

**ORDINANCE #66444**  
**Board Bill No. 233**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the "Third Amendment To Lambert-St. Louis International Airport® (the 'Airport') Concession Agreement (News\Gift)" (hereinafter referred to as the "Third Amendment") to the Airport Concession Agreement for Airport News and Gift Concession No. AL-101 between the City and Paradies – Concession II – Arch, Inc. (the "Concessionaire"), dated May 21, 1992 (the "Agreement") that was authorized under Ordinance 62606 approved April 7, 1992, and amended by the "First Amendment" dated November 9, 1994 (authorized by Ordinance 63293 approved October 14, 1994) and the "Second Amendment" dated January 27, 1997 (authorized by Ordinance 63981 approved January 3, 1997)(collectively referred to herein as the "Agreement"); the Third Amendment, which was approved by the City's Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof, amends certain terms and conditions of the Agreement to provide for the construction by the Concessionaire of additional concession premises and extends the term of the Agreement by four (4) years and seven (7) months to end January 31, 2013, for the amortization of those costs; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement as amended by the Third Amendment; containing a severability clause; and containing an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the "Third Amendment To Lambert-St. Louis International Airport® (the 'Airport') Concession Agreement (News\Gift)" (hereinafter referred to as the "Third Amendment") to the Airport Concession Agreement for Airport News and Gift Concession No. AL-101 between the City and Paradies – Concession II – Arch, Inc. (the "Concessionaire"), dated May 21, 1992 (the "Agreement") that was authorized under Ordinance 62606 approved April 7, 1992, and amended by the "First Amendment" dated November 9, 1994 (authorized by Ordinance 63293 approved October 14, 1994) and the "Second Amendment" dated January 27, 1997 (authorized by Ordinance 63981 approved January 3, 1997)(collectively referred to herein as the "Agreement"); the Third Amendment to the Agreement, which was approved by the City's Airport Commission, is to read in words and figures as set out in **ATTACHMENT "1"** and is to attached hereto and made a part hereof.

**SECTION TWO.** The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the Agreement as amended by the Third Amendment 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 this Ordinance or the agreements, documents, and instruments approved and/or authorized by this Ordinance.

**SECTION THREE.** 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 is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

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

ATTACHMENT "1"

Airport #AL-101

THIRD AMENDMENT  
TO  
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®  
CONCESSION AGREEMENT  
(NEWS\GIFT)

THIS THIRD AMENDMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City"), and PARADIES - CONCESSION II - ARCH, INC., (the "Concessionaire"), hereinafter the "Third Amendment".

WITNESSETH THAT:

WHEREAS, City and Paradies Shops, Inc., are parties to a Concession Agreement for the Airport News and Gift Concession dated May 21, 1992 (the "Agreement") authorized by Ordinance 62606, approved April 7, 1992; and,

WHEREAS, the Agreement was amended and assigned to Concessionaire by the First Amendment dated November 9, 1994 (the "First Amendment") authorized by Ordinance 63293, approved October 14, 1994; and,

WHEREAS, the Agreement was amended and provided for revisions and additional concession Premises by the Second Amendment dated January 27, 1997 (the "Second Amendment") authorized by Ordinance 63981, approved January 3, 1997; and,

WHEREAS, the parties desire to enlarge and improve the Premises granted by the Agreement as amended and otherwise to amend the Agreement as amended to their respective mutual benefits; and,

WHEREAS, the parties desire to revise certain terms and conditions of the Agreement as amended to provide for the construction by the Concessionaire of additional concession Premises, including the development of (a) a new Brooks Brothers Men's and Women's Store on concourse "C"; (b) a new CNBC store on concourse "C"; (c) a new Bass Pro Shop or another concept approved by the Airport on concourse "C"; (d) a new Explore St. Louis Shop on concourse "C"; (e) a new storefront on the existing LT-5 location; (f) return the BS location in the Main Terminal to the Airport; (g) remodel the D-12 location on concourse "D" at such time enplanements on concourse "D" reach 30,000 per month; (h) remodel the D-13 location on concourse "D" at such time enplanements on concourse "D" reach 40,000 per month and Gates D-28 through D-36 are being partially utilized; (i) expend a minimum of one million three hundred thousand dollars (\$1,300,000.00) on the above projects; and (j) to extend the Term for four (4) years and seven (7) months for amortization of these costs.

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

1. Section 201. Premises. Exhibit "A" referred to in this section of the Concession Agreement is deleted in its entirety and an amended Exhibit "A", which is attached hereto and made a part thereof, shall hereinafter constitute the Premises under the Concession Agreement and this Third Amendment.

2. Section 301. Term. is deleted in its entirety and the following is substituted:

The Term of this Agreement shall consist of two (2) interim periods and Twenty-one Contract Years. The first Interim Period shall begin on April 1, 1992, and end on June 30, 1992. The Contract Years shall commence on July 1, 1992 and end June 30, 2012, and the second Interim Period shall begin July 1, 2012 and end January 31, 2013, unless sooner terminated in accordance with other provisions of this Agreement.

3. Section 403.(a) Concession Fees - Contract Years. is deleted in its entirety and the following is substituted:

Concessionaire agrees to pay for Contract Years One through Twenty-one a sum equal to the greater of the Minimum Annual Guarantee as set out below for each contract Year or the aggregate of Applicable Percentage Fees for each product category as set out below.

<u>Contract Years</u>	<u>Minimum Annual Guarantees</u>
Contract Year One	\$ 850,000.00
Contract Year Two	\$1,000,000.00
Contract Year Three	\$1,119,000.00
Contract Year Four	\$1,119,000.00
Contract Year Five	\$1,119,000.00
Contract Year Six	\$1,119,000.00
Contract Year Seven	\$1,321,440.00
Contract Year Eight	\$1,321,440.00
Contract Year Nine	\$1,321,440.00
Contract Year Ten	\$1,321,440.00
Contract Year Eleven	\$1,321,440.00
Contract Year Twelve	\$1,321,440.00
Contract Year Thirteen	\$1,321,440.00

Contract Year Fourteen	\$1,321,440.00
Contract Year Fifteen	\$1,321,440.00
Contract Year Sixteen	\$1,321,440.00
Contract Year Seventeen	\$1,321,440.00
Contract Year Eighteen	\$1,321,440.00
Contract Year Nineteen	\$1,321,440.00
Contract Year Twenty	\$1,321,440.00
Contract Year Twenty-One	\$1,321,440.00
Second Interim Period	\$ 770,840.00

<u>Product Categories</u>	<u>Product Percentage Fees</u>
Newspapers	5%
Magazines	10%
Books	10%
Tobacco	10%
Drug Sundries and Film	10%
PGA Tour Store, Brooks Brothers, Bass Pro Shop, or other Airport approved branded concept Merchandise	12%
Retail Court Branded Merchandise	12%
All Other Merchandise	20%

The Concessionaire will not offer any merchandise for sale in the PGA Tour Store, Brooks Brothers Store, Bass Pro Shop or other Airport approved branded concept stores that it offers at product percentage fees of 20% in its other retail Premises.

Items not clearly belonging to one of the product categories will be assigned to a category by the Director.

4. Section 601 (c). Construction by Concessionaire. is deleted in its entirety and the following is substituted:

It is the express desire of the parties that the projects (a),(b),(c) and (d) in the preamble to the Third Amendment be completed by March 31, 2005.

Concessionaire agrees that the Build-Out shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director. Spaces in either location may be modified if required by the Director, contingent upon mutual agreement of both parties.

- Submit a signed tenant construction or alteration application (TCA) including complete construction drawings and specifications as required by Section 603 to the Airport Properties Department not more than sixty (60) days following the full execution of this Agreement by the City and notification of availability of new Premises by City.
- Submit a building permit number from St. Louis County or other applicable governmental entities not more than thirty (30) days following approval of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved).
- Submit the contractor's liability insurance certificates and performance and payment bonds required by Section 604 and 605 to the Airport Properties Department not more than forty-five (45) days following TCA approval by the Airport Properties Department.
- Submit a certificate of completion and a certified copy of occupancy permit from St. Louis County or other applicable governmental entities to the Airport Properties Department as required by Section 606 not more than 120 days following approval of the contractor's liability insurance certificates and performance and payment bonds by the Airport Properties Department.

5. Section 602. Cost of Improvements. a fifth paragraph is inserted as follows:

In addition, the Concessionaire shall cause to be expended an additional \$1,300,000.00 (One Million, Three Hundred

Thousand Dollars) for the four-year and seven-month extension to January 31, 2013 and Build-Out of Premises agreed upon in this Third Amendment. Concessionaire shall furnish the Director with satisfactory proof of the additional \$1,300,000.00 (One Million, Three Hundred Thousand Dollars) 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 canceled checks and certified as accurate by an independent Certified Public Accountant. The Concessionaire shall provide to the Director any other proof necessary to satisfy the Director. The Concessionaire is encouraged by City to productively spend the entire amount of \$1,300,000.00 (One Million, Three Hundred Thousand Dollars) obligated to additional Build-Out Costs, but in the event the Concessionaire's actual expenditures are less than the additional total of \$1,300,000.00 (One Million, Three-Hundred Thousand Dollars), the difference shall be an item of additional rent paid to City within thirty (30) days after receipt of an invoice for such difference from City.

6. Section 1222. Americans with Disabilities Act (ADA), an additional section is inserted as follows:

Section 1222. Americans with Disabilities Act (ADA). Concessionaire shall be responsible for compliance with the Federal ADA, plus any federal, state, or local laws and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

7. Section 1223. Security Plan and Facilities, an additional section is inserted as follows:

Section 1223. Security Plan and Facilities. Concessionaire hereby acknowledges that City is required by the Transportation Security Administration's ("TSA") regulation 1542, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a master security plan for the Airport, and Concessionaire warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's exercise of the privileges granted to the Concessionaire hereunder. Concessionaire will promptly (within 30 days of the City's request) reimburse City for all fines or penalties imposed upon City by the FAA resulting from Agent's negligence or failure to act in relation to regulation 1542.

8. Section 1224. Environmental Notice, an additional section is added as follows:

Section 1224. Environmental Notice. Concessionaire shall promptly notify the Director of (1) any change in the nature of the Concessionaire's operations on the Premises that will materially and/or substantially change the City's or Concessionaire's potential obligations or liabilities under the environmental laws, or (2) the commencement of any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Concessionaire's operations on the Premises.

9. Section 1225. Living Wage Compliance Provisions, an additional section is added as follows:

Section 1225. Living Wage Compliance Provisions. This Agreement as amended by the First and Second Amendments is subject to the St. Louis Living Wage Ordinance No. 65597 (the "Ordinance") and the "Regulations" associated therewith, as may be amended from time to time. Copies of the Ordinance and the Regulations may be obtained by contacting Mr. Jack Thomas, Assistant Airport Director, Airport Certification and Compliance Office, 13723 Riverport Drive, 3rd Floor, Maryland Heights, Missouri, 63043 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates, and agrees to comply with these measures:

A. Minimum Compensation: The Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (Exhibit "D"), which is incorporated herein. The initial rate shall be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Bulletin at the time the Bulletin is issued.

B. Notification: Concessionaire shall provide the Living Wage Bulletin to all employees, together with a "Notice of Coverage", in English, Spanish, and other languages spoken by a significant number of the Contractor's employees within thirty (30) days of the execution of the Third Amendment to this Agreement for existing employees and within thirty (30) days of employment for new employees thereafter.

C. Posting: Concessionaire shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish, and other languages spoken by a significant number of the Contractor's employees, in a prominent place in a communal area of each worksite covered by the Agreement as amended by the Third Amendment.

D. Subcontractors and Sublessees: Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees effective as of the day the Third Amendment to this Agreement is fully executed by the parties hereto.

E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire term of the Agreement as amended by the Third Amendment, and to submit the reports required by the Regulations for each calendar year or portion thereof during which the Agreement as amended by the Third Amendment is in effect.

F. Reporting: Concessionaire shall provide the Annual Reports and attachments required by the Ordinance and Regulations.

G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation, suspension or termination of the Agreement as amended, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.

10. All of the terms, covenants, warranties, and conditions of the Agreement not consistent with this Third Amendment are unchanged and are hereby ratified and approved and shall remain in full force and effect.

11. All other terms and conditions of the Agreement as amended by the First and Second Amendments not inconsistent with this Third Amendment are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Third Amendment for themselves, their successors and assigns, as of the day and year first written above.

Pursuant to City of St. Louis Ordinance approved

PARADIES - CONCESSIONS II - ARCH, INC.  
CONCESSIONAIRE

\_\_\_\_\_

Title:

Date:

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

The foregoing Third Amendment to Agreement was approved by the Airport Commission at its meeting on \_\_\_\_\_, 2004.

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

The foregoing Third Amendment to Agreement was approved by the Board of Estimate and Apportionment at its meeting on \_\_\_\_\_

, 2004.

\_\_\_\_\_  
 Secretary, Date  
 Board of Estimate & Apportionment

APPROVED AS TO FORM:

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

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

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

AMENDED EXHIBIT "A"  
 (Premises)  
 NEWS/GIFT CONCESSIONS

1.	NEWS\GIFT CONCESSION (A-1)	1,875 sq. ft.
2.	NEWS\GIFT CONCESSION (B-1)	628 sq. ft.
3.	NEWS\GIFT CONCESSION (C-CNBC)	1,101 sq. ft.
4.	NEWS\GIFT CONCESSION (C-4)	1,052 sq. ft.
5.	NEWS\GIFT CONCESSION (C-44)	793 sq. ft.
6.	NEWS\GIFT CONCESSION (C-Brooks Brothers)	1,550 sq. ft.
7.	NEWS\GIFT CONCESSION (C-Bass Pro)	925 sq. ft.
8.	NEWS\GIFT CONCESSION (C-Explore)	937 sq. ft.
9.	NEWS\GIFT CONCESSION (LT-5)	1,169 sq. ft.
10.	NEWS\GIFT CONCESSION (LT-6)	956 sq. ft.
11.	NEWS\GIFT CONCESSION (LT-8)	6,098 sq. ft.
12.	NEWS\GIFT CONCESSION (PGA)	1,511 sq. ft.
13.	NEWS\GIFT CONCESSION (LT-10)	801 sq. ft.
14.	NEWS\GIFT CONCESSION (D-9)	801 sq. ft.
15.	NEWS\GIFT CONCESSION (D-12)	683 sq. ft.
16.	NEWS\GIFT CONCESSION (D-13)	1,019 sq. ft.
17.	NEWS\GIFT CONCESSION (D-79)	463 sq. ft.
18.	NEWS\GIFT CONCESSION (E-1)	763 sq. ft.
19.	NEWS\GIFT CONCESSION (E-2)	3,355 sq. ft.
20.	NEWS\GIFT CONCESSION (E-3)	755 sq. ft.
TOTAL		27,235 sq.ft.

Revised graphical exhibits and corrected square footage to follow upon submission of as-built drawings.

EXHIBIT "D"

ST. LOUIS LIVING WAGE ORDINANCE  
 LIVING WAGE ANNOUNCEMENT BULLETIN

**NOTICE OF ST. LOUIS LIVING WAGE RATES  
 EFFECTIVE APRIL 1, 2004**

In accordance with Ordinance No. 65597, the St. Louis Living Wage Ordinance (“Ordinance”) and the Regulations associated therewith, the City Compliance Official for the City of St. Louis has determined that the following living wage rates are now in effect for employees of covered contracts:

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$9.79** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$12.15** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$2.36** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2004**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

The Ordinance applies to employers who are covered by the Ordinance as defined in the Ordinance, where the contract or grant is entered into or renewed after the effective date of the Ordinance, which is November 3, 2002. A copy of the Ordinance may be viewed online at <http://www.stlouiscity.com/livingwage> or obtained from:

City Compliance Official  
 DBE Program Office  
 13723 N. Riverport Drive, 3rd Floor  
 Maryland Heights, MO 63043  
 (314) 551-5000

Dated: April 1, 2004

**ST. LOUIS LIVING WAGE ORDINANCE  
 LIVING WAGE ACKNOWLEDGMENT & ACCEPTANCE DECLARATION**

CONTRACTING AGENCY: St. Louis Airport Authority

AGENCY CONTRACT NUMBER: NA

CONCESSIONAIRE'S NAME: \_\_\_\_\_

DATE PREPARED: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

PREPARER'S TELEPHONE NUMBER: \_\_\_\_\_

PREPARER'S ADDRESS AND ZIP CODE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

As the authorized representative of the above-referenced Concessionaire, I hereby acknowledge that the Concessionaire understands that the Agreement as amended by this Third Amendment is subject to the St. Louis Living Wage Ordinance and the Regulations associated therewith. The Concessionaire hereby agrees to comply with the Ordinance and the associated Regulations for the entire term of the Agreement as amended by the Third Amendment. I am authorized to make the above representations on behalf of the Concessionaire.

**AUTHORIZED REPRESENTATIVE CERTIFICATION:**

\_\_\_\_\_

Signature

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Approved: October 28, 2004**