

City of Houston, Texas, Ordinance No. 2014 - 986

AN ORDINANCE APPROVING AND AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF HOUSTON AND CONCESSIONS OF HOUSTON, INC. FOR OFFICE AND WAREHOUSE SPACE AT GEORGE BUSH INTERCONTINENTAL AIRPORT; AND DECLARING AN EMERGENCY.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

**Section 1.** The City Council approves and authorizes the Lease Agreement described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under the Lease Agreement, as amended, without further authorization from the City Council.

**Section 2.** There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5th day of November, 2014.

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is NOV 11 2014.

[Signature]  
City Secretary

(Prepared by Legal Dep't. [Signature] Senior Assistant City Attorney)  
(RWC: rwc October 28, 2014  
(Requested by Mario C. Diaz, Director, Houston Airport System)  
(L.D. File No. \_\_\_\_\_)  
Ordinance for Lease Agreement - Concessions of Houston Inc - IAH 10-28-2014

AYE	NO	
✓		<b>MAYOR PARKER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		STARDIG
	<b>ABSENT</b>	DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
	<b>ABSENT</b>	GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	



"Lessee" is defined in the preamble hereof.

"Regulations" means all applicable laws, statutes, codes (including the City's Building Code and Fire Code and the Tenant Improvement Program for the Houston Airport System), judicial decisions, ordinances, regulations (including federal grant assurances governing the Airport), rulings, zoning ordinances, restrictive covenants, airport rules and operating instructions, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities having jurisdiction over the Airport or the Leased Premises, including the Federal Aviation Administration ("FAA"), the Transportation Security Administration ("TSA"), Environmental Protection Agency ("EPA"), and the Texas Commission on Environmental Quality ("TCEQ").

"Sign(s)" means billboards, advertising materials, identification symbols, posters or any other similar devices and is covered in Section 5.6.

"Term" is defined in Section 2.2.

"Trade Fixtures" mean all furnishings, fixtures and equipment located in the Leased Premises, whether or not permanently affixed to or within any wall, floor, ceiling or section of ground on the Leased Premises, that can be removed by Lessee without irreparable damage to the Leased Premises (Lessee hereby agreeing to repair any damage resulting from such removal).

## **ARTICLE II.** **LEASED PREMISES AND TERM**

2.1 -- Leased Premises. Except as limited herein, the City hereby leases to Lessee for Lessee's exclusive use of approximately 3,600 square feet of office and warehouse space at 18504 Lee Road, Bldg. E630, located at the Airport as indicated on Exhibit "B" ("Leased Premises").

### 2.2 – Term and Option Period.

(a) This Lease shall become effective on the date of countersignature by the City Controller ("Effective Date"), and shall continue in effect thereafter for three (3) consecutive years ("Term"), unless and until otherwise terminated in accordance with the terms of this Lease.

(c) Lessee and the City shall each have the right to terminate this Lease for convenience upon thirty (30) days' prior written notice to the other party. Neither party shall be liable for unaccrued obligations.

## **ARTICLE III.** **USE OF LEASED PREMISES**

During the Term of this Lease, Lessee shall have the right to use the Leased Premises only for storage and office space related to Lessee's operations; provided however, storage shall only be within the interior of the Leased Premises. During the Term of this Lease, Lessee shall not use the Leased Premises to conduct any business that is in direct competition with other Airport tenants (other than tenants possessing the same or similar rights of use of the Airport). By way of example, but not by way of limitation, Lessee shall not conduct the following activities on the Leased Premises:

- (a) the placement of any temporary or mobile-type structures, such as trailers used for office or storage space, in or on the Leased Premises unless the Director expressly authorizes, in writing, Lessee to place such a structure on the Leased Premises;
- (b) any other commercial activities, including but not limited to a restaurant, cafe, automobile leasing, or aircraft servicing;
- (c) the use of any portion of the Leased Premises for residential purposes;
- (d) the providing of any public parking facilities other than for the owner, employees, customers of Lessee's operations; and
- (e) parking by Lessee's employees in areas other than those designated on the Leased Premises.

So long as Lessee is not in default hereunder, Lessee shall possess the rights set forth herein during the Term of this Lease as long as Lessee complies with the terms of this Lease and all applicable Regulations. Lessee's use of the Leased Premises is expressly conditioned upon its non-interference with normal airport operations.

#### **ARTICLE IV.** **RENTALS AND OTHER CHARGES**

4.1 -- Rental Rate. The rental payable by Lessee to the City for the Leased Premises will be at a rate of \$19,200.00 per year or \$1,600.00 per month. Rental shall escalate 3% annually over the prior year's rental rate.

Lessee's twelfth (12<sup>th</sup>) monthly payment in a Lease Year shall be adjusted upward or downward, as applicable, so that the total of the twelve payments in a Lease Year equals the Rental Rate indicated in the schedule above for that Lease year.

4.2 -- Due Date. Beginning on the Effective Date, rental payments are due and payable on or before the first day of each calendar month in advance, and shall be paid without demand to City at the address set out in the preamble hereof, or at such other address as the Director may direct in writing. Any monies not paid on or before the fifth day following that due date may bear interest at the highest rate allowed by law until paid and entitle the City to charge Lessee an administrative processing charge in an amount equal to five percent (5%) of the amount then due. The administrative processing charge is agreed by the parties to be liquidated damages and to constitute a reasonable estimate of the extra administrative costs and expenses expected to be incurred by the City in handling such delinquency. Lessee further agrees that as further consideration for this Lease, it will pay to City when due the full amount of all taxes which the City may lawfully assess and levy upon any real or personal property interest of Lessee specific to the Leased Premises.

4.3 -- Other Charges.

(a) Lessee shall pay for all utilities or services, including hookups, which are furnished, provided or otherwise made available to Lessee by the City or any utility company providing direct service to Lessee. This will include installation fees, connection fees, water and wastewater impact fees, and any other charges assessed by the City or any utility company for services provided to the Leased Premises. The Director shall have the right to charge the proportionate share of municipal drainage fees assessed against the Leased Premises.

(b) It is expressly agreed that the City is under no obligation to furnish any utilities except as presently exist at or near the Leased Premises, as applicable. Lessee may install, only upon the Director's prior written approval, separate meters for any or all of the utilities provided to it to determine precisely the amount of usage by Lessee. Lessee shall bear the full cost of any utility modifications or additional installations (including meter installations) that Lessee may require. Lessee shall submit detailed plans of any intended modifications or installations (including all signage and graphics) to the Director. All modifications or installations shall have the prior written approval of the Director before being undertaken. If Lessee elects to install any separate meters, the City will use the information retrieved therefrom to compute utilities charges. All other utilities shall also be Lessee's sole responsibility to pay.

(c) Lessee understands and acknowledges that fines and/or penalties may be assessed as a result of Lessee's non-compliance with all federal, state and local statutes, ordinances, regulations, rules, policies, codes or guidelines now or hereafter in effect, as same may be amended from time to time. Any fines or penalties assessed against the City because of Lessee's non-compliance shall be reimbursed to the City by Lessee within ten (10) days of receipt of written notice from the Director setting forth the amount of such fine or penalty.

4.4 -- Lease Security. In addition to the rentals to be paid hereunder, Lessee shall furnish to the City a cash deposit, cashier's check, performance bond or an irrevocable Letter of Credit in the amount of \$3,302.22 as security for the performance by Lessee of each and every term, covenant and condition of this Lease. The check, bond or Letter of Credit must be issued in a form approved by the City Attorney and by a corporate surety authorized and admitted to write surety bonds in Texas. If Lessee defaults in respect to any of the terms, covenants or conditions of this Lease, without limitation, failure to pay rental fees or for damage to the Leased Premises, as applicable, the City may, but will not be required to, use, apply or retain the whole or any part of the security for payment of any rental fees in default, or for any sum(s) which the City may expend or be required to expend for damages to said premises caused by Lessee, its agents, employees, suppliers, contractors, subcontractors, independent contractors or invitees or for other reasons of Lessee's default. If Lessee complies with all the terms, covenants and conditions of this Lease, the security, or any balance thereof, will be returned to Lessee after the termination, cancellation or expiration of this Lease and surrender of the Leased Premises. Lessee shall ensure that its performance security remains valid and enforceable throughout the Term of this Lease and any extensions thereto.

## **ARTICLE V.**

### **CONDITION OF PREMISES**

5.1 -- Present Condition. Lessee agrees to accept, and accepts possession of, the Leased Premises and any Improvements thereon in an "as is" condition, and admits their suitability and sufficiency for the use proposed to be made thereof by Lessee. **LESSEE ACKNOWLEDGES THE POSSIBILITY OF THE PRESENCE OF ASBESTOS-CONTAINING MATERIAL ("ACM") OF A NON-FRIABLE NATURE IN THE LEASED PREMISES.** Lessee shall not disturb such material or other contaminants in the Leased Premises unless: (1) it advises the Director in advance; (2) it takes prescribed precautions for handling ACM or other contaminants if such material is to be disturbed; and, (3) it properly disposes of ACM or other contaminants, at its cost, if such material is disturbed. Any abatement or removal of ACM is subject to the Director's prior written approval, and Lessee must submit plans and specifications of the intended modification. If before, or in the course of, constructing Improvements on the Leased Premises, Lessee discovers ACM of a friable nature or ACM of a non-friable nature which is rendered friable, such ACM shall be abated by Lessee at its sole cost, and Lessee shall restore the Leased Premises to a condition which is compliant with all Regulations. **LESSEE ALSO ACKNOWLEDGES THE POSSIBILITY**

**OF THE PRESENCE OF TOXIC MOLD. THE CITY SHALL NEVER HAVE ANY OBLIGATION TO REMOVE ANY TOXIC MOLD, AND LESSEE EXPRESSLY RELEASES CITY FROM ANY LIABILITY FOR DAMAGES OCCURRING FROM THE PRESENCE OF TOXIC MOLD.**

5.2 -- Maintenance and Repair.

(a) Lessee covenants that it will, during the Term hereof, maintain the Leased Premises and the exterior of the Leased Premises in a clean condition. Lessee shall remove trash from the Leased Premises and shall not permit trash of any kind to be placed outside the building area. Lessee shall, at its sole cost and expense, keep the Leased Premises and all improvements thereon, including those made or constructed by Lessee, in a good and sound state of repair, excepting (1) such wear and tear as cannot be prevented by reasonable and proper repair work; and (2) damage to or destruction of any improvements by those casualties against which insurance is herein required to be carried. Lessee shall be responsible for routine maintenance and repairs to any large roll-up doors and personnel doors, as applicable, during the Term of this Lease. Lessee acknowledges that it does not have a certificate of occupancy on the Leased Premises, but is pursuing one. Notwithstanding anything else in this Lease to the contrary, Lessee agrees that it shall not allow any employees to occupy the building, nor shall it make any use of the Leased Premises other than such work that is required to renovate the Leased Premises in order to obtain a certificate of occupancy. Lessee shall have 60 days to obtain such certificate or be in default hereunder. Additionally, once such certificate is obtained, Lessee shall thereafter have all rights of occupancy and use afforded under the terms of this Lease and Lessee shall maintain a valid certificate of occupancy on its Leased Premises throughout the Term of this Lease.

(b) All maintenance, repair, modification or improvement work undertaken by Lessee on the Leased Premises shall be done at Lessee's sole cost and expense and shall be done in accordance with the Ordinances and the Building Code of the City and in compliance with all applicable Regulations specifically including the Tenant Improvement Program for the Houston Airport System. Lessee must submit plans and specifications of any modifications or improvements to the Director and prior written approval of the Director must be given before any work is undertaken.

(c) Lessee expressly agrees in the making of all repairs and improvements that it will neither give, grant, nor pretend to give or grant any lien upon the Leased Premises or upon any improvement thereupon during the process of construction or repair. Lessee shall not allow any condition to exist or situation to develop whereby any party would be entitled, as a matter of law, to a lien against the Leased Premises or improvements thereon.

5.3 -- Title to Improvements. Upon the termination of this Lease whether by accomplishment of the full Term hereof or by an earlier termination under any provision hereof, the full and complete fee simple title to all improvements constructed by Lessee and affixed to the Leased Premises will vest in the City free and clear of all liens whatsoever, and in particular free and clear of all claims on the part of Lessee on account of any repair, modification or improvement work done or to be done under the terms hereof by Lessee.

5.4 -- Right of Entry. The City may enter upon the Leased Premises at any reasonable time on advance notice, except in an emergency for which no notice is needed, for any purpose necessary, incidental to, or connected with the performance of City's obligations hereunder or in the exercise of the City's governmental functions. Such entry or reentry will not constitute a trespass nor give Lessee a cause of action for damages against City.

5.5 -- Rules and Regulations.

(a) From time to time the Director, the TSA, or the FAA may adopt and enforce Regulations with respect to the occupancy and use of the Airport, its services or facilities, by persons, vehicles, aircraft and equipment that in the Director's, TSA's or FAA's opinion will: (i) facilitate the safe, efficient and economically practicable operation thereof; (ii) provide for the safety and convenience of those using the Airport; or (iii) protect the Airport and its facilities and the public from damage or injury resulting from operations on, into and from the Airport. Lessee agrees to observe and obey such Regulations, and to require its officers, agents, employees, contractors and sublessees to observe and obey the same. The Director reserves the right to deny access to the Airport and/or its facilities to any person, firm or corporation that fails or refuses to obey and comply with such Regulations. Such Regulations will not be inconsistent with the terms of this Lease or valid Regulations of the TSA or FAA, or any other governmental agency having jurisdiction over the Airport and the operation of aircraft at the Airport. A link to the City's Regulations shall be available to Lessee contemporaneously with the execution of this Lease, upon request.

(b) Lessee shall conduct its operations in compliance with all Regulations, as defined herein, as same may be amended from time to time, including but not limited to the following: (i) 49 CFR 1520, 1540 & 1542 (as same may be amended from time to time) and (ii) all applicable laws and requirements of all governmental authorities from which Lessee has obtained licenses, franchises, certificates, permits or other authorization which may be necessary to the conduct of Lessee's operations at the Airport. Additionally, Lessee shall comply with all requirements of insurers of the Leased Premises concerning the use and condition thereof for the purpose of reducing fires, hazards and other casualties, and not do, nor permit to be done, any act or thing that would invalidate or conflict with any fire insurance policies covering the Leased Premises or any hazardous condition so as to increase the risks normally attendant upon the operations permitted by this Lease.

5.6 -- Signs. Lessee shall not erect, maintain or display a Sign on the exterior walls of the Leased Premises, as applicable, (excluding the interior thereof), on the surrounding grounds, or at any other location on the Airport unless Lessee obtains the prior written approval of the Director. Lessee will be exempt from requirements to obtain a permit for any on-premise signs as set out in §4605(b)3 of the City of Houston Sign Code; provided, however, Lessee shall comply with all requirements of §4611 therein only to such extent as they are not inconsistent with Airport rules and regulations, which shall control. If Lessee wishes to construct, erect or display a Sign in an area requiring the Director's approval (as specified above), Lessee shall submit to the Director all drawings, sketches, designs, dimensions and intended location of such Sign. The Director will then review the submitted information to determine if the location and design of the Sign complies with all applicable Airport rules and regulations. The Director will not approve a Sign that, in his opinion, fails to comply with applicable Airport Regulations or that will cause confusion to aircraft pilots, automobile drivers or other members of the traveling public. The City will have the right to remove, or have removed, any Sign(s) that are erected without approval. Lessee agrees to maintain any Sign(s), or other manner of identification as may be approved by the Director, in good condition and repair at all times.

5.7 -- Environmental Laws. Lessee shall comply with Environmental Laws.

- 1) Within 10 days of receipt of an invoice, Lessee shall reimburse the City for any fines or penalties that may be levied against the City by any governmental agency for Lessee's (or its agents' and employees') failure to comply with Environmental Laws.

- 2) Except as may be necessary in amounts substantially similar to those for residential consumers, Lessee shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, or any other areas or facilities subject to this Agreement, except in strict compliance with Environmental Laws. The Airport is subject to various permits issued pursuant to Environmental Laws by federal and state agencies (“Environmental Permits”) for operations at the Airport. Lessee is familiar with these Environmental Laws and Environmental Permits, and shall conduct operations in accordance with them. Lessee understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.
- 3) Close cooperation with City staff is necessary to ensure compliance with Environmental Permit terms and conditions, as well as to ensure safety and to minimize costs.
- 4) The City’s TPDES storm water discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Lessee shall be bound by all applicable portions of the permit.
- 5) Lessee shall implement the NPDES requirements at its sole expense, unless otherwise agreed to in writing between the City and Lessee. Lessee shall meet all deadlines that may be imposed or agreed to by the City and Lessee. Time is of the essence.
- 6) If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable Environmental.
- 7) Lessee appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City’s Environmental Permits applicable to Lessee.
- 8) Lessee shall participate in any City organized task force or other work group established to coordinate permit compliance activities at the Airport.
- 9) The City may enter upon Lessee’s Facilities at any time upon reasonable advance notice for purposes of inspection to ensure that Lessee is complying with this Section and any other provisions in this Agreement without committing a trespass.
- 10) The City’s remedies with regard to Lessee’s environmental obligations hereunder are cumulative and survive termination of this Agreement.
- 11) WITH NO INTENT TO LIMIT LESSEE’S INDEMNIFICATION TO THE CITY SET FORTH IN ELSEWHERE IN THIS AGREEMENT, LESSEE SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS’ AND CONSULTANTS’ FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:
  - i. ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE

CITY OR A THIRD PARTY DUE TO LESSEE'S , ITS EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE LEASED PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

- ii. ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE LEASED PREMISES BY LESSEE, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS;
- iii. THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY LESSEE, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS AT THE LEASED PREMISES THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;
- iv. ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY LESSEE, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS AT THE LEASED PREMISES; OR
- v. ANY VIOLATION BY LESSEE, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT OR TO THE EXTENT CITY HAS CAUSED SUCH LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES OR EXPENSES.

5.8 – Antennae. Subject to the prior written approval of the Director, which approval should not be unreasonably withheld, Lessee may install, maintain and operate antennae and such electronic, communications, meteorological and aerial navigational equipment and facilities as may be necessary or convenient solely for the operation of Lessee's business, provided (i) the location, elevation, installation, maintenance or operation of such antennae, equipment or facilities does not interfere with operations conducted or equipment operated by the FAA, (ii) they meet any and all requirements of all governmental authorities, and (iii) they are used by Lessee solely in connection with operations as permitted in Section 3.1 and shall not be used or operated in any way for any other commercial activity.

## **ARTICLE VI.** **INDEMNIFICATION AND INSURANCE**

**6.1 -- RELEASE. EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, LESSEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS LEASE, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

**6.2 -- INDEMNITY. LESSEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS LEASE INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (1) LESSEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS', (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "LESSEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S ACTUAL OR ALLEGED SOLE OR CONCURRENT NEGLIGENCE, WHETHER LESSEE IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND LESSEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER LESSEE IS IMMUNE FROM LIABILITY OR NOT.**

**LESSEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS LEASE AND FOR FOUR YEARS AFTER THE LEASE TERMINATES.**

**6.3 -- Indemnification Procedures-In General.**

**(a) Notice of Claims.** If the City or Lessee receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

- (1) a description of the indemnification event in reasonable detail,**
- (2) the basis on which indemnification may be due, and**
- (3) the anticipated amount of the indemnified loss.**

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Lessee is prejudiced, suffers loss, or incurs expense because of the delay.

**(b) Defense of Claims**

**(1) Assumption of Defense.** Lessee may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Lessee shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Lessee must advise the City as to whether or not it will defend the claim. If Lessee does not assume the defense, the City will assume and control the defense, and all defense expenses constitute an indemnification loss.

**(2) Continued Participation.** If Lessee elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Lessee may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Lessee does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

6.4 -- Insurance - General.

With no intent to limit Lessee's liability under the indemnification provisions set forth above, Lessee covenants to provide and maintain in full force and effect during the Term of this Lease, any all extensions and amendments thereto, at least the following insurance. If any of the following insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Lessee agrees to purchase policy period extensions so as to provide coverage to the City for a period of at least two years after the expiration or termination of this Lease. Insurance to be provided by Lessee under this Lease is as follows:

- (1) Risks and Limits of Liability. Lessee shall provide at a minimum the following insurance coverage and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Amount set by Statute
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by disease \$500,000 (each employee) Bodily Injury by disease \$500,000 (policy limit)
Commercial General Liability Coverage: (Including broad form coverage, contractual liability, bodily and personal injury, and products and completed operations, independent contractors, personal and advertising injury, medical payments, explosion, collapse and underground hazard, fire legal liability, mobile equipment)	\$500,000 combined single limit per Occurrence/ \$1,000,000 aggregate  Fire legal liability: \$250,000 per occurrence
Automobile Liability Insurance (for automobiles used by Lessee in the course of its performance under this Lease, including Employer's Non-Ownership and Hired Auto Coverage)	\$1,000,000 combined single limit

(Aggregate limits are per 12-month period unless otherwise indicated.)

- (2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Lessee from its duties to provide the required coverage under this Lease. The Director's actions or inaction do not waive the City's rights under this Lease.
- (3) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States.
- (4) Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Lessee shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

- (6) Cancellation. LESSEE SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED. WITHIN THE 30 DAY PERIOD, LESSEE SHALL PROVIDE OTHER SUITABLE POLICIES IN LIEU OF THOSE ABOUT TO BE CANCELLED, MATERIALLY CHANGED, OR NON-RENEWED SO AS TO MAINTAIN IN EFFECT THE REQUIRED COVERAGE.
- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Lease.
- (9) Liability for Premium. Lessee shall pay all insurance premiums, and the City will not be obligated to pay any premiums.
- (10) Subcontractors. Lessee shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Lessee shall provide copies of insurance certificates to the Director.
- (11) Proof of Insurance.
  - (a) Commencing with the Effective Date and during the Term of this Lease, Lessee shall furnish the Director with Certificates of Insurance, along with an Affidavit from Lessee confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Lessee shall furnish the City with certified copies of Lessee's actual insurance policies.
  - (b) Lessee shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Lessee does not comply with this requirement, the Director, at his or her sole discretion, may
    - (1) immediately suspend Lessee from any further performance under this Lease and begin procedures to terminate for default, or
    - (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Lessee under this Lease.

The City will never waive or be estopped to assert its right to terminate this Lease because of its acts or omissions regarding its review of insurance documents.

- (12) Other Insurance. If requested by the Director, Lessee shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Lessee's operations under this Lease.

## ARTICLE VII.

### MODIFICATION, ASSIGNMENT, DEFAULT, EXTENSION AND TERMINATION

7.1 -- Modification. No officer or employee of the City shall have the right to extend, modify, or change the terms hereof except by authority of an ordinance of the City Council.

7.2 -- Assignments and Subleases.

- (a) Lessee shall not sell, convey, transfer or assign, in law or otherwise, this Lease or any part hereof, or any rights created hereby.

- (b) Lessee shall not sublease the Leased Premises.
- (c) Any assignment or sublease of this Lease shall constitute a default of this Lease.

7.3 -- Termination by City.

(a) Termination by City for Lessee's Failure to Pay Rent. In the event of a default on the part of Lessee, either in the payment of rentals or other charges required by this Lease to be paid, the City shall serve upon Lessee a notice calling attention to the particular default or defaults complained of and demanding the correction thereof, and in the event of the continued existence of the default or defaults for a period of fifteen (15) days from the time of the giving of such notice, the City shall have the right without further action to re-enter and take possession of the Leased Premises, including all improvements thereon and therein, with or without judicial process, and to terminate this Lease. Provided, however, that no notice of default as above provided shall be of any force or effect if Lessee shall have remedied the default prior to Lessee's receipt of the City's notice of default or if within the fifteen (15) day period Lessee cures the default by payment to the City of all arrearages described in the City's notice of default. If the City and Lessee disagree with respect to Lessee's obligation to pay money under this Lease, Lessee may pay the amount demanded by the City under protest and such payments shall not prejudice Lessee's right to recover the disputed amount if it was not otherwise due under this Lease.

(b) Termination by City for Other Default by Lessee. In addition to any other right of termination granted under this Lease, the City shall have the right to terminate Lessee's right to possession and use of the Leased Premises and the improvements thereon by giving Lessee written notice of termination upon or after the happening, and during the continuance of any of the following events:

(1) Lessee shall fail to perform any of its obligations hereunder (other than payment of rents or other charges) including but not limited to Lessee's failure to use the Leased Premises only for the permitted use identified in Article III hereof and shall continue such failure for the period of ten (10) days after notice thereof shall have been given by the City to Lessee; provided, however, that no notice of termination as above provided shall be of any force or effect if Lessee shall have remedied the default prior to receipt of City's notice of termination or if within the ten (10) day period Lessee commences the process of remedying the default and diligently prosecutes the same to completion; or

(2) Lessee shall become insolvent or bankrupt, or shall fail for the period of thirty (30) days after entry thereof to take such action as may be necessary to cause the satisfaction, opening or vacation of, or an appeal from any judgment against it which shall constitute a lien upon a substantial part of Lessee's assets or other property of Lessee; or

(3) A trustee or receiver shall be appointed for Lessee at the instance of creditors of Lessee and such trustee or receiver shall not be discharged within thirty (30) days following such appointment; or

(4) Lessee shall fail to make necessary repairs or maintain the Leased Premises in at least the condition existing on the Effective Date of this Lease, except as otherwise provided herein.

7.4 -- Failure to Exercise Rights. Failure by the City to exercise any of its rights arising hereunder by reason of any default or act of Lessee, or acceptance by City of fees, charges and rentals or other payments after a default by Lessee hereunder, shall not be deemed a waiver of any subsequent act or default, similar or dissimilar by Lessee, its successors or assigns.

7.5 -- Termination by Either Party. Either party may cancel this Lease and thereby terminate all of its rights and unaccrued obligations hereunder by giving the other party thirty (30) days' advance written notice.

7.6 -- Surrender upon Termination. Upon the termination of this Lease whether by the accomplishment of the Term hereof or pursuant to any provision hereof for its earlier termination, Lessee agrees to surrender the Leased Premises to the City in good condition or as improved by Lessee, save and except (a) normal wear and tear thereof as could not have been prevented by reasonable, proper and usual repair and maintenance; and (b) damage to or destruction of the improvements by those casualties against which insurance is herein required to be provided by Lessee, as to which damage or destruction the rights and obligations of the parties hereto shall be as stated elsewhere in the Lease. Further, upon any such termination, or during the Term of this Lease, Lessee shall have the right to remove any Trade Fixtures. This right shall not apply to permanent additions, modifications, improvements and repairs to existing facilities.

7.7 -- Holding Over by Lessee.

No holding over by Lessee after the termination of this Lease shall operate to extend or renew this Lease for any further term whatsoever. Lessee will, however, by such holding over become a tenant at will of the City and Lessee shall pay 200% of the monthly rental rate in effect at the termination of the Lease. After written notice by the City to vacate the Leased Premises, continued occupancy thereof by Lessee shall constitute Lessee a trespasser. Any holding over by Lessee without consent of the City shall make Lessee liable to the City for damages equal to double the monthly rental rate in effect at the termination of the Lease. All insurance coverage that Lessee is required to maintain under the provisions hereof shall remain in effect for so long as Lessee occupies the Leased Premises.

**ARTICLE VIII.**  
**GENERAL PROVISIONS**

8.1 -- National Emergency or Closure of Airport. During a time of war or national emergency, the City shall have the obligation to lease the landing area or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this Lease (including the provisions for payment of rent hereunder) insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended, but such suspension shall not exceed the Term of this Lease.

8.2 -- Notices. All notices required or permitted by this Lease must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Lease or at such other address as the receiving party designates by proper notice to the sending party.

8.3 -- Survival. Lessee shall remain obligated to the City under all clauses of this Lease that expressly or by their nature extend beyond the expiration or termination of this Lease, including but not limited to, the indemnity provisions.

8.4 -- Force Majeure. Timely performance by the Parties is essential to this Lease. However, neither party will be liable for delays or other failures to perform its obligations under this Lease to the extent the delay or failure is directly caused by Force Majeure at the Airport and affecting the Leased Premises. Force Majeure shall not excuse Lessee from paying rent under this Lease. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority but excludes strikes and work slowdowns.

8.5 -- Severability. If any part of this Lease is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

8.6 -- Entire Agreement. This Lease merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Lease.

8.7 -- Written Amendment. Unless otherwise specified elsewhere in this Lease, this Lease may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Lessee. The Director is only authorized to perform the functions specifically delegated to him in this Lease.

8.8 -- Applicable Laws. This Lease is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Lease is Harris County, Texas.

8.9 -- Captions. Captions contained in this Lease are for reference only, and, therefore, have no effect in construing this Lease. The captions are not restrictive of the subject matter of any section in this Lease.

8.10 -- Non-Waiver. If either party fails to require the other to perform a term of this Lease, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Lease. An approval by the Director, or by any other employee or agent of the City, of any part of Lessee's performance does not waive compliance with this Lease or establish a standard of performance other than that required by this Lease and by law. The Director is not authorized to vary the terms of this Lease.

8.11 -- Inspections. Representatives of the City have the right to perform, or to have performed, inspections of all places where work is undertaken in connection with this Lease for the purposes of determining compliance hereunder.

8.12 -- Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this Lease without further authorization. Lessee shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Lessee's compliance with this Lease, with the exception of those documents made confidential by federal or State law or regulation.

8.13 -- Ambiguities. If any term of this Lease is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

8.14 -- Parties In Interest. This Lease does not bestow any rights upon any third party, but binds and benefits the City and Lessee only.

8.15 -- Successors and Assigns. This Lease binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment set out in Section 7.2 herein. This Lease does not create any personal liability on the part of any officer or agent of the City.

8.16 -- Certain Federal Requirements.

(a) Lessee, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof does hereby covenant and agree as a covenant running with the land that Lessee shall maintain and operate the facilities on the Leased Premises and services offered hereunder in compliance with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 CFR Part 21 and 49 CFR Part 21, Appendix C(a)(1). This provision is inclusive of any amendments which may be made to such regulations. Further, Lessee shall include in subcontracts it enters into pursuant to this Lease, a requirement that the subcontractor comply with the applicable non-discrimination provisions required under 49 CFR Part 21 and 49 CFR Part 21, Appendix C(a)(1), as may be amended.

(b) Lessee acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Leases with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.

(c) Nothing herein shall be deemed to grant Lessee any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.

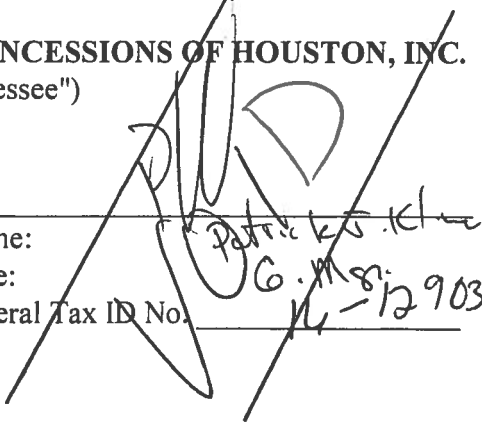
8.17 -- Licenses and Permits. Lessee shall obtain, maintain, and pay for all licenses, permits, and certificates required by any statute, ordinance, rule or regulation.

8.18 -- Right of Flight. Lessee understands that the City reserves the right of flight for the passage of aircraft above the surface of the Leased Premises in accordance with the criteria of the FAA and that the grant and demise of the Leased Premises is subject to this reserved right of flight, which such right shall include the right to cause in such airspace such noise as may be inherent to the operation of aircraft now known or hereafter used for the navigation of or flight in the air. Further, Lessee understands and agrees that the City reserves the right to use said airspace for landing at, taking off from, and operating aircraft on and over the Airport and that the grant and demise hereof is subject to such reserved right.

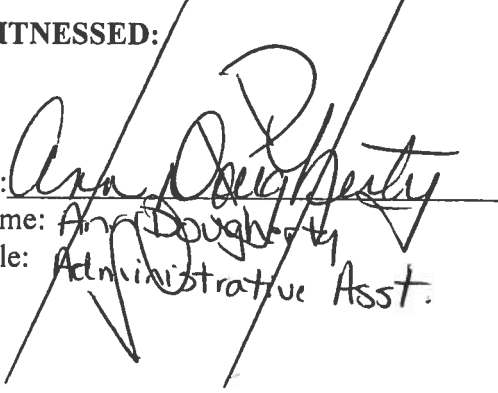
8.19 -- Remedies Cumulative. Unless otherwise specified elsewhere herein, the rights and remedies contained in this Lease are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties hereunder except in accordance with its provisions.

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed in three (3) counterparts, each of which is deemed an original.

**CONCESSIONS OF HOUSTON, INC.**  
("Lessee")

By:   
Name: Patricia K. S. Kline  
Title: CO. Mgr.  
Federal Tax ID No. 14-1290359

**WITNESSED:**

By:   
Name: Ann Dougherty  
Title: Administrative Asst.

**CITY OF HOUSTON, TEXAS ("City")**

**ATTEST/SEAL:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

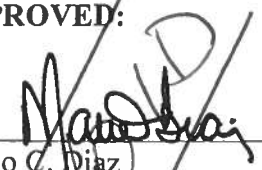
**COUNTERSIGNED:**

**COUNTERSIGNATURE DATE:**

\_\_\_\_\_  
City Controller

**APPROVED:**

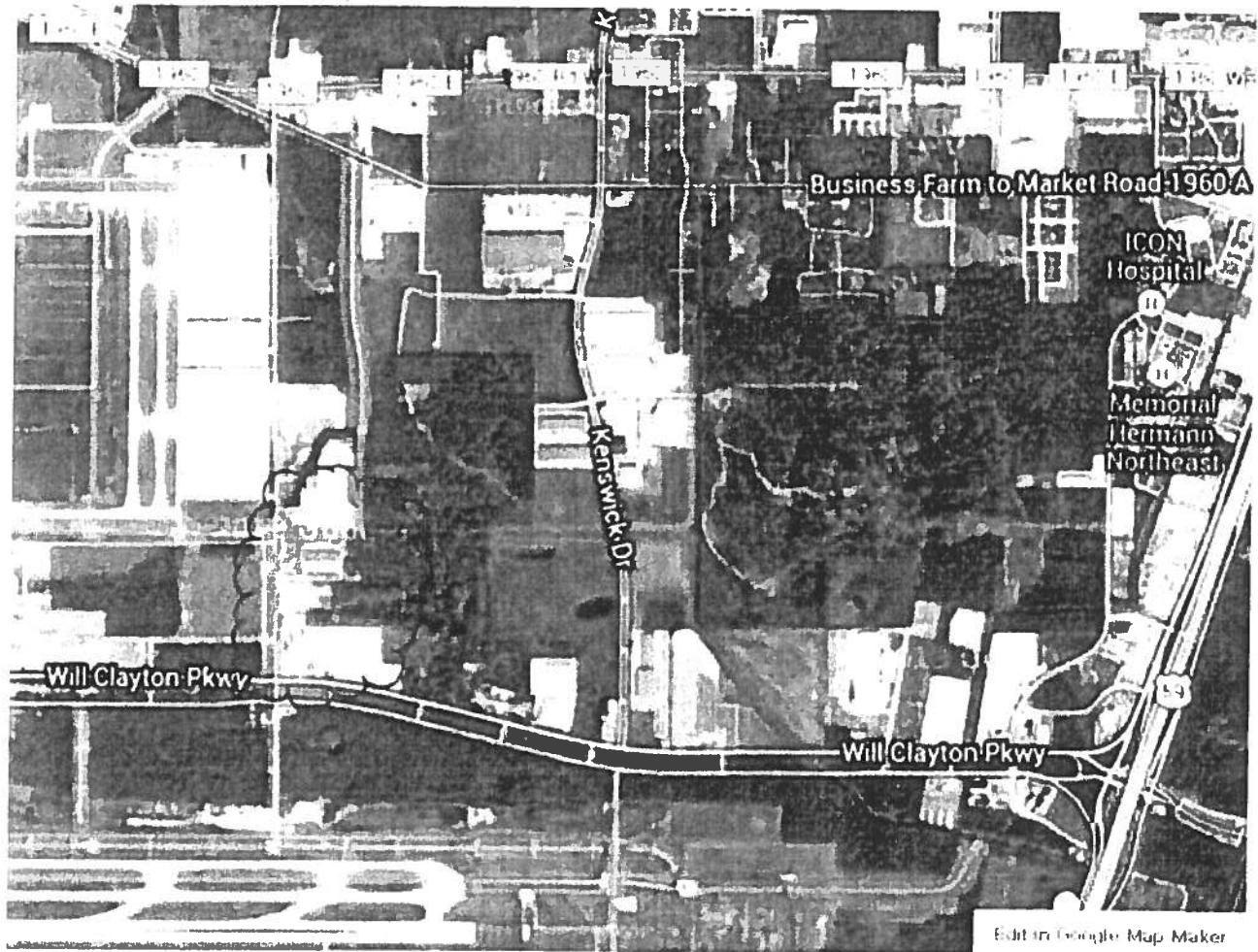
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Mario C. Diaz  
Director, Houston Airport System

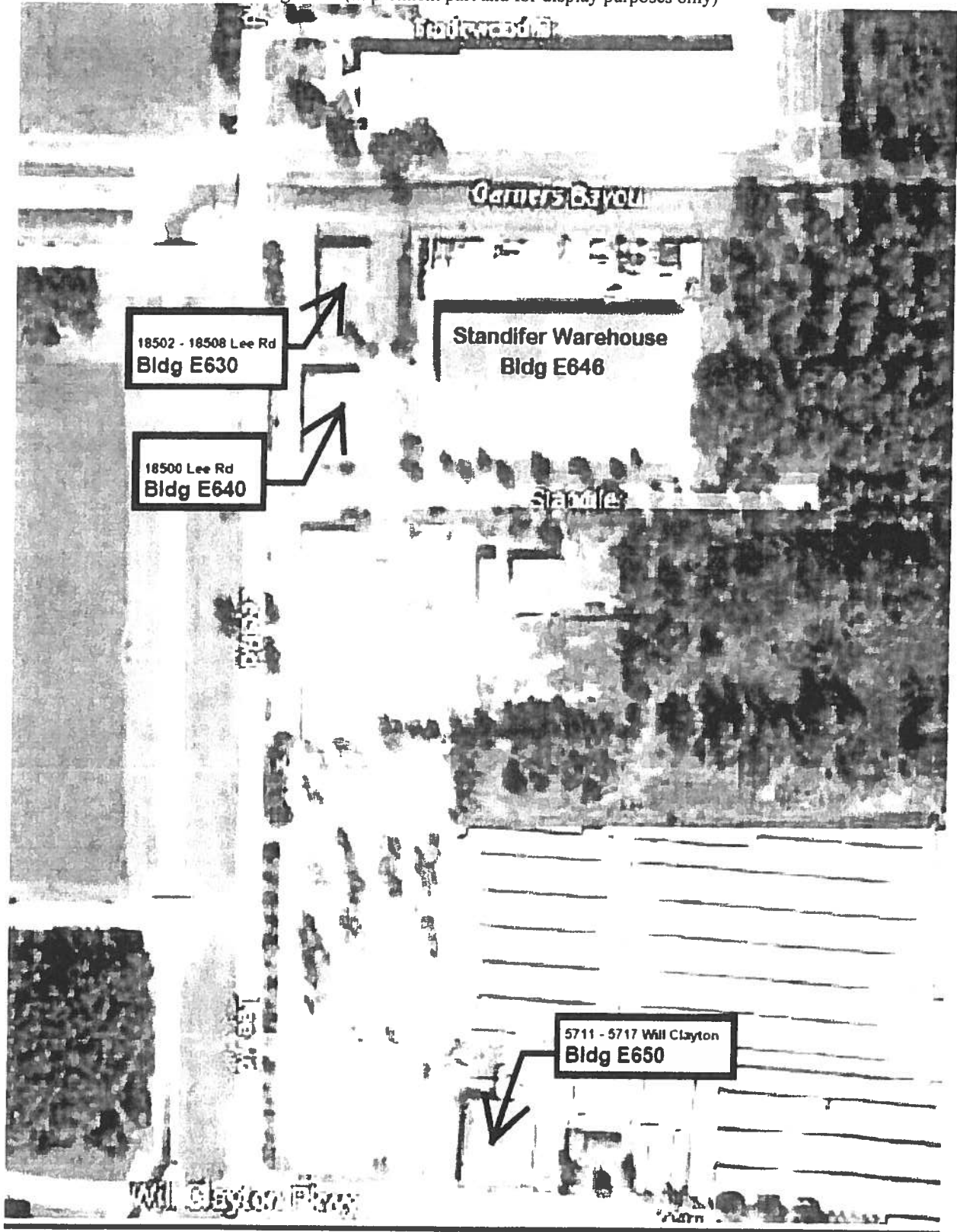
\_\_\_\_\_  
Sr. Assistant City Attorney  
LD File No.

  
INW

**EXHIBIT "A"**  
**GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON**  
Page One  
(in pertinent part and for display purposes only)



**EXHIBIT "A"**  
**GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON**  
Page Two (in pertinent part and for display purposes only)



**EXHIBIT "B"**  
**LEASED PREMISES**

