Contract Year, thirty (30) days after each Contract Year anniversary date, Concessionaire shall conduct, or shall cause to be conducted, a price comparison of all current items available within the Premises. The price comparison shall compare the price of all current items available at the Airport with the price at non-Airport comparable locations, excluding resort destinations and attractions, hotels, theaters, sports and entertainment venues, as described in this Section 609. In the event of non-compliance with the street pricing requirements herein, Concessionaire shall bring all products into compliance with the pricing requirements within seven (7) days after such non-compliance is identified. This price comparison shall be submitted to the Airport Properties Department.
- C. The Director reserves the right to independently compare Concessionaire's prices to the agreed upon comparable non-airport location prices, as described in Section 609.B, and if prices are determined to be more than ten percent (10%) above street, require Concessionaire to reduce prices based upon its documented comparison.
- D. Concessionaire shall not increase or decrease any prices without prior written approval of the Director.
- E. All new items are subject to the pricing requirements of this Section 609 hereof and may be proposed at any time.
- F. Concessionaire is permitted, but not required, to offer discounted prices to employees of the City and other Airport employees. Before implementing a discount policy Concessionaire shall first provide thirty (30) days advance written notice to the Director. The notice shall provide the details surrounding the discount policy (e.g., who it covers, how much is the discount, etc). The Director will not unreasonably withhold approval to implement the policy. In addition, discounts may be changed, modified or discontinued with thirty (30) days prior written notice to the Director.
- G. To monitor the Concessionaire's adherence to this pricing policy, the City reserves the right to conduct price comparison surveys of various items offered by the Concessionaire.

SECTION 610. CONFLICTS. Concessionaire shall monitor the movement of its vehicles and/or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

SECTION 611. RECORD KEEPING. Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and ACDBE participant(s) under this Agreement (these records are to be retained by Concessionaire). Concessionaire must also maintain records that document, in a format acceptable to the Director, the portion of Gross Receipts attributable to ACDBE participants.

SECTION 612. TRANSITION PERIOD. If applicable, during any future transition of the Local Concept Food & Beverage Concession to another Concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

SECTION 613. OPERATION.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this Concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Existing Improvements, New Improvements, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for any damage or loss to any such items resulting from any cause whatsoever including, without limitation, flood, fire, explosion, vandalism, casualty, acts of God or other causes outside the direct control and responsibility of the City.
- C. Concessionaire shall, no later than the fifteenth (15th) day of each month during the Term of the Agreement, provide to the City a report or reports and affiliated records as required, detailing the maintenance work performed by or on its behalf, in maintaining the Premises. Reports shall include, but not be limited to, grease trap service, hood and duct cleaning, pest control service, scheduled drain cleaning, pipe replacement, and water conditioning equipment service.

SECTION 614. COMMUNICATION.

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

SECTION 615. CUSTOMER COMMENTS. Concessionaire shall establish procedures for handling all customer comments. Concessionaire shall respond in writing to every comment, written or oral, within seven (7) calendar days of the comment and shall make good faith efforts to explain, resolve or rectify the cause of any complaint. Concessionaire shall provide the Airport Properties Department with a copy of such comments and its written response thereto.

SECTION 616. DELIVERIES. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving docks with other users. All deliveries to or pick-ups from the Airport Terminal buildings by Concessionaire or its agents will be through the Terminal 1 delivery dock at the west end of the lower level or the Terminal 2 delivery dock at the east end of the lower level. **All deliveries are the sole responsibility of Concessionaire and not the City.** Deliveries of product to the unit, whenever possible, will be made through secure doors. Deliveries on the Concourse will be made at times of minimum passenger flows. **Shippers, carts or other delivery equipment will be unloaded immediately and removed from the public areas of the Airport.** Concessionaire is not permitted to block or impede the flow of passenger traffic while delivering products. **Delivery equipment will never be left unattended; an employee must physically be with the delivery equipment at all times.** Any unattended delivery equipment will result in Concessionaire being assessed liquidated damages pursuant to Article XIII.

All shippers, carts and/or other delivery equipment shall be equipped with "soft" wheels such as polyurethane, rubber, thermoplastic rubber, pneumatic or semi-pneumatic to ensure merchandise is transported quietly. "Hard" wheels such as phenolic, polyolefin, nylon, cast iron and steel are not permitted in the public areas of the Airport. The wheels on all carts and/or delivery equipment are to be kept in good condition, and must be periodically checked for embedded items, such as screws, nails or rocks that could damage the flooring. Motorized carts are not permitted in the Terminals and/or Concourses unless approved in writing by the Director.

Concessionaire shall comply with all Transportation Security Administration (TSA) and/or Federal Aviation Administration (FAA) regulations concerning the delivery, distribution and storage of products.

SECTION 617. OPERATIONAL AUDIT. During the Term of this Agreement, Concessionaire shall be subject to regular operational inspections of Concessionaire's Local Concept Food and Beverage Concession operation at the Airport.

SECTION 618. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device shall be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld. No antenna or aerial shall be erected on the roof, interior walls or exterior walls of the Premises or on the Airport without, in each instance, first obtaining the prior written consent of the Director. Any radio, television, or other similar device, antenna or aerial so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard outside the Premises without the prior written consent of the Director. Surveillance equipment shall be permitted within the Premise for surveillance within the Premises only. Concessionaire shall not be permitted, nor permit others to use, establish, purchase, sell, or maintain any type of wireless data transmission service or antennae in, on or from the Premises without obtaining the prior written consent of the Director, whose consent may be withheld for any reason whatsoever, or for no reason. The cost removal of any of the foregoing shall be borne by the Concessionaire. It is agreed that all television, radio, antenna, wireless data transmission service, and other similar devices installed and in place prior to the Commencement Date are considered approved by the Director. In addition, wireless transmission of data from Concessionaires point of sales systems to its accounting and other systems will be reasonably permitted.

SECTION 619. MENUS AND LABELING.

- A. Concessionaire shall label and detail the price of product offerings and list product offerings on menu/product/service boards in a manner consistent with street side locations for the same brand, business, franchise or trade name in an area clearly visible to the passenger. Any such menu shall include the use of

descriptive terminology that accurately describes the product(s). Any terminology or statement that the Director, in his sole and absolute discretion, determines is false or misleading shall be immediately removed. Menus shall be of excellent quality and sufficient in number to meet peak period demands.

- B. If reasonably required by the Director to enhance customer service for international passengers, Concessionaire shall create, execute and maintain on hand an adequate number of menus printed in languages other than English.
- C. For each menu item offered by Concessionaire, Concessionaire shall submit for approval a written description of the menu item or the brand/franchise's description of the item to include the quantity and quality of ingredients, how the item is assembled and serving size. If brand name ingredients are used in the menu item, i.e. Volpi salami, it shall be specified in the description. Each menu item and product offered will be prepared in accordance with the brand approved recipe (to include the approved ingredients, quantity, quality and execution). For any proprietary concepts, each menu item and product offered will be consistent with the approved menu for the facility (including the product ingredients, quantity, quality and execution) and no changes will be permitted without fifteen (15) days notification to the City.

SECTION 620. PRODUCT, SERVICE AND/OR MERCHANDISE LIMITATIONS. The following products, services and/or merchandise **are not permitted** to be sold under or through this Local Concept Food & Beverage Concession Agreement or from the Premises:

- News and gift merchandise;
- Duty-free merchandise;
- Electronics and/or music merchandise;
- Vending, automated and/or mechanical retail devices;
- Pre-packaged, *non-perishable* snacks, candy and chewing gum;
- Fresh and/or pre-popped popcorn;
- Insurance of any kind;
- Commercial advertising services, signage and displays;
- Telephone, Internet access and Broadband facilities;
- Ground transportation and parking services;
- Hotel accommodations;
- Banking services including Automatic Teller Machines (ATM), foreign currency exchange and money orders;
- Baggage carts and/or lockers;
- Airline tickets;
- Travel agency activities; and
- Check-cashing services

The sale of a limited amount of *concept-related* merchandise items including but not limited to t-shirts and mugs may be approved by the Airport Director in writing (see Article III, Section 302 entitled "Limitation Of Rights").

All items sold must meet and/or comply with Transportation Security Administration (TSA) and/or Federal Aviation Administration (FAA) security regulations.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

SECTION 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Concessionaire takes the Premises "AS IS" as provided for in Article II, Section 201 hereof, and agrees, at Concessionaire's sole cost and expense, to design, erect, construct, install, replace, Refurbish, equip and furnish all necessary New Improvements, Removable Fixtures, equipment, fixturing, and make related facility changes as needed to operate a Local Concept Food & Beverage Concession, pursuant to this Agreement, subject to the Provisions of this Agreement.
- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.
1. Concessionaire shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 705, to the Airport

Properties Department. The TCA shall be submitted along with any future phasing and construction schedules as agreed to between the Concessionaire and the City. Concessionaire also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with a specific work element. As such, Concessionaire's ongoing coordination with the City, at all times, is crucial.

2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved.)
3. Concessionaire shall submit the contractor's liability insurance certificates, performance bonds, and payment bonds as required by Sections 706 and 707, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
4. Concessionaire shall use only City-approved contractors or subcontractors for improvements affecting control and/or programming of Airport systems including but not limited to security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.
5. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 709 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (**PCB**) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

SECTION 702. INITIAL MINIMUM INVESTMENT. In connection with Concessionaire's performance under Section 701 and Section 702 of this Agreement, Concessionaire shall expend or cause to be expended for Build-Out Costs not less than **Five Hundred Thousand Dollars (\$500,000.00) (the "Initial Minimum Investment")**. Concessionaire shall complete or cause to be completed such New Improvements subject to and in accordance with all the Provisions of this Agreement. Concessionaire's Build-Out shall be completed no later than **six (6) months after the Commencement Date** of the Agreement unless delayed or postponed at the Director's written direction.

Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs for the unit within one hundred eighty (180) days following completion of work to the Premises. This proof of Build-Out Costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified by an Independent Certified Public Accountant, and will supply the resulting audit report to the Director. Concessionaire shall provide to the Director any other proof or documentation required by the Director to ensure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Initial Minimum Investment; however, in the event Concessionaire's actual expenditures for Build-Out Costs are less than the Initial Minimum Investment, the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 703. LIQUIDATED DAMAGE FOR LATE OPENING. If the Premises is not open for business at the start of the Initial Concession Period, the Concessionaire shall be required to pay to the City within thirty (30) days of the City's written request liquidated damages of One Thousand Dollars (\$1,000.00) per day until the Premises is open to the traveling public for business unless otherwise agreed to in writing by the Director.

SECTION 704. MID-TERM REINVESTMENT.

- A. Concessionaire shall have the right, without cost to City, to construct additional New Improvements to or in the Premises, subject to and in accordance with the Provisions of this Agreement.

- B. Concessionaire covenants, warrants, represents, and agrees that the Concessionaire shall expend or cause to be expended Refurbishment Costs for Refurbishments in an amount not less than **Fifty Thousand Dollars (\$50,000) (the "Mid-Term Reinvestment")**. The Mid-Term Reinvestment to Refurbish the Premises including New Improvements shall include only those Refurbishment Costs incurred or expended by the Concessionaire or its sublessees' on the first day of Year 1 of the Option Term and be completed no later than the first day of Year 2 of the Option Term, unless delayed at the City's direction. Concessionaire shall perform and complete the Refurbishments for the Mid-Term Reinvestment in accordance with the Provisions of this Agreement. The Director reserves the right to participate in and approve the Concessionaire's Mid-Term Reinvestment plans to Refurbish the Premises. Concessionaire shall furnish the Director with satisfactory proof of the Mid-Term Reinvestment within one hundred twenty (120) days following completion of work to the Premises. Upon completion of the Refurbishment, the Concessionaire shall promptly have the Refurbishment Cost for Mid-Term Reinvestment to Refurbish the Premises certified by an Independent Certified Public Accountant and shall promptly supply the resulting audit report to the Director. Concessionaire shall also promptly provide to the Director any other proof or documentation reasonably requested by Director to insure compliance with the Provisions of this Article VII. Concessionaire is encouraged by City to productively expend the entire Mid-Term Reinvestment amount; however, in the event Concessionaire's actual expenditures for Refurbishment Costs to Refurbish the Premises are less than the Mid-Term Reinvestment amount of Fifty Thousand Dollars (\$50,000.00), the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.
- C. In addition to the Mid-Term Reinvestment requirement stated in Section 704(B), if it becomes reasonably necessary during the Term of this Agreement, as determined by the Director, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises, Existing Improvements and New Improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings to keep the Premises in like new condition during the Term of this Agreement.

SECTION 705. PREPARATION OF PLANS AND SPECIFICATIONS. Concessionaire shall submit detailed drawings, plans, schedules and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. **Concessionaire shall begin work on proposed construction only after it has received the written approval of its plans, schedules and specifications from the Director.**

SECTION 706. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

SECTION 707. PERFORMANCE AND PAYMENT BONDS. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish both a Performance Bond **and a** Payment Bond **each** in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond shall be used for the completion of said construction and/or the payment of laborers and material suppliers, as the case may be.

SECTION 708. MECHANICS' AND MATERIALMEN'S LIENS. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

SECTION 709. CERTIFICATE OF COMPLETION. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings, preferably in an electronic format, within ninety (90) days of opening of the Local Concept Food & Beverage Concession location.

SECTION 710. SIGNS.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of a Local Concept Food & Beverage Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 710 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining the local food & beverage concession or place any signs (excluding the facility name – e.g., Burger King) outside of the Premises without the prior written approval of the Director.
- E. As part of the development of any facility, Concessionaire will be required to install an approved blade sign as part of the initial construction.
- F. Handwritten signs are strictly prohibited.
- G. The Director reserves the right to require the removal of any signs or advertising in, on or within the Premises deemed unacceptable or improper, and the Director's decision shall be final and binding.

SECTION 711. PLUMBING LINES & WATERPROOFING. The City shall require Concessionaire to install, keep, maintain and repair all pipes or lines for water, drainage or sewer within or directly serving the Premises ("**plumbing lines**") such that they are sealed or protected against leakage or discharge of odors in conformance with the City's requirements whether or not such requirements exceed the minimum requirements of the applicable building codes. In the event that such plumbing lines leak, Concessionaire shall, at its *sole cost and expense*, and within one (1) calendar day of receipt of notice from the City (which notice may be by telephone) commence repair of such plumbing lines. Any such repair shall be in strict conformance to the Tenant Design Standards.

Concessionaire shall promptly reimburse the City or other tenant for any physical damage to their property including, without liability, property resulting from such leakage. Upon the third (3rd) occasion of a leak from the same plumbing lines during a one (1) year period, the City shall be entitled to hire its own plumbing contractor to correct the problem and the City shall be reimbursed from Concessionaire the cost and expense of the repairs plus fifteen percent (15%) as set forth in Section 803.

The City shall require Concessionaire to install, maintain and repair waterproof membrane systems under all floors of the Premises, such that they are sealed or protected against leakage in conformance with the City's requirements whether or not such requirements exceed the minimum requirements of the applicable building codes. In the event that such floors leak, Concessionaire shall at its sole cost and expense and as soon as reasonably practical upon receipt of notice from the City (which notice may be by telephone) repair such waterproof system. Any such repair shall be in strict conformance to the Tenant Design Standards. Concessionaire shall reimburse the City or other tenant for any physical damage to its ceiling tiles and/or other property resulting from such leakage.

SECTION 712. GREASE INTERCEPTION SYSTEM. Concessionaire is required to install and maintain a grease interception system of sufficient size to prevent the release of grease in the waste water. The grease interception system will be serviced as such intervals as necessary to prevent the release of grease in the waste water. Grease traps shall be cleaned on a regular schedule and/or as needed. Grease shall be transported to and from a unit via a sealed container in which the grease is pumped into and out of the container in a safe and clean manner so as to lessen the occurrence of a "spill" and/or tracking grease on Airport surfaces.

SECTION 713. EXHAUST FANS, VENTS & HOODS. The City shall require Concessionaire to install, maintain and repair exhaust fans, vents and hoods as they relate to operation of the Local Concept Food & Beverage Concession unit in conformance with the City's requirements whether or not such requirements exceed the minimum requirements of the applicable building codes.

Concessionaire shall ensure all Concessionaire-owned and maintained exhaust fans, vents and hoods are clearly marked with Concessionaire's name. Concessionaire shall also ensure all exhaust fans, cooking vents and hoods, filters and related ductwork shall be cleaned and maintained on a regular basis to prevent health, fire or safety issues.

In the event that such exhaust fans, vents and/or hoods are not maintained causing excess build-up of grease or other kitchen contaminants, Concessionaire shall, at its sole cost and expense, and within one (1) calendar day of receipt of notice from the City (which notice may be by telephone) commence maintenance and repair of the exhaust fans, vents and/or hoods and/or any property damaged by the equipment. Any such repair shall be in strict conformance to the Tenant Design Standards. Concessionaire shall promptly reimburse the City or other tenant for any physical damage to anything, improvement or property relating to the exhaust fan(s), vent(s) and/or hood(s). Upon the third (3rd) occasion of damage from exhaust fan(s), vent(s) and/or hood(s) from the same exhaust fan(s), vent(s) and/or hood(s) lines during a one (1) year period, the City shall be entitled to hire its own contractor to correct the problem and/or repair the damaged property, and the City shall be reimbursed from Concessionaire the cost and expense of the repairs plus fifteen percent (15%) as set forth in Section 803.

SECTION 714. TITLE TO NEW IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES. All New Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement.

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

The City reserves the right, and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Removable Fixtures and restore the Premises to an acceptable condition as approved by the Director. Concessionaire agrees to bear all costs of such removals and restorations (see Section 403 entitled "Surrender of Possession"). If after thirty (30) days following the expiration or early termination of this Agreement, Concessionaire fails to remove its Removable Fixtures and other personal property from the Premise, such Removable Fixtures and personal property may be deemed abandoned. In addition to whatever other rights are available to the City, with prior notification of Concessionaire, the City may: (i) remove, sell, or store Concessionaire's property at Concessionaire's expense, or (ii) take title to Concessionaire's property in lieu of removal on behalf of Concessionaire. If the City takes title to such property or otherwise disposes of the property, the City shall be entitled to all proceeds of sale of such Concessionaire property as liquidated damages for the breach of this covenant to remove.

ARTICLE VIII USE OF PREMISES

SECTION 801. COMPLIANCE WITH LAWS AND REGULATIONS. Concessionaire shall comply with all applicable Rules and Regulations, the Airport Certification Manual, Airport Security Plans and procedures, and operating directives, environmental plans or program, promulgated or established by the Airport Authority, the Airport Commission, the Director, or the City, as they may be amended from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

SECTION 802. USE. Concessionaire shall provide and pay for all repairs and maintenance of the Premises, *except* the following which shall be the responsibility of the City:

- a. The structural components of the building.
- b. The utility system to the point of Concessionaire's connection to the utility system, except where the utility systems are owned or controlled by the utility companies.
- c. The washing of the exterior of windows in the terminal building.

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

- d. Perform custodial services daily.
- e. Keep all its equipment and fixtures within the Premises in good repair and appearance including, without limitation, all New Improvements, Existing Equipment and Removable Fixtures.
- f. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- g. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- h. Provide for complete, sanitary handling and disposal of all trash, garbage, recycling and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.
- i. If the City provides or designates a service for picking up refuse and garbage, Concessionaire will be required to use said service.
- j. If the City establishes a recycling program, the Concessionaire will fully participate in said recycling program. Concessionaire must comply with all applicable City, county, state and federal regulations regarding recycling.
- k. Concessionaire shall break down or cause to break down all cardboard boxes prior to their disposal.
- l. Provide waste receptacles inside the Premises for customer and passenger use.
- m. If the City or the Airport establishes a food waste reduction program, the Concessionaire shall fully participate in said food waste reduction program.
- n. Confine all handling and holding of Concessionaire's property to the Premises.
- o. Keep all papers and debris picked up daily from the Premises.
- p. Keep the Premises free of all pests, providing such pest control services as required.
- q. Keep unit secured at all times.
- r. Provide, at Concessionaire's sole cost and expense, a functional mailing address or other means of receiving mail, and shall ensure all mail is directed to that address. The City is not responsible for the Concessionaire's mail or the subsequent delivery thereof.
- s. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including, without limitation, loss of profit or business, actual, incidental, consequential or special damages. Notwithstanding, if Concessionaire is negatively and materially or substantially impacted the City will make reasonable efforts to work with Concessionaire to provide a solution that may help to offset the negative impact.

SECTION 803. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises to determine whether Concessionaire has complied and is complying, with the Provisions of this Agreement.

- B. To perform maintenance and make repairs Concessionaire is obligated, but has failed to do after the City have given Concessionaire notice to do so, in which event, Concessionaire shall reimburse the City for the costs thereof, plus a charge of fifteen percent (15%) for overhead, within thirty (30) days of the City's written request or demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections and remediations, studies and assessments during normal business hours.

SECTION 804. UTILITIES.

- A. Metered Utilities. All utilities, including but not limited to electricity, water and gas, to the Premises will be separately metered wherever practical. Concessionaire shall be required to install dedicated electric meters, water meters and gas meters at its sole cost and expense.
- B. Electrical Fee. The City shall provide a main electric panel from which Concessionaire shall obtain electricity at a cost based upon metered usage. Charges for those utilities not separately metered may be prorated and billed to Concessionaire by the City. All City-issued utility bills will include an Airport processing and administrative fee.
- C. Electrical Service & Supply. Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. If electrical service outlets are not available where needed, Concessionaire shall be responsible for bringing electrical service to the Premises. Concessionaire shall be responsible for any needed modifications or upgrades in electrical supply caused by increased lighting or other changes to the Premises made by the Concessionaire.
- D. Water Usage Fee. Concessionaire's water usage shall be charged at a cost based upon metered usage. Charges for those utilities not separately metered may be prorated and billed to Concessionaire by the City. All City-issued utility bills will include an Airport processing and administrative fee.
- E. Gas Usage Fee. Concessionaire's gas usage shall be charged at a cost based upon metered usage. Charges for those utilities not separately metered may be prorated and billed to Concessionaire by the City. All City-issued utility bills will include an Airport processing and administrative fee.
- F. Heating, Ventilation & Air Conditioning ("HVAC"). Concessionaire shall be required to construct and maintain separate HVAC equipment on New Improvements constructed under the Agreement. All HVAC equipment shall be connected to the Airport's fire detection system.
- G. Other Utilities Concessionaire shall provide and pay for all other utilities (including telephone and other third party service) it requires, including but not limited to deposits; installation costs; costs of upgrading or relocating utility service; connection charges; telephone and/or data lines it requires; meter deposits; and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.
- H. Fire Detection & Suppression Equipment. If required by building codes or other regulations, Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

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

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

SECTION 805. INTERFERENCE WITH AIRPORT UTILITIES. Concessionaire shall not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

SECTION 806. INTERFERENCE TO AIR NAVIGATION. Concessionaire warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the Federal Aviation Administration (FAA), will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Concessionaire at its expense. Concessionaire warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the Air Traffic Control Tower and its operations. Concessionaire further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aids or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX INSURANCE, DAMAGE AND INDEMNIFICATION

SECTION 901. INSURANCE.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
1. Commercial General Liability in an amount not less than five million dollars (\$5,000,000.00), per occurrence and in aggregate.
 2. Automobile Liability Insurance in an amount not less than three million dollars (\$3,000,000.00) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of seven million dollars (\$7,000,000.00), to Concessionaire automobile liability insurance.
 3. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire 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 Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
 4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property including, without limitation, Concessionaire's personal property and Removable Fixtures. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 5. Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may

elect to self-insure for individual projects with a total cost of fifty thousand dollars (\$50,000.00) or less.

6. Other Property Coverage. Concessionaire 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 form and which covers Concessionaire's improvements to the Premises including, without limitation, New Improvement, Removable Fixtures, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's Removable Fixtures and personal property).

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

1. Form of Policies. The insurance may be in one or more policies of insurance.
2. Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire 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.
3. Insured Parties. Each policy by endorsement, 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 Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to and shall not, make the City a partner or joint venturer with Concessionaire in its operations.

The "additional insured" language shall read exactly as follows: "St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City and its Board of Aldermen and Airport Commission, and their respective officers, employees, and agents are additional insured on the General Comprehensive and Automobile Liability portions of the insurance.

The "Certificate Holder" portion should read exactly: "City of St. Louis, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145."

4. Deductibles. Concessionaire 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 Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
5. Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a thirty (30) day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
6. 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.
7. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
8. Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus fifteen percent (15%) administrative charge, from Concessionaire.

9. Proof of Insurance. Within thirty (30) days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance. At least fifteen (15) days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Concessionaire, the City shall have the right to examine Concessionaire's insurance policies.
- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 902. CONCESSIONAIRE ACTIONS AFFECTING INSURANCE. Concessionaire shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If such Concessionaire's act, or failure to act, causes cancellation of any policy, then Concessionaire shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Concessionaire does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Concessionaire shall immediately remedy such actions and/or pay the increase in premiums, upon notice from the City to do so; but in any event, Concessionaire will hold the City harmless for any expenses and/or damage resulting from any such action.

SECTION 903. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City shall use reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. Total Damage.
1. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify

Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.

2. If the City elects to reconstruct or replace affected Premises, the City shall use reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its Local Concept Food & Beverage Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG and any other rental payments will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.
3. If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its Local Concept Food & Beverage Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipt generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

D. Scope of Restoration of Premises.

1. The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section shall in any event be limited to using due diligence and reasonable efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C. If the City elects to repair, reconstruct, or replace affected Premises as provided in this Section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, install, reconstruct, or replace its signs, fixtures, equipment, furnishings, Removable Fixtures, New Improvements, and other items provided, constructed, or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
2. In lieu of the City's repair, reconstruction, or replacement of the affected Premises, as provided in this section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article VII. The City shall reimburse Concessionaire for the cost of such authorized work performed by Concessionaire as agreed to in writing by the City and the Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as a Concessionaire or contractor of the City.

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

SECTION 904. INDEMINIFICATION.

- A. Concessionaire shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the “**Indemnified Parties**”) from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys’ fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of the Concessionaire or Concessionaire’s use of the Premises or other areas or facilities at the Airport by Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- i. the acts or omissions of Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
 - ii. Concessionaire’s use or occupancy of the Airport including the Premises; and
 - iii. any violation by Concessionaire in the conduct of Concessionaire’s Local Concept Food & Beverage Concession or its use of its Premises or other areas or facilities at the Airport of any Provision of this Agreement.
- Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- B. Concessionaire shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Concessionaire or by reason of Concessionaire’s occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Concession-related receipts. However, Concessionaire 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 reasonably necessary to permit Concessionaire to contest or appeal the same. Concessionaire 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 Concessionaire. Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire’s use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, officers, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.

- E. If a prohibited incursion into the Airport Operations Area (AOA) occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, officers, agents, contractors, independent contractors, sublessees, invitees, licensees, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire 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 Concessionaire 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. Concessionaire'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 Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire 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 Concessionaire.
- H. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Concessionaire 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 Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.
- The provisions of this Section shall survive the expiration or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Concessionaire in accordance with this Section. Any final judgment rendered against the City for any cause for which Concessionaire is liable hereunder shall be conclusive against Concessionaire as to amount upon the expiration of the time for appeal there from. 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, Concessionaire 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 ten percent (10%) liable due to contributory negligence.
- K. This Section shall survive the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 shall in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

SECTION 905. CITY NOT LIABLE. Unless otherwise expressly provided for in this Agreement, the City shall not in any event be liable to Concessionaire for:

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, or suppliers;
- B. Concessionaire's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. Any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, 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 SUBCONTRACTING**

SECTION 1001. ASSIGNMENT AND SUBCONTRACTING.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all applicable Provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 603 of this Agreement; (iv) a provision providing that all terms of the sublease are subject to and subordinate to the Provisions of this Agreement; and (v) a provision that the term of the sublease shall expire immediately at the expiration or early termination of this Agreement.

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

- C. No subcontract, sublease, or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Article XI. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI
TERMINATION OF AGREEMENT IN ENTIRETY

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

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be of a material amount (defined for this Section as an amount in excess of Five Thousand Dollars (\$5,000.00)) and shall remain unpaid after the date the same shall become due and Concessionaire does not satisfy the obligation after written notice and a reasonable cure period as provided for in Section 1103 below.
- B. If during the term of this Agreement, Concessionaire shall:
- 1) Apply for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
 - 2) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3) Make a general assignment for the benefit of creditors;
 - 4) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
 - 6) Fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
 - 7) Fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
 - 8) Allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire that is not removed or enjoined within thirty (30) days;
 - 9) Desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or
 - 10) Fail in the performance of any Provision herein required to be performed by Concessionaire when not cured upon written notice and a reasonable cure period.

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

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

SECTION 1102. CONCESSIONAIRE'S RIGHT TO TERMINATE. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least sixty (60) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

SECTION 1103. PROCEDURES FOR TERMINATION. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after written notice by either party to the other specifying the date and cause of termination. No such termination shall be effective if the party at default (i) cannot by the nature of the default cure it within such forty-five (45) day period; (ii) commences to diligently correct such default within such forty-five (45) day period; and (iii) corrects such default as is reasonably practicable. Notwithstanding the foregoing, the effective date for termination shall be thirty (30) days after written notice by City to Concessionaire for failure to make any payment when due, or for failure to provide the security for performance as specified in Article V or for failure to provide any insurance coverage as specified in Article IX unless cured in such thirty (30) days after written notice by City to Concessionaire.

SECTION 1104. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of the City and Concessionaire specified in this Article are not intended to be and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

ARTICLE XII AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

SECTION 1201. COMPLIANCE.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than **Fourteen Percent (14%)**. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the Term of the Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (**MRCC**) certified ACDBEs.
- B. If Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Concessionaire will not be required to perform additional Good Faith Efforts, except in the event that Concessionaire's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Concessionaire's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Concessionaire will be required to perform the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following the loss of ACDBE participation and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- C. If Good Faith Efforts did not result in fulfillment of the ACDBE goal, Concessionaire must again complete the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following Commencement of the Term of this Agreement and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- D. In the event that any ACDBE Sublessee defaults, Concessionaire agrees to immediately take steps to obtain a replacement certified ACDBE through good faith efforts. Notwithstanding, if ACDBE goes over the Personal Net Worth limitation, their participation will still count until the end of the lease term as per FAA/DOT regulations. It is the intent of City to have a certified ACDBE Sublessee replace any ACDBE Sublessee that has defaulted. Replacement ACDBE's must be approved in writing by the Director. If a replacement ACDBE cannot be located, Concessionaire must make good faith efforts to sublease other rights of Concessionaire to secure ACDBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately operate the Local Concept Food & Beverage Concession unit in lieu of an

ACDBE that has failed to perform due to default of its sublease until such time as a replacement ACDBE sublessee begins operation. The loss of an ACDBE does not relieve Concessionaire of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Concessionaire assistance in locating ready, willing, able ACDBE firms.

- E. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations 49 CFR Part 23. Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner’s race, creed, color, religion, sex, national origin or ancestry in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.

- F. Concessionaire shall operate its Local Concept Food & Beverage Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. Concessionaire shall also comply with any City of St. Louis executive orders, resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

**ARTICLE XIII
LIQUIDATED DAMAGES**

SECTION 1301. LIQUIDATED DAMAGES. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches Article VII, Section 703 entitled “Liquidated Damages For Late Opening”, Section 1302 entitled “Continuing Operations”, or any of the Provisions enumerated below. Therefore, in addition to Section 703 or Section 1302, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Concessionaire of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first (1st) default or breach in any category will result in a warning letter. The second (2nd) default or breach will require Concessionaire to pay liquidated damages in the amount listed below. For the third (3rd) default or breach and each subsequent default or breach in the same category, Concessionaire will pay City liquidated damages in the amount listed below. Such liquidated damages shall be due and payable by the Concessionaire within thirty (30) days of the City’s request or notice. The stated defaults or breaches referred to in this Section 1301 are cumulative over the Term of this Agreement and are in addition to any other remedies City may have under this Agreement or at law or in equity. For any defaults or breaches specified in this Section with associated liquidated damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

LIQUIDATED DAMAGES FOR BREACH OF OPERATING STANDARDS BREACH OR DEFAULT	SECOND BREACH	THIRD BREACH
A. Breach of Space Use and/or Unattended Delivery Equipment	\$500.00	\$750.00
B. Unauthorized advertising and/or signage.	\$500.00	\$750.00
C. Failure to remedy customer service, cleanliness, quality assurance, operations, and/or facility standards.	\$500.00	\$750.00
D. Late monthly reporting of Gross Receipts in breach of Article V.	\$25.00 per day	\$50.00 per day
E. Failure to deliver on time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$500.00	\$750.00

F. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00	\$750.00
G. Failure to maintain required hours of operation.	\$500.00	\$750.00
H. Late annual financial reporting in breach of Article V.	\$50.00 per day	\$100.00 per day

SECTION 1302. CONTINUING OPERATIONS. Concessionaire acknowledges, stipulates, and agrees that the continuous operation of the Premises is essential to the provision of excellent customer service to the traveling public. If Concessionaire shall fail to operate any portion of the Premises set forth in Exhibit "A" for more than five (5) consecutive days, except in the case of damage or destruction of the Premises or if Concessionaire is making New Improvements or Refurbishments as provided for in Article VII, Concessionaire shall either return the Premises to the City without cost to the City or pay to the City an amount equal to the non-airline square footage rental rate then applicable as Liquidated Damages to compensate the City for the failure.

ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS

SECTION 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS. Concessionaire warrants and covenants that in conducting any activities or business on Airport property, including any activities directly related or incidental to its use and occupancy of Premises, Concessionaire shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws.

Concessionaire further covenants and warrants as follows:

A. Environmental Permits.

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

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

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

Remediation Work shall be performed at Concessionaire's expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire, taking into consideration the circumstances, timely and promptly submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through notice; provided, however, that the City's approval shall not be unreasonably withheld or delayed (see Section 403 entitled "Surrender Of Possession"). The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument on the land title. Specific cleanup levels for any Remediation Work by Concessionaire 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 and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's current and/or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.

- D. Access for Environmental Inspection. Upon reasonable notification to Concessionaire, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Concessionaire is using the Premises in accordance with this Section 1401. Concessionaire shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Concessionaire's operations. If the City's inspection results in any type of written report, the City shall provide Concessionaire a reasonable opportunity to timely review and comment on a draft of the report. Concessionaire shall provide to the City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Concessionaire 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 the Subsection to the extent consistent with the City's legal obligations.
- E. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Premises, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be timely paid or reimbursed by Concessionaire within thirty (30) calendar days of the City's written notice. Subsequent to receipt of the City's notice to perform the Remediation Work, the Concessionaire shall not undertake performance of such Remediation Work without the specific prior authorization from the City, Remediation Work, if necessary, shall be performed in accordance with the provisions of Section 1401.C, but only after first having provided notice to Concessionaire of such failure to comply, and thirty (30) days within which Concessionaire may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Concessionaire's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Concessionaire's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.
- F. Review of Environmental Documents. At the reasonable request of the City, Concessionaire shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Concessionaire has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertains to the Airport or the Premises, and which would be discoverable in litigation.
- G. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided for in this Article XIV shall survive the expiration or early termination of this Agreement.
- H. Pollution Control. In addition to all other requirements of this Agreement, Concessionaire, at its cost, shall manage all its operations at the Premises in compliance with all applicable Environmental Laws, Environmental Permits, and with

applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan and Storm Water Management Plan, which shall be provided to Concessionaire at Concessionaire's written request.

- I. Environmental Covenants. So long as they do not materially impact Concessionaire's day-to-day operations at the Premises, Concessionaire will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises or the Airport; (ii) limits the use of the Premises to nonresidential uses; and/or (iii) reasonably restricts access to soil underlying the Premises or the Airport.

**ARTICLE XV
MISCELLANEOUS PROVISIONS**

SECTION 1501. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to:

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

With a copy to:

Airport Properties Division Manager
Lambert-St. Louis International Airport
P.O. Box 10212
10701 Lambert International Blvd.
St. Louis, Missouri 63145

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

Mr. Milan Patel
OHM CONCESSION GROUP, LLC
10812 St. Charles Rock Road
St. Louis, MO 63074

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

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

SECTION 1502. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport® will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or Agreement discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21. Concessionaire agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. 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.
- B. Concessionaire agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or

disability. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency ("CREA") within ten (10) days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of it program.
- E. Concessionaire will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Concessionaire's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Concessionaire may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Concessionaire shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Concessionaire will establish and maintain during the Term of this Agreement an affirmative action program, and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, religion, age or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered suborganizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- K. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Concessionaire hereby agrees that its Premises shall be posted to such effect as required by such regulation. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- L. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and causes those businesses to similarly include the statement in further agreements.

M. Concessionaire shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

SECTION 1503. NO PERSONAL LIABILITY. No alderman, commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any Provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City relating to any aspect of this agreement shall be brought against the City and not against named individual respondents.

SECTION 1504. 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 Concessionaire hereunder, their respective licensees, contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Concessionaire 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 Concessionaire's obligations to make any payments due to the City pursuant to this 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 therefore 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 1505. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto. This provision shall not constitute a waiver of any conditions regarding the assignment or subletting contained in this Agreement.

SECTION 1506. QUITE ENJOYMENT. Subject to the Provisions of this Agreement, the City covenants that Concessionaire, on paying the fees and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable use of the Premises.

SECTION 1507. OPERATIONS AND MAINTENANCE OF THE AIRPORT. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

SECTION 1508. TITLE TO THE SITE. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

SECTION 1509. AGREEMENTS WITH THE UNITED STATES OF AMERICA. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States Government or governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the granting of federal funds or the approval to impose or use Passenger Facility Charges ("PFCs") for the improvement or development of the Airport. Concessionaire shall not cause the City to violate any assurance made by the City to the United States Government in connection with the granting of such federal funds or the approval of such PFC's. All Provisions of this Agreement shall be subordinate to the rights of the United States of America to operate all of the Airport or any part thereof during time of war or national emergency. Such rights shall supersede and Provisions of this Agreement inconsistent with the operation of the Airport by the United States of America.

SECTION 1510. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions of this Agreement, as may be reasonably required to enable the City to obtain said FAA funds, provided that in no event shall such changes substantially impair the rights of Concessionaire hereunder.

SECTION 1511. GOVERNING LAW AND FORUM SELECTION. This Agreement is made and entered into in the State of

Missouri, and Missouri law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the City of St. Louis, Missouri. Concessionaire and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section shall survive the expiration or termination of this Agreement.

SECTION 1512. HEADINGS. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any Provisions of this Agreement and shall not be construed to affect in any manner the Provisions hereof or the interpretation or construction thereof.

SECTION 1513. AMENDMENTS. Unless otherwise expressly provided herein, this Agreement may not be changed, modified, or amended except by written amendment duly executed by the parties hereto.

SECTION 1514. PREVIOUS AGREEMENTS. It is expressly understood that the Provisions of this Agreement shall in no way affect or impair the Provisions or obligations or rights of any existing or prior agreements between Concessionaire and the City.

SECTION 1515. REQUIRED APPROVALS. When the consent, approval, waiver, or certification (“**Approval**”) of other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. In taking such actions, the Director shall act reasonably, and take into consideration the best interest of the City, the Airport, and travel public. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director, on behalf of the City, and Concessionaire or its designee. Whenever the Approval of the City, or the Director, or Concessionaire is required herein, no such Approval shall be unreasonably requested, conditioned, or withheld.

SECTION 1516. WAIVERS. No Provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice that may evolve between the parties in the administration of the Provisions of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the Provisions of this Agreement.

SECTION 1517. INVALID PROVISIONS. If any Provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such 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 Provisions of this Agreement shall remain in full force and effect provided that the striking of such Provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid Provisions of this Agreement.

SECTION 1518. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto and/or incorporated by reference herein, constitutes or embodies the entire Agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and the Concessionaire.

SECTION 1519. NOT A LEASE. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges expressly granted hereunder. Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

SECTION 1520. ADVERTISING. Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotional service or publication without the prior written consent of the Director.

SECTION 1521. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Concessionaire, and any other tenant, licensee, sublessee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final and binding.

SECTION 1522. PREVAILING WAGE. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is subject to and shall be in accordance with City Ordinance No. 62124, as may be amended from time to time.

SECTION 1523. AMERICANS WITH DISABILITIES ACT (“ADA”). Concessionaire shall be responsible for compliance with the federal ADA, and any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having

access to Concessionaire's services.

SECTION 1524. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The parties expressly agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if not time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

SECTION 1525. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the Provisions contained in this Agreement. As such, the Provisions of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

SECTION 1526. SECURITY PLAN AND FACILITIES. Concessionaire hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire's negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

SECTION 1527. LIVING WAGE COMPLIANCE PROVISIONS. This Agreement is subject to the St. Louis Living Wage Ordinance No. 65597 ("**Ordinance**") and the "**Regulations**" associated therewith, as may be amended from time to time. Copies of Ordinance and Regulations may be obtained by contacting Assistant Airport Director, M/W/DBE Certification and Compliance Office, P. O. Box 10212, St. Louis, Missouri, 63145-0212 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates and agrees to comply with these measures (unless expressly exempt as provided for in the Ordinance and Regulations):

- A. Minimum Compensation: Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (**Exhibit "B"**), which is incorporated herein. The initial rate shall be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.
- B. Notification: Concessionaire shall provide the Living Wage Bulletin to all employees, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. Posting: Concessionaire shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. Subcontractors and Sublessees: Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.
- E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire term of the Agreement, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such Agreement is in effect.
- F. Reporting: Concessionaire shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation, suspension or termination of the Agreement, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.

H. Concessionaire hereby acknowledges receipt of a copy of the Ordinance and Regulations.

SECTION 1528. SURVIVAL OF WARRANTIES. All warranties and covenants set forth in this Agreement shall survive the execution and performance of this Agreement.

SECTION 1529. CITY'S RIGHT AND REMEDIES ARE CUMMULATIVE. All rights and remedies of the City as provided for herein and under law are cumulative in nature.

(The balance of this page is intentionally blank.)

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

CONCESSIONAIRE BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 2013:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2013.

BY:

Commission Chairman and Date
Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 2013.

BY:

Secretary, Date
Board of Estimate and Apportionment

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis Date

**EXHIBIT "A"
PREMISES**

RESERVED FOR PREMISES

EXHIBIT "B"

LIVING WAGE BULLETIN

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

**NOTICE OF ST. LOUIS LIVING WAGE RATES
EFFECTIVE APRIL 1, 2012**

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

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$11.93** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$15.52** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$3.59** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2012**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

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

City Compliance Official
Lambert-St. Louis International Airport
Certification and Compliance Office
P.O. Box 10212
St. Louis, Mo 63145
(314) 426-8111

Dated: February 17, 2012

Approved: May 30, 2013