

## *St. Louis City Ordinance 64521*

FLOOR SUBSTITUTE

BOARD BILL NO. [98] 175

INTRODUCED BY ALDERMAN ROBERT RUGGERI

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 eight concession agreements for Passenger Vehicle Rental ("PVR") Concessions (the "Concession Agreements") at Lambert - St. Louis International Airport (the "Airport") between the City and the following concessionaires a) Alamo Rent-A-Car, Inc., b) Avis Rent A Car System, Inc., c) Budget Rent A Car Systems, Inc., d) Missouri Rental and Leasing, Inc., D/B/A Dollar Rent A Car, e) Enterprise Leasing Company of St. Louis, f) The Hertz Corporation, g) National Car Rental System, Inc., and h) C & J Rental, Inc., D/B/A Thrifty Car Rental, granting to each concessionaire the right, license and privilege to operate a non-exclusive PVR Concession at the Airport subject to the terms, covenants and conditions of their PVR Concession Agreement with the City, which were approved by the Airport Commission and are more fully described in Section One of this Ordinance; directing that the Concession Agreements be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions and executive orders relating to equal employment opportunity; and containing an emergency clause.

WHEREAS, the City of St. Louis (the "City") owns, operates and maintains Lambert - St. Louis International Airport (the "Airport");

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

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

WHEREAS, the City has advertised and received competitive bids for the right to manage and operate PVR concessions at the Airport, and by this process the City has determined that the concessionaires listed above are qualified

operators of this service and have submitted bids deemed advantageous to the public and the City.

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

**SECTION ONE.** The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City eight Concession Agreements for Passenger Vehicle Rental ("PVR") Concessions (the "Concession Agreements") at Lambert - St. Louis International Airport (the "Airport") between the City and the following concessionaires: a) Alamo Rent-A-Car, Inc., b) Avis Rent A Car System, Inc., c) Budget Rent A Car Systems, Inc., d) Missouri Rental and Leasing, Inc., D/B/A Dollar Rent A Car, e) Enterprise Leasing Company of St. Louis, f) The Hertz Corporation, g) National Car Rental System, Inc., and h) C & J Rental, Inc., D/B/A Thrifty Car Rental, granting to each concessionaire the right, license and privilege to operate a non-exclusive PVR Concession at the Airport subject to the terms, covenants and conditions of their Concession Agreement with the City, which were approved in substance by the Airport Commission and are attached and incorporated herein as follows:

ATTACHMENT A - Alamo Rent-A-Car, Inc.,

ATTACHMENT B - Avis Rent A Car System, Inc.

ATTACHMENT C - Budget Rent A Car Systems, Inc.

ATTACHMENT D - Missouri Rental and Leasing, Inc., D/B/A Dollar Rent A Car,

ATTACHMENT E - Enterprise Leasing Company of St. Louis

ATTACHMENT F - The Hertz Corporation

ATTACHMENT G - National Car Rental System, Inc.

ATTACHMENT H - C & J Rental, Inc., D/B/A Thrifty Car Rental

**SECTION TWO.** The Concession Agreements shall be in compliance with all applicable disadvantaged business enterprise requirements and in compliance with all applicable federal, state, and local laws ordinances, regulations, court decisions and executive orders relating to equal employment opportunity.

**SECTION THREE.** 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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LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and AVIS RENT A CAR SYSTEM, INC. ("Concessionaire"), a corporation organized and existing under the laws of the State of Delaware.

WITNESSETH, That:

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

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

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

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

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

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆ Concessionaire ◆ as stated in the preamble hereof.

◆ Contract Year ◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆ Counter Area ◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆Customer Service Facility◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for ♦corporate contracts♦ which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under

contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term "corporate contract" shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

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



- credits for refunds to customers for sales made at the Customer Service Facility; and

- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆Passenger Vehicle Rental (PVR) Concession◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆Percentage Fee◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆Women's Business Enterprise (WBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area ◆(enter description from exhibits)◆, the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the

Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the City's actual expense of providing and maintaining the space as computed by

the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

### Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

#### Contract Years Minimum Annual Guarantees

Year 1	\$1,690,000.00
Year 2	\$1,757,000.00
Year 3	\$1,828,000.00
Year 4	\$1,901,000.00
Year 5	\$1,976,000.00

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

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to

the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.



Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

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

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week. Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the

hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and

agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR § 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

#### Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

#### Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon,

by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

Section 708. Title to Improvements and Fixtures. All improvements constructed or placed in the Premises by the Concessionaire that are not removable fixtures, as well as all alterations, modifications and enlargements

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

#### Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

A. The structural components of the terminal buildings.

B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

A. Perform daily custodial services.

B. Keep all its equipment and fixtures in good repair and appearance.

C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.

E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.

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

G. Keep all papers and debris picked up daily from the Premises.

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

I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all



inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.

B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).

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

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire

shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of

insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale

or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from



the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

1. If these good faith efforts resulted in the fulfillment of the DBE goal, the Concessionaire will not be required to perform additional good faith efforts, except in the event that the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event

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

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be

located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to Avis Rent A Car System, Inc., 900 Old Country Road, Garden City, NY 11530. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

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

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase ♦An Equal Opportunity Employer♦. The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and

all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.



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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

AVIS RENT A CAR SYSTEM, INC.

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on ,1998.

Secretary, Board of Estimate & Apportionment

Date

APPROVED AS TO FORM:

City Counselor,  
Date  
City of St. Louis

Comptroller,  
Date  
City of St. Louis

Register,  
\_\_\_\_\_ Date  
City of St. Louis

EXHIBITS

A-1, A-2 and A-3

(Premises)

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AIRPORT NUMBER .....

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and BUDGET RENT A CAR SYSTEMS, INC. ("Concessionaire"), a corporation organized and existing under the laws of the State of Delaware.

WITNESSETH, That:

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

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

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

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

- to provide first-class PVR concessions that meet Airport user needs and add value to other Airport and airline services;
- to provide a wide range of high quality PVR services at prices that are attractive to Airport users;

- to provide PVR services that are operated by well trained, efficient and pleasant staff;
- to be responsive to both Federal Aviation Administration and City goals for Disadvantaged Business Enterprise participation in PVR concessions.

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆ Concessionaire ◆ as stated in the preamble hereof.

◆Contract Year◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆Counter Area◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆Customer Service Facility◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

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

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for ♦ corporate contracts ♦ which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional

charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term **corporate contract** shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

- monies collected from customers for vehicles dropped at the Customer Service Facility and originally rented at another airport to which the Concessionaire pays a concession fee;
- credits for refunds to customers for sales made at the Customer Service Facility; and
- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.



◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆Passenger Vehicle Rental (PVR) Concession◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆Percentage Fee◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆Women's Business Enterprise (WBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area ◆(enter description from exhibits)◆, the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire

will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

Contract Years Minimum Annual Guarantees

Year 1	\$860,722.00
Year 2	\$882,240.00
Year 3	\$904,296.00
Year 4	\$926,904.00
Year 5	\$950,077.00

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

entire twenty-five percent (25%) decline in O&D enplaned passengers and (3) this adjustment will be offset proportionally to one hundred percent (100%) of the applicable Contract Years' Minimum Annual Guarantees for Contract Years following the year in which O&D enplanements increases above seventy-five percent (75%) of Contract Year One O&D enplanements.

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No.

570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. The Concessionaire covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class PVR concession serving the needs of all users of the Airport by offering prompt and efficient services that are adequate to meet all reasonable demands thereof. All categories of users will be treated on a fair, equal and nondiscriminatory manner that will reflect credit upon the Concessionaire and the City. The Concessionaire shall provide quality services managed efficiently in a clean, attractive and pleasant atmosphere. The Concessionaire shall offer for rent vehicles not more than two (2) model years



old consisting of full-size, mid-size, compact and subcompact models in such numbers as are required by demand.

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week.

Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its

agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall

be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

- A. The structural components of the terminal buildings.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

- A. Perform daily custodial services.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.
- F. Confine all handling and holding of the Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.

B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).

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

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.



If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

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

facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his

designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall

include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

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

B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments

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

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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



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

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter

into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to Budget Rent a Car Systems, Inc., 4225 Naperville Road, Lisle, IL 60532. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

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

a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. The Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all

contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the

terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

ATTEST

Title:

Date:

BUDGET RENT A CAR SYSTEMS, INC.

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on ,1998.

Secretary, Board of Date Estimate & Apportionment

APPROVED AS TO FORM:

City Counselor,

Date

City of St. Louis

Comptroller,



Date  
City of St. Louis

Register, \_\_\_\_\_ Date  
City of St. Louis

EXHIBITS

A-1, A-2 and A-3

(Premises)

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LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and MISSOURI RENTAL AND LEASING, INC., D/B/A DOLLAR RENT A CAR ("Concessionaire"), a corporation organized and existing under the laws of the State of Missouri.

WITNESSETH, That:

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

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

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

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

- to provide first-class PVR concessions that meet Airport user needs and add value to other Airport and airline services;

- to provide a wide range of high quality PVR services at prices that are attractive to Airport users;

- to provide PVR services that are operated by well trained, efficient and pleasant staff;
- to be responsive to both Federal Aviation Administration and City goals for Disadvantaged Business Enterprise participation in PVR concessions.

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆ Concessionaire ◆ as stated in the preamble hereof.

◆Contract Year◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆Counter Area◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆Customer Service Facility◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for ♦ corporate contracts ♦ which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not

include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term "corporate contract" shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

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

- credits for refunds to customers for sales made at the Customer Service Facility; and

- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆Passenger Vehicle Rental (PVR) Concession◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆Percentage Fee◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆Women's Business Enterprise (WBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area ◆(enter description from exhibits)◆, the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.



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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

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

specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an ♦extra month♦.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the

City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

### Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

#### Contract Years Minimum Annual Guarantees

Year 1	\$260,000.00
Year 2	\$275,000.00
Year 3	\$285,000.00
Year 4	\$295,000.00
Year 5	\$300,000.00

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

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to

the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

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

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week. Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the

hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and



agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR § 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

#### Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

#### Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon,

by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

Section 708. Title to Improvements and Fixtures. All improvements constructed or placed in the Premises by the Concessionaire that are not removable fixtures, as well as all alterations, modifications and enlargements

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

#### Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

A. The structural components of the terminal buildings.

B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

A. Perform daily custodial services.

B. Keep all its equipment and fixtures in good repair and appearance.

C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.

E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.

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

G. Keep all papers and debris picked up daily from the Premises.

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

I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all

inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.

B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).

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

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire

shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of



insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale

or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from

the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

1. If these good faith efforts resulted in the fulfillment of the DBE goal, the Concessionaire will not be required to perform additional good faith efforts, except in the event that the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event

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

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement



certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to Missouri Rental and Leasing, Inc. (d/b/a Dollar Rent A Car), P.O. Box 10095, St. Louis, MO 63145. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

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

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and

all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

MISSOURI RENTAL AND LEASING, INC. (D/B/A DOLLAR RENT A CAR)

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on ,1998.

Secretary, Board of Estimate & Apportionment

Date

APPROVED AS TO FORM:

City Counselor,

Date

City of St. Louis

Register, \_\_\_\_\_

City of St. Louis

Date

Comptroller,  
Date  
City of St. Louis

Date  
City of St. Louis

EXHIBITS

A-1, A-2 and A-3

(Premises)

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LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and ENTERPRISE LEASING COMPANY OF ST. LOUIS ("Concessionaire"), a corporation organized and existing under the laws of the State of Missouri.

WITNESSETH, That:

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

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

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

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

- to provide first-class PVR concessions that meet Airport user needs and add value to other Airport and airline services;

- to provide a wide range of high quality PVR services at prices that are attractive to Airport users;
- to provide PVR services that are operated by well trained, efficient and pleasant staff;
- to be responsive to both Federal Aviation Administration and City goals for Disadvantaged Business Enterprise participation in PVR concessions.

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆Concessionaire◆ as stated in the preamble hereof.

◆Contract Year◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆Counter Area◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆Customer Service Facility◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for ♦corporate contracts♦ which state that full loss damage waiver is included in the daily rental rate, but which fails to

separately bill on the rental agreement amounts paid by customers as additional charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term "corporate contract" shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

- monies collected from customers for vehicles dropped at the Customer Service Facility and originally rented at another airport to which the Concessionaire pays a concession fee;
- credits for refunds to customers for sales made at the Customer Service Facility; and
- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆ Passenger Vehicle Rental (PVR) Concession ◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆ Percentage Fee ◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆ Women's Business Enterprise (WBE) ◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area ◆(enter description from exhibits)◆, the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to

the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.



Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

Contract Years Minimum Annual Guarantees

Year 1	\$280,000.00
Year 2	\$290,000.00
Year 3	\$300,000.00
Year 4	\$310,000.00
Year 5	\$320,000.00

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

the applicable Contract Years' Minimum Annual Guarantees for Contract Years following the year in which O&D enplanements increases above seventy-five percent (75%) of Contract Year One O&D enplanements.

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No.

570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. The Concessionaire covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class PVR concession serving the needs of all users of the Airport by offering prompt and efficient services that are adequate to meet all reasonable demands thereof. All categories of users will be treated on a fair, equal and nondiscriminatory manner that will reflect credit upon the Concessionaire and the City. The Concessionaire shall provide quality services managed efficiently in a clean, attractive and pleasant atmosphere. The Concessionaire shall offer for rent vehicles not more than two (2) model years

old consisting of full-size, mid-size, compact and subcompact models in such numbers as are required by demand.

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week.

Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its

agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.



Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

- A. The structural components of the terminal buildings.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

- A. Perform daily custodial services.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.
- F. Confine all handling and holding of the Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the

Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.
- B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of

fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.



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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale

or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from

the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

1. If these good faith efforts resulted in the fulfillment of the DBE goal, the Concessionaire will not be required to perform additional good faith efforts, except in the event that the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event

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

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be

located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to Enterprise Leasing Company of St. Louis, 29 Hunter Avenue, St. Louis, MO 63124. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

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



B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase ♦An Equal Opportunity Employer♦. The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and

all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

ENTERPRISE LEASING COMPANY

OF ST. LOUIS

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on , 1998.

Secretary, Board of

Date

Estimate & Apportionment

APPROVED AS TO FORM:

City Counselor,

Date

City of St. Louis

Comptroller,  
Date  
City of St. Louis

Register,  
Date  
City of St. Louis

**EXHIBITS**

A-1, A-2 and A-3

(Premises)

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LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and THE HERTZ CORPORATION ("Concessionaire"), a corporation organized and existing under the laws of the State of Delaware.

WITNESSETH, That:

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

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

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

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

- to provide first-class PVR concessions that meet Airport user needs and add value to other Airport and airline services;



- to provide a wide range of high quality PVR services at prices that are attractive to Airport users;
- to provide PVR services that are operated by well trained, efficient and pleasant staff;
- to be responsive to both Federal Aviation Administration and City goals for Disadvantaged Business Enterprise participation in PVR concessions.

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆Concessionaire◆ as stated in the preamble hereof.

◆Contract Year◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆Counter Area◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆Customer Service Facility◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for ♦ corporate contracts ♦ which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional

charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term **corporate contract** shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

- monies collected from customers for vehicles dropped at the Customer Service Facility and originally rented at another airport to which the Concessionaire pays a concession fee;
- credits for refunds to customers for sales made at the Customer Service Facility; and
- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆ Passenger Vehicle Rental (PVR) Concession ◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆ Percentage Fee ◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆ Women's Business Enterprise (WBE) ◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area ◆(enter description from exhibits)◆, the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires,

if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any

other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

#### ARTICLE IV

##### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an ♦extra month♦.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

#### ARTICLE V

##### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the



City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

### Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

#### Contract Years Minimum Annual Guarantees

Year 1	\$1,920,000.00
Year 2	\$2,027,000.00
Year 3	\$2,140,000.00
Year 4	\$2,259,400.00
Year 5	\$2,385,300.00

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

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to

the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

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

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week. Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the hours of operation without written application to and the written approval of the

Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and agrees that security requirements may change and the Concessionaire agrees

that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR § 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

A. The Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, the Concessionaire will provide and be responsible for all employees and necessary components of the operation,

including inventory, fixtures, equipment and supplies. The Concessionaire shall provide and maintain the rental vehicles made available hereunder at the Concessionaire's sole expense, in good operative order, free from known mechanical defects and in a clean, neat and attractive condition inside and outside.

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

#### Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

#### Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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



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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any

certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

#### Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

#### Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

- A. The structural components of the terminal buildings.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

- A. Perform daily custodial services.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.
- F. Confine all handling and holding of the Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

**Section 803. Right to Enter, Inspect and Make Repairs.** The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.

B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).

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

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

Section 805. Interference to Air Navigation. The Concessionaire agrees that no obstruction to air navigation, as such are defined from time to time by

application of the criteria of Part 77 of the Federal Aviation regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Any obstructions will be removed by the Concessionaire at its expense. The Concessionaire further agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides, the safe and efficient operations of the Airport, or the operations of other tenants and users of the Airport.

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be

materially changed, altered or canceled by the insurer during its term without first giving thirty (30) days written notice to the Director.

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING



## Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that

all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;

6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;

7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;

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

9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;

10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

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

B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

#### Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

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

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

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

performance of any concession agreement covered by 49 CFR Part 23, Subpart F.

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire

shall be sent by certified mail, return receipt requested addressed to The Hertz Corporation, 225 Brae Boulevard, Park Ridge, NJ 07656. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

#### Section 1302. Non Discrimination and Affirmative Action Program.

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

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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



require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

Section 1315. Withholding Required Approvals. Whenever the approval of the City, the Director, or the Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of the City is required, the approval must be in writing and from the Director or the person

duly designated to perform one or more of the Director's duties under this Agreement.

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

THE HERTZ CORPORATION

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on ,1998.

Secretary, Board of Date Estimate & Apportionment

APPROVED AS TO FORM:

City Counselor,  
Date  
City of St. Louis

Register,  
Date  
City of St. Louis

Comptroller,  
Date  
City of St. Louis

Register,  
\_\_\_\_\_ Date  
City of St. Louis

EXHIBITS

A-1, A-2 and A-3

(Premises)

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AIRPORT NUMBER .....

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and NATIONAL CAR RENTAL SYSTEM, INC. ("Concessionaire"), a corporation organized and existing under the laws of the State of Delaware.

WITNESSETH, That:

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

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

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

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

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

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆ Concessionaire ◆ as stated in the preamble hereof.

◆ Contract Year ◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆ Counter Area ◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆ Customer Service Facility ◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆ Disadvantaged Business Enterprise ◆ or ◆ DBE ◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage

charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for **corporate contracts** which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term **corporate contract** shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

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

- credits for refunds to customers for sales made at the Customer Service Facility; and

- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport's Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆Passenger Vehicle Rental (PVR) Concession◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆Percentage Fee◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆Women's Business Enterprise (WBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area (enter description from exhibits), the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

### ARTICLE III

#### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and

other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement.

December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

#### Contract Years Minimum Annual Guarantees

Year 1	\$1,185,000.00
Year 2	\$1,202,004.00
Year 3	\$1,650,000.00
Year 4	\$2,103,000.00
Year 5	\$2,448,000.00

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

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

Section 504. Payment. Payments for each month of the Contract Years shall consist of (a) paid in advance on or before the first day of each month an amount equal to 1/12 of the annual rental for the Counter Area and the East Terminal Telephone Board for the applicable calendar year, (b) paid in advance on or before the first day of each month an amount equal to 1/12 of the Minimum Annual Guarantee for the applicable Contract Year and (c) paid on or before the 20th day of the second and each succeeding month an amount equal to the Percentage Fee for the preceding month which exceeds the Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

A. The Concessionaire shall submit to the City by the 20th day of the second and each succeeding month of the Contract Years hereof, one copy of an accurate statement of Gross Receipts. The final statement of Gross Receipts



will be due by the 20th day of the month following expiration of this Agreement. The Concessionaire shall report Gross Receipts, and the computation of Gross Receipts on the form provided by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in a future solicitation for bids for this concession.

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.

Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of

such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service. The Concessionaire covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class PVR concession serving the needs of all users of the Airport by offering prompt and efficient services that are adequate to meet all

reasonable demands thereof. All categories of users will be treated on a fair, equal and nondiscriminatory manner that will reflect credit upon the Concessionaire and the City. The Concessionaire shall provide quality services managed efficiently in a clean, attractive and pleasant atmosphere. The Concessionaire shall offer for rent vehicles not more than two (2) model years old consisting of full-size, mid-size, compact and subcompact models in such numbers as are required by demand.

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week. Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each

of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR § 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users. Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire).

The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

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

Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

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

requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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



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

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

- A. The structural components of the terminal buildings.
- B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

- A. Perform daily custodial services.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.
- F. Confine all handling and holding of the Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is

provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.

B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).

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

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution

equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenantable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision

to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

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

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from the Concessionaire for any period or periods after a default by the Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by the Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by the Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default

within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

#### Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

1. If these good faith efforts resulted in the fulfillment of the DBE goal, the Concessionaire will not be required to perform additional good faith efforts, except in the event that the Concessionaire's DBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event the Concessionaire's DBE participation fails to continue to meet the goal or comply with applicable federal regulations, the Concessionaire will be required to perform the good faith efforts procedure specified in the applicable federal regulations for the type of participation sought within four (4) months

following the loss of DBE participation and continue at intervals of not less than twelve (12) months, or until the DBE goal is reached by the Concessionaire.

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to National Car Rental System, Inc., 7700 France Avenue South, Minneapolis, MN 55435. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

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

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote

or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and

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

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.



Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.

Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

NATIONAL CAR RENTAL SYSTEM, INC.

Title:

Date:

ATTEST

NATIONAL CAR RENTAL SYSTEM, INC.

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on  
, 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment  
at its meeting on ,1998.

Secretary, Board of Date Estimate & Apportionment

APPROVED AS TO FORM: City Counselor,

Date

City of St. Louis

Register,

\_\_\_\_\_ Date

City of St. Louis

Comptroller,

Date

City of St. Louis

EXHIBITS

A-1, A-2 and A-3

(Premises)

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LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(PASSENGER VEHICLE RENTAL)

THIS AGREEMENT, made and entered into as of the day of , 1998, by and between the CITY OF ST. LOUIS ("City"), a municipal corporation of the State of Missouri, and C & J RENTAL, INC., D/B/A THRIFTY CAR RENTAL ("Concessionaire"), a corporation organized and existing under the laws of the State of Missouri.

WITNESSETH, That:

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

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

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

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

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

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

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

## ARTICLE I

### DEFINITIONS

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

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

◆ Airport ◆ as stated in the preamble hereof.

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

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

◆ City ◆ as stated in the preamble hereof.

◆ Concessionaire ◆ as stated in the preamble hereof.

◆ Contract Year ◆ shall mean a period of five (5) consecutive twelve-month periods commencing on January 1, 1999, as specified in Section 401.

◆ Counter Area ◆ shall mean a counter in the Main Terminal that is designated for the Concessionaire's use in the provision of PVR services to the public.

◆ Customer Service Facility ◆ shall mean any facility operated by a Concessionaire for the processing and / or servicing of, or for the delivery of rental vehicles to its customers located on or off Airport property.

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

◆Disadvantaged Business Enterprise◆ or ◆DBE◆ shall mean a small business: (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are refutably 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 Receipts◆ includes, but is not limited to, the following items:

- all time and mileage charges, net of any discounts that may be offered, on vehicles rented at the Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;

- all monies paid or payable for personal accident insurance coverage;

drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;

all monies separately stated or collected to recover the Airport concession fee, Airport rent, or any other Airport fee or charge;

all monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);

all other monies charged or collected from customers for associated services and equipment (e.g., child restraint devices and telecommunications devices), except those specifically excluded below;

- all receipts charged or derived from or in connection with the extension or renewal of any automobile rental agreement entered into with any customer

transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;

amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and

- all monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the Authority of amounts that would otherwise be payable to the Authority;

Only the following may be excluded from Gross Receipts:

- monies separately stated and collected from customers for collision damage waivers, loss damage waivers and supplementary liability protection;

- Calculated loss damage waiver for  $\diamond$ corporate contracts $\diamond$  which state that full loss damage waiver is included in the daily rental rate, but which fails to separately bill on the rental agreement amounts paid by customers as additional charges for waiver by Concessionaire of its right to recover damages from customers for loss of or damage to the vehicle rented. Gross Receipts shall not include an amount equal to the product obtained by multiplying the LDW rate charged to the general public at the Airport at the time of the rental under contracts other than corporate contracts by a ratio obtained by dividing (i) the average daily base rental rate for all Airport rentals contracted under corporate contracts that do not state the LDW coverage is included in the daily base rental rate by (ii) the average daily rental rate (time and mileage only) for all Airport rentals not contracted under corporate contracts. Concessionaire shall recalculate the ratio annually using rental transaction data for the most recently completed PVR concession contract year, and shall apply the revised ratio throughout the following PVR concession contract year. The exclusion for corporate contracts is available only if (a) the rental agreement states that LDW coverage is included in the daily rental rate, and (b) upon request by the Airport, Concessionaire provides to the Airport (i) a monthly listing by rental agreement number showing the amount deducted from Gross Receipts for



LDW coverage, the date closed, the associated contract number, the total number of rental agreements on the listing, and the sum of deduction amounts on the listing, and (ii) documentation by the Concessionaire that reasonably supports the annual ratio calculation. As used herein, the term "corporate contract" shall refer to a written agreement between Concessionaire and a corporation, partnership, association, or governmental entity pursuant to which Concessionaire agrees to rent vehicles to employees of such corporation, partnership, association, or governmental entity at specified rates for the term of the contract.

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

- any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers, such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;

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

- proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;

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

- credits for refunds to customers for sales made at the Customer Service Facility; and

- rental of any vehicle to local residents or other customers who did not arrive at, the Airport by airplane within 24 hours prior to the rental, and was not transported from the Airport by the Concessionaire or by others to the Concessionaire's Customer Service Facility, together with a statement (which shall be included in the rental agreement or attached thereto) completed and signed by such customer in the following form:

I certify that I did not arrive by airplane at Lambert Airport within the 24 hours preceding this rental.

Signature

Printed Name

Date

◆Ground Transportation Rules and Regulations◆ shall mean the Airport◆s Commercial Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

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

◆Minority Business Enterprise (MBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day-to-day operational and managerial control and an interest in capital and earnings commensurate with his or her percentage of ownership.

◆Minority Group Member(s)◆ shall mean persons who are citizens or lawful permanent residents of the United States who are Asian-Pacific American or Asian-Indian American, Black, Hispanic or Native American.

◆Passenger Vehicle Rental (PVR) Concession◆ shall mean a concession that serves the public through the provision of passenger vehicle rental services.

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

◆Percentage Fee◆ shall mean the product of (i) Gross Receipts multiplied by (ii) the percentage specified in Article V hereof.

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

◆Women's Business Enterprise (WBE)◆ shall mean a small business concern as defined in Small Business Act, 15 U.S.C., as amended, that is a sole proprietorship, partnership, or corporation owned, 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 grants the use of and requires the Concessionaire to use at the Airport the Premises labeled as Counter Area (enter description from exhibits), the East Terminal Telephone Board and the Curbside Pickup / Drop-off Areas as described on Exhibits A-1, A-2 and A-3 attached hereto and made a part hereof in the Concessionaire's operation of its customer service counter. The rights granted in Section 301 hereof must only be exercised on the Premises and at the Customer Service Facility.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any inconvenience or loss by the Concessionaire of work time or business resulting from these changes to the Premises.

The Director may, however bears no obligation to, reallocate the Curbside Pickup / Drop-off Area(s) and the Counter Area on June 1 of Contract Years Two (2) through Five (5), based on the Concessionaire's concession fees paid to the City in relation to the total concession fees paid by all PVR concessionaires, if the change in concession fees amongst any of the PVR concessionaires is five (5) percentage points or more.

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

The City will not provide a ready / return nor a service area for the Concessionaire's use during any part of the term of this Agreement.

Section 202. Access. Subject to Section 801 hereof, the Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, agents, guests, patrons and invitees.

## ARTICLE III

### CONCESSION RIGHTS

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

The right to transact rental services only within the Premises and at the Customer Service Facility, including the provision of customer service counter, the sale of loss and collision damage waiver, personal accident insurance and other insurance products including, but not limited to, supplemental liability coverage and personal effects coverage, and other customer services, including infant car seats, bicycle and ski racks and telecommunications devices, used only for rental vehicles, and any others which may be approved by the Director of Airports.

The Concessionaire will be required to pay installation, maintenance and operating charges for a direct telephone line on the telephone board in the East Terminal. In addition, the Concessionaire will finance and operate shuttle vehicles for the purpose of transporting customers between the Main Terminal and East Terminal and the Concessionaire's Customer Service Facility. The Concessionaire shall comply with and all shuttle vehicles of the Concessionaire will be governed by and subject to the Airport's Ground Transportation Rules and Regulations.

Section 302. Limitation of Rights. The Concessionaire is not granted the right to offer for sale any merchandise, vehicles, or other services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by the Concessionaire, the Concessionaire will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director.

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

## ARTICLE IV

### LEASE TERM

Section 401. Term. The term of this Agreement shall begin on December 1, 1998 and end on December 31, 2003 unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration

dates shall be written in the spaces below. Each contract year will begin on January 1st of each year of the Agreement. December 1998 will be treated as an extra month.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. The 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, which in accordance with Section 708 shall be restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

## ARTICLE V

### FEES AND RENTALS

Section 501. General. The Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees set forth below in Sections 502, 503, 506 and 511 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

Section 502. Space Rental Payment. The Concessionaire shall pay to the City from the first month of the term through the last month of the term, an annual per square foot rental rate for Counter Area in the Main Terminal equal to the City's actual expense of providing and maintaining the space as computed by the City plus fifteen percent (15%). This rental rate shall be adjusted each time the rental rate is adjusted for the Signatory Airlines. The Concessionaire will not be required to pay a rental rate higher than any other non airline tenant occupying similar space.

Section 503. Concession Fee Payments.

A. The Concessionaire agrees to pay to City for Contract Years One through Five a sum equal to the greater of the Minimum Annual Guarantees as set out below for each Contract Year or ten percent (10.0%) of Gross Receipts. Each Contract Year will begin on January 1st of each year of the Agreement.

December 1998 will be treated as an extra month. The Minimum Annual Guarantee for December 1998 will be 1/12th of the Minimum Annual Guarantee for Contract Year 1 (calendar year 1999).

Contract Years Minimum Annual Guarantees

Year 1	\$148,500.00
Year 2	\$148,500.00
Year 3	\$148,500.00
Year 4	\$148,500.00
Year 5	\$148,500.00

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

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

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

Minimum Annual Guarantee for the applicable Contract Year. (See Section 506 Unpaid Rent and Fees for the amount of any applicable service charge).

Section 505. Reports.

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

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

C. The Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant 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 Receipts, (ii) the calculation of the total amount payable to the City based upon the Percentage Fee, and (iii) the aggregate amount of Gross Receipts and/or goods and services attributable to DBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.

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

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

Section 506. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder will bear a service charge of one-and-a-half percent (1½%) per month if same is not paid and received by the City on or before the 20th of the month in which said payments are due, and the Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 507. Performance Bond. The Concessionaire agrees to furnish a Performance Bond to the City during the entire term of the Agreement in the principal amount of one-fourth (1/4) of the Minimum Annual Guarantee for Contract Year Five. Such bond will guarantee the payment of the concession and other fees, rentals and performance of all other terms, conditions and covenants of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A Plus 3 and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The City may agree to another form of deposit that will provide equal protection of the City's interest. If City cashes the Performance Bond, Concessionaire agrees to furnish a replacement Performance Bond in the same principal amount within 15 days.

Section 508. Prompt Payment of Taxes and Fees. The Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 509. Accounting Records and Reports. During the term hereof the Concessionaire will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. The Concessionaire will make same records available in the St. Louis area for one year following the termination of this Agreement. These records will be accessible during usual business hours to the City or its duly appointed agents or auditors. The Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City at the Concessionaire's place of records.



Section 510. Audit. City or its designated agent reserves the right to audit Concessionaire's, its subcontractors' or others doing business under this Agreement, books and records and receipts for the purpose of verifying the Gross Receipts hereunder. The City will provide Concessionaire reasonable notice of such audit. If as a result of such audit(s), it is established that additional fees or charges are due the City, the Concessionaire shall pay such fees or charges to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by the Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by the Concessionaire.

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

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

B. if the City is required or elects to pay any sum(s) or incur any obligation(s) or expense(s) because of the failure, neglect or refusal of the Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rental thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, 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 sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 512. Notice, Place and Manner of Payment. Payments will be made in legal tender of the United States at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as the Director may hereafter notify Concessionaire.

## ARTICLE VI

### CONCESSIONAIRE'S OPERATIONS

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

Section 602. Hours of Operation. The hours of operation for serving the public shall be from time of the arrival of the first scheduled flight of the day to one hour after the last scheduled arrival of the day, seven (7) days per week. Concessionaire must monitor flight activity and adjust their hours of operation to accommodate late arriving flights. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director. The Director may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public. The Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies. The Concessionaire shall accept at least three (3) nationally recognized credit cards for customer payments of rental and other charges.

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

The Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by the Concessionaire to induce its patrons to rent or receive vehicles in such a manner and at such places so as to diminish the Gross Receipts of the

Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 605. Personnel.

A. The Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and badges to indicate the fact and nature of their employment. The Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this PVR concession. The Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. The Concessionaire's oral solicitation of business at the Airport shall be confined to the Premises. The Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, the Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

B. The Concessionaire acknowledges and agrees that it will conduct employee background checks of each of its personnel if required by the Federal Aviation Administration (FAA) and / or the Airport. The Concessionaire recognizes and agrees that security requirements may change and the Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

The Concessionaire understands and agrees that fines and / or penalties may be assessed by the Federal Aviation Administration for the Concessionaire's noncompliance with the provisions of 14 CFR 107 (1988) as amended or other applicable laws or regulations. The Concessionaire shall promptly reimburse the City for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

Section 606. Manager. The Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Concessionaire. The manager(s) shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

Section 607. Conflicts. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final in any conflict between Airport users.

Section 608. Record Keeping. The Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V of this Agreement. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of the Concessionaire and DBE participant(s) under this Agreement (these records are to be retained by the Concessionaire). The Concessionaire must also maintain records that document, in a format acceptable to the Director, the purchase or lease of goods and services attributable to DBE participants.

Section 609. Transition Period. If applicable, during any future transition of the PVR concession to another concessionaire, the incumbent Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 610. Operation.

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

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

Section 611. Communication.

A. The Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Properties Department's discretion) with the appropriate representative of the Airport Properties Department to discuss sales and any

other relevant issues which may affect the Concessionaire's operation at the Airport. The Concessionaire shall also be available for meetings at other times as necessary.

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

## ARTICLE VII

### IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by the Concessionaire.

A. The Concessionaire takes the Premises in the Main Terminal "as is" and shall, at the Concessionaire's sole cost and expense, improve the Premises, including installation of new counter, back wall and other finishes in the Counter Area.

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

B. The Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director. Section 702. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. The Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract that pertains to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of

coverage shall be delivered to the Director for approval before any constructing, improving or equipping of Premises commences.

Section 704. Performance and Payment Bonds. The Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1994 as amended. Copies of the bonds shall be given to the Director for approval before work begins. Any sum(s) derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 705. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

Section 707. Signs.

A. The Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, the Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of PVR services as contemplated hereunder. The Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.

B. The Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be

approved by the Director and are subject to all applicable requirements of this Section 707 and the Tenant Design Standards.

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

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

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

All removable fixtures shall remain the property of the Concessionaire, and shall be removed by the Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such removable fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

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

## ARTICLE VIII

### USE OF PREMISES

Section 801. Compliance with Laws and Regulations.

The Concessionaire shall comply with all Rules and Regulations which the

Director may establish from time to time, including the Airport's Ground Transportation Rules and Regulations. In addition, the Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

A. The structural components of the terminal buildings.

B. The utility system up to the Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

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

A. Perform daily custodial services.

B. Keep all its equipment and fixtures in good repair and appearance.

C. Keep premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of the Concessionaire or the Concessionaire's employees or agents.

E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. The Concessionaire agrees to promptly provide and install such devices and to abide by all standards.

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



- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. The Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and the Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of the closing of any right-of-way, including loss of profit or business.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of the 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 the Concessionaire has complied and is complying, with the terms, covenants or conditions of this Agreement.
- B. In the event the Concessionaire is obligated but has failed to perform maintenance and make repairs after the City has given the Concessionaire notice to do so, the Concessionaire shall promptly reimburse the City for the cost thereof plus an overhead charge of fifteen percent (15%).
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 804. Utilities. The City will provide and pay for heated and chilled air up to, but not into the Counter Area. The City shall provide a main electric panel from which the Concessionaire shall obtain electricity at a cost based upon metered usage. The Concessionaire shall be responsible for the cost of electric meters and sockets and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

The Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, the Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. The Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. The Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to the Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. The Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of such interruption, including loss of profit or business.

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

## ARTICLE IX

### LOSS OF AND LIABILITIES PERTAINING TO PREMISES

Section 901. Liability Insurance. The Concessionaire, at its expense and, at all times during the term hereof, shall cause St. Louis County, the City, the Board of Aldermen, the Airport Commission, the officers, agents and employees of said entities and the Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to have arisen out of the activities of the Concessionaire, its officers, agents,

employees, and independent contractors pursuant to this Agreement, both on the Premises and at 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 \$3,000,000 comprised of such primary and excess policies of insurance as the Concessionaire finds feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional named insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of the Concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as a named insured is not intended to, and shall not make the City a partner or joint venturer with the Concessionaire in its operations hereunder.

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

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

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

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

If the building is repairable, the City will begin such repairs as soon as is practicable. Rental payments on untenable portions will cease as of the date of the damage. Rental payments will continue to be due on the tenable areas. The City will attempt to find temporary facilities for use by the Concessionaire during the repairs and the Concessionaire will pay rental for the temporary facilities. City will not be liable or responsible for any inconvenience or loss by Concessionaire of business or profit resulting from such damage.

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

At least fifteen (15) days prior to the expiration of any such policy, the Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, the Concessionaire shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

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

Section 905. Conditions of Default. This Agreement shall be considered in default when the Concessionaire fails to comply with any of the terms, covenants or conditions of this Agreement. Said default shall constitute a material breach hereof and shall be cause for the termination of the Agreement by the City.

Section 906. Indemnification. The Concessionaire shall protect, defend, and hold St. Louis County, the City, the Board of Aldermen, the Airport Commission, and officers, agents and employees of said entities, 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 the Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees,

regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City of St. Louis. The Director or his designee shall give to the Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City of St. Louis or his designee, after consultation with the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

Section 907. Adjustment of Claims. The 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 the Concessionaire under this Agreement.

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

## ARTICLE X

### ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

A. The Concessionaire shall not assign this Agreement without first obtaining written approval from the Director and the Airport Commission. At least ninety (90) days prior to any contemplated assignment of this Agreement, the Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective if the Concessionaire is 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 prior written consent of the City shall constitute a default on the part of the Concessionaire under this Agreement and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to end the term on a date which shall not be sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the removable fixtures, except subject to the City's right to end the term.

B. The Concessionaire shall not subcontract the Premises, except as may be necessary to comply with the DBE participation goal in Article XII of this Agreement. At least ninety (90) days prior to any contemplated subcontract of this Agreement, the Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum: (1) strict compliance with all provisions of this Agreement; (2) a provision that the subcontractor will use the facilities solely for the purposes identified in this Agreement; and (3) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement.

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

## ARTICLE XI

### TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. The City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or

more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a material breach of the Agreement justifying the termination of this Agreement in its entirety.

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, the 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 the Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of the Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which in the opinion of the Director, materially and adversely affects the overall performance of the Concessionaire under this Agreement;
8. allow a lien to be filed against the Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of the Concessionaire that is not removed or enjoined within thirty (30) days;

9. desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;

10. fail in the performance of any term, covenant or condition herein required to be performed by the Concessionaire.

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

#### Section 1102. The Concessionaire's Right to Terminate.

The Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

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

B. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.



Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than forty-five (45) days have elapsed after notice by either party to the other specifying the date and cause of termination, except for the Concessionaire's failure to make any payments specified in Article V or provide any insurance coverage specified in Article IX, the effective date of termination shall be forty-five (45) days from the payment(s) due date with notice to the Concessionaire or thirty (30) days from the date the insurance coverage is not provided with notice to the Concessionaire; and no such termination, except for termination for the Concessionaire's failure to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such forty-five (45) day period, (2) commences to correct such default within said forty-five (45) days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than either (1) ten percent (10%) participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23, Subpart F, or (2) twenty-five percent (25%) participation through the purchase or lease of services or goods from certified DBEs. Both goals shall be measured as a percentage of total Gross Receipts. These goals remain in effect throughout the term of the Agreement and credit toward the DBE goal will only be given for the use of Airport Authority certified DBEs.

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

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

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

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

The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

c). The Concessionaire shall operate its PVR concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Substitutions of DBEs must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. When a Concessionaire does not enter into contracts with DBE vendors, the Concessionaire must have a list of multiple certified DBE vendors providing the same category of goods and services from which the Concessionaire will obtain that category of goods and services. Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if Concessionaire has made acceptable good faith efforts. Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from Section 1201, as determined by City, may subject the Agreement to termination in accordance with the procedure established in Section 1103.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to the Concessionaire shall be sent by certified mail, return receipt requested addressed to C & J Rental, Inc. (d/b/a Thrifty Car Rental), 4140 Cypress Road, St. Louis, MO 63074. A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.

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

Section 1302. Non Discrimination and Affirmative Action Program.

A. The Concessionaire hereto understands and agrees that the City in the operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry,

discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. The Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.

B. The 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. The Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.

C. The Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". The 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. The Concessionaire agrees that should it be determined by the Concessionaire or the City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination to ascertain the steps to be taken by the Concessionaire to achieve the provisions of his program.

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

F. The 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 the Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

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

H. The Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

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

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

Section 1304. Force Majeure. Neither the City nor the 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, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that the 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 the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to the Site. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act, as it has been amended from time to time.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport, the Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the

terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds.

Section 1311. Governing Law. This Agreement shall be deemed to have been made 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 reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between the Concessionaire and the City.

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

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

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

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

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. 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. The Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1320. Advertising. The Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises either directly or indirectly in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between the Concessionaire and any other tenant, licensee or concessionaire as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each lessee, licensee, and / or other concessionaire and shall make a final decision to which the Concessionaire agrees to be bound. All determinations by the Director are final.

Section 1322. Prevailing Wages. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with City Ordinance No. 62124.

Section 1323. Solicitation For Bids. The Concessionaire's bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the Solicitation For Bids for Passenger Vehicle Rental Concession at the Airport dated May 21, 1998 is hereby made a part of the this Agreement and is incorporated herein by reference. Providing that if an express provision of this Agreement is in conflict with any provision of the Concessionaire's Bid or the Solicitation For Bids referred to above, the provisions of this Agreement shall prevail.



Section 1324. 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.

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

Pursuant to City of St. Louis Ordinance approved .

CONCESSIONAIRE

C & J RENTAL, INC. (D/B/A

THRIFTY CAR RENTAL)

Title:

Date:

ATTEST

Title:

Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on , 1998.

Commission Chairman \_\_\_\_\_ Date and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on ,1998.

Secretary, Board of Date Estimate & Apportionment

APPROVED AS TO FORM:

City Counselor,

Date

City of St. Louis

Register,  
\_\_\_\_\_ Date  
City of St. Louis

Comptroller,  
Date  
City of St. Louis

Register,  
\_\_\_\_\_ Date  
City of St. Louis

**EXHIBITS**

A-1, A-2 and A-3

(Premises)

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>10/23/98</b>	<b>10/23/98</b>	<b>W&amp;M</b>		
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>10/30/98</b>			<b>12/18/98</b>	<b>12/18/98</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>64521</b>				