

ORDINANCE #67900
Board Bill No. 492

AN ORDINANCE AUTHORIZING THE EXECUTION OF A TRANSPORTATION PROJECT AGREEMENT BETWEEN THE CITY AND THE LAUREL TRANSPORTATION DEVELOPMENT DISTRICT; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION WITH THE TRANSPORTATION PROJECT; AND CONTAINING A SEVERABILITY CLAUSE.

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

WHEREAS, pursuant to sections 238.200 to 238.275 RSMo. (2005) (the "TDD Act"), by that certain Judgment and Order of the Circuit Court of the City of St. Louis, Missouri, in Cause No. _____, Division _____, entered _____, 2008 (the "Order"), the Laurel Transportation Development District (the "TDD") was created; and

WHEREAS, the TDD intends to undertake that certain "Transportation Project" as described and defined in the Order, which Transportation Project will provide a benefit to the City by increasing the available supply of parking; and

WHEREAS, the City of St. Louis constitutes the "local transportation authority" for the purposes of the Transportation Project, and as a result of the Missouri Highway Transportation Commission's declining jurisdiction over the Transportation Project, approval of the Transportation Project is vested exclusively with the City; and

WHEREAS, the TDD Act provides that prior to construction or funding of a proposed project, such project shall be submitted to the local transportation authority for its prior approval, subject to any required revisions of such project, and the district and local transportation authority in question entering into a mutually satisfactory agreement regarding the development and future maintenance of such proposed project; and

WHEREAS, the City hereby desires and intends to approve the Transportation Project subject to the TDD and the City entering into a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the City intends to enter into that certain Transportation Project Agreement (the "Agreement"), in the form attached hereto as **Exhibit A** and incorporated herein by reference, with the TDD as a mutually satisfactory agreement regarding the development and future maintenance of the Transportation Project; and

WHEREAS, the TDD Act provides that, within six (6) months after development and initial maintenance costs of a project have been paid, transfer control and ownership of the project in question pursuant to contract; and

WHEREAS, the TDD intends to transfer and the City intends to accept such control and ownership pursuant to and on the terms set forth in the Transportation Project Agreement; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Transportation Project Agreement attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City, the Developer and the TDD of their respective obligations are in the best interests of the City and the health, safety, morals and welfare of its residents.

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

SECTION ONE. The Board of Aldermen hereby approves the Transportation Project as submitted to the City.

SECTION TWO. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Transportation Project Agreement with the Developer in order to implement the Transportation Project.

SECTION THREE. The Board of Aldermen finds and determines that the Transportation Project is necessary and desirable in order to increase the supply of available parking in the City.

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

SECTION FIVE. The Comptroller of the City or his or her designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, including, but not limited to an Intergovernmental Cooperation Agreement with The Laurel Community Improvement District and/or the TDD,

with no such further action of the Board of Aldermen necessary to authorize such action by the Comptroller or his or her designated representatives.

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

SECTION SEVEN. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

EXHIBIT A

Transportation Project Agreement (Attached hereto)

THE LAUREL TDD

TRANSPORTATION PROJECT AGREEMENT

THIS LAUREL TDD TRANSPORTATION PROJECT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2008, by and between the THE LAUREL TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision duly organized and existing under the laws of the State of Missouri (the "TDD") and the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the "City").

Recitals:

A. The TDD is a political subdivision and transportation development district formed pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.275 RSMo. (2005) the ("TDD Act").

B. Dillard Building, LLC, a Missouri limited liability company (the "Developer") is the fee simple owner of certain real estate described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"), together with certain improvements thereon, located in the City.

C. The TDD has acquired from the Developer a leasehold interest in a portion of the Property, upon which the Developer may design, develop and construct a TDD Project, or which may be acquired for a TDD Project (as defined in Section 1 of this Agreement).

D. Upon completion of acquisition of the TDD Project, the TDD intends to issue Obligations (as defined hereinafter) in a principal amount sufficient to finance the TDD Project and related costs of the TDD, including, without limitation, the costs of issuance of the Obligations and accrued interest thereon; in the alternative, the TDD may pledge its revenues to the City (or an authority located within the City with the power to issue obligations) and/or a CID (as herein defined) for the repayment of obligation issued with respect to the redevelopment of the Property, at least a portion of which shall be issued on behalf of the TDD with respect to the TDD Project. The contribution by the TDD towards the acquisition and/or construction of the TDD Project will be in the form of prepaid rent for the Lease (hereinafter defined) or reimbursement of Developer's construction costs.

E. Preliminary plans and specifications ("Preliminary Plans") of the TDD Project are set forth on Exhibit B, attached hereto and incorporated herein by reference, which Preliminary Plans have been approved by the City.

F. The City and the TDD desire to enter into this Agreement in order to: (i) acknowledge the general economic benefit and value to the community created by the TDD Project and to provide for public access within the TDD Project on the terms set forth herein; (ii) memorialize the agreement of the City, acting in its capacity as local transportation authority (as defined in the TDD Act) regarding development and future maintenance of the TDD Project; and (iii) serve as the contract pursuant to which the TDD shall transfer control and ownership of the Project to the City after the costs thereof have been paid in accordance with Section 238.275.1 of the TDD Act. The City acknowledges that it is entering into this Agreement for the overall benefit of the community and that the commitment to provide public access to the TDD Project does not constitute a specific economic benefit to the City or the TDD.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, the TDD and the City hereby agree as follows:

Section 1. Definitions. In addition to the capitalized terms defined elsewhere in this Agreement and in the Recitals, the following capitalized terms used in this Agreement shall have the meanings ascribed to them in this Section.

CID. A community improvement district formed pursuant to Sections 67.401 through 67.1571 of the Revised Statutes of Missouri (2007), as amended.

Lease. That certain lease agreement entered into between the Developer, as landlord, and the TDD, as tenant, for the TDD Project, as may be amended from time to time by the parties thereto.

Obligations. Obligations issued by the City to finance the design, development, construction and/or the acquisition of the TDD Projects; including, the pledging of revenues by the TDD to the City (or an authority located within the City with the power to issue obligations) and/or a CID for the repayment of obligations issued with respect to the redevelopment of the Property, at least a portion of which shall be issued on behalf of the TDD with respect to the TDD Project.

Property. The real property described in Exhibit A hereto, all of which is located within the boundaries of the TDD. TDD Project. The Transportation Project described in Exhibit C of the Petition for the Creation of a Transportation Development District, filed in the Circuit Court of the City of St. Louis, Cause No. ____, Division ____, on January 17, 2008.

Term. The period commencing on the date of execution of the Lease and, unless otherwise terminated hereunder prior thereto, continuing until one day after the satisfaction in full of all Obligations.

Section 2. Access to TDD Project. The TDD shall, and shall cause its agents and contractors to, comply with any and all applicable laws in connection with its operation of the TDD Project. Prior to the Transfer, defined below, the TDD shall retain all operational control of the TDD Project. After the Transfer, the City shall have all operational control of the TDD Project for the duration of the Lease term, subject to any existing encumbrances.

Section 3. Transfer of Ownership and Control. The City and the TDD agree to execute an Assignment of Lease Agreement in form mutually agreeable to the parties immediately upon maturity or termination of the Obligations, by which the TDD transfers to the City its interest in the Lease for the remaining term of the Lease (the "Transfer"). The TDD and the City acknowledge that, upon execution, the transactions contemplated by the Assignment of Lease Agreement shall constitute the transfer of control and ownership of the Project as required pursuant to Section 238.275 of the TDD Act, provided that the TDD shall remain responsible for operation and maintenance of the Project even after such transfer, in accordance with Section 4 hereinafter.

Section 4. TDD Project Operation and Maintenance. Except as otherwise provided in the Lease, while the Obligations remain outstanding, the TDD shall perform, or cause to be performed, all obligations connected with or arising out of owning, occupying or using the TDD Project or any part thereof, including without limitation the payment of all expenses required for the operation of the TDD Project, including, without limitation, payment of any real or personal property taxes, assessments, payments in lieu of taxes assessed, any expenses incurred, performance of any cleaning or maintenance services required to maintain the TDD Project in good condition, and provision of any repairs for any damage to the TDD Project (the "TDD Maintenance"). The TDD agrees to operate and maintain the TDD Project in accordance with all applicable laws and regulations. Following the satisfaction in full of all Obligations, and during the remaining Term of this Agreement, the City shall be responsible for the TDD Maintenance.

Section 5. Indemnification and Release. To the extent permitted by law, the TDD agrees to indemnify, defend, and hold the City, its employees, agents, and independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the acquisition of the TDD Project, including liability under any Environmental Laws; and (ii) the negligence or willful misconduct of the TDD or its respective employees, agents or independent contractors in connection with the management, and acquisition of the TDD Project. To the extent permitted by law, the City agrees to indemnify, defend, and hold the TDD and its employees, agents, and independent contractors harmless from and against any and all suits, claims, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the negligence or willful misconduct of the City, its employees, agents, and independent contractors and consultants, or arising from a default by the City of its obligations hereunder. The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 6. Miscellaneous.

6.1 **Representations and Warranties of the TDD.** The TDD hereby represents and warrants to the City that: (i) the TDD is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the TDD pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the TDD; and (iii) this Agreement is binding upon, and enforceable against the TDD, in accordance with its terms.

6.2 **Representations and Warranties of the City.** The City hereby represents and warrants to the TDD that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City pursuant to this Agreement; (ii) this Agreement was duly authorized by the governing body of the City; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

6.3 **Applicable Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by, the laws of the State of Missouri.

6.4 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the TDD and the City with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. It supercedes all prior written or oral understandings with respect thereto. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the TDD and the City.

6.5 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

6.6 Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid term or provision is such that a court reasonably would find that the parties, or any of them, would not have entered this Agreement without such term or provision, or would not have intended the remainder of this Agreement to be enforced without such term or provision.

6.7 Notices. Any notice, demand, or other communication required by this Agreement to be given by any party hereto to the others shall be in writing and shall be sufficiently given or delivered if dispatched by certified mail, postage prepaid, or delivered personally as follows:

In the case of the TDD:

The Laurel Transportation Development District
906 Olive Street, Suite 600
St. Louis, Missouri 63101
Attention: _____

With a copy to:

Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: David Richardson

In the case of the City, to:

City of St. Louis
City Hall
1200 Market Street
St. Louis, Missouri 63103
Attention: Mayor, Room 200
Attention: Comptroller, Room 212

With a copy to:

St. Louis Development Corporation
1015 Locust Street
Suite 1200
St. Louis, Missouri 63101
Attention: Executive Director

and

City Counselor
City of St. Louis
1200 Market Street, Room 314
St. Louis, Missouri 63103
Attention: Peter Mosanyi

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**THE LAUREL TRANSPORTATION DEVELOPMENT
DISTRICT**

By: _____

Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

CITY OF ST. LOUIS, MISSOURI

By: _____
Comptroller

Attest: _____
Register

Approved as to form: _____
City Counselor

EXHIBIT A
Legal Description of the Property

EXHIBIT B
PRELIMINARY PLANS OF TDD PROJECT
[SEE ATTACHED]

Approved: February 27, 2008

ORDINANCE #67901
Board Bill No. 448

An ordinance to designate portions of the McKinley Heights Neighborhood as a Local Historic District under provisions of Title Twenty-Four of the Code of the City of St. Louis, a complete description of the boundaries of the District more fully described in the body of this ordinance, and providing for a development plan including Design Standards to be applied within the district, containing severability clauses and an emergency clause.

WHEREAS, the preservation, protection and enhancement of buildings, other structures, parks and items of natural or artificial phenomena located within a district impart a distinctive aspect to the City of St. Louis by serving as a visible reminder of the historic, architectural and cultural heritage of the City; and

WHEREAS, the district herein described as the McKinley Heights Historic District has architectural and historical value which should be preserved for the people of the City of St. Louis and the State of Missouri; and

WHEREAS, the McKinley Heights neighborhood is distinct for the manner in which its historic buildings relate to one another and to the street, for its cross section of architectural styles and for its uniformity of construction;

WHEREAS, the combination of these physical characteristics and the importance of the McKinley Heights Historic District in the historical development of the City of St. Louis serves as a compelling reason for preserving the McKinley Heights Historic District;

WHEREAS, the establishment and enforcement of controls over exterior architectural features within the McKinley Heights Historic District will ensure the on-going value of properties within the McKinley Heights Historic District;

WHEREAS, at the same time, such controls must reasonably accommodate contemporary construction techniques and lifestyles in order to maintain and improve the quality of life of those residing within the McKinley Heights Historic District;

WHEREAS, Part IV, Sections 16 through 34 of Ordinance 94689 provides for the creation of historic districts and sets out the necessary procedure to be followed in establishing such a district;

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

PART I

Section One. Pursuant to and in accordance with Part IV, Sections 16 through 34 of Ordinance 64689 of the City of St. Louis, the area set out below is hereby designated as a Historic District to be known as the McKinley Heights Historic District and shall consist of the area described as follows:

Commencing at the intersection of the mid-street right of way line of Gravois Avenue and the mid-street right of way line of Jefferson Avenue and proceeding north along Jefferson Avenue to the intersection of the mid-street right of way line of Jefferson Avenue and the public right-of-way south of Interstate Highway 44, then proceeding east along the public right-of-way south of Interstate Highway 44 to the intersection of that public right-of-way and the alley east of S. 18th Street; proceeding south along the public-right-of-way (alley) east of S. 18th Street to the intersection of S. 18th Street, Russell Avenue and Gravois Avenue; proceeding southwest along the mid section of Gravois Avenue to the intersection of the mid point of Gravois Avenue and Jefferson Avenue back to the point of the beginning.

Section Two. The proposed standards to be applied within the district including, but not limited to demolition, facades, setbacks, height, scale, materials, color and texture, for all structures and the design details of all fences, streets and drives, street furniture, signs and landscape materials are set out in the Historic District Development Plan and Design Standards (the Standards) attached as Part II. The Standards, which have been reviewed and approved by the Preservation Board, the Board of Public Service and the Planning and Urban Design Commission and recorded in the Office of the Recorder of Deeds, a copy of which is attached hereto, are hereby adopted and incorporated herein by reference. Copies of said standards shall also be filed for inspection in the Office of the Register and in the Office of the Building Commissioner.

Section Three. All sections of this ordinance are hereby declared to be independent sections and parts of sections and notwithstanding any other evidence of the legislative intent it is hereby declared to be the controlling legislative intent that if any provision of said section, or the application thereof to any person or circumstance, other than those as to which it is held invalid, shall not be affected thereby and it is hereby declared that this ordinance would have been passed independently of such section, sections or parts of a section so held to be invalid.

Section Four. This being an ordinance necessary for the immediate preservation of the Public Welfare, it is hereby declared to be an emergency measure and shall become effective immediately upon passage and approval of the Mayor.

PART TWO: DEVELOPMENT PLAN

Section One. The current plan for future development of the McKinley Heights Historic District is defined by the 2005 City of St. Louis Strategic Land Use Plan (the Plan). Under the Plan the District is defined as a Neighborhood Preservation Area with outlying nodes designated as Neighborhood Commercial Areas. Implementation of the Plan is anticipated by building on the value of the neighborhood's inheritance of un-replaceable historic buildings by causing the adoption of a historic district ordinance containing design standards for rehabilitation and new construction, by limiting demolition of historic properties and by continued appropriate development of both residential and commercial properties within its boundaries. This projected development is expected to be funded not only through the use of the State and Federal Tax Credit for Historic Preservation Programs, but also through market rate investments in development of properties in the area.

Section Two. It is anticipated the establishment and enforcement of clear and consistent standards to govern the exterior architectural features within the McKinley Heights Historic District will augment the benefits of National Register listing by ensuring that all rehabilitation and/or new construction projects are executed to the same high standard and that the on-going historic and real estate value of properties within the McKinley Heights Historic District will thus be maintained. At the same time, it is anticipated that these controls will reasonably accommodate contemporary construction methods and lifestyles in order to maintain and improve the quality of life of those residing within the McKinley Heights Historic District. It is also anticipated that the protection and rehabilitation of the existing building stock is in the best economic and social interest of the neighborhood, its residents and property owners. Depletion of the existing building stock would not only threaten the National Register status of the District and thus the use of the Federal and State Historic Preservation Tax Credit programs and diminish the opportunity for increased tourism in the City's valuable historic areas; but also destroy the irreplaceable National treasure of this intact, late 19th and early 20th Century neighborhood with its highly detailed and richly ornamented brick buildings. Under the 2005 City of St. Louis Strategic Land Use Plan, the primarily residential portions of the proposed District are designated as Neighborhood Preservation Areas. The bordering commercial streets of Gravois and Jefferson Avenues are designated under the 2005 Plan as Neighborhood Commerce Areas. The proposed Historic District Design Standards address this discrepancy under the 2005 Plan by adopting under Article 5: Commercial Development Corridors Design Standards, alternative design standards for non historic commercial buildings.

Section Three. Zoning Map: No changes in the current zoning map or of current uses are anticipated by the adoption of this historic district ordinance.

PART THREE: ATTACHMENTS

Attachment A: [McKinley Heights Historic District Map](#)

Attachment B: [McKinley Heights Historic District Existing Zoning Map](#)

Attachment C: [McKinley Heights Local Historic District Commercial Corridor Standards Areas](#)

PART FOUR:

MCKINLEY HEIGHTS HISTORIC DISTRICT DESIGN STANDARDS

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The McKinley Heights Historic District, located in the near South Side of St. Louis, primarily developed as a late nineteenth working class and early twentieth century middle-class neighborhood. The original subdivisions of the area were laid out between 1848 and 1869, although most of the now extant buildings were not constructed until 1890 through 1915. A few (very few) early buildings dating to 1865 can be found, and some later contributing buildings were constructed in the early 1930's. Originally part of the Petit Prairie of the St. Louis Commons, the area was first laid out for residential subdivision by Joseph Charles in 1848. This triangular tract of land was bounded by Jefferson, Gravois and Shenandoah. Future development of the area was aided by the inauguration of a trolley line along Gravois Road which allowed working class residents the ability to live in the "suburbs" and commute to work, and the influx of European immigrants in St. Louis, primarily Germans, Bohemians and Russians, who flooded the area looking for inexpensive housing.

In the late 19th Century, several small private developments were constructed along Nicholson, Park, and Waverly Places connecting Geyer and Lafayette Avenues. The houses from these developments and some on surrounding streets reflected some of the best in late 19th Century single family residential design. Although most buildings from this period were lost during the construction of Interstate Highway 44, some still survive.

The peak residential development period for the neighborhood was between 1901 and 1910. During this time most of two and four family buildings were constructed to accommodate the seemingly endless flood of immigrants. These 'modern' buildings offered improved amenities to the tenants in that they were constructed with indoor plumbing, front yards with a uniform set-back on a terrace overlooking the sidewalk. This front yard signaled that the residents of the buildings were 'middle class' not workers living in the tenements of Soulard or Hyde Park.

The development of the area as a distinctive working man's neighborhood was re-enforced by the location of the Union Depot Railroad Company, whose car sheds and yards were located on Jefferson at Geyer. This trolley company served many areas of the City and was an important amenity. In addition the Board of Education constructed two elementary schools, the Charless School in 1895 and the Franz Segal School in 1905 and a high school, McKinley High School, a state-of-the-art technical and academic high school in a massive, Jacobethan structure that dominates the area for blocks around with its four story central section and crenellated towers.

The last building which contributes to the historic district was constructed in 1931. After this construction, the area began a slow decline as more prosperous City residents moved even further west and some large mansions were turned into rooming houses. In the 1960's, the Federal Highway System cut a great chasm in the north segment of the District, demolishing many of the grand houses and all the streets which connected McKinley Heights to Lafayette Square. This 'improvement' hastened the stagnation of the District, and rendered it more isolated from the rest of the City.

In the 1980's however, the area residents began revitalization. In 1984, the Landmarks Association of St. Louis successfully completed a National Register nomination for the District. New home owners purchased the rooming houses and began to convert them back to single family residences. A neighborhood organization was formed, and in 2006 the residents petitioned the City to make the area a local historic district.

The goal of the historic district ordinance is to further stabilize property values in the District and strengthen investment by creating standards for improvements to property that help owners protect the architectural styles of buildings.

ARTICLE ONE: DEFINITIONS

101 The McKinley Heights Historic District

101.1 Alley House

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- 101.3 Awning
- 101.4 Canopy
- 101.5 Carriage House
- 101.6 Cast-Iron
- 101.7 Commercial Development Corridor
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- 101.32 Tuckpointing
- 101.33 Visible
- 101.34 Visually Dominant
- 101.35 Wrought-iron

101.36 Wythe

101 The McKinley Heights Historic District (See Appendix A for Map): That portion of the City of St. Louis described in "Legal Description of the McKinley Heights Historic District."

101.1 Alley House: A residential structure located immediately adjacent to an alley, and originally behind another residential structure on the same building lot. Due to demolition, an alley house may be the only remaining structure on a building lot.

101.2 Appendages: Steps, stoops, porches, and decks attached or immediately adjacent to the primary building.

101.3 Awning - A roof like structure often made of canvas or plastic, which serves as a shelter, as over a storefront, window, door, or deck.

101.4 Canopy - A protective roof like covering, often of canvas, mounted on a frame over a walkway or door.

101.5 Carriage House - A building originally used to protect carriages and horses, and often containing living quarters for hired hands. Typically, they are two story structures and are located at the rear of the building lot immediate to the alley.

101.6 Cast-Iron: Method of manufacturing iron parts or certain building elements. The iron is heated to a molten state and poured into molds. Decorative tips and tiered stars are two common examples of cast-iron.

101.7 Commercial Development Corridor

Those areas within the Historic District which are defined by the **City of St. Louis Strategic Land Use Plan**, adopted January, 2005, as Neighborhood Commercial Area (NCA), Regional Commercial Area (RCA), or Opportunity Area (OA), and which, as a consequence, are expected to be developed by regionally oriented commercial and/or industrial uses. Additions and repairs to existing buildings, site improvements and/or new construction in these areas are required to be constructed in accordance with the **Design Standards for Commercial Development Corridors** contained in this Ordinance.

101.8 Communication Devices - Devices used to send, receive or process any form of communication. This can include but is not limited to antenna, cables, wires, or mounting equipment.

101.9 Cornice: The decorative portion of a building where an exterior wall meets the roof. In addition to being decorative, the cornice often camouflages the gutter and supports the roof overhang. In the McKinley Heights Historic District, cornices are made of a variety of materials and designs incorporating brackets, dentil moldings, and ogee moldings. Cornices are typically constructed of brick, built-up pieces of wood, sheet metal, or combinations of all three. As used herein, cornices include top cornices and crown moldings. (See also Section 101.28)

101.10 Dormer - A structure projecting from a sloping roof or mansard to provide a window into the attic story.

101.11 Facade: An exterior wall of a building, the street facade is the wall of a building that faces the street. (See also Section 101.20)

101.12 Flat Roof: Roofs that are essentially flat, typically having a slope of ¼ inch per foot to ½ inch per foot and usually waterproofed by a built-up roof

101.13 Gable: The triangular portion of a building wall that forms two slopes of a roof.

101.14 Half-Flounder: A building with a roof that slopes from one side of the building to the other.

101.15 Masonry: Family of building techniques that uses stone, brick, or concrete block units, usually separated by mortar beds and joints.

101.16 Mansard: A steeply sloping roof, often incorporating dormers to provide light and ventilation for the attic story

101.17 Model Example:

Comment: Throughout these Standards, a Model Example is often required as a basis for comparison and as a source of ideas for reconstructed elements and for new construction.

- 1) A building or element(s) of a single building type or style constructed prior to 1929 and existing or once existing within:
 - a) The McKinley Heights Historic District; or the City of St. Louis, provided it is of a form and architectural style currently or once found within the McKinley Heights Historic District; and
 - b) Offered to prove:

- i) A design proposed for constructing or reconstructing a building will result in a building element compatible with the building for which it is to be constructed; or a design proposed for constructing a new building will result in a building compatible with its architectural environment; and
 - ii) Of a comparable form, architectural style, and use as the building to receive the constructed or reconstructed element, or the building to be constructed.
- 2) A Model Example shall be evidenced by a series of photographs or photographic reproductions at least 3" by 5" in size and either black and white or color, which shall include the following:
 - a) In the case of proposed construction or reconstruction of building elements:
 - i) Photographs or photographic reproductions clearly showing the Model Example building elements in detail, and, where possible, taken from at least two different angles; or
 - ii) Photographs or photographic reproductions showing the overall form and style of the building upon which such building elements are found.
 - b) In the case of proposed new construction:
 - i) Photographs or photographic reproductions showing, in its entirety, the Public Facade and, where possible, each Facade of the Model Example building; or
 - ii) Photographs, or photographic, reproductions showing, in detail, special elements thereof including, but not limited to windows, cornices, and dormers.
 - c) If no Model Example can be located detailed architectural drawings shall be submitted for approval.

The Model Example concept is not intended to preclude contemporary designs, but to assure that they are compatible with their environment. The obligation to provide a Model Example and the photographs or photographic reproductions evidencing same shall at all times belong to the person or entity proposing to construct or reconstruct building elements or to construct new buildings. The Preservation Board shall have the right to determine whether an example is, in fact, a Model Example, as defined herein. The Preservation Board shall also have the right to request that additional evidence of the example be provided.

101.18 Non-Historic Commercial Building

A commercial building located in the designated Commercial Development Corridor which is less than fifty years old.

101.19 Parapet: That portion of the walls of a building that project above the roof except the chimney.

101.20 PermaStone: Trade name often used generically to describe all varieties of synthetic materials designed to resemble stone. These materials are pre-cast cement "stones" or panels of "stone" attached as veneer over existing masonry.

101.21 Primary Structure - A structure that is seen as the main building on the property.

101.22 Public, Semi-Public, and Private Facades:

Comment: The definition of Facades is the same for existing buildings and new construction. A facade of a building, which was once private, does not become public, but instead semi-public, if it is exposed by demolition. If the classification of a facade is disputable between two classifications, the higher classification shall apply. Public is considered the highest, semi-public second highest and private lowest.

- 1) **Public Facades:** The following architectural elevation(s) of a building:
 - a) A Facade that faces a Public street, including those sections of such elevation that are recessed; or
 - b) The section of a side elevation of a building that is set forward off an adjacent structure.
- 2) **Semi-Public Facades:** The following architectural elevation(s) of a building:
 - a) Side elevations that face a vacant lot, a side yard at least 15 feet wide or a public alley and are visually dominant from a street.
 - b) Rear elevation of a corner building, which is visually dominant from a street.
 - c) The Facade of an alley house that faces the alley.

- 3) **Private Facades:** All other architectural elevation(s) of a building not defined as a Public or Semi-Public Facade.

101.23 Reconstructed: Re-creation of a once existing element (e.g. missing cornice) or the repair or replacement of a statute of an element (e.g. damaged cornice).

101.24 Residential Preservation Areas

Those areas within the Historic District which are not defined as part of the **Commercial Development Corridor** All additions, repairs, site improvements and/or new construction in these areas are required to be constructed in accordance with the **Design Standards for Residential Development Areas** contained in this Ordinance. These standards apply whether the intended use of the site is residential, commercial, industrial or institutional.

101.25 Routine Maintenance and Repairs:

Comment: City building codes require a permit for more than 25% of the roof decking is replaced and allow no more than three layers of asphalt shingles.

- 1) Small repairs are necessary to prevent deterioration of a building or landscaping element. Such repairs do not require a building permit except as may be required by city building codes. They include:
 - a) Tuckpointing, as long as mortar colors are matched with original colors and textures,
 - b) Repair or replacement of gutters or downspouts,
 - c) Painting of wood or metal elements,
 - d) Repair, but not total replacement of existing retaining walls, fences, steps, stoops, porches, decks, or awnings,
 - e) Repair or replacement of a flat roof,
 - f) Repair or overlay of a sloped roof with the existing material.
- 2) The following activities covered by these standards do not require a building permit. In these instances, a Cultural Resources Only ("CRO-only") permit must be applied for:
 - a) Tuckpointing over 25% of a facade (spot-pointing does not require a permit)
 - b) Painting of stone or brick
 - c) Re-layment or repair of parapet walls or coping tiles
 - d) Replacement of gutters and downspouts
 - e) Repair of existing walls, steps, stoops, porches, decks or awnings
 - f) Replacement of windows and doors
 - g) Installation of retaining walls less than 18" in height
 - h) On-premise fences (fences other than those erected on property lines)

101.26 Retaining Wall: A structure of masonry, reinforced concrete and masonry that holds back soil.

101.27 Stoop - A small porch, platform, or staircase leading to the entrance of a house or building.

101.28 Storefront - A portion of a building typified by large, fixed pieces of glass. The glazing area normally extended from a knee-high (30") sill to ceiling height, with wood or metal frames supporting the store window and transoms. The area below the larger panes of glass was often glazed and allowed light and air into basement storage areas.

101.29 Stormer Doors: ("Stormers") Outer doors historically made of wood, which protect the vestibule and the primary door of the building.

101.30 Tooth-In: A masonry technique used to form a new opening or to close-up an existing opening in an existing masonry wall. In the case of a new opening in a brick wall, the edges of the new opening are first notched beyond the actual width dimensions of the opening. This notching would allow for the insertion of half bricks aligning with the ends of the full bricks. The result is an opening jamb that is smooth, neatly aligned, and has the hard surface of the bricks properly exposed at the jamb edges. The reverse process would be used to brick in an opening in an attempt to blend the new bricks with those already existing.

(Comment: This reverse process is not a recommended method of infilling a window within the McKinley Heights Historic District. Recommended methods are described in §203.2.)

101.31 Top Cornices or Crown Moldings: Ornamental molding of wood with sheet metal flashing, or sheet metal that defines the top edge of the finish material of a mansard roof and covers the seam between this material and that of the roof. Cornices are typically constructed of brick, built-up pieces of wood, sheet metal, or combinations of all three. As used herein, cornices include top cornices and crown moldings.

101.32 Transom: The window over the top of a door, either fixed or operable.

101.33 Tuckpointing: Process of repairing, mortar joints in a masonry wall, wherein existing mortar is removed to a prescribed depth back from the face of the masonry, after which new mortar is pressed into the joints and properly tooled.

101.34 Visible: For the purpose of this code, visibility shall be determined from public areas of the street on which Public and Intermediate Facades face. Visible shall refer to things that can be seen from adjacent public areas, when viewed from six feet or less above the ground. Landscaping is not permanent and shall not be considered when determining visibility. Fences and free-standing walls are considered permanent, and objects hidden by fences and free-standing walls shall not be considered visible.

101.35 Visually Dominant: An element is visually dominant if it commands, controls, or prevails the visual perception of a building because of its size, shape, material, or color. It is visually dominant if:

- 1) Its size occupies more than 10 percent of the visual plane of the building from a street or;
- 2) Its size occupies more than 2 percent of the visual plane of the building from a meet and:
 - a) Its shape is not aligned with the natural lines of the building to which it is attached, or
 - b) Its materials are a distinctly different appearance or texture than those to which it is attached; or
 - c) Its color is of a brightness, hue, or tone that contrasts with the brightness, hue, or tone of the building,

Comment: This concept is only applied to selected, not all, elements to be added to a building. It is not intended to imply that nothing should be visually dominant. Some things, such as Mansards, should be visually dominant.

101.36 Wrought-iron: Method of manufacturing iron parts or certain building elements. The iron is heated in a forge and shaped while soft, either by bending or hammering. Fences and gates often incorporate wrought iron elements.

101.37 Wythe

A term used in masonry construction to describe the thickness of a wall. A 2 wythe brick wall is one that is 2 bricks thick. Most brick walls in historic residential structures are 3 Mythe walls, or 3 bricks thick (approximately 13").

ARTICLE 2: EXISTING BUILDINGS - RESIDENTIAL PRESERVATION AREAS

200 General Law:

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200 General Law:

1. All buildings and structures are products of their own time. Alterations that attempt to make a building look older or younger than it is, or that try to change the architectural style of the building, should be avoided.
2. Later additions to an old building, or non-original facades or storefronts, may have gained significance in their own right as examples of an architectural style or evidence of historical changes to the building. If so, these additions or alterations to the original building should be evaluated on a case by case basis.
3. The surface cleaning of structures should be undertaken with the gentlest means possible. Sandblasting and other abrasive techniques shall not be used to clean the exterior of a building, because they will damage the original building materials.
4. Original openings should not be altered on the public facade(s) of a building, because enlarging, reducing the size, or eliminating openings can dramatically alter the appearance and character of a building.
5. Original building materials and architectural features should not be covered by other materials.
6. Any non-original material or feature on a building that was in existence at the time of the designation of the historic district may be retained as is, or repaired.

If documented evidence can be provided that verifies an element of an existing building has been altered; it may be reconstructed to its original configuration.

If a building, addition to a building, or element of a building was constructed after January 1, 1929; it may be altered only in accordance with the requirements for New Construction. Evidence that the building, addition, or element was constructed after January 1, 1929 shall be provided.

(Comment: January 1, 1929 was chosen because at the time of writing of this Code, all buildings contributing to the historic character of the neighborhood were built before that date. However that which is today current will one day be historic. Therefore, this date should be reviewed at least once every 10 years and brought forward as necessary to reflect the date before which buildings contribute to the historic character of the neighborhood at that time. All other references to that date should be changed simultaneously.)

Unless specifically stated otherwise, all regulations herein apply to Public Facades only. Those for Semi-Public and Private Facades are specifically noted.

When a choice of solutions is given, the solutions are presented in order of preference. These Standards do not require the correction of any condition predating their enactment except the stabilization of vacant buildings as described in § 212.

201 Roofs: Roofs are a prominent part of any building, and in conjunction with the walls determine a building's form and scale. Roof styles, the conditions of the roof and roof details greatly influence the visual character of the District. Most of the roof styles in the District fall into one of the following categories:

- 1) Mansard,
- 2) Gable,
- 3) Single slope to one side, or
- 4) Flat

Repair of a roof, replacement of a flat roof, or overlay of a sloped roof with the existing material and repair or replacement of gutters or downspouts is general maintenance and does not require a permit except as provided in City Building Codes. References herein are advisory

201.1 Roof Lines and Dormer configuration: Rooflines and dormer configuration of buildings shall not be altered except

as specifically provided herein. Rooflines include the roof's slope, height, location, and structure.

201.2 Reconstructed Roofs: Reconstructed roofs shall be constructed based on the original roof where the original slope of the roof cannot be verified through reasonable research or existing evidence, reconstruction shall be based on a Model Example.

201.3 Roofing Materials on Flat Roofs: Flat roofs are not regulated by this ordinance.

201.4 Roofing Materials on Sloping Roofs: Roofing materials on sloping shall be one of the following:

- 1) Materials that can be documented as being original to the building;
- 2) Slate shingles
- 3) Synthetic rubber, plastic or polymer shingles that replicate the proportions of slate shingles found in the district.
- 4) Composition shingles that replicate the proportions of slate shingles.
- 5) Sheet metal roofing applied in a manner consistent with that of a Model Example;
- 6) Asphalt or fiberglass composition shingles, standard three tab design of 235 pounds per square minimum construction;
- 7) Wood shingles of a shape and size, and applied in a manner consistent with wood shingles on a Model Example.

Patterns may not be arranged in asphalt or slate shingles on sloping roofs unless based on evidence original to the building or a Model Example.

201.5 Roofing Materials on Mansard Roofs: Roofing materials on mansard roofs shall be one of the following:

- 1) Materials that can be documented as being original to the building;
- 2) Slate shingles
- 3) Synthetic slate shingles of a cementitious composition and reinforced with fiberglass,
- 4) Composition shingles that replicate the proportions of slate shingles. Patterns on Mansard Roofs:
 - 1) Patterns created by the arrangement of slate of differing colors or configurations shall not be altered by the subtraction or addition of shingles.
 - 2) Patterns may be painted where no pattern originally existed based on a Model Example.
 - 3) Reconstructed mansard roofs may be patterned through the use of slate or synthetic slate shingles of differing colors or configurations. Such patterns shall be based on a Model Example

201.6 Brick Parapets: Brick parapets and the manner in which the roofing material meets them shall be constructed as follows:

- 1) When the inside face of the parapet is visible from a street, the roofing material shall be flashed and counter flashed with metal flashing set into the masonry parapet wall.
- 2) When the inside face of the parapet is not visible from a street, the roofing material shall be extended up the inside face of the parapet and fitted under the metal flashing or the parapet cap.

Parapets at the Public Facade(s) shall have coping as follows:

- 1) Sloping parapets at roofs shall have coping of brick similar to that of the parapet.
- 2) Horizontal planes of a parapet (i.e. the top of a parapet that screens a flat roof or of a step in a stepped parapet) shall be protected with glazed coping tile, or a metal cap.
- 3) Glazed coping tile, when broken or missing shall be replaced by the same.
- 4) Metal caps shall have a non-reflective metal finish that replicates historic materials.
- 5) Felt, roofing paper, or roll roofing is prohibited as a total replacement finish material at parapets.

201.7 Dormers: Dormers shall not be removed or altered in configuration, location, and detail except as otherwise expressly provided herein. However, dormers may be removed if evidence exists that they are not original to the house. Evidence would consist of original plans, photograph, or a Model Example that matches the same design.

Reconstructed dormers and elements of a dormer shall be designed and positioned on roofs to replicate the dimensions, proportions, materials (except as noted in part 4 hereof), and details including ornament of the original dormer. Where such dimensions, proportions, materials, and details are not evident from present conditions, a Model Example shall be provided.

New dormers may be added where there is no evidence of their prior existence, if based on a Model Example.

Dormer materials, including those at the sides, shall not be altered in appearance from the original except vinyl, aluminum, steel, concrete, or Masonite siding that appears as 4" wood siding may be used at the sides when the dormer is located above the second story of a building as provided in section 202.2. Asphalt shingles are prohibited on vertical sides of dormers.

(Comment: Asphalt shingles are an inappropriate siding material for on vertical surface. The sides of dormers on slate roofs are typically slate, while the sides of dormers on asphalt shingle roofs are typically 4" exposed wood siding.)

Ornament at Dormers

(Comment: The role of ornament at dormers is architecturally significant.)

- 1) New ornament at dormers must be based on evidence of its prior existence on the dormer (s) or, if such evidence no longer exists, be based on a Model Example.
- 2) Ornament shall be constructed of materials historically used for such ornament or other materials that replicate such materials.
- 3) Ornament and dormer detailing shall be of a finished material.

201.8 Cornices: Cornices are a critical element of a building's historical and visual integrity. Reconstructed cornices shall be designed to replicate the dimensions, proportion, materials, and details of the original cornice. Where such dimensions, proportions, materials, and details are not evident from the current conditions of the building a Model Example shall be provided. New cornices on existing buildings shall be based on a Model Example.

Cornice Materials:

- 1) Cornice materials shall not be altered from the original except as provided herein.
- 2) Replacement materials shall replicate the appearance of the original finished materials.

Brick and Ornamental Brick:

- 1) Replacement brick within a cornice shall be brick of similar dimensions, color, and surface characteristics as the original or stained to match existing brick.
- 2) Replacement shall be one of the following:
 - a) New or used pressed brick of similar dimensions, color and surface characteristics and ornamental detailing as the original; or
 - b) Fiberglass reinforced concrete replicas with integral color and matching the original in color and surface characteristics and ornamental detailing.

Sheet Metal: Replacement of sheet metal within a cornice shall be of one of the following:

- 1) Sheet metal similar to that to be replaced; or
- 2) Any of the materials indicated as appropriate for use for wood cornices.

Wood: Replacement of wood within a cornice shall be of one of the following:

- 1) Wood;
- 2) Fiberglass replicating the original wood; or
- 3) Synthetic molded replicas of the original wood.

Stone and Terra Cotta: Replacement of stone or terra cotta shall be of one of the following:

- 1) Stone or terra cotta of similar color, texture, and dimension as the original;
- 2) Precast concrete of similar color, texture, and dimension as the original;
- 3) Fiberglass reinforced concrete replicating the original; or molded synthetic replicas of the original stone or terra cotta.

Built-in Gutters within a Cornice:

- 1) Masonry cornices with built-in gutters shall be reconstructed to match the original in design, profile, dimension, and detail.
- 2) Wood and metal cornices with built-in gutters shall be reconstructed in one of the following methods:
 - a) Reconstructed to match the original in profile and dimension. The method of drainage shall be similar to the original.
 - b) Reconstructed with a standard sheet metal gutter integrated into the cornice profile and maintaining the original height and projection of the original

Cornice Finish: All exterior surfaces of a cornice shall have a finished surface.

- 1) Wood within a cornice shall be painted.
- 2) Sheet metal within a cornice shall be painted except copper, which shall be painted or allowed to obtain its natural oxidized finish.

201.9 Roofing Accessories

Gutters and Downspouts: Repair and replacement of gutters and downspouts are defined as general maintenance and therefore not regulated by these Standards except as provided in section 201.8. However, gutters and downspouts are to remain in their original placement or location.

Chimneys:

- 1) Existing chimneys shall be retained
- 2) Chimneys not in use may be capped; but in no case is a chimney to be altered in dimension, including height.
- 3) Reconstructed chimneys shall duplicate the original or be based upon a Model Example.

Communication Devices: Communication devices shall not be visible from the street.

Roof Cresting: Roof cresting shall be of the following materials:

- 1) Wrought iron, cast iron, copper, or other non-reflective metal; or
- 2) Plastic that replicates the appearance of the above. Plastic cresting shall be securely attached and rigid so as to be indistinguishable from metal cresting,

Piping and Vents at the Roof: Piping and Vents at roof are not permitted on Public facade. Interior plumbing must be located so that plumbing vent stacks, attic ventilation devices, metal chimney flues, and metal fireplace chimneys are not located on a portion of a roof which slopes toward a Public facade.

Skylights and Roof Windows: Skylight and roof windows shall not be on a roof that slopes toward a Public Facade and shall not be visually dominant on any other portion of a roof

Solar Collectors: Solar collectors shall not be visible from a street.

Roof-Top Air Conditioning Units: Roof-top air conditioning units shall not be visible from the street in front of a building and shall not be visually dominant from any other street,

Other: Other items that are not original to a structure shall not be visible from a street unless based on a Model Example. Such items shall include but not be limited to satellite dishes, antennas, and roof decks

202 Exterior Walls

202.1 Exterior Masonry Walls

Cleaning: The blasting of exterior masonry walls with sand or other abrasive materials is prohibited. Masonry shall only be cleaned of dirt or paint with non-acidic chemical solutions and water. Such solutions and water shall be sprayed at low to medium pressures never to exceed 400 pound per square inch.

Painting: Painting of unpainted masonry walls is prohibited. Masonry walls that are currently painted may be repainted. The color shall be a color resembling the underlying material.

Tuckpointing: These recommendations provide a reasonable definition of tuckpointing in a workmanlike fashion as required by City Building Codes. Therefore, major deviations from these recommendations can result in actions by the Building Division to correct deficiencies

- 1) Old mortar shall be removed so as to provide adequate space for new mortar.
- 2) The composition of the mortar mix should be compatible to the type of brick being tuckpointed. Mortar that is too hard may spall, chip, or break the adjacent masonry. A recommended mix is to be performed in accordance with the National Park Service (NPS) historic tuckpointing standards. The color of the mortar should match the majority of the mortar currently existing in the wall. The color of mortar is affected by pigments added into tile mortar mix; the size, and quantity of sand in the mix; and the color of the cement used. The color of mortar that does not have color pigment added is affected by the color and coarseness of the sand. Typically white silica sand will result in mortars of a lighter color while brown river sand will result in mortars of a darker color. Similarly, sand of a finer coarseness will result in mortars light in color while coarser sands will result in mortars of a darker color. In each instance, the color of the mortar will not be clearly identifiable until it has dried and been washed. Mortar normally dries in thirty days and washed of residue by plain water and a stiff bristle brush.

Reconstructed Masonry Walls: Reconstructed masonry walls include the replacement of missing masonry within a wall and the reconstruction of a masonry wall that has collapsed or is deemed structurally inadequate.

Construction:

- 1) Reconstructed masonry wall shall be one of the following types of construction:
 - a) Solid brick masonry,
 - b) Concrete block back-up with masonry exterior; or
 - c) Masonry veneer on metal or wood studs.
- 2) Mortar thickness and coursing shall match the original.
- 3) Material of one of the following materials shall be used;
 - a) New or used masonry units that match the original in size, shape, color (variety and pattern of color), surface hardness, and ornament.
 - b) The original ornamental masonry units (pressed brick and terra cotta) or replica units constructed of the materials outlined in section 201.8 Cornices.

Exposed Masonry Party Walls: Exposed masonry party walls shall be treated using one of the following methods:

- 1) Add a new veneer of brick to the wall. The new brick shall be similar in size and color to the original; unless prohibited by adverse property rights
- 2) Clean the exposed wall of any debris, replace any deteriorated areas, and tuckpoint the entire wall; or

202.2 Wood Siding: Wood siding shall be painted

- 1) Replacement materials shall be one of the following:
 - a) New wood siding that replicates the original in design, dimension, and method of application
 - b) At the sides of a dormer that is above the second floor, aluminum, steel, concrete, vinyl, or masonry which replicates wood siding.
- 2) Use of the following replacement materials is restricted:
 - a) Masonite in 12" widths configured to look like exposed siding is prohibited at the Public Facade except

as provided herein;

- b) Aluminum, steel, concrete, or vinyl siding is prohibited at Public Facades except as provided herein.
- c) Wood shingles are prohibited.

202.3 Stone and Cement Facades:

- 1) Missing pieces of stone and missing or severely damaged Facades shall be replicated with stone, cement stucco, fiberglass, or other material that replicates the original appearance of the stone.
 - a) Cement stucco Facades shall meet the following.
 - i) The cement stucco shall be scored to replicate the pattern of the original stonework.
 - ii) The setback of windows and doors shall be closely maintained.
 - iii) The detailing of corners and edges shall be as crisp as the original,
 - b) Synthetic stone veneers are prohibited.
 - c) Painting
 - i) Granite and marble Facades may not be painted.
 - ii) Limestone and sandstone Facades may not be painted.

203 Windows: Windows are crucial to a building's historic character.

203.1 Windows at Public Facades:

- 1) Windows in Public Facades shall be one of the following:
 - a) The existing window repaired and retained
 - b) Replacement window, duplicating the original, which meets the following requirements;
 - i) Replacement windows or sashes shall be made of wood or finished aluminum,
 - ii) The profiles of muntins, sashes, frames, and moldings shall match the original elements in dimension and configuration.
 - iii) The number, arrangement and proportion of lights shall match the original or be based on a Model Example.
 - iv) The method of opening shall be the same as the original
- 2) Reconstructed windows and sashes in a Public Facade shall be based on the following:
 - a) An adjacent existing window in the same Facade that is original; or
 - b) If all windows on a Facade are being replaced they, shall be based on a Model Example.
- 3) Glass Types at a Public Facade
 - a) Glass in historic windows an a Public Facade shall be one of the following:
 - i) Clear glass or other original glazing;
 - ii) Glass based on a Model Example; or
 - iii) Insulated glass with exterior face set 3/8" back from exterior of the sash.
 - b) The following glass types are prohibited on Public Facades:
 - i) Tinted glass;
 - ii) Reflective glass;

- iii) Glass block, and
 - iv) Plastic (plexi-glass) except Lexan or an equivalent.
- 4) **Abandoned Windows in a Public Facade:** Windows that are to be abandoned on the interior shall be infilled by closing them with wooden shutters set ½" back from the face of the wall with the window opening left intact including the frame, sash, sub-sill and lintel.
- 5) Storm Windows and Screens at a Public Facade
- a) Materials
 - i) Exterior storm windows and screens shall be made of wood, aluminum or plastic.
 - ii) Wood shall be painted; aluminum shall be factory or field painted.
 - iii) Clear anodized aluminum, is prohibited
 - b) Interior storm windows and screens are not regulated by these Standards.
 - c) Storm windows and screens shall also meet the following requirements:
 - i) The dimensions of the area of glass or screen shall be the same as the area of glass in the window being protected.
 - ii) The meeting rail of the storm or screen window shall be in line with the meeting rail of the window being protected. Additional meeting rails are prohibited.
- 6) New Window Openings are prohibited in a Public Façade.
- 7) No existing window opening in a Public Facade shall be altered in length or width.

203.2 Windows on Semi-Public Facades: Windows at Semi-Public Facades shall comply with all of the restrictions outlined in section 203.1 except:

- 1) Replacement Windows in a Semi-Public Facade
- a) Replacement windows may be constructed of the following materials:
 - i) Wood;
 - ii) Vinyl-coated wood; or
 - iii) Finished (painted or otherwise coated with color) aluminum;
 - b) Clear anodized aluminum is prohibited.
- 2) Configuration
- a) The profiles of muntins, sashes, frames, and moldings shall match the original elements in dimension and configuration.
 - b) The number of lites may be reduced to one over one.
 - c) Square head replacement windows may replace original arched-bead windows where the apex of the arch is less than 6" above its base. However, the arch shall be maintained with a decorative element of wood, finished metal, or plastic which appears as wood.
- 3) Brick Molding
- a) In all cases, the original brick molding shall be retained or its size and general profile duplicated.
- 4) Windows that are to be abandoned on the interior shall be infilled as follows:
- a) Close the window with wooden shutters set back from the face of the wall with the window opening left intact including the frame, sash, sub-sill, and lintel.
 - b) Brick in the opening with brick set 1 ½ " to 2" back from the face of the wall with the window opening

left intact including the sub-sill and lintel. The infill brick shall match the surrounding brick in size, color, texture, coursing, mortar composition, color, texture, and tooling.

c) Windows at Private Facades may be converted to doors by lengthening the vertical (height) but not the horizontal (width) dimension. Such new doors are subject to the replacement door standards set forth in 204 following.

203.3 Windows on Private Facades: Windows at Private Facades shall comply with all of the restrictions outlined in section 203.1 except as amended in section 203.2 and herein.

- 1) New Window openings in Private Facades:
 - a) New openings where no window existed before or where existing windows are to be made shorter or longer, shall meet the following:
 - i) The proportion of the opening shall be the same as the adjacent openings;
 - ii) Sills and lintels shall match those adjacent.
 - b) Glass types and materials on Private Facades are not regulated by these Standards.

204 Doors: Doors are an integral part of a building's Public Facade. Primary entrance doors are one of the strongest first impressions of a building.

- 1) Doors shall be one of the following:
 - a) The original wood door restored;
 - b) A new wood door that replicates the original; or
 - c) Based on a Model Example.
- 2) The following types of doors are prohibited:
 - a) Flush, hollow-core doors with or without applied moldings~
 - b) Flush doors of any material.
 - c) Indoor stock doors
- 3) Doors shall have one of the following finishes:
 - a) Paint
 - b) When hardwood, a natural finish.
- 4) When more than one primary entrance door exists, all primary entrance doors must be identical and of the same color
- 5) **Stormer Doors:** Stormer doors shall not be replaced with any other type of enclosure.
- 6) **Hardware:** New hardware shall be of a style, type, and material historically appropriate for the door.
- 7) **Placement:** Setting doors forward or back from their original line of placement is prohibited.
- 8) **Abandoned Doors:**
 - a) Doors that are to be abandoned at the inside on a Public Facade
 - i) Shall be closed with a door that replicates the original door or that of a Model Example set in the existing frame. The doorframe and sub-sill shall be maintained.
 - b) Doors that are to be abandoned at the inside on a Semi Public Facade
 - i) Shall be closed with a door that replicates the original door or that of a Model Example set in the existing frame. The doorframe and sub-sill shall be maintained. Or
 - ii) May be infilled with brick set 11/2" to 2" back from the face of the wall with the opening

left intact including the sub-sill and lintel.

- c) Doors at Private Facades may be converted to windows by shortening the vertical (height) but not the horizontal (width) dimension. Such new windows are subject to the replacement window standards set forth in § 203 hereof.

204.1 Transoms:

1. Existing transoms shall be maintained as part of the entry at all Facades,
2. Storm windows and screens for transoms shall comply with section 204.2.

204.2 Storm and Screen Doors: Wood is the preferred material for storm and screen doors.

1. Storm Doors: Storm doors shall not be replaced with any other type of enclosure.
2. New storm doors shall meet the following:
 - a. Simple and open in design and full lite; and
 - b. Of a finished material other than clear-anodized aluminum; and
 - c. Be compatible with the design of the door behind by matching existing shape of door.
3. New screen doors shall meet the following:
 - a. Simple and open in design;
 - b. Finished material other than clear-anodized aluminum; and
 - c. Be compatible with the design of the door behind.

205 Foundations:

205.1 Paint:

1. Unpainted foundations shall not be painted.
2. Painted foundations may be repainted. The color shall be a color resembling the underlying material.

205.2 Replacement Materials: Replacement materials shall meet the following requirements

1. New or re-used stone that matches the original in color, type of stone, method of stone finish, and size, or
2. A veneer of the above applied to a back-up material such as concrete or concrete block, or
3. Other masonry products such as:
 - a. Cast-in-place concrete,
 - b. Split-faced concrete block, or
 - c. Concrete block with an uneven face when the face replicates the original material.

205.3 Surface Treatments:

1. Foundations at the Public Facade shall not be parged (skim-coated) with stucco, concrete, mortar, or other cement-like materials.
2. Foundations that require tuckpointing should be tuckpointed to match the existing mortar in color, texture, and composition.

206 Appendages on Public and Semi-Public Facades:

206.1 Reconstructed Appendages to Public and Semi-Public Facades:

Reconstructed appendages shall be based on evidence of their prior existence (whole appendage) and/or on evidence at the building and/or on a Model Example (individual elements).

206.2 Appendages: Carpeting (excluding doormats) on new and existing appendages is prohibited.

206.4 Stone Elements on Appendages:

1. Stone steps and porch elements shall be replaced, as opposed to repaired, only when needed to ensure Public and occupant safety.
 - a. Steps and porch elements shall retain their original location and shall maintain their original configuration.
 - b. Stonework shall not be painted or receive any adhesively applied finishes.
2. Replacement materials at Public Facades
 - a. For architectural elements see the acceptable replacement materials listed under stone cornices (section 201.8).
 - b. Replacement steps shall be made of the following:
 - i. New or re-used stone duplicating in shape, size, and coloration that which is being replaced.
 - ii. Concrete that replicates the stone in shape, size, and coloration and will maintain its shape, size and coloration over time.
3. Paint:
 - a. Unpainted stone elements shall not be painted.
 - b. Painted stone elements to be repainted shall be painted a color resembling that of the underlying material.

206.5 Wood, Elements on Appendages: Reconstructed wood elements shall be of wood, except architectural details such as brackets that may be of the materials listed under replacement materials for wood cornices (section 201.8). A Model Example shall be used.

- 1) Reconstructed wood handrails shall be one of the following:
 - a) A wood handrail based on a Model Example.
 - b) The "Soulard" handrail common to St. Louis.
- 2) Wood handrails shall receive one of the following finishes:
 - a) Paint; or
 - b) An opaque stain

206.6 Metal Elements on Appendages:

Reconstructed metal handrails and architectural detailing shall be of one of the types of metals or other replacement materials listed under section 207.1(2).

207 Accessories:

207.1 Wrought and Cast Iron Accessories: Black is the preferred color.

- 1) Existing wrought and cast iron accessories shall not be removed or altered in form.
- 2) Owners are encouraged to reconstruct balconies where they once existed especially if the original brackets are still in place.
- 3) Replacement Materials
 - a) New or re-used metal accessories based on a Model Example, or
 - b) Plastic or other molded or cast material that replicates the appearance of the original

207.2 Reconstructed Shutters:

1. Shall be horizontally slatted or based on a Model Example.
2. Shall be of the size, shape and height of the original window opening.
3. Shall be in the open position or operable, except where used to close abandoned windows under sections 203(1)(4)(a) or 203(2)(4)(a).

207.3 Security Bars and Doors:

1. Existing historic security bars and ironwork in front of windows and doors shall be retained.
2. New security bars and doors shall be based on a Model Example.
3. Except as otherwise noted, security bars and doors are prohibited at Public Facades,

207.4 Awnings and Canopies: New awnings and canopies shall be based on a Model Example and shall be:

1. The same shape and size as the window, door, or storefront behind,
2. Constructed of a canvas-like fabric with a metal frame.
3. New metal and fiberglass awnings and canopies are prohibited. However, existing awnings may be retained

207.5 Exterior Lighting:

1. Exterior lighting shall not detract from any significant architectural features of a building.
2. Public Façade lighting to be historically compatible with building or to follow a Model Example.

207.6 Landscape Lighting at Public Façade: Landscape lighting shall not detract from any architectural significant features of a building.

207.7 Signs:

- 1) Permanent Commercial Signs
 - a) Commercial signs at structures serving a residential purpose at the time of adoption of these Standards are prohibited.
 - i) Unless a conditional use permit is obtained. If so
 - (1) Sign shall not be more than 2 square feet in size
 - ii) Commercial signs at structures serving a commercial purpose at the time of adoption of these Standards
 - (1) Shall not exceed 40 square feet on each Public Façade or 10 percent of the area of each Public Façade, whichever is smaller.
 - (2) Each side of a protruding sign counts toward the 40 square feet so they may not be more than 20 square feet or 5 percent of the surface area whichever is smaller.
 - b) Signs must be compatible with existing architectural details.
 - c) Signs shall be restricted to those identifying the names and/or businesses and principal products of the person or entity occupying the structure.
 - d) Signs may not be placed in the following locations:
 - (i) On a mansard
 - (ii) On a rooftop;
 - (iii) On the slope of an awning;
 - (iv) In a location that obscures significant architectural details; or

- (v) On a pole
 - e) Signs must be fixed and silent.
 - f) Signs painted on windows and interior signs, including those inside windows, are not regulated by these Standards.
- 2) Permanent Non-Commercial Signs
- a) Signs shall be limited to the following:
 - i) On walls - Metal or painted wood plaque, less than 100 sq. inches in size.
 - ii) At landscape elements including walls, fences, carriage stones and steps
- 3) Sandwich boards shall meet the following:
- a) They shall be less than 10 square feet on a side;
 - b) They shall be consistent with other City Ordinances;
 - c) There shall be no more than two per establishment;
 - d) They shall be outdoors only during business hours; and
 - e) They shall not be electrified.

207.8: Street Addresses

1. Street addresses at the Private Façade are not regulated by these standards.
2. Street addresses at the Public and Semi Public Façade shall:
 - a. Numerals shall be Arabic.
 - b. Street addresses shall be one of the following:
 - c. At a transom
 - d. Painted gold leaf.
 - e. Etched or leaded glass based on a Model Example.
 - f. Stencil or decals to simulate gold leaf, with the design based on a Model Example.
3. On a door
 - a. Etched or leaded glass based on a Model Example.
 - b. Metal numerals, a maximum of 4" in height.
 - c. Metal plaque, a maximum of 4" x 8" in size, with numerals integrally cast.
4. On landscape elements including walls, fences, carriage stones and steps
 - a. Integrally carved in stone, a maximum of 4" in height.
 - b. Metal numerals, a maximum of 4" in height.
 - c. Metal plaque, a maximum of 4" x 8" in size, with numerals integrally cast.
5. On walls
 - a. Metal numerals, a maximum of 4" in height.
 - b. Metal plaque, a maximum of 4" x 8" in size, with numerals integrally cast.

6. The following types of street addresses are prohibited:
- A. Plastic numbers attached to transom glass, doors, walls, steps, fences, roofs, light posts, mail boxes.

207.9 Utility Service Lines:

- 1) Where possible, all exterior electric meters shall be hidden from view by locating them in gangways between buildings or on a Private Facade.
- 2) No exterior meters shall be attached to building foundations or to a Public Facade.
- 3) No satellite dishes shall be attached to building foundations, Public Facades, or public yards.

207.10 Communication Devices:

- 1) Communication antennas are prohibited on the Public Façade and Semi Public Facades. This includes and not limited to antenna, wire, mounting equipment and accessories.

208 Storefronts:

208.1 Reconstructed Storefronts: Reconstructed storefronts shall meet the following:

1. All exposed materials shall be painted, including wood and metal.
2. Be based on a Model Example consistent with the building's original character.

208.2 Storefront Conversion: Storefronts converted to residential use shall retain their original storefront character and shall not be altered in any way so as to disguise their original use.

209 New Additions to Existing Buildings: No new additions shall be made to Public or Semi-Public Facades except that additions may be made to Semi-Public Facades occurring at the rear of buildings that predate 1929.

1. New additions constructed at Private Facades or at Semi-Public Facades at the rear of structures predating 1929 are subject to New Construction Standards for like Facades.
2. New additions constructed at Private Facades may lengthen an adjacent Public or Semi-Public Facade.

210 Alley House: The intent of this Code is to protect and preserve the structural integrity of this type of structure while recognizing that it is a secondary structure.

210.1 Semi-Public and Private Facades: The Facade of an alley house is defined herein as a Semi-Public Facade. The remaining Facades may be Semi-Public or private as defined in accordance with section 101.20. Facades of alley houses are subject to the same regulations as the like Facades of other buildings. If no primary structure exists, the alley house becomes the primary structure with the same guidelines as a primary structure.

211 Demolition: Buildings built prior to 1929 are considered historically significant to the character and integrity of the District. These buildings are irreplaceable assets, and as such, their demolition is strictly limited. Ordinances No. 64689 and 64925 of the City of St. Louis are hereby adopted to govern demolition of buildings located within the McKinley Heights Historic District, except that the following § of such Ordinance shall, for purposes of this Code only, be deemed revised, amended, deleted as noted: (2)(i) is revised to state as follows:

Structure means any building or improvement of any kind for demolition of which a demolition permit is required and with respect to which an application for a demolition permit is filed.

§ (2) (3) is revised to state as follows:

Condition: The Office shall make exterior inspections to determine whether a Structure is Sound. If a Structure, or portion thereof proposed to be demolished is obviously not Sound, and the threat to the public health, safety, and welfare resulting there from cannot be eliminated with reasonable preventative measures, the application for demolition shall be approved except in unusual circumstances which shall be expressly noted. The remaining or salvageable portion(s) of the Structure shall be evaluated to determine the extent of reconstruction, rehabilitation, or restoration required to obtain a viable structure.

Sound Structures with apparent potential for adaptive reuse and/or resale shall generally not be approved for demolition unless application of Criteria 1, 4, 6, and 7 indicates demolition is appropriate.

Structurally attached or groups of buildings: The impact of the proposed demolition on any remaining portion(s) of the building will be evaluated.

Viability of walls that would be exposed by demolition and the possibility of diminished value resulting from the partial demolition of a building, or of one or more buildings in a group of buildings, will be considered.

§ (7) (4) is revised to state as follows:

Rehabilitation Potential: If the Applicant offers substantial evidence that the Structure, in its entirety, is in such a condition that the only feasible rehabilitation thereof would be equivalent to total reconstruction, the application for demolition shall generally be approved.

- ii. Economic Hardship: The Office shall consider the economic hardship that may be experienced by the present owner. If the application is denied, such consideration may include, among other things the estimated cost of demolition, the estimated cost of rehabilitation or reuse, the feasibility of Public or private financing, the effect of tax abatement, if applicable, and the potential for economic growth and development in the area.

§ (7)(6) 15 amended to add the following:

The proposed plan, although calling for demolition of one or more Structures, would result in the preservation of buildings that are (i) High Merit, Merit, or Contributing; and

(ii) in need of substantial rehabilitation.

§ (7)(7) is deleted.

§ (7)(8) is renumbered § (7)(7).

212 Securing Vacant Buildings: Vacant buildings shall be protected from deterioration and vandalism as follows:

1. All windows and doors shall be covered by exterior grade plywood if such windows and doors are incapable of securing the building.
2. All such covered windows and doors shall be painted red
3. The roof, gutter, and downspouts shall carry the rainwater to the ground.
4. Work necessary to protect the structural integrity of the building must be performed.
5. Grounds of vacant buildings shall be maintained

ARTICLE 3: NEW BUILDINGS IN RESIDENTIAL DEVELOPMENT AREAS

301 Public and Semi-Public Facades of New Construction

301.1 Site

301.2 Mass

301.3 Scale

301.4 Proportion

301.5 Ratio of Solid to Void

301.6 Façade Material and Material Color

302 Private Facades on New Construction

303 Garages and carports in New Construction

304 Proposal requirements for New Construction

305 New Appendages

301 Public and Semi-Public Facades of New Construction: The Public and Semi-Public Facades of new construction shall be reviewed based on a Model Example taking into consideration the following:

301.1 Site: A site plan shall describe the following:

1. Alignment

- a. New buildings shall have their Public Facade parallel to the Public Facade of the adjacent buildings.
 - b. If a new building is to be located between two existing buildings with different alignments to the street or in the event that there are no adjacent buildings, the building alignment shall be the same as that which is more dominant within that block on the same side of the street.
 - c. If a new building is to be located on a block that is completely empty, then the alignment shall be that which is most dominant within the adjacent blocks or across the street.
2. Setback
- a. New buildings shall have the same setback as adjacent buildings.
 - b. If a new building is to be located between two existing buildings with different setbacks to the street, or in the event that there are no adjacent buildings, then the building setback shall be the same as that which is more dominant within that block on the same side of the street.
 - c. If a new building is to be located on a block that is completely empty, then the setback which is most dominant within adjacent blocks or across the street shall be used.
 - d. Setback may be based on a Model Example.

301.2 Mass: Mass is the visual displacement of space based on the building's height, width and depth. The mass of a new building shall be comparable to the mass of the adjacent buildings or to the common overall building mass within the block, and on the same side of the street.

301.3 Scale

1. Scale is the perceived size of a building relative to adjacent structures and the perceived size of an element of a building relative to other architectural elements (e. g., the size of a door relative to a window).
2. A new building shall appear to be the same number of stories as other buildings within the block. Interior floor lines shall also appear to be at levels similar to those of adjacent buildings.
3. If a new building is to be located between two existing buildings with different scales, or in the event that there are no adjacent buildings, then the building scale shall be that which is more dominant within that block on the same side of the street.
4. If the new building is on a block that is completely empty, then the building scale shall be similar to that of buildings in adjacent blocks.
5. When several buildings, or a long building containing several units, are constructed on a sloping street, the building(s) shall step down the slope. In order to maintain the prescribed height. The step shall occur at a natural break between units or firewalls.

Comment: Building height shall be measured at the center of a building from the ground to the parapet or cornice on a flat roof building; to the crown molding on a building with a mansard; to the roof ridge on a building with a sloping roof.

301.4 Proportion

Proportion is a system of mathematical ratios that establish a consistent set of visual relationships between the parts of a building and to the building as a whole. The proportions of a new building shall be comparable to those of adjacent build buildings. If there are no buildings on the block then the proportions shall be comparable to those of adjacent blocks.

301.5 Ratio of Solid to Void

1. The ratio of solid to void is the percentage of opening to solid wall. Openings include doors, windows and enclosed porches and vestibules.
2. The total area of windows and doors in the Public Facade of a new building shall be no less than 25% and no more than 33% of the total area of the facade.
3. The height of a window in the Public Facade shall be between twice and three times the width.
4. The ratio of solid to void may be based on a Model Example.

301.6 Facade Material and Material Color

1. Finish materials shall be one of the following:
 - a. For walls:
 - b. Kiln-fired brick (2-1/3" by 8" by 3-5/8")
Comment: Brick within the McKinley Heights Historic District is typically laid in a running bond with natural gray, white or red mortar. Typical joints include concave, struck and v-groove. Most brick within the McKinley Heights Historic District is red or orange with only minor variations in coloration.
 - c. Stone common to the McKinley Heights Historic District.
 - d. Scored stucco and sandstone.
 - e. 4" lap wood siding or vinyl siding which appears as 4" wood siding based on a Model Example.
2. For foundations:
 - a. Stone, new or reused, which matches that used in the McKinley Heights Historic District
 - b. Cast-in-place concrete with a stone veneer; or
 - c. Cast-in-place concrete, painted.
3. Finished facade materials shall be their natural color or the color of the natural material which they replicate or if sandstone, painted. Limestone may be painted.
4. Glazing shall be clear, uncolored glass or based on a Model Example.

302 Private Facade of New Construction

Materials at private Facades of new construction shall be one of those listed in 301.6 except that wood or vinyl siding need not be based on a Model Example.

303 Garages and Carports in New Construction

1. Garages and Carports are not regulated except as follows:
 - a. Garages and carports shall be set within 10' of the alley line.
 - b. Vehicular access shall only be from the alley.
 - c. Garage doors shall be parallel to, and face, the alley.
 - d. Construction requirements per form:
 - i. Garages shall be sided with 4" cover siding of wood, vinyl or finished aluminum, 4" beaded tongue and groove siding, brick or brick veneer. Unfinished siding is prohibited.
2. Garage and carport roofs shall be as set forth in Section 201.
3. The mass and scale of garages and carports shall be appropriate for their use and shall not visually dominate the main building.

304 Proposal Requirements for New Construction

1. Site Plan
 - a. Site plan shall include the following:
 - b. The new construction as well as an outline plan of the structures to each side of the site.
 - c. If the setback of the new construction follows that across the street or in an adjacent block, then a portion of that side of the street or block shall be shown.
2. Site Section

- a. If the new construction proposes changing the grade of the site in order to accommodate garages or other basement activities which shall be open to grade, then a "before" and an "after" grade shall be shown in Section at the section of greatest grade change.
- 3. Elevations
 - a. All Facades shall be shown and shall include an outline of any existing, adjacent elevations. Photographs shall accompany these elevations.
- 4. Floor Plans
 - a. Floor plans are not required by these Standards, but are helpful in understanding why the exterior of the new construction is as designed.

Comment: Floor plans are required by City Building Codes.

305 New Appendages:

- 1. New porches, stoops and steps at Public or Semi-Public Facades shall be based on a Model Example.
- 2. New stoops and steps at Private Facades are not regulated by this ordinance.
- 3. Decks are prohibited at Public Façade.
- 4. Decks are prohibited at Semi-Public Facades except when those occur at the rear of a building
- 5. New porches or decks constructed at a Semi-Public Facades must not:
 - a. Obscure any architectural detail of the building such as windows, doors, or ornamental brickwork.
 - b. Be visually dominant because of mass, scale, or topology of the land

ARTICLE 4: SITE IN RESIDENTIAL DEVELOPMENT AREAS

401 Slope/Grade:

402 Landscaping Walls:

402.1 Retaining Walls on Public Facades:

403 Fences

403.1 Low Fences:

403.2 High Fences:

403.3 Prohibited Materials:

404 Sidewalks and Steps:

405 Landscape Lighting at Public Façade:

406 Swimming Pools:

407 Yard Structures:

401 Slope/Grade: The historic slope of a yard should not be altered at the Public Facade unless it has at some time been altered and is to be restored to its original configuration. An existing historic retaining wall (stone or brick) shall not be removed or altered.

402.1 Retaining Walls on Public Facades: Reconstructed retaining walls shall replicate the appearance of a historic wall, Stone or brick may be applied as veneer to a concrete wall as long as the outward appearance meets the historic visual qualities of the original.

- 1. Retaining walls made of the following materials are prohibited:
 - a. Pressure treated lumber

- b. Railroad ties.

403 Fences

403.1 Low Fences: Low fences are to have a height of 48" or less, measured from the ground.

1. Low fences shall be of one of the following types:
 - a. Wrought or cast iron;
 - b. Treated or rot-resistant wood picket fence consisting of posts, rails, and vertical pickets painted or treated with opaque stain; or
 - c. Chain link, but only if it is behind a Private Facade and either painted a dark color or clad with a dark colored vinyl.
 - d. Masonry materials that replicate existing stone or brick work of primary building with matching joints and materials.
2. Low fences shall be based on a Model Example. When located in front of a Public Facade of the building, The Model Example fence shall be located in front of a building of similar vintage to the property under consideration.
3. In no event shall a low fence obscure significant architectural features of a building.

403.2 High Fences: High fences are taller than 48" in height when measured from the ground.

1. High fences are restricted to the following locations:
 - a. Private or Semi-Public Facades, excluding gangways less than 10 feet running parallel and behind the front line of the building of both buildings.
2. High fences shall be one of the following types:
 - a. Boards placed vertically if the structure of the fence will not be visible from the Public Facade.
 - b. Wrought or cast iron.
 - c. Stone or brick pillars in combination with one of the above.
 - d. A reconstructed fence shall be based on a Model Example.

403.3 Prohibited Materials: The following types of fences are prohibited at all Facades.

1. All wire fences.
2. Chain link fences.
3. Concrete or block, except when used as a substrate material for a stone or brick final surface.

403.4 Landscaping Walls: Landscaping walls essentially function as a fence and shall:

1. Be constructed of red brick and have a limestone or pre-cast concrete cap or be constructed of stone.
2. Be of a height of 48" or less.

404 Sidewalks and Steps: At Public Facades, sidewalks shall be one of the following:

1. Red brick, is the preferred material, and is not to be replaced with concrete.
2. Cast-in-place concrete with an exposed aggregate finish.
3. Bomanite or equivalent.
4. A combination of the above.

Exterior handrails at steps located in a yard and not attached to a house shall be erected as a simple, non-decorative wrought iron or equivalent (aluminum or steel) rail. Wood stair rails are not historically appropriate on stone, brick or concrete steps, even

if the house's porch has a wood handrail.

406 Swimming Pools: Above ground and in ground pools shall not be visible from the street.

407 Yard Structures: Yard structures; such as gazebos and storage sheds shall be based upon a Model Example. This Ordinance does not regulate yard structures at Private Facades

1. Designs shall be of mass and scale appropriate to the space they occupy and constructed of such materials acceptable by this Code for new construction.
2. The following are prohibited:
 - a. Pre-fabricated metal structures
 - b. Fiberglass structures.

ARTICLE 5: COMMERCIAL DEVELOPMENT CORRIDORS DESIGN STANDARDS

501 New construction and existing non-historic commercial buildings

All new construction within the designated Commercial Development Corridor (the Corridor) must be reviewed and approved by the Preservation Board taking into account the following considerations:

501.1 Height

New buildings must be constructed within 15 percent of the average height of existing buildings on the block. Any additions must be compatible with both the existing building and the surrounding structures.

501.2 Scale

The scale of all proposed new construction in the Corridor must respect the existing scale of any surrounding historic structures by seeking to minimize the difference in height, mass, fenestration and location. Any additions must be compatible with both the existing building and the surrounding structures.

501.3 Location

New or moved commercial structures shall be positioned on the lot to not only enhance the character of the commercial location but also to be compatible with the surrounding streetscape. Any additions must be compatible with both the existing building and the surrounding structures.

501.4 Exterior Materials

All new building materials shall be compatible in type and texture with the dominant materials of adjacent buildings. While artificial masonry such as "Permastone" is not permitted, introduction of new materials for new construction will be considered. A submission of all building material samples shall be required prior to approval. Any additions must be compatible with both the existing building and the surrounding structures.

501.5 Details

Details on new structures should be compatible with the surrounding built environment. Any additions must be compatible with both the existing building and the surrounding structures.

502. Existing historic buildings

The **Standards for Residential Development Areas** apply to all existing historic buildings and sites whether the building is used for a residential or commercial use.

503. Walls, Fences and Enclosures

Walls and fences form an important part of the overall streetscape. These should be of concrete, brick, stone or stucco, wood, wrought iron or evergreen hedge when visible from the street, as is consistent with existing dominant materials. Interlocking masonry wall units can only be approved when the masonry units replicated the appearance of cut stone or are a part of the overall new building design.

504. Parking

All off-street parking shall be located behind or to the side of commercial structures. Where visible from the street, screening with visually opaque landscaping or 5' minimum high masonry or concrete wall shall be necessary. Visually

opaque landscaping is defined as a continuous hedgerow of bushes planted 36" on center within a planting strip at least 5 feet wide. The planting strips with hedgerow must also contain upper story shade trees planted every 25 feet along the planting strip. The trees must be at least 2 1/2" in caliper upon planting.

All parking lots over 5,000 square feet in surface size must also be landscaped on the interior with tree planting wells, at least 15 square feet in size, so that at least 3% of the interior is landscaped with upper story shade trees at least 2 1/2 " caliper upon planting.

505. Paving Materials

The use of masonry units compatible with adjacent building materials is encouraged. Pedestrian walks, courts, sitting areas, etc. shall be surfaced by a permanent material including textured concrete, brick pavers, cobblestone or street pavers or any other material consistent with adjacent surfaces. Asphalt paving shall not be acceptable on any areas for pedestrian-use, exclusively, and acceptable on vehicular-use areas only.

506.0 Signs

506.1

Signs within the commercial district shall be in accordance with the following except that in no case will the following be allowed:

Non-appurtenant advertising signs.

Signs in excess of 15' in height.

506.2 Permanent Commercial Signs on residential property

Commercial signs at structures serving a residential purpose at the time of adoption of these Standards are prohibited unless a conditional use permit is obtained. If so Sign shall not be more than 2 square feet in size.

506.3 Commercial signs generally

Shall not exceed 25 square feet on each Public Facade or 10 percent of the area of each Public Facade, whichever is smaller.

A. Each side of a protruding sign counts toward the 25 square feet so they may not be more than 12.5 square feet or 5 percent of the surface area whichever is smaller.

B. Signs must be compatible with existing architectural details.

C. Signs shall be restricted to those identifying the names and/or businesses of the person or entity occupying the structure.

D. Signs may not be placed in the following locations:

(i) On a mansard

(ii) On a rooftop; or

(iii) In a location that obscures significant architectural details;

E. Signs must be fixed and silent.

506.4 Wall signs

Wall signs should be designed to complement the existing building and never cover windows or other architectural elements. Where more than one wall sign exists on a single structure or a series of related structures, all signs should be basically similar in character and placement. Office buildings without first floor retail establishments shall have no more than one wall sign per façade located below the second floor window sill line designating only the name and address of the building.

506.5 Roof top signs.

Roof top signs are prohibited.

506.6 Projecting signs

Projecting signs should not obstruct the view of adjacent signs, obstruct windows or other architectural elements or extend above the second floor windowsill level. Only one projective sign is allowed per street frontage for each establishment.

506.7 Flashing or rotating elements.

Flashing or rotating elements are not allowed.

506.8 Painted wall signs.

Painted wall signs may be allowed only on buildings in which, and for which, an existing business is located. These signs should be designed to replicate the traditional historic painted wall signs of historic commercial areas. Non appurtenant painted wall signs are not allowed.

507. Landscaping

All surface parking lots facing the street shall be screened by a decorative brick masonry unit or concrete wall at least 5 feet high or by a planting strip at least six feet wide, planted with a dense hedgerow of evergreen bushes planted at not less than 2.5 gal and at every three feet to reach three foot height at maturity. The hedgerow shall be interspersed with planting of ornamental trees every twenty-five feet.

If there is a predominance of particular types or qualities of landscape materials, any new planting should be compatible by considering massing and continuity. The installation of street trees by request to the City is encouraged and in some instances may be required.

508 Street Furniture and Utilities

All freestanding light standards placed in the front yard of any structure or premises shall be either authentic period styling or high quality contemporary design.

Where possible, all new utility lines shall be underground.

ARTICLE 6: SEVERABILITY

If any provision, sentence, clause, section, part, or application, of this Code is for any reason held to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, section, parts, or applications of this Code.

ARTICLE 7: ECONOMIC HARDSHIP

701 Economic Hardship exceptions:

701 Economic Hardship Exception: Any section under this code may be exempted due to economic hardship that may be experienced by the present owner. All applications for exemptions shall be case and site specific and shall be made to the Preservation Board.

1. The following factors shall be taken into consideration for an economic hardship exception:
 - a. The nature of the homeowner's economic hardship
 - b. The emergent and necessary nature of the structural repair,
 - c. The estimated cost of the repair following the historical code as opposed to the cost of repair without following the code, and
 - d. Any other factor bearing a reasonable relationship to each homeowner's unique position.
2. Should the Preservation Board approve of the exemption, the following measures may be taken to assist the homeowner:
 - a. A feasibility assessment by the Preservation Board of public or private financing to assist the homeowner,
 - b. The effect of tax abatement, if applicable, and
 - c. Personal assistance through the neighborhood association.

Approved: March 3, 2008

ORDINANCE #67902
Board Bill No. 450

An Ordinance recommended by the Planning Commission on January 9, 2008, to change the zoning of property as indicated on the District Map, from "A" Single-Family Dwelling District to the "C" Multiple-Family Dwelling District, in City Block 4065 (2714 and 2718 Macklind), so as to include the described tracts of land in City Block 4065; and containing an emergency clause.

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

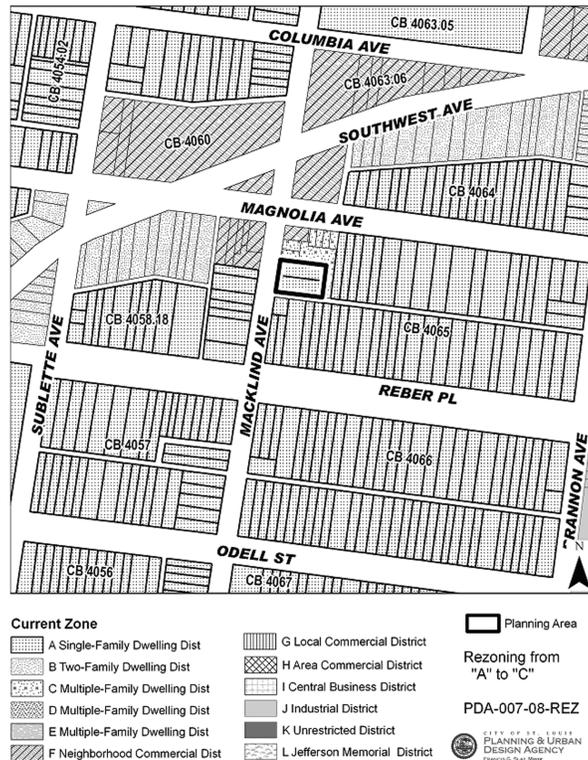
SECTION ONE. The zoning designation of certain real property located in City Block 4065 is hereby changed to the "C" Multiple-Family Dwelling District, real property being particularly described as follows:

A tract of land being part of Lots 18 & 19 of Block Six of St. Louis Heights subdivision and City Block 4065, City of St Louis, Missouri, and being more particularly described as follows.

Commencing at the southeast intersection of Macklind (60'W) Avenue & Magnolia (80'W) Avenue; thence South 08 degrees 49 minutes 42 seconds West a distance of 100.00 feet to a point being on the east right-of-way line Macklind (60'W) Avenue to the point of beginning of the herein described tract of land; thence leaving said east right-of-way line South 82 degrees 50 minutes 53 seconds East a distance of 133.14' feet to a point; thence South 06 degrees 54 minutes 47 seconds West a distance of 92.61' feet to a point being the north right-of-way line of an alley (15'W); thence continuing along said alley (15'W) North 82 degrees 50 minutes 22 seconds West a distance of 136.24' feet to a point being east right-of-way line of said Macklind (60'W) Avenue; thence continuing along said east right of way line North 08 degrees 49 minutes 42 seconds East a distance of 92.63' feet to the point of beginning and containing 12,473 square feet or 0.286 acres and being subject to deeds, easements, and restrictions of record.

SECTION 2. This ordinance being necessary for the preservation of the health, safety and welfare shall take effect and be in full force immediately upon approval by the Mayor of the City of St. Louis.

EXHIBIT A



Approved: March 3, 2008

**ORDINANCE #67903
Board Bill No. 451**

An Ordinance recommended by the Planning Commission on January 9, 2008, to change the zoning of property as indicated on the District Map, from "A" Single-Family Dwelling District to the "F" Neighborhood Commercial District, in City Block 5940 (6711 Plainview), so as to include the described tract of land in City Block 5940; and containing an emergency clause.

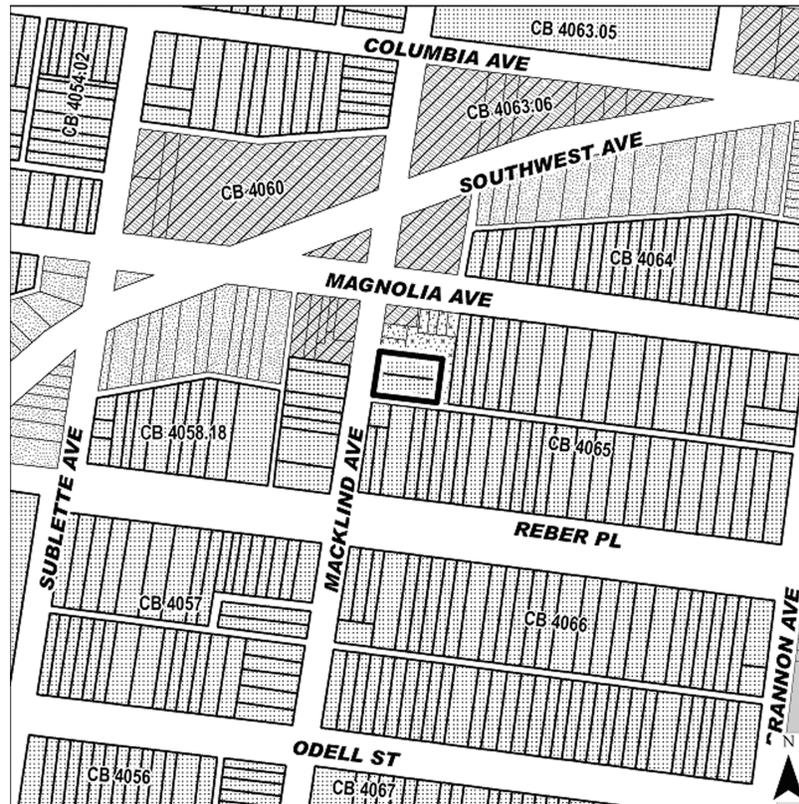
BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The zoning designation of certain real property located in City Block 5940 is hereby changed to the "F" Neighborhood Commercial District, real property being particularly described as follows:

Lot 36 in Block 7 of St. Louis Hills, and in BLOCK 5940 of the City of St. Louis, fronting 35 feet on the North line of Plainview Avenue, by a depth Northwardly of 125 feet to an alley.

SECTION 2. This ordinance being necessary for the preservation of the health, safety and welfare shall take effect and be in full force immediately upon approval by the Mayor of the City of St. Louis.

EXHIBIT A



Current Zone		Planning Area
A Single-Family Dwelling Dist	G Local Commercial District	Rezoning from "A" to "C"
B Two-Family Dwelling Dist	H Area Commercial District	
C Multiple-Family Dwelling Dist	I Central Business District	PDA-007-08-REZ
D Multiple-Family Dwelling Dist	J Industrial District	
E Multiple-Family Dwelling Dist	K Unrestricted District	 CITY OF ST. LOUIS PLANNING & URBAN DESIGN AGENCY <small>PLANNING & URBAN DESIGN AGENCY</small>
F Neighborhood Commercial Dist	L Jefferson Memorial District	

Approved: March 3, 2008

ORDINANCE #67904
Board Bill No. 466

An ordinance approving a Lease and Concession Agreement within the Gateway Transportation Center located at 430 South 15TH Street in the City of St. Louis, Missouri, authorizing certain actions by City Officials, and containing an emergency clause.

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

WHEREAS, the City has acquired and constructed the Gateway Transportation Center (the "Center") located at 430 South 15th Street to serve the public for Metro, Greyhound and AMTRAK; and

WHEREAS, the Center will be open twenty-four (24) hours per day 365 day per year; and

WHEREAS, as a part of the service to the public, the City desires to have a food concession as well as other related services at the Center, all as set forth in the attached Lease and Concession Agreement; and

WHEREAS, the City has selected Arch City Deli, LLC to be said Concessionaire under the Lease and Concession Agreement; and

WHEREAS, Arch City Deli, LLC is desirous of entering into said Lease and Concession Agreement.

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

SECTION ONE. The Lease and Concession Agreement between the City and Arch City Deli, LLC, as attached hereto and incorporated by reference herein as Exhibit A, is hereby approved.

SECTION TWO. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to execute said Lease and Concession Agreement and to take any and all actions as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

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

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

EXHIBIT A
LEASE AND CONCESSION AGREEMENT

LEASE AND CONCESSION AGREEMENT

This Lease and Concession Agreement (this "Agreement") dated the ____ day of _____, 2008 shall be effective on the Effective Date and contingent thereon, by and between the City of St. Louis, a municipal corporation organized and existing under the laws of the State of Missouri, having an address at 311 City Hall, St. Louis, Missouri 63103 ("Lessor"), and Arch City Deli, LLC, a Missouri limited liability company, having an address at 10812 St. Charles Rock Road, St. Louis, Missouri 63074 ("Concessionaire").

WITNESSETH:

WHEREAS, Lessor is the owner of the Gateway Transportation Center, located at 430 South 15th Street, St. Louis, Missouri 63103;

WHEREAS, Concessionaire's Affiliate is an experienced business provider of food, beverage and merchandise concessions;

WHEREAS, Concessionaire's Affiliate has had a long-standing business relationship in said concessions with the City of St. Louis, Lambert-St. Louis International Airport® and Lessor is willing to grant Concessionaire the rights described herein;

WHEREAS, the parties recognize that Lessor has non-exclusive contracts with Pepsi Americas for soda/beverage machines

and with Dynamic Vending for candy/snack machines, which contracts require placement of such machines in City owned locations, including the Gateway Transportation Center;

WHEREAS, the parties desire to enter into this Agreement under which Concessionaire designs and improves Concession Facilities and will purchase Concession Equipment for the Gateway Transportation Center and Concessionaire will operate such facilities thereafter.

NOW, THEREFORE, in consideration of the premises hereto and the after-stated terms and conditions, the parties agree as follows:

ARTICLE I Definitions

Access: Shall have the meaning ascribed to that term in Section 3.3.1 hereof.

Access Term: Shall have the meaning set forth in Section 3.3.2 hereof.

Additional Insureds: The City of St. Louis, its agents, servants and employees and each of their respective Affiliates, successors and assigns.

Affiliates: Any legal or natural person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with a person. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: This Lease and Concession Agreement.

Anniversary Date: The first July 1 after the Effective Date and each July 1 one year thereafter.

Annual Gross Receipts: Aggregate Gross Receipts from Concession Sales during each Year.

ATM: Automated Teller Machine.

Base Rate Rent: That amount determined by the parties based on the previous Year's Percentage Rent.

Capital Expenditure: That amount initially spent by Concessionaire for the Concession Improvements.

Casualty Event: An act of God, accident, fire, earthquake, flood or other casualty resulting in: (i) damage which causes the Center to be irreparably damaged or uneconomical to repair or rebuild in the reasonable opinion of an officer of the Lessor, (ii) damage to the Center that results in an insurance settlement with respect thereto on the basis of a total loss, or an agreed compromised total loss, (iii) the actual or constructive loss of all or substantially all of the Center (it being agreed that any loss, casualty or damage that results in a decrease of the value of the Center by more than fifty (50)% is a loss of substantially all of the Center), or (iv) damage or loss that causes the Center to be unusable for more than twelve (12) consecutive months.

Center: The Gateway Transportation Center.

City: The City of St. Louis or Lessor.

Commencement Date: Date of permit through Lessor's Board of Public Service.

Common Areas: All loading docks and facilities, elevators, common passage areas, restrooms, and other common areas of the Center, and appurtenant easement and access areas thereto to the extent necessary for Concessionaire's use of the Concession Facilities for the purposes set forth herein. The use by Concessionaire of Common Areas shall be subject to all Laws and any reasonable rules and regulations established by Lessor from time to time, including scheduling rules and regulations.

Conceptual Drawings: Certain food and beverage service equipment layout drawings (with applicable utility specifications for such equipment) for the Concession Facilities and Concession Improvements at the Center. The Conceptual Drawings shall include, without limitation, a complete list of Concession Equipment.

Concession Equipment: All equipment used by Concessionaire from time to time in providing for the preparation, display, sale and consumption of Concession Sales not attached to the Concession Facilities or Concession Improvements.

Concession Facilities: Approximately 1,700 square feet of interior space as set forth in the building plans, as shown on Exhibit A. This includes spaces P132, P133, P134 and a storage facility located on the lower level.

Concession Improvements: All improvements now or hereafter constructed for the Concession Facilities including but not limited to, as applicable: all demising walls, doors, lock sets and doorways; flooring, floor finishes and coverings; walls and wall finishes and coverings; dropped ceiling grids and tiles, soffits, roll down security grills and security enclosure gates; general lighting;

all exterior and interior finishes; back counters; cash wraps and associated cases; display lighting; all bar and bar dyes and mill work; signage and graphics; and all necessary and adequate Utility Systems for the Concession Facilities and all improvements attached to the Concession Facilities for the Concession Sales.

Concession Sales: All sales from the Concession Facilities at the Center.

Concessionaire: Arch City Deli, LLC.

Concessionaire's Aggregate Investment Amortization: The parties assume that Concessionaire will expend prior to the Anniversary Date in excess of \$500,000 for Capital Expenditures. Assuming an expenditure of at least \$500,000, during the first ten (10) years of the Primary Term, Concessionaire will be allowed to amortize up to fifty percent (50%) of its Capital Expenditures in an amount not to exceed a total of \$100,000 using straight line depreciation in equal monthly amounts without interest or no more than \$416.67 per month. Further, assuming an expenditure of at least \$500,000, during the Primary Term, Concessionaire will be allowed to amortize up to fifty percent (50%) of its Capital Expenditures in an amount not to exceed a total of \$400,000 using straight line depreciation in equal monthly amounts without interest or no more than \$833.33 per month. In the event Concessionaire expends less than \$500,000, the amortization shall be reduced pro rata accordingly.

By way of hypothetical examples: In year five of the Primary Term, assuming Concessionaire has expended \$510,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$416.67 plus \$833.33 or \$1,250.00 per month because the limit on the Capital Expenditures is \$500,000.

In year five of the Primary Term, assuming Concessionaire has expended \$400,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$999.99 because Concessionaire expended 80% of the \$500,000 maximum, or 80% of the first \$100,000 or 80% of \$416.67 which is \$333.33 and 80% of \$500,000 (same being \$100,000 plus \$400,000 in Capital Expenditures) or \$666.66 (which is 80% of \$833.33) per month.

In year fifteen of the Primary Term, assuming Concessionaire has expended \$510,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$833.33 because the amortization for the first \$100,000 expired after the first ten (10) years.

In year fifteen of the Primary Term, assuming Concessionaire has expended \$400,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$666.66 or 80% of \$500,000 or 80% of \$833.33 per month.

Effective Date: Date of Access prior to the Anniversary Date or the date of Concessionaire's opening to the public for business or the date of an ordinance authorizing the Agreement, whichever is later.

Entire Taking: Shall have the meaning stated in Section 12.1 hereof.
Exclusive Service Rights' Sales: Those sales from rights other than Shared Service Rights and including sales of Prepared Food, Newspapers, ATM, Retail Sales, amusements, video games and Sundries.

First-Class Condition: A condition comparable to that of similar city train and bus facilities of the same age consistently and properly maintained in accordance with best practices.

Force Majeure: Any Casualty Event, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, terrorist act, material shortage, strike, boycott or labor dispute not limited to the Concessionaire, appropriation or rationing, court or judicial order, or any other event or occurrence beyond the reasonable control of a party hereto.

Future Rents: Shall have the meaning stated in Section 9.4(c) hereof.

GAAP: Generally accepted accounting principles, consistently applied.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental or quasi-governmental unit (federal, state, county, district or municipal), whether now or hereafter in existence.

Gross Receipts: The total amounts received by Concessionaire from operations conducted at the Concession Facilities hereunder whether such sales be evidenced by cash, check, credit or debit, charge account or otherwise and shall include the amounts received from the Concession Sales, less only:

- (1) Any Sales Taxes paid in connection with such sales to the appropriate Governmental Authority;
- (2) That portion of credit card service charges, charged by any bank designated by Concessionaire to process credit card transactions;
- (3) Gratuities payable directly to Concessionaire's servers;
- (4) Any reduced price sales with a discount of more than thirty-five (35%) made to the general public and approved by Lessor's Asset Manager;

- (5) Meals consumed by Concessionaire's on-duty personnel without charge (or at a reduced price) to such personnel;
- (6) Receipts from customers related to returns;
- (7) Manufacturers' and/or distributors' rebates and awards;
- (8) Franchise and Royalty fees.

Hazardous Substance: Substances that are defined or listed in, or otherwise classified pursuant to, any applicable Law (or other enforceable criteria and guidelines promulgated pursuant thereto) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," "pollutants," "contaminants," "radioactive material," "petroleum" or any fraction thereof or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity or "EP toxicity," and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

Indemnitees: Additional Insured.

Law: All applicable federal, state and local laws, statutes, rules, regulations, Charter of the City of St. Louis, ordinances, decrees, rulings, codes, permits, certificates and licenses issued by any Governmental Authority, including but not limited to ADA, OSHA and all relevant building, safety, health and sanitation codes.

Lessor: The City of St. Louis or City.

Lessor's Contractor: K & S Associates.

Newspapers: All daily or weekly newsprints.

Occupancy Taxes: Any tax on rental payments or an ad valorem tax imposed assessed or levied by the State of Missouri or the City of St. Louis on or with respect to Concessionaire's rights and interests created by this Agreement including, but not limited to, Concessionaire's rights of occupancy and use of the Concession Facilities.

Option Terms: Shall have the meaning as set forth in 3.3.4.

Percentage Rents: Shall have the meaning as set forth in 5.1.

Person: Shall mean any natural person, individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity, whether acting in an individual, fiduciary or other capacity.

Prepared Food. Food made within the Center or off site for sale at the Concession Facilities including canned, bottled or fountain soda and other beverages; all sold over the counter or in vending machines.

Primary Term: Shall have the meaning set forth in Section 3.3.3 hereof.

Rent or Rental Payments: All Percentage Rents payable under Article V of this Agreement.

Retail Sales: Any and all merchandise offered for sale at the Concession Facilities within the Center, including without limitation, novelties, toys, souvenirs, clothing, garments, and accessories and such other appropriate merchandise sold at other city train and bus facilities.

Sales Taxes: Tax on sales, excise taxes, value-added taxes or similar charges, assessed against and payable by the Concessionaire or related to its operations hereunder at the Center.

Shared Service Rights' Sales: Those sales from equal (as reasonably determined by the Lessor's Asset Manager), non-exclusive rights in common with Concessionaire and Pepsi Americas under a Contract dated September 1, 2007 attached hereto as Exhibit 1 for the following products in Vending Machines: cans, bottles, energy beverages, juices, and milk and with Concessionaire and Dynamic Vending under a Contract dated March 1, 2007 attached hereto as Exhibit 2 for the following products in Vending Machines: name brand candy, gum and mints, chips, and other snacks, and pastries.

Substantial Completion: Means the Work (or separable units or phases thereof, as applicable) essentially and satisfactorily complete, such that the Center is ready for public use or use by Concessionaire. For purposes of this definition, specified phases or areas of the entire Work or Center may be individually judged as substantially complete.

Sundries: Miscellaneous items, e.g. aspirin, antacids, cough drops, etc.

Term. Shall have the meaning set forth in Section 3.3.2, 3.3.3 and 3.3.4.

Utility Systems: Any water, sewage (including but not limited to all permit fees and tap fees), gas, plumbing and general

lighting, electrical service, sprinkler and fire safety, telephone and telecommunication and security facilities (including telephone and telecommunications equipment), piping (including storm and waste drains and all lines, drops and heads for sprinklers), ductwork, grease extraction ductwork, conduit, wiring (including all electrical panel boards and transformers), outlets and connections and mechanicals (as applicable); heating, ventilating, and air conditioning equipment, ductwork, fans and electrical components; all applicable elevators and escalators; and all chases and drains, and electrical lines related thereto. "Utility Services" shall mean the full and unimpeded use of the foregoing Utility Systems for their intended purpose. As used herein, water shall mean water fit for human consumption and in compliance with all applicable laws, rules, regulations and orders.

Vending Machine: any machine used to dispense services, whether under Exclusive Services Rights or Shared Service Rights.

Work: The construction and other services required to complete the Center, including but not limited to all labor, materials, equipment and services provided or to be provided.

Year: The twelve month period beginning on the Anniversary Date which shall terminate after 365 days.

ARTICLE II Development of Center Concession Facilities

2.1 Lessor's Contractor's Responsibilities.

2.1.1 Concessionaire will be responsible for causing, at its sole cost and expense, the construction of all Concession Facilities and all Concession Improvements related thereto substantially in accordance with the Conceptual Drawings.

2.1.2 Lessor and Lessor's Contractor shall be responsible for causing, at its sole cost and expense, the construction of all Utility Systems including:

- (a) all welded ductwork and fans for the exhaust hoods;
- (b) all wiring/data lines, and conduit for point of sale devices;
- (c) all phone wiring, conduit, telephone sets and associated switches/gear for all telecommunications;
- (d) any and all applicable utilities to each piece of Concession Equipment (e.g., electrical, hot/cold water supply, waste lines, floor drains, gas lines, manifolds, and shut off valves) provided that Concessionaire shall be responsible for final connections of the applicable utilities to the Concession Equipment;
- (e) obtaining all permit fees and tap fees.

2.2 Concessionaire's Responsibilities.

2.2.1 In addition to all other requirements imposed by Law, Concessionaire will be responsible, at its sole cost and expense, for the Conceptual Drawings of the Concession Facilities. Prior to Concessionaire's commencement of Concession Improvements, the Conceptual Drawings which reflect such design of the Concession Facilities shall be submitted to Lessor's Board of Public Service for review and approval, which shall be approved within seven (7) days of receipt and which approval shall not be unreasonable withheld. Concessionaire shall identify in the Conceptual Drawings all Concession Improvements required to be installed. If not approved, Lessor's Board of Public Service shall promptly make or cause to be made any revisions to the Conceptual Drawings. Concessionaire and Lessor's Board of Public Service shall agree to the revisions within seven (7) days thereafter.

2.2.2 Concessionaire will also be responsible, at its sole cost and expense, for purchasing, unloading, operating, assembly and setting in place all Concession Equipment (including all governmental approvals, licenses or permits necessary to perform such work and operate the Concession Facilities hereunder), which shall be completed at or near the time of the Center's opening.

Concessionaire shall use reasonable commercial efforts to work with Lessor's Contractor's schedule with respect to Concessionaire's installation of concession stand counters and other items requiring installation. Concessionaire shall be solely responsible for the purchase of the Concession Equipment and all delivery, installation and connecting procedures for the Concession Equipment at its sole cost and expense. As part of the foregoing, Concessionaire shall provide all exhaust hoods required for its cooking equipment. Such hoods will include a control system, fire protection system and the installation costs associated therewith. All work performed by Concessionaire and/or its contractors pursuant to this Section 2.2.2 shall be done in a manner to promote a harmonious job site at all times during the construction of the Center, Concession Facilities and the Concession Improvements, including without limitation, the obligation to abide by any applicable project labor agreement and the use of the classifications of workers specified for specific work as delineated in such agreement.

Prior to the Effective Date, the Lessor and Lessor's Contractor shall be responsible for arranging for the security of the Center against theft and/or vandalism and for reimbursing Concessionaire for any losses or damages to any Concession

Improvements. Following the Effective Date, Concessionaire shall be responsible for securing the Concession Facilities.

2.2.3 Concessionaire agrees to indemnify, defend, save, and hold harmless the Indemnitees from and against all suits and claims that arise out of or relate to the Conceptual Drawings or the Concession Facilities or the Concession Improvements or the Concession Equipment. In any such event, Concessionaire, at its own cost and expense, shall pay all reasonable charges of attorneys and all costs and other expenses arising therefrom or incurred by the Indemnitees in connection therewith. The foregoing indemnity shall not apply if and to the extent the same shall be ultimately determined to have arisen out of the negligence or intentional action of one of the Indemnitees. To secure its ability to perform the foregoing indemnity, Concessionaire further agrees to carry and maintain insurance reasonably satisfactory to Lessor. The terms and conditions of such insurance shall be in accordance with the provisions of Sections 7.1 and 7.3 hereof.

2.3 Compliance.

All of the foregoing developmental work to be performed by either party shall be completed in accordance with Law and the resultant Concession Facilities, Concession Improvements, and Concession Equipment shall be in compliance with Law.

ARTICLE III
Grant of Operating Rights, Leasehold Interest and Term

3.1 Scope of Operating Rights.

3.1.1 Concessionaire is hereby granted Exclusive Service Rights' Sales and Shared Service Rights' Sales within the Concession Facilities at the Center. Notwithstanding, with respect to the latter, it is expressly understood by the parties that Lessor is bound by a Contract dated September 2, 2007 with Pepsi Americas and by a Contract dated March 1, 2007 with Dynamic Vending. It is the parties intent that there shall be at least one (1) Vending Machine from each Pepsi Americas and Dynamic Vending for the equivalent of two (2) comparable Vending Machines from Concessionaire.

3.2 Lease of Facilities.

3.2.1 In conjunction with the exercise of the above-described rights, Lessor hereby leases to Concessionaire for its use from and after the Effective Date, the Concession Facilities. Lessor warrants and covenants that as long as Concessionaire has performed its obligations hereunder, Concessionaire shall and may peacefully and quietly have, hold operate and enjoy the Concession Facilities for the purposes provided herein. Concessionaire shall also have the non-exclusive right to use all Common Areas of the Center as determined by Lessor's Asset Manager for the purposes provided herein and as necessary during the Term.

3.2.2 Lessor shall have the right to use public areas of the Concession Facilities for meetings. For any such meetings, Lessor will not permit the service of food by any other than Concessionaire. Lessor and its designated agents reserve the right of access to all areas leased to Concessionaire hereunder for purposes of maintaining and repairing the Center, and all improvements therein or thereon and all Utility Systems related thereto.

3.2.3 At all times during the Term, Lessor by and through its employees, agents, representatives and others that it may approve, shall have a right of access to all portions of all of the Concession Facilities, for the purposes of inspecting their condition, examining Concessionaire's performance of its obligations under this Agreement (including inspection of products being sold and distributed by Concessionaire), and any other purpose Lessor deems appropriate. Lessor shall use reasonable efforts to have a representative of Concessionaire's management present during such inspections in order to minimize any interference with Concessionaire's operations as a result of these activities.

3.2.4 Lessor may relocate and/or modify the Concession Facilities to the extent deemed necessary or appropriate by Lessor for the benefit of its operations in the Center; provided, however, that Lessor shall provide replacement areas with floor space not less than that contained in the Concession Facilities prior to such relocation or modification and all costs of relocation and preparation of such replacement Concession Facilities for operation shall be borne by Lessor. Lessor shall use reasonable efforts to locate any such new Concession Facilities in portions of the Center that are in a First-Class Condition and are otherwise comparable to the areas being replaced, as long as these locations are consistent with Lessor's overall plans and concepts for the design and operation of the Center. In the event that Concessionaire determines that the Concession Facilities are not reasonably acceptable, Concessionaire may terminate this Agreement.

3.3 Term.

3.3.1 Access Prior to Substantial Completion. Lessor agrees that Access to the Concession Facilities has been delivered to Concessionaire prior to Substantial Completion and on the Commencement Date by permit through Lessor's Board of Public Service. Notwithstanding the foregoing, any obligation of Lessor to deliver Access to the Concession Facilities to Concessionaire shall be subject to the requirements of all applicable Laws, occupancy or other permits, safety and other similar requirements, contractual requirements, any delays arising by reason of Force Majeure, or any other delays in construction of and/or obtaining occupancy permits for the Center, and Lessor shall not be liable to Concessionaire for any damages resulting from any delay in the delivery of Access to Concessionaire. For purposes of this Agreement, the term "Access" shall mean the delivery to Concessionaire of securable Concession Facilities (subject to any restrictions imposed by applicable Laws due to Concessionaire's access to any Concession Facilities prior to Substantial Completion) within the applicable areas set forth above for its use and operation hereunder and any and all keys to access the same. Concessionaire acknowledges that it will have Access to areas of the

Center prior to Substantial Completion and prior to obtaining temporary certificates of occupancy, and Concessionaire hereby agrees to allow Lessor's Contractor and its agents and representatives access to such areas until Substantial Completion of the Center.

3.3.2 Access Term. The parties agree that Concessionaire may have Access to the Concession Facilities after the Effective Date under this Agreement.

3.3.3 Primary Term. The Primary Term of this Agreement shall commence on the first Anniversary Date and shall continue for twenty (20) years, unless otherwise terminated earlier pursuant to this Agreement.

3.3.4 Option Term. Concessionaire shall have two five (5) year option terms to extend the Primary Term by giving written notice of its intent to do so to Lessor's Comptroller at least sixty (60) days prior to the end of the then term, as applicable, unless waived.

**ARTICLE IV
Operating Responsibility**

4.1 Center Availability. Commencing on the Effective Date and thereafter, during each year of the Term hereof, Lessor shall use its best efforts to ensure that the Center is open twenty-four (24) hours per day, seven (7) days per week, year round. In no event shall such failure be considered a Force Majeure hereunder.

4.2 Utilities. Lessor will furnish Concessionaire with the connections to use all Utility Systems and services related thereto without charge. Concessionaire shall be responsible for all costs for the use of Utility Systems and services of its own telephone service and telecommunication service charges.

4.3 Maintenance. Except as otherwise provided herein, Concessionaire shall be responsible for maintenance and repair of all Utility Systems needed for the operation of the Concession Facilities in a First Class Condition. Lessor shall be responsible for maintenance and repair of all load-bearing structures within or about the Concession Facilities and for exterior sides of any demising walls thereof, except as repairs are necessary due to the negligence or intentional acts of Concessionaire or its employees, agents, or subcontractors (all of which Concessionaire shall repair). Concessionaire shall be responsible for the maintenance and repair, in a First Class Condition, of (a) all other components of the Concession Facilities, including, without limitation, the interior sides of all demising walls and interior walls, floors and ceilings (but not roofing), counters, and signage, (b) all Concession Equipment, (c) all beverage lines and towers, and (d) all Utility Systems to the extent that they are within or are dedicated solely to the Concession Facilities. Concessionaire will perform all preventive maintenance procedures as specified by the manufacturer(s).

4.4 Access. Lessor shall provide Concessionaire's personnel with the nonexclusive rights with ready ingress and egress to and from the Center for delivery of required goods and services. Concessionaire's personnel working at the Center shall be entitled to parking on regular business days at a specific location in the parking lot designated by Lessor's Treasurer and at such costs as Lessor's Treasurer shall determine.

4.5 Security. Lessor shall be fully responsible, at its sole cost and expense, for providing all necessary security forces at the Center and/or to fulfill requirements of any Governmental Authority.

4.6 Third Party Vendors. Except as permitted pursuant to Section 3.2.1, vendors, peddlers or persons other than Concessionaire's employees, shall not be permitted to vend, otherwise sell, or distribute any Refreshments or Merchandise in the Center and Lessor shall at all times see to their dispersal to the extent Lessor can legally do so. Lessor further agrees that in keeping with exclusivity of Concessionaire's rights hereunder, neither Lessor nor its employees will sell any Refreshments or Merchandise.

**ARTICLE V
Rents and Financial Reports**

5.1 Percentage Rents.

5.1.1 Concessionaire shall pay to Lessor the following "Percentage Rents" commencing on the Effective Date:

With respect to Gross Receipts from Concession Sales

0 - \$700,000 in Annual Gross Receipts in a Year	7%
\$700,000 to \$800,000 in Annual Gross Receipts in a Year	8%
\$800,000 to \$900,000 in Annual Gross Receipts in a Year	9%
Excess over \$900,000 in Annual Gross Receipts in a Year	10%

Notwithstanding, during the Primary Term Concessionaire shall be allowed to amortize the Concessionaire's Aggregate Investment as described in Article I.

Concessionaire shall pay prospectively the Base Rate Rent. Additionally, within twenty (20) days after the end of each Year, Concessionaire shall become current in the Percentage Rent for the previous Year or Concessionaire shall receive credit to the

Base Rent.

5.1.2 Concessionaire will pay the foregoing Base Rate Rents to Lessor on a monthly basis, with such payments to be payable by wire transfer of immediately available funds or check deliverable by Concessionaire on or before the 20th of the following month. In the event of late payment, Concessionaire agrees to pay Lessor interest on the amount due at the rate of 1.5% per month.

5.2 Records, Accounting and Audit.

(a) Concessionaire will keep at its headquarters in St. Louis, Missouri or at the Center adequate and accurate accounting books and records prepared in accordance with GAAP of all business and transactions conducted under this Agreement, said records to include without limitation the daily receipts, the daily bank deposits, the daily sales and business done by Concessionaire. Such records will be maintained at Concessionaire's headquarters in St. Louis, Missouri or in the Center for any Year of operations hereunder for five (5) years following completion of operations for such Year. Concessionaire shall preserve and make available for audit and examination by Lessor and its agents all of such records.

(b) Concessionaire shall maintain such accounting records on a Year basis.

(c) Throughout the Term of this Agreement, Concessionaire shall submit to Lessor, within ninety (90) days after the end of each Year, a Report of all Gross Receipts (by tiers described in Section 5.1.1) for the prior Year certified by an independent certified public accountant.

(d) In the event that Lessor is not satisfied with the statements presented therein, Lessor shall have the right, from time to time at its election, to conduct an audit of the Concessionaire's books and records related to its Gross Receipts, by auditors selected by Lessor, provided he/she does so within six (6) months following receipt of any applicable financial statement. Should such audit(s) uncover a deficiency or deficiencies in payments to Lessor for any period covered, Concessionaire shall pay to Lessor the amount of such payment deficiency within twenty (20) days following receipt of the audit report. In the event of any such deficiency, the provisions hereof shall not be the exclusive remedy of the Lessor, which shall have all remedies available to it at law and in equity. If such payment deficiency is in excess of one percent of the aggregate amount reported, the cost of the audit shall be immediately due and payable by Concessionaire.

(e) In addition, Concessionaire must submit, in a form reasonably acceptable to Lessor, a monthly summary showing Gross Receipts and Percentage Rent payable therefor on or before the 20th day of the following month.

(f) Concessionaire will not permit any of its employees to make change from pockets of clothing, boxes or containers in the Concession Facilities.

ARTICLE VI
Operating Duties of Concessionaire

6.1 Management of Operations.

(a) Concessionaire agrees to manage and operate all of its operations in a professional manner to ensure that it will maintain consistent, prompt and courteous service to the public. Concessionaire will further manage all of its operations at the Center in accordance with best practices utilized by concessionaires in a First Class Condition of then similar age, condition and type, subject to any limitations or physical restraints imposed by the Center on the Concession Facilities or Concession Equipment. Concessionaire shall at all times maintain a sufficient number of qualified personnel at the Center for the performance of Concessionaire's obligations under this Agreement. Concessionaire's on-site general manager shall attend meetings to be scheduled by Lessor at the Center from time to time during the Term, to review concession operations at the Center or on the Site and will implement Lessor's reasonable recommendations and directives for improving such operations.

(b) Concessionaire will pay promptly all authorized bills, payroll and other expenses incurred in connection with its operations and pursuant to this Agreement.

(c) Concessionaire shall pay when due all license fees, taxes, Sales Taxes and employee costs on the products or services which Concessionaire provides hereunder, including but not limited to all federal, state and local taxes, workers' compensation payments, social security payments, unemployment insurance, payroll and other taxes with respect to products or services provided under this Agreement and all other taxes arising from Concessionaire's operations hereunder.

(d) Concessionaire will provide all necessary working capital and perishable and non-durable inventory required for its operation including, but not limited to, Refreshments and paper products.

(e) Concessionaire will comply with Center operating policies and directives established upon opening of the Center and as modified from time to time by Lessor; provided, nothing herein shall be construed as changing any of the financial terms and conditions of this Agreement. Concessionaire will also comply with Laws and directives as the same may be modified from time to time.

6.2 Personnel.

(a) Concessionaire will hire, train and supervise, discipline and, if need be, dismiss any and all persons necessary to operate its business in accordance with the terms of this Agreement and will use its best efforts to assure that its employees continually practice high standards of cleanliness, safety, courtesy and service customarily followed in the conduct of a first-class concession operation. Such individuals shall be solely and exclusively employees of Concessionaire, be subject to appearance standards mutually acceptable to the parties hereto, and shall wear, at all times while working at the Center or on the Site, neat and clean clothing. Such clothing shall be of a design generally approved by Lessor's Asset Manager. All employees shall be instructed to obey Lessor's rules and regulations, if any, and that failure to do so may lead to disciplinary actions including but not limited to discharge. Lessor shall have the right at any time, in the reasonable exercise of its discretion, to object to any and all employees of Concessionaire in the Center. Upon such reasonable objection, any such individuals shall be immediately removed from their positions at the Center on a temporary basis, pending results of investigation. Thereafter, Concessionaire shall be permitted a reasonable period to complete a thorough and prompt investigation, diligently prosecuted, of the circumstances of such an objection to the extent reasonably necessary to determine whether such removal would comply with any applicable Law or collective bargaining agreement. If, as a result of such investigation, Concessionaire determines, in its reasonable judgment, that such removal is justified and would not violate any applicable Law or any collective bargaining agreement, Concessionaire shall permanently remove such employee from employment at the Center or on the Site. To the extent that Concessionaire determines, in its reasonable judgment, that such removal would violate any applicable Law or any collective bargaining agreement, Concessionaire and Lessor shall develop alternative methods of resolving the issue. Concessionaire must maintain accurate records of the names, addresses and other legal identification of employees.

(b) The foregoing notwithstanding, Lessor's right to require replacement of a Concessionaire employee, and Concessionaire's obligation to comply with any such requests shall be subject to restrictions imposed upon Concessionaire by any applicable federal, state or local statute, law, code, regulation or ordinance or by any applicable collective bargaining agreement.

(c) Concessionaire shall prepare training programs for all of its employees working in the Center. The training programs will be mandatory for all employees. Concessionaire shall be prepared to conduct additional training sessions from time-to-time to address new policies and procedures or to address poor performance of specific employees.

(d) In performing its obligations under this Agreement, Concessionaire shall comply with all applicable Law. Without limiting the generality of the foregoing, Concessionaire will (i) not discriminate against any employee or applicant for employment on any basis prohibited by law, (ii) provide equal opportunity in all employment practices, (iii) comply with the provisions of the City of St. Louis Equal Opportunity and Non-Discrimination Guidelines, including Executive Order #28 dated July 24, 1997, as amended, setting a goal of twenty-five percent (25%) minority-owned business participation and five percent (5%) for women-owned business participation, (iv) comply with all other applicable federal, state and local laws and executive orders regarding contracting, hiring and employment, and (v) permit Lessor to monitor and review compliance with the equal opportunity provision contained herein.

6.3 Licenses and Permits.

Concessionaire shall obtain, and maintain in force during the Term of this Agreement, all food and other licenses and permits and renewals thereof necessary to sell Refreshments at the Center and to otherwise operate as required hereunder. Concessionaire shall pay all fees and taxes which may be due and owing, from time to time, to federal, state or municipal authorities incidental to its operations hereunder. Concessionaire shall furnish Lessor with copies of such licenses and permits and renewals thereof as are physically maintained at the Center, as applicable, and all other licenses or permits requested. Lessor agrees to cooperate with Concessionaire in connection with applications submitted by Concessionaire for any and all licenses and permits and renewals thereof.

6.4 Compliance with Laws, Policies and Programs.

In connection with the sales hereunder, Concessionaire shall in good faith comply and faithfully observe all Laws, as well as all rules, regulations or policies.

6.5 Proceedings Involving Licenses and Permits.

Concessionaire shall advise Lessor in writing of any pending or threatened actions against Concessionaire, whether by governmental authorities or otherwise, which seek, or could result in, the suspension or revocation of any license or permit necessary for its performance of this Agreement.

6.6 Hours of Operation.

Subject to approval by Lessor's Asset Manager, Concessionaire will be open twenty-four (24) hours per day, seven (7) days per week, yearly.

6.7 Maintenance and Refuse.

(a) Concessionaire at its sole cost and expense will maintain, repair, and if necessary, replace all Concession Improvements and Concession Equipment, and clean the grease interceptors and stove hoods at regular scheduled

intervals using designated repair techniques to protect warranties and comply with supplier agreements.

(b) Subject to Lessor's maintenance and repair obligations hereunder, Concessionaire shall keep the Concession Facilities neat and clean and shall maintain the Concession Facilities in First-Class Condition, including without limitation, all piping for grease traps, sewage and other drains, ordinary wear and tear excepted. Concessionaire will comply with all requirements and reasonable recommendations of insurance companies providing coverage applicable to the Center. Concessionaire will not permit its employees to dispose of or discharge waste, garbage or refuse in any area in or outside the Center other than in areas specifically designated therefor. In addition, Concessionaire shall be responsible for cleaning the Concession Facilities. Concessionaire agrees to bag all trash from all its operations. Concessionaire agrees to dispose of the bagged trash in garbage receptacles provided for by the Lessor. The cost of disposing the trash and maintaining the trash receptacles will be the responsibility of Lessor. Lessor will determine the location of the trash receptacles. Concessionaire will not pile trash around the outside of the garbage receptacles or overfill them in such a manner as to cause trash to spill or fall out of the garbage receptacles during transport.

(c) Each party agrees not to use Hazardous Substances at the Center or on the Site, except in accordance with applicable law and agrees to indemnify, defend and hold the other party harmless for all losses, costs, damages, liabilities and expenses arising out of its use, generation or storage of Hazardous Substances at the Center.

(d) Concessionaire shall engage the services of an exterminator to control vermin and pests within its Concession Facilities as necessary at Concessionaire's sole cost and expense. Lessor shall cause the remainder of the Center to be serviced by an exterminator.

(e) Lessor shall not be liable or responsible for the condition or safekeeping of any goods, products, inventory or equipment stored by or on behalf of Concessionaire at the Center, nor will Lessor be responsible for consequential, economic or property damage or loss resulting from power failures, flood, fire, explosion and/or other causes unless such damage is caused solely and directly by the proven negligence of Lessor.

(f) Lessor shall have the right to conduct periodic inventories of Concession Equipment. Lessor shall have the right, but not the obligation to do any clean up or repair which needs to be done based on failure of the Concessionaire to comply with the terms hereof, and the Concessionaire shall repay the Lessor for all costs incurred by Lessor in connection therewith.

6.8 Deliveries.

All deliveries by Concessionaire at the Center shall be made through loading docks or at a gate or gates designated by Lessor's Asset Manager. Concessionaire shall use reasonable efforts as directed, to prevent the entry of any unauthorized persons into the Center through such docks or gate or gates when open for purpose of such deliveries.

6.9 Mechanics Lien.

Concessionaire shall at all times protect and keep the Concession Facilities, Concession Improvements, and Concession Equipment free and clear of all mechanics and other liens, attachments, encumbrances, or claims arising out of Concessionaire's operations hereunder, its performance under this Agreement and/or its use of the foregoing. In the event any such lien is placed, or such encumbrances created, Concessionaire shall cause any such liens to be promptly removed, and if necessary, shall provide any such lien holder with a performance bond or other reasonable security.

6.10 Products and Prices.

(a) Concessionaire agrees that it will have available at all times sufficient quantities and varieties of products for its Exclusive Rights' Sales and Shared Services Rights' Sales. Prices, portions, product selection, and specific brands shall be subject to Lessor's prior approval, which shall not be unreasonably withheld, but only if such exceeds ten (10%) of the retail price, provided that same are generally comparable to those appearing in First Class Conditions in other city transportation centers of similar size and nature. Concessionaire will post menus, with prices, in conspicuous places within or adjacent to the Concession Facilities.

(b) All beverage products will be served only plastic bottles, cans or paper containers with caps. Beverage products shall not be served in glass bottles.

6.11 Products.

Lessor shall have the right to require Concessionaire to use reasonable commercial efforts to take innovative action to increase sales and/or improve customer satisfaction, provided that pricing offered Concessionaire is comparable to First Class Conditions of vendors of like kind products.

6.12 Altering Facilities.

Concessionaire shall not alter, add to or in any way vary the Concession Facilities or Concession Improvements or make any material alterations or installations without having first obtained the consent in writing of Lessor' Board of Public Service. All alterations and installation shall conform to and be made in accordance with all applicable rules and regulations, laws, ordinances

and regulations using first quality materials and workmanship. Upon approval by Lessor, Concessionaire may alter or improve the Concession Facilities or Concession Improvements provided that such alterations or improvements are conducted at a time such as to minimize interference with Concessionaire's operations.

6.13 Advertising Restrictions.

Concessionaire shall not advertise in any manner other than as approved by Lessor, in its sole discretion, and Concessionaire shall have no right to use the trademarks, symbols or trade name or name of Lessor, directly or indirectly, in connection with any production, promotion, service or publication without the prior written approval of Lessor's Asset Manager.

**ARTICLE VII
Indemnification and Insurance**

7.1 Waiver of Subrogation Rights.

Notwithstanding any other provision of this Agreement, it is expressly agreed that neither Lessor nor Concessionaire shall be liable to the other, and each such party hereto hereby releases and waives all claims, rights of recovery, and causes of action that either such party or any party claiming by, through or under such party, by subrogation or otherwise, may now or hereafter have against the other party or any of the other party's directors, officers, employees, or agents for any loss or damage that may occur to the Center and/or any and all improvements to either of the foregoing, the Concession Facilities and/or the Concession Equipment, any of the contents of any of the foregoing, or for any interruption in the business of either of them, if sustained by reason of fire (even if such fire is the result of the negligence or gross negligence of either of the parties hereto or any one or more of their directors, officers, employees or agents), or if sustained by reason of storm damage or the elements, or by any other casualty to the extent that such loss or damage is of a type that is, by its nature, recoverable by insurance (including any deductible), regardless of whether any policy is actually in effect. Each of the parties hereto shall cause their respective insurance carriers to include provisions in all applicable policies authorizing the waiver of any rights by way of subrogation each might have against the other parties and against the Additional Insureds.

7.2 Indemnification.

Concessionaire agrees to indemnify, defend, save, and hold harmless the Indemnitees from and against all suits and claims that may be based on any injury or alleged injury to any person (including death) or to the property of any person not a party hereto, that may arise, or that may be alleged to have arisen out of the negligence or intentional action of Concessionaire or that of its officers, directors, employees, servants, or agents. In any such event, Concessionaire, at its own cost and expense, shall pay all reasonable charges of attorneys and all costs and other expenses arising therefrom or incurred by the Indemnitees in connection therewith. The foregoing indemnity shall not apply with respect to any injuries which may be alleged to have arisen out of the negligence or intentional action of Concessionaire if and to the extent the same shall be ultimately determined to have arisen out of the negligence or intentional action of one of the Indemnitees.

7.3 Concessionaire's Insurance.

(a) Prior to commencing any activity pursuant to this Agreement, Concessionaire shall obtain and thereafter continue to maintain the following insurance coverages, which coverage limits may be increased by the Lessor's Comptroller from time to time:

(i) Type of Insurance	Liability Limits
1. Workers Compensation	Statutory
2. Employer's Liability	\$1,000,000 each occurrence \$1,000,000 disease policy limit \$1,000,000 each employee
3. Commercial Automobile Liability*	\$1,000,000 CSL each occurrence
4. Commercial General Liability ** including Contractual, Liquor, Liability, and Products Liability, and Personal Injury	\$1,000,000 each occurrence General Aggregate
5. Property/Casualty	Full replacement Cost of Concession Equipment, inventory supplies, etc.

(ii) Notes

* Commercial auto liability includes the owned, non-owned and hired auto hazards.

** Commercial general liability does not exclude explosion, collapse, nor the products and completed operations hazards, and

includes broad form property damage. Contractual liability applies to the hold-harmless provisions of this Agreement, as well as any liability assumed in Tenant's agreements the insured makes in connection with insured operations.

** Products Personal Injury liability coverage shall include coverage for all consumable items sold under this Agreement.

(b) Concessionaire shall deliver to Lessor at least three (3) days prior to the first date of Access to any portion of the Center or Site hereunder, and then at least thirty (30) days prior to the expiration date of any then existing policies in the future during the Primary Term and any Option Terms hereof, a certificate or certificates evidencing that such insurance coverages are in effect. All policies shall contain a clause providing in substance that such policies shall not be cancelled or any material provisions thereof amended adversely to Lessor unless they shall have been first given at least thirty (30) days advance notice of such termination or of any such proposed amendment. If any policy expires or is cancelled, Concessionaire shall immediately furnish a new certificate evidencing renewal or replacement. Concessionaire shall cause the Lessor to be named as loss payees and the Additional Insureds to be named as additional insureds on all of the foregoing insurance policies required to be maintained by Concessionaire hereunder.

(c) All such policies may be provided under blanket and/or umbrella policies carried by Concessionaire.

(d) The insurance required by Section 7.3(a) shall be primary insurance and the insurer shall be liable for the full amount of any loss up to the total limit of liability required without the right of contribution of any other insurance coverage held by Lessor or the Additional Insured.

(e) This Section 7.3 is subject to all limitations identified in Sections 7.1 and 7.2, respecting Subrogation and Indemnification respectively. Nothing in this Section 7.3 shall be construed as requiring liability coverage and/or indemnification of Lessor for its own negligence or willful action or omission.

(f) All insurance carriers providing the above coverage for Concessionaire must be licensed to do so in the State of Missouri. All such carriers must also be rated no lower than "A-8 VIII" by the most recent Best's Key Rating Guide or Best's Agent's Guide or must be otherwise acceptable to Lessor.

(g) It is expressly understood and agreed by Concessionaire that the insurance requirements specified above contemplate the use of occurrence liability forms. If claims-made coverage is evidenced to satisfy any of these requirements, Concessionaire shall be subject to additional requirements as may be reasonably imposed by Lessor to avoid any potential lapse in protection which is inherent in the use of claims-made coverage.

ARTICLE VIII Assignments

8.1 Concessionaire's Assignment.

(a) Except as otherwise provided in this Agreement, Concessionaire shall not, without prior written consent of Lessor in its sole discretion, assign or sublet this Agreement or any of its rights or duties as Concessionaire, provided that such written consent shall not be required where such assignment is to an Affiliate and remains in full force and effect or a collateral assignment to any bank or financial institution providing financing to Concessionaire, provided that such assignment shall contain provisions reasonably satisfactory to Lessor regarding restrictions on removal of Concession Equipment and/or other assets of Concessionaire from the Center. Concessionaire shall not cause, permit, or suffer, directly or indirectly, any Change of Control and such Change of Control shall be deemed as an assignment of this Agreement and be subject to Lessor's consent thereof. "Change of Control" for the purposes of this Section 8.1 shall be deemed to have occurred at such time as any "person" or "group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of more than 50 percent or more of the membership interests (or of the right to vote such interests) of Concessionaire.

(b) Notice and copy of any assignment must be given to Lessor at least ten (10) days prior to the effective date of such assignment and such assignment must contain the specific assumption of concession obligations and liability hereunder, however, no such assignment or assumption shall relieve Concessionaire's obligation or liability hereunder without the written consent of Lessor.

8.2 Subordination.

8.2.1 Concessionaire agrees that this Agreement and all rights and obligations hereunder shall be and remain and are hereby expressly made subject, subordinate and inferior to any financing lease and lease back and all renewals, modifications, and amendments.

ARTICLE IX Termination

9.1 Termination by Lessor.

Subject to the terms of Section 9.3 below, Lessor may terminate this Agreement by written notice to such effect for cause

in the event: (a) Concessionaire fails to remit, for a period of ten (10) days after receipt of written notice of demand therefor, any sums due and owing to Lessor under this Agreement; or (b) Concessionaire fails to perform any material obligation hereunder (except where such failure is due to a Force Majeure) and such failure continues unremedied for a period of thirty (30) days after receipt of written notice of the particular failure to perform or, in the case of a failure due to Force Majeure, such failure continues unremedied for a period of thirty (30) days after the condition constituting a Force Majeure has terminated, but (notwithstanding Section 9.3) in no event longer than one year from the commencement of such Force Majeure; or (c) in the event Concessionaire is placed into bankruptcy either voluntarily or involuntarily, or if Concessionaire becomes financially insolvent; provided, however, that, notwithstanding the foregoing, if such failure cannot reasonably be expected to be remedied within the applicable cure period set forth above, Lessor shall not have the right to terminate this Agreement hereunder if Concessionaire commences to remedy such failure within the applicable cure period and thereafter prosecutes and completes the same with due diligence and dispatch. Notwithstanding anything to the contrary herein, if (x) Concessionaire fails to comply with its obligations under Section 6.2(d) and (y) such failure is judicially determined to be a breach of a material obligation hereunder, and (z) any damages assessed against Concessionaire as a result of its failure to comply with Section 6.2(d) or any subsequent required compliance therewith has caused or would cause a material adverse effect against Concessionaire to the benefits derived from this Agreement, Lessor and Concessionaire shall negotiate, in good faith, an equitable adjustment to the terms and conditions of this Agreement to accommodate for such material adverse effect to Concessionaire.

9.2 Termination by Concessionaire.

Subject to the terms of Section 9.3 below, in the event Lessor fails to perform, in any material and substantial respect, its obligations hereunder where the effect thereof is to deprive Concessionaire, in a substantial and material manner, of the benefits of this Agreement (except where such failure or refusal is due to a Force Majeure), and such failure or refusal continues unremedied for a period of thirty (30) days after receipt of written notice of the particular failure to perform or, in the case of a failure due to Force Majeure, such failure continues unremedied for a period of thirty (30) days after the condition constituting a Force Majeure has terminated, Concessionaire may terminate this Agreement by furnishing Lessor with written notice of its intent to do so; provided, however, that, notwithstanding the foregoing, if such failure cannot reasonably be expected to be remedied within the applicable cure period set forth above, Concessionaire shall not have the right to terminate this Agreement hereunder if Lessor commences to remedy such failure within the applicable cure period and thereafter prosecutes and completes the same with due diligence and dispatch. All notices required to be provided by Concessionaire under this Section 9.2 shall be provided to Lessor. In no event shall Concessionaire have the right to terminate this Agreement, except as set forth in Articles IX, X and XII hereof.

9.3 General Cure Period.

If the particular failure to perform under Section 9.1 or Section 9.2 cannot be cured within the applicable curative periods provided above, the breaching party shall have a reasonable time thereafter in which to remedy the problem provided that it is diligently and continuously using its best efforts required to correct the problem.

9.4 Settlement.

(a) Upon termination or expiration of this Agreement for any reason, Concessionaire shall immediately surrender possession of the Concession Improvements to Lessor, and all matters, rights and liabilities existing on the date of termination between the parties hereto shall be determined by the parties hereto as of such termination date (except as described above), and discharged as promptly as possible thereafter, including but not limited to any claims for damages either party may have against the other for breach of the terms and conditions hereof. Any such surrender shall require delivery of possession of the Concession Facilities and Concession Improvements in clean and First-Class Condition, reasonable and ordinary wear and tear excepted and otherwise in compliance with the terms of this Agreement. Concessionaire shall remove all Concession Equipment. No termination shall be fully effective until all matters, rights and liabilities between the parties are resolved and all debts of the parties, each to the other are fully paid and satisfied.

(b) Upon termination or expiration of this Agreement for any reason, Lessor may purchase or cause to be purchased from the Concessionaire, all of the Concessionaire's Improvements at the Center for a price equal to Concessionaire's capital costs, less depreciation as determined by the rent payments.

(c) Notwithstanding the foregoing, in the event of early termination of the Term of this Agreement due to a breach or default by the Concessionaire, Lessor shall have the right to reduce the amount payable to Concessionaire upon termination pursuant to Section 9.4(b) by the direct costs incurred by Lessor in effecting a cure of such breach by the Concessionaire (including without limitation, the direct cost incurred in arranging for a replacement concessionaire), and by the then unpaid amount of any then past due Percentage Rents and Future Rents (as defined below) otherwise payable to Lessor pursuant to Section 5.1 of this Agreement (less amounts payable by any successor concessionaire or the estimated net profits achievable by Lessor (if Lessor performs the concessionaire services) calculated as if Lessor were required to pay the rent set forth in Section 5.1); provided, however, that Lessor shall be required to use all commercially reasonable efforts to mitigate the damages and losses incurred as a result of Concessionaire's breach or default. For purposes of this provision, the parties agree that "Future Rents" shall mean the number of years remaining in the Term times the most recent 5 year annual average rental stream of actual amounts paid as Percentage Rent hereunder.

9.5 Representation and Warranties.

(a) Concessionaire warrants that it has full power and authority to enter into and perform their obligations

under this Agreement, and, upon execution, the Agreement will be a valid obligation of Concessionaire, binding upon it in accordance with its terms and will not violate any provision of law, regulations, rule, agreement, charter or by-law to or by which Concessionaire or any of its property is subject or bound.

(b) Lessor warrants that it has full power and authority to enter into and perform their obligations under this Agreement, and, upon execution, the Agreement will be a valid obligation of Lessor, binding upon it in accordance with its terms and will not violate any provision of law, regulations, rule, agreement, charter or by-law to or by which Lessor or any of its property is subject or bound, upon passage of an ordinance authorizing this Agreement.

ARTICLE X Casualty Event

10.1 Casualty Event.

After any Casualty Event, Concessionaire shall continue the operation of its Concession Improvements hereunder to the extent possible. During the period in which the damage or destruction caused by such Casualty Event remains unremedied, the Percentage Rents will be equitably reduced by the percentage reduction in Gross Receipts that is directly caused by and attributable to such damage or destruction (or to the absence of or reduction in rents following such Casualty Event), with the amount of such reduction to be negotiated in good faith by the parties on a case-by-case basis to achieve an equitable result. Lessor shall make any repairs, reconstruction or restoration of any such damage or destruction to the Center and Concession Facilities and Concessionaire shall replace its Concession Equipment and other personalty to the extent purchased by Concessionaire. In any such event, Concessionaire shall not be entitled to any monetary or other damages because of any resulting inconvenience or loss. However, the Term hereof shall be equitably extended. In any event, Concessionaire shall not be entitled to terminate this Agreement by reason of the occurrence of a Casualty Event, unless the Agreement is otherwise terminated as a result of such Casualty Event or the Concession Facilities remain uninhabitable for a period of six (6) months.

ARTICLE XI Jurisdiction

All litigation arising out of or relating to this Agreement shall be brought in a state or federal court situated in the City of St. Louis, Missouri, as applicable. Concessionaire hereby consents to the exclusive jurisdiction of any state or federal court situated in the City of St. Louis, Missouri, and waives any objection based on lack of personal jurisdiction, improper venue or forum non conveniens, with regard to any actions, claims, disputes or proceedings relating to this Agreement, or any document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing and waives its right to a jury trial. The prevailing party in any litigation shall receive its reasonable attorney fees.

ARTICLE XII Condemnation

12.1 Entire Taking.

In the event of a taking, for any public or quasi-public use, under any statute or by right of eminent domain (an "Entire Taking") of (a) all of the Center or (b) a material portion of the Center so that it no longer can be used for, or restored for bus and train station, either party may terminate this Agreement effective upon the date of such Taking.

12.2 Partial Taking.

In the event of any other taking of the Center for public or quasi-public use under any statute or by right of eminent domain which does not result in an Entire Taking (as defined in Section 12.1), Lessor shall, to the extent of any award, restore the Center to First-Class Condition and this Agreement shall continue in full force and effect and the Percentage Rents will be equitably reduced by the percentage reduction in Gross Receipts that is directly caused by and attributable to such taking (or to the absence of or reduction in rents following such partial taking), the amount of such reduction to be negotiated in good faith by the parties on a case-by-case basis to achieve an equitable result.

12.3 Compensation.

In any event, Concessionaire shall have the right to prosecute an action against the condemning authority for compensation for the loss of its leasehold estate and personal property, except to the extent that any such claim may serve to reduce the award(s) sought by Lessor, as a result of the taking.

ARTICLE XIII Force Majeure

It is expressly understood and agreed that failure or delay on the part of either party hereto in the performance in whole, or in part, of the terms and conditions of this Agreement shall not constitute a breach hereof, nor a default hereunder, if such failure or delay is attributable to a Force Majeure. The foregoing shall not apply with respect to Concessionaire's obligation to pay to Lessor the Percentage Rents as required under Section 5.1 hereof, and such obligations shall continue regardless of a Force Majeure;

provided, however, that Concessionaire's obligation to pay to Lessor the Percentage Rents shall be reduced in accordance with Section 10.1 in the case of a Casualty Event and Section 12.2 in the case of a taking that does not result in an Entire Taking under Section 12.1. Any strike, lockout or similar work stoppage or labor dispute solely affecting Concessionaire shall not constitute Force Majeure hereunder; and, in any such event Lessor has the right, but not the obligation, to arrange for replacement services on a temporary basis.

ARTICLE XIV Notices

All notices required or permitted to be given under the terms of this Agreement shall be sent in writing by certified mail, return receipt requested, or by courier service or by facsimile. Notices sent by certified mail or courier shall be deemed to have been received at the time they are delivered to the applicable address set out below to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows:

If to Concessionaire:

Arch City Deli, LLC
10812 St. Charles Rock Road
St. Louis, Missouri 63074

Attn: Milan Patel
Fax: (314) 209-9201

With a copy to:

Stephen Ukman
34 N. Brentwood Blvd.
Suite 16
St. Louis, Missouri 63105
Fax: (314) 863-6708
Fax: (314) 612-2223

If to Lessor:

Comptroller
City of St. Louis
Room 311, City Hall
St. Louis, Missouri 63103
Attn: Asset Manager
Fax: (314) 588-0550

With a copy to:

Armstrong Teasdale, LLP
One Metropolitan Square
Suite 2600
St. Louis, Missouri 63102
Attn: Thomas J. Ray

ARTICLE XV Consents and Approvals

Where consent or approval of or authorization (the "Consent") from Lessor is required hereunder and not designated, such Consent shall mean the Consent by Lessor's Comptroller. Where Consent of Concessionaire is required hereunder such Consent shall mean that of its regional manager or an officer of Concessionaire.

ARTICLE XVI Miscellaneous

16.1 Estoppel Certificates.

Lessor and Concessionaire agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate, addressed to such persons as the requesting party may reasonably request, certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), the dates to which any rents due hereunder has been paid in advance, if any, and that to the knowledge of the signer of such certificate, no default hereunder by either Lessor or Concessionaire exists hereunder (or specifying each such default to which this signer may have knowledge), together with such other information as Lessor or Concessionaire may reasonably require with respect to the status of this Agreement and Concessionaire's use and occupancy of the Concession Facilities in the Center.

16.2 Applicable Law.

This Agreement shall be governed in all respects by the Laws of the State of Missouri, without regard to such state's position with respect to conflict of Laws.

16.3 Reorganization.

This Agreement and the terms hereof, including the terms set forth in Sections 3.2.1 and 8.3 hereof, shall be not be modified or affected by any reorganization, merger, recapitalization or change in structure of either party or by any transfer, lease, assignment or other change in ownership of the Lessor's interest in the Center.

17.4 Binding On.

This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and

assigns, as may be permitted herein.

17.5 Whole Agreement.

This Agreement and the exhibits attached hereto, contain all of the covenants, promises and agreements between the parties concerning the operations described herein. It supersedes all prior agreements, arrangements or understanding, whether written or oral. This Agreement may not be amended or modified except in a writing signed by the parties to be bound thereby.

17.6 No Joint Venture.

Nothing hereinabove or elsewhere contained in this Agreement shall in any manner be deemed to create a partnership or joint venture relationship between Lessor and Concessionaire, or any of their respective Affiliates.

Any provision of this Agreement prohibited or invalidated by a court of competent jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without affecting the validity of the remaining provisions of this Agreement.

17.7 Rules of Usage. The following rules of usage shall apply to this Agreement unless otherwise required by the context or as specifically provided:

- (a) The terms set forth in this Agreement shall have the meanings herein provided for.
- (b) Any term defined in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning ascribed thereto whether or not such other document, instrument or agreement is in effect.
- (c) Singular words shall connote the plural as well as the singular, and vice versa.
- (d) Words referring to a gender include any gender.
- (e) A reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or herein.
- (f) The headings and subheadings are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof nor shall they modify, define, expand or limit any of the terms or provisions thereof.
- (g) A definition of or reference to any document, instrument or agreement includes each amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used.
- (h) A reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time unless otherwise specified.
- (i) References to any Person (as hereinabove defined) shall include such Person, its successors and permitted assigns and permitted transferees.
- (j) Any reference to "day" shall mean calendar day unless "Business Day" is expressly specified.
- (k) If the date as of which any right, option or election is exercisable, or the date upon which an amount is due and payable, is stated to be on a day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day and no interest shall accrue or be payable with respect to such payment;
- (l) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof;
- (m) references to "including" shall mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and
- (n) references to any agreement, including this Agreement, document or instrument shall mean such agreement, including this Agreement, document or instrument as supplemented, amended, or otherwise modified from time to time in accordance with the provisions thereof.

ORDINANCE #67905
Board Bill No. 501

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment authorizing a Second Supplemental Appropriation in the amount of One Hundred Thousand Dollars (\$100,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Building Projects Ordinance 67101 approved June 5, 2006, for the payment of costs for work and services authorized therein, and containing an emergency clause.

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

SECTION ONE. There is hereby authorized a Second Supplemental Appropriation in the amount of One Hundred Thousand Dollars (\$100,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Building Projects Ordinance 67101 approved June 5, 2006, for the payment of costs for work and services authorized therein.

SECTION TWO. This being an ordinance providing for public work and improvement program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City of St. Louis' Charter and shall become effective immediately upon its approval by the Mayor of the City of St. Louis.

Approved: March 3, 2008

ORDINANCE #67906
Board Bill No. 502

An Ordinance, recommended and approved by the Airport Commission and the Board of Estimate and Apportionment authorizing a Second Supplemental Appropriation in the total amount of Seventeen Million Forty Four Thousand Dollars (\$17,044,000) as follows: a) Seventeen Million Nine Thousand Dollars (\$17,009,000) from the Series A Commercial Paper Construction Account of the Commercial Paper Construction Fund, and b) Thirty Five Thousand Dollars (\$35,000) from the Airport Development Fund, into the Airport Schedule F CIP Project Ordinance 67357 approved December 19, 2006, for the payment of costs for work and services authorized therein, and containing an emergency clause.

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

SECTION ONE. There is hereby authorized a Second Supplemental Appropriation in the total amount of Seventeen Million Forty Four Thousand Dollars (\$17,044,000) as follows: a) Seventeen Million Nine Thousand Dollars (\$17,009,000) from the Series A Commercial Paper Construction Account of the Commercial Paper Construction Fund established and authorized pursuant to Ordinance 66232 approved March 30, 2004, and b) Thirty Five Thousand Dollars (\$35,000) from the Airport Development Fund established under authority of Ordinance 59286, Section 13, approved October 26, 1984, into the Airport Schedule F CIP Project Ordinance 67357 approved December 19, 2006, for the payment of costs for work and services authorized therein.

SECTION TWO. This being an ordinance providing for public work and improvement program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City of St. Louis' Charter and shall become effective immediately upon its approval by the Mayor of the City of St. Louis.

Approved: March 3, 2008

ORDINANCE #679007
Board Bill No. 503

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Airport SPA Concession Agreement AL-431 at Lambert-St. Louis International Airport® (the "Concession Agreement"), between the City and XpresSpa St. Louis Airport, LLC (the "Concessionaire"), a corporation organized and existing under the laws of the State of New York, granting to the Concessionaire the non-exclusive right, license, and privilege to design, construct, operate, manage, and maintain an Airport Spa concession within the Premises as described in the Concession Agreement, subject to and in accordance with the terms, covenants, and conditions of the Concession Agreement, which was approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Concession Agreement; containing a severability clause; and containing an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Airport SPA Concession Agreement AL-431 at Lambert-St. Louis International Airport® (the "Concession Agreement"), between the City and XpresSpa St. Louis Airport, LLC (the "Concessionaire"), a corporation organized and existing under the laws of the State of New York, granting to the Concessionaire the non-exclusive right, license, and privilege to design, construct, operate, manage, and maintain an Airport Spa concession within the Premises as described

in the Concession Agreement, subject to and in accordance with the terms, covenants, and conditions of the Concession Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in ATTACHMENT "1", which is attached hereto and made a part hereof.

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

SECTION THREE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

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

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



XpresSpa St. Louis Airport, LLC

AIRPORT SPA

CONCESSION AGREEMENT

NO. AL-431

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AIRPORT NUMBER: AL-431

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
 CONCESSION AGREEMENT
 (Airport Spa)**

THIS AGREEMENT, made and entered into as of the _____ day of _____ 200____, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri and XpresSpa St. Louis Airport, LLC ("Concessionaire"), a corporation organized and existing under the laws of the State of New York.

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, an Airport Spa Concession at the Airport is desirable for proper accommodation of the public;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of an Airport Spa Concession:

- To secure a Concessionaire that will provide the highest quality spa products and services at the airport on a non-exclusive basis to the traveling public and other airport users;
- Provide excellent customer service by installing and operating an Airport Spa concession with state-of-the-art equipment and highly trained, motivated and pleasant employees;
- Provide a stylish, attractive and well designed spa offering a wide variety of personal care products and relaxation services to include but not limited to chair, foot and full body massage, manicures, sculptured nails, pedicures, facials and merchandise similar to that found in the finest spas;
- Generation of revenue for the Airport by developing retail strategies that most efficiently meets customer demands and standards of performance that will permit Concessionaire to operate efficiently while maximizing customer satisfaction;
- Use creativity to allow Concessionaire to adapt to changes in passenger traffic, demographics and trends in airport retailing;
- Invest the capital and human resources necessary to offer the traveling public and airport staff the highest degree of customer service possible;
- Be responsive to the FAA and City goals for Airport Concessionaire Disadvantaged Business Enterprise ("ACDBE") participation in concessions;

The order of these objectives should not be construed as an indication of their relative merit as viewed by the City.

WHEREAS, the City has advertised and received bids for the right to manage and operate an Airport Spa concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified operator of this service and has submitted a bid deemed advantageous to the public and the City.

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**

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

"Airport" as stated in the preamble hereof.

"Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)" shall mean a concession that is a for-profit small business concern:

- That is a 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, 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.

"Airport Spa" shall mean a concession offering products and services to include but not limited to chair and full body massage, manicures, sculptured nails, pedicures, facials and merchandise that would be found in the finest spas. The sale of creams, lotions and aerosols are subject to the standards and policies established by the Transportation Security Administration ("**TSA**")

"Agreement" shall mean this concession contract for Airport Spa and any amendments thereto, duly approved by the City.

"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/re-development of existing improvements and construction of new Improvements to the Premises, including furnishings, fixtures and finishes including Removable Fixtures, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction and overhead of the Concessionaire.

"Build-Out Period" shall mean a period of six (6) months commencing on the first day of the month following full execution of the Agreement by the City.

"City" as stated in the preamble hereof.

"Concession" as stated in the preamble hereof.

"Concession Period" shall mean a period of five (5) Contract Years immediately following the Build-Out Period.

"Concessionaire" as stated in the preamble hereof.

"Contract Year" shall mean a period of twelve (12) consecutive calendar months commencing on the first day of the month following the expiration of the Build-Out Period.

"Director" shall mean the Director of Airports of the City of St. Louis Airport Authority, and incorporates the granting of approval requirements of Section 1415 hereof.

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

"Gross Receipts" shall mean the total revenues from all sources and all types at the Airport under the Agreement and any derivative thereof performed by Concessionaire, its subcontractors, 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 approved for removal by the Director and owned by Concessionaire.
- gratuities paid by customers to members of Concessionaire's staff.

"Improvements" shall mean all construction and fixtures built or erected by the Concessionaire, and forming a part of and which are permanently affixed or attached to any portion of Airport real property or improvements within the Premises.

"Percentage" shall mean that designated portion of Concessionaire's Gross Receipts that are payable to the City.

"Percentage Fee" shall mean the product of (i) Gross Receipts multiplied by (ii) Percentage set out in Article V, Section 502 hereof.

"Premises" shall mean a location or locations described in Section 201 that have been designated by the City for the sale of Concessionaire's services, and for other uses provided specifically herein, together with all Improvements thereon.

"Removable Fixtures" shall mean all furnishings, equipment and fixtures installed by the Concessionaire that are not permanently affixed to any wall, floor or ceiling in the Premises.

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"**, 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. The Concessionaire shall have the right to terminate the agreement if the alternate location is unsatisfactory with the stipulation that the Performance Bond be paid in full to the City.

Any additional premises granted to Concessionaire will have a Minimum Annual Guarantee equal to the non-airlines square footage rental rate for that area of the Airport if it is added to 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 agents or representatives. City without limitation expressly disclaims and negates as to the Premises 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.

Section 202. Access. Subject to the terms, covenants and conditions 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 and invitees.

ARTICLE III CONCESSION RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement the nonexclusive right, license and privilege and Concessionaire hereby assumes the obligation to design, construct and to operate, manage and maintain an Airport Spa within the Premises and the sale of products and services as listed in **Exhibit "C"** attached hereto and made a part hereof.

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 Section 301 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.

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself. 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.

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

ARTICLE IV CONCESSION TERM

Section 401. Term. The term of this Agreement shall consist of five (5) years and six (6) months which consists of a Build-Out Period of six (6) months commencing on the first day of the month following full execution of the Agreement by the City; and followed by the Concession Period of five (5) Contract Years immediately following the Build-Out Period.

Build-Out Period _____ to _____

Concession Period _____ to _____

Section 402. 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 as good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear, 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.

Section 403. 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 a tenant at will on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as set forth herein, unless different fees shall be agreed upon by the Director on behalf of the City and the Concessionaire, and shall be bound by all terms, covenants and conditions 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 fees and the other fees and charges set forth below in Sections 502, 505 and 510 and the utilities described in Section 804 of this Agreement, without demand, during the term of this Agreement.

Section 502. Concession Fee Payments. During the Build-Out Period, the Concessionaire agrees to pay to the City an amount equal to ten percent (10%) of Gross Receipts for the previous month.

During the Concession Period, the Concessionaire agrees to pay to the City a Minimum Annual Guarantee (MAG) fee of sixty one thousand one hundred sixteen dollars (\$61,116.00) or the Percentage Fee for each Contract Year, or portion thereof, as set out below.

Contract Year	Percentage Fee
1	10 %
2	10 %
3	10 %
4	10 %
5	10 %

Section 503. Payment. Payments for each month of each Contract Year shall consist of (a) an amount paid in advance on or before the first (1st) day of each month of 1/12 of the MAG; and (b) an amount paid on or before the 15th day of the second and each succeeding month equal to the Percentage Fee applied to the Gross Receipts for the preceding month which exceeds the MAG as set forth in this Agreement. (See Article V, Section 505 Unpaid Fees for the amount of any applicable service charge and Article XIII LIQUIDATED DAMAGES.)

Section 504. Reports.

- A. Concessionaire shall submit to the City by the 15th day of the second and each succeeding month of each Contract Year hereof, two copies of an accurate statement of Gross Receipts. Concessionaire shall document in a manner satisfactory to the Director the specifics of all refunds deducted from Gross Receipts. This statement shall separately state Gross Receipts for products by location and be certified as accurate by an officer of the Concessionaire. The final statement of Gross Receipts will be due by the 15th day of the month following expiration of this Agreement. Concessionaire shall report Gross Receipts, on a form approved by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in a future solicitation for bids or request for proposals for this concession.
- B. Concessionaire shall submit an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Receipts; and (ii) the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.
- C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, Concessionaire shall provide the City with an estimate of projected monthly Gross Receipts for the subsequent Contract Year.
- D. 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 Section 1101 B. 10) herein.

- E. 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. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

Section 505. Unpaid Fees. All unpaid fee 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 20th 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 in a form acceptable to City in the principal amount equal to fifty thousand dollars (\$50,000.00) 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 expiration date of the expiring bond. Such bond will guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond will be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (i) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (ii) 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 will be kept in full force and effect during the term hereof. City may agree to another form of deposit which will 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 fifteen (15) 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 one (1) year 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. Audit. 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 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.

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 or sums 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 or sums or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the terms, covenants or conditions 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 or sums 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 shall be made to the Airport Administrative

Office, at the Airport, or at such other place as the City may hereafter notify Concessionaire and shall be made in legal tender of the United States.

**ARTICLE VI
CONCESSIONAIRE'S OPERATIONS**

Section 601. Standards of Service.

- A. 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.
- B. Premises shall be kept clean, neat, business-like 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.
- C. Concessionaire shall ensure that each customer receives prompt, efficient and courteous service from pleasant and well trained employees. In conjunction with this requirement Concessionaire shall ensure that each location has adequate staff and product to provide such service. Concessionaire shall ensure that all Airport Spa locations have adequate staff and product available to continue service during normal peak operating hours and during any special or emergency circumstances including flight and weather delays. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may warrant.
- D. Concessionaire shall assure that its agents and employees do not engage in the solicitation of or pressure sales tactics for products offered on or about the Airport.
- E. Operations shall fully comply with all Federal Aviation Administration (FAA) regulations including security requirements, Airport rules and regulations and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration's ("TSA") regulation 1542 regarding conduct and access to the Airfield Operations Area ("AOA").
- F. If applicable, Concessionaire shall provide the Director a copy of any health inspection report within 24 hours after Concessionaire receives such report. If a health inspection does not result in a report, Concessionaire shall submit a written summary of the nature and findings of such inspection as they were communicated to the Concessionaire. Concessionaire shall also provide the Director with any required corrective actions and timeframes for each corrective action to be continuously implemented.
- G. Concessionaire will make change for all passengers without charge.

Section 602. Hours of Operation. Concession shall be open seven (7) days per week, three hundred sixty-five or three hundred sixty-six (365 or 366) days per year, as applicable. Hours of operation must be approved in writing by the Director and may not be changed without approval. Concessionaire is expected to operate from one hour before the first departure until the time of the last departure. Concessionaire will remain open during period of flight delays to serve the traveling public.

Section 603. Promotion. 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. Concessionaire shall not divert or 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 604. Personnel.

- A. Concessionaire shall maintain a sufficient number of trained personnel on duty to insure that Concessionaire's customers shall receive prompt and efficient service at all times. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. 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. 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. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. 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.
- B. Concessionaire, at its cost, acknowledges and agrees that it shall conduct employee background checks of each of its personnel if required by the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA") and/or the Airport. 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.

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 the Transportation Security Administration's ("TSA") regulation 1542 as amended or other applicable laws or regulations. Concessionaire shall promptly reimburse the City (within 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.

- C. Concessionaire's employees will be trained to have sufficient knowledge of the Airport to be able to give clear and accurate directions to the public.

Section 605. Onset of Service. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as is necessary to provide service pursuant to this Agreement. At the time of proposal, Concessionaire submitted a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan and replacement schedule, with the previous concessionaire 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.

Section 606. Pricing.

- A. Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public and substantially similar to the prices charged at 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 for a product shall be the price at the nearest non-Airport location 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 the regular price of the product at the nearest entity 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 A1) and A2) 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 or at the nearest entity of the same business, franchise or trade name, 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; and
 - 5) Products containing selling prices printed by the manufacturer are excluded and shall not be sold for more than published prices.

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, prior to the opening of Premises, a complete list of items to be offered by Concessionaire therein and their prices for the Director's approval. The Concessionaire shall not begin operation without the Director's approval. Concessionaire shall submit to the Director, within sixty (60) days after the end of each Contract Year, an annual price comparison that indicates the extent of compliance by Concessionaire thereof with street pricing and the actions taken by Concessionaire to remedy any noncompliance.

- B. Following the Build-Out Period, no less than one (1) time per Contract Year, Concessionaire shall conduct, or shall cause to be conducted, a price comparison of current products available within the Premises. The price comparison shall compare the price of current products available at the Airport with the price at non-Airport comparable locations as described in Section 606 hereof. In the event of noncompliance with the street pricing requirements herein, Concessionaire shall bring all products into compliance with the street pricing requirements within seven (7) days after such noncompliance is identified. The Director reserves the right to independently compare Concessionaire's prices to comparable airports' prices and require Concessionaire to reduce prices based upon its comparison.

- C. Concessionaire shall not increase any prices without prior written approval of the Director. All new products are subject to the street pricing requirements of Section 606 hereof and may be proposed at any time.
- D. Concessionaire is permitted, but not required, to offer discounted prices to employees of the City and other Airport employees. The amount of the discount shall be approved by the Director prior to opening of Premises. In addition, no discounts may be changed, modified or discontinued without the Approval of the Director and with no less than thirty (30) days' notice to the Director.

Section 607. Manager. Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who is thoroughly trained to provide and teach excellent customer service and who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 608. 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 609. 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 610. Transition Period. If applicable, during any future transition of the Airport Spa 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 611. Operation.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Improvements, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

Section 612. Communication.

- A. Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Airport Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and the DBE Program Office to discuss ACDBE participation, any other relevant issues which may affect Concessionaire's operation at the Airport. 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 613. Customer Complaints. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every complaint, written or oral, within seven (7) calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

Section 614. 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 dock with other users. All deliveries are the responsibility of Concessionaire and not the City.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire. The design should be sophisticated yet providing a comfortable and inviting atmosphere. Storefronts must be upscale and dynamic while complementing the design of the surrounding terminal space. The materials must provide the highest level of fit and finish yet must be durable enough to survive in the high volume airport environment. Finishes should be easy to maintain and keep clean. Passenger flow must be addressed to eliminate queuing into the concourses. The design must meet the criteria of the Americans with Disabilities Act ("ADA") along with all similar state and local requirements. Design of the Concession will be subject to the review and approval of the Airport Properties Department and Planning

and Engineering Department of Lambert-St. Louis International Airport®. Drawings must be submitted to the Airport Properties Department along with a completed Tenant Construction or Alteration Application ("TCA") Building permits will be required from St. Louis County. Fire protection drawings must be sealed by a licensed fire protection contractor and are subject to review and approval by the Airport's insurance carrier. No work can begin until drawings have been approved by the City, building permits have been submitted to the city and a pre-construction conference has been held.

- 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, equip and furnish all necessary Improvements, Removable Fixtures and equipment and make related facility changes as needed to operate an Airport Spa concession, pursuant to this Agreement, in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of 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.
 - 1) Concessionaire shall submit a signed Tenant Construction or Alteration Application (TCA) including complete sealed construction drawings and specifications, as required by Section 702 hereof, to the Airport Properties Department for its initial as well as future construction. The TCA shall be submitted not more than thirty (30) days following full execution of the Agreement by City. Concessionaire will be asked to submit thirty percent (30%) design drawings for review and comment to expedite the approval of final plans and specifications.
 - 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 construction can begin.)
 - 3) Concessionaire shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705 hereof, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
 - 4) Concessionaire shall complete all construction and open all Premises fully fixtured and operational no later than one hundred eighty (180) days after full execution of the Agreement by the City, subject to the provisions of Article XIII.
 - 5) Failure to open and operate in accordance with this Section 701 will result in Concessionaire being assessed liquidated damages in the amount of \$500/day for each day beyond the one hundred eighty (180) days after full execution by the City.
 - 6) 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 706 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. 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 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than two million dollars (\$2,000,000.00) as to any one person, and two million dollars (\$2,000,000.00) as to any one occurrence, and with property damage limits of not less than two million dollars (\$2,000,000.00) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

Section 704. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish a Performance Bond and a Payment Bond each in the full amount of any contract 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 said Performance and Payment Bonds shall be used for the completion of said construction and the payment of

laborers and material suppliers, as the case may be.

Section 705. Mechanics' and Materialmen's Liens. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be 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 706. Certificates 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 within ninety (90) days of opening.

Section 707. 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 an Airport Spa concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises. A blade sign installed in accordance with the Airport's blade sign specification must be installed as part of Concessionaire's initial construction.
- 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 707 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 an Airport Spa concession or place any signs outside of the Premises.

Section 708. Title to Improvements and Fixtures. All Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement.

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at date of expiration or early termination of this Agreement. Within sixty (60) days 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 periodically updated by Concessionaire.

The City reserves the right and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Improvements and structures and restore the Premises to their original condition at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

ARTICLE VIII USE OF PREMISES

Section 801. Compliance with Laws and Regulations. Concessionaire shall comply with all rules and regulations which the Director may establish from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

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

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

- A. Perform custodial services daily.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's agents or employees.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage 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.
- F. Confine all handling and holding of Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep the Premises free of all pests, providing such pest control services as required.
- I. 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, incidental, consequential or special damages.

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 terms, covenants and conditions of this Agreement.
- B. To perform maintenance and make repairs Concessionaire is obligated, but has failed to do so after the City has given Concessionaire notice to do so, in which event, Concessionaire shall reimburse the City for the cost thereof, plus a charge of fifteen percent (15%) for overhead, promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections, studies and assessments during normal business hours.

Section 804. Utilities. The City shall provide a main electric panel from which Concessionaire shall obtain electricity at a cost based upon metered usage. Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. Concessionaire shall be responsible for any needed modification or upgrade in electrical supply caused by increased lighting or other changes to the Premises made by Concessionaire.

Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, 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.

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 or incidental, consequential or special damages.

Section 805. 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, 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 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 aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

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 two million dollars (\$2,000,000.00). Such coverage shall be single limit liability with no annual aggregate.
 - 2) Automobile Liability Insurance. Concessionaire shall provide in an amount not less than two million dollars (\$2,000,000.00) 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 two million dollars (\$2,000,000.00) 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. 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) 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 norm and which covers Concessionaire's improvements to the Premises, 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 equipment 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, 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.
 - 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 903 hereof.
 - 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless thirty (30) days 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 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 5 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 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.
- 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 Airport Spa concession at the Airport.
 - 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 Airport Spa concession at the Airport.
- 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 best 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 Subsections 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, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided 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 Subsections 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 Section 701. The City shall reimburse Concessionaire for the cost of such work performed by Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as an agent 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 pay the amount of such additional costs to the City.

Section 904. Indemnification. 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 Automated Retail Services Concession, or Concessionaire's use of its Premises or other areas or facilities at the Airport by Concessionaire, its agents, employees, contractors, or subcontractors, including, but not limited to:

- A. The acts or omissions of Concessionaire, its agents, employees, contractors, or suppliers;
- B. Concessionaire's use or occupancy of the Airport and the Premises; and
- C. Any violation by Concessionaire in the conduct of Concessionaire's Airport Spa Concession or its use of its Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement.

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

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.

If a prohibited incursion into the air operations area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, agents, contractors, 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.

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.

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.

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 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 therefrom. Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.

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.

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 if the City is conclusively determined to be more than fifty percent (50%) liable due to contributory negligence.

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

ARTICLE X ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights

acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 602 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 approval, 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 Section 1103. 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 unpaid after the date the same shall become due.
- 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;
 - 10) Fail in the performance of any term, covenant or condition herein required to be performed by Concessionaire.

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 term, covenant or condition 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 term, covenant or condition 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 term, covenant or condition 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 term, covenant or condition.

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 twenty-five percent (25%) 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 MRCC certified ACDBEs.

Concessionaire submitted at the time of the Bid, evidence that it completed the applicable Good Faith Efforts procedure specified in the Solicitation for Bids for an Airport Spa Concession.

- B. If these 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 these 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. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire 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 covered by 49 CFR Part 23. Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

- E. Concessionaire shall operate its Airport Spa 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 any of the terms, covenants or conditions enumerated below. Therefore, 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 in the same category, Concessionaire will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Concessionaire shall pay to City the third default or breach amount plus an additional one hundred (100%). 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 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 inequity. 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.

BREACH OR DEFAULT	SECOND VIOLATION	THIRD VIOLATION
A. Unapproved equipment or placement of equipment in areas not authorized by City.	\$500.00	\$750.00
B. Late monthly reporting of gross receipts in breach of Article V.	\$25.00 per day	\$50.00 per day
C. Failure to deliver on time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$200.00	\$300.00
D. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00	\$750.00
E. Inoperable equipment or equipment not repaired within 15 days of notice to Concessionaire.	\$200.00	\$300.00
F. Late annual financial reporting in violation of Article V.	\$50.00 per day	\$100.00 per day

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1401. 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, St. Louis Airport Authority, 10701 Lambert International Boulevard, P.O. Box 10212 Lambert Station, St. Louis, MO 63145. **A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.** All notices, demands and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to:

XpresSpa St. Louis Airport, LLC
Marisol Binn, President
150 East 58th Street, 7th Floor
New York, NY 10155

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 1402. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that the City in the operation and use of Lambert-St. Louis International Airport® will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21

of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.

- B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. 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, national origin or ancestry. Such action must include, but shall not be limited to the following: actions 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 the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". 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, national origin or ancestry.
- D. Concessionaire will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- E. Concessionaire further agrees that these clauses (B through D) 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 he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- F. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through E) 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.
- G. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- H. 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, religion, sex, national origin or ancestry 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 sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- I. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, color, national origin or sex 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.
- J. 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 and cause those businesses to similarly include the statement in further agreements.

Section 1403. No Personal Liability. No Alderman, Commissioner, Director, officer, agent or employee of either party shall be personally liable under or in connection with this Agreement.

Section 1404. Force Majeure. Neither the City nor Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1405. 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.

Section 1406. Quiet Enjoyment. Subject to the terms, covenants and conditions of the Agreement, the City covenants

that Concessionaire, on paying the fees and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1407. Operation 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 1408. 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 1409. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1410. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes substantially impair the rights of Concessionaire hereunder.

Section 1411. Governing Law. This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Missouri, and is subject to the City's Charter and ordinances, as they may be amended from time to time.

Section 1412. 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 terms and provisions hereof or the interpretation or construction thereof.

Section 1413. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1414. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Concessionaire and the City.

Section 1415. Required Approvals. When the consent, approval, waiver, or certification ("**Approval**") of other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party Approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director and Concessionaire or its designee. Whenever the approval of the City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld.

Section 1416. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. Any waiver must be in writing and signed by the party waiving.

Section 1417. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1418. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1419. Not a Lease. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges 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 1420. 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, promotion service or publication without the prior written consent of the Director.

Section 1421. Conflicts Between Tenants. In the event of a conflict between Concessionaire and any other tenant, licensee 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 1422. 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 in accordance with and is subject to City Ordinance No. 62124.

Section 1423. Solicitation for Bids. Concessionaire's Bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation for Bids for an Airport Spa concession at the Airport dated August 20, 2007 is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the Exhibits attached hereto is in conflict with any provision of Concessionaire's Bid or the Solicitation for Bids referred to above, the provisions of this Agreement shall prevail.

Section 1424. 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 1425. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement.

Section 1426. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms 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 1427. Security Plan and Facilities. Concessionaire hereby acknowledges that the City is required by the Transportation Security Administration's ("TSA") regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to Airfield Operations Areas ("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 1428. Environmental Notice. Concessionaire shall promptly notify the Director of (i) any change in the nature of the Concessionaire's operations on the Premises that will materially and/or substantially change the Concessionaire's or City's potential obligations or liabilities under the environmental laws; or (ii) the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Concessionaire's operations on the Premises.

Section 1429. 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 Mr. Jack Thomas, 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:

- 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.

(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.

XpresSpa St. Louis Airport, LLC BY:

ATTESTED TO BY:

 Title: _____
 Date: _____

 Title: _____
 Date: _____

FEDERAL TAX ID #26-1214864

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 200_ :

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 200_ .

BY:

 Commission Chairman and Director of Airports Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 200_ .

BY:

 Secretary, Board of Estimate and Apportionment Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

 City Counselor Date
 City of St. Louis

 Comptroller Date
 City of St. Louis

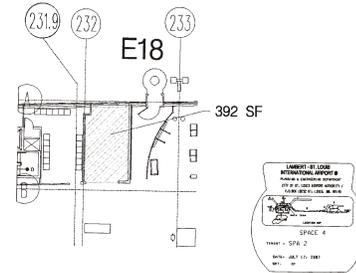
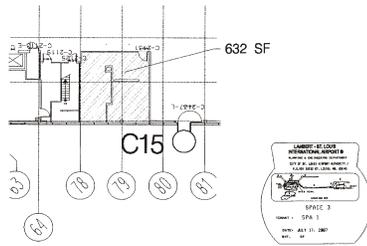
ATTESTED TO BY:

 Register, City of St. Louis Date

**EXHIBIT "A"
PREMISES**

67907

67907



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**EXHIBIT B
LIVING WAGE ADJUSTMENT BULLETIN
ST. LOUIS LIVING WAGE ORDINANCE
LIVING WAGE ADJUSTMENT BULLETIN
NOTICE OF ST. LOUIS LIVING WAGE RATES
EFFECTIVE APRIL 1, 2007**

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 **\$10.73** 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 **\$13.74** 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: **\$3.01** 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, 2007**. 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.stlouiscity.com/livingwage> or obtained from:

Airport Assistant Director
DBE Program Office
P.O. Box 10212
St. Louis, MO 63145-0212

(314) 551-5000

Dated: February 12, 2007

**EXHIBIT C
LIST OF PRODUCTS & SERVICES**

Approved: March 3, 2008