

*St. Louis City Ordinance 63055*

FLOOR SUBSTITUTE

BOARD BILL NO. [93] 241

INTRODUCED BY ALDERMAN JOANNE WAYNE

An Ordinance authorizing and directing the Airport Director and the Comptroller of the City of St. Louis to enter into and execute on behalf of the City of St. Louis a certain Concession Agreement for Passenger Vehicle Rental between the City of St. Louis and Budget Rent-A-Car of St. Louis, Inc., which Concession Agreement is contained verbatim in Section One of this Ordinance; and containing an emergency clause.

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

Section One. The Airport Director and the Comptroller of the City of St. Louis are hereby authorized and directed to enter into and execute on behalf of the City of St. Louis a certain Concession Agreement for Passenger Vehicle Rental between the City of St. Louis and Budget Rent-A-Car of St. Louis, Inc., which Concession Agreement reads in terms and figures as follows:

AIRPORT NUMBER AL-288

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1993, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and BUDGET RENT-A-CAR OF ST. LOUIS, INC., a corporation organized and existing under the laws of the State of Missouri (the "Concessionaire").

WITNESSETH, That:

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

WHEREAS, Passenger Vehicle Rental (PVR) Concessions at the Airport are essential for proper accommodation of the public;

WHEREAS, the City has determined that the public will be best served by six, PVR rental concession operators at the Airport during the term of this Agreement;

WHEREAS, the City has determined that it is in the public interest for the following objectives to be met in the provision of a PVR concession:

- to provide first-class PVR concessions that meet Airport user needs and add value to other Airport and airline services;
- to provide a wide range of high quality PVR services at prices that are attractive to Airport users;
- to provide PVR services that are operated by well trained, efficient and pleasant staff;
- to be responsive to Federal Aviation Administration goals for Disadvantaged Business Enterprise participation in PVR concessions.

WHEREAS, the City has advertised and received competitive bids for the right to manage and operate PVR concessions at the Airport, and by this process the City has determined that 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 promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, the City and Concessionaire agree as follows:

## ARTICLE I DEFINITIONS

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

"Agreement" shall mean this document and any amendments thereto, duly approved by the City.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be the

Concessionaire's point of contact with the Airport on all issues related to this Agreement.

"City" as stated in the preamble hereof.

"Concessionaire" as stated in the preamble hereof.

"Contract Year" shall mean one of five (5) consecutive twelve month periods.

"Counter Area" shall mean counter(s) in the Main Terminal and East Terminal, if any, that are designated for the Concessionaire's use in the provision of PVR services to the public.

"Director" shall mean the Director of Airports of the Airport Authority of the City of St. Louis, and incorporates the granting of approvals requirements of Section 1315 hereof.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

"Gross Revenue" includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Airport or on vehicles taken by customers from the Airport regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Airport;

- drop charges charged to customers renting vehicles at the Airport but delivering them to another location;

- all other monies collected from customers for associated services and equipment (e.g., child restraint devices and mobile telephones) except those specifically excluded below.

- all monies paid for personal accident insurance coverage

The following may be excluded from Gross Revenues:

- all monies paid for collision and loss damage waiver;

- monies recovered from insurance or otherwise for damage to or for loss, conversion or abandonment of vehicles or other property;

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers;

- monies separately stated and collected from customers for refueling of vehicles;

- proceeds from the disposal of Concessionaire's owned equipment or vehicles sold wholesale;

- monies collected from customers for vehicles dropped at the Airport and originally rented at another airport to which Concessionaire pays a concession fee; and

- credits for refunds to customers for sales made at the Airport.

"Improvements" shall mean all constructions 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.

"Passenger Vehicle Rental (PVR) Concession" shall mean a concession that serves the public through the provision of exclusively on-airport passenger vehicle rental services. Exclusively on-airport passenger vehicle rental services are restricted to be those rights granted to the Concessionaire by the City in Section 301 of this Agreement.

"Parking Space" shall mean each one hundred eighty (180) square feet of space within the relocated Ready/Return Area, i.e., the total area of the Concessionaire's assigned Ready/Return Area divided by 180 equals the

number of Parking Spaces assigned to the Concessionaire. No portion of the Ready/Return Area shall be excluded from this definition.

"Premises" shall mean a location or locations described in Section 201 that have been designated by the City for the operation of Concessionaire's PVR concession, and for other uses herein specifically provided for.

"Percentage Fee" shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage set out in Article V hereof.

"Ready/Return Area" shall mean a parking area(s) containing Parking Spaces presently located only in the Main Terminal garage and East Terminal parking area, if any, that is designated for the Concessionaire's use in staging rental only vehicles prepared for or returned by customers.

"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.

"Unamortized Investment" shall mean the depreciated value of Concessionaire's investment in Improvements less the cost of Removable Fixtures. The Improvements costs shall be fully amortized on a straight-line basis over the number of complete Contract Years remaining in the term after completion of the construction of the Improvements. To establish the cost of Improvements, the Concessionaire shall furnish the Director with satisfactory proof of Improvements costs upon written request by the Director. This proof of costs must include, at a minimum, an itemized account of all included costs, supported by invoices and canceled checks and certified as accurate by an independent Certified Public Accountant. The Concessionaire shall also provide to the Director any other proof of costs necessary to satisfy the Director.

## ARTICLE II PREMISES

Section 201. Premises. City hereby grants and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area "Ec" and Ready/Return Area "DT" as described on Exhibits A-1 and A-2 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter and ready/return services. The rights granted in Section 301 hereof must only be exercised on the Premises.

The Director shall have the right to add, substitute or relocate portions of the Premises upon reasonable notice to the Concessionaire, including the addition of a Counter Area and Ready/Return Area in the expansion of the East Terminal and relocation of the Ready/Return Area within the planned reconfiguration of the red level of the Main Terminal garage. The Concessionaire will move to area "D" as shown on Exhibit A-3 in the relocated Ready/Return Area and is exclusively required to use this area for ready/return services. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the spaces in the Ready/Return Area on June 1 of Contract Years Two through Five based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaire's if the change in concession fees amongst any of the PVR concessionaires is 5 percentage points or more.

The Counter Area lines of demarcation between the Concessionaire and other concessionaires or tenants shall be determined by the Director.

The City will not provide a service area for the Concessionaire's use during any part of the term of this Agreement. Should the Concessionaire have occupied an on-airport service area prior to the term of this Agreement, it may continue to do by a separate agreement that expires March 1, 1994. The Concessionaire must vacate this on-airport service area on March 1, 1994.

Section 203. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises, for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III CONCESSION RIGHTS

Section 301. Rights. City hereby grants to Concessionaire the right, license and privilege to operate a non-exclusive PVR concession on the Airport that offers exclusively on-airport PVR services, subject to all the terms, covenants and conditions of this Agreement, during the term of this Agreement. The following activities are inclusive of these rights:

The right to transact rental services only within the Premises, including the provision of customer service counter and ready/return services, the sale of loss and collision damage waiver and personal accident insurance, and other

customer services including car seats and cellular phones used only for rental vehicles.

The Concessionaire is not granted the right to sell vehicles or transport, by shuttle bus or any other mode of transportation, any of its customers off the Premises for the purpose of performing any customer rental activities/transactions, including the provision of customer service counter and ready/return services.

The Concessionaire will install and operate a direct telephone line in the ground transportation kiosk in the East Terminal until such time as a Counter Area and Ready Car Area may be made available in the East Terminal. The Concessionaire will operate the Counter and Ready Car Areas in the East Terminal if such areas are provided.

Section 302. Limitation of Rights. Concessionaire is not granted the right to offer for sale any merchandise or other services or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services, 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.

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

#### ARTICLE IV LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1993 and shall end five (5) years thereafter on November 30, 1998 unless sooner terminated in accordance with other provisions of this Agreement.

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 good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

#### 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 set forth below in Sections 502, 506 and 512 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. Concessionaire shall pay to the City from the first month of the term through December 31, 1993 an annual rental rate of \$30.48 per square foot for 606 square feet of the Counter Area in the Main Terminal. The Concessionaire shall pay to the City upon taking occupancy of a Counter Area in the East Terminal, if provided, an annual per square foot rental rate equal to the City's actual expense of providing and maintaining the space as computed by the City plus 15%.

Beginning on January 1 of each succeeding calendar year the Concessionaire shall pay a per square foot rental rate for all Counter Area that shall be equal to the City's actual expense of providing and maintaining the space as computed by the City plus 15%. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

The Concessionaire shall pay to the City an annual rental of \$600.00 per Parking Space assigned to it within the existing and relocated Ready/Return Area in the garage of the Main Terminal. This rental rate may be reestablished by the Director. A separate annual rental rate per Parking Space for a Ready Return Area in the East Terminal parking area, if provided, will be established by the Director, and may be different from the Main Terminal rate.

Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or the percentage of Gross Revenue as set out below.

Contract Years	Minimum Annual Guarantees
- Contract Year One	\$625,000.00
- Contract Year Two	\$550,000.00
- Contract Year Three	\$560,000.00
- Contract Year Four	\$570,000.00
- Contract Year Five	\$585,000.00

Percentage

10%



B. The Minimum Annual Guarantees shall be reduced by a maximum of 25% should enplaned origin/destination ("O&D") passengers fall by at least 25% or more in a one year period after Contract Year One. The base year for O&D enplanement comparisons is Contract Year One. O&D enplanement numbers used for comparisons shall be taken from the statistics recorded by the City. This adjustment shall be subject to the following limitations: (1) this adjustment will take effect in the Contract Year immediately following the Contract Year in which the entire 25% reduction in O&D enplanements is attained, (2) this adjustment applies only to Contract Years subsequent to the entire 25% decline in O&D enplaned passengers and (3) this adjustment will be offset proportionally to 100% of the applicable Contract Years' Minimum Annual Guarantees for Contract Years following O&D enplanement increases above 75% of Contract Year One O&D enplanements.

An example of this adjustment is as follows. O&D enplanements in Contract Year Three decrease to 65% of Contract Year One O&D enplanements. This will cause a maximum of a 25% reduction in the Minimum Annual Guarantee for Contract Year Four. O&D enplanements in Contract Year Four then increase to 85% of Contract Year One O&D enplanements. This will cause the Minimum Guarantee for Contract Year Five to increase to 85% of the Minimum Annual Guarantee for Contract Year Five.

C. The City will defer up to a total of \$2,000,000.00 (two million dollars) concession fees to be used by the PVR concessionaires to offset any costs of establishing service areas outside the boundaries of the Airport. The concession fees will be deferred as credits applied to the Airport accounts of the PVR concessionaires in (24) twenty-four equal amounts over the 1st (first) through the 24th (twenty-four) months of the term. The deferred concession fees will be repaid to the Airport accounts of the PVR concessionaires in (36) thirty-six equal amounts over the 36th (thirty-sixth) through the 60th (sixtieth) months. The Concessionaire's share of the total deferred concession fees will be equal in proportion to the total amount of the Concessionaire's Minimum Annual Guarantees, as set out in Section 503 of the Concession Agreement, divided by the total Minimum Annual Guarantees of all PVR concessionaires.

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and Ready/Return Area for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the

Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year.

Section 505. Reports.

A. Concessionaire shall submit to the City by the 20th day of the second and each succeeding month of the Contract Years hereof, one copy of an accurate statement of Gross Revenue. The final statement of Gross Revenue will be due by the 20th day of the month following expiration of this Agreement. The Concessionaire shall report Gross Revenue, and the computation of Gross Revenue, on the form provided by the Director. The City reserves the right to use these statements of Gross Revenue as a source of information to bidders in a future solicitation for bids for this concession.

B. On the form supplied by the Director for the submission of each monthly statement of Gross Revenue, Concessionaire shall state the number of rental transactions. The City shall use said reports to determine traffic flow for planning and other management purposes.

C. The Concessionaire shall submit an audit report of Gross Revenue within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant licensed to do business within the state of Missouri. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) the calculation of the total amount payable to the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Revenue and/or goods and services attributable to DBE 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 Revenue without exception.

If through such audit report, it is established that additional fees are due the City, the Concessionaire shall pay such additional fees to the City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that the Concessionaire has overpaid the City, then such overpayment from the Concessionaire shall be credited to the fees and charges next thereafter due from the Concessionaire or paid to Concessionaire after the last Contract year.

D. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, the Concessionaire shall provide the City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year.

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of 1 1/4% 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 the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees and rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) 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 City may agree to another form of deposit which will provide equal protection of the City's interest.

Section 508. Prompt Payment of Taxes and Fees. Concessionaire 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, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Mechanics' and Materialmen's Liens. The 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 510. Accounting Records and Reports. Concessionaire will during the term hereof make available in the St. Louis area true, accurate, complete and auditable records of all business conducted by it at the Airport. Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The 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 at the Concessionaire's place of records.

Section 511. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts at any time for the purpose of verifying the Gross Revenue hereunder. If as a result of such audit(s) it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Revenue reported by the Concessionaire and Gross Revenue determined by the audit, the cost of the audit shall be borne by the Concessionaire.

Section 512. Additional Fees, Charges and Rentals. Concessionaire will pay additional fees, charges and rentals under the following conditions:

A. if the City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse the City, and

B. if the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments will 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 rental thereafter due hereunder. Each and every part of such payment will 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 rental, as set forth herein.

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

Section 513. Notice, Place and Manner of Payment. Payments will be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire and will be made in legal tender of the United States.

## ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. The Concessionaire covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class PVR concession serving the needs of all users of the Airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon the Concessionaire and the City. The Concessionaire shall provide quality services and shall equip, organize, put into service and manage efficiently the PVR concession to provide service with a clean, attractive and pleasant atmosphere. Concessionaire shall offer for rental automobiles not more than two (2) model years old consisting of full, compact and subcompact models in such numbers as are required by demand.

Section 602. Hours of Operation. The hours of operation for serving the public shall be twenty-four (24) hours per day, seven (7) days per week. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public and substantially similar to the prices charged by on-airport concessionaires at airports of comparable passenger enplanements located within the midwest region. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

Section 604. Promotion. Concessionaire covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. The Concessionaire shall provide a national reservations system for its services.

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 induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Revenue of Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by City.

## Section 606. Personnel.

A. The 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. The 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 PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. 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. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and/or the Airport. The Concessionaire recognizes and agrees that the security requirements may change and Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and/or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR 107 (1988) or other applicable law or regulation and shall promptly be reimbursed to the City by the Concessionaire.

Section 607. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced managers who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager 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. The Concessionaire shall monitor the movement of its vehicles 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. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and

statements of Gross Revenue 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 the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

#### Section 610. Transition Period.

A. During the transition to the Concessionaire of an existing PVR concession, if applicable, the Concessionaire shall use its best efforts to assure that there shall be no cessation of the operation of PVR services. The Concessionaire agrees to closely coordinate the planning and execution of such a transition with the Director. All operations during the transition shall be confined to the Premises.

B. The Concessionaire understands that it is not subject to any requirement to buy out the improvements investment in the Counter and Ready/Return Areas, if applicable, of the previous concessionaire.

#### Section 611. Operation.

A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, the Concessionaire will provide and is responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies. Concessionaire shall provide and maintain the rental vehicles made available hereunder at Concessionaire's sole expense, in good operative order, free from known mechanical defects and in a clean, neat and attractive condition inside and outside.

B. The City shall not be responsible for any vehicles, supplies, fixtures or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control of the City.

## ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal and East Terminal, subject to completion of the East Terminal expansion project, "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area. The Concessionaire shall be responsible for all costs of relocating its Ready/Return Area in the planned reconfiguration of the red level of the Main Terminal garage

All improvements shall be constructed by the Concessionaire in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.

B. The 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.

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. Concessionaire will 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 St. Louis County, 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, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director.

Section 704. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1986 as amended. 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.

Section 705. Certificates of Completion. Upon the completion of the improvements hereunder, the 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.

Section 706. Signs.

A. The Concessionaire shall not, without the prior written approval of the Director erect, maintain or display any signs on the Premises. 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, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directory 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 706 and the Tenant Design Standards.

C. Prior to the erection, construction or placement of any sign, the Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.

D. The Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to PVR services. The Concessionaire shall not place any signs outside of the Premises.

Section 707. Title to Improvements and Fixtures. All improvements constructed or placed in the Premises by the Concessionaire that are not Removable Fixtures, and all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in the City upon

expiration or earlier termination of this Agreement; subject, however, to the Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

All Removable Fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement.

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

Section 708. Reimbursement of Build-Out Costs. In the event of relocation of the Premises or portions thereof by the City, the City shall pay to the Concessionaire, less any amounts due the City from the Concessionaire, the Unamortized Investment Concessionaire has made in Improvements to the relocated Premises or portions thereof. The City shall be entitled to inspect the Improvements, and if this inspection reveals missing or damaged items, the Unamortized Investment shall be reduced by an amount equal to the cost of the replacement or repair of missing or damaged Improvements. Title to the Improvements shall pass to the City immediately upon payment of the Unamortized Investment.

## 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. Repairs and Maintenance. Concessionaire will 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 terminal building and garage.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

The Concessionaire will perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but the 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 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 employees or agents.
- 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. The 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. 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. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all claims or causes of action arising out of the closing of any right-of-way.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) 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 and conditions of this Agreement.

B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after the City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. No heat or chilled air will be provided to the Ready/Return Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The 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, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The 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 the Concessionaire in damages or otherwise for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

Section 805. Interference to Air Navigation. The Concessionaire agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Any obstructions will be removed by the Concessionaire at its expense. The Concessionaire further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. Concessionaire, at his expense, at all times during the term hereof, shall cause St. Louis County, the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire 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 of Concessionaire its officers, agents, employees, and independent contractors pursuant to this Agreement both on the Premises and the Airport under the following types of coverage:

- A. General Comprehensive;
- B. Automobile (all vehicles).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$2,000,000 comprised of such primary and excess policies of insurance as Concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees and

independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations hereunder.

Section 902. Property Insurance. Concessionaire will provide fire and related insurance coverage for the full value of the improvements and equipment existing or installed on the Premises.

Section 903. Damage or Destruction of Terminal and Garage. The building in which the Premises are located will be insured by the City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, the City may terminate this Agreement by written notice to the Concessionaire. All rental payments will cease as of the date of the destruction or damage.

If the building is repairable the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities during the repair and Concessionaire will pay rental for the temporary facilities.

Section 904. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director 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 written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director.

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the conditions of this Agreement.

Section 906. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Premises or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of Lambert-St. Louis International Airport. The Director or his designee shall give to Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement.

Section 908. Occupancy of Premises. Concessionaire accepts the Premises "as is". The Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

## ARTICLE X

### ASSIGNMENT AND SUBLETTING

Section 1001. Assignment and Subcontracting.

A. Concessionaire shall not assign this Agreement without first obtaining written approval of the Director and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective unless Concessionaire shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such

assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement.

Any such transfer or assignment without the consent of the City shall constitute a default on the part of the Concessionaire under this Agreement. 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 of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after notice thereof given in writing to exercise the City's option hereby given to end the term on a date which shall not be 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 the Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in 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 end the term.

B. Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least 30 days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit in writing a request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement; and (4) a provision providing for the assignment of the contract to the City, without consent of the subcontractor upon the request of the City.

The parties understand and agree that the Concessionaire is responsible for the performance of its subcontractors under this Agreement. The Concessionaire agrees to initiate and take all correction action should a subcontractor 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.

## 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 default.

A. If the fees, charges, or other money payments which the 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 a 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 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 the Concessionaire under this Agreement;

8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire and is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises which, 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 covenant or condition herein required to be performed by the 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 by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions 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 of said terms, covenants or conditions.

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 substantial entirety.

B. If the City shall have abandoned the Airport for a period of at least 30 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 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 45 (forty-five) days have elapsed after notice by either party to the other specifying the date and cause of termination, except that for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be 45 (forty-five) days from the payment(s) due date with notice to the Concessionaire or 30 (thirty) days from the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such 45 day period, (2) commences to correct such default within said 45 days and (3) corrects the same as promptly as is reasonably practicable.

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

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.

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) 10% participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR part 23, subpart F, or (2) 25% participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Revenues. These goals remain in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director.

At the time of bid, the implementing regulations governing DBE participation through the purchase or lease of services or goods from certified DBEs had not yet been finalized by the FAA, and the Concessionaire is not required to fully comply with these implementing regulations in Contract Year One. The Concessionaire shall, however, fully comply with the implementing regulations as finalized by the FAA for goods and services participation in Contract Years Two through Five.

The Concessionaire submitted at time of bid evidence that it completed the applicable good faith efforts procedure specified in the PVR bid specifications.

1. If these good faith efforts resulted in the fulfillment of the DBE goal, the Concessionaire will not be required to perform additional good faith efforts, except in the event that the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations, the Concessionaire will be required to perform the good faith efforts procedure specified in the applicable federal regulations for the type of participation sought within four (4) months following the loss of DBE participation, and continue at intervals of not less than twelve (12) months, or until DBE participation that fulfills the DBE goal is secured by the Concessionaire.

2. a) If these good faith efforts did not result in fulfillment of the DBE goal, the Concessionaire must again complete the good faith efforts procedure specified in the applicable federal regulations for the type of participation sought within four (4) months following commencement of the term of this Agreement, and continue at intervals of not less than twelve (12) months, or until DBE participation that fulfills the DBE goal is secured by the Concessionaire goal.

(b) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 23, subpart F.

The 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.

(c) The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, and as applicable and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance 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

### MISCELLANEOUS PROVISIONS

Section 1301. 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, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to Budget Rent-A-Car of St. Louis, Inc., P.O. Box 10347, St. Louis, Missouri, 63145. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

A. The Concessionaire hereto understands and agrees that the City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Concessionaire hereby agrees that his premises shall be posted to such effect as required by such regulation.

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 action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of 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 agrees that should it be determined by the Concessionaire or City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of his program.

E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever the Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within 10 days.

H. 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 and 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.

I. The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The 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. The Concessionaire assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1303. No Personal Liability. No Alderman, Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1304. 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 or which is not within its control.

Section 1305. 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 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1307. Operation and Maintenance of 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 1308. Title to Site. The Premises from the date hereof until the 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 1309. 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. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Concessionaire herein.

Section 1310. 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 impair the right of Concessionaire hereunder.

Section 1311. 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.

Section 1312. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this



Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. 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 1314. 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 1315. Withholding Required Approvals. Whenever the approval of the City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of the City is required, the approval must be in writing and the approving official is the Director or the person duly designated to perform one or more of the Director's duties under this Agreement.

Section 1316. 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.

Section 1317. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1318. 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 1318. 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, and the 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 1319. Advertising. The 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 1320. Conflicts Between Tenants. In the event of a conflict between the 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 lessee, licensee, and/or other concessionaire and the Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1321. Prevailing Wages. The Concessionaire agrees to pay all employees not less than the prevailing hourly rate of wages and fringe benefits as determined by the United States Secretary of Labor, or its authorized representative, in accordance with prevailing rates in the locality of the metropolitan St. Louis area pursuant to 41 U.S.C. 351 et seq., as amended, except for any person engaged in an executive, administrative or professional capacity.

IN WITNESS WHEREOF, the parties hereto affixed their hands and seals as set forth below for themselves, their successors and assigns.

BUDGET RENT-A-CAR OF ST. LOUIS, INC.

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1993.

Commission Chairman and Director of Airports  
Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on , 1993.

Secretary, Board of Estimate & Apportionment  
Date

APPROVED AS TO FORM:

City Counselor City of St. Louis

Date Comptroller,  
Date  
City of St. Louis

Register,  
City of St. Louis  
Date

EXHIBITS  
A-1, A-2 and A-3  
(Premises)

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

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>11/19/93</b>	<b>11/19/93</b>	<b>T&amp;C</b>		

<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>12/10/93</b>			<b>12/17/93</b>	<b>12/17/93</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>63055</b>				