

ORDINANCE #65664
Board Bill No. 231

An Ordinance, recommended and approved by the Board of Estimate and Apportionment, authorizing and directing the Director of Airports and the Comptroller of The City of St. Louis (the "City") to enter into and execute on behalf of the City a Preferential Use Space Permit NO. AL-99 (the "Permit") at Lambert-St. Louis International Airport (the "Airport") between the City and Continental Airlines, Inc. (the "Permittee"), granting to the Permittee, subject to the terms, covenants, and conditions of the Permit, certain rights and privileges in connection with the occupancy and use of the Space, which is defined and more fully described in Section 1 of the Permit that was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and is attached hereto as ATTACHMENT "A" and is incorporated herein; and containing an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller for The City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City a Preferential Use Space Permit NO. AL-99 (the "Permit") at Lambert-St. Louis International Airport (the "Airport") between the City and Continental Airlines, Inc. (the "Permittee"), granting to the Permittee, subject to the terms, covenants, and conditions of the Permit, certain rights and privileges in connection with occupancy and use of the Space, which is defined and more fully described in Section 1 of the Permit that was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and is to read in words and figures as set out in ATTACHMENT "A", which is attached hereto and is incorporated herein.

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

ATTACHMENT "A"
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT



CONTINENTAL AIRLINES, INC.
PREFERENTIAL USE SPACE PERMIT NO. AL-99

AIRPORT NUMBERAL-99.....

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
PREFERENTIAL USE SPACE PERMIT
(CONTINENTAL AIRLINES, INC.)

The City of St. Louis ("City") hereby grants to Continental Airlines, Inc., ("Permittee") permission to occupy and use the space ("Space") described below at Lambert-St. Louis International Airport ("Airport") under the terms and conditions of this Space Permit ("Permit").

Section 1. SPACE. The Space for which occupancy and preferential use is granted is shown on the attached Exhibit "A" (which is incorporated herein) and is more fully described as Gate A14 Mid Level, Concourse "A" holdroom space of 2,014 sq. ft. and Lower Level, Concourse "A" operations space of 1,576 sq. ft. City may relocate, add, substitute or delete portions of the Space at its sole option as may be reasonably required in the opinion of the Director of Airports. Such changes will be made at the sole expense of Permittee and City will not be liable or responsible for any loss whatsoever including without limitation any

inconvenience or loss by Permittee of work time, profit or business resulting from such changes. Permittee acknowledges, understands and agrees that the rights and privileges granted herein are subject to a condition subsequent more fully described in Section 35 of this Permit entitled "Condition Subsequent".

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

Section 2. USE. The Space is to be used only for the conduct of activities which are reasonably necessary to airline passenger service and airline operations. This Permit does not grant the use of any parking area by Permittee unless specifically granted.

All deliveries to or pick-ups from the Airport Terminal Building by Permittee or its agents will be through the dock at the west end of the lower level.

No sale of any goods or services to the public or to employees of any Airport tenant is authorized other than those related to airline passenger service. Violation of this restriction may result in immediate termination of this Permit.

Section 3. PREFERENTIAL USE. Preferential Use means that Permittee has the first right to the use of Preferential Use Premises for uses authorized by this Permit, but that the Director may require Permittee to share the use of Preferential Use Premises under the following conditions:

- A. To facilitate air carriers initiating or seeking to increase service to the Airport ("Requesting Carrier") and to maximize the utilization of facilities at the Airport, Permittee agrees, upon request by the City in the event the City is otherwise unable to accommodate a Requesting Carrier with Airport facilities, to accommodate such Requesting Carrier on a temporary basis by permitting such Requesting Carrier to utilize Permittee's passenger holdroom and passenger loading bridge, at times when such facilities are not needed for Permittee's scheduled or planned operations or those of other airlines whom Permittee is already accommodating. Permittee's obligations hereunder shall be subject to execution of a written agreement between Permittee and such Requesting Carrier setting forth mutually agreed-to terms and conditions governing such use. In the event such accommodation agreement involves a rental rate based upon square footage, such rental rate shall not exceed the current rental rate per square foot applicable to the facilities involved under this Permit with the City, plus a recovery of all direct and overhead costs associated with the accommodation, including a reasonable allocation of capital improvement costs, and a reasonable administrative fee.

Permittee further agrees to make all reasonable efforts to facilitate the temporary accommodation of such Requesting Carrier with the use of ticket counter area, use of Permittee's baggage facilities and the rendering of customary ground services, upon such carrier's request, if (1) Permittee has adequate capabilities, facilities, and personnel therefor, after taking into account Permittee's own requirements and contractual obligations, the compatibility of said carrier's proposed operations with those of Permittee, and the need for labor harmony, and (2) said Requesting Carrier enters into a written agreement with Permittee therefor and agrees to pay Permittee its established rates and charges for such services. Any accommodation of a Requesting Carrier hereunder must be pursuant to a sublease, handling agreement, or a combination thereof, mutually agreed upon by Permittee and Requesting Carrier and subject to the prior written consent of the City as set out in Section 29. below, which consent shall not be unreasonably withheld.

- B. In the event Permittee advises a Requesting Carrier that Permittee is unable to accommodate the proposed operations of such carrier, or the parties are unable to reach final agreement as to the terms and conditions of an accommodation agreement, and the Requesting Carrier is unable to find reasonable accommodations elsewhere at the Airport, the City, acting by and through its Director, shall determine whether Permittee should accommodate any or all of such Requesting Carrier's proposed operations, reasonably considering all pertinent factors, including Permittee's present and planned use of such facilities and those of other airlines Permittee is then accommodating, the compatibility of such Requesting Carrier's proposed operations with Permittee's operations and those of others already using such facilities, and the need for labor harmony. Upon request, Permittee shall immediately provide all information reasonably necessary to aid the Director in this determination. Should the Director determine that Permittee has the capability to accommodate such Requesting Carrier, he may direct Permittee, in writing, to accommodate such carrier with respect to passenger holdrooms and passenger loading bridge(s) to the extent and during those periods he deems reasonable, and will provide to Permittee and such Requesting Carrier a written statement specifying the terms and conditions, not otherwise resolved between

Permittee and such carrier, of such accommodation.

- C. Any sublease, accommodation, or handling agreement pursuant to these procedures shall be for a period to which the parties mutually agree; provided, however, that such an agreement or accommodation may be terminated, at any time, by either party, if other facilities are made available by the City to such Requesting Carrier. In addition, any agreement or accommodation shall recognize that Permittee has the Preferential Use right with respect to the premises and facilities and that, upon 120 days' advance written notice from Permittee that Permittee will require the use of said premises and facilities in a manner that conflicts with such Requesting Carrier's use, said Requesting Carrier will take whatever action is necessary to eliminate the conflict within the 120-day period, including the adjustment and cancellation of flights. Permittee will make its best good faith efforts to accommodate any schedules of said carrier that have to be adjusted, subject to the availability of time and space in Permittee's leased premises and facilities.
- D. To the extent that one or more Gates are included in Permittee's Preferential Use Space, Permittee shall submit to the City on or before the 5th day of each month for the preceding calendar month's activity, a written report certified by an authorized representative of the Permittee showing the Permittee's actual regularly scheduled flight departures (and other departures by Permittee shown separately) operated from each Gate. The Permittee shall also include on each said monthly report the same information for any other air carrier to whom the Permittee provides/shares use of its Gate(s) pursuant to this Section 3. or any other section of this Permit.

Section 4. ACCESS. Subject to the terms, covenants and conditions of this Permit hereof, Permittee has the right of free access, ingress to and egress from the Space, for Permittee's employees, agents, guests, patrons and invitees.

Section 5. TERM. The term of this Permit shall begin on September 15, 2002 and shall end on December 31, 2005 unless sooner terminated in accordance with other provisions of this Permit.

City or Permittee may terminate this Permit without cause by giving 30 days notice to the other party with no liability to the terminating party and such termination shall be deemed a no fault cancellation.

Section 6. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the term of this Permit shall be necessary. Permittee covenants and agrees that at the expiration date of the term of this Permit, or at the earlier termination hereof, it will peaceably surrender possession of the Space in good condition as that existing at the time of Permittee's initial entry upon the Space under this Permit or any preceding permits, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Space with or without due process of law.

Section 7. RENTAL PAYMENTS. Permittee shall pay in advance to City monthly space rental of \$9,704.97. Permittee shall also pay in advance to City a monthly rental payment of \$3,000.00 for use of City's passenger loading bridge.

In addition, Permittee shall pay a pro-rata portion of common area cleaning, maintenance and operating costs for Concourse "A", Lower Level, operations space adjoining common use space, based upon Permittee's percent of space adjoining the Concourse "A", Lower Level, common use space in proportion to the total space adjoining this common use space.

All payments shall be paid on or before the first day of each month of the term of this Permit. Rental rates will be revised on July 1, or other date as the Director of Airports may specify, of each year of the term of this Permit. Permittee shall pay a per square foot rental rate that shall be equal to City's actual expense of providing and maintaining the Space as computed by City.

All unpaid rent and fee payments due City hereunder shall bear a service charge of 1½% per month if same is not paid and received by City on or before the 30th of the month in which said payments are due, and Permittee agrees that it shall pay and discharge all costs and expenses including attorneys' fees and litigation cost incurred or expended by City in collection of said delinquent amounts due including services charges.

Payments to City shall be made at the Office of the Director of Airports at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Permittee and shall be made in legal tender of the United States.

Section 8. ADDITIONAL FEES, CHARGES AND RENTALS. Permittee shall pay additional fees, charges and rentals under the following conditions:

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

reimburse City for, or

- B. If City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the terms, covenants or conditions of this Permit.

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 the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and 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 or sums by City for any work done or material furnished shall be prima facie evidence against Permittee that the amount of such payment was necessary and reasonable.

Section 9. PROMPT PAYMENTS OF TAXES AND FEES. Permittee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further warrants, covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent.

Section 10. MECHANICS' AND MATERIALMEN'S LIENS. Permittee agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Space 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 11. CONSTRUCTION BY PERMITTEE. Permittee may improve the Space subject to written approval of the Director of Airports. Permittee will submit to the Director of Airports detailed plans and specifications for all improvements to and equipping of the Space. Permittee will not begin any work until it receives the approval of its plans and specifications from the Director of Airports. Any changes in the plans or specifications after approval will require resubmission.

Permittee will provide the Director of Airports with a copy of all applicable permits as required by local municipalities prior to beginning any construction or alterations.

Upon the completion of the improvements hereunder, Permittee shall submit to the Director of Airports 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 Permittee.

Permittee will provide the Director of Airports within 30 days of completion or occupancy of any construction or modification to the Space, reproducible as-built drawings on either Mylar or Sepia Mylar base, and in an electronic format acceptable to City.

Title to the Space and all Improvements constructed or placed in or on the Space by the Permittee including all alterations, modifications and enlargements thereof shall become part of the Space with title vesting in the City upon the expiration or earlier termination of this Permit, except that City reserves the right and Permittee agrees that the Director of Airports may require Permittee to remove any or all improvements and structures and restore the Space to its original condition. Permittee agrees to bear all costs of such removals and restorations.

Section 12. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving and equipping the Space, Permittee shall require the contractor to cause City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than \$1,000,000 as to any one person and \$1,000,000 as to any one occurrence, and with property damage limits of not less than \$1,000,000 as to any one occurrence. Said insurance shall be in a form acceptable to City.

Section 13. PERFORMANCE AND PAYMENT BONDS. Permittee shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 14. SIGNS. Permittee agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the areas of the Space exposed to the public without prior written approval of the Director of Airports and that such signs shall conform to reasonable standards established by said Director of Airports with respect to wording, type, size, design, color and location.

Section 15. COMPLIANCE WITH LAWS AND REGULATIONS. Permittee shall comply with all Rules and Regulations which the Director of Airports may establish from time to time. In addition, Permittee shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Space or to any adjoining public ways, as to the manner of use or the condition of the Space or of adjoining public ways.

Section 16. SECURITY PLAN AND FACILITIES. Permittee hereby acknowledges that City is required by Federal Aviation Regulations, Part 107, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Permittee covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Permittee's exercise of the privileges granted to Permittee hereunder. Permittee will reimburse City for all fines imposed upon City by the FAA resulting from Permittee's negligence or failure to act in relation to Part 107.

Section 17. PASSENGER LOADING BRIDGE. City hereby permits Permittee preferential use of the City owned Passenger Loading Bridge at Gate A14, serial number OG 2268. Permittee, at its own cost and expense, shall service, repair, maintain, test, and overhaul the City's passenger loading bridge consistent with normal practices in the ordinary conduct of its business and in at least the same manner and the same care as used by Permittee with similar equipment owned by or operated by Permittee, which manner and care shall at all times be at or above the industry standard for similar equipment. The City shall be the sole judge of the adequacy of work performed by the Permittee, and may upon written notice require specific service, repair, maintenance, or overhaul work to be completed at Permittee's own cost and expense.

Permittee will submit within 60 days of the start of each contract year (one of three (3) consecutive twelve (12) month periods commencing on the first day of the term of this permit) of this Permit a maintenance schedule for City's passenger loading bridge at Gate A14, serial number OG 2268, for that contract year. Permittee will report to the Airport, at the close of each contract year of this Permit, any service, repair, and maintenance completed on the passenger loading bridge and the costs expended for that service, repair, and maintenance. Permittee will pay all costs of operating and maintaining City's passenger loading bridge. Permittee may enter into agreements to recover a reasonable portion of the passenger loading bridge costs from secondary use operators if secondary use is designated by Airport. Permittee shall submit to the Director of Airports a copy of such agreements with secondary use operator. Security requirements at the passenger loading bridge will be the responsibility of Permittee.

Section 18. REPAIRS AND MAINTENANCE. Permittee will provide and pay for all repairs and maintenance of the Space, except the following which shall be the responsibility of City:

- A. The structural components of the building.
- B. The utility system to, but not within, the Space 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.

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

- A. Perform custodial services daily.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Perform all needed maintenance and repair to the City's Passenger Loading Bridge.
- D. Keep the Space free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

- E. Repair all damage to the Space and the Airport when such damage results from the careless or negligent acts of Permittee or Permittee's employees or agents.
- F. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director of Airports 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. Permittee agrees to promptly provide and install same and to abide by such standards.
- G. Confine all handling and holding of Permittee's property to the Space.
- H. Keep all papers and debris picked up daily from the Space.
- I. Keep the Space free of all pests, providing such pest control services as required.
- J. No storage will be permitted on the exterior areas of the Space.

Section 19. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Permittee's operations as is reasonably practicable) to enter upon and in the Space for the following purposes:

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

Section 20. UTILITIES. City will provide and pay for heated and chilled air to, but not into the Space. Permittee will provide and pay for all other utilities it requires. City shall not be liable to Permittee for any damages, cost, or losses of any kind whatsoever due to the interruption of any utility services, or any delay in the supplying or furnishing of any utility service.

Section 21. INTERFERENCE WITH AIR NAVIGATION. Permittee agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Space. Any obstructions will be removed by Permittee at its expense. Permittee agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Permittee further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

Section 22. LIABILITY INSURANCE. Permittee, will obtain, at its sole expense and at all times during the term of this Permit, liability insurance, on an occurrence basis, against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Permittee, its officers, agents, employees, contractors, subcontractors, licensees, independent contractors and invitees pursuant to this Permit on the Airport under the following types of coverage:

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

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

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

Section 23. PROPERTY INSURANCE. Permittee will provide fire and related insurance coverages for the Space and all of its improvements and equipment existing or subsequently installed within the Space.

Section 24. WORKERS' COMPENSATION. Permittee at a minimum will obtain, at its sole expense and at all times during the term of this Permit for its employees working on Airport Premises Workers' Compensation insurance coverage at the statutory limits applicable to Permittee's operations in the State of Missouri.

Section 25. WAIVER OF SUBROGATION. Permittee, on behalf of itself and its insurers, hereby waives any claim or right of recovery from City, its Board of Aldermen, Airport Commission, officers, employees and agents for loss or damage to Permittee or its property or the property of others under Permittee's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "All Risk" physical damage property insurance policy. Permittee shall provide notice of this waiver of subrogation to its insurers.

Section 26. EVIDENCE OF INSURANCE. Certificates, or other evidence of insurance coverage and special endorsements required of Permittee in this Article, shall be delivered to the Director of Airports in form and content satisfactory to City.

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

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

Section 27. INDEMNIFICATION. Permittee shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Permit and/or the use or occupancy of the Space or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, licensees, independent contractors or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The Director of Airports or his/her designee shall give to Permittee reasonable notice of any such claims or actions. The Permittee shall also use counsel reasonably acceptable to the City Counselor of the City or his/her designee, after consultation with the Director of Airports or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Permit.

Section 28. OCCUPANCY OF SPACE. Permittee agrees that it will not permit any act of omission or commission or condition to exist on the Space which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 29. ASSIGNMENT AND SUBLETTING. Permittee shall not assign this Permit. Permittee shall not sublet the Space or any portion thereof without the prior express written consent of the Director of Airports.

Section 30. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall

be in writing and shall be sent by certified mail, return receipt requested, addressed to the Director of Airports, City of St. Louis Airport Authority, 10701 Lambert International Boulevard, St. Louis, MO, 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Permittee shall be sent by certified mail, return receipt requested, addressed to Continental Airlines, Inc., P.O. Box 4607, Dept. HQSPF, Houston, Texas 77210.

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

Section 31. CITY'S RIGHT TO TERMINATE PERMIT BY REASON OF DEFAULT. City, acting by and through its Director of Airports, may declare this Permit terminated in its entirety, in the manner provided in Section 33 and Section 35 hereof, upon the happening of any one or more of the following events:

- A. If the fees, charges, or other money payments which Permittee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Permit, Permittee 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 Permit an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Permittee a bankrupt or insolvent, or approving a petition seeking a reorganization of Permittee, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days.
- C. If Permittee shall have failed in the performance of any term, covenant or condition herein required to be performed by Permittee.

On the date set forth in the notice of termination, the term of this Permit and all right, title and interest of Permittee shall expire, except as otherwise provided in Section 33 and Section 35 hereof.

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

Section 32. PERMITTEE'S RIGHT TO TERMINATE PERMIT BY REASON OF DEFAULT. Permittee, at its option, may declare this Permit terminated in its entirety, in the manner provided in Section 33 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes.
- C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency

or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport continuing for a period in excess of 60 days.

- D. If City shall have failed in the performance of any term, covenant or condition within the control of City and herein required to be performed by City.

Section 33. PROCEDURES FOR TERMINATION. Unless otherwise expressly provided for herein, no termination declared by either party shall be effective and unless and until not less than 30 days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Permit is being terminated and no such termination shall be effective if such cause of default by its nature cannot be cured within such 30 day period, and if the party at default commences to correct such default within said 30 days and corrects the same as promptly as is reasonably practicable.

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

Section 34. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of City and Permittee specified in Sections 31, 32, 33, and 35 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.

Section 35. CONDITION SUBSEQUENT. Permittee represents, covenants, warrants and agrees, that as a condition subsequent to maintaining this Permit in full force and effect, that Permittee shall relinquish, return and vacate Gate A9 and associated holdroom and lower level operations space on Concourse "A" as defined on Exhibit "A" of the Airport Use Agreement AL-10 (which is incorporated herein by reference) to City within thirty (30) days, without notice or demand, should Permittee (or any of its affiliates) at any time during the term of this Permit, acquire the rights to Gate A10 and A12 at the Airport by means of assignment, sublease, rental, shared use or by any and all other means or manner whatsoever (collectively, the "Rights"), provided, however, that use of Gate A10 or A12 on a per-turn basis not to exceed one turn per week due to irregular and/or emergency operations shall not require the relinquishment, return, and vacation of Gate A9 and associated holdroom and lower level operations space. Permittee further represents, covenants, warrants and agrees that should Permittee fail to relinquish, release and vacate Gate A9 and associated holdroom and lower level operations space on Concourse "A" as defined on Exhibit "A" of Airport Use Agreement AL-10 no later than thirty (30) days following acquiring the Rights to Gates A10 and A12, this Permit shall expire immediately without notice or demand and be deemed cancelled or terminated and the term of this Permit and all of the rights, title and interest of Permittee shall immediately expire and the Space under this Permit shall return immediately without notice to the City. Notwithstanding the foregoing, the City covenants and agrees that it will make, or cause to make, available to Permittee lower level operations space of similar size on Concourse "A" that Permittee now has use and occupancy thereof only in the event that Permittee does not obtain rights of use and occupancy of lower level Concourse "A" operations space associated with Gates A10 and A12 upon obtaining rights to use and occupancy of Gates A10 and A12

Section 36. CONDITIONS OF DEFAULT. This Permit shall be considered in default when Permittee fails to fulfill any of the terms, covenants or conditions of this Permit.

Section 37. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Permittee hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Permittee hereby agrees that its Space shall be posted to such effect as required by such regulation.
- B. Permittee agrees that in performing under this Permit, 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, national origin or ancestry. Permittee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

- C. Permittee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Permittee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Permittee 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. Permittee agrees that should it be determined by Permittee 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 10 days of such determination, as to the steps to be taken by Permittee to achieve the provisions of it program.
- E. Permittee 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. Permittee 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 Permittee 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 Permit.
- G. Whenever Permittee 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, Permittee shall notify the City Counselor in writing of such suit or threatened suit within 10 days.
- H. In event of Permittee's noncompliance with nondiscrimination clauses of this Permit, or to furnish information or permit its books, records and account to be inspected within 20 days from date requested, this Permit may be canceled, terminated or suspended, in whole or in part, and Permittee may be declared ineligible for further City contracts for a period of one year by option of City, provided, further, if this Permit is canceled, terminated or suspended for failure to comply with fair employment practices, Permittee shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Permittee will establish and maintain for the term of this Permit an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Permittee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Permittee 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. Permittee assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 38. NO PERSONAL LIABILITY. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Permit.

Section 39. FORCE MAJEURE. Neither City nor Permittee shall be deemed in violation of this Permit, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 40. QUIET ENJOYMENT. Subject to the terms, covenants and conditions of the Permit, City covenants that Permittee on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Space.

Section 41. GOVERNING LAW. This Permit shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter.

Section 42. WITHOLDING REQUIRED APPROVALS. Whenever the approval of the City, or the Director of Airports, or of Permittee is required herein, no such approval shall be unreasonably requested or withheld.

Section 43. WAIVERS. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. Any such waiver must be in writing and signed by the party waiving.

Section 44. PREVAILING WAGE. Permittee shall, as a condition of the Permit, include in all service contracts pertaining to the Space language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City of St. Louis Ordinance No. 62124.

Section 45. INVALID PROVISIONS. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either City or Permittee in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Permit.

Section 46. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Permit shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 47. OPERATION AND MAINTENANCE OF AIRPORT. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 48. AGREEMENTS WITH THE UNITED STATES. This Permit is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 49. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Permittee agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Permit, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes substantially impair the right of Permittee hereunder.

Section 50. AMERICANS WITH DISABILITIES ACT (ADA). Permittee shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Permittee's services.

Section 51. ADVERTISING. Permittee shall have no right to use the trademarks, symbols, trade names or name of the Airport or Space, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director of Airports.

Section 52. CONFLICTS BETWEEN TENANTS. In the event of a conflict between Permittee and any other permittee, airline, tenant, licensee or concessionaire, as to the respective rights of the others, the Director of Airports shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Permittee agrees to be bound by such decision. All determinations by the Director of Airports are final.

Section 53. TIME IS OF THE ESSENCE. Time is of the essence in this Permit. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Permit.

Section 54. ACKNOWLEDGMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Permit. As such, the terms of this Permit 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 Permit or any amendments, modifications or exhibits thereto.

Section 55. REQUIRED APPROVALS. When the consent, approval, waiver, or certification ("Approval") of other party is required under the terms of this Permit, such Approval must be in writing and signed by the party Approving. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports or his/her authorized designee. The City and Permittee agree that extensions of time for performance may be made by the written mutual consent of the Director of Airports and the Permittee or its designee.

Section 56. ENVIRONMENTAL NOTICE. Permittee shall promptly notify the Director of Airports of (1) any change in the nature of the Permittee's operations on the Space that will materially and/or substantially change the Permittee's or City's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Permittee's operations on the Space.

Section 57. ENTIRE AGREEMENT. This Permit, together with all exhibits attached hereto, constitutes the entire Permit between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Permit may be amended only in writing and executed by duly authorized representatives of the parties hereto.

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

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

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

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

Commission Chairman and Director of Airports Date

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

Secretary, Board of Estimate & Apportionment Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller, Date
City of St. Louis

ATTESTED TO BY:

Register, Date
City of St. Louis

CONTINENTAL AIRLINES, INC.

ATTESTED TO BY:

Title: _____

Secretary Date

Date: _____

See attached Lease Exhibit A Continental Airlines (sheets 3 or 3)

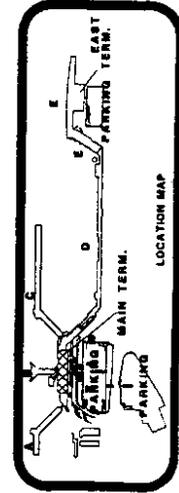
Approved: October 22, 2002

ORDINANCE #65664 - LEASE EXHIBIT A CONTINENTAL AIRLINES (Sheets 1 of 3)

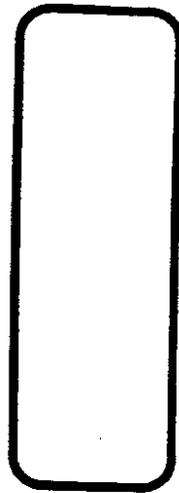
65664

Airport Space Permit

Location	Level	Area/(sqft)	Sub Total
Main Terminal	Upper Level / Ticket.	-	
	Mid Level / Bag. C.	-	
	Lower Level / Bag. M.	-	
Terminal Expansion	Curb Bldg / Ticketing Drive	-	
	Bag Claim Drive	-	
A Gates	Upper Level / Ticket.	-	
	Mid Level / Bag. C.	-	
B Gates	Lower Level / Bag. M.	-	
	Mid Level / Concourse	2014	3590 SF
C Gates	Lower Level / Apron	1676	
	Mid Level / Concourse	-	
C Gates Extension	Upper Level	-	
	Mid Level / Concourse	-	
D Gates	Mid Level / Concourse	-	
	Lower Level / Apron	-	
East Connector	Protected Pavement	-	
	Metro Link Level	-	
East Terminal E Gates	Upper Level / Ticket.	-	
	Mid Level / Bag. C.	-	
International Area	Lower Level / Bag. M.	-	
	Mid Level / Concourse	-	
Shops Bldg.	Lower Level / Apron	-	
	Mid Level / Concourse	-	
Airline Services Bldg.	Lower Level / Apron	-	
	Mid Level / Concourse	-	
Airline Services Bldg. 2	Lower Level / Apron	-	
	Mid Level / Concourse	-	
Continental Airlines Total Area • 3590 SF			

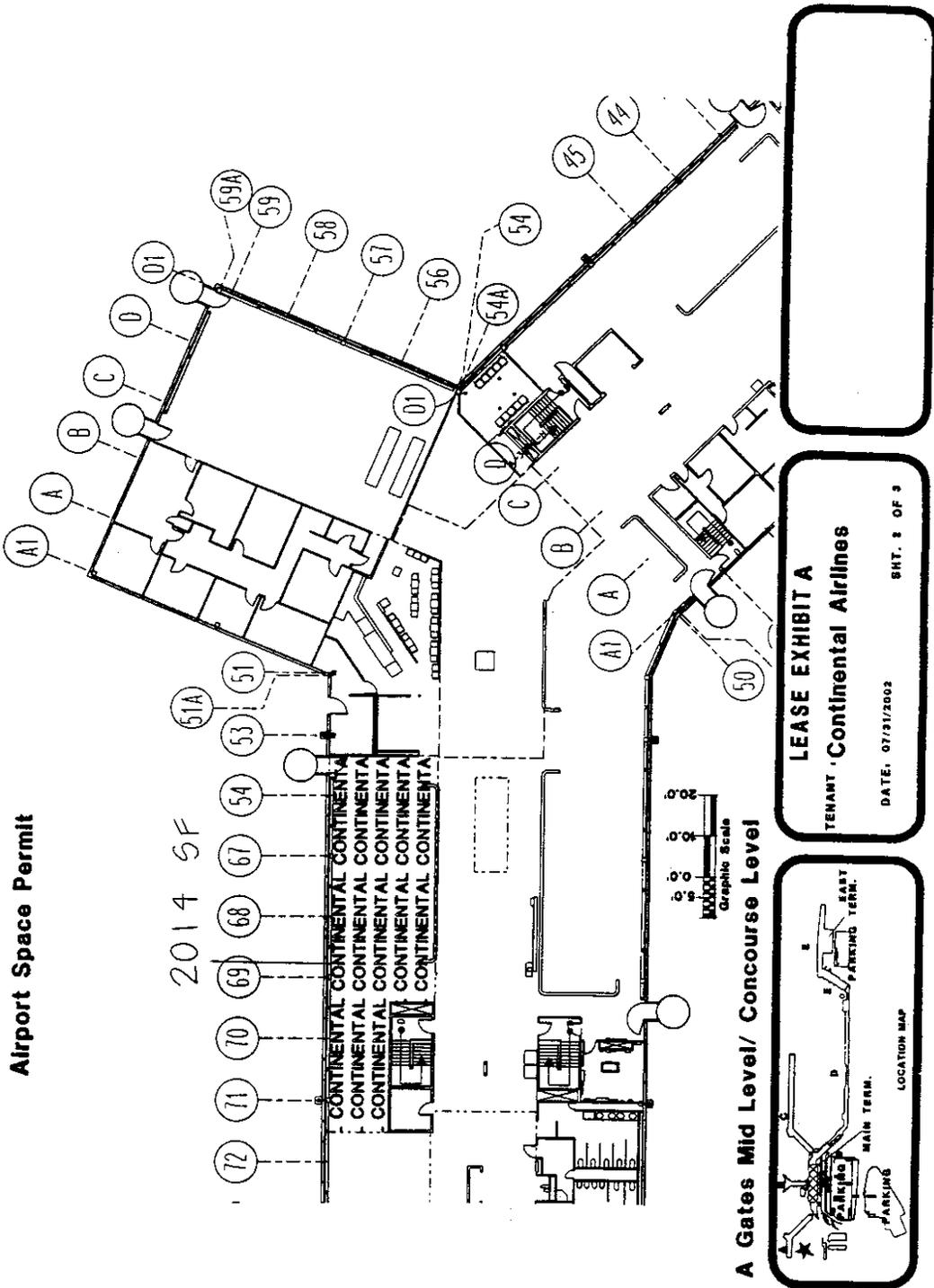


LEASE EXHIBIT A
TENANT • Continental Airlines
 DATE: 7/31/2001 SHT. 1 OF 3



ORDINANCE #65664 - LEASE EXHIBIT A CONTINENTAL AIRLINES (Sheets 2 of 3)

65664

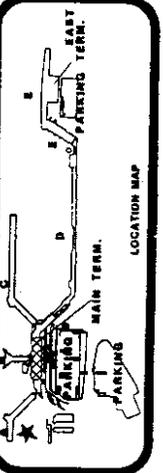


Airport Space Permit

2014 SF

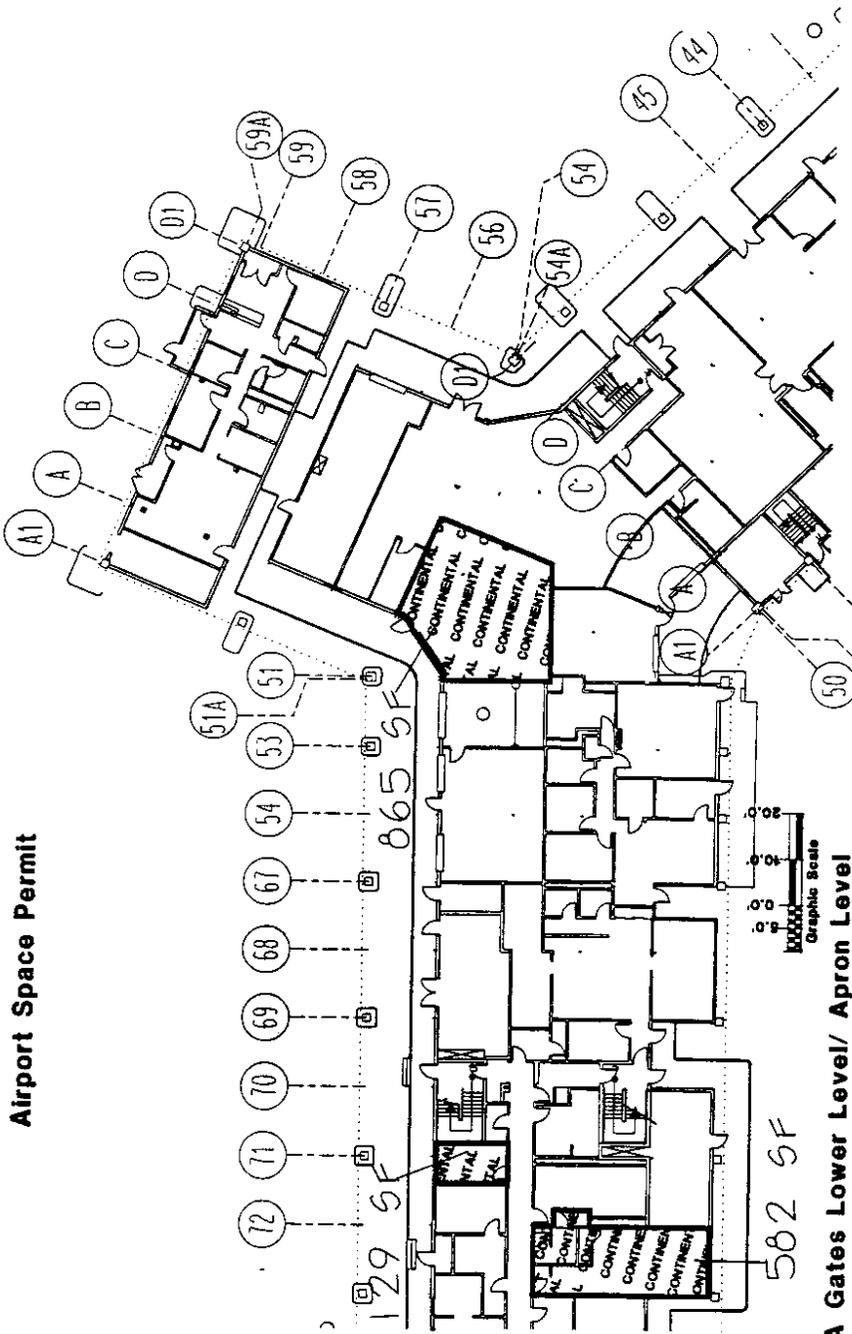
A Gates Mid Level/ Concourse Level

LEASE EXHIBIT A
 TENANT Continental Airlines
 DATE: 07/31/2002
 SHT. 2 OF 3



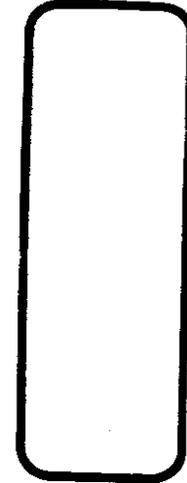
ORDINANCE #65664 - LEASE EXHIBIT A CONTINENTAL AIRLINES (Sheets 3 of 3)

65664



Airport Space Permit

A Gates Lower Level/ Apron Level



LEASE EXHIBIT A
 TENANT - Continental Airlines
 DATE: 07/31/2002
 SHT. 3 OF 3

