

## *St. Louis City Ordinance 63939*

FLOOR SUBSTITUTE

BOARD BILL NO. [96] 249

INTRODUCED BY ALDERMAN MARY ROSS

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City a fifth amendment to the Concession Agreement (the "Agreement") for Food and Beverage Concession at Lambert- St. Louis International Airport (the "Airport") made January 31, 1967, which was authorized under Ordinance 54251 approved June 24, 1966; this fifth amendment between the City and Host International, Inc., a Delaware corporation (the "Concessionaire") approved by the Airport Commission and the Board of Estimate and Apportionment, which is attached hereto as "Attachment 1" and made a part hereof, is a complete restatement of and an amendment to the Agreement as amended, providing increased opportunities for disadvantaged, minority and women business enterprises in the food and beverage concession at the Airport as well as additional revenue and more favorable terms to the City; 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 are hereby authorized and directed to enter into and execute on behalf of the City of St. Louis (the "City"), a fifth amendment to a certain Concession Agreement (the "Agreement") for Food and Beverage Concession at Lambert- St. Louis International Airport (the "Airport") made January 31, 1967, which was authorized under Ordinance 54251 approved June 24, 1966; this fifth amendment between the City and Host International, Inc., a Delaware corporation (the "Concessionaire") approved by the Airport Commission and the Board of Estimate and Apportionment, is a complete restatement of and an amendment to the Agreement as amended and is to read in words and figures as set out in "Attachment 1" which is attached hereto and made a part hereof.

SECTION TWO. 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 Charter and shall become effective immediately upon its approval by the Mayor of the City of St. Louis.

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EXHIBIT "A"

EXHIBIT "B"

AIRPORT NUMBER .....

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT RESTATED AND  
AMENDED CONCESSION AGREEMENT (FOOD AND BEVERAGE)

THIS FIFTH AMENDMENT, made and entered into as of the day of , 1996  
(the "Agreement") by and between the CITY OF ST. LOUIS, a municipal  
corporation of the State of Missouri ("City") and Host International, Inc., a  
Delaware Corporation ("Concessionaire").

THIS Agreement is a complete restatement of and amendment to the  
Concession Agreement made the 31st day of January, 1967, and as amended by  
Addendum to Concession Agreement dated February 1, 1967, (The First  
Amendment), as further amended by an Extension of Concession Agreement  
for Food and Beverage Concession dated August 3, 1976, (The Second  
Amendment), as further amended by an Amendment to Concession Agreement

for Food and Beverage dated April 16, 1979, (The Third Amendment), and as further amended by an Amendment to Concession Agreement for Food and Beverage dated April 1, 1987, (The Fourth Amendment) by and between the City of St. Louis, a municipal corporation of the State of Missouri and Host International, Inc., (previously known as Interstate Hosts, Inc.), a Delaware Corporation. Whereas, it is the intent of both parties upon execution of this Agreement, that the terms, covenants and conditions of the January 31, 1967 Concession Agreement as previously amended will no longer be in effect.

WITNESSETH, That:

WHEREAS, 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"); and,

WHEREAS, a Food and Beverage Concession at the Airport is essential for proper accommodation of the public; and,

WHEREAS, Concessionaire, since its initiation of operations at Lambert-St. Louis International Airport by Concession Agreement dated January 31, 1967, has earned the confidence of City and the traveling public and has demonstrated a high level of service in the food and beverage operations at the Airport; and,

WHEREAS, the multi-gate expansion of the East Terminal under construction will require food and beverage facilities to be designed, constructed and operative by Spring, 1998 and, in addition to those facilities, major improvements are required to food and beverage facilities in the Airport Terminal and Concourses; and,

WHEREAS, City desires increased opportunities for disadvantaged, minority and women business enterprises in the Food and Beverage Concession at the Airport as well as additional revenue and more favorable terms to the City; and,

Whereas, Concessionaire has agreed to sublease portions of the Premises in order to achieve and maintain a DBE/MBE/WBE participation level of 40% of Concession Gross Revenue throughout the term of this Agreement; and,

WHEREAS, design and construction of said facilities and improvements will require Concessionaire to invest or cause to have invested not less than \$7,500,000.00 (Seven Million, Five Hundred Thousand Dollars) and Concessionaire has agreed to commit to such investment; and,

WHEREAS, Concessionaire has further agreed to refurbish the Premises no later than the year 2004 and has agreed to expend or cause to be expended not less than \$3,000,000.00 (Three Million Dollars); and,

WHEREAS, by this Agreement, Concessionaire waives all rights to any and all reimbursements and compensation from the City for the depreciated value of existing improvements and non-expendable equipment at the Airport.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and other valuable considerations, 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 subsequent amendments thereto, duly approved by City.

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

"Applicable Percentage Fee" shall mean the product of (i) the Gross Revenue for each product category sold for the appropriate period multiplied by (ii) the percentage set out in Article V hereof for each product category.

"Build-Out" shall mean the demolition/redevelopment of existing Improvements and construction of new Improvements to the Premises, including Removable Fixtures.

"Build-Out Costs" shall mean costs incurred for the demolition/re development of existing Improvements and construction of new Improvements to the Premises, including Removable Fixtures, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction, franchise and/or license fees and overhead of Concessionaire.

"City" shall mean the City of St. Louis, a municipal corporation of the State of Missouri.

"Commencement Date" shall mean the first day of the month following the date City fully executes this Agreement.

"Concession Plan" shall mean plan which identifies the concepts for Food and Beverage units Concessionaire will construct based upon quantitative and qualitative research conducted in the Metropolitan St. Louis area by Concessionaire.

"Concession Plan Implementation" shall mean the actions which Concessionaire will take to sublease premises to DBE/MBE/WBE firms to fulfill Concessionaire's 40% DBE/MBE/WBE participation goal and as further described in Section 604 herein.

"Concessionaire" shall mean the Host International, Inc., a Delaware Corporation.

"Contract Year" shall mean each consecutive twelve month period of the Agreement term.

"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 1314 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" shall mean the gross receipts from all sales made for cash or credit on the Airport, regardless of the point of origin or delivery of the order,

and any other revenue of any type arising out of or in connection with Concessionaire's operations on the Airport, whether performed by Concessionaire, its Sublessees, subsidiaries, associated companies or otherwise. The following may be excluded or deducted, as the case may be, from Gross Revenues:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;

- revenues derived from payments received by Concessionaire for loans made to Sublessees, fees charged for services provided Sublessees, or any other fees assessed by the Concessionaire for the use of Airport facilities for which the Concessionaire has a direct lease, so long as the charge is assessed in accordance with this Agreement.

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

"Large-Hub Airport" shall mean any Airport so designated by the Federal Aviation Administration.

"Metropolitan" shall mean the Greater St. Louis Metropolitan Area.

"Minority Business Enterprise" or "MBE" shall mean a sole proprietorship, partnership, or corporation owned, operated and controlled by minority group members who have at least 51% ownership. Minority group member(s) must have day to day operational and managerial control, with an interest in capital and earnings commensurate with his or her percentage of ownership. Minority Group Member(s) means persons legally residing in the United States who are Black or Hispanic.

"Minimum Annual Guarantee" shall mean the minimum annual fee that Concessionaire guarantees to pay each Contract Year in twelve equal payments.

"Participation Goal" shall mean the assignment of business opportunities to certified DBE/MBE/WBE firms in an amount sufficient to achieve a minimum participation level of 33% of Gross Revenues with certified MBE firms and a minimum participation level of 7% with certified WBE firms. A minimum of 10% of Gross Revenues provided for above will be assigned to a combination of MBE/WBE firms which also qualify as certified DBE firms. In total the goal

is for participation by DBE/MBE/WBE firms in an amount equal to not less than 40% of total Gross Revenues.

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

"Pro Rata Basis" shall mean the formula for which Minimum Annual Guarantees will be reduced in the event that Premises are reclaimed and no replacement space is offered. This formula shall be the most recent twelve month period of gross revenues attributable to the reclaimed unit as a percentage of total gross revenues of food and beverage and merchandise for the same twelve months period. This percentage shall represent the reduction in the Minimum Annual Guarantee. This reduction shall remain in effect until the reclaimed unit has been out of service for one (1) Contract Year.

"Refurbishment" shall mean to upgrade the Premises and return the Premises to original condition or convert food and beverage units over to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of improvements.

"Refurbishment Costs" shall mean costs incurred to upgrade the Premises and return the Premises to original condition or convert food and beverage units over to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of improvements, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction, license and/or franchise fees and overhead of Concessionaire.

"Removable Fixtures" shall mean all furnishings, equipment and fixtures installed by 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 Build-Out Costs less the cost of Removable Fixtures. The Build-Out Costs shall be fully amortized on a straight-line basis over the Term of this Agreement.

"Women's Business Enterprise" or "WBE" shall mean a sole proprietorship, partnership, or corporation, operated and controlled by a woman or women who have at least 51% ownership. The woman or women must have day to day

operational and managerial control, and an interest in capital and earnings commensurate with her or their percentage of ownership.

## ARTICLE II PREMISES

Section 201. Premises. City hereby permits Concessionaire to use at the Airport the Premises as described on Exhibit "A," attached hereto and made a part hereof. The rights granted in Article III hereof may be exercised only on the Premises.

The Director shall have the right to add, substitute, relocate or reclaim portions of the Premises upon reasonable notice to Concessionaire. Any relocation of Premises will be reasonable in regard to the selection of substitute space that is as near comparable as possible. If such relocation is necessary, City will not be liable or responsible for any inconvenience or loss by Concessionaire of work time or business resulting from the relocation. In the event that Premises are relocated, Concessionaire will be reimbursed the Unamortized Investment of the relocated Premises. In the event that Premises are reclaimed, Concessionaire will be reimbursed the Unamortized Investment of the reclaimed space and the Minimum Annual Guarantee will be reduced on a Pro-Rata Basis until such time as the reclaimed Premises have been out of service for a full contract year.

Section 202. Substitute Space - Reduced Enplanements. Should City in the course of implementing the current Airport Master Plan, which is pending FAA approval, develop an additional terminal or concourse which results in enplanements on an existing concourse being reduced by 25% or more and the impacted Concessionaire can demonstrate that the reduction in enplanements has resulted in a reduction in Gross Revenues in excess of 15% for a six month period, when compared with the same period from the prior year, City may, at its sole discretion, provide substitute space that will generate sales similar to the sales generated in the vacated space prior to the reduction in enplanements. In the event that substitute space is provided, City, at its sole discretion, may require Concessionaire to develop the vacated space, offer the space to an existing tenant of the Airport or seek a new tenant to develop the space for any purpose it so desires including a Food and Beverage Concession unit.

Section 203. Access. Subject to Section 901 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



## RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the exclusive right, license and privilege, to the extent allowed by law, to operate a Food and Beverage Concession within the Premises. City hereby grants to Concessionaire, subject to all terms, covenants and conditions of this Agreement, the non-exclusive right, license and privilege to operate in-flight catering. Concessionaire is restricted in its offering of retail merchandise to products that are specifically approved in writing by the Director.

Concessionaire is not granted the right to offer for sale any other products or services.

Concessionaire agrees to achieve and maintain a DBE/MBE/WBE participation rate of 40% of Gross Revenue throughout the term of this Agreement. (See ARTICLE VI. DBE/MBE/WBE Participation for Compliance.)

Section 302. Limitation of Rights. Concessionaire shall have no right to perform any services or offer for sale any products, 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 hereof are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale 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 existing terminal building and concourses.

The rights granted by this Agreement will extend to the East Terminal facility planned to open March 1998. Rights will not extend to any other terminals that may be built during the Term of this Agreement.

## ARTICLE IV

### TERM

Section 401. Term. The term of this Agreement shall commence on the first day of the month following the date City fully executes this Agreement and ending on January 31, 2013, unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below.

Commencement Date

Expiration Date

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 City shall have the right to take possession of the Premises with or without due process of law.

**ARTICLE V  
FEES AND PAYMENT**

Section 501. General. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the fees set forth in this Agreement, without demand during the term of the Agreement.

Section 502. Concession Fees.

A. Concessionaire agrees to pay, for each Contract Year, a sum equal to the greater of the Minimum Annual Guarantee (hereinafter referred to as "MAG") as set out in paragraph (B) of this Section, or the aggregate of the Applicable Percentage Fees for each product category as set out below, and which shall be applied to the Gross Revenue, as defined, of Concessionaire and each Sublessee, whether the owner of one or multiple units, separately, except that no fees charged to any Sublessee shall be greater than those outlined below:

<b>FOOD/BEVERAGES</b>		<b>ALCOHOLIC BEVERAGES</b>	
\$0 - \$4.0M	10%	\$0 - \$2.0M	15%
\$4.1 - \$8.0M	11%	\$2.1 - \$4.0M	16%
\$8.0M and over	12%	\$4.0M and over	17%
EMPLOYEE CAFETERIA	0%		
<b>INFLIGHT CATERING</b>		<b>APPROVED MERCHANDISE</b>	
Catering Permit	5%	Sold in Terminals/Concourses	20%

NOTE: Catering Permit Applicable Percentage Fee will be subject to adjustment based on the prevailing Applicable Percentage Fees negotiated with other in-flight catering companies operating at the Airport.

B. For Contract Year One and Contract Year Two, the Minimum Annual Guarantee (hereinafter referred to as MAG) shall be \$1,000,000 (One Million

Dollars) for each year. For Contract Year Three, and each remaining Contract Year, the MAG shall be a sum of money representing 80% of the preceding Contract Year's Applicable Percentage Fees or MAG, whichever is greater.

Section 503. Payment. Payments for each month of Contract Years One (1) through the last Contract Year shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the MAG for the applicable Contract Year, and (b) paid on or before the 15th day of the second and each succeeding month an amount equal to the aggregate of the Applicable Percentage Fees for the preceding month which exceeds the MAG for the applicable Contract Year.

Section 504. Reports.

A. Concessionaire shall submit to City by the 15th day of the second and each succeeding month of each Contract Year hereof, one copy of an accurate statement of Gross Revenue for the preceding month. This statement must show Gross Revenue by the Applicable Percentage Fee product categories for each unit within the Premises, identifying Gross Revenues itemized by the Applicable Percentage Fee product categories attributable to DBE/MBE/WBE participation, and be certified as accurate by an officer of Concessionaire. The final statement of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. 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. 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) accumulated Gross Revenue separated into the five Applicable Percentage Fee product categories, (iii) the calculation of the total amount payable to City based upon accumulated Gross Revenue for the Contract Year, the product categories and the Applicable Percentage Fees, and (iv) the aggregate amount attributable to DBE/MBE/WBE Sublessees. The audit reports shall also include a schedule showing the total of actual payments to 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 City, Concessionaire shall pay such additional fees to 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 Concessionaire has overpaid City, then such overpayment from Concessionaire shall be credited to the fees and charges next thereafter due from Concessionaire or paid to Concessionaire after the last Contract year.

C. Within thirty (30) days after the close of each Contract Year, Concessionaire shall provide City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year) by product category as set out in Section 502(A).

Section 505. Unpaid Rent and Fees. All unpaid rent and fee payments due City hereunder will bear a service charge of 1½% per month if same is not paid and received by City on or before the 15th of the month in which said payments are due, and Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by City in collection of said delinquent amounts due including services charges.

Section 506. Performance Bond. Concessionaire agrees to furnish a bond to City in the principal amount of one-half the Minimum Annual Guarantee for the Contract Year One (1). Such bond will guarantee the payment of the Concession Fees 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 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 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 Performance Bond, Concessionaire agrees to furnish a replacement bond in the same principal amount within 15 days.

Section 507. Prompt Payment of Taxes and Fees. Concessionaire covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 508. 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 509. 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 City or its duly appointed agents or auditors.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its Sublessees' 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 City, Concessionaire shall pay such fees or charges to 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 Concessionaire and Gross Revenue determined by the audit, the cost of the audit shall be borne by Concessionaire.

Section 511. Additional Fees, Charges and Rentals. Concessionaire will pay additional fees, charges and rentals under the following conditions:

- If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City.
- If City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of 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 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 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 512. Notice, Place and Manner of Payment. Payments will be made at the Office of the Director of Airports, or at such other place in City of St. Louis, Missouri as City may hereafter notify Concessionaire and will be made in legal tender of the United States.

Section 513. Penalties. If Concessionaire violates any of the covenants or terms and conditions enumerated below, the Director may elect, after written notice of said violation has been provided to Concessionaire, to impose the penalties described below on the basis of per violation per day:

Violation	Section	Penalty
Violation of Article III, Rights Clause	301. - 302.	\$100.00
Violation of Article VII, Concessionaire's Operation Clause	702. - 708.	\$150.00
Violation of Article VIII, Improvements and Alterations Clause	807.	\$150.00
Violation of Article IX, Use of Premises Clause	902.	\$100.00

## ARTICLE VI

### DISADVANTAGED BUSINESS ENTERPRISE (DBE), MINORITY BUSINESS ENTERPRISE (MBE), WOMEN'S BUSINESS ENTERPRISE (WBE) PARTICIPATION

Section 601. DBE/MBE/WBE. In order to promote City's interest in establishing opportunities for disadvantaged, minority and women business enterprises, Concessionaire shall provide for the sublease of certain facilities to an agreed upon number of disadvantaged business enterprises, as defined under the Regulations of the U.S. Dept. of Transportation, as set forth in Title 49 CFR Part 23, Subpart F, as applicable now or in the future as said Regulations may be amended or new regulations promulgated, and minority and women's business enterprises as defined in the Mayor's Executive Order No. 18 dated March 31, 1992 and any City of St. Louis Executive Order, Resolution or Ordinance enacted now or in the future to implement the foregoing Federal and City regulations, as applicable.

Section 602. Compliance.

A. Concessionaire agrees as a condition hereunder to meet a minimum Participation Goal of not less than 40% of the total Gross Revenues earned in the exercise of the Concession Rights granted in Article III. This goal remains in effect throughout the term of the Agreement. Credit toward the Participation Goal will only be given for the use of DBE/MBE/WBE's certified by processes acceptable to the Director.

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.

Concessionaire shall operate this Food and Beverage Concession in compliance with all other requirements imposed by or pursuant to Mayor's Executive Order No. 18 dated March 31, 1992 as applicable and as said regulations may be amended or new regulations promulgated, or new City of St. Louis executive order, resolution or ordinance enacted, now or in the future. In the event of breach of any of the above covenants, the City shall have the right to terminate the Agreement.

C. In the event that any DBE/MBE/WBE Sublessee defaults, Concessionaire agrees to immediately take steps to obtain a replacement certified DBE/MBE/WBE through good faith efforts. It is the intent of City to have a certified DBE/MBE/WBE Sublessee replace any DBE/MBE/WBE Sublessee that has defaulted. Replacement DBE/MBE/WBE's must be approved in writing by the Director. If a replacement DBE/MBE/WBE cannot be located, Concessionaire must make good faith efforts to sublease other rights of Concessionaire to secure DBE/MBE/WBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately operate the food and/or beverage unit(s) in lieu of a DBE/MBE/WBE that has failed to perform due to default of its sublease until such time as a replacement DBE/MBE/WBE Sublessee begins operation. The loss of a DBE/MBE/WBE does not relieve Concessionaire of its obligation to maintain the minimum Participation Goal.

D. Concessionaire shall operate its Food and Beverage Concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, Subpart F, as applicable and as said regulations may be amended or new regulations promulgated, and the St. Louis Airport Authority DBE/MBE/WBE Program. 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, City shall have the right to terminate this Agreement and re-enter and repossess the Premises thereon and hold the same as if this Agreement had never been made or issued.

Section 603. Master Concession Plan. Concessionaire shall submit by January 1, 1997 for City's review and approval a Master Concession Plan (Concession Plan) for the Food and Beverage Concession at the Airport. Such Concession Plan shall be based upon quantitative and qualitative research conducted in St. Louis by Concessionaire. The Concession Plan, when approved by City shall become the conceptual plan which Concessionaire and its Sublessees shall be obligated to implement. Any deviations in the implementation of the Concession Plan shall require City's prior approval in writing.

Section 604. Concession Plan Implementation.

A. Concessionaire shall sublease to qualified disadvantaged/minority/women business enterprises the locations shown on Exhibit ("B"). Concessionaire shall make adjustments to assure that sales in the DBE/MBE/WBE subleased units are equal to 40% of the Concession Gross Revenue. Concessionaire will conduct assessments periodically to assess patterns to determine what adjustments are needed to maintain the Participation Goal. Any adjustments needed shall be in compliance with the Concession Plan.

In the East Terminal, the location projected to have the highest sales will be a DBE/MBE/WBE subleased unit regardless of the Concession Plan concept for that terminal.

B. Concessionaire will recommend a specific implementation schedule for Sublessees to City for its review and approval. Concessionaire will have under contract DBE/MBE/WBE Sublessees for five (5) units no later than February 1, 1997. Subject to Section (C) below, Concessionaire will have a minimum of two units currently operated by Concessionaire, subleased and operated by one or more DBE/MBE/WBE on or before February 1, 1997. Concessionaire shall have subleased and in operation the remaining DBE/MBE/WBEs that achieve the Participation Goal before February 1, 1999.



The Implementation Schedule for Sublessees will be completed as expeditiously as possible, but shall be totally realized on or before February 1, 1999.

C. Subject to approval by City of the Concession Plan, DBE/MBE/WBE Sublessees may begin operation as soon as the following conditions have been fulfilled: Sublessees have been DBE/MBE/WBE certified by City; a sublease with Concessionaire has been signed; the sublease has been approved by the Director; the DBE/MBE/WBE Sublessee is fully certified for the brand which it is to sell, assuming such certification is required; and the facility after construction by the Sublessee's contractor receives all the necessary permits and approvals including required approvals from governmental bodies or franchisors.

Section 605. Financing. Concessionaire will assist the DBE/MBE/WBE Sublessees as appropriate and when requested with items, such as "navigating" the administrative and design process, designing the facility and assisting with the selection of contractors. Concessionaire will make available a "pool" of financing of up to one million five hundred thousand dollars (\$1,500,000).

The pool may be used as a vehicle to provide the DBE/MBE/WBE Sublessees with (1) direct loans for up to 90% financing for the purpose of acquiring Concessionaire's unamortized investment in facilities transferred to a DBE/MBE/WBE Sublessee or for the purpose of providing funds for new construction as the case may be; or (2) loan guarantees to be used as additional security for the purpose of acquiring business loans at interest rates not greater than 12 percentage points. The interest rates charged by Concessionaire for direct loans shall not exceed the cost the Concessionaire pays for financing plus one (1) percentage point. Direct loans will amortize over a seven year period. Concessionaire will charge a fee of 1.75% for providing loan guarantees.

Section 606. Overhead Fee. Concessionaire may assess Sublessees with certain fees as follows:

A. Administrative Fee - This fee will be assessed all Sublessees at a rate of 1.5% of Gross Revenues to compensate Concessionaire for activities relating to contract management, performance monitoring and enforcing standards.

B. Training Fee - This fee will be assessed at a rate of 1.125% of Gross Revenues for all Sublessees having less than two years of experience operating an Airport concession or less than five years operating a similar business in a non Airport environment. The fee will not be charged a DBE/MBE/WBE

Sublessee once the Sublessee has operated at the Airport for a two year period. The fee is being assessed to compensate Concessionaire for providing regular training sessions focusing on topics such as how to operate a successful Airport business, effective hiring, training and management techniques, effective merchandising and other related topics.

C. Service Fee - This fee will be assessed at a rate of 1.125% of Gross Revenues for all Sublessees having less than two years experience operating an Airport concession. The fee will compensate Concessionaire for counsel, advice, accounting assistance and other technical assistance, so long as the assistance is not covered by the Administrative or Training Fee. This fee will be charged the DBE/MBE/WBE Sublessee for a period not to exceed one (1) year.

D. Tenant Support Fee - For any Tenant receiving a certain number of performance citations as listed below within a one year period, Concessionaire, after approval by the Assistant Director of Finance, will provide either training and/or technical support. The Tenant Support Fee will be charged for a period not to exceed one (1) year at a rate of 2.25% of Gross Revenues. If other fees are in effect at the time the Tenant Support Fee is implemented, the total of all fees may not exceed 3.75% of gross sales.

The Tenant Support Fee may be imposed if Tenant, during any twelve-month period receives: three notices of default from Concessionaire; fails two audits by the Tenant's franchisor (if a franchise); receives four written customer complaints; or a combination of any three (3) of the above items; or fails one formal health inspection.

Section 607. Noncompliance. Concessionaire understands that any substantial deviation from ARTICLE VI, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1203.

## ARTICLE VII CONCESSIONAIRE'S OPERATIONS

Section 701. Standards of Service. Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Food and Beverage 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 Concessionaire and City. Concessionaire shall handle

quality products and shall equip, organize, put into service and manage efficiently the Food and Beverage Concession to provide service with a clean, attractive and pleasant atmosphere.

#### Section 702. Hours of Operation.

A. The minimum hours of operation for serving the public shall be thirty (30) minutes before departure of the first scheduled flight each day and until the departure of the last flight out each evening. Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

B. In the event that scheduled flights are delayed past the normal last scheduled departures due to weather or other causes, Concessionaire agrees to keep open adequate food and beverage units to accommodate the needs of the public and employees until such time that the delayed flights have departed or have been canceled.

C. Concessionaire shall operate, at the minimum, one 24 hour food unit each day of the week. The Director may require additional 24 hour units to reflect changing operational circumstances at the Airport.

D. At the time of closing for each food and beverage unit, Concessionaire shall provide and display professionally made signs directing customers to the nearest 24 hour unit(s). The said signs shall be placed in an area visible to the public, inside the Premises of each food unit.

#### Section 703. Pricing.

A. Concessionaire agrees to ensure that all prices are attractive to the public and are no more than 10% greater than prices charged for similar menu items, of equal portions and quality, at similar facilities and/or franchises found in the Metropolitan area. It is agreed that similar facilities and/or franchises are best represented by Food and Beverage facilities located in shopping malls. If similar facilities and/or franchises are not available in the Metropolitan area shopping malls, Concessionaire will select three local area businesses, subject to the Director's approval, serving items of equal portions and quality, and the average price per item plus no more than 10% will be used to determine Concessionaire's price. In the event that similar facilities and/or franchises cannot be located, Concessionaire shall propose prices and the Director shall

determine the reasonableness of such prices, on which basis Concessionaire shall adjust prices accordingly.

B. In the event that Concessionaire, during the Term of this Agreement, becomes party to a contract which implements a pricing program at any other Large-Hub Airport in the United States, wherein no percentage price increase adjustment over street pricing is allowed and when applied to the pricing program contemplated herein would result in reducing prices, Concessionaire and City hereby agree that the Director reserves the right and upon written notice to Concessionaire, that the same pricing policy will replace that described in paragraph (A) of this Section.

C. Concessionaire shall submit, at the commencement date of this Agreement, a complete list of all products proposed to be sold. This list shall contain current price comparisons that comply with paragraph (A) of this Section. On the first day of each ensuing Contract Year, Concessionaire shall submit a revised list of all products proposed to be sold which shall contain current price comparisons that comply with paragraph (A) of this Section. Concessionaire shall submit a written request, with price comparisons that comply with paragraph (A) of this Section, in the event that Concessionaire proposes to introduce new products. The proposed prices shall not be implemented until approved in writing by the Director. Concessionaire shall not increase any prices without the prior written approval of the Director. If deemed reasonably necessary by the Director, the right is hereby reserved to require additional price comparison surveys and to independently compare Concessionaire's prices to locations in the Metropolitan area, and to require Concessionaire to reduce prices based on its comparisons. If price comparisons determine that any price is not in compliance with the guidelines established in paragraph (A) of this Section, Concessionaire will immediately adjust the price(s), upon written notice, to acceptable levels. Any and all costs associated with price comparison surveys are the sole responsibility of Concessionaire, with the exception of those conducted by City which costs shall be borne by City.

D. Concessionaire, at the commencement of this Agreement, will submit, subject to the Director's approval, a children's menu for children 12 years of age and under. Concessionaire shall offer a children's menu in food service units of mutual agreement by City and Concessionaire.

E. Concessionaire will offer a discount to the employees of City or any of City's tenants at the Airport. Said discounts shall be ten percent (10%). Discounts to employees of City and employees of other tenants at the Airport (other than Concessionaire's employees) must be on an equal and

nondiscriminatory basis. Concessionaire must maintain records of all employee discounts given and provide these records to the Director upon request. In the event that the pricing program as described in paragraph (B) of this Section is implemented, Concessionaire will not be obligated to offer employee discounts.

F. It is Concessionaire's responsibility to ensure compliance with the pricing requirements of this Section. Failure on the part of Concessionaire promptly to correct, rectify or modify its service, prices, quality or quantity schedule upon such written notice from the Director so to do shall be cause for cancellation of this Agreement by City under the provisions of Section 1201.

Section 704. Employee Cafeteria. Concessionaire shall submit at the commencement of this Agreement a menu and price list to be implemented at the Employee Cafeteria which shall provide a substantial variety of menu items at reasonable prices subject to the Director's approval. The menu and price list shall remain in effect until such time as the Director shall approve a revised menu and price list.

Section 705. Promotion.

A. Concessionaire covenants 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.

B. Concessionaire shall submit, at the commencement of this Agreement, a proposed promotion plan for the first Contract Year of the type and timing of sales promotion it intends to implement to publicize and promote the Food and Beverage Concession and increase sales. This plan shall include scheduled seasonal, theme, special event and general promotions. Openings of new facilities shall be the subject of special promotions. Concessionaire shall indicate whether or not the increases in sales resulting from the promotion plan are included in Gross Revenues estimates as required in Section 504(C). Concessionaire shall submit an update of its promotion plan 60 days prior to each Contract Year.

Section 706. Personnel.


A. 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 Food and Beverage Concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. Concessionaire shall prohibit and restrain its employees, vendors, and agents 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. Employee parking will be offered as available in the Airport Employee Parking Lot at established rates.

C. Concessionaire shall submit, at the commencement of this Agreement and as the Director may require, a proposed staffing plan of management and supervisory employees. This plan shall be subject to the approval of the Director. Concessionaire agrees to provide staff in numbers adequate to provide a high level of service and maximize sales.

D. Concessionaire acknowledges and agrees that it will conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint if required by the Federal Aviation Administration (FAA) and/or the Airport. 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.

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

Section 707. Manager. 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 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 708. 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 Airport. Concessionaire shall only use delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts.

Section 709. Record Keeping. Concessionaire agrees to provide for the collection of all monies and provide accounting, audit and reports of Gross Revenue as required by Article V of this Agreement. In addition, Concessionaire shall ensure that a point of sale system is provided in all facilities which is capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and DBE/MBE/WBE Sublessee(s) for each facility under this Agreement (these records are to be retained by Concessionaire).

Section 710. Operation.

A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide and is responsible for all employees, Sublessees, and necessary components of the operation, including inventory, fixtures, equipment and supplies.

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

Section 711. Communication.

A. Concessionaire's local manager shall schedule monthly meetings with the appropriate representative of the Airport Properties Department to discuss sales and revenue performance, operational programs, planned and approved construction/renovation and any other relevant issues which may adversely 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 which reduces service levels or sales or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

## ARTICLE VIII IMPROVEMENTS AND ALTERATIONS

Section 801. Construction by Concessionaire.

A. Concessionaire takes the Premises "as is" and agrees, at Concessionaire's sole cost and expense, to Build-Out the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VIII.

B. Concessionaire agrees that the Build-Out shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director, and the schedule set out below. Any deviation from this schedule must be approved in writing by the Director.

- Submit a signed tenant construction or alteration application (TCA) including complete construction drawings and specifications as required by Section 803 to the Airport Properties Department not more than 120 days following full execution of the Agreement by City and notification of availability of new Premises by City.

- Submit a St. Louis County building permit number or other applicable governmental entities not more than 90 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved).

- Submit the contractor's liability insurance certificates and performance and payment Bonds required by Sections 804 and 805 to the Airport Properties Department not more than 45 days following TCA approval by the Airport Properties Department.

- Submit a certificate of completion and a certified copy of occupancy permit from St. Louis County or other applicable governmental entities to the Airport Properties Department as required by Section 806 not more than 120 days following approval of the contractor's liability insurance certificates and performance and payment bonds by the Airport Properties Department.

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 cost of removing or mitigating asbestos or PCB will be



borne by the party determined to be responsible for its presence. If the Concessionaire is responsible for the presence of the asbestos or PCB then the Concessionaire will be responsible for paying all cost associated with its removal or mitigation. If, however, the City is responsible then all cost will be borne by the City. In the event a dispute arises as to the responsible party, the Director will determine the responsible party and his determination will be final. Concessionaire shall resume work in the affected area when the affected area has been rendered harmless, by written agreement of the Director and Concessionaire.

Section 802. Cost of Improvements. In connection with Concessionaire's performance under Section 801 of this Agreement, Concessionaire shall expend or cause to be expended for Build-Out Costs not less than \$7,500,000.00 (Seven Million, Five Hundred Thousand Dollars). Concessionaire and its Sublessees shall complete or cause to be completed such Improvements in accordance with all requirements of this Article VIII.

Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs for each unit within 180 days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices and certified as accurate by an independent Certified Public Accountant. Concessionaire shall provide to the Director any other proof necessary to satisfy the Director.

Concessionaire is encouraged by City to productively expend the entire amount obligated to Build-Out Costs, but in the event Concessionaire's actual expenditures are less than the total of \$7,500,000.00 (Seven Million, Five Hundred Thousand Dollars), the difference shall be an item of additional payment paid to City within thirty (30) days after the receipt of an invoice for such difference from City.

Section 803. Preparation of Plans and Specifications. 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 804. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against

City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include City as additional insured. Said insurance shall be in a form agreeable to City, and certificates showing proof of coverage shall be delivered to the Director.

Section 805. 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 City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo as amended. Copies of the bonds shall be given to City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 806. 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.

Section 807. Signs.

A. 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, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of food and beverage Concession services as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. Concessionaire shall be responsible for the cost of any modifications to Airport directory and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 807.

C. Prior to the erection, construction or placing of any sign, 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. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its Food and Beverage Concession services. Concessionaire shall not place any signs outside of the Premises.

Section 808. Title to Improvements and Fixtures. All Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, and all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

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

Section 809. Alterations, Refurbishment and Redecoration.

A. Concessionaire shall have the right, without cost to City, to construct additional Improvements to or in the Premises, provided however, that they shall be subject to all the requirements of this Article VIII.

B. In connection with Concessionaire's further performance under Section 801 of this Agreement, Concessionaire shall perform a complete Refurbishment of the Premises not later than the end of the year 2003 and expend for Refurbishment Costs not less than \$3,000,000.00 (Three Million Dollars). Concessionaire shall complete such Refurbishment in accordance with all requirements of this Article VIII, including the proof of costs and the payment of the difference between actual expenditures and obligated expenditures to City as provided in Section 802. The Director reserves the right to specify the actual extent of all Refurbishment to be performed by Concessionaire to address the requirements of the Premises at that time.

C. In addition to the Refurbishment requirements stated in Section 809.(B), if it becomes reasonably necessary during the term of this Agreement, as determined by the Director, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises and Improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings.

## ARTICLE IX USE OF PREMISES

Section 901. 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 902. 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 City:

- A. The structural components of the building.
- B. The utility system up to Concessionaire's point of connection, 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 agrees to 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 and cleaning services daily, and as necessary during hours of operation, to maintain a continuous sanitary environment including, but not necessarily limited to: mopping and sweeping of floors; vacuuming of carpets; cleaning surfaces of counters, trash receptacles, tables, windows, equipment, signs and chairs; polishing brass; dusting and polishing wood surfaces and other surfaces where dust accumulates; emptying trash receptacles; and, regularly clean grease traps and drains to prevent leakage.

B. Upon execution of this Agreement, Concessionaire shall establish a preventative and routine maintenance program, the provisions of which shall be subject to periodic review by the Director. Concessionaire, from time to time, upon request, shall provide the Director with a written schedule of Concessionaire's cleaning and maintenance program. Concessionaire will perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire on a timely basis.

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. All waste matter shall be stored and disposed of in a manner satisfactory to the Director, and Concessionaire agrees to arrange for the timely disposal, at its own expense, of all waste material. Concessionaire may not dispose of any such items in the public areas. This 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 these requirements. In transporting waste matter, trash, and refuse from the Premises, Concessionaire shall use only carts or conveyances that are covered, leak-proof, and equipped with wheels suitable for operating on carpets without damage thereto. Concessionaire will, at the commencement of this Agreement, submit a written plan to the Airport Properties Department of its methods of handling and disposal of trash, garbage and refuse which shall be subject to the approval of the Director.

F. Confine all handling and holding of Concessionaire's property to the premises.

G. Keep all papers and debris picked up daily, and as necessary during hours of operation, from the Premises.

H. Keep all floors, walls and surfaces clean and sanitary, free from dust and dirt buildup, within the Premises.

I. No storage will be permitted on the exterior areas of the Premises nor on the Airport Loading Dock(s).

J. Concessionaire shall not transport carts, food shippers, or any other wheeled conveyances on the Airport speed ramps.

K. Keep Premises free of pests and provide pest control services as needed.

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 City from any and all claims or causes of action arising out of the closing of any right-of-way.

Section 903. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, Sublessees and other representative 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) 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 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 City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

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

Section 904. Utilities. City shall, at its sole cost, provide water, sewer, electrical power, fire sprinkler lines, heating and air conditioning to the Premises in capacities based upon normal operation of that type of unit. Additional heating or cooling necessary caused by Concessionaire's operation, i.e. high lighting load, heat generating equipment, odor producing operations requiring exhaust systems, etc. shall be provided by Concessionaire.

Concessionaire shall, at its sole cost, provide electrical distribution, circuit breakers, electrical meters, water conduit, air conditioning/ventilation systems and duct work past mixing boxes, and fire sprinkler apparatus within the Premises in accordance with Airport Tenant Design Standards.

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.

Concessionaire shall pay for all costs of all utilities, including but not limited to deposits, installations costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises. In cases where utility services may be furnished by City, Concessionaire shall pay City for services based upon usage when invoiced.

## ARTICLE X

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 1001. Liability Insurance. Concessionaire, at its expense, at all times during the term hereof, shall cause City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured to the extent of their indemnity 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 \$5,000,000 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, City shall be included as an additional insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees and independent contractors on the Airport. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured to the extent

indemnified by this Agreement is not intended to, and shall not, make City a partner or joint venturer with Concessionaire in its operations hereunder.

Concessionaire will maintain, and upon request furnish evidence to City, adequate provisions for Worker's compensation Insurance, Social Security and Unemployment Compensation at statutory limits and to the extent such provisions are applicable to Concessionaire's operations hereunder.

Section 1002. 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 1003. Damage or Destruction of Terminal Building. The building in which the Premises are located will be insured by 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, City may terminate this Agreement by written notice to Concessionaire. All rental payments will cease as of the date of the destruction or damage.

If the building is repairable 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. City will attempt to find temporary facilities during the repair and Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business resulting from such damage.

Section 1004. 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 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 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 1005. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, 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, Sublessees, 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. Concessionaire shall also use counsel reasonably acceptable to the City Counselor of City or his designee, after consultation with 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 1006. 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 1007. Occupancy of Premises. 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 XI

### ASSIGNMENT AND SUBLETTING

Section 1101. Assignment and Subletting.

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 City shall constitute a default on the part of Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent, or employee of City shall constitute a waiver by City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, City shall be entitled within 90 days after notice thereof given in writing to exercise City's option hereby given to end the term on a date which shall not be sooner than forty-five (45) days after the date of such determination by 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 Concessionaire's furnishings, removable fixtures, equipment, or 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 City premises or any of the removable fixtures, except subject to City's right to end the term.

B. Concessionaire may sublease the Premises with the prior written approval of the Director. At least 30 days prior to any contemplated sublease of this Agreement, Concessionaire must submit in writing a request to the Director. This request must include a copy of the proposed sublease. Any sublease for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a sublease must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the Sublessee 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 702 of this Agreement; and (4) a provision providing for the assignment of the contract to City, without consent of the Sublessee upon the request of City.

The parties understand and agree that Concessionaire is responsible for the performance of its Sublessees under this Agreement. Concessionaire agrees to initiate and take all corrective action should a Sublessee fail to comply with its contract with Concessionaire or any provision of this Agreement. Alternative Sublessee(s) may be substituted on the same terms as the Sublessee it is replacing with the prior written approval of the Director. There will be no

reduction of the Minimum Annual Guarantee payable to City during any such period of change-out or vacancy.

## ARTICLE XII

### TERMINATION OF AGREEMENT IN ENTIRETY

Section 1201. City's Right to Terminate. City, acting by and through the Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 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 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 products or 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. file any lien against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of 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 to meet the Participation Goal as described in Article VI of this Agreement;

11. fail in the performance of any terms, covenants, 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 1203 hereof.

This Agreement shall be considered in default when Concessionaire fails to comply with any of the terms, covenants, or conditions of the Agreement. Failure of 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 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 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 City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1202. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 hereof for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.

B. If City shall have abandoned the Airport for a period of at least 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 City shall have failed in the performance of any specific covenant within the control of City and required by this Agreement to be performed by City.

Section 1203. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date and cause for termination, except that for Concessionaire's failure to make any payments specified in Section 1201 (A) or provide insurance specified in Article X. The effective date of termination for failure to make any payments specified in Section 1201 (A) shall be after said payment has been 20 days delinquent from the payment(s) due date. The effective of termination for failure to provide evidence of insurance coverage as required by Section 1004 shall be 20 days following the date such evidence is due; and no such termination, except for termination for 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 reasonably practicable.

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

Section 1204. Rights Cumulative. It is understood and agreed that the rights and remedies of 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 XIII

#### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Concessionaire shall be sent by certified mail, return receipt requested addressed to Host International, Inc., Attn: General Counsel, 10400 Fernwood Road, Bethesda, MD, 20817.

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. Concessionaire hereto understands and agrees that City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. 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 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 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 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 Sublessees, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Whenever Concessionaire is sued by a Sublessee, 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 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. 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. 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 Lessor 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.

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

Section 1308. Title to Site. The premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of City Counselor is sufficient to permit the letting thereof by 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 City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of



the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 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 City to obtain said Federal Aviation Administration funds.

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. Withholding Required Approvals. Whenever the approval of City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of 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 of Airport's duties under this Agreement.

Section 1315. 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 1316. 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 City or Concessionaire in its respective rights and

obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1317. Americans with Disabilities Act (ADA). Concessionaire shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

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 1319. 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 Concessionaire will in no instance be deemed to have acquired any possessory rights against City or the Premises or be deemed to be a tenant of City.

Section 1320. 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 1321. 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 lessee, licensee, and/or other concessionaire and Concessionaire agrees to be bound by such decision. All determinations by the Director are final.

Section 1322. Prevailing Wages. 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 al. eg., as amended except for any person engaged in an executive, administrative or professional capacity.

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

The foregoing Agreement was approved by the Airport Commission at its meeting on . Pursuant to the City of St. Louis Ordinance Number approved , 1996.

HOST INTERNATIONAL, INC.

Title:

Date:

ATTEST

Title:

Date:

THE CITY OF ST. LOUIS

Director of Airports Date  
and Commission Chairman

APPROVED AS TO FORM ONLY

City Counselor Date  
City of St. Louis

COUNTERSIGNED

Comptroller, Date  
City of St. Louis

Register, Date  
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1996.

Secretary, Date  
Board of Estimate & Apportionment

EXHIBIT "A"

(Food and Beverage Concession Agreement Premises)

EXHIBIT "B"

(Food and Beverage Concession Agreement Premises DBE/MBE/WBE)

**Legislative History**

<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>10/25/96</b>	<b>10/25/96</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>11/22/96</b>			<b>12/06/96</b>	<b>12/06/96</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>63939</b>				