

LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT®

HG-ST.LOUIS JV

NEWS/GIFT & SPECIALTY RETAIL

CONCESSION AGREEMENT

AL#-212

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(News/Gift & Specialty Retail)

THIS AGREEMENT, made and entered into as of the ____ day of _____ 20____, ("**Agreement**") by and between the CITY OF ST. LOUIS ("**City**"), a municipal corporation of the State of Missouri and HG-ST. LOUIS JV ("**Concessionaire**"), a joint venture organized and existing under the laws of the State of Missouri.

WITNESSETH, THAT:

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

WHEREAS, a News/Gift & Specialty Retail Concession ("**Concession**") at the Airport is essential for proper accommodation of the public;

WHEREAS, the City has determined that it is in the City's and the traveling public's interest for the following objectives to be met in the provision of a News/Gift & Specialty Retail Concession:

- to provide first-class, full service News/Gift & Specialty Retail Concessions that meet or exceed Airport user needs and add value to other Airport and airline services;
- to provide a high level of service at prices that are attractive to Airport users and competitive with prices found in comparable U.S. Airports;
- to provide Airport users with a broad variety of quality merchandise and innovative news, gift and specialty retail concepts;
- to be responsive to the Federal Aviation Administration ("**FAA**") and City goals for Airport Concession Disadvantaged Business Enterprise ("**ACDBE**") participation in concessions;
- to provide a balance of local, regional, national and international brands, concepts and products;
- to provide news, gift and specialty retail concessions that are operated by well trained, efficient and courteous staff;
- to improve the appearance and design of all news, gift and specialty retail facilities;

- to monitor and remain current with retail trends and changing passenger demographics;
- to expand the volume of news, gift and specialty retail sales through planned promotional and marketing campaigns;
- to provide an environment where both Concessionaire and Airport can be financially successful;
- to optimize concession revenues for Lambert-St. Louis International Airport®; and

WHEREAS, the City has advertised and received bids for the right to develop, manage and operate a News/Gift & Specialty Retail Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified and responsive bidder that submitted the highest and best bid deemed most advantageous to the City for the development, management, and operation of a first-class News/Gift & Specialty Retail Concession at the Airport and best meets the City objectives.

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

ARTICLE I DEFINITIONS AND INTERPRETATIONS

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

“Agreement” shall mean this concession contract for News/Gift & Specialty Retail service and any amendments thereto, duly approved by the City.

“Airport” as stated in the preamble hereof.

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

“Airport Concession Disadvantaged Business Enterprise” or “ACDBE” shall mean a small business concern:

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

socially and economically disadvantaged individuals who own it.

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

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

“Build-Out” or **“Build-Out Costs”** shall mean costs incurred for the demolition, redevelopment, Refurbishment, or modification of Existing Improvements and/or the installation or construction of New Improvements to the Premises, including (but not limited to) furnishings, fixtures, equipment and finishes including Removable Fixtures, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest during construction and internal costs of Concessionaire’s employees.

“City” as stated in the preamble hereof.

“Commencement Date” shall mean February 1, 2013 (see Article IV, Section 401).

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

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

“Contract Year” shall mean a twelve (12) consecutive month period commencing on the Commencement Date, and each twelve (12) month period thereafter during the Term of this Agreement.

“Contract Postal Unit” or **“CPU”** shall have the meaning stated in Article VI, Section 622.

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

“Development Plan” shall have the meaning stated in Article VII, Section 702.

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

“Environmental Laws” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, Environmental Permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of

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

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

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

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

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

"Gross Receipts" shall mean the total revenues from all sources and all types at this Airport under the Agreement performed by Concessionaire, its subcontractors, sublessees, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order; and, only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for returned products or unperformed services purchased at the Airport;

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

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

“Initial Minimum Investment” shall have the meaning stated in Article VII, Section 703 hereof.

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

“International Brands” or **“International Concepts”** shall mean news, gift and/or specialty retail brands, concepts or products are available and sold worldwide and/or participate in advertising, promotional, and/or marketing campaigns in the United States and other foreign countries so that they are immediately recognized by a majority of the traveling public.

“Local Brands” or **“Local Concepts”** shall mean news, gift and/or specialty retail brands, concepts or products that area reflective of the St. Louis metropolitan area and/or are created and produced by St. Louis-based retailers, designers or merchants.

“Merchandise Category” as stated in Article V, Section 502.B hereof.

“Mid-Term Reinvestment” shall have the meaning stated in Article VII, Section 705 hereof.

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

“National Brands” or **“National Concepts”** shall mean news, gift and/or specialty retail brands, concepts or products that are available and sold in the contiguous forty-eight (48) U.S. states and participate in nationwide advertising, promotional, and/or marketing campaigns so that they are immediately recognized by a majority of the traveling public.

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

“News/Gift & Specialty Retail” shall mean a type of retail concession distinct to airports, offering a broad range of retail product categories of interest to the traveling public.

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

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

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

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

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

“Refurbish” or “Refurbishment” shall mean to construct, install, refurbish, improve, upgrade the Premises including Existing Improvements and/or return the Premises to original condition, or the conversion of news, gift and specialty retail sales units to new concepts, including modernization/redesign by replacement of furnishings, fixtures including Removable Fixtures, and finishes, and/or the installation or construction of New Improvements.

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

“Regional Brands” or “Regional Concepts” shall mean news, gift and/or specialty retail brands, concepts, or products that are representative of any United States region, such as Midwest, West Coast, East Coast and so forth, that area immediately recognized by the traveling public living in those areas.

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

“Removable Fixtures” shall mean all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor or ceiling within the Premises or Existing Improvement, and identified and listed by Concessionaire on its Removable Fixtures list approved by the Director, as provided for in Section 712 of this Agreement.

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

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

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

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

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

1. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
2. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
3. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
4. Words importing the singular shall include the plural and vice versa. Words of any gender shall be deemed to include correlative words of the other gender.
5. The term “**including**” shall be construed to mean “including without limitation,” unless otherwise expressly indicated.
6. All references to number of days shall mean calendar days.
7. Words used in the present tense include the future.

ARTICLE II PREMISES

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

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises.

Except as provided for in Section 618 entitled “Economic Performance”, in the event that the Premises are relocated or reclaimed, Concessionaire will be reimbursed the Unamortized Investment of the relocated Premises. In addition, the City will make reasonable efforts to find replacement space that is of equal size and value as that of the reclaimed Premises. If replacement space is developed by Concessionaire with less than three (3) years remaining on the Term then the Build-Out Costs of the replacement space will be amortized on a straight-line basis over a five (5) year life, with any Unamortized Investment being paid to Concessionaire upon contract termination. If replacement space is not located and developed by Concessionaire,

the MAG will be proportionately reduced, based upon the percentage of Gross Receipts of the Premises compared to the total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

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

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

- A. Concessionaire shall not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire’s use of the Premises, and provided further that such reservation or grant of rights shall not directly result in additional cost or expense to Concessionaire.
- D. The City reserves the right (but shall not be obligated to Concessionaire) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.
- G. During the time of war or national emergency the City shall have the right to enter into an agreement with the Government of the United States of America (“**U.S. Government**”) for

use of part of all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt written notice from the City.

- H. This Agreement shall become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, shall not substantially or materially interfere with the surface of the soil or with Concessionaire's use of improvements thereon.

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

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

ARTICLE III CONCESSION RIGHTS

SECTION 301. RIGHTS. City hereby grants to Concessionaire, subject to and in accordance with all of the Provisions of this Agreement the **non-exclusive** right, license and privilege and Concessionaire hereby assumes the obligation to design, construct, operate, manage and maintain a News/Gift & Specialty Retail within the Premises, subject to and in accordance with all the Provisions of this Agreement (see Article VI entitled "Concessionaire's Operations").

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

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

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

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

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself (or the brands which it operates under certain license and/or franchise agreements). City shall be the sole judge whether the conduct of Concessionaire's representative in the solicitation of business constitutes a violation of this paragraph, and upon notice from the City, Concessionaire shall forthwith take all steps necessary to eliminate the undesirable condition. Notwithstanding, Concessionaire may advertise and promote its offerings (including special promotions) in an attempt to maximize Gross Receipts and provide the highest customer satisfaction for Airport passengers (see Section 711 entitled "Signs").

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

ARTICLE IV CONCESSION TERM

SECTION 401. INITIAL TERM. The Initial Term of this Agreement shall consist of **Ten (10) Contract Years** as written below, unless sooner terminated in accordance with other Provisions of this Agreement:

Commencement Date: **February 1, 2013**

Expiration Date: **January 31, 2023**

SECTION 402. OPTION TERM. The Director, at his/her sole discretion, may grant one (1) additional **Three (3) Year Option Term** by giving the Concessionaire not less than one (1) year's written notice, prior to the Expiration Date. The Concessionaire shall then have thirty (30) days to accept or decline the Option Term.

SECTION 403. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the Term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the Term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in a clean, sanitary, and good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear (taking into account the improvements, repair and maintenance required to be done by Concessionaire), acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 712 entitled "Title to Improvements, Equipment and Removable Fixtures").

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

ARTICLE V FEES AND RENTALS

SECTION 501. GENERAL. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fee Payments and other fees and charges as set forth in this Agreement including, without limitation, in Sections 502, 503, 504, 505, 507, 509, 510, 512, Sections 703, 704, 705, the utilities described in Section 804 and the liquidated damages described in Article XIII, *without demand*, during the Term of this Agreement.

SECTION 502. CONCESSION FEE PAYMENTS. Concessionaire agrees to pay to City for each Contract Year, a sum equal to the greater of the "**Minimum Annual Guarantee**" ("**MAG**") as set forth in Section 502.A below or the aggregate of the applicable Percentage Fee for each "**Merchandise Category**" as set forth in Section 502.B below which shall be applied to the Gross Receipts of Concessionaire and each sublessee, whether the owner of one or multiple units, separately, for each Contract Year or portion thereof (the "**Concession Fee Payments**").

For Contract Year Four (4) and subsequent Contract Years of the Agreement, the MAG will equal the *greater* of the MAG for Contract Year Three (3) or 85% of the aggregate Percentage Fees payable for the prior year as determined by the Annual Audit of Gross Receipts (see Section 504.C entitled "Certified Audit Report Of Gross Receipts"). *In no event shall the MAG be reduced below the Contract Year Three (3) MAG.*

A. For Contract Years One (1), Two (2) and Three (3), the **MAG** shall be as follows:

<u>Contract Year</u>	<u>Minimum Annual Guarantee</u>
1	\$4,500,000.00
2	\$4,500,000.00
3	\$4,000,000.00

B. **Percentage Fee Rates by Merchandise Category** for the entire Term of the Agreement, as applied to Gross Receipts.

<u>Merchandise Category</u>	<u>Percentage Fee Rate</u>
Postal Items	1%
Reading Materials	10%
Drugs & Sundries	10%
Candy, Snacks, Bottled Water & Packaged Beverages	12%
Branded Specialty	13%
Other Merchandise	20%

“**Sundries**” shall include travel accessories and health and beauty items. “**Postal Items**” shall include all items sold as part of the Contract Postal Unit. All other news, gift and specialty retail merchandise and/or items not clearly belonging to one of the Merchandise Categories listed above will be assigned a Merchandise Category by the Director, whose decision shall be final and binding.

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

- A. **MAG Payments.** The “**MAG Payment**” shall consist of an amount equal to 1/12 of the MAG for the applicable Contract Year paid in advance on or before the first (1st) day of each month.
- B. **Percentage Fee Payments.** The Percentage Fee payment shall consist of an amount equal to the portion of the aggregate, applicable Percentage Fee Rates for each Merchandise

Category applied to the Gross Receipts for the previous month to be paid on or before the 15th day of the second month and each succeeding month during the Term of this Agreement (see Section 505 entitled "Unpaid Fees" and Article XIII entitled "Liquidated Damages" for the amount of any applicable service charge or liquidated damages.)

SECTION 504. REPORTS.

- A. Statement of Gross Receipts. Concessionaire shall submit to the City, by the fifteenth (15th) day of the second and each succeeding month of each Contract Year hereof, two (2) copies of an accurate statement of Gross Receipts certified by an officer of the Concessionaire. The statement of Gross Receipts shall separately state Gross Receipts by location. Concessionaire shall report Gross Receipts on a form approved by the Director. The Director reserves the right to request Concessionaire to provide documentation in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in future solicitation for this Concession.
- B. Final Statement of Gross Receipts. The final statement of Gross Receipts shall be due fifteen (15) days following expiration or early termination of this Agreement. The City reserves the right to use these statements as a source of information to bidders in future solicitation for this Concession.
- C. Certified Audited Report of Gross Receipts. Concessionaire shall submit to the *Airport Properties Department* an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of *each* Contract Year. This audit report must be prepared by an independent Certified Public Accountant. The audit report shall, at a minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report shall also include a schedule showing the total of actual Concession Fee Payments to the City during the Contract Year and shall state an opinion as to the correctness of the Concession Fee Payments without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein.
- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Concessionaire shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Concessionaire shall, upon City verification and approval, deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year, the City will pay the amount of the overpayment to Concessionaire within thirty (30) days of receipt of the final audit report.

- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Concessionaire, the City will waive the annual Certified Audited Report of Gross Receipts requirement if, during the previous Contract Year, Concessionaire paid to the City only the Minimum Annual Guarantee (MAG) as set forth in Section 502 and 503. The City will review Concessionaire's payment history prior to approving the waiver request.
- F. Quarterly ACDBE Activity Reports. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) two (2) copies of an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement shall be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.
- G. ACDBE Documentation. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance.

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

SECTION 506. PERFORMANCE AND PAYMENT BOND. Concessionaire agrees to furnish a Performance and Payment Bond or other security in a form acceptable to City in the principal amount equal to **Two Million Dollars (\$2,000,000)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the Term of this Agreement **and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond sixty (60) days *prior* to the expiring bond's expiration date. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond shall be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the Term hereof, **and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement.** City may agree to another form of deposit which shall provide equal protection of City's interest. If City cashes the

bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within twenty (20) days.

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

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

SECTION 509. RIGHT TO AUDIT.

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

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

- A. If the City has paid any sum(s) or has incurred any obligations or expenses for which Concessionaire has agreed to pay or reimburse the City for; or

- B. If the City is required or elects to pay any sum(s) or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the Provisions of this Agreement.

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

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

SECTION 511. NOTICE, PLACE AND MANNER OF PAYMENT. Payments to the City required by this Agreement shall be made at the Airport Administrative Office at the address as set forth in Section 1501, or at such other place or by whatever payment method that the City may determine as the City may hereafter notify Concessionaire, and shall be made in legal tender of the United States of America.

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

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

SECTION 601. STANDARDS OF SERVICE.

- A. The Concessionaire shall be required to use their best efforts to satisfy the City's objectives as set out in the preamble hereof.
- B. The Concessionaire shall furnish a first-class News/Gift & Specialty Retail Concession serving the needs of all Airport users.
- C. Concessionaire shall ensure that each passenger and Airport customer receives prompt, efficient service and courteous service. In conjunction with this requirement, Concessionaire shall ensure that each location has adequate staff to provide this level of service. Concessionaire shall ensure that all news, gift and specialty retail locations have adequate staff available during normal peak operating hours and during any special or emergency circumstances.

- D. Concessionaire shall have a sufficient quantity of inventory available and ensure that the Premises is fully stocked and available to passengers at all times. All inventories must be top quality and displayed in an “opening day fresh” manner.
- E. Concessionaire shall have procedures in place to handle unusual situations such as excessive lines, weather delays, etc.
- F. Concessionaire shall label and detail the price of merchandise in an area clearly visible to the passenger and in a manner consistent with street side locations for the same brand, business, franchise or trade name.
- G. The Premises shall be kept clean, neat, and businesslike and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- H. Concessionaire shall ensure all necessary licenses, permits, notices and inspection certificates shall be on the Premises and/or posted as required.
- I. Concessionaire shall ensure all signage shall be professionally designed and produced—no homemade signs are permitted and, illuminated signage shall be fully illuminated at all times (see Article VII, Section 711 entitled “Signs”).
- J. Concessionaire shall ensure all store entrances are clean and free from obstruction and debris. Concessionaire shall ensure all doors, windows, walls and fixtures shall be clean, free of smudges, dirt, grime and/or chipped or peeling paint, floor surfaces shall be clean and swept at all times, walls, ceilings, glass surfaces, awnings, blade signs, ceilings and facades shall be clean and free of dirt and dust at all times, ceiling lights and vents shall be kept dust free and operational and all lights and light fixtures shall be clean and operational.
- K. Concessionaire shall ensure refuse containers and refuse areas shall be available in the unit, adequate to handle volume of unit, wiped clean and not overflowing.
- L. Concessionaire shall ensure cashiers and sales staff record each individual sale on the register; all sale totals shall be visible to the customer; itemized register receipts shall be offered with every transaction; sale shall be rung up efficiently and effectively; cashier and sales staff shall be proficient with the operation of cash register and credit card machines; and an appropriate number of registers shall be open to meet sales volume.
- M. Concessionaire shall accept, at minimum, cash, four (4) major credit cards, debit cards and other legal tender at all locations. The Concessionaire is also encouraged, but not required, to accept electronic expedited payment options.
- N. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may

warrant.

- O. Concessionaire is not permitted to store items including, but not limited to trash, boxes, and/or merchandise under display tables or other locations on the sales floor of the Premises in view of the traveling public.
- P. Concessionaire shall assure that its agents and employees do not engage in the solicitation of or use pressure sales tactics for products offered on or about the Airport.
- Q. All items, merchandise and/or products sold must meet and/or comply with Transportation Security Administration (TSA) and/or Federal Aviation Administration (FAA) security regulations.
- R. Concessionaire's operations shall fully comply with all Federal Aviation Administration (FAA) regulations including security requirements, Airport rules and regulations and Airport security plan.
- S. Each retail location shall provide change upon request and without requiring a purchase or requiring the passenger/customer requesting change to wait for another passenger/customer to purchase an item.
- T. Concessionaire shall offer passengers the opportunity to ship/mail their purchases to both national and international locations. Concessionaire shall ensure passengers are aware of this service.
- U. Concessionaire shall offer bags and packaging that will enable customers to more easily transport items through the Airport. Environmentally friendly and/or innovative packaging or transportation devices that facilitate travel are highly encouraged, but not required.
- V. Deliveries of supplies, cash and coin to the Concession Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.

SECTION 602. ONSET OF SERVICE. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation, Refurbishment and maintenance of the Existing Improvements, New Improvements, Removable Fixtures, equipment, and fixtures as is necessary to provide service pursuant to this Agreement. Concessionaire has submitted a Development Plan and schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire and/or concept. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved Development Plan to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other users at the Airport (see Section 702 entitled "Development Plan").

SECTION 603. HOURS OF OPERATION.

- A. All News/Gift & Specialty Retail Concession locations must be open seven (7) days a week, three hundred sixty five (365) a year, including all holidays, with operating hours, staffing levels and inventory that support passenger activity at the Airport.
- B. The minimum hours of operation for serving the public shall be **ninety (90) minutes** prior to the first scheduled departure each morning until the last scheduled departure each evening in both the pre-security areas and the post-security areas of the Terminals. The first scheduled departure and the last scheduled departure will be based on the specific flight schedules of each airline and may vary by Concourse and/or Terminal.
- C. Concessionaire shall operate, at a minimum, one (1) unit located pre-security, Terminal 1, from 4:30 am until 11:30 pm seven (7) days a week three hundred sixty five (365) days a year unless a specific location is designated as a 24-hour facility or as directed in writing by the Director.
- D. In the event that scheduled flights are delayed past the normal last scheduled departures due to weather or other causes, Concessionaire will remain continuously open and provide all services as provided for in the Agreement to accommodate the needs of the public and employees until such time that the delayed flights have departed, been canceled or otherwise directed by the Director.
- E. Concessionaire may *not* change the hours of operation without written application to, and the written approval of, the Director. The Director may require Concessionaire to change its hours of operation, with very limited notice, to reflect changing operational circumstances at the Airport.
- F. Concessionaire will be required to submit to the City proposed hours of operation for each new retail location no less than thirty (30) days *prior* to the opening of the retail location for the review and approval of the Director.
- G. Specific requests for exceptions to the approved operating hours for holidays and/or other reasons (refurbishments) must be submitted in writing to the City not less than five (5) days prior to the proposed change and must be approved in writing by the Director.
- H. The Director may require Concessionaire to operate one (1) twenty-four (24) hour retail unit, pre-security Terminal 1, to reflect changing operational circumstances at the Airport.
- I. On or before the fifteenth (15th) day of the second calendar month and each month thereafter, during the Term of the Agreement, Concessionaire shall submit to the City a report generated from Concessionaire's point-of-sale system, or by such other

means as approved by the Director, showing the time of the first and last Gross Receipts generated in each news, gift and specialty retail unit for the specified period.

SECTION 604. PROMOTION.

- A. Concessionaire shall implement a marketing and promotion plan that includes, but is not limited to, advertising within the Airport and social media outlets, the use of coupons, frequent patron cards, frequent flyer passengers, senior citizen programs, Essential Air Service ("EAS") passenger programs, book signings, entertainment, pamphlets and merchandise shipping programs for all news, gift and specialty retail locations.
- B. Concessionaire shall use market research tools including, but not limited to surveys, focus groups, convention and visitors commission data, store customer counts, customer comment cards and mystery shopping services to ensure the news, gift and specialty retail needs of Airport passengers, employees, tenants and other users are being met.
- C. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder.
- D. Concessionaire shall not divert, cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Concessionaire to diminish the Gross Receipts of Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 605. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and fully represent and act on behalf of the Concessionaire in all matters pertaining to its business operation. The manager(s) shall be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence. The Manager and/or subordinate shall be available after hours to resolve any issues pertaining to the Concession operations.

SECTION 606. PERSONNEL.

- A. Concessionaire shall ensure, *at its sole cost and expense*, all employees obtain an Airport-issued ID badge from the Airport Police Department and shall ensure all employees wear and display in an acceptable manner their Airport ID at all times while on Airport property. Employees shall fully comply with TSA regulation 1542 regarding conduct and access to the AOA.

- B. Concessionaire, *at its cost*, acknowledges and agrees that all employees applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
- C. Concessionaire, *at its cost*, acknowledges and agrees that it shall conduct employee background checks of each of its personnel if required by the FAA, TSA and/or the City. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it shall comply with all such changes throughout the Term of this Agreement.
- D. Concessionaire understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Concessionaire shall promptly reimburse the City, within thirty (30) days of the City's request, for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.
- E. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and company-issued name tags so they may be identified by the public and indicates the fact and nature of their employment. Uniforms will be clean, neat, and worn according to company standards during the entire time the employee is on Airport property.
- F. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Concession.
- G. Concessionaire shall ensure staff and cashiers demonstrate customer service and product knowledge by presenting a pleasant greeting and smile upon customer's arrival, having excellent product knowledge and providing prompt service.
- H. Concessionaire shall ensure staff and cashiers cease any personal conversations and promptly assist the customer, and shall practice "customer comes first".
- I. Concessionaire shall ensure staff shall be knowledgeable about and adhere to customer service policies for redemption of gift certificate and/or airline vouchers.
- J. All employees shall act in a courteous and helpful manner at all times with customers and fellow employees. Employees are expected to behave in businesslike and professional manner at all times while in uniform and on Airport property.
- K. Employees shall provide a friendly and professional greeting to customers whenever and wherever contact is made; employees shall display a positive attitude toward passengers and fellow employees; English shall be spoken by staff, except when necessary to accommodate customer; the use of foul or inappropriate language in public areas at any time is prohibited; employees shall smile and use a pleasant tone of voice when conversing with the customers; employees shall be actively working while on duty and

refrain from gathering and “chatting” in groups while on duty, unless necessary; employees shall refrain from the use of cell phones while on duty; employees shall not nap or sleep in public areas while in uniform; and employees shall be attentive to customers.

- L. Employees are not permitted to utilize public seating, boarding areas, gate areas and/or lounge areas with the Terminal and Concourses. The above areas are intended for use by the traveling public and not as rest or lounge facilities for employees.
- M. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and/or licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport’s customer service program.
- N. Concessionaire acknowledges only direct support vehicles and/or equipment will be allowed on the AOA. Qualifying, direct support vehicles and/or equipment must be approved by the Airport Police Department and all drivers must attend Airport-sponsored driver training prior to driving on the AOA, and attend any recurrent driver training required by the Airport.
- O. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable federal, state, City, and local laws, rules and regulations including, without limitation, the Airport’s Rules and Regulations, the Airport’s Security Plan and all applicable FAA, TSA, & City security rules, regulations, plans orders, directives, requirements, and procedures.
- P. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.
- Q. The Airport will provide the Concessionaire, at no cost or expense, **four (4) Terminal 1 Short Term Parking Garage** parking passes. Additional parking passes shall be at *the sole cost and expense* of the Concessionaire.
- R. Lambert-St. Louis International Airport® is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 607. KNOWLEDGE OF AIRPORT. Employees of Concessionaire are expected to be able to assist Airport users with way-finding within the Airport. Concessionaire shall ensure that each of its employees (i) have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Airport and provide such information upon request, with courtesy and accuracy, and (ii) have a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers’ requests for information.

SECTION 608. PRICING.

- A. Lambert-St. Louis International Airport has established a “street pricing” policy for all concessions at the Airport. This policy requires the Concessionaire to charge fair, reasonable and nondiscriminatory prices that are attractive to the public and no more than ten percent (10%) over prices charged at comparable non-Airport locations (“street locations”) within the greater St. Louis metropolitan area (which shall be defined as St. Louis City, St. Louis County and St. Charles County), excluding resort destinations, attractions, hotels, theaters, sports and entertainment venues. Concessionaire is encouraged, but not required, to offer the same prices as street locations. For purposes of this Agreement, the term “street location” shall mean the regular price of the product or service at a non-Airport location or comparable location, determined as follows:
1. If an entity of the same business, franchise or trade name as Concessionaire operates in a non-Airport location within the greater St. Louis metropolitan area, the price charged for a product shall be no more than ten percent (10%) over the average price of the same product at three (3) non-Airport locations designated by Concessionaire and approved by the Director. Requests for changes to the comparable location or locations for the determination of street pricing and the reasons for such changes shall be provided to the Director for approval and shall become effective only upon receipt of the Director’s approval.
 2. If an entity of the same business, franchise or trade name as Concessionaire does not operate within the greater St. Louis metropolitan area, the street price for a product shall be no more than ten percent (10%) over the average price of the product at three (3) non-Airport locations of the same business, franchise or trade name, as agreed to by the Director and Concessionaire.
 3. If a product is not available from an entity of the same business, franchise or trade name as stated in Section 608.A.1 and Section 608.A.2 hereof, the street price for such product shall be determined by reference to a range of the regular prices of three (3) separate businesses for such product, of comparable nature, ambiance and product and service lines, within the greater St. Louis metropolitan area as agreed to by the Director and Concessionaire.
 4. If Concessionaire is a franchisee or retail outlet of an entity with a national pricing structure identical for all franchisees or outlets, the street price for a product shall be determined in accordance with such pricing structure.
 5. Products containing selling prices printed by the publisher or manufacturer are excluded and shall not be sold for more than published prices.
 6. Where an identical product is not available at an agreed comparable location, any difference in size or quality shall constitute a price differential. Concessionaire shall submit a list of merchandise for each location along with the prices to be offered. Concessionaire shall also submit a list of comparable locations and prices which

support the pricing to be charged by Concessionaire. Concessionaire shall not begin operation of a new facility without the Director approving the comparable locations, merchandise selection and pricing in accordance with Section 608.A of this Agreement.

- B. No less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date, Concessionaire shall conduct, or shall cause to be conducted, a price comparison of all current products available within the Premises. The price comparison shall compare the price of all current products available at the Airport with the price at non-Airport comparable locations, excluding resort destinations, attractions, hotels, theaters, sports and entertainment venues, as described in this Section 608. In the event of noncompliance with the street pricing requirements herein, Concessionaire shall bring all products into compliance with the pricing requirements within seven (7) days after such noncompliance is identified.
- C. The Director reserves the right to independently compare Concessionaire's prices to the agreed upon comparable non-airport location prices and if prices are determined to be more than ten percent (10%) above street, require Concessionaire to reduce prices based upon its documented comparison.
- D. Concessionaire shall not increase any prices without prior written approval of the Director.
- E. All new products are subject to the pricing requirements of this Section 608 hereof and may be proposed at any time.
- F. Concessionaire will be required to submit a price comparison of all items sold no less than thirty (30) days *prior* to the opening of each retail location.
- G. Concessionaire is encouraged, but is not required to accept manufacturer's coupons for retail merchandise sold on the Premises. Concessionaire shall provide the Airport Properties Office with a "coupon" policy no less than thirty (30) days *prior* to the opening of each retail location.
- H. Concessionaire is permitted, but not required, to offer discounted prices to employees of the City and other Airport employees. Before implementing a discount policy Concessionaire shall first provide thirty (30) days advance notice to the Director. The notice shall provide the details surrounding the discount policy (e.g., who it covers, how much is the discount, what stores participate, etc). The Director will not unreasonably withhold approval to implement the policy. In addition, discounts may be changed, modified or discontinued with thirty (30) days notice to the Director.
- I. To monitor the Concessionaire's adherence to this pricing policy, the City reserves the right to conduct price comparison surveys of various products and services offered by the Concessionaire.

SECTION 609. CONFLICTS. Concessionaire shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

SECTION 610. RECORD KEEPING. Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and ACDBE participant(s) under this Agreement (these records are to be retained by Concessionaire). Concessionaire must also maintain records that document, in a format acceptable to the Director, the portion of Gross Receipts attributable to ACDBE participants.

SECTION 611. TRANSITION PERIOD. If applicable, during any future transition of the News/Gift & Specialty Retail Concession to another Concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

SECTION 612. OPERATION.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment, Removable Fixtures, and supplies.
- B. The City shall not be responsible for any equipment, Removable Fixtures, New Improvements, supplies or fixtures used, maintained or stored on the Premises or at the Airport, nor will it be responsible for any damage or loss to any such items resulting from any cause whatsoever including, without limitation, flood, fire, explosion, vandalism, casualty, acts of god, or other causes outside the direct control and responsibility of the City.
- C. On or before the fifteenth (15th) day of the second calendar month and each month thereafter, during the Term of the Agreement, Concessionaire shall provide to the City a report or reports and affiliated records as required, that detail the maintenance work performed by or on its behalf, in maintaining the Premises. Reports shall include, but not be limited to, pest control services and janitorial services.

SECTION 613. COMMUNICATION.

- A. At the Airport Properties Department's discretion, Concessionaire's local manager shall schedule monthly or quarterly meetings with the appropriate representative of the Airport Properties Department and the DBE Program Office to discuss sales, ACDBE participation and any other relevant issues which may affect Concessionaire's operation at the City. Concessionaire shall also be available for

meetings at other times as necessary.

- B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem that reduces service or sales levels or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

SECTION 614. CUSTOMER COMMENTS. Concessionaire shall establish procedures for handling all customer comments. Concessionaire shall respond in writing to every comment, written or oral, within seven (7) calendar days of the comment and shall make good faith efforts to explain, resolve or rectify the cause of any complaint. Concessionaire shall provide the Airport Properties Department with a copy of such comments and its written response thereto.

SECTION 615. DELIVERIES. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving docks with other users. All deliveries to or pick-ups from the Airport Terminal buildings by Concessionaire or its agents will be through the Terminal 1 delivery dock at the west end of the lower level or the Terminal 2 delivery dock at the east end of the lower level.

All deliveries are the sole responsibility of Concessionaire and not the City.

Deliveries of product to the units, whenever possible, will be made through secure doors. Deliveries on the Concourses will be made at times of minimum passenger flows. **Shippers, carts or other delivery equipment will be unloaded immediately and removed from the public areas of the Airport.** Concessionaire is not permitted to block or impede the flow of passenger traffic while delivering merchandise. **Delivery equipment will never be left unattended; an employee must physically be with the delivery equipment at all times.** Any unattended delivery equipment will result in Concessionaire being assessed liquidated damages pursuant to Article XIII.

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

Concessionaire shall comply with all TSA and/or FAA regulations concerning the delivery, distribution and storage of merchandise.

SECTION 616. OPERATIONAL AUDIT. During the Term of this Agreement, Concessionaire shall be subject to regular operational facilities inspections of Concessionaire's news, gift and specialty retail operations at the Airport.

SECTION 617. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device shall be installed without first obtaining, in each instance, the Director's

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

SECTION 618. ECONOMIC PERFORMANCE. If during the Term of this Agreement, Gross Receipts for any retail location declines by fifteen percent (15%) or more below the base year, which for the purposes of this Section 618 will be Contract Year One (1) of this Agreement, for a period of six (6) months, the City shall have the right to require Concessionaire to re-brand the news, gift and/or specialty retail location. Notwithstanding Section 201, if Concessionaire refuses to re-brand the news, gift and/or specialty retail location, the City shall have the right to recapture the location **at no cost to the City**. The City will not enforce the terms of this Section if the reduction in Gross Receipts is caused by the decrease in enplanements of more than fifteen percent (15%) or the development of new news, gift and/or specialty retail concession real estate in the immediate vicinity of the affected retail location. Any money spent on re-branding the unit(s), as required by this Section 618, will be credited towards the Mid-Term Refurbishment requirement (see Section 705 entitled "Mid-Term Refurbishment").

SECTION 619. SEASONAL LOCATIONS. During certain seasonal holidays, observances and/or occasions, including but not limited to special sporting events, Valentine's Day and Christmas, Concessionaire may, with the prior written approval of the Airport Director, set up temporary locations, outside of the Premises, to sell seasonal-related items.

SECTION 620. SALES/MERCHANDISE TABLES. The Concessionaire may, with the prior written approval of the Airport Director, set up temporary sales and/or merchandise tables, outside of the Premises, to sell certain pre-approved merchandise and/or sale items.

SECTION 621. ADULT MATERIAL. All adult materials, as defined by the Director, will be handled in a discrete manner. Magazines will be placed on the highest display rack and their covers, except for the publication name, will be hidden. Cards will be placed in the highest rack and their pictures will be hidden. Other materials will be handled as prescribed by the Director. The Airport reserves the right to request that the Concessionaire remove any or all adult materials from its retail locations.

SECTION 622. CONTRACT POSTAL UNIT. Concessionaire shall operate a Contract Postal Unit, located pre-security, Terminal 1, providing full service postal retail and services to the public, at US Postal Service prices. The location and hours of operation shall be approved in writing by the Director. The City reserves the right to have the Contract Postal Unit operated by another operator.

SECTION 623. MERCHANDISE LIMITATIONS. The following products or services **are not permitted** to be sold under or through the News/Gift & Specialty Concession Agreement or from the Premises:

- Perishable snack items;
- Electronics and/or music;
- Duty-free items;
- Insurance of any kind;
- Commercial advertising services, signage and displays;
- Telephone, Internet access and Broadband facilities;
- Ground transportation and parking services;
- Hotel accommodations;
- Banking services including Automatic Teller Machines (ATM), foreign currency exchange and money orders;
- Baggage carts and/or lockers;
- Airline tickets;
- Travel agency activities; and
- Check-cashing services

The sale of bottled water, packaged soft drinks, other packaged beverages and a limited selection of small electronic accessories at select locations may be approved by the Airport Director.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

SECTION 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Concessionaire takes the Premises “AS IS” as provided for in Article II, Section 201 hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, install, replace, Refurbish, equip and furnish New Improvements, Removable Fixtures, equipment and fixtures, and make related facility changes as needed to operate a News/Gift & Specialty

Retail Concession, in accordance with and subject to the Provisions of this Agreement including, without limitation, the implementation of the Development Plan prepared by Concessionaire and approved by the Director as provided for in this Article VII.

B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.

1. Concessionaire shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 706, to the Airport Properties Department. The TCA shall be submitted for each location in accordance with the approved Development Plan and/or construction drawings and specifications along with any future phasing and construction schedules as agreed to between the Concessionaire and the City. Concessionaire also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Concessionaire's ongoing coordination with the City, at all times, is crucial.
2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved.)
3. Concessionaire agrees that all such work, design and construction, shall be completed pursuant to the Mayor's Executive Order #28, as amended. Concessionaire agrees that it shall use their best efforts, as determined by the Director, to achieve twenty-five percent (25%) MBE participation and five percent (5%) WBE in the design and construction of the improvements and alterations.
4. Concessionaire shall submit the contractor's liability insurance certificates, performance bonds, and payment bonds, required by Sections 707 and 708, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
5. Concessionaire shall use only City-approved contractors or subcontractors for improvements affecting control and/or programming of Airport systems including, but not limited to, security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.
6. Concessionaire shall complete all construction and open all Premises fully fixture and operational according to the Development Plan (see Exhibit C, attached hereto).
7. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 710 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report

the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

SECTION 702. DEVELOPMENT PLAN. Concessionaire has submitted and the City has approved the Development Plan, which includes, without limitation, a tenant concept and merchandising plan for each unit included in the Premises along with a transition plan, and a phased construction plan and store opening schedule for each news, gift and/or specialty retail location, which is attached hereto as **Exhibit "C"** and incorporated herein. The Concessionaire shall implement the Development Plan in accordance with and subject to the Provisions of this Agreement (see Section 703 entitled "Initial Minimum Investment"). Concessionaire, in accordance with the Development Plan, shall provide, to the maximum extent feasible, continuous service to the traveling public in all parts of the Airport. Concessionaire acknowledges and agrees that temporary facilities may be required at certain times and locations during the transition and/or construction period. In addition, Concessionaires agrees that all unoccupied or incomplete news, gift and specialty retail locations shall have professional signage covering the storefronts with "coming soon" or similar information, as it is available, and/or information and directions on locations providing similar products within reasonable walking distance (also see Section 703 entitled "Initial Minimum Investment" and Section 704 entitled "Liquidated Damages For Late Opening").

Any deviations in the implementation of or modification to the Development Plan shall require the Director's prior written approval. Concessionaire and City acknowledge and agree that the parties may agree to amend or modify Exhibit "C" entitled "Development Plan" without a formal amendment to this Agreement. The Director, on behalf of the City and in the best interest of the City and the traveling public, is hereby authorized to make such changes or modifications.

SECTION 703. INITIAL MINIMUM INVESTMENT. Concessionaire covenants, warrants, represents, and agrees that the Concessionaire shall expend or cause to be expended for Build-Out Costs not less than **Five Million Fifty-Eight Thousand Three Hundred Eight-Two Dollars (\$5,058,382.00)** (the "**Initial Minimum Investment**"). Concessionaire and its sublessees shall complete or cause to be completed all New Improvements subject to and in accordance with the Provisions of this Agreement. Concessionaire's Build-Out in accordance with the Development Plan shall be completed no later than **September 30, 2014** unless delayed or postponed at the Director's written direction.

Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs for each unit within one hundred eighty (180) days following completion of work to the Premises. This proof of Build-Out Costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified as accurate by an officer of Concessionaire. Upon completion of the Build-Out of the last unit in the Development Plan, Concessionaire shall promptly have the total Build-Out Cost for the Development Plan certified by an Independent Certified Public Accountant and shall

promptly supply the resulting audit report to the Director. Concessionaire shall also promptly provide to the Director any other proof or documentation reasonably requested by Director to insure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Initial Minimum Investment; however, in the event Concessionaire's actual expenditures for Build-Out Costs are less than the **Initial Minimum Investment of Five Million Fifty-Eight Thousand Three Hundred Eight-Two Dollars (\$5,058,382.00)**, the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 704. LIQUIDATED DAMAGE FOR LATE OPENING. If a particular news, gift or specialty retail location is not open for business according to the time line established in the store opening schedule, the Concessionaire hereby covenants, warrants and agrees that it shall promptly pay to the City liquidated damages of one thousand dollars (\$1,000) per day per news, gift or specialty retail location until the news, gift or specialty retail location is open to the traveling public for business, unless otherwise agreed to in writing by the Director.

SECTION 705. MID-TERM REINVESTMENT.

- A. Concessionaire shall have the right, without cost to City, to construct additional New Improvements to or in the Premises, subject to and in accordance with the Provisions of this Agreement.
- B. Concessionaire covenants, warrants, represents, and agrees that the Concessionaire shall expend or cause to be expended Refurbishment Costs for Refurbishments in an amount not less than **One Million Seven Hundred Thousand Dollars (\$1,700,000.00)** (the "**Mid-Term Reinvestment**"). The Mid-Term Reinvestment to Refurbish the Premises including New Improvements shall include only those Refurbishment Costs incurred or expended by the Concessionaire or its sublessees' **from February 1, 2017 through June 30, 2019**. Concessionaire shall perform and complete the Refurbishments for the Mid-Term Reinvestment in accordance with the Provisions of this Agreement. The Director reserves the right to participate in and approve the Concessionaire's Mid-Term Reinvestment plans to Refurbish the Premises. Concessionaire shall furnish the Director with satisfactory proof of the Mid-Term Reinvestment to Refurbish each unit within one hundred twenty (120) days following completion of work to the Premises. This proof of Refurbishment Cost for the Mid-Term Reinvestment must include, at a minimum, an itemized account of all included Refurbishment Costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified as accurate by an officer of Concessionaire. Upon completion of the Refurbishment of the last unit, the Concessionaire shall promptly have the Refurbishment Cost for Mid-Term Reinvestment to Refurbish the Premises certified by an Independent Certified Public Accountant and shall promptly supply the resulting audit report to the Director. Concessionaire shall also promptly provide to the Director any other proof or documentation reasonably requested by Director to insure compliance with the Provisions of this Article VII. Concessionaire is encouraged by City to productively expend the entire Mid-Term Reinvestment amount;

however, in the event Concessionaire's actual expenditures for Refurbishment Costs to Refurbish the Premises are less than the Mid-Term Reinvestment amount of **One Million Seven Hundred Thousand Dollars (\$1,700,000.00)**, the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

- C. In addition to the Mid-Term Reinvestment requirement stated in Section 705(B), if it becomes reasonably necessary during the term of this Agreement, as determined by the Director, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises, Existing Improvements and New Improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings to keep the Premises in like new condition during the Term of this Agreement.

SECTION 706. PREPARATION OF PLANS AND SPECIFICATIONS. Concessionaire shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. **Concessionaire shall begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.**

SECTION 707. CONTRACTOR'S LIABILITY INSURANCE. In any contract appertaining to improving, constructing, maintenance, repair, and/or equipping of the Premises, Concessionaire shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

SECTION 708. PERFORMANCE AND PAYMENT BONDS. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish both a Performance Bond **and a Payment Bond each** in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond shall be used for the completion of said construction and/or the payment of laborers and material suppliers, as the case may be.

SECTION 709. MECHANICS' AND MATERIALMEN'S LIENS. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

SECTION 710. CERTIFICATE OF COMPLETION. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings, preferably in an electronic format, within ninety (90) days of opening of each retail location.

SECTION 711. SIGNS.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "**sign**" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of a news, gift and specialty retail concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 711 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining to a news, gift and specialty retail concession or place any signs (excluding the facility name – e.g., Brighton) outside of the Premises without the prior written approval of the Director.
- E. As part of the development of any facility, Concessionaire will be required to install an approved blade sign as part of the initial construction.
- F. Handwritten signs are strictly prohibited.
- G. The Director reserves the right to require the removal of any signs or advertising in, on or within the Premises deemed unacceptable or improper and the Director's decision shall be final and binding.

SECTION 712. TITLE TO IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES. All New Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications, Refurbishments, and

enlargements thereof shall become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement.

All Removable Fixtures shall remain the property of Concessionaire, and shall be promptly removed by Concessionaire at date of expiration or early termination of this Agreement. Within one hundred twenty (120) days of the commencement of the operation in the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be updated by Concessionaire no less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date or as may be necessary or as requested by the City.

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

ARTICLE VIII USE OF PREMISES

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

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

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

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

- Perform custodial services daily.
- Keep all its equipment and fixtures within the Premises in good repair and appearance including, without limitation, all New Improvements, Existing Improvements and Removable Fixtures.
- Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- Provide for complete, sanitary handling and disposal of all trash, garbage, recycling and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.
- If the City provides or designates a service for picking up refuse and garbage, Concessionaire will be required to use said service.
- If the City establishes a recycling program, the Concessionaire will fully participate in said recycling program. Concessionaire must comply with all applicable City, county, state and federal regulations regarding recycling.
- Concessionaire shall break down or cause to break down all cardboard boxes prior to their disposal.
- Provide waste receptacles inside the Premises for customer and passenger use.
- Confine all handling and holding of Concessionaire's property to the Premises.

- Keep all papers and debris picked up daily from the Premises.
- Keep the Premises free of all pests, providing such pest control services as required.
- Keep the Premises secured at all times.
- Provide, at Concessionaire's sole cost and expense, a functional mailing address or other means of receiving mail, and shall ensure all mail is directed to that address. The City is not responsible for the Concessionaire's mail or the subsequent delivery thereof.
- No storage will be permitted on the exterior areas of the Premises.

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

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

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

SECTION 804. UTILITIES.

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

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

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

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

ARTICLE IX INSURANCE, DAMAGE AND INDEMNIFICATION

SECTION 901. INSURANCE.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
1. Commercial General Liability in an amount not less than ten million dollars (\$10,000,000.00) per occurrence and in aggregate.
 2. Automobile Liability Insurance in an amount not less than three million dollars (\$3,000,000.00) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of seven million dollars (\$7,000,000.00), to Concessionaire automobile liability insurance.

3. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
 4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property including, without limitation, Concessionaire's personal property and Removable Fixtures. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 5. Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of fifty thousand dollars (\$50,000.00) or less.
 6. Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by form and which covers Concessionaire's improvements to the Premises including, without limitation, New Improvement, Removable Fixtures, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's Removable Fixtures and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
1. Form of Policies. The insurance may be in one or more policies of insurance.
 2. Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire

from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.

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

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

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

4. Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
5. Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a thirty (30) day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
6. Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
7. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
8. Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if

Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus fifteen percent (15%) administrative charge, from Concessionaire.

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

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

SECTION 903. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. Total Damage.
1. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.
 2. If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the

City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its News/Gift & Specialty Retail Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG and any other rental payments will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

3. If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its News/Gift & Specialty Retail Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipt generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

D. Scope of Restoration of Premises.

1. The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this section shall in any event be limited to using due diligence and reasonable efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C. If the City elects to repair, reconstruct, or replace affected premises as provided in this section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, install, reconstruct, or replace its signs, fixtures, equipment, furnishings, Removable Fixtures, New Improvements, and other items provided, constructed, or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
2. In lieu of the City's repair, reconstruction, or replacement of the affected Premises, as provided in this section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article

VII. The City shall reimburse Concessionaire for the cost of such authorized work performed by Concessionaire as agreed to in writing by the City and the Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as a Concessionaire or contractor of the City.

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

SECTION 904. INDEMNIFICATION.

- A. Concessionaire shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the “**Indemnified Parties**”) from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys’ fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of the Concessionaire or Concessionaire’s use of the Premises or other areas or facilities at the Airport by Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- i. the acts or omissions of Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
 - ii. Concessionaire’s use or occupancy of the Airport including the Premises; and
 - iii. any violation by Concessionaire in the conduct of Concessionaire’s News/Gift & Specialty Retail Concession or its use of its Premises or other areas or facilities at the Airport of any Provision of this Agreement.

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

- B. Concessionaire shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which

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

- C. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire's use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, officers, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.
- E. If a prohibited incursion into the Airport Operations Area (AOA) occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, officers, agents, contractors, independent contractors, sublessees, invitees, licensees, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or

breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

- F. Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Concessionaire.
- H. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.

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

- I. The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests,

approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.

- J. Notwithstanding the provisions of this Section, Concessionaire shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than ten percent (10%) liable due to contributory negligence.
- K. This Section shall survive the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 shall in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

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

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, or suppliers;
- B. Concessionaire's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. Any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees except to the extent such conditions are caused by the City, its employees or agents; or
- D. Bodily injury or any loss or damage to real or personal property or business income occasioned by flood, fire, smoke, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, vandalism, malicious mischief, or acts of war or terrorism, or for any injury, loss or damage not caused by the negligence, willful misconduct, or bad faith of the City.

**ARTICLE X
ASSIGNMENT AND SUBCONTRACTING**

SECTION 1001. ASSIGNMENT AND SUBCONTRACTING.

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

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

- C. No subcontract, sublease, or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved

subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Article XI. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

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

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be of a material amount (defined for this Section as an amount in excess of \$5,000.00) and shall remain unpaid after the date the same shall become due and Concessionaire does not satisfy the obligation after written notice and a reasonable cure period.
- B. If during the term of this Agreement, Concessionaire shall:
 - 1) Apply for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
 - 2) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3) Make a general assignment for the benefit of creditors;
 - 4) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;

- 6) Fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
- 7) Fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
- 8) Allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire that is not removed or enjoined within thirty (30) days;
- 9) Desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or
- 10) Fail in the performance of any Provision herein required to be performed by Concessionaire when not cured upon written notice and a reasonable cure period as provided for in Section 1103 below.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof. Failure of the City to take any authorized action upon default of any Provision required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any Provision herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any Provision herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any said Provision.

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

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

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

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

ARTICLE XII AIRPORT CONCESSIONAIRE DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

SECTION 1201. COMPLIANCE.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than **sixteen percent (16%)** participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of the Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee ("MRCC") certified ACDBEs.
- B. If Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Concessionaire will not be required to perform additional Good Faith Efforts, except in the event that Concessionaire's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Concessionaire's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Concessionaire will be required to perform the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following the loss of ACDBE participation and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- C. If Good Faith Efforts did not result in fulfillment of the ACDBE goal, Concessionaire must again complete the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following

commencement of the term of this Agreement and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.

- D. In the event that any ACDBE Sublessee defaults, Concessionaire agrees to immediately take steps to obtain a replacement certified ACDBE through good faith efforts. Notwithstanding, if ACDBE goes over the Personal Net Worth limitation, their participation will still count until the end of the lease term as per FAA/DOT regulations. It is the intent of City to have a certified ACDBE Sublessee replace any ACDBE Sublessee that has defaulted. Replacement ACDBE's must be approved in writing by the Director. If a replacement ACDBE cannot be located, Concessionaire must make good faith efforts to sublease other rights of Concessionaire to secure ACDBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately operate the news, gift and specialty retail unit(s) in lieu of an ACDBE that has failed to perform due to default of its sublease until such time as a replacement ACDBE sublessee begins operation. The loss of an ACDBE does not relieve Concessionaire of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Concessionaire assistance in locating ready, willing, able ACDBE firms.
- E. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, creed, color, religion, sex, national origin or ancestry in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.
- F. Concessionaire shall operate its News/Gift & Specialty Retail Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. Concessionaire shall also comply with any City of St. Louis executive orders, resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

ARTICLE XIII LIQUIDATED DAMAGES

SECTION 1301. LIQUIDATED DAMAGES. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches Article VII, Section 704 entitled "Liquidated Damages For Late Opening", Section 1302 entitled "Continuing

Operations”, or any of the Provisions enumerated below. Therefore, in addition to Section 704 or Section 1302, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Concessionaire of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first default or breach in any category will result in a warning letter. The second default or breach will require Concessionaire to pay liquidated damages in the amount listed below. For the third default or breach and each subsequent default or breach in the same category, Concessionaire will pay City liquidated damages in the amount listed below. Such liquidated damages shall be due and payable by the Concessionaire within thirty (30) days of the City's request or notice. The stated defaults or breaches referred to in this Section 1301 are cumulative over the term of this Agreement and are in addition to any other remedies City may have under this Agreement or at law or in equity. For any defaults or breaches specified in this section with associated liquidated damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

LIQUIDATED DAMAGES FOR BREACH OF OPERATING STANDARDS BREACH OR DEFAULT	SECOND BREACH	THIRD BREACH
A. Breach of Space Use and/or Unattended Delivery Equipment	\$500.00	\$750.00
B. Unauthorized advertising and/or signage.	\$500.00	\$750.00
C. Failure to remedy customer service, cleanliness, quality assurance, operations, and/or facility standards.	\$500.00	\$750.00
D. Late monthly reporting of Gross Receipts in breach of Article V.	\$25.00 per day	\$50.00 per day
E. Failure to deliver on time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$500.00	\$750.00
F. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00	\$750.00
G. Failure to maintain required hours of operation for each unit.	\$500.00	\$750.00
H. Late annual financial reporting in breach of Article V.	\$50.00 per day	\$100.00 per day

SECTION 1302. CONTINUING OPERATIONS. Concessionaire acknowledges, stipulates, and agrees that the continuous operation of all the Premises is essential to the provision of excellent customer service to the traveling public. Concessionaire covenants, warrants and agrees that if the Concessionaire should fail to operate any portion of the Premises set forth in Exhibit “A” for more than five (5) consecutive days, except in the case of damage or

destruction of the Premises or if Concessionaire is making New Improvements or Refurbishments as provided for in Article VII, Concessionaire shall either promptly return the Premises to the City without cost to the City or timely pay to the City an amount equal to the non-airline square footage rental rate then applicable as Liquidated Damages to compensate the City for the breach of its covenants.

ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS

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

Concessionaire further covenants and warrants as follows:

A. Environmental Permits.

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

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

the Premises or the Airport, Concessionaire shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complain, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials on or under the Premises, Concessionaire shall simultaneously provide a copy of such notice or report to the City.

- C. Environmental Remediation. Concessionaire shall promptly and timely undertake all necessary steps to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct, or presence of Concessionaire or its agents, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Premises or Airport, whether resulting from negligent conduct or otherwise (“**Remediation Work**”). Such Remediation Work shall be consistent with remediation standards established by or derived from the appropriated government agency responsible for enforcing Environmental Laws or Environmental Permits. Such Remediation Work shall be performed at Concessionaire’s expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire, taking into consideration the circumstances, timely and promptly submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through notice; provided, however, that the City’s approval shall not be unreasonably withheld or delayed (see Section 403 entitled “Surrender Of Possession”). The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument on the land title. Specific cleanup levels for any Remediation Work by Concessionaire shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City’s current and/or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.
- D. Access for Environmental Inspection. Upon reasonable notification to Concessionaire, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Concessionaire is using the Premises in accordance with this Section 1401. Concessionaire shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Concessionaire’s operations. If the City’s inspection results in any type of written report, the City shall provide

Concessionaire a reasonable opportunity to timely review and comment on a draft of the report. Concessionaire shall provide to the City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Concessionaire responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or finals, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with the Subsection to the extent consistent with the City's legal obligations.

- E. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Premises, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be timely paid or reimbursed by Concessionaire within thirty (30) calendar days of the City's written notice. Subsequent to receipt of the City's notice to perform the Remediation Work, the Concessionaire shall not undertake performance of such Remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, shall be performed in accordance with the provisions of Section 1401.C, but only after first having provided notice to Concessionaire of such failure to comply, and thirty (30) days within which Concessionaire may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Concessionaire's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Concessionaire's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.
- F. Review of Environmental Documents. At the reasonable request of the City, Concessionaire shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Concessionaire has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertains to the Airport or the Premises, and which would be discoverable in litigation.
- G. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in

nature. The City's right to indemnification as provided for in this Article XIV shall survive the expiration or early termination of this Agreement.

- H. Pollution Control. In addition to all other requirements of this Agreement, Concessionaire, at its cost, shall manage all its operations at the Premises in compliance with all applicable Environmental Laws, Environmental Permits, and with applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan and Storm Water Management Plan, which shall be provided to Concessionaire at Concessionaire's written request.
- I. Environmental Covenants. So long as they do not materially impact Concessionaire's day-to-day operations at the Premises, Concessionaire will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises or the Airport; (ii) limits the use of the Premises to nonresidential uses; and/or (iii) reasonably restricts access to soil underlying the Premises or the Airport.

ARTICLE XV MISCELLANEOUS PROVISIONS

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

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

With a copy to:

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

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

Michael R. Mullaney
Executive Vice President
Hudson Group (HG) Retail, LLC
One Meadowlands Plaza
11th Floor
East Rutherford, NJ 07073

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

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

SECTION 1502. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport® will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or Agreement discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21. Concessionaire agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- B. Concessionaire agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency ("CREA") within ten (10) days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of its program.
- E. Concessionaire will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Concessionaire's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Concessionaire may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Concessionaire shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, religion, age or disability be

excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered suborganizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- J. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Concessionaire hereby agrees that its Premises shall be posted to such effect as required by such regulation. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- K. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and causes those businesses to similarly include the statement in further agreements.
- L. Concessionaire shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

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

SECTION 1504. FORCE MAJEURE. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the City or Concessionaire hereunder, their respective licensees, contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Concessionaire to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended or shall be construed to abate, postpone or in any respect diminish Concessionaire's obligations to make any payments due to the City pursuant to this Agreement.

The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore shall be prohibited or rationed by any law, ordinance, rule, regulation, requirement, order or directive of any federal, state, county or municipal government having jurisdiction.

SECTION 1505. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto. This provision shall not constitute a waiver of any conditions regarding the assignment or subletting contained in this Agreement.

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

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

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

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

Section 1510. MODIFICATIONS FOR GRANTING FAA FUNDS. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions of this

Agreement, as may be reasonably required to enable the City to obtain said FAA funds, provided that in no event shall such changes substantially impair the rights of Concessionaire hereunder.

SECTION 1511. GOVERNING LAW AND FORUM SELECTION. This Agreement is made and entered into in the State of Missouri, and Missouri law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the City of St. Louis, Missouri. Concessionaire and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section shall survive the expiration or termination of this Agreement.

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

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

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

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

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

SECTION 1517. INVALID PROVISIONS. If any Provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such Provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be

so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other Provisions of this Agreement shall remain in full force and effect provided that the striking of such Provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid Provisions of this Agreement.

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

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

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

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

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

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

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

SECTION 1525. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the Provisions contained in this Agreement. As such, the

Provisions of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

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

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

- A. **Minimum Compensation:** Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (**Exhibit "B"**), which is incorporated herein. The initial rate shall be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.
- B. **Notification:** Concessionaire shall provide the Living Wage Bulletin to all employees, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. **Posting:** Concessionaire shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. **Subcontractors and Sublessees:** Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such

Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.

- E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire term of the Agreement, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such Agreement is in effect.
- F. Reporting: Concessionaire shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation, suspension or termination of the Agreement, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.
- H. Concessionaire hereby acknowledges receipt of a copy of the Ordinance and Regulations.

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

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

(The balance of this page is intentionally blank.)

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

CONCESSIONAIRE BY:

Hudson Group (HG) Retail, LLC as
Managing Partner

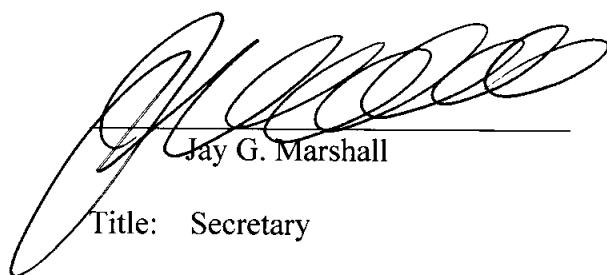
By: 

Joseph DiDomizio

Title: President

Date: July 20, 2012

ATTESTED TO BY:


Jay G. Marshall

Title: Secretary

Date: July 20, 2012

FEDERAL TAX ID# 32-0382393

**THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT®** pursuant to City Ordinance # 69270 approved the
2 day of November, 2012:

The foregoing Agreement was approved by the Airport Commission at its meeting on the
1 day of August, 2012.

BY: 

Commission Chairman and
Director of Airports

11/13/12
Date

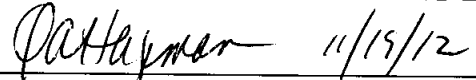
The foregoing Agreement was approved by the Board of Estimate and Apportionment at its
meeting on the _____ day of _____, 2012.

BY: 

Secretary,
Board of Estimate and Apportionment

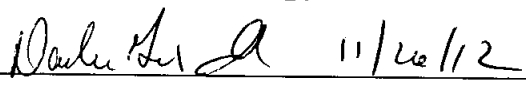
8/15/12
Date

APPROVED AS TO FORM ONLY BY:


City Counselor
City of St. Louis

11/19/12
Date

COUNTERSIGNED BY:


Comptroller
City of St. Louis

11/26/12
Date

ATTESTED TO BY:

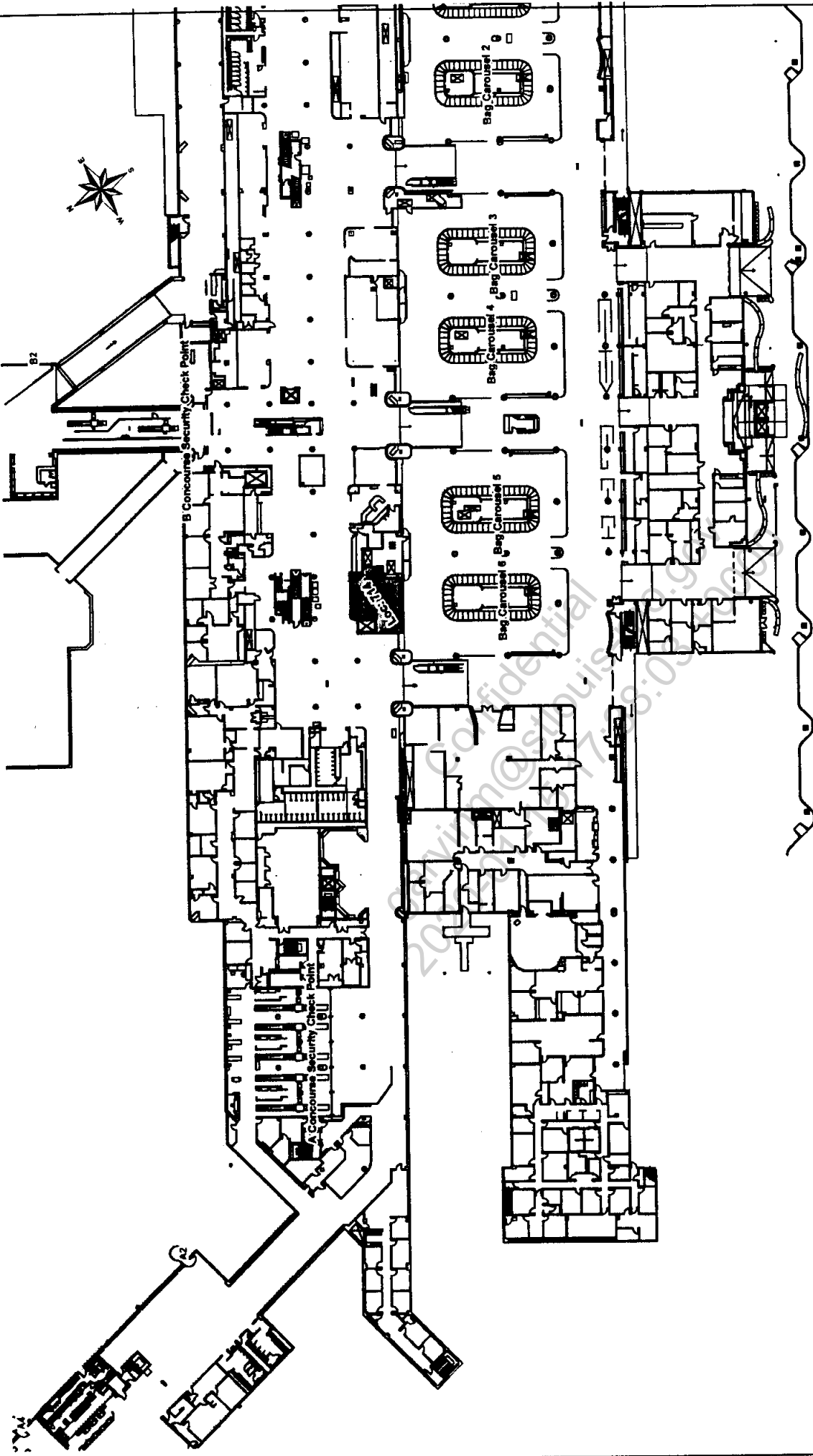

Register, City of St. Louis

DEC 05 2012
Date

COMPTROLLER'S OFFICE
DOCUMENT NUMBER 64932

EXHIBIT “A”

PREMISES
(To follow)



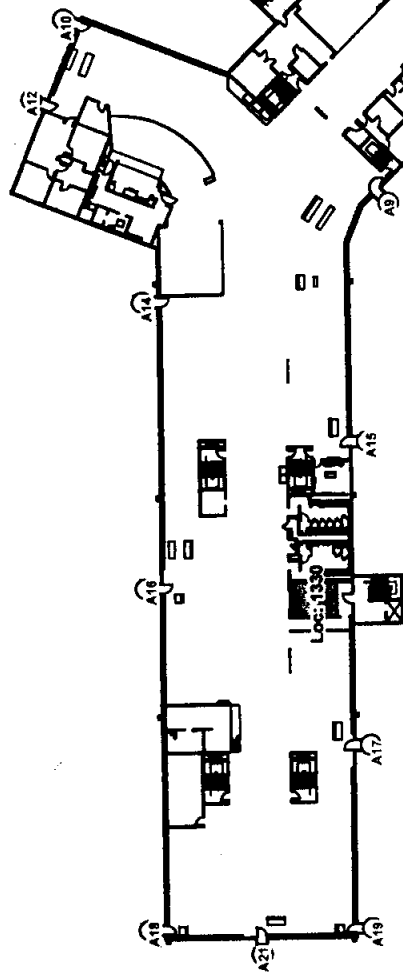
LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT ®

Exhibit A Terminal 1 Pre-Security MidLevel



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Prepared By: Program/Dept.
Date: 07/10/2012



Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:38:03 +0000

Prepared By: Properties Dept
Date: 07/10/2012

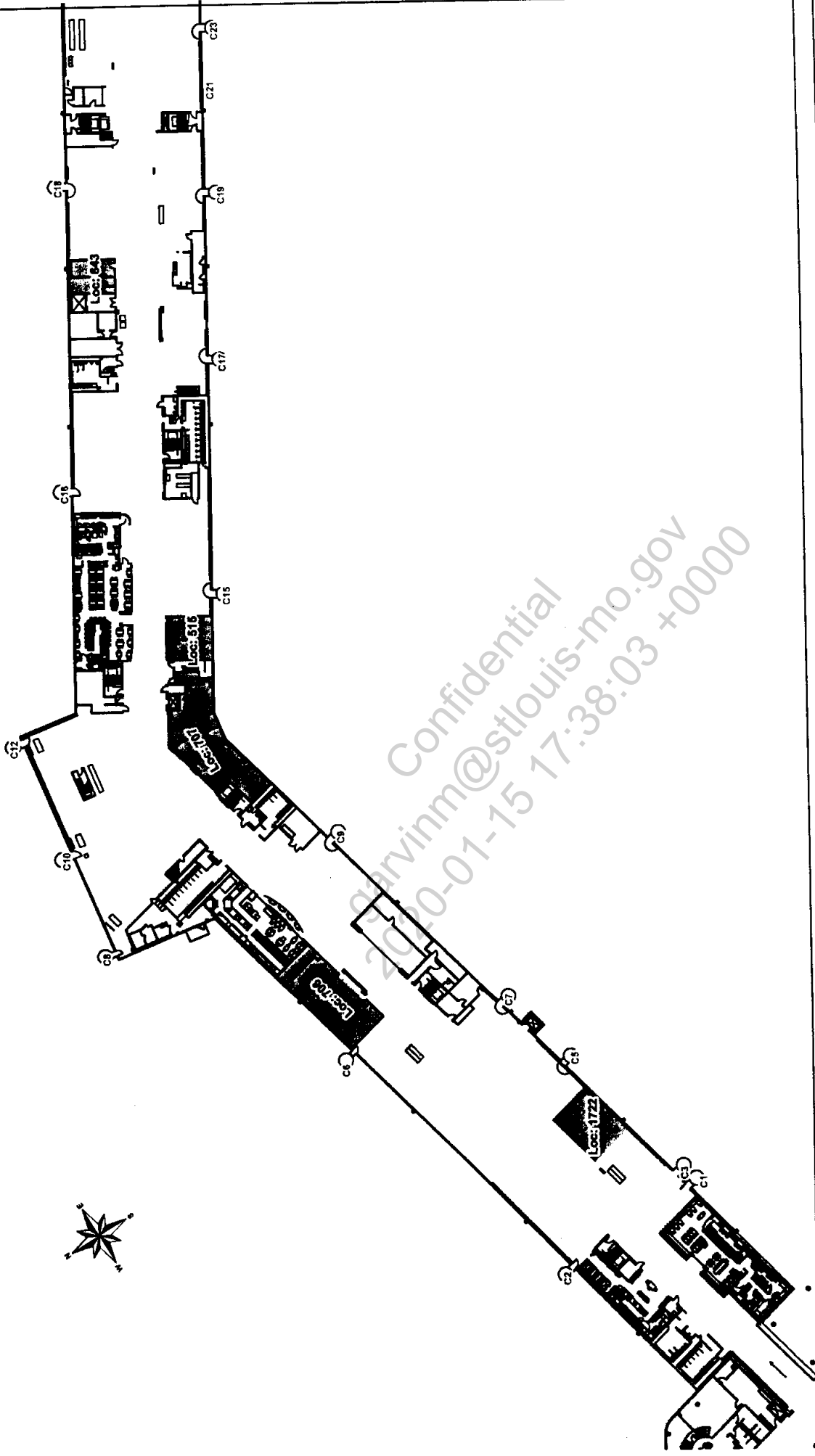
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Exhibit A A Concourse

LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT ®





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 garvinm@stlouis-mo.gov
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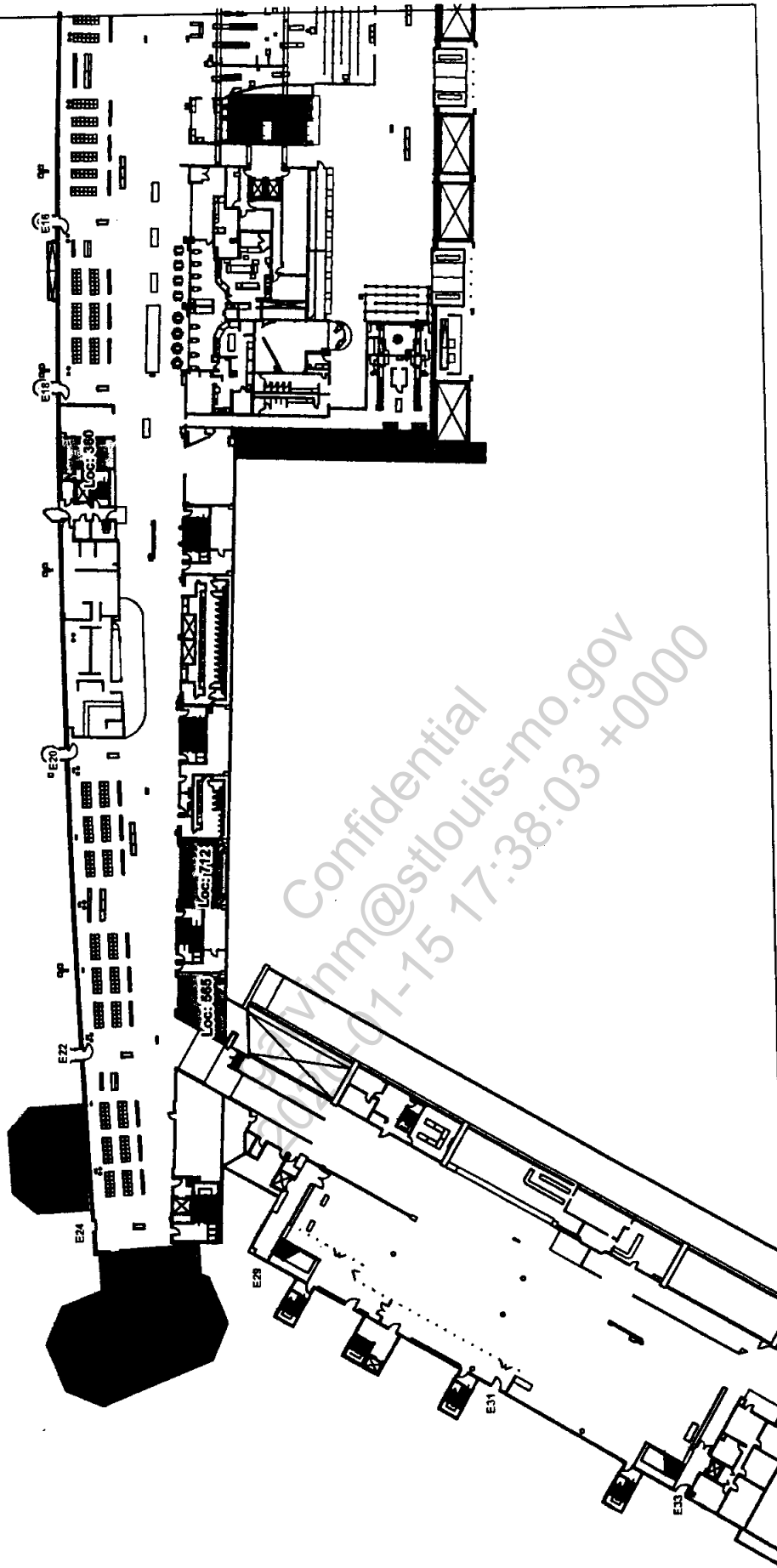


LAMBERT-ST. LOUIS
 INTERNATIONAL AIRPORT ®

Exhibit A
C Concourse

This document is for informational use only and is not to be used for any other purpose. The information contained herein is the property of the City of St. Louis and is not to be distributed or used for any other purpose without the written consent of the City of St. Louis. The information contained herein is the property of the City of St. Louis and is not to be distributed or used for any other purpose without the written consent of the City of St. Louis.

Prepared By: Properties & Design
 Date: 07/09/2017

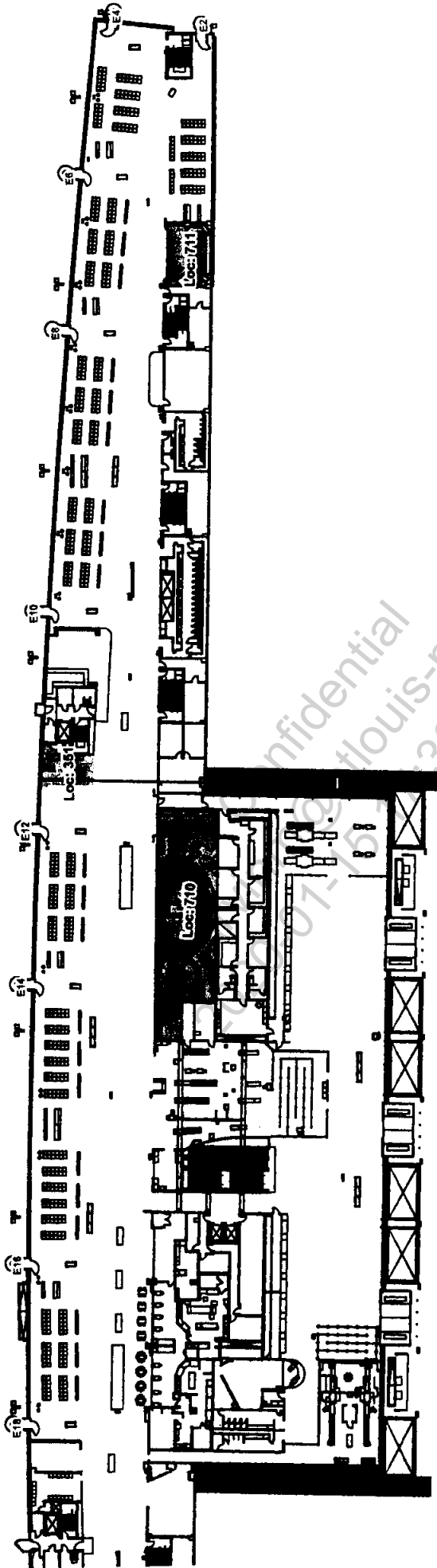


This document and its contents will be submitted by Larkspur to Lusk's representatives, and the information contained in this document will be made available to the Lusk's representatives. The information contained in this document will be made available to the Lusk's representatives, and the information contained in this document will be made available to the Lusk's representatives.



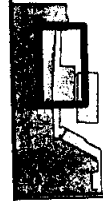
**LAMBERT-ST. LOUIS
INTERNATIONAL AIRPORT®**





LAMBERT-ST. LOUIS
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Exhibit A Terminal 2



This document is a schematic and is intended for informational purposes only. It is not a legal document and should not be used for legal purposes. The information contained herein is for informational purposes only and is not intended to be used for legal purposes. The information contained herein is for informational purposes only and is not intended to be used for legal purposes. The information contained herein is for informational purposes only and is not intended to be used for legal purposes.

Revised: 07/19/2012
Date: 07/19/2012

EXHIBIT “B”
LIVING WAGE BULLETIN

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

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

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

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

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

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

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

Dated: February 17, 2012

EXHIBIT “C”
DEVELOPMENT PLAN
(To Follow)

Development Plan

Location	Location Code	Square Feet	Name of Unit	Concept
Terminal 1 - Mid Level - Airport Administrative Office	714	927	Hudson w/ Contract Postal Unit	News, gifts, essentials & Postal Unit
A Concourse - Gates A6 & A8	701	1876	Hudson	News, gifts & essentials
A Concourse - Gates A16 & A17	1330	226	Hudson	News, gifts & essentials
C Concourse - Gates C3 & C5	1722	1115	Ebony	News, gifts & essentials
C Concourse - Gate C6	706	1476	Eddie Bauer	Specialty Retail
C Concourse - Gates C10 & C12	707	1935*	Hudson	News, gifts & essentials
C Concourse - Gates C10 & C12	707	1935*	Natalie's Candy Jar	Specialty Retail
C Concourse-Gate C15	515	633	bliss	Specialty Retail
C Concourse-Gate C18	643	468	Spectacles	Specialty Retail
Terminal 2 - Gates E4 & E6	711	763	Hudson	News, gifts & essentials
Terminal 2- Gates E10 & E12	351	446	Spectacles	Specialty Retail
Terminal 2 - Gates E14 & E16	710	3376**	St. Louis Sports	Specialty Retail
Terminal 2 - Gates E14 & E16	710	3376**	Hudson	News, gifts & essentials
Terminal 2 - Gates E14 & E16	710	3376**	Natalie's Candy Jar	Specialty Retail
Terminal 2 - Gate E18	360	447	Discover St. Louis	Specialty Retail
Terminal 2 - Gates E20 & E22	712	777	CNN Newsstand St. Louis	News, gifts & essentials
Terminal 2 - Gates E22 & E24	565	631	Kids Works	Specialty Retail
*Hudson & Natalie's Candy Jar share the same space footprint				

**St. Louis Sports / Hudson / Natalie's Candy Jar share the same space footprint

Development Plan

Phasing, Design & Construction Schedule

Concept Development Phase 1 Locations						
Location Code	Square Feet	Name of Unit	Concept	Estimated Development Duration	Estimated Opening Date	Miscellaneous
714	927	Hudson w/ Contract Postal Unit	News, gifts, essentials & Postal Unit	29 Weeks	22-Jul-13	Temporary unit to be installed
701	1876	Hudson	News, gifts & essentials	29 Weeks	22-Jul-13	Temporary unit to be installed
1722	928	Ebony	News, gifts & essentials	26 Weeks	5-Jul-13	Temporary unit to be installed
706	1476	Eddie Bauer	Specialty Retail	33 Weeks	23-Aug-13	Temporary unit to be installed
707	1935*	Hudson	News, gifts & essentials	32 Weeks	16-Aug-13	Temporary unit to be installed
707	1935*	Natalie's Candy Jar	Specialty Retail	32 Weeks	16-Aug-13	Temporary unit to be installed
643	468	Spectacles	Specialty Retail	29 Weeks	22-Jul-13	
711	763	Hudson	News, gifts & essentials	28 Weeks	15-Jul-13	Temporary unit to be installed
710	3376**	St. Louis Sports	Specialty Retail	35 Weeks	9-Sep-13	Temporary unit to be installed
710	3376**	Hudson	News, gifts & essentials	35 Weeks	9-Sep-13	Temporary unit to be installed
710	3376**	Natalie's Candy Jar	Specialty Retail	35 Weeks	9-Sep-13	Temporary unit to be installed
360	447	Discover St. Louis	Specialty Retail	29 Weeks	22-Jul-13	

*Hudson & Natalie's Candy Jar share the same space footprint

**St. Louis Sports / Hudson / Natalie's Candy Jar share the same space footprint

Development Plan

Phasing, Design & Construction Schedule

Concept Development Phase 2 Locations						
Location Code	Square Feet	Name of Unit	Concept	Estimated Development Duration	Estimated Opening Date	Miscellaneous
1330	226	Hudson	News, gifts & essentials	33 Weeks	23-Aug-13	Temporary unit to be installed
515	633	bliss	Specialty Retail	37 Weeks	23-Sep-13	
351	446	Spectacles	Specialty Retail	36 Weeks	16-Sep-13	
712	777	CNN Newsstand St. Louis	News, gifts & essentials	37 Weeks	23-Sep-13	Temporary unit to be installed
565	631	Kids Works	Specialty Retail	37 Weeks	23-Sep-13	