

**ORDINANCE #65880**  
**Board Bill No. 26**

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport (the "Airport") "Bookstore and Business Center Restated and Amended Concession Agreement" (the "Restated and Amended Concession Agreement") to the Airport Concession Agreement (Specialty Retail-Book)(AL-105) between the City and The Bookmark, Inc., a corporation of the State of Missouri, dated September 14, 1992, and authorized by City Ordinance No. 62679 approved July 27, 1992 and as amended by the "First Amendment" dated January 12, 1998 as authorized by City Ordinance No. 64222 approved December 12, 1997(collectively the "Airport Concession Agreement"); the Restated and Amended Concession Agreement, which is attached hereto as **ATTACHMENT "1"** and made a part hereof, is a complete restatement and second amendment to the Airport Concession Agreement and its terms are more fully described in Section One of this Ordinance; authorizing the Director of Airports and the Comptroller to enter into and execute on behalf of the City and in the City's best interest the Bill of Sale for the sale of certain personal property and fixtures to the Concessionaire as provided for in Article V, Section 511 of the Restated and Amended Concession Agreement and any attendant or related documents, agreements, or instruments deemed necessary to effectuate the terms set forth in the Restated and Amended Concession Agreement or the Bill of Sale and/or deemed necessary to preserve and protect the City's interest; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Restated and Amended Concession Agreement and the agreements, documents, and instruments approved and/or authorized by this Ordinance; and containing a severability clause and an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport (the "Airport") "Bookstore and Business Center Restated and Amended Concession Agreement" (the "Restated and Amended Concession Agreement") to the Airport Concession Agreement (Specialty Retail- Book)(AL-105) between the City and The Bookmark, Inc., a corporation of the State of Missouri, dated September 14, 1992, and authorized by City Ordinance No. 62679 approved July 27, 1992 and as amended by the "First Amendment" dated January 12, 1998 as authorized by City Ordinance No. 64222 approved December 12, 1997(collectively the "Airport Concession Agreement"); the Restated and Amended Concession Agreement is a complete restatement and second amendment to the Airport Concession Agreement and is to read in words and figures as set out in **ATTACHMENT "1"** and is attached hereto and made a part hereof.

**SECTION TWO.** The Director of Airports and the Comptroller are hereby authorized to enter into and execute on behalf of the City and in the City's best interest the Bill of Sale for the sale of certain personal property and fixtures to the Concessionaire as provided for in Article V, Section 511 of the Restated and Amended Concession Agreement and any attendant or related documents, agreements, or instruments deemed necessary to effectuate the terms set forth in the Restated and Amended Concession Agreement or the Bill of Sale and/or deemed necessary to preserve and protect the City's interest and to take such actions as are necessary or appropriate in connection with Restated and Amended Concession Agreement or the consummation of the transactions contemplated herein.

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

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

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

**ATTACHMENT "1"**

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT**



The Bookmark, Inc.

**BOOK STORE AND BUSINESS CENTER  
RESTATED AND AMENDED CONCESSION AGREEMENT**

**NO. AL - 105**

TABLE OF CONTENTS

INTRODUCTION ..... Page 1

ARTICLE I: DEFINITIONS ..... Page 2

ARTICLE II: PREMISES ..... Page 4

ARTICLE III: RIGHTS ..... Page 5

ARTICLE IV: TERM ..... Page 5

ARTICLE V: FEES AND PAYMENT ..... Page 6

ARTICLE VI: CONCESSIONAIRE’S OPERATIONS ..... Page 11

ARTICLE VII: IMPROVEMENTS AND ALTERATIONS ..... Page 16

ARTICLE VIII: USE OF PREMISES ..... Page 19

ARTICLE IX: LOSS OF AND LIABILITIES PERTAINING TO PREMISES ..... Page 21

ARTICLE X: ASSIGNMENT AND SUBCONTRACTING ..... Page 24

ARTICLE XI: TERMINATION OF AGREEMENT IN ENTIRETY ..... Page 25

ARTICLE XII: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION ..... Page 27

ARTICLE XIII: LIQUIDATED DAMAGES ..... Page 28

ARTICLE XIV: MISCELLANEOUS PROVISIONS ..... Page 29

SIGNATURES ..... Page 36

EXHIBIT “A” ..... 6 Pages

EXHIBIT “B” ..... 1 Page

EXHIBIT “C” ..... 3 Pages

**AIRPORT NUMBER AL-105**

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT  
RESTATED AND AMENDED CONCESSION AGREEMENT  
(BOOK STORE AND BUSINESS CENTER)**

**THIS SECOND AMENDMENT**, made and entered into as of the \_\_\_ day of \_\_\_\_\_ 2003 (the "Agreement") by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and The Bookmark, Inc. ("Concessionaire") a corporation of the State of Missouri, U.S.A.

**WITNESSETH, THAT:**

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

**WHEREAS**, this Agreement is a complete restatement and second amendment to the Concession Agreement dated September 14, 1992 by and between the City and the Concessionaire, as authorized by City Ordinance No. 62679, approved July 27, 1992, and as amended by the First Amendment dated January 12, 1998 as authorized by City Ordinance No. 64222, approved December 12, 1997, (collectively "Concession Agreement");

**WHEREAS**, it is the intent of both parties that upon the Effective Date of this Agreement (as defined on page 36 of this Agreement) that the terms, covenants and conditions of the Concession Agreement will no longer be in effect;

**WHEREAS**, a Book Store and a Business Center at the Airport are essential for proper accommodation of the public;

**WHEREAS**, City has determined that it is in the public interest for the following objectives to be met in the provision of a Book Store and a Business Center Concession:

Provide a first-class, full-service Book Store and Business Center Concession that meets Airport user needs and adds value to other Airport and airline services,

Provide a high level of service at prices that are attractive to airport users and competitive with prices found in comparable Metro Area stores,

Provide a Book Store and Business Center Concession that is operated by well trained, efficient, courteous, and pleasant staff,

Be responsive to Federal Aviation Administration goals for Disadvantaged Business Enterprise participation in concessions;

**WHEREAS**, the Concessionaire, since its initiation of operations at the Airport under the Concession Agreement has earned the confidence of the City and the traveling public and has demonstrated a high level of service in the operation of bookstores at the Airport; and

**WHEREAS**, the City is desirous of increasing the offering of products and services available to the traveling public; and

**WHEREAS**, the City has been unsuccessful in retaining a stand alone business center,

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

**ARTICLE I  
DEFINITIONS**

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

"Agreement" shall mean this document (including exhibits) and any amendments thereto, duly approved by City.

“Airport” as stated in the preamble hereof.

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

“Build-Out” or “Build-Out Costs” shall mean costs incurred for the demolition/redevelopment of existing improvements and construction of new improvements to the Premises, including furnishings, fixtures and finishes including Removable Fixtures, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest during construction and overhead of the Concessionaire.

“City” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof

“Concession Fee” shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage as set out in Article V.

“Contract Year” shall be a 12-month period commencing on the first day of July and ending on the thirtieth day of June.

“Director” shall mean the Director of Airports of the Airport Authority of the City of St. Louis, and incorporates the granting of approval requirements of Section 1415. Withholding Required Approvals 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 of the socially and economically disadvantaged individuals who own it. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended.

“Gross Revenue” shall mean the gross receipts from all sales made and services performed for cash or credit on the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire’s operations on the Airport, whether performed by Concessionaire, its subcontractors, subsidiaries, associated or affiliated companies or otherwise. Only the following may be excluded or deducted, as the case may be, from Gross Revenues:

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

Cash or credit refunds given to customers for services purchased at the Airport;

The value of any supplies or equipment exchanged or transferred from or to other locations of Concessionaire’s business not made for the purpose of avoiding a sale at the Airport;

Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;

The sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.

“Improvements” shall mean without limitation all construction and fixtures or appurtenances thereto built or erected by Concessionaire and forming a part of, and which are permanently affixed or attached to any portion of Premises or the Airport’s real property or improvements.

“Metro Area” shall mean the central business district of the City of St. Louis. For the purposes of this Agreement, the comparable Metro Area locations shall be St. Louis Union Station retailers. For products without a comparison in the specified locations, the comparable location shall be within the local area and approved by the Director.

“Minimum Guarantee” shall mean Concessionaire’s minimum annual payment, as set out in Section 502 herein.

“Premises” shall mean a location or locations described in Section 201 that have been designated by City for the occupancy and use by the Concessionaire together with all Improvements for the sale of Concessionaire’s products and services and for other uses herein specifically and expressly provided for.

“Refurbishment” or “Refurbishment Costs” shall mean actual costs incurred to upgrade equipment and software, the Premises and the actual costs incurred to return the Premises to like new condition, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of improvements, costs of architectural design and engineering fees, permits, insurance and construction bonds; but excluding the costs of interest or financing fees during construction and overhead of the Concessionaire.

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

“Unamortized Investment” shall mean the depreciated value of Concessionaire’s investment of Build-Out Costs less the cost of Removable Fixtures. The Build-Out Costs shall be fully amortized on a straight line basis over the term of the Agreement.

## ARTICLE II PREMISES

**Section 201. Premises.** City hereby permits Concessionaire to use at the Airport the Premises as described on **EXHIBIT “A,”** attached hereto and made a part hereof. The rights granted in Section 301 hereof may be exercised only on the Premises.

Concessionaire accepts the Premises **“AS IS”**, with no warranties or representations of any kind, expressed or implied, either oral or written made by the City or any of its agents or representatives. City without limitations expressly disclaims and negates, as to the condition of the Premises: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Premises or any portion thereof

The Director shall have the right to add, subtract, relocate, substitute or delete portions of the Premises upon notice to Concessionaire. City will not be liable or responsible for any loss whatsoever including, without limitation, any inconvenience or loss by Concessionaire of work time, profit or business resulting from such changes. The City will make best efforts to offer substitute space that is as near equal as possible.

After Contract Year Twelve (12), Concessionaire, at its option, shall have the right to vacate any location and declare this Agreement terminated only as it relates to said location when gross sales for any contract year have decreased by fifteen (15%) percent or more from the immediately preceding contract year for said location.

**Section 202. Access.** Subject to the terms, covenants and conditions of this Agreement, Concessionaire has the right of free access, ingress to, and egress from the Premises, for Concessionaire’s employees, agents, guests, patrons, and invitees.

## ARTICLE III RIGHTS

**Section 301. Rights.** City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the non-exclusive right, license, and privilege to operate a Book Store and Business Center Concession within the Premises. These rights shall include the right to sell all types and varieties of products from the product category listed on **EXHIBIT “B”**. Concessionaire is not granted the right to offer for sale any other services or products.

Other Concessionaires may be authorized under their concession agreements to offer for sale related and same products that may create indirect competition for the Concessionaire. However, the City does not envision, during the term hereof, granting Book Store or Business Center Concession rights to any other entity that would be in direct competition with Concessionaire.

The Concessionaire is hereby required to stock and offer for sale any items that the Director may deem desirable to the public convenience and comfort.

**Section 302. Limitation of Rights.** Concessionaire shall have no right to perform any services or offer for sale any products, or engage

in any other business or commercial activity on the Airport except within the Premises and then only as provided for herein. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof immediately and not later than upon receipt of written notice from the Director, and the decision of the Director shall be final and binding.

This Agreement grants no real or implied rights to any Concession privileges or any other rights or privileges on or at the Airport other than in the Premises as provided for herein.

**ARTICLE IV  
TERM**

**Section 401. Term.** The term of this Agreement shall commence on July 1, 1992 and ending eighteen (18) years thereafter unless sooner terminated in accordance with other provisions of this Agreement. The commencement and expiration dates are written in the spaces below.

Commencement Date	July 1, 1992
Expiration Date	June 30, 2010

**Section 402. Surrender of Possession.** No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises. Such Premises, in accordance with Section 708, shall be, at the discretion of the Director, restored to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises with or without due process of law.

**Section 403. Holdover Provision.** If Concessionaire shall, with the prior written approval of the Director, hold over after the expiration of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed in writing, be a tenant at will on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Minimum Guarantee and Concession Fee as set forth in the final year herein, unless different fees shall be agreed upon in writing, and shall be bound by all terms, covenants and conditions of this Agreement.

**ARTICLE V  
FEES AND PAYMENT**

**Section 501. General.** Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fee set forth below in Section 502 and the utilities described in Section 804 of this Agreement, without demand during the term of the Agreement.

**Section 502. Minimum Guarantee and Concession Fee.**

(a) Concessionaire agrees to pay, for each Contract Year, a sum equal to the greater of the Minimum Guarantee as set forth below or the Concession Fee (Gross Revenue multiplied by the Percentage set forth below).

	<u>Beginning July 1</u>	<u>Minimum Guarantee</u>	<u>Percentage</u>
Contract Year 1	1992	\$ 58,120.00	10%
Contract Year 2	1993	\$ 65,281.00	10%
Contract Year 3	1994	\$ 72,443.00	10%
Contract Year 4	1995	\$ 79,604.00	10%
Contract Year 5	1996	\$ 86,766.00	10%
Contract Year 6	1997	\$ 93,927.00	10%
Contract Year 7	1998	\$144,460.00	10%
Contract Year 8	1999	\$150,051.00	10%
Contract Year 9	2000	\$155,808.00	10%
Contract Year 10	2001	\$161,832.00	10%
Contract Year 11	2002	\$168,201.00	10%
Contract Year 12	For the contract year twelve, and each remaining		10%

through Year 18 Contract Year, the Minimum Guarantee shall be 70% of the preceding Contract Year's Applicable Concession Fee or Minimum Guarantee, whichever is greater. The Minimum Guarantee shall be computed on a per location basis.

(b) The Minimum Guarantees shall be reduced by a maximum of 25% should enplaned passengers fall by at least 25% or more in a period of up to twelve (12) months after Contract Year Ten. The base year for enplanement comparisons is Contract Year Ten (10). Enplanement comparisons for periods of less than twelve months shall be made only on the basis of comparing the same months of the comparison period to the base year (e.g., a comparison period of May — November must be compared to the months of May-November of Contract Year Ten (10). 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 immediately following the period in which the entire 25% reduction in enplanements is attained, (2) this adjustment applies only to periods subsequent to the entire 25% decline in enplaned passengers and (3) this adjustment will be offset proportionally to 100% of the applicable Contract Years' Minimum Guarantees for Contract Years following enplanement increases above 75% of Contract Year Ten (10) enplanements.

An example of this adjustment is as follows. Enplanements in the first six months of Contract Year Eleven decrease to 65% of enplanements in the first six months of Contract Year Ten. This will cause a maximum of a 25% reduction in the Minimum Guarantee for the remaining months of, and months subsequent to, Contract Year Eleven. Enplanements in Contract Year Twelve then increase to 85% of Contract Year Ten enplanements. This will cause the Minimum Guarantee for Contract Year Thirteen to increase to 100% of the Minimum Guarantee for Contract Year Thirteen.

**Section 503. Payment.** Payments shall consist of (a) an amount equal to 1/12th of the Minimum Guarantee, to be paid in advance on or before the first day of each month and (b) an amount equal to that portion of the Percentage Fee for the preceding month that is in excess of 1/12th the Minimum Guarantee, to be paid on or before the 15th day of the second and each succeeding month during the Term as set forth in Section 401. (See Section 505. Unpaid Fees for service charge.)

**Section 504. Reports.**

A. Concessionaire shall submit to City by the 15th day of the second and each succeeding month of the term hereof, two copies of an accurate statement of Gross Revenue for both Book Store and Business Center services. These statements must separately state Gross Revenue for sales of products and services from each location and be certified as accurate by an officer of Concessionaire. The final statements of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. City reserves the right to use these statements of Gross Revenue as a source of information to bidders in a future solicitation for bids for this concession.

Concessionaire shall submit to City by the 15th day of the second and each succeeding month of the term thereof, two copies of accurate DBE Participation Reports. One report is to be submitted to the Airport Properties Department, P.O. Box 10212, St. Louis, Missouri, 63145, and the other to the Airport Authority's DBE Programs Office, 13723 Riverport Drive, Maryland Heights, Missouri, 63043.

B. Concessionaire shall submit an audit report of Gross Revenue within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) the calculation of the total amount payable to City based upon accumulated Gross Revenue for the Contract Year and the Percentage Fee, and (iii) the aggregate amount attributable to DBE participants, if any. The audit reports shall also include a schedule showing the total of actual payments to City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

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

C. Within 120 days from the end of Concessionaire's accounting year, fiscal or calendar, Concessionaire will submit to the City a profit and loss statement for all operations conducted at this Airport. The statement will provide, at minimum, all

revenues derived from the activities at this Airport and all direct expenses related to the operations at this Airport. Any allocation, overhead or management charges will be separately stated after a determination of the difference between direct revenue and direct expenses from operations has been made. This statement will include footnotes to describe the accounting practices used by Concessionaire to compile the profit and loss statement from operations at this Airport. An officer of the Concessionaire will certify the statement to be a true and accurate statement taken from the Concessionaire's accounting records.

- D. Within thirty (30) days after the close of each Contract Year, Concessionaire shall provide City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year).
- E. Concessionaire shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the DBE participation requirement [at a minimum of three (3) years after the expiration or termination of this Agreement]. The Airport Authority reserves the right, to investigate, monitor, audit, and/or review records for compliance.

**Section 505. Unpaid Fee.** All unpaid fee payments due City hereunder will bear a service charge of 1½% per month if same is not paid and received by City on or before the 15th of the month in which said payments are due (see Section 503. Payment for due date), and Concessionaire agrees that it will pay and discharge all costs and expenses including attorney's fees and litigation costs incurred or expended by City in collection of said delinquent amounts due, including service charges, within five (5) days of notice.

**Section 506. Performance and Payment Bond.** Concessionaire agrees to furnish a bond, or other form of security, in a form acceptable to City in the principle amount of ½ of contract year one. Such bond, or other form of security, shall remain in full force and effect throughout the term of this Agreement and shall extend sixty (60) days following the termination or early termination of this Agreement. In the event that said bond should expire prior to the expiration of this Agreement, Concessionaire covenants and agrees to provide City a renewal bond or other form of security sixty (60) days prior to the expiration date of the expiring bond. Such bond will guarantee the payment of all Fees and performance of all other terms, covenants and conditions of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the Term hereof. City may agree to another form of security deposit which will provide equal protection of City's interest. If City cashes the bond or other form of security, Agent agrees to furnish a replacement bond or other form of security in the same principal amount within fifteen (15) calendar days.

**Section 507. Prompt Payment of Taxes and Fees.** Concessionaire covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and maintain in full force and effect all governmental 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. Such licenses shall cover not only Concessionaire, but all its agents and employees required by law to be licensed to transact such business.

**Section 508. Accounting Records.** Concessionaire shall keep full and complete books of account and other records relating to the provisions and requirements of this Agreement and in so doing, shall comply with the minimum procedural requirements prescribed by City. Concessionaire will, during the term hereof, make available during normal business hours in the St. Louis area, true, accurate, complete and auditable records of all business conducted by it at the Airport.

Concessionaire will retain and make these records available in the St. Louis area for at least three (3) years following the expiration or termination of this Agreement, and upon City's request shall make these records accessible during usual business hours to City or its duly appointed agents or auditors at the Airport or at some other mutually agreed upon location. Should adequate records not be made available by Concessionaire at the appointed location, then the additional cost of said audit including all reasonable travel, food, and lodging expenses incurred by City shall at City's discretion be borne by Concessionaire.

**Section 509. Additional Fees and Charges.** Concessionaire will pay additional fees and charges under the following conditions:

If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City; or

If City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or

refusal of Concessionaire to perform or fulfill any of the terms, covenants, or conditions of this Agreement.

Such payments 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 and charges thereafter due hereunder. Each and every part of such payment will be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges as set forth herein.

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

**Section 510. Notice, Place and Manner of Payment.** Payments will be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Concessionaire and will be made in legal tender of the United States.

**Section 511. Bill of Sale for the Property.** Subject to the terms, covenants, and conditions of this Section 511, the City hereby offers and agrees to sell and the Concessionaire agrees to purchase for fifty Thousand Dollars (\$50,000.00) all of the City's rights, title, and interest in and to certain personal property and fixtures (the "Property") more fully described in **ATTACHMENT "A"** titled "Property Description" of **EXHIBIT "C"** entitled "BILL OF SALE", which is an unexecuted copy of the BILL OF SALE for the Property in a form acceptable to the City and the Concessionaire and is attached hereto and incorporated herein.

- A. The "Closing" on the Property shall take place within ten (10) calendar days of the Effective Date of this Agreement at a place and time reasonably determined by the City unless otherwise agreed to by the City and the Concessionaire in writing. City shall give Concessionaire at least three (3) calendar day's written notice of the Closing.
- B. The "Purchase Price" for the Property is Fifty Thousand Dollars (\$50,000.00). At the Closing and upon delivery by the City of a fully executed BILL OF SALE as herein provided, the Concessionaire shall pay to the City the Purchase Price in legal tender of United States.
- C. The City agrees to deliver to the Concessionaire at the Closing on the Property a fully executed original of the BILL OF SALE.
- D. The Closing on the Property shall occur provided that all of the conditions precedent to the Closing and other contingencies set forth herein, including the delivery of the BILL OF SALE and the payment of the Purchase Price have been satisfied or waived in writing by the respective parties.
- E. Except as expressly provided for in the BILL OF SALE, Concessionaire shall accept the Property "AS IS", with no warranties or representations of any kind, expressed or implied, either oral or written made by the City or any of its agents or representatives. City without limitations expressly disclaims and negates, as to the condition of the Property: a) any implied or expressed warranty or merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Property or any portion thereof.

## ARTICLE VI CONCESSIONAIRE'S OPERATIONS

**Section 601. Standards of Service.** Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Book Store and Business Center Concession serving the needs of all users of the Airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and City. Concessionaire shall provide quality services and products and shall equip, organize, put into service and manage efficiently the concession to provide service with a clean, attractive and pleasant atmosphere. It is understood that business center services will be provided primarily at the Main Terminal location.

**Section 602. Hours of Operation.** The minimum hours of operation for book store and business center serving the public shall be thirty (30) minutes before departure of the first scheduled flight each day and until the departure of the last flight out each evening. The Concessionaire may not change the hours of operation without written application to and the written approval of the Director.

The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the airport. During hours of non-operation, the location must be physically closed and locked by Concessionaire. A separate set of hours may be established for the bookstore and the business center, at the Main Terminal location.

**Section 603. Pricing.**

(a) The Concessionaire agrees to ensure that all prices are attractive to the public and are no more than 10% greater than prices charged for identical products found in comparable Metro Area locations; however, books and cards containing selling prices printed by the publisher are excluded and must be sold for the published prices or the prices charged in the Metro Area (prices are greater than the published prices). For the purposes of this Agreement, the comparable Metro Area location shall be St. Louis Union Station retailers. For products without a comparison in the specified location, the comparable location shall be within the Metropolitan Saint Louis area and approved in writing by the Director.

(b) The Concessionaire submitted at time of bid a complete list of all products proposed to be sold in the allowable product category. This list shall contain the current Metro Area price comparisons, including the name of the comparison Metro Area retailers, and proposed selling prices that comply with paragraph (a) of this Section for a minimum of 25% of the products proposed to be sold within the Product Category listed on Exhibit "B." The Concessionaire shall not include in its comparisons books and cards if these products are sold for the publisher printed prices on the products. This exception does not apply to any other products. The proposed prices shall not be implemented until approved in writing by the Director.

(c) The Concessionaire shall not increase any prices without the prior written approval of the Director. The Concessionaire's prices shall be subject to review for increases only once per year unless agreed to the contrary in writing by the Director. The Concessionaire's prices may normally only be increased following substantiation of cost price movements from vendors and a comparison to Metro Area prices that shows that Metro Area prices have increased.

(d) The Concessionaire shall annually prepare a complete schedule of all products and prices including a comparison to Metro Area prices for a minimum of 25% of the products sold within the Product Category listed on **Exhibit "B,"** The Concessionaire shall not include in its comparisons books and cards if these products are sold for the publisher printed prices on the products. This exception does not apply to any other products. This schedule shall include a short description of all products and be submitted to the Airport Properties Department. Any of Concessionaire's prices found to be more than 10% greater than Metro Area prices shall be reduced to no more than 10% greater than their Metro Area comparisons. The Director reserves the right to independently compare the Concessionaire's prices to Metro Area prices and require the Concessionaire to reduce prices based on its comparisons. All new products and prices must be included in the complete schedule of all products and prices and must be submitted in writing by the Concessionaire and approved in writing by the Director. The proposed prices for these products are subject to all pricing requirements specified in this Section. The Concessionaire shall give written notice to the Director of all products it intends to delete from this schedule. The Director reserves the right to deny the Concessionaire permission to delete any product from this schedule. Product additions and deletions may be proposed at any time.

(e) The Concessionaire submitted a proposal for its implementation of all pricing requirements of this Section. This proposal shall clearly indicate that it is the Concessionaire's responsibility to ensure compliance with the pricing requirements of this Section. This proposal must be approved in writing by the Director.

**Section 604. Promotion and Marketing.**

- A. Concessionaire warrants, represents, and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, cause, or allow any business to be diverted from the Airport by referral or any other method.
- B. The Concessionaire must submit at the beginning of each contract year a promotion plan. This plan is required to include, type and timing of sales promotion it intends to implement to publicize and promote the Book Store and Business Center Concession and increase sales. This plan shall include scheduled seasonal, theme, special event and general promotions. The opening of a shop shall be the subject of a special promotions. The Concessionaire shall indicate whether or not the increases in sales resulting from the promotional plan are indicated in gross sales estimates. The Concessionaire shall submit an update of its promotion plan sixty (60) days prior to each Contract year.
- C. The Concessionaire may offer a discount to its employees or those of subcontractors, the employees of the City or any of the City's tenants at the Airport, and to other volume purchasers or other special categories of customers. Said discounts

shall not exceed ten percent (10%) except to employees of Concessionaire, which shall not exceed twenty percent (20%). Discounts to employees of the City and employees of other tenants at the Airport (other than Concessionaire's employees) must be on an equal and nondiscriminatory basis. The Concessionaire must maintain records of all employee discounts given and produce these records to the Director upon request.

- D. The Concessionaire shall arrange products in each shop within the Premises in such a manner that will maximize overall sales and Gross Revenue. The Director may require the Concessionaire to make specific changes to product locations and/or visibility if such efforts are not being effectively made by Concessionaire.

**Section 605. Personnel.**

- A. Concessionaire shall employ a sufficient number of personnel to provide a high level of service, maintain good operating condition of all locations and efficiently perform the office and administrative duties incidental to the operation of the business.

Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, all of whom shall be proficient in the duties to be performed in the operation of this Book Store and Business Center Concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules, and regulations. Concessionaire shall prohibit and restrain its agents, visitors, and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

Neither Concessionaire nor any of its employees shall conduct, transact, or otherwise carry on any business or service that is not specifically authorized, in accordance with the terms of this Agreement.

- B. Employee parking will be offered as available in the Airport Employee Parking Lot at established rates.
- C. Concessionaire shall require its employees to wear appropriate uniforms and nametags to indicate the fact and nature of their employment.
- D. Concessionaire acknowledges and agrees that it will conduct an employee background check of each of its personnel who are employed in a facility located beyond a security checkpoint, at its cost, if required by the Federal Aviation Administration (FAA) and/or the Airport. Concessionaire recognizes and agrees that the security requirements may change and Concessionaire agrees that it will comply with all such changes throughout the term of this Agreement.

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

**Section 606. Manager.** 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 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. The manager or the manager in charge for each shift shall be responsible for the proper conduct of the employees on duty and the efficient and courteous transaction of the business herein authorized. Management personnel must be readily accessible for all hours the Concessionaire is in operation.

**Section 607. Deliveries.** Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the Airport. The Concessionaire shall use only delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts. Deliveries shall be made at such times and in such manners as to minimize disruption of passenger traffic in the gate areas and/or other tenant operations.

**Section 608. Record Keeping.** Concessionaire agrees to provide for the collection of all monies and provide accounting, audit, and reports of Gross Revenue as required by Article V of this Agreement. In addition, Concessionaire shall ensure that a point of sale system is provided which is capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and DBE participant(s), if any, for each facility under this Agreement (these records are to be retained by Concessionaire for a minimum of three (3) years, and made available to the City upon request).

**Section 609. Transition Period.** During any future transition of the Book Store and Business Center Concession to another concessionaire, if applicable, Concessionaire shall use its best efforts to assure a smooth transition. Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director.

**Section 610. Operation.**

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide, and is responsible for, all employees and necessary components of the operation including, without limitation, inventory, fixtures, equipment, and supplies.
- B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of City.

**Section 611. Communication.**

- A. Concessionaire's local manager shall schedule quarterly or monthly meetings with the appropriate representative of the Airport Properties Department to discuss sales and any other relevant issues, which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem, which reduces service levels or sales or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

**Section 612. Customer Complaints.** Concessionaire will establish procedures for handling all customer complaints. Concessionaire will respond in writing to every complaint (written or oral), within seven (7) calendar days and make a good faith attempt to explain, resolve or rectify the cause of the complaint. Concessionaire will provide the Director a copy of each such complaint and its written response thereto. Concessionaire will also provide the Director a summary of resolution/disposition of the complaints in writing at its regular meeting with Airport Properties Department.

**Section 613. Interference to Air Navigation.** 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 promptly by Concessionaire at its expense. Concessionaire agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations.

Concessionaire further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

**Section 614. Adult Materials.** All adult materials, as defined by the Director in his/her sole determination, will be handled in a discrete manner so as to avoid offending the public. (a) Books will be placed on the highest display rack and their covers, except for names, will be hidden. (b) Cards will be placed in the highest rack and their pictures hidden from view. (c) Other materials will be handled as prescribed by the Director. (d) The Concessionaire agrees to remove all adult materials, which the Director in his/her sole determination requests it to remove and the Concessionaire will not sell such materials again after it is ordered removed by the Director. The Director's decision shall be final and binding.

## ARTICLE VII IMPROVEMENTS AND ALTERATIONS

**Section 701. Construction by Concessionaire.**

- A. Concessionaire takes the Premises "AS IS" and agrees, at Concessionaire's sole cost and expense, to install, construct, equip, and furnish the Improvements in the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.

- B. Concessionaire will renovate the existing Main Terminal Bookstore and adjacent former Aerzone Business Center to create an integrated and harmonious presentation. It is the desire of the parties that the two facilities appear as one integrated unit when the remodeling is complete. In the achievement of this goal Concessionaire will provide:
- Consistent ceiling treatment throughout,
  - Consistent flooring throughout,
  - Consistent light levels throughout,
  - Consistent signage, and
  - An integrated storefront presentation.
- C. Concessionaire shall install appropriate equipment to optimize space use and ease of operation, and satisfy the Americans with Disabilities Act (ADA).
- D. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are on file in the Office of the Director.
- F. Concessionaire shall submit a signed Tenant Construction or Alteration Application (TCA) including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Department. The TCA shall be submitted not more than 30 days following full execution of the Agreement by City.
- F. Concessionaire shall submit a St. Louis County building permit number not more than 30 days following approval of the TCA to the Airport Properties Department.
- G. Concessionaire shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705, to the Airport Properties Department not more than 45 days following the TCA approval by the Airport Properties Department and prior to commencement of work.
- H. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 706, prior to occupancy of premises.
- I. In the event the Concessionaire encounters materials believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and the Concessionaire. The Concessionaire shall not be required to perform without consent any work relating to asbestos or PCB.
- J. In addition to any other construction, remodeling or refurbishment requirements herein, Concessionaire is required to expend for refurbishment in:
- |                  |  |
|------------------|--|
| Contract Year 12 | Ten (10%) percent of Minimum Guarantee for Contract Year 11; |
| Contract Year 15 | Ten (10%) percent of Minimum Guarantee for Contract Year 14; |
| Contract Year 17 | Ten (10%) percent of Minimum Guarantee for Contract Year 16. |

**Section 702. Preparation of Plans and Specifications.** Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises, prepared in accordance with the Tenant Design Standards. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director and a St. Louis County building permit.

**Section 703. Contractor's Liability Insurance.** In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include City and its Airport

Commission, Board of Aldermen, officers, employees and agents as an "Additional Insured." Said insurance shall be in a form agreeable to City, and certificates showing proof of coverage shall be delivered to the Director.

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

**Section 705. Mechanics' and Materialmen's Liens.** Concessionaire agrees not to permit any mechanics' or materialmen's lien 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 improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire.

**Section 707. Signs.**

- A. Concessionaire shall not, without the prior written approval of the Director, erect, maintain, or display any signs on the Premises. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such identification signs as may be necessary for the proper conduct of a Book Store and Business Center Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.
- B. Concessionaire shall be responsible for the cost of any modifications to the Airport directories and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707.
- C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions, or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not obstruct its equipment with advertising matter, displays, or other literature not directly pertaining to its Book Store and Business Center Concession services. Concessionaire will not place any signs outside of the Premises.

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

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed promptly and timely by Concessionaire at the 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 Directors approval, and such list shall be periodically updated by Concessionaire. City reserves the right and Concessionaire agrees that the Director may require Concessionaire to restore the Premises to the condition that originally existed at the time Concessionaire took possession of the Premises under this agreement or any previous agreement. Concessionaire agrees to bear all costs of such removals and restorations.

**Section 709. Cost of Improvements.** The Concessionaire shall furnish the Director with satisfactory proof of Build-Out Costs within sixty (60) days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs supported by invoices and cancelled checks and certified as accurate by the Concessionaire or an agent of the Concessionaire. The Concessionaire shall provide to the Director any other proof necessary to satisfy the Director.

**Section 710. Reimbursement of Build-Out Costs.** In the event of relocation of the Premises by the City, the City shall pay to the Concessionaire the Unamortized Investment Concessionaire has made in Improvements to Premises to be relocated or portions thereof. The City shall be entitled to inspect the Improvements, and if this inspection reveals missing or damaged items, the Unamortized investment shall be reduced by an amount equal to the cost of the replacement or repair of missing or damaged Improvements. Title to the Improvements shall pass to the City immediately upon payment of the Unamortized Investment.

#### **ARTICLE VIII USE OF PREMISES**

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

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

- A. The structural components of the building.
- B. The utility system to the Premises, except where the utility systems are owned or controlled by the utility companies.
- C. The cleaning of the exterior of windows in the terminal building.

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 Concessionaire's responsibilities are not limited to those functions:

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire.
- C. Keep premises free from all fire and other hazards to persons and property, and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees or agents.
- F. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Concessionaire may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors, and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by these requirements. Concessionaire will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage, and refuse.
- F. Confine all handling and holding of Concessionaire's property to the premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. Storage will not be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges City from any and all claims or causes of action arising out of the closing of any roadway or right-of-way including, without limitation, any inconvenience or loss by Concessionaire of work time, profit, or business resulting from said closing.

**Section 803. Right to Enter, Inspect and Make Repairs.** City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.
- B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems or to make inspections, testing, surveys, environmental inspections, studies and assessments.

In case of emergency, City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right to enter the Premises by whatever means necessary to remedy the emergency situation and without liability to Concessionaire for any damage or losses related thereto.

**Section 804. Utilities.** The City will provide and pay for heated and chilled air up to, but not into the Space. 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 an electric meter and socket and all connections to and within the Premises. The Concessionaire shall be responsible for any needed upgrade in electrical supply or cooling caused by increased lighting or other changes to the Premises made by the Concessionaire.

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

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

The City shall not be liable to the Concessionaire in damages or otherwise for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

#### **ARTICLE IX LOSS OF AND LIABILITIES PERTAINING TO PREMISES**

**Section 901. Liability Insurance.** Concessionaire, at its expense, at all times during the term hereof shall cause City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors pursuant to this Agreement under the following types of coverage:

1. Comprehensive General Liability;
2. Comprehensive Automobile Liability (any vehicles, including owned, hired and non-owned).

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$21,000,000 comprised of such primary and excess policies of insurance as Concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be included as an "Additional Insured". Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Concessionaire, its officers, agents, employees, consultants, contractors, licensees, invitees and independent contractors. Such coverages shall also extend to contractual

liability insurance sufficient to cover Concessionaire's indemnity obligations hereunder. City and its Board of Aldermen, Airport Commission, officers, agents and employees shall have no liability for any premiums charged for such coverage, and the inclusion of City and its Board of Aldermen, Airport Commission, officers, agents and employees as an "Additional Insured" is not intended to, and shall not, make City and its Board of Aldermen, Airport Commission, officers, agents and employees a partner or joint venturer with Concessionaire in its operations hereunder.

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

**Section 902. Property Insurance.** Concessionaire will provide fire and other hazardous related insurance coverage for the full value (one hundred percent) of the improvements and equipment it installs or may hereafter erect on the Premises.

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

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, City may terminate this Agreement by written notice to Concessionaire.

If the building is repairable, City will begin such repairs as soon as is practicable. City will attempt to find temporary Premises during the repair. Minimum Guarantee on the untenable portions will cease as of the date of the damage. Minimum Guarantee will continue to be due on the tenable areas. City will not be liable or responsible for any inconvenience or loss of any kind whatsoever, including the loss by Concessionaire of business resulting from such damage.

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

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

All policies of insurance herein shall be in a form and with a company or companies approved by City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director. Each such insurance policy shall also provide primary coverage to the City, its Board of Aldermen, Airport Commission, officers, agents, and employees. In the event of overlapping policies or duplicate coverage, Concessionaire's coverage shall be deemed the primary coverage and any other coverage shall be deemed excess coverage.

**Section 905. Indemnification.** Concessionaire shall protect, defend, and hold St. Louis County, City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, independent contractors, 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. The Director or his/her designee shall give to Concessionaire reasonable notice of any such claims or actions. Concessionaire shall also use counsel reasonably acceptable to the City Counselor of the City or his/her designee, after consultation with the Director or his/her designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement.

**Section 906. Adjustment of Claims.** Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage, or theft arising out of the activities of Concessionaire under this Agreement.

**Section 907. Occupancy of Premises.** Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the Airport or invalidate any such

insurance.

**Section 908. Waiver of Subrogation.** Concessionaire on behalf of itself and its insurers, hereby waives any claim or right of recovery from the City, its Board of Aldermen, Airport Commission, officers, agents and employees for any loss or damage to Concessionaire's officers, agents, or employees or its property or the property of others under Concessionaire's control, to the extent that such loss is covered by a valid insurance policy or could be covered by an "all risk" physical damage property insurance policy. Concessionaire shall provide notice of this waiver of subrogation to its insurer(s).

#### ARTICLE X ASSIGNMENT AND SUBCONTRACTING

**Section 1001. Assignment.** Concessionaire shall not assign this Agreement without first obtaining written approval of the Director and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Concessionaire shall submit a written request to the Director. No assignment shall be made or shall be effective unless Concessionaire shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement. Any such transfer of assignment without the consent of the City shall constitute a default on the part of the Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

**Section 1002. Subcontracting.** Concessionaire shall not subcontract or sublet the Premises, or any portion thereof except as may be required to secure DBE participation and only with the prior written approval of the Director. At least 60 calendar days prior to the contemplated subcontracting or subletting of this Agreement, Concessionaire shall submit a written request to the Director along with a copy of the proposed subcontracting or sublease agreement. The parties understand and agree that Concessionaire is responsible for the performance of its subcontractors or subtenants under this Agreement. Such subcontract or sublease must require, at a minimum, the strict compliance with all provisions of this Agreement and that the subcontractor or subtenant will use the Premises solely for the purposes identified in this Agreement. No subcontract or sublease shall be effective as it pertains to the City until such time as the Director receives a fully executed copy of the subcontract or sublease.

**Section 1003. Bankruptcy.** In the event that there is an assignment of this Agreement by operation of law, the City shall be entitled within ninety (90) days after notice thereof given in writing to exercise the City's option hereby given to end the term on the date which shall be no sooner than forty-five (45) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at 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.

#### ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

**Section 1101. City's Right to Terminate.** 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, but not limited to, any one or more of the following events.

- A. If the fees, charges, or other money payments, which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Agreement, Concessionaire shall:
  1. apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
  2. file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
  3. make a general assignment for the benefit of creditors;
  4. file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;

5. file an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days;
6. fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
7. fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
8. allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire and is not removed or enjoined within thirty (30) days;
9. desert, vacate or discontinue all or a portion of its operation of the Premises which, in the opinion of the Director, results in a failure to provide the public and others the service contemplated hereunder;
10. fail to meet the DBE goal as described in Article XII of this Agreement;
11. fail in the performance of any terms, covenants or conditions herein required to be performed by Concessionaire.

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

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

**Section 1102. Concessionaire's Right to Terminate.** Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, for the following causes:

- A. if a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety;
- B. if City shall have abandoned the Airport for a period of at least 30 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers;
- C. in the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that an agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport, and any of said events shall result in material interference with Concessionaire's normal business operations or substantial diminution of Concessionaire's gross revenue from the operation at the Airport, continuing for a period in excess of 30 days;
- D. if City shall have failed in the performance of any specific covenant within the control of City and required by this Agreement to be performed by City.

**Section 1103. Procedures for Termination.** No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after notice by either party to the other specifying the date and cause of termination, except that for Concessionaire's failure to make any payments specified in Section 1101 (A) or provide the insurance specified in Article IX, the effective date of termination shall be 45 days from the payment(s) due date with notice to Concessionaire or 30 days from the date insurance is not provided with notice to Concessionaire; and no such termination, except for termination for Concessionaire's failure

to make any payments or provide insurance, shall be effective if the party at default (1) cannot by the nature of the default cure it within such 45 day period, (2) commences to correct such default within said 45 days and (3) corrects the same as promptly as is reasonably practicable.

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

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

## ARTICLE XII DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

### Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than 30% of the total Gross Revenues earned in the exercise of the concession rights granted in Section 302. This goal remains in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director. Concessionaire submitted a DBE participation plan that detailed the method(s) and percentage of DBE participation it offers in the performance of this Agreement. This DBE participation plan must be approved in writing by the Director before it may be implemented. Concessionaire is obligated to meet the 30% DBE participation or the amount of participation detailed in its DBE participation plan as approved by the Director.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 26. 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 26. 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. Concessionaire warrants, represents, covenants, and agrees that it shall not terminate the subcontract or agreement between the Concessionaire and the DBE without cause (a material breach) or the written consent of the DBE. In the event that the Concessionaire terminates the DBE subcontract or agreement, the Concessionaire must provide the Director with reasonable documentation of the DBE's mutual consent to the termination or reasonable documentation of the material breach of the subcontract or agreement by the DBE. Concessionaire must then immediately take steps to obtain a replacement certified DBE through good faith efforts. The Director shall have the sole determination as to whether or not the Concessionaire has made acceptable good faith efforts. When the Concessionaire secures a replacement DBE subcontract or agreement, such subcontract or agreement must be reviewed and certified by the City prior to implementation.
- D. Concessionaire shall operate its Book Store and Business Center Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 26, as applicable and as said regulations may be amended or new regulations promulgated, and the St. Louis Airport Authority's DBE Programs Office. Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises thereon and hold the same as if this Agreement had never been made or issued.

**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 LIQUIDATED DAMAGES

**Section 1301. Liquidated Damages.** Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expenses, the amounts of which are difficult to ascertain, if the Concessionaire violates any of the terms, covenants, or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director, on behalf of the

City, may elect (after written notice to the Concessionaire of said violation) to impose the charges in amounts described below as liquidated damages on the basis of each violation per day:

<b>VIOLATION</b>	<b>SECTION</b>	<b>CHARGES</b>
Violation of Article III, Rights Clause	301 - 302	\$100.00
Violation of Article VI, Concessionaire's Operation	602 – 609	\$150.00
Violation of Article VII, Improvements and Alterations	707	\$150.00
Violation of Article VIII, Use of Premises Clause	802	\$150.00

The parties hereby stipulate and agree that time is of the essence in this Agreement and that charges provided for within this section shall be deemed liquidated damages and not a penalty or fine and the City may elect, alternatively, to pursue any remedy at law or in equity. Liquidated Damages shall be due upon receipt of notice and 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 Concession Fee as set forth in ARTICLE V of this Agreement.

Director will give Concessionaire timely written notice of each violation for which Director intends to collect liquidated damages. Concessionaire will have one business day from receipt of such notice in which to remedy the violation, or respond in writing as to the intended course of action to remedy the violation if the violation cannot reasonably be remedied within one business day. Only after Concessionaire has failed to remedy the violation, or in the case of Article VI, repeated the violation, will liquidated damages for the indicated violation be payable under this section. In no event shall liquidated damages payable under this section exceed 10% of the Minimum Guarantee.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

**Section 1401. Notice.** Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to the Director of Airports, St. Louis Airport Authority, 10701 Lambert International Boulevard, St. Louis, MO 63145, with a copy to the Airport Properties Manager at the same address. All notices, demands, and requests by City to Concessionaire shall be sent by certified mail, return receipt requested addressed to: Bookmark, Inc., 520 South Fifth Street, St. Charles, Missouri 63301. The Concessionaire may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Concessionaire or said Director.

**Section 1402. Conditions of Default.** This Agreement shall be considered in default when Concessionaire fails to fulfill any of the terms, covenants or conditions of this Agreement and such default shall be considered a material breach of this Agreement for which the City at its option may terminate this Agreement as provided for in ARTICLE XI of this Agreement.

**Section 1403. Non-Discrimination and Affirmative Action Program.**

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that their premises shall be posted to such effect as required by such regulation.

- B. Concessionaire agrees that in performing under this Agreement, neither they nor anyone under their control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that they will be unable to conform to their approved positive employment program submitted to determine eligibility under the fair employment practices provisions of City Code, they will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of their program.
- E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within 10 days.
- H. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in
- Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- I. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**Section 1404. 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 1405. Force Majeure.** Neither City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and for which it is not within its control.

**Section 1406. 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 permitted assigns of the respective parties hereto.

**Section 1407. Quiet Enjoyment.** Subject to the provisions of the Agreement, City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the premises.

**Section 1408. Operation and Maintenance of Airport.** City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

**Section 1409. Title to Site.** The premises from the date hereof until the termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

**Section 1410. Agreements with the United States.** This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

**Section 1411. Modifications for Granting FAA Funds.** In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable City to obtain said Federal Aviation Administration funds.

**Section 1412. Governing Law.** This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the Charter of the City of St. Louis and its ordinances.

**Section 1413. Headings.** The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Section 1414. 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 1415. Withholding Required Approvals.** Whenever the approval of City, or the Director, or of Concessionaire is required herein, no such approval shall be unreasonably requested or withheld. Whenever the approval of City is required, the approval must be in writing and the approving official is the Director or the person duly designated or authorized to perform one or more of the Director's duties under this Agreement.

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

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

**Section 1418. Americans with Disabilities Act (ADA).** Concessionaire shall be responsible for compliance with the Federal ADA,

plus any State laws and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

**Section 1419. Not a Lease.** This Agreement is not a lease and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder, and Concessionaire will in no instance be deemed to have acquired any possessory rights against City or the Premises or be deemed to be a tenant of City.

**Section 1420. Advertising.** Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

**Section 1421. Conflicts Between Tenants.** In the event of a conflict between Concessionaire and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final and binding.

**Section 1422. Prevailing Wage.** Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City of St. Louis Ordinance No. 62124.

**Section 1423. Entire Agreement.** The terms, covenants, warranties, conditions, and provisions of this Agreement are intended by the parties as a final expressions of this Agreement with respect to said provisions as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement, together with all exhibits and attachments attached hereto constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto. However, the Director, on behalf of the City and in its best interest, may with the consent of the Concessionaire revise or amend the exhibits to this Agreement. In the event of any inconsistency or conflict between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. Agreement.
- b. Exhibits and Attachments to the Agreement.

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

**Section 1425. Acknowledgment of Terms and Conditions.** The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto. The provisions of this Agreement shall survive the expiration or early termination of this Agreement.

**Section 1426. Required Approvals.** When the consent, approval, notice, waiver or certification ("Approval") of the other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Airport Director is required, the Approval must be from the Airport Director or his/her authorized or designated representative. City and Concessionaire agree that extensions of time for performance may be made by the written, mutual consent of the Airport Director and Concessionaire or its designee.

**Section 1427. Previous Agreements.** It is expressly understood by the parties hereto that the provisions of this Agreement shall supersede the terms, covenants, and conditions of the Concession Agreement. It is expressly understood by the parties hereto that the provisions of this Agreement shall in no way affect or impair the terms, covenants, conditions, or obligations of any other existing or prior agreement between the Concessionaire and the City.

**Section 1428. Binding Contracts; Counterparts.** This Agreement shall become effective and binding only upon the execution and delivery hereof by the City and Concessionaire. Concessionaire acknowledges and agrees that this Agreement is contingent upon approval of the Airport Commission and the City's Board of Estimate and Apportionment and must be authorized by the City's Board



City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on \_\_\_\_\_, 2003.

\_\_\_\_\_  
 Secretary,  
 Board of Estimate and Apportionment

\_\_\_\_\_  
 Date

**The Bookmark, Inc.**

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID#: \_\_\_\_\_

**EXHIBIT "A"**

(Premises)

Concession Agreement  
 Specialty Retail- Bookstore And Business Center

<u>Unit Number</u>	<u>Unit Location</u>	<u>Square Feet</u>
Unit (1)	Concourse A	602
Unit (2)	Concourse C	339
Unit (3)	Concourse D	1,076
Unit (4)	Main Terminal, Mid-Level	1,869
Unit (5)	East Terminal	<u>860</u>
TOTAL		4,746

**EXHIBIT "B"**

**Product Category**

Books and Book Related Items (includes book accessories and cards).

- Office Supplies, Services and Equipment
- Work Space Rental And Conference Room
- Computer equipment and supplies
- Print, Scan, copy and fax service
- FedEx or similar shipping services
- Tech equipment and services
- Phone cards, wireless phones and accessories
- Greeting cards and gift accessories
- Educational products and computer software
- Business luggage
- Audio/Visual media and equipment
- And such other merchandise as has been approved by the Director

EXHIBIT "C"

CITY OF ST. LOUIS, MISSOURI
AT
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT

BILL OF SALE

THIS BILL OF SALE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003 (the "Bill of Sale"), by and between THE CITY OF ST. LOUIS, a municipal Corporation of the State of Missouri, whose address is City Hall, Room 200, 1200 Market Street, St. Louis, Missouri 63103 (the "City" or "Seller") and THE BOOKMARK, INC., a corporation of the State of Missouri ("Concessionaire" or "Purchaser").

WITNESSETH THAT: the Seller, for and in consideration of Fifty Thousand Dollars (\$50,000.00) paid by the Purchaser and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents BARGAIN, SELL, ASSIGN, CONVEY, TRANSFER, SETOVER, AND DELIVER unto the Purchaser, its successors, legal representatives, and assigns, all of the Seller's rights, title, and interest in and to the personal property and fixtures more fully described in ATTACHMENT "A," attached hereto and incorporated herein (the "Property"). Except as expressly provided for below, the Purchaser, its successors, legal representatives, and assigns accept the Property "AS IS", with no warranties or representations of any kind, expressed or implied, either oral or written made by the Seller or any of its agents or representatives. Seller without limitations expressly disclaims and negates, as to the condition of the Property: a) any implied or expressed warranty of merchantability; b) any implied or expressed warranty of fitness for a particular purpose; and c) any implied warranty with respect to the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, together with all rights, titles, interest, privileges, and immunities thereto, unto the Purchaser, its successors, legal representatives, and assigns forever, and Seller does hereby bind itself and its successors, legal representatives and assigns to WARRANT AND FOREVER DEFEND all title to the Property unto the Purchaser, its successors, legal representatives, and assigns, against the lawful claims of all persons whosoever. Seller hereby covenanting that the Seller is the lawful owner of the Property hereby sold to the Purchaser herein, affirms that the Property is free and clear from all encumbrances, and warrants that the Seller has the full right, title, and authority to bargain, sell, assign, convey, transfer, setover, and deliver the Property to the Purchaser.

Seller also covenanting and agreeing to execute and deliver to Purchaser any and all other documents and/or instruments of title and conveyance that may be reasonably necessary or appropriate to effect good and sufficient transfer of title to the Purchaser of the Property hereby sold.

This Bill of Sale and any representation, warranties, and covenants set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns (as applicable) and any entity into which or with which any party hereto may be incorporated, liquidated, merged, or consolidated.

IN WITNESS WHEREOF, this Bill of Sale has been executed by Seller as of the \_\_\_\_ day of \_\_\_\_\_, 2003.

Pursuant to City of St. Louis Ordinance No. \_\_\_\_\_ approved on \_\_\_\_\_, 2003.

THE CITY OF ST. LOUIS, MISSOURI, OWNER AND OPERATOR OF LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT:

SELLER:

The foregoing Bill of Sale was approved by the Airport Commission at its meeting on \_\_\_\_\_, 2003.

BY: \_\_\_\_\_
Commission Chairman Date
And Director of Airports

The foregoing Bill of Sale was approved by the Board of Estimate and Apportionment at its meeting on \_\_\_\_\_, 2003.

BY: \_\_\_\_\_  
Secretary

Date

Board of Estimate & Apportionment

**APPROVED AS TO FORM BY:**

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Counselor Date  
City of St. Louis

\_\_\_\_\_  
Comptroller Date  
City of St. Louis

**ATTESTED TO BY:**

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

STATE OF MISSOURI )  
) SS.  
CITY OF ST. LOUIS )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003 before me appeared Leonard L. Griggs, Director of Airports, to me personally known, who being by me duly sworn, did say he is the Director of Airports for the City of St. Louis, a municipal corporation of the State of Missouri, and that the seal affixed to the foregoing Bill of Sale is the corporate seal of said municipal corporation and that said instrument was signed and sealed on behalf of said corporation pursuant to Ordinance Number \_\_\_\_\_, approved \_\_\_\_\_, 2003.

**IN TESTIMONY WHEREOF**, I have herewith set my hand and affixed my official seal the day and year above written.

Notary Public

My commission expires \_\_\_\_\_.

STATE OF MISSOURI )  
) SS.  
CITY OF ST. LOUIS )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003 before me appeared Darlene Green, Comptroller, to me personally known, who being by me duly sworn, did say she is the Comptroller of the City of St. Louis, a municipal corporation of the State of Missouri, and that the seal affixed to the foregoing Bill of Sale is the corporate seal of said municipal corporation and that said instrument was signed and sealed on behalf of said corporation pursuant to Ordinance Number \_\_\_\_\_, approved \_\_\_\_\_, 2003.

**IN TESTIMONY WHEREOF**, I have herewith set my hand and affixed my official seal the day and year above written.

Notary Public

My commission expires \_\_\_\_\_.

**"Attachment A"**  
**"Property Description of Exhibit C"**  
**Schedule of Property and Fixtures**

Equipment:		
Paper Shredders	\$	34.00
Instant Office Network Routers	\$	3,256.00
Power Strips	\$	51.00
HP ePC computers/kb/montitor/hd	\$	1,716.00
HP 3200se Printers	\$	1,848.00
Nortel Phones	\$	185.00
Hand Scanners	\$	264.00
Cannon PC425 Copiers	\$	66.00
Epson Receipt Printers	\$	165.00
KDS 15" LCD Monitors	\$	396.00
External Floppy Disk Drives	\$	13.00
External CD-ROM Drive	\$	17.00
HP 4550N Color Laser Printer	\$	776.00
Calculators	\$	17.00
Vacuum Cleaner	\$	26.00
Label Maker	\$	17.00
Miscellaneous Equipment	\$	43.00
Supplies:		
Copy Paper Reams	\$	90.00
Sanitary Wipes	\$	2.00
Marker Set	\$	2.00
Maker Board	\$	20.00
Clip Boards	\$	10.00
Staplers	\$	10.00
Card Imprinters	\$	10.00
Plastic Cooler	\$	10.00
Logo Clock/Calendars	\$	5.00
Trash Cans	\$	26.00
Miscellaneous Supplies	\$	20.00
Inventory:		
Assorted Products	\$	2,815.00
Removable Fixtures:		
Workstations and Cubicles	\$	19,800.00
Desk Lamps	\$	240.00
Steelcase Leap Chairs	\$	5,000.00
Door Chimes	\$	60.00
Glass Display Cases	\$	4,250.00
Easel Stands	\$	40.00
Copier Stands	\$	600.00
Lighted Signs	\$	2,325.00
Sales Desks	\$	2,250.00
Triangular Displays	\$	400.00
Storage Cabinets	\$	1,600.00
Miscellaneous Removable Fixtures	\$	1,525.00
Total Purchase Price	\$	50,000.00

Approved: June 12, 2003