

ORDINANCE #67904
Board Bill No. 466

An ordinance approving a Lease and Concession Agreement within the Gateway Transportation Center located at 430 South 15TH Street in the City of St. Louis, Missouri, authorizing certain actions by City Officials, and containing an emergency clause.

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, the City has acquired and constructed the Gateway Transportation Center (the "Center") located at 430 South 15th Street to serve the public for Metro, Greyhound and AMTRAK; and

WHEREAS, the Center will be open twenty-four (24) hours per day 365 day per year; and

WHEREAS, as a part of the service to the public, the City desires to have a food concession as well as other related services at the Center, all as set forth in the attached Lease and Concession Agreement; and

WHEREAS, the City has selected Arch City Deli, LLC to be said Concessionaire under the Lease and Concession Agreement; and

WHEREAS, Arch City Deli, LLC is desirous of entering into said Lease and Concession Agreement.

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

SECTION ONE. The Lease and Concession Agreement between the City and Arch City Deli, LLC, as attached hereto and incorporated by reference herein as Exhibit A, is hereby approved.

SECTION TWO. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to execute said Lease and Concession Agreement and to take any and all actions as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

SECTION THREE. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the agreement and any related instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

SECTION FOUR. Emergency clause. This being an ordinance for the preservation of public peace, health, safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the Mayor.

EXHIBIT A
LEASE AND CONCESSION AGREEMENT

LEASE AND CONCESSION AGREEMENT

This Lease and Concession Agreement (this "Agreement") dated the ____ day of _____, 2008 shall be effective on the Effective Date and contingent thereon, by and between the City of St. Louis, a municipal corporation organized and existing under the laws of the State of Missouri, having an address at 311 City Hall, St. Louis, Missouri 63103 ("Lessor"), and Arch City Deli, LLC, a Missouri limited liability company, having an address at 10812 St. Charles Rock Road, St. Louis, Missouri 63074 ("Concessionaire").

WITNESSETH:

WHEREAS, Lessor is the owner of the Gateway Transportation Center, located at 430 South 15th Street, St. Louis, Missouri 63103;

WHEREAS, Concessionaire's Affiliate is an experienced business provider of food, beverage and merchandise concessions;

WHEREAS, Concessionaire's Affiliate has had a long-standing business relationship in said concessions with the City of St. Louis, Lambert-St. Louis International Airport® and Lessor is willing to grant Concessionaire the rights described herein;

WHEREAS, the parties recognize that Lessor has non-exclusive contracts with Pepsi Americas for soda/beverage machines and with Dynamic Vending for candy/snack machines, which contracts require placement of such machines in City owned locations, including the Gateway Transportation Center;

WHEREAS, the parties desire to enter into this Agreement under which Concessionaire designs and improves Concession Facilities and will purchase Concession Equipment for the Gateway Transportation Center and Concessionaire will operate such facilities thereafter.

NOW, THEREFORE, in consideration of the premises hereto and the after-stated terms and conditions, the parties agree as follows:

**ARTICLE I
Definitions**

Access: Shall have the meaning ascribed to that term in Section 3.3.1 hereof.

Access Term: Shall have the meaning set forth in Section 3.3.2 hereof.

Additional Insureds: The City of St. Louis, its agents, servants and employees and each of their respective Affiliates, successors and assigns.

Affiliates: Any legal or natural person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with a person. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: This Lease and Concession Agreement.

Anniversary Date: The first July 1 after the Effective Date and each July 1 one year thereafter.

Annual Gross Receipts: Aggregate Gross Receipts from Concession Sales during each Year.

ATM: Automated Teller Machine.

Base Rate Rent: That amount determined by the parties based on the previous Year's Percentage Rent.

Capital Expenditure: That amount initially spent by Concessionaire for the Concession Improvements.

Casualty Event: An act of God, accident, fire, earthquake, flood or other casualty resulting in: (i) damage which causes the Center to be irreparably damaged or uneconomical to repair or rebuild in the reasonable opinion of an officer of the Lessor, (ii) damage to the Center that results in an insurance settlement with respect thereto on the basis of a total loss, or an agreed compromised total loss, (iii) the actual or constructive loss of all or substantially all of the Center (it being agreed that any loss, casualty or damage that results in a decrease of the value of the Center by more than fifty (50)% is a loss of substantially all of the Center), or (iv) damage or loss that causes the Center to be unusable for more than twelve (12) consecutive months.

Center: The Gateway Transportation Center.

City: The City of St. Louis or Lessor.

Commencement Date: Date of permit through Lessor's Board of Public Service.

Common Areas: All loading docks and facilities, elevators, common passage areas, restrooms, and other common areas of the Center, and appurtenant easement and access areas thereto to the extent necessary for Concessionaire's use of the Concession Facilities for the purposes set forth herein. The use by Concessionaire of Common Areas shall be subject to all Laws and any reasonable rules and regulations established by Lessor from time to time, including scheduling rules and regulations.

Conceptual Drawings: Certain food and beverage service equipment layout drawings (with applicable utility specifications for such equipment) for the Concession Facilities and Concession Improvements at the Center. The Conceptual Drawings shall include, without limitation, a complete list of Concession Equipment.

Concession Equipment: All equipment used by Concessionaire from time to time in providing for the preparation, display, sale and consumption of Concession Sales not attached to the Concession Facilities or Concession Improvements.

Concession Facilities: Approximately 1,700 square feet of interior space as set forth in the building plans, as shown on Exhibit A. This includes spaces P132, P133, P134 and a storage facility located on the lower level.

Concession Improvements: All improvements now or hereafter constructed for the Concession Facilities including but not limited to, as applicable: all demising walls, doors, lock sets and doorways; flooring, floor finishes and coverings; walls and wall finishes and coverings; dropped ceiling grids and tiles, soffits, roll down security grills and security enclosure gates; general lighting; all exterior and interior finishes; back counters; cash wraps and associated cases; display lighting; all bar and bar dyes and mill work; signage and graphics; and all necessary and adequate Utility Systems for the Concession Facilities and all improvements attached to the Concession Facilities for the Concession Sales.

Concession Sales: All sales from the Concession Facilities at the Center.

Concessionaire: Arch City Deli, LLC.

Concessionaire's Aggregate Investment Amortization: The parties assume that Concessionaire will expend prior to the Anniversary Date in excess of \$500,000 for Capital Expenditures. Assuming an expenditure of at least \$500,000, during the first ten (10) years of the Primary Term, Concessionaire will be allowed to amortize up to fifty percent (50%) of its Capital Expenditures in an amount not to exceed a total of \$100,000 using straight line depreciation in equal monthly amounts without interest or no more than \$416.67 per month. Further, assuming an expenditure of at least \$500,000, during the Primary Term, Concessionaire will be allowed to amortize up to fifty percent (50%) of its Capital Expenditures in an amount not to exceed a total of \$400,000 using straight line depreciation in equal monthly amounts without interest or no more than \$833.33 per month. In the event Concessionaire expends less than \$500,000, the amortization shall be reduced pro rata accordingly.

By way of hypothetical examples: In year five of the Primary Term, assuming Concessionaire has expended \$510,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$416.67 plus \$833.33 or \$1,250.00 per month because the limit on the Capital Expenditures is \$500,000.

In year five of the Primary Term, assuming Concessionaire has expended \$400,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$999.99 because Concessionaire expended 80% of the \$500,000 maximum, or 80% of the first \$100,000 or 80% of \$416.67 which is \$333.33 and 80% of \$500,000 (same being \$100,000 plus \$400,000 in Capital Expenditures) or \$666.66 (which is 80% of \$833.33) per month.

In year fifteen of the Primary Term, assuming Concessionaire has expended \$510,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$833.33 because the amortization for the first \$100,000 expired after the first ten (10) years.

In year fifteen of the Primary Term, assuming Concessionaire has expended \$400,000 in Capital Expenditures, Concessionaire will be allowed an amortization of \$666.66 or 80% of \$500,000 or 80% of \$833.33 per month.

Effective Date: Date of Access prior to the Anniversary Date or the date of Concessionaire's opening to the public for business or the date of an ordinance authorizing the Agreement, whichever is later.

Entire Taking: Shall have the meaning stated in Section 12.1 hereof.

Exclusive Service Rights' Sales: Those sales from rights other than Shared Service Rights and including sales of Prepared Food, Newspapers, ATM, Retail Sales, amusements, video games and Sundries.

First-Class Condition: A condition comparable to that of similar city train and bus facilities of the same age consistently and properly maintained in accordance with best practices.

Force Majeure: Any Casualty Event, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, terrorist act, material shortage, strike, boycott or labor dispute not limited to the Concessionaire, appropriation or rationing, court or judicial order, or any other event or occurrence beyond the reasonable control of a party hereto.

Future Rents: Shall have the meaning stated in Section 9.4(c) hereof.

GAAP: Generally accepted accounting principles, consistently applied.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental or quasi-governmental unit (federal, state, county, district or municipal), whether now or hereafter in existence.

Gross Receipts: The total amounts received by Concessionaire from operations conducted at the Concession Facilities hereunder whether such sales be evidenced by cash, check, credit or debit, charge account or otherwise and shall include the amounts received from the Concession Sales, less only:

- (1) Any Sales Taxes paid in connection with such sales to the appropriate Governmental Authority;
- (2) That portion of credit card service charges, charged by any bank designated by Concessionaire to process credit card transactions;
- (3) Gratuities payable directly to Concessionaire's servers;
- (4) Any reduced price sales with a discount of more than thirty-five (35%) made to the general public and approved by Lessor's Asset Manager;
- (5) Meals consumed by Concessionaire's on-duty personnel without charge (or at a reduced price) to such personnel;
- (6) Receipts from customers related to returns;
- (7) Manufacturers' and/or distributors' rebates and awards;
- (8) Franchise and Royalty fees.

Hazardous Substance: Substances that are defined or listed in, or otherwise classified pursuant to, any applicable Law (or other enforceable criteria and guidelines promulgated pursuant thereto) as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," "pollutants," "contaminants," "radioactive material," "petroleum" or any fraction thereof or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity or "EP toxicity," and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

Indemnitees: Additional Insured.

Law: All applicable federal, state and local laws, statutes, rules, regulations, Charter of the City of St. Louis, ordinances, decrees, rulings, codes, permits, certificates and licenses issued by any Governmental Authority, including but not limited to ADA, OSHA and all relevant building, safety, health and sanitation codes.

Lessor: The City of St. Louis or City.

Lessor's Contractor: K & S Associates.

Newspapers: All daily or weekly newsprints.

Occupancy Taxes: Any tax on rental payments or an ad valorem tax imposed assessed or levied by the State of Missouri or the City of St. Louis on or with respect to Concessionaire's rights and interests created by this Agreement including, but not limited to, Concessionaire's rights of occupancy and use of the Concession Facilities.

Option Terms: Shall have the meaning as set forth in 3.3.4.

Percentage Rents: Shall have the meaning as set forth in 5.1.

Person: Shall mean any natural person, individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity, whether acting in an individual, fiduciary or other capacity.

Prepared Food. Food made within the Center or off site for sale at the Concession Facilities including canned, bottled or fountain soda and other beverages; all sold over the counter or in vending machines.

Primary Term: Shall have the meaning set forth in Section 3.3.3 hereof.

Rent or Rental Payments: All Percentage Rents payable under Article V of this Agreement.

Retail Sales: Any and all merchandise offered for sale at the Concession Facilities within the Center, including without limitation, novelties, toys, souvenirs, clothing, garments, and accessories and such other appropriate merchandise sold at other city train and bus facilities.

Sales Taxes: Tax on sales, excise taxes, value-added taxes or similar charges, assessed against and payable by the Concessionaire or related to its operations hereunder at the Center.

Shared Service Rights' Sales: Those sales from equal (as reasonably determined by the Lessor's Asset Manager), non-exclusive rights in common with Concessionaire and Pepsi Americas under a Contract dated September 1, 2007 attached hereto as Exhibit 1 for the following products in Vending Machines: cans, bottles, energy beverages, juices, and milk and with Concessionaire and Dynamic Vending under a Contract dated March 1, 2007 attached hereto as Exhibit 2 for the following products in Vending Machines: name brand candy, gum and mints, chips, and other snacks, and pastries.

Substantial Completion: Means the Work (or separable units or phases thereof, as applicable) essentially and satisfactorily complete, such that the Center is ready for public use or use by Concessionaire. For purposes of this definition, specified phases or areas of the entire Work or Center may be individually judged as substantially complete.

Sundries: Miscellaneous items, e.g. aspirin, antacids, cough drops, etc.

Term. Shall have the meaning set forth in Section 3.3.2, 3.3.3 and 3.3.4.

Utility Systems: Any water, sewage (including but not limited to all permit fees and tap fees), gas, plumbing and general lighting, electrical service, sprinkler and fire safety, telephone and telecommunication and security facilities (including telephone and telecommunications equipment), piping (including storm and waste drains and all lines, drops and heads for sprinklers), ductwork, grease extraction ductwork, conduit, wiring (including all electrical panel boards and transformers), outlets and connections and mechanicals (as applicable); heating, ventilating, and air conditioning equipment, ductwork, fans and electrical components; all applicable elevators and escalators; and all chases and drains, and electrical lines related thereto. "Utility Services" shall mean the full and unimpeded use of the foregoing Utility Systems for their intended purpose. As used herein, water shall mean water fit for human consumption and in compliance with all applicable laws, rules, regulations and orders.

Vending Machine: any machine used to dispense services, whether under Exclusive Services Rights or Shared Service

Rights.

Work: The construction and other services required to complete the Center, including but not limited to all labor, materials, equipment and services provided or to be provided.

Year: The twelve month period beginning on the Anniversary Date which shall terminate after 365 days.

ARTICLE II Development of Center Concession Facilities

2.1 Lessor's Contractor's Responsibilities.

2.1.1 Concessionaire will be responsible for causing, at its sole cost and expense, the construction of all Concession Facilities and all Concession Improvements related thereto substantially in accordance with the Conceptual Drawings.

2.1.2 Lessor and Lessor's Contractor shall be responsible for causing, at its sole cost and expense, the construction of all Utility Systems including:

- (a) all welded ductwork and fans for the exhaust hoods;
- (b) all wiring/data lines, and conduit for point of sale devices;
- (c) all phone wiring, conduit, telephone sets and associated switches/gear for all telecommunications;
- (d) any and all applicable utilities to each piece of Concession Equipment (e.g., electrical, hot/cold water supply, waste lines, floor drains, gas lines, manifolds, and shut off valves) provided that Concessionaire shall be responsible for final connections of the applicable utilities to the Concession Equipment;
- (e) obtaining all permit fees and tap fees.

2.2 Concessionaire's Responsibilities.

2.2.1 In addition to all other requirements imposed by Law, Concessionaire will be responsible, at its sole cost and expense, for the Conceptual Drawings of the Concession Facilities. Prior to Concessionaire's commencement of Concession Improvements, the Conceptual Drawings which reflect such design of the Concession Facilities shall be submitted to Lessor's Board of Public Service for review and approval, which shall be approved within seven (7) days of receipt and which approval shall not be unreasonable withheld. Concessionaire shall identify in the Conceptual Drawings all Concession Improvements required to be installed. If not approved, Lessor's Board of Public Service shall promptly make or cause to be made any revisions to the Conceptual Drawings. Concessionaire and Lessor's Board of Public Service shall agree to the revisions within seven (7) days thereafter.

2.2.2 Concessionaire will also be responsible, at its sole cost and expense, for purchasing, unloading, operating, assembly and setting in place all Concession Equipment (including all governmental approvals, licenses or permits necessary to perform such work and operate the Concession Facilities hereunder), which shall be completed at or near the time of the Center's opening.

Concessionaire shall use reasonable commercial efforts to work with Lessor's Contractor's schedule with respect to Concessionaire's installation of concession stand counters and other items requiring installation. Concessionaire shall be solely responsible for the purchase of the Concession Equipment and all delivery, installation and connecting procedures for the Concession Equipment at its sole cost and expense. As part of the foregoing, Concessionaire shall provide all exhaust hoods required for its cooking equipment. Such hoods will include a control system, fire protection system and the installation costs associated therewith. All work performed by Concessionaire and/or its contractors pursuant to this Section 2.2.2 shall be done in a manner to promote a harmonious job site at all times during the construction of the Center, Concession Facilities and the Concession Improvements, including without limitation, the obligation to abide by any applicable project labor agreement and the use of the classifications of workers specified for specific work as delineated in such agreement.

Prior to the Effective Date, the Lessor and Lessor's Contractor shall be responsible for arranging for the security of the Center against theft and/or vandalism and for reimbursing Concessionaire for any losses or damages to any Concession Improvements. Following the Effective Date, Concessionaire shall be responsible for securing the Concession Facilities.

2.2.3 Concessionaire agrees to indemnify, defend, save, and hold harmless the Indemnitees from and against all suits and claims that arise out of or relate to the Conceptual Drawings or the Concession Facilities or the Concession Improvements or the Concession Equipment. In any such event, Concessionaire, at its own cost and expense, shall pay all reasonable charges of attorneys and all costs and other expenses arising therefrom or incurred by the Indemnitees in connection therewith. The foregoing indemnity shall not apply if and to the extent the same shall be ultimately determined to have arisen out of the negligence or intentional action of one of the Indemnitees. To secure its ability to perform the foregoing indemnity, Concessionaire further agrees to carry and maintain insurance reasonably satisfactory to Lessor. The terms and conditions of such insurance shall be in accordance with the provisions of Sections 7.1 and 7.3 hereof.

2.3 Compliance.

All of the foregoing developmental work to be performed by either party shall be completed in accordance with Law and the resultant Concession Facilities, Concession Improvements, and Concession Equipment shall be in compliance with Law.

ARTICLE III Grant of Operating Rights, Leasehold Interest and Term

3.1 Scope of Operating Rights.

3.1.1 Concessionaire is hereby granted Exclusive Service Rights' Sales and Shared Service Rights' Sales within the Concession Facilities at the Center. Notwithstanding, with respect to the latter, it is expressly understood by the parties that Lessor is bound by a Contract dated September 2, 2007 with Pepsi Americas and by a Contract dated March 1, 2007 with Dynamic Vending. It is the parties intent that there shall be at least one (1) Vending Machine from each Pepsi Americas and Dynamic Vending for the equivalent of two (2) comparable Vending Machines from Concessionaire.

3.2 Lease of Facilities.

3.2.1 In conjunction with the exercise of the above-described rights, Lessor hereby leases to Concessionaire for its use from and after the Effective Date, the Concession Facilities. Lessor warrants and covenants that as long as Concessionaire has performed its obligations hereunder, Concessionaire shall and may peacefully and quietly have, hold operate and enjoy the Concession Facilities for the purposes provided herein. Concessionaire shall also have the non-exclusive right to use all Common Areas of the Center as determined by Lessor's Asset Manager for the purposes provided herein and as necessary during the Term.

3.2.2 Lessor shall have the right to use public areas of the Concession Facilities for meetings. For any such meetings, Lessor will not permit the service of food by any other than Concessionaire. Lessor and its designated agents reserve the right of access to all areas leased to Concessionaire hereunder for purposes of maintaining and repairing the Center, and all improvements therein or thereon and all Utility Systems related thereto.

3.2.3 At all times during the Term, Lessor by and through its employees, agents, representatives and others that it may approve, shall have a right of access to all portions of all of the Concession Facilities, for the purposes of inspecting their condition, examining Concessionaire's performance of its obligations under this Agreement (including inspection of products being sold and distributed by Concessionaire), and any other purpose Lessor deems appropriate. Lessor shall use reasonable efforts to have a representative of Concessionaire's management present during such inspections in order to minimize any interference with Concessionaire's operations as a result of these activities.

3.2.4 Lessor may relocate and/or modify the Concession Facilities to the extent deemed necessary or appropriate by Lessor for the benefit of its operations in the Center; provided, however, that Lessor shall provide replacement areas with floor space not less than that contained in the Concession Facilities prior to such relocation or modification and all costs of relocation and preparation of such replacement Concession Facilities for operation shall be borne by Lessor. Lessor shall use reasonable efforts to locate any such new Concession Facilities in portions of the Center that are in a First-Class Condition and are otherwise comparable to the areas being replaced, as long as these locations are consistent with Lessor's overall plans and concepts for the design and operation of the Center. In the event that Concessionaire determines that the Concession Facilities are not reasonably acceptable, Concessionaire may terminate this Agreement.

3.3 Term.

3.3.1 Access Prior to Substantial Completion. Lessor agrees that Access to the Concession Facilities has been delivered to Concessionaire prior to Substantial Completion and on the Commencement Date by permit through Lessor's Board of Public Service. Notwithstanding the foregoing, any obligation of Lessor to deliver Access to the Concession Facilities to Concessionaire shall be subject to the requirements of all applicable Laws, occupancy or other permits, safety and other similar requirements, contractual requirements, any delays arising by reason of Force Majeure, or any other delays in construction of and/or obtaining occupancy permits for the Center, and Lessor shall not be liable to Concessionaire for any damages resulting from any delay in the delivery of Access to Concessionaire. For purposes of this Agreement, the term "Access" shall mean the delivery to Concessionaire of securable Concession Facilities (subject to any restrictions imposed by applicable Laws due to Concessionaire's access to any Concession Facilities prior to Substantial Completion) within the applicable areas set forth above for its use and operation hereunder and any and all keys to access the same. Concessionaire acknowledges that it will have Access to areas of the Center prior to Substantial Completion and prior to obtaining temporary certificates of occupancy, and Concessionaire hereby agrees to allow Lessor's Contractor and its agents and representatives access to such areas until Substantial Completion of the Center.

3.3.2 Access Term. The parties agree that Concessionaire may have Access to the Concession Facilities after the Effective Date under this Agreement.

3.3.3 Primary Term. The Primary Term of this Agreement shall commence on the first Anniversary Date and shall continue for twenty (20) years, unless otherwise terminated earlier pursuant to this Agreement.

3.3.4 Option Term. Concessionaire shall have two five (5) year option terms to extend the Primary Term by giving written notice of its intent to do so to Lessor's Comptroller at least sixty (60) days prior to the end of the then term, as applicable, unless waived.

ARTICLE IV Operating Responsibility

4.1 Center Availability. Commencing on the Effective Date and thereafter, during each year of the Term hereof, Lessor shall use its best efforts to ensure that the Center is open twenty-four (24) hours per day, seven (7) days per week, year round. In no event shall such failure be considered a Force Majeure hereunder.

4.2 Utilities. Lessor will furnish Concessionaire with the connections to use all Utility Systems and services related thereto without charge. Concessionaire shall be responsible for all costs for the use of Utility Systems and services of its own telephone service and telecommunication service charges.

4.3 Maintenance. Except as otherwise provided herein, Concessionaire shall be responsible for maintenance and repair of all Utility Systems needed for the operation of the Concession Facilities in a First Class Condition. Lessor shall be responsible for maintenance and repair of all load-bearing structures within or about the Concession Facilities and for exterior sides of any demising walls thereof, except as repairs are necessary due to the negligence or intentional acts of Concessionaire or its employees, agents, or subcontractors (all of which Concessionaire shall repair). Concessionaire shall be responsible for the maintenance and repair, in a First Class Condition, of (a) all other components of the Concession Facilities, including, without limitation, the interior sides of all demising walls and interior walls, floors and ceilings (but not roofing), counters, and signage, (b) all Concession Equipment, (c) all beverage lines and towers, and (d) all Utility Systems to the extent that they are within or are dedicated solely to the Concession Facilities. Concessionaire will perform all preventive maintenance procedures as specified by the manufacturer(s).

4.4 Access. Lessor shall provide Concessionaire's personnel with the nonexclusive rights with ready ingress and egress to and from the Center for delivery of required goods and services. Concessionaire's personnel working at the Center shall be entitled to parking on regular business days at a specific location in the parking lot designated by Lessor's Treasurer and at such costs as Lessor's Treasurer shall determine.

4.5 Security. Lessor shall be fully responsible, at its sole cost and expense, for providing all necessary security forces at the Center and/or to fulfill requirements of any Governmental Authority.

4.6 Third Party Vendors. Except as permitted pursuant to Section 3.2.1, vendors, peddlers or persons other than Concessionaire's employees, shall not be permitted to vend, otherwise sell, or distribute any Refreshments or Merchandise in the

Center and Lessor shall at all times see to their dispersal to the extent Lessor can legally do so. Lessor further agrees that in keeping with exclusivity of Concessionaire's rights hereunder, neither Lessor nor its employees will sell any Refreshments or Merchandise.

ARTICLE V
Rents and Financial Reports

5.1 Percentage Rents.

5.1.1 Concessionaire shall pay to Lessor the following "Percentage Rents" commencing on the Effective Date:

With respect to Gross Receipts from Concession Sales

0 - \$700,000 in Annual Gross Receipts in a Year	7%
\$700,000 to \$800,000 in Annual Gross Receipts in a Year	8%
\$800,000 to \$900,000 in Annual Gross Receipts in a Year	9%
Excess over \$900,000 in Annual Gross Receipts in a Year	10%

Notwithstanding, during the Primary Term Concessionaire shall be allowed to amortize the Concessionaire's Aggregate Investment as described in Article I.

Concessionaire shall pay prospectively the Base Rate Rent. Additionally, within twenty (20) days after the end of each Year, Concessionaire shall become current in the Percentage Rent for the previous Year or Concessionaire shall receive credit to the Base Rent.

5.1.2 Concessionaire will pay the foregoing Base Rate Rents to Lessor on a monthly basis, with such payments to be payable by wire transfer of immediately available funds or check deliverable by Concessionaire on or before the 20th of the following month. In the event of late payment, Concessionaire agrees to pay Lessor interest on the amount due at the rate of 1.5% per month.

5.2 Records, Accounting and Audit.

(a) Concessionaire will keep at its headquarters in St. Louis, Missouri or at the Center adequate and accurate accounting books and records prepared in accordance with GAAP of all business and transactions conducted under this Agreement, said records to include without limitation the daily receipts, the daily bank deposits, the daily sales and business done by Concessionaire. Such records will be maintained at Concessionaire's headquarters in St. Louis, Missouri or in the Center for any Year of operations hereunder for five (5) years following completion of operations for such Year. Concessionaire shall preserve and make available for audit and examination by Lessor and its agents all of such records.

(b) Concessionaire shall maintain such accounting records on a Year basis.

(c) Throughout the Term of this Agreement, Concessionaire shall submit to Lessor, within ninety (90) days after the end of each Year, a Report of all Gross Receipts (by tiers described in Section 5.1.1) for the prior Year certified by an independent certified public accountant.

(d) In the event that Lessor is not satisfied with the statements presented therein, Lessor shall have the right, from time to time at its election, to conduct an audit of the Concessionaire's books and records related to its Gross Receipts, by auditors selected by Lessor, provided he/she does so within six (6) months following receipt of any applicable financial statement. Should such audit(s) uncover a deficiency or deficiencies in payments to Lessor for any period covered, Concessionaire shall pay to Lessor the amount of such payment deficiency within twenty (20) days following receipt of the audit report. In the event of any such deficiency, the provisions hereof shall not be the exclusive remedy of the Lessor, which shall have all remedies available to it at law and in equity. If such payment deficiency is in excess of one percent of the aggregate amount reported, the cost of the audit shall be immediately due and payable by Concessionaire.

(e) In addition, Concessionaire must submit, in a form reasonably acceptable to Lessor, a monthly summary showing Gross Receipts and Percentage Rent payable therefor on or before the 20th day of the following month.

(f) Concessionaire will not permit any of its employees to make change from pockets of clothing, boxes

or containers in the Concession Facilities.

ARTICLE VI Operating Duties of Concessionaire

6.1 Management of Operations.

(a) Concessionaire agrees to manage and operate all of its operations in a professional manner to ensure that it will maintain consistent, prompt and courteous service to the public. Concessionaire will further manage all of its operations at the Center in accordance with best practices utilized by concessionaires in a First Class Condition of then similar age, condition and type, subject to any limitations or physical restraints imposed by the Center on the Concession Facilities or Concession Equipment. Concessionaire shall at all times maintain a sufficient number of qualified personnel at the Center for the performance of Concessionaire's obligations under this Agreement. Concessionaire's on-site general manager shall attend meetings to be scheduled by Lessor at the Center from time to time during the Term, to review concession operations at the Center or on the Site and will implement Lessor's reasonable recommendations and directives for improving such operations.

(b) Concessionaire will pay promptly all authorized bills, payroll and other expenses incurred in connection with its operations and pursuant to this Agreement.

(c) Concessionaire shall pay when due all license fees, taxes, Sales Taxes and employee costs on the products or services which Concessionaire provides hereunder, including but not limited to all federal, state and local taxes, workers' compensation payments, social security payments, unemployment insurance, payroll and other taxes with respect to products or services provided under this Agreement and all other taxes arising from Concessionaire's operations hereunder.

(d) Concessionaire will provide all necessary working capital and perishable and non-durable inventory required for its operation including, but not limited to, Refreshments and paper products.

(e) Concessionaire will comply with Center operating policies and directives established upon opening of the Center and as modified from time to time by Lessor; provided, nothing herein shall be construed as changing any of the financial terms and conditions of this Agreement. Concessionaire will also comply with Laws and directives as the same may be modified from time to time.

6.2 Personnel.

(a) Concessionaire will hire, train and supervise, discipline and, if need be, dismiss any and all persons necessary to operate its business in accordance with the terms of this Agreement and will use its best efforts to assure that its employees continually practice high standards of cleanliness, safety, courtesy and service customarily followed in the conduct of a first-class concession operation. Such individuals shall be solely and exclusively employees of Concessionaire, be subject to appearance standards mutually acceptable to the parties hereto, and shall wear, at all times while working at the Center or on the Site, neat and clean clothing. Such clothing shall be of a design generally approved by Lessor's Asset Manager. All employees shall be instructed to obey Lessor's rules and regulations, if any, and that failure to do so may lead to disciplinary actions including but not limited to discharge. Lessor shall have the right at any time, in the reasonable exercise of its discretion, to object to any and all employees of Concessionaire in the Center. Upon such reasonable objection, any such individuals shall be immediately removed from their positions at the Center on a temporary basis, pending results of investigation. Thereafter, Concessionaire shall be permitted a reasonable period to complete a thorough and prompt investigation, diligently prosecuted, of the circumstances of such an objection to the extent reasonably necessary to determine whether such removal would comply with any applicable Law or collective bargaining agreement. If, as a result of such investigation, Concessionaire determines, in its reasonable judgment, that such removal is justified and would not violate any applicable Law or any collective bargaining agreement, Concessionaire shall permanently remove such employee from employment at the Center or on the Site. To the extent that Concessionaire determines, in its reasonable judgment, that such removal would violate any applicable Law or any collective bargaining agreement, Concessionaire and Lessor shall develop alternative methods of resolving the issue. Concessionaire must maintain accurate records of the names, addresses and other legal identification of employees.

(b) The foregoing notwithstanding, Lessor's right to require replacement of a Concessionaire employee, and Concessionaire's obligation to comply with any such requests shall be subject to restrictions imposed upon Concessionaire by any applicable federal, state or local statute, law, code, regulation or ordinance or by any applicable collective bargaining agreement.

(c) Concessionaire shall prepare training programs for all of its employees working in the Center. The training programs will be mandatory for all employees. Concessionaire shall be prepared to conduct additional training sessions from time-to-time to address new policies and procedures or to address poor performance of specific employees.

(d) In performing its obligations under this Agreement, Concessionaire shall comply with all applicable Law. Without limiting the generality of the foregoing, Concessionaire will (i) not discriminate against any employee or applicant for employment on any basis prohibited by law, (ii) provide equal opportunity in all employment practices, (iii) comply with the provisions of the City of St. Louis Equal Opportunity and Non-Discrimination Guidelines, including Executive Order #28 dated July 24, 1997, as amended, setting a goal of twenty-five percent (25%) minority-owned business participation and five percent (5%) for women-owned business participation, (iv) comply with all other applicable federal, state and local laws and executive orders regarding contracting, hiring and employment, and (v) permit Lessor to monitor and review compliance with the equal opportunity provision contained herein.

6.3 Licenses and Permits.

Concessionaire shall obtain, and maintain in force during the Term of this Agreement, all food and other licenses and permits and renewals thereof necessary to sell Refreshments at the Center and to otherwise operate as required hereunder. Concessionaire shall pay all fees and taxes which may be due and owing, from time to time, to federal, state or municipal authorities incidental to its operations hereunder. Concessionaire shall furnish Lessor with copies of such licenses and permits and renewals thereof as are physically maintained at the Center, as applicable, and all other licenses or permits requested. Lessor agrees to cooperate with Concessionaire in connection with applications submitted by Concessionaire for any and all licenses and permits and renewals thereof.

6.4 Compliance with Laws, Policies and Programs.

In connection with the sales hereunder, Concessionaire shall in good faith comply and faithfully observe all Laws, as well as all rules, regulations or policies.

6.5 Proceedings Involving Licenses and Permits.

Concessionaire shall advise Lessor in writing of any pending or threatened actions against Concessionaire, whether by governmental authorities or otherwise, which seek, or could result in, the suspension or revocation of any license or permit necessary for its performance of this Agreement.

6.6 Hours of Operation.

Subject to approval by Lessor's Asset Manager, Concessionaire will be open twenty-four (24) hours per day, seven (7) days per week, yearly.

6.7 Maintenance and Refuse.

(a) Concessionaire at its sole cost and expense will maintain, repair, and if necessary, replace all Concession Improvements and Concession Equipment, and clean the grease interceptors and stove hoods at regular scheduled intervals using designated repair techniques to protect warranties and comply with supplier agreements.

(b) Subject to Lessor's maintenance and repair obligations hereunder, Concessionaire shall keep the Concession Facilities neat and clean and shall maintain the Concession Facilities in First-Class Condition, including without limitation, all piping for grease traps, sewage and other drains, ordinary wear and tear excepted. Concessionaire will comply with all requirements and reasonable recommendations of insurance companies providing coverage applicable to the Center. Concessionaire will not permit its employees to dispose of or discharge waste, garbage or refuse in any area in or outside the Center other than in areas specifically designated therefor. In addition, Concessionaire shall be responsible for cleaning the Concession Facilities. Concessionaire agrees to bag all trash from all its operations. Concessionaire agrees to dispose of the bagged trash in garbage receptacles provided for by the Lessor. The cost of disposing the trash and maintaining the trash receptacles will be the responsibility of Lessor. Lessor will determine the location of the trash receptacles. Concessionaire will not pile trash around the outside of the garbage receptacles or overfill them in such a manner as to cause trash to spill or fall out of the garbage receptacles during transport.

(c) Each party agrees not to use Hazardous Substances at the Center or on the Site, except in accordance with applicable law and agrees to indemnify, defend and hold the other party harmless for all losses, costs, damages, liabilities and expenses arising out of its use, generation or storage of Hazardous Substances at the Center.

(d) Concessionaire shall engage the services of an exterminator to control vermin and pests within its Concession Facilities as necessary at Concessionaire's sole cost and expense. Lessor shall cause the remainder of the Center to be serviced by an exterminator.

(e) Lessor shall not be liable or responsible for the condition or safekeeping of any goods, products, inventory or equipment stored by or on behalf of Concessionaire at the Center, nor will Lessor be responsible for consequential, economic or property damage or loss resulting from power failures, flood, fire, explosion and/or other causes unless such damage is caused solely and directly by the proven negligence of Lessor.

(f) Lessor shall have the right to conduct periodic inventories of Concession Equipment. Lessor shall have the right, but not the obligation to do any clean up or repair which needs to be done based on failure of the Concessionaire to comply with the terms hereof, and the Concessionaire shall repay the Lessor for all costs incurred by Lessor in connection therewith.

6.8 Deliveries.

All deliveries by Concessionaire at the Center shall be made through loading docks or at a gate or gates designated by Lessor's Asset Manager. Concessionaire shall use reasonable efforts as directed, to prevent the entry of any unauthorized persons into the Center through such docks or gate or gates when open for purpose of such deliveries.

6.9 Mechanics Lien.

Concessionaire shall at all times protect and keep the Concession Facilities, Concession Improvements, and Concession Equipment free and clear of all mechanics and other liens, attachments, encumbrances, or claims arising out of Concessionaire's operations hereunder, its performance under this Agreement and/or its use of the foregoing. In the event any such lien is placed, or such encumbrances created, Concessionaire shall cause any such liens to be promptly removed, and if necessary, shall provide any such lien holder with a performance bond or other reasonable security.

6.10 Products and Prices.

(a) Concessionaire agrees that it will have available at all times sufficient quantities and varieties of products for its Exclusive Rights' Sales and Shared Services Rights' Sales. Prices, portions, product selection, and specific brands shall be subject to Lessor's prior approval, which shall not be unreasonably withheld, but only if such exceeds ten (10%) of the retail price, provided that same are generally comparable to those appearing in First Class Conditions in other city transportation centers of similar size and nature. Concessionaire will post menus, with prices, in conspicuous places within or adjacent to the Concession Facilities.

(b) All beverage products will be served only plastic bottles, cans or paper containers with caps. Beverage products shall not be served in glass bottles.

6.11 Products.

Lessor shall have the right to require Concessionaire to use reasonable commercial efforts to take innovative action to increase sales and/or improve customer satisfaction, provided that pricing offered Concessionaire is comparable to First Class Conditions of vendors of like kind products.

6.12 Altering Facilities.

Concessionaire shall not alter, add to or in any way vary the Concession Facilities or Concession Improvements or make any material alterations or installations without having first obtained the consent in writing of Lessor' Board of Public Service. All alterations and installation shall conform to and be made in accordance with all applicable rules and regulations, laws, ordinances and regulations using first quality materials and workmanship. Upon approval by Lessor, Concessionaire may alter or improve the Concession Facilities or Concession Improvements provided that such alterations or improvements are conducted at a time such as to minimize interference with Concessionaire's operations.

6.13 Advertising Restrictions.

Concessionaire shall not advertise in any manner other than as approved by Lessor, in its sole discretion, and Concessionaire shall have no right to use the trademarks, symbols or trade name or name of Lessor, directly or indirectly, in connection with any production, promotion, service or publication without the prior written approval of Lessor's Asset Manager.

**ARTICLE VII
Indemnification and Insurance**

7.1 Waiver of Subrogation Rights.

Notwithstanding any other provision of this Agreement, it is expressly agreed that neither Lessor nor Concessionaire shall be liable to the other, and each such party hereto hereby releases and waives all claims, rights of recovery, and causes of action that either such party or any party claiming by, through or under such party, by subrogation or otherwise, may now or hereafter have against the other party or any of the other party's directors, officers, employees, or agents for any loss or damage that may occur to the Center and/or any and all improvements to either of the foregoing, the Concession Facilities and/or the Concession Equipment, any of the contents of any of the foregoing, or for any interruption in the business of either of them, if sustained by reason of fire (even if such fire is the result of the negligence or gross negligence of either of the parties hereto or any one or more of their directors, officers, employees or agents), or if sustained by reason of storm damage or the elements, or by any other casualty to the extent that such loss or damage is of a type that is, by its nature, recoverable by insurance (including any deductible), regardless of whether any policy is actually in effect. Each of the parties hereto shall cause their respective insurance carriers to include provisions in all applicable policies authorizing the waiver of any rights by way of subrogation each might have against the other parties and against the Additional Insureds.

7.2 Indemnification.

Concessionaire agrees to indemnify, defend, save, and hold harmless the Indemnitees from and against all suits and claims that may be based on any injury or alleged injury to any person (including death) or to the property of any person not a party hereto, that may arise, or that may be alleged to have arisen out of the negligence or intentional action of Concessionaire or that of its officers, directors, employees, servants, or agents. In any such event, Concessionaire, at its own cost and expense, shall pay all reasonable charges of attorneys and all costs and other expenses arising therefrom or incurred by the Indemnitees in connection therewith. The foregoing indemnity shall not apply with respect to any injuries which may be alleged to have arisen out of the negligence or intentional action of Concessionaire if and to the extent the same shall be ultimately determined to have arisen out of the negligence or intentional action of one of the Indemnitees.

7.3 Concessionaire's Insurance.

(a) Prior to commencing any activity pursuant to this Agreement, Concessionaire shall obtain and thereafter continue to maintain the following insurance coverages, which coverage limits may be increased by the Lessor's Comptroller from time to time:

(i) Type of Insurance	Liability Limits
1. Workers Compensation	Statutory
2. Employer's Liability	\$1,000,000 each occurrence \$1,000,000 disease policy limit \$1,000,000 each employee
3. Commercial Automobile Liability*	\$1,000,000 CSL each occurrence
4. Commercial General Liability ** including Contractual, Liquor, Liability, and Products Liability, and Personal Injury	\$1,000,000 each occurrence General Aggregate
5. Property/Casualty	Full replacement Cost of Concession Equipment, inventory

supplies, etc.

(ii) Notes

- * Commercial auto liability includes the owned, non-owned and hired auto hazards.
- ** Commercial general liability does not exclude explosion, collapse, nor the products and completed operations hazards, and includes broad form property damage. Contractual liability applies to the hold-harmless provisions of this Agreement, as well as any liability assumed in Tenant's agreements the insured makes in connection with insured operations.
- ** Products Personal Injury liability coverage shall include coverage for all consumable items sold under this Agreement.

(b) Concessionaire shall deliver to Lessor at least three (3) days prior to the first date of Access to any portion of the Center or Site hereunder, and then at least thirty (30) days prior to the expiration date of any then existing policies in the future during the Primary Term and any Option Terms hereof, a certificate or certificates evidencing that such insurance coverages are in effect. All policies shall contain a clause providing in substance that such policies shall not be cancelled or any material provisions thereof amended adversely to Lessor unless they shall have been first given at least thirty (30) days advance notice of such termination or of any such proposed amendment. If any policy expires or is cancelled, Concessionaire shall immediately furnish a new certificate evidencing renewal or replacement. Concessionaire shall cause the Lessor to be named as loss payees and the Additional Insureds to be named as additional insureds on all of the foregoing insurance policies required to be maintained by Concessionaire hereunder.

(c) All such policies may be provided under blanket and/or umbrella policies carried by Concessionaire.

(d) The insurance required by Section 7.3(a) shall be primary insurance and the insurer shall be liable for the full amount of any loss up to the total limit of liability required without the right of contribution of any other insurance coverage held by Lessor or the Additional Insured.

(e) This Section 7.3 is subject to all limitations identified in Sections 7.1 and 7.2, respecting Subrogation and Indemnification respectively. Nothing in this Section 7.3 shall be construed as requiring liability coverage and/or indemnification of Lessor for its own negligence or willful action or omission.

(f) All insurance carriers providing the above coverage for Concessionaire must be licensed to do so in the State of Missouri. All such carriers must also be rated no lower than "A-8 VIII" by the most recent Best's Key Rating Guide or Best's Agent's Guide or must be otherwise acceptable to Lessor.

(g) It is expressly understood and agreed by Concessionaire that the insurance requirements specified above contemplate the use of occurrence liability forms. If claims-made coverage is evidenced to satisfy any of these requirements, Concessionaire shall be subject to additional requirements as may be reasonably imposed by Lessor to avoid any potential lapse in protection which is inherent in the use of claims-made coverage.

ARTICLE VIII Assignments

8.1 Concessionaire's Assignment.

(a) Except as otherwise provided in this Agreement, Concessionaire shall not, without prior written consent of Lessor in its sole discretion, assign or sublet this Agreement or any of its rights or duties as Concessionaire, provided that such written consent shall not be required where such assignment is to an Affiliate and remains in full force and effect or a collateral assignment to any bank or financial institution providing financing to Concessionaire, provided that such assignment shall contain provisions reasonably satisfactory to Lessor regarding restrictions on removal of Concession Equipment and/or other assets of Concessionaire from the Center. Concessionaire shall not cause, permit, or suffer, directly or indirectly, any Change of Control and such Change of Control shall be deemed as an assignment of this Agreement and be subject to Lessor's consent thereof. "Change of Control" for the purposes of this Section 8.1 shall be deemed to have occurred at such time as any "person" or "group" (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, of more than 50 percent or more of the membership interests (or of the right to vote such interests) of Concessionaire.

(b) Notice and copy of any assignment must be given to Lessor at least ten (10) days prior to the effective date of such assignment and such assignment must contain the specific assumption of concession obligations and liability hereunder, however, no such assignment or assumption shall relieve Concessionaire's obligation or liability hereunder without the written consent of Lessor.

8.2 Subordination.

8.2.1 Concessionaire agrees that this Agreement and all rights and obligations hereunder shall be and remain and are hereby expressly made subject, subordinate and inferior to any financing lease and lease back and all renewals, modifications, and amendments.

ARTICLE IX
Termination

9.1 Termination by Lessor.

Subject to the terms of Section 9.3 below, Lessor may terminate this Agreement by written notice to such effect for cause in the event: (a) Concessionaire fails to remit, for a period of ten (10) days after receipt of written notice of demand therefor, any sums due and owing to Lessor under this Agreement; or (b) Concessionaire fails to perform any material obligation hereunder (except where such failure is due to a Force Majeure) and such failure continues unremedied for a period of thirty (30) days after receipt of written notice of the particular failure to perform or, in the case of a failure due to Force Majeure, such failure continues unremedied for a period of thirty (30) days after the condition constituting a Force Majeure has terminated, but (notwithstanding Section 9.3) in no event longer than one year from the commencement of such Force Majeure; or (c) in the event Concessionaire is placed into bankruptcy either voluntarily or involuntarily, or if Concessionaire becomes financially insolvent; provided, however, that, notwithstanding the foregoing, if such failure cannot reasonably be expected to be remedied within the applicable cure period set forth above, Lessor shall not have the right to terminate this Agreement hereunder if Concessionaire commences to remedy such failure within the applicable cure period and thereafter prosecutes and completes the same with due diligence and dispatch. Notwithstanding anything to the contrary herein, if (x) Concessionaire fails to comply with its obligations under Section 6.2(d) and (y) such failure is judicially determined to be a breach of a material obligation hereunder, and (z) any damages assessed against Concessionaire as a result of its failure to comply with Section 6.2(d) or any subsequent required compliance therewith has caused or would cause a material adverse effect against Concessionaire to the benefits derived from this Agreement, Lessor and Concessionaire shall negotiate, in good faith, an equitable adjustment to the terms and conditions of this Agreement to accommodate for such material adverse effect to Concessionaire.

9.2 Termination by Concessionaire.

Subject to the terms of Section 9.3 below, in the event Lessor fails to perform, in any material and substantial respect, its obligations hereunder where the effect thereof is to deprive Concessionaire, in a substantial and material manner, of the benefits of this Agreement (except where such failure or refusal is due to a Force Majeure), and such failure or refusal continues unremedied for a period of thirty (30) days after receipt of written notice of the particular failure to perform or, in the case of a failure due to Force Majeure, such failure continues unremedied for a period of thirty (30) days after the condition constituting a Force Majeure has terminated, Concessionaire may terminate this Agreement by furnishing Lessor with written notice of its intent to do so; provided, however, that, notwithstanding the foregoing, if such failure cannot reasonably be expected to be remedied within the applicable cure period set forth above, Concessionaire shall not have the right to terminate this Agreement hereunder if Lessor commences to remedy such failure within the applicable cure period and thereafter prosecutes and completes the same with due diligence and dispatch. All notices required to be provided by Concessionaire under this Section 9.2 shall be provided to Lessor. In no event shall Concessionaire have the right to terminate this Agreement, except as set forth in Articles IX, X and XII hereof.

9.3 General Cure Period.

If the particular failure to perform under Section 9.1 or Section 9.2 cannot be cured within the applicable curative periods provided above, the breaching party shall have a reasonable time thereafter in which to remedy the problem provided that it is diligently and continuously using its best efforts required to correct the problem.

9.4 Settlement.

(a) Upon termination or expiration of this Agreement for any reason, Concessionaire shall immediately

surrender possession of the Concession Improvements to Lessor, and all matters, rights and liabilities existing on the date of termination between the parties hereto shall be determined by the parties hereto as of such termination date (except as described above), and discharged as promptly as possible thereafter, including but not limited to any claims for damages either party may have against the other for breach of the terms and conditions hereof. Any such surrender shall require delivery of possession of the Concession Facilities and Concession Improvements in clean and First-Class Condition, reasonable and ordinary wear and tear excepted and otherwise in compliance with the terms of this Agreement. Concessionaire shall remove all Concession Equipment. No termination shall be fully effective until all matters, rights and liabilities between the parties are resolved and all debts of the parties, each to the other are fully paid and satisfied.

(b) Upon termination or expiration of this Agreement for any reason, Lessor may purchase or cause to be purchased from the Concessionaire, all of the Concessionaire's Improvements at the Center for a price equal to Concessionaire's capital costs, less depreciation as determined by the rent payments.

(c) Notwithstanding the foregoing, in the event of early termination of the Term of this Agreement due to a breach or default by the Concessionaire, Lessor shall have the right to reduce the amount payable to Concessionaire upon termination pursuant to Section 9.4(b) by the direct costs incurred by Lessor in effecting a cure of such breach by the Concessionaire (including without limitation, the direct cost incurred in arranging for a replacement concessionaire), and by the then unpaid amount of any then past due Percentage Rents and Future Rents (as defined below) otherwise payable to Lessor pursuant to Section 5.1 of this Agreement (less amounts payable by any successor concessionaire or the estimated net profits achievable by Lessor (if Lessor performs the concessionaire services) calculated as if Lessor were required to pay the rent set forth in Section 5.1); provided, however, that Lessor shall be required to use all commercially reasonable efforts to mitigate the damages and losses incurred as a result of Concessionaire's breach or default. For purposes of this provision, the parties agree that "Future Rents" shall mean the number of years remaining in the Term times the most recent 5 year annual average rental stream of actual amounts paid as Percentage Rent hereunder.

9.5 Representation and Warranties.

(a) Concessionaire warrants that it has full power and authority to enter into and perform their obligations under this Agreement, and, upon execution, the Agreement will be a valid obligation of Concessionaire, binding upon it in accordance with its terms and will not violate any provision of law, regulations, rule, agreement, charter or by-law to or by which Concessionaire or any of its property is subject or bound.

(b) Lessor warrants that it has full power and authority to enter into and perform their obligations under this Agreement, and, upon execution, the Agreement will be a valid obligation of Lessor, binding upon it in accordance with its terms and will not violate any provision of law, regulations, rule, agreement, charter or by-law to or by which Lessor or any of its property is subject or bound, upon passage of an ordinance authorizing this Agreement.

ARTICLE X Casualty Event

10.1 Casualty Event.

After any Casualty Event, Concessionaire shall continue the operation of its Concession Improvements hereunder to the extent possible. During the period in which the damage or destruction caused by such Casualty Event remains unremedied, the Percentage Rents will be equitably reduced by the percentage reduction in Gross Receipts that is directly caused by and attributable to such damage or destruction (or to the absence of or reduction in rents following such Casualty Event), with the amount of such reduction to be negotiated in good faith by the parties on a case-by-case basis to achieve an equitable result. Lessor shall make any repairs, reconstruction or restoration of any such damage or destruction to the Center and Concession Facilities and Concessionaire shall replace its Concession Equipment and other personalty to the extent purchased by Concessionaire. In any such event, Concessionaire shall not be entitled to any monetary or other damages because of any resulting inconvenience or loss. However, the Term hereof shall be equitably extended. In any event, Concessionaire shall not be entitled to terminate this Agreement by reason of the occurrence of a Casualty Event, unless the Agreement is otherwise terminated as a result of such Casualty Event or the Concession Facilities remain uninhabitable for a period of six (6) months.

ARTICLE XI
Jurisdiction

All litigation arising out of or relating to this Agreement shall be brought in a state or federal court situated in the City of St. Louis, Missouri, as applicable. Concessionaire hereby consents to the exclusive jurisdiction of any state or federal court situated in the City of St. Louis, Missouri, and waives any objection based on lack of personal jurisdiction, improper venue or forum non conveniens, with regard to any actions, claims, disputes or proceedings relating to this Agreement, or any document delivered hereunder or in connection herewith, or any transaction arising from or connected to any of the foregoing and waives its right to a jury trial. The prevailing party in any litigation shall receive its reasonable attorney fees.

ARTICLE XII
Condemnation

12.1 Entire Taking.

In the event of a taking, for any public or quasi-public use, under any statute or by right of eminent domain (an "Entire Taking") of (a) all of the Center or (b) a material portion of the Center so that it no longer can be used for, or restored for bus and train station, either party may terminate this Agreement effective upon the date of such Taking.

12.2 Partial Taking.

In the event of any other taking of the Center for public or quasi-public use under any statute or by right of eminent domain which does not result in an Entire Taking (as defined in Section 12.1), Lessor shall, to the extent of any award, restore the Center to First-Class Condition and this Agreement shall continue in full force and effect and the Percentage Rents will be equitably reduced by the percentage reduction in Gross Receipts that is directly caused by and attributable to such taking (or to the absence of or reduction in rents following such partial taking), the amount of such reduction to be negotiated in good faith by the parties on a case-by-case basis to achieve an equitable result.

12.3 Compensation.

In any event, Concessionaire shall have the right to prosecute an action against the condemning authority for compensation for the loss of its leasehold estate and personal property, except to the extent that any such claim may serve to reduce the award(s) sought by Lessor, as a result of the taking.

ARTICLE XIII
Force Majeure

It is expressly understood and agreed that failure or delay on the part of either party hereto in the performance in whole, or in part, of the terms and conditions of this Agreement shall not constitute a breach hereof, nor a default hereunder, if such failure or delay is attributable to a Force Majeure. The foregoing shall not apply with respect to Concessionaire's obligation to pay to Lessor the Percentage Rents as required under Section 5.1 hereof, and such obligations shall continue regardless of a Force Majeure; provided, however, that Concessionaire's obligation to pay to Lessor the Percentage Rents shall be reduced in accordance with Section 10.1 in the case of a Casualty Event and Section 12.2 in the case of a taking that does not result in an Entire Taking under Section 12.1. Any strike, lockout or similar work stoppage or labor dispute solely affecting Concessionaire shall not constitute Force Majeure hereunder; and, in any such event Lessor has the right, but not the obligation, to arrange for replacement services on a temporary basis.

ARTICLE XIV
Notices

All notices required or permitted to be given under the terms of this Agreement shall be sent in writing by certified mail, return receipt requested, or by courier service or by facsimile. Notices sent by certified mail or courier shall be deemed to have been received at the time they are delivered to the applicable address set out below to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows:

If to Concessionaire:

If to Lessor:

Arch City Deli, LLC
10812 St. Charles Rock Road
St. Louis, Missouri 63074

Attn: Milan Patel
Fax: (314) 209-9201

With a copy to:

Stephen Ukman
34 N. Brentwood Blvd.
Suite 16
St. Louis, Missouri 63105
Fax: (314) 863-6708
Fax: (314) 612-2223

Comptroller
City of St. Louis
Room 311, City Hall
St. Louis, Missouri 63103
Attn: Asset Manager
Fax: (314) 588-0550

With a copy to:

Armstrong Teasdale, LLP
One Metropolitan Square
Suite 2600
St. Louis, Missouri 63102
Attn: Thomas J. Ray

**ARTICLE XV
Consents and Approvals**

Where consent or approval of or authorization (the "Consent") from Lessor is required hereunder and not designated, such Consent shall mean the Consent by Lessor's Comptroller. Where Consent of Concessionaire is required hereunder such Consent shall mean that of its regional manager or an officer of Concessionaire.

**ARTICLE XVI
Miscellaneous**

16.1 Estoppel Certificates.

Lessor and Concessionaire agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate, addressed to such persons as the requesting party may reasonably request, certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), the dates to which any rents due hereunder has been paid in advance, if any, and that to the knowledge of the signer of such certificate, no default hereunder by either Lessor or Concessionaire exists hereunder (or specifying each such default to which this signer may have knowledge), together with such other information as Lessor or Concessionaire may reasonably require with respect to the status of this Agreement and Concessionaire's use and occupancy of the Concession Facilities in the Center.

16.2 Applicable Law.

This Agreement shall be governed in all respects by the Laws of the State of Missouri, without regard to such state's position with respect to conflict of Laws.

16.3 Reorganization.

This Agreement and the terms hereof, including the terms set forth in Sections 3.2.1 and 8.3 hereof, shall be not be modified or affected by any reorganization, merger, recapitalization or change in structure of either party or by any transfer, lease, assignment or other change in ownership of the Lessor's interest in the Center.

17.4 Binding On.

This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns, as may be permitted herein.

17.5 Whole Agreement.

This Agreement and the exhibits attached hereto, contain all of the covenants, promises and agreements between the parties concerning the operations described herein. It supersedes all prior agreements, arrangements or understanding, whether written or

oral. This Agreement may not be amended or modified except in a writing signed by the parties to be bound thereby.

17.6 No Joint Venture.

Nothing hereinabove or elsewhere contained in this Agreement shall in any manner be deemed to create a partnership or joint venture relationship between Lessor and Concessionaire, or any of their respective Affiliates.

Any provision of this Agreement prohibited or invalidated by a court of competent jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without affecting the validity of the remaining provisions of this Agreement.

17.7 Rules of Usage. The following rules of usage shall apply to this Agreement unless otherwise required by the context or as specifically provided:

(a) The terms set forth in this Agreement shall have the meanings herein provided for.

(b) Any term defined in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning ascribed thereto whether or not such other document, instrument or agreement is in effect.

(c) Singular words shall connote the plural as well as the singular, and vice versa.

(d) Words referring to a gender include any gender.

(e) A reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or herein.

(f) The headings and subheadings are solely for convenience of reference and shall not constitute a part of any such document nor shall they affect the meaning, construction or effect of any provision thereof nor shall they modify, define, expand or limit any of the terms or provisions thereof.

(g) A definition of or reference to any document, instrument or agreement includes each amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used.

(h) A reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time unless otherwise specified.

(i) References to any Person (as hereinabove defined) shall include such Person, its successors and permitted assigns and permitted transferees.

(j) Any reference to "day" shall mean calendar day unless "Business Day" is expressly specified.

(k) If the date as of which any right, option or election is exercisable, or the date upon which an amount is due and payable, is stated to be on a day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day and no interest shall accrue or be payable with respect to such payment;

(l) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof;

(m) references to "including" shall mean including without limiting the generality of any description preceding such term and for purposes hereof the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned; and

(n) references to any agreement, including this Agreement, document or instrument shall mean such agreement, including this Agreement, document or instrument as supplemented, amended, or otherwise modified from time to time in accordance with the provisions thereof.

In Witness Whereof, the parties hereto have caused this Lease and Concession Agreement to be duly executed as of the day and year first written above.

Arch City Deli, LLC

By: _____

City of St. Louis

By: _____

Mayor

By: _____

Comptroller

Approved as to form, only:

City Counselor

Register

STATE OF MISSOURI)

SS.

CITY OF ST. LOUIS)

I, _____, a Notary Public, in and for said City, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as the free and voluntary act and deed of Arch City Deli, LLC, a Missouri limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2008.

Notary Public

My Commission Expires:

STATE OF MISSOURI)

SS.

CITY OF ST. LOUIS)

I, _____, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that FRANCIS G. SLAY and DARLENE GREEN, the Mayor and Comptroller of the City of St. Louis, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary acts and deeds, for the uses and purposes therein set forth.

Given under my hand and official seal, this ____ day of _____, 2008.

Notary Public

My Commission Expires:

Exhibit 1
Pepsi Americas Contract

Exhibit 2
Dynamic Vending Contract

Approved: March 3, 2008