

St. Louis City Ordinance 63293

FLOOR SUBSTITUTE

BOARD BILL NO. [94] 208

INTRODUCED BY ALDERMAN GERALDINE OSBORN

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller, to enter into a First Amendment to a Concession Agreement for the Airport News and Gift Concession, dated May 21, 1992 (the "Concession Agreement"), authorized by Ordinance 62606, approved April 7, 1992, and which First Amendment is attached hereto as "Attachment A", and amended Exhibit "A" are made a part hereof; 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 are hereby authorized and directed to execute on behalf of the City of St. Louis a First Amendment to a Concession Agreement for the Airport News and Gift Concession dated May 21, 1992 (the "Concession Agreement"), authorized by Ordinance 632606, approved April 7, 1992, and which First Amendment is attached hereto as "Attachment A" and Amended Exhibit "A" and made a part hereof.

Section Two. This being an Ordinance necessary for the immediate preservation of the public safety and welfare, it is hereby declared to be an emergency measure within the meaning of Article IV Sections 19 and 20 of the City Charter and shall become effective immediately upon its approval by the Mayor.

ATTACHMENT "A"

FIRST AMENDMENT

TO

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

(NEWS/GIFT)

THIS FIRST AMENDMENT, entered into this _____ day of _____, 1994 by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and The Paradies Shops, Inc., (the "Concessionaire"), and PARADIES - CONCESSION II - ARCH, INC., (the "Assignee"), hereinafter the "First Amendment".

WITNESSETH, That:

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

WHEREAS, the Concession Agreement was originally entered into by the Concessionaire, with the intent that the Concessionaire would enter into a business arrangement with others in order to fulfill its Disadvantaged Business Enterprise ("DBE") participation requirement under the Concession Agreement; and,

WHEREAS, in order to fulfill its DBE participation, the Concessionaire, with the approval of the City assigned the Concession Agreement on March 7, 1994, to the Assignee; and

WHEREAS, the parties desire to revise certain terms and conditions of the Concession Agreement to provide for the addition of a Professional Golf Association Tour Store (the "PGA Store,") and the resulting increase in the Minimum Annual Guarantee Concession Fees and to establish Percentage Concession Fees for PGA Store Merchandise, as that term is defined below; and,

WHEREAS, the parties wish to enlarge and modify the Premises granted by the Concession Agreement and otherwise to amend the Concession Agreement to their respective mutual benefits,

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

ARTICLE I

1. The Assignment and Assumption of Concession Agreement set out in Appendix A to this First Amendment (the "Assignment") is hereby ratified and

approved and the participation by the Assignee, as presently structured, in the Concession Agreement satisfies the requirements of the City for DBE participation as set out in Section 1101. Compliance. of the Concession Agreement.

2. The following definition shall be added to Section 101. Definitions. of the Concession Agreement.

"PGA Store Merchandise" shall mean all merchandise, including non-franchised and non-licensed merchandise as well as franchised and licensed merchandise, that is offered for sale in the PGA Store.

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

(a) Concessionaire and Assignee agree to pay for Contract Years One through Eight 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.

Contract Years	Minimum Annual Guarantees
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	\$1,119,000.00
Contract Year Eight	\$1,119,000.00

Product Categories	Product Percentage Fees
Newspapers	5%
Magazines	10%
Books	10%
Tobacco	10%
Drug Sundries and Film	10%
PGA Store Merchandise	12%
All Other Merchandise	20%

The Concessionaire and/or Assignee will not offer any merchandise for sale in the PGA Store that it offers at product percentage fees of 20% in its other outlets on the Premises.

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

4. Subsection (b) of Section 502. Hours of Operation. of the Concession Agreement is deleted in its entirety and the following is substituted in lieu thereof:

(b) Shop location #10 shown on Exhibit "A" is approved to be closed and out of operation at the commencement of the term.

Shop location #10 must be opened not later than the point at which the number of flights scheduled for Gates 69 - 6 (overflow flights excluded) exceeds five (5) per average week day.

5. The last sentence of Subsection (a) of Section 601. Construction by Concessionaire. of the Concession Agreement is deleted and the following sentence is substituted in lieu thereof:

Shop locations #9, and #104 as shown on Exhibit "A" are excluded from the Build Out requirement of the Premises.

6. Section 602. Cost of Improvements. of the Concession Agreement is deleted in its entirety and the following is substituted in lieu thereof:

In connection with the Concessionaire's and/or Assignee's performance under Section 601 of this Agreement, the Concessionaire and/or Assignee shall cause to be expended for Build Out Costs not less than \$1,928,000.00 (One Million, Nine Hundred and Twenty-Eight Thousand Dollars). The Concessionaire and/or Assignee shall complete such Improvements in accordance with all requirements of this Article VI.

The Concessionaire and/or Assignee shall furnish the Director with satisfactory proof of Build Out Costs within sixty (60) days following completion of work to the Premises. This proof of costs must include, at a minimum, an itemized account of all included costs, supported by invoices and canceled checks and certified as accurate by an independent Certified Public Accountant. The

Concessionaire and/or Assignee shall provide to the Director any other proof necessary to satisfy the Director.

The Concessionaire and/or Assignee is encouraged by the City to productively expend the entire amount obligated to Build Out Costs, but in the event the Concessionaire's and/or Assignee's actual expenditures are less than the total of \$1,928,000.00 (One Million, Nine Hundred Twenty-Eight Thousand Dollars), the difference shall be an item of additional rent paid to the City within thirty (30) days after the receipt of an invoice for such difference from the City.

7. Subsections (b) and (c) of Section 609. Alterations. Refurbishment and redecoration. of the Concession Agreement are deleted in their entirety and the following is substituted in lieu thereof:

(b) In connection with the Concessionaire's and/or Assignee's further performance under Section 601 of this Agreement, the Concessionaire shall perform a complete Refurbishment of the Premises not later than the end of the fifth Contract Year and expend for Refurbishment Costs not less than \$226,000.00 (Two Hundred Twenty-Six Thousand Dollars). The Concessionaire and/or Assignee shall complete such Refurbishment in accordance with all requirements of this Article VI, including the proof of costs and the payment of the difference between actual expenditures and obligated expenditures to the City as provided in Section 602. Shop location #10 shown on Exhibit "A" is excluded from this fifth Contract Year Refurbishment and Cost obligation; however, this location must be Refurbished not later than the conclusion of three (3) years of operation. The Director reserves the right to specify the actual content of all Refurbishment to be performed by the Concessionaire and/or Assignee to address the requirements of the Premises at that time.

(c) Shop locations #9 and #10 that are excluded from the Build Out of the Premises requirement by Section 601 must be Redecorated as follows. Location #9 must be Redecorated during the Build Out. Location #10 must be Redecorated not later than the point at which the number of flights scheduled for Gates 69 76 (overflow flights excluded) exceeds 5 (five) per average week day. The Director reserves the right to specify the actual content of all Redecoration to be performed by the Concessionaire and/or Assignee to address the requirements of the Premises at that time.

8. Exhibit A referred to in the Section 201. Premises. of the Concession Agreement is deleted in its entirety and an Amended Exhibit A, which is attached hereto and made a part of this First Amendment, shall hereinafter

constitute the Premises under the Concession Agreement and this First Amendment.

9. Paragraph (1) of Restrictions: of Exhibit "B" Product Categories of the Concession Agreement is deleted in its entirety and the following is substituted in lieu thereof:

(1) Space devoted to books will be limited to: one (1) four (4) foot run of shelves in the shops on Concourses A, C and D; and one (1) four (4) foot run of shelves in the shops in the Main terminal and East Terminal, except that in Shop 8 one (1) twenty (20) foot run of shelves will be allowed.

All other terms and conditions of the Concession Agreement and the Assignment not inconsistent with this First Amendment are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this First Amendment for themselves, their successors and assigns.

Pursuant to City of St. Louis Ordinance Number _____ approved
_____.

THE PARADIES SHOPS, INC.
CONCESSIONAIRE

Title:
Date:

PARADIES - CONCESSION II - ARCH, INC.
ASSIGNEE

Title:
Date:

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

The foregoing Agreement was approved by the Airport Commission at its meeting on _____, 1994.

Commission Chairman Date
and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and
Apportionment at its meeting on _____, 1994.

Secretary Date
Board of Estimate and Apportionment

APPROVED AS TO FORM ONLY

City Counselor Date
City of St. Louis

Register, Date
City of St. Louis

COUNTERSIGNED

Comptroller, Date
City of St. Louis

AMENDED EXHIBIT "A"

(Premises)

NEWS/GIFT CONCESSIONS

NEWS/GIFT CONCESSION (1) 569 sq. ft.
NEWS/GIFT CONCESSION (2) 121 sq. ft.

NEWS/GIFT CONCESSION (3) 356 sq. ft.
NEWS/GIFT CONCESSION (4) 1,039 sq. ft.

NEWS/GIFT CONCESSION (5) 444 sq. ft.
NEWS/GIFT CONCESSION (6) 602 sq. ft.

NEWS/GIFT CONCESSION (7) 73 sq. ft.
NEWS/GIFT CONCESSION (8) 126 sq. ft.

NEWS/GIFT CONCESSION (9) 720 sq. ft.
NEWS/GIFT CONCESSION (10) 1,510 sq. ft.

NEWS/GIFT CONCESSION (11) 467 sq. ft.
NEWS/GIFT CONCESSION (12) 135 sq. ft.

NEWS/GIFT CONCESSION (13) 1,040 sq. ft.
NEWS/GIFT CONCESSION (14) 919 sq. ft.

NEWS/GIFT CONCESSION (15) 1,014 sq. ft.
NEWS/GIFT CONCESSION (16) 1,508 sq. ft.

NEWS/GIFT CONCESSION (17) 6,167 sq. ft.

NEWS/GIFT CONCESSION (18) 834 sq. ft.
NEWS/GIFT CONCESSION (19) 1,300 sq. ft.

TOTAL 18,944 sq. ft.

Appendix A

CONSENT TO ASSIGNMENT

CONCESSION AGREEMENT

(NEWS/GIFT)

CITY OF ST. LOUIS AND THE PARADIES SHOPS, INC.

TO

PARADIES-CONCESSION II-ARCH, INC.

The Director of Airports and the Lambert St. Louis International Airport Commission hereby consent to the Assignment and Assumption of the Concession Agreement dated February 23, 1994, between The Paradies Shops, Inc., (the "Company") and Paradies-Concession II-Arch, Inc., (the "Assignee"), Attachment 1 hereto, of the Concession Agreement AL-101 (the "Concession

Agreement") dated May 21, 1992 (adopted by the Board of Aldermen on March 31, 1992, Ordinance number 62606) by and between the City of St. Louis and The Paradies Shops, Inc., to Paradies-Concession II-Arch, Inc., a Corporation. Notwithstanding any assignment, The Paradies Shops, Inc., shall remain fully liable on this Concession Agreement and shall not be released from performing any of the terms, covenants, and conditions of this Concession Agreement.

In witness whereof, this Consent has been executed on this 7th day of March, 1994.

The foregoing Consent to Assignment was approved by the Airport Commission at its meeting on March 2, 1994.

Commission Chairman Date
and Director of Airports

Attachment 1

STATE OF GEORGIA
COUNTY OF FULTON

ASSIGNMENT AND ASSUMPTION OF CONCESSION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

FOR AND IN CONSIDERATION of One and No/100 Dollars (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, The Paradies Shops, Inc., a Georgia corporation (hereinafter referred to as "Company"), does hereby sell, transfer, assign, bargain, convey, deliver, abandon and set over unto Paradies/Concessions II/Arch, Inc., a Georgia corporation (hereinafter referred to as "Assignee"), its successors and assigns, all of Company's rights, title and interest in and to that certain Lambert-St. Louis International Airport Concession Agreement between company and City of St. Louis, dated may 21, 1992, a copy of which is attached hereto as Exhibit A and made a part hereof (hereinafter referred to as the "Assigned Agreement").

Company, its legal representatives, successors, successors-in-title and assigns, represent, warrant and agree that they are the true, lawful and sole owners of the Assigned Agreement hereby sold, transferred, assigned, bargained,

conveyed, delivered, abandoned and set-over; that they have the full, complete and lawful right, power and authority to so sell, transfer, assign, bargain, convey, deliver, abandon and set-over the Assigned Agreement; that the title and interest in the Assigned Agreement hereby sold, transferred, assigned, bargained, conveyed, delivered, abandoned and set-over constitutes good and marketable title to Company's rights and entitlements under the Assigned Agreement, free and clear of all restrictions, encumbrances and claims or rights of third parties of every kind and nature whatsoever, except as set forth in the Assigned Agreement; and that as of the date hereof, all concession fees required by the Assigned Agreement to be paid have been paid and Company has not defaulted under any of its obligations under the Assigned Agreement.

TO HAVE AND TO HOLD the Assigned Agreement unto Assignee, its legal representatives, successors, successors-in-title and assigns to its own proper use, benefit and behoof for the duration of the term thereof.

Company hereby indemnifies Assignee from any claim, loss, cost or expense which Assignee may suffer as the result of a breach by Company of its duties under the Assigned Agreement, up to and including the date hereof. Assignee, by its acceptance hereof, hereby agrees that it shall perform all of Concessionaire's duties, covenants and obligations under the terms of the Assigned Agreement from and after the date hereof.

Company will from time to time and at all times hereafter, upon every request of Assignee, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required by Assignee effectually to carry out the intent of this Assignment and Assumption Agreement and to transfer the Assigned Agreement to Assignee.

IN WITNESS WHEREOF, Company and Assignee have executed this Assignment and Assumption of Concession Agreement, as of the 23rd day of February, 1994.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

COMPANY:

THE PARADIES SHOPS, INC.

By: _____

ASSIGNEE:

THE PARADIES/CONCESSIONS II/ARCH, INC.

By: _____

Vice President

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
09/16/94	09/16/94	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
09/23/94			09/30/94	10/07/94
ORDINANCE	VETOED		VETO OVR	
63293				

