

## CONCESSION LEASE AGREEMENT

CONCESSION LEASE AGREEMENT NUMBER:	
PARTIES AND ADDRESSES:	
"BOARD":	<p>DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD Attn: Airport Concessions Department Post Office Box 619428 DFW Airport, Texas 75261 Telephone: 972-973-4820 Fax: 972-973-4821</p> <p><u>Mailed Payments:</u> Dallas/Fort Worth International Airport P.O. Box 974551 Dallas, TX 75397-4551</p> <p><u>Monthly Reports:</u> Dallas/Fort Worth International Airport Attn: Finance Department P.O. BOX 619428 DFW Airport, Texas 75261-9428</p> <p><u>All Courier Mail:</u> Dallas/Fort Worth International Airport Business Center, North Tower Airport Concessions, 2<sup>nd</sup> Floor 2200 South Service Road DFW Airport, TX 75261</p>
"CONCESSIONAIRE":	
For Operation of a Concession 2010	

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## CONCESSION LEASE NUMBER:

This concession lease (hereinafter called "Lease") is made and entered into by and between the DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD (hereinafter called the "Board"), a Joint Airport Board of the Cities of Dallas and Fort Worth, Texas (hereinafter called the "Cities"), and \_\_\_\_\_ (hereinafter called "Concessionaire").

In consideration of the rents and covenants hereinafter set forth, the Board does hereby lease to Concessionaire, and Concessionaire does hereby lease from the Board, the herein described premises ("the Premises") upon the following terms and conditions:

### ARTICLE 1: SUMMARY OF LEASE PROVISIONS

1. Board Address: Dallas/Fort Worth International Airport Board  
3200 East Airfield Drive  
Post Office Box 619428  
DFW Airport, Texas 75261-9428  
Attn: Airport Concessions Department  
Phone: (972) 973-4820  
Fax: (972) 973-4821  
  
Address for courier delivery:  
Airport Concessions Department  
2nd Floor, North Tower, DFW Business Center  
2200 South Service Road  
DFW Airport, Texas 75261
2. Concessionaire Address:
3. Guarantor:  
**Limited Guaranty of Lease "Exhibit D"**
4. Premises Description: **See Exhibit "A"**

- Designated Storage Area Description: See Exhibit "B"
5. Allocable Square Feet: Total Square Feet, subject to adjustment upon completion of construction. (Square footage is stated in Exhibit "A".)
6. Tradename:
7. Permitted Use:
8. Rent Commencement Date:  
**Rent Commencement Date/Construction Schedule "Exhibit E"** The date that is referenced in Exhibit "E" OR the date the Board notifies Concessionaire in writing that the Premises are ready for Concessionaire's occupancy.
9. Term: The Term shall expire \_\_\_\_\_ years from the Rent Commencement Date.
10. Extension Option: None
11. Minimum Annual Guarantee:
12. Percentage Rent:
13. Concessionaire Charges: As per the Schedule of Charges, no exceptions.  
or  
As per the Schedule of Charges with the following exceptions:

14. Product Exclusive Rights (Section 6.02): Concessionaire acknowledges that the Board currently has an exclusive beverage products agreement with the Bottling Group, LLC DBA The Pepsi Bottling Group (Pepsi Agreement). Concessionaire agrees to include products included in said Pepsi Agreement in Concessionaire's menu, if applicable, and purchase said products via the Airport's exclusive agreement to the extent those products are not in conflict with agreements existing prior to January 2004.
- As used herein, "Beverage Products" shall mean all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks, energy and fluid replacements); and (vi) bottled or canned water whether carbonated or still (spring, mineral or purified).
- An initial price ceiling on 20 oz. bottled beverages has been set not to exceed \$2.25. The price ceiling shall be reviewed annually for price adjustments.
15. Cash Deposit or Surety Bond: If none, then state "None."
- Storage Property and Security Deposit: A \$3,000 Property Damage and Security Deposit shall be paid in advance of effective date and maintained during the term.
16. Minimum Capital Investment:
17. Special Terms and Conditions:

**NOTE:** This Lease contains other provisions and additional information about the items listed in **Article 1**. In the event of any inconsistency between other provisions in this Lease and **Article 1**, the other provisions in this Lease shall control. Concessionaire acknowledges that it has read this entire Lease carefully.

## ARTICLE 2: PREMISES

### Section 2.01 Premises Description

A. The Premises consists of the location shown on **Exhibit "A"**, attached hereto and incorporated herein, including any improvements to be made thereon or modifications to be made thereto. No other part of the Airport Terminals or the ground on which they are situated shall be part of the Premises. The total estimated square footage allocable to Concessionaire for purposes of assessing fees and charges is stated in **Article 1**, and if there is more than one location under this Lease, the individual location allocable square footages are stated in **Exhibit "A"**. If the Premises is not fully constructed at the time of Lease execution, then the actual square footage determined after completion of construction shall be adjusted and acknowledged by the parties on **Exhibit "A"**.

B. Concessionaire shall have the right of ingress to and egress from the Premises over the Airport roadways, including the use of common use roadways, the same as the public at large, subject to such rules, regulations and security requirements now in existence and as may be established from time to time by the Board and by other governmental authorities.

C. Neither this Lease nor any memorandum of lease shall be filed in the real property records of Tarrant County.

### Section 2.02 Premises Acceptance As Is

Concessionaire accepts the Premises in its present condition, as is, where is, and with all faults. The Board shall not be obligated to construct additional improvements or to modify existing improvements, nor to provide services of any type, character, or nature (including any utilities or telephone service) on or to the Premises during the Term of this Lease other than those stated in this Lease to be provided by the Board.

### Section 2.03 No Warranty of Economic Viability

The Board makes no warranty, promises or representations as to the economic viability of any concession location or business concept. The Board makes no warranty that airline usage of gates or other facilities adjacent to the Premises will not change.

## ARTICLE 3: TERM

### Section 3.01 Commencement Date and Term

A. The Commencement Date, and Concessionaire's obligation to open for business and to commence payment of Rent (including the Minimum Annual Guarantee), shall be the date stated in **Article 1**.

B. The Term shall be for the amount of time stated in **Article 1**, unless sooner terminated as hereinafter provided.

C. All terms of this Lease governing Concessionaire's use of the Premises, insurance and indemnities, Concessionaire Charges pursuant to the Schedule of Charges, and all Lease terms other than Rent and opening for business, shall commence when Concessionaire takes possession of the Premises, regardless of when Concessionaire is obligated to begin paying Rent and to open for business.

## Section 3.02 Extension Option

A. If there is an Extension Option stated in **Article 1**, Concessionaire shall be entitled to extend the Term of this Lease as so stated, subject to the limitations below. All terms and conditions of this Lease shall apply to the extended Term of the Lease, unless otherwise noted in this Lease. Concessionaire must give notice of intent to exercise the Extension Option no earlier than nine (9) months and no later than six (6) months prior to the expiration of the then current Term. Concessionaire must not be in default under this Lease in any material respect. Concessionaire shall have no right to extend the Term except as expressly set forth in this Lease.

B. The Extension Option shall be null and void if Concessionaire fails to maintain the quality objective in subsection (1) below, or fails to maintain at least 2 of the 3 sales objectives in subsections (2) through (4) below, during the final two (2) years of the Term:

1. Concessionaire's cumulative quality experience ranking must remain at least in the top 75% of all companies evaluated at DFW for the prior twelve months, if evaluations are conducted;
2. Concessionaire's sales must increase at or above the percentage growth in enplanements over each prior 12-month period, or decrease at or below the decrease in enplanements over each prior 12-month period;
3. Concessionaire's sales must increase at or above the percentage increase of other comparable concepts or categories over each prior 12-month period, or decrease at or below the decrease of other comparable concepts or categories over each 12-month period; and
4. Concessionaire's average location sales per square foot for each 12-month period must be at least in the top 75% of location sales for that category.

It is entirely within the Board's sole discretion to determine when and how quality evaluations are conducted. It is entirely within the Board's sole discretion to determine the scope of enplanements to be used for comparison, and it is entirely within the Board's sole discretion to define comparable concepts or categories; provided, however, that such standards shall be applied uniformly as to all similarly situated concessionaires.

## ARTICLE 4: RENT, FEES, REPORTING, RECORDS, AND AUDITS

### Section 4.01 Gross Receipts

"GROSS RECEIPTS", sometimes called Gross Revenues or Gross Sales, shall include all monies paid or payable to Concessionaire for sales made and for services rendered at or from the Premises, to include catering and internet sales, regardless of when or where the order therefor is received (including outside the Premises), and any other revenues of any type arising out of or in connection with Concessionaire's operations (or those operations of Concessionaire's agents or sublessees) at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, retail display allowances, and any type of ancillary advertising or product placement fees, provided, however, that Gross Receipts shall not include:

1. Any taxes imposed by law which are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire;
2. Amounts and credits received in settlement of claims for loss of, or damage to merchandise;
3. Insurance proceeds;
4. Bulk sales as defined by the U.C.C;
5. Tax rebates; and
6. Inter-store transfers.

If originally recorded as or included in Gross Receipts, Concessionaire may deduct from Gross Receipts the items listed below, provided the Concessionaire lists on sales reports and other reports of Gross Receipts submitted to the Board the amounts deducted, by category:

1. Cash and credit card refunds to customers for merchandise returned;
2. Mixed Beverage Taxes paid to the State of Texas and levied as a percentage of the amounts charged by Concessionaire for mixed beverages; and
3. Amounts for coupons and other forms of discounts (including, but not limited to, complimentary customer and employee meals), such that only the amounts actually received are ultimately included in Gross Receipts.

#### **Section 4.02 Rent**

Effective on the Commencement Date and continuing thereafter, Concessionaire shall pay Percentage Rent to the Board as set forth in **Article 1** based on Concessionaire's Gross Receipts, subject to a Minimum Annual Guarantee (MAG) as set forth in **Article 1**, and as further provided below:

A. Minimum Annual Guarantee (MAG). One-twelfth of the MAG shall be due in advance on the first day of each month without setoff, deduction, prior notice or demand. Each payment not received by the 1st day of the month shall be late, and Late Payment Charges shall accrue as set forth in the Schedule of Charges.

The MAG shall be adjusted at the beginning of every calendar year during the Term of the Lease after the first twelve-month period of operation, by a flat rate of three percent (3%) per year. Notwithstanding this annual flat rate adjustment, the MAG shall never be decreased and shall not increase more than three percent (3%) in any single year.

If the Commencement Date occurs other than on the first day of a calendar month or if the Expiration Date occurs other than on the last day of a calendar month, then the MAG shall be prorated for said month.

B. Percentage Rent. In addition to the MAG, Concessionaire shall pay percentage rent in the amounts noted in **Article 1**, but only to the extent that percentage rent

exceeds the monthly installment of MAG paid in advance for said month or portion thereof. Percentage rent for each month is due and payable by the 20th day of each month following the month of accrual. Payment will be considered late if not received by the 20th day of the same month.

The Board shall have the right to change the Percentage Rent to weekly collection upon establishment of a system of automated debit of accounts by electronic transfer through the Federal wire-transfer system.

#### **Section 4.03 Schedule of Charges**

Concessionaire shall pay to the Board all charges currently described as "Concessionaire Charges" in the Airport's Schedule of Charges (unless specifically exempted from any such Concessionaire Charge in **Article 1**). The methods by which the Concessionaire Charges are to be calculated are stated in the Schedule of Charges. Concessionaire Charges shall be due in advance on the first day of each month without setoff, deduction, prior notice or demand. Each payment not received by the 1st day of the month shall be late, and Late Payment Charges shall accrue as set forth in the Schedule of Charges. The Schedule of Charges, as it may be amended from time to time in the Board's sole discretion, constitutes a part of this Lease.

Concessionaire shall pay Late Payment and Returned Check Charges on all late payments and returned checks. Late Payment Charges are calculated according to the formula set forth in the Airport's Schedule of Charges. Late Payment and Returned Check Charges shall be payable upon presentation of an invoice. In the event of a dispute as to the amount to be paid, the Board shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, the Late Payment Charge shall apply only to the deficiency. Concessionaire acknowledges that the formula for Late Payment Charges is fair and reasonable. In no event, however, shall the Late Payment Charges, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest.

The Board and Concessionaire are knowledgeable and experienced in commercial transactions and agree that the provisions of this Lease for determining charges, amounts and additional rent payable by Concessionaire (including, without limitation, payments of charges under the Schedule of Charges, as amended from time to time) are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges. The Board and Concessionaire further acknowledge that the Board is obligated by federal law to charge rates for all services and use of Airport property that are at least fully compensatory of the costs incurred by the Board.

Concessionaire acknowledges that the Board is a governmental authority as well as a landlord, and that many charges in the Airport's Schedule of Charges are assessed to the public at large pursuant to the Board's governmental police powers, including without limitation Parking Charges, Public Safety, Medical & Service Charges, Development Charges, and Airport Identification/Access Badging & Fingerprinting Charges. Concessionaire acknowledges that being an Airport tenant does not exempt Concessionaire or Concessionaire's employees, agents or invitees from any charges in the Schedule of Charges, even if the charges are not specifically enumerated in the body of this Lease.

#### **Section 4.04 Space Acquisition Costs**

If there is a Space Acquisition Cost stated in **Article 1** to reimburse the Board for an airline's or a prior tenant's release of the Premises, Concessionaire will pay said sum upon execution of this Lease.

#### **Section 4.05 Space Infrastructure Costs**

If there is a Space Infrastructure Cost stated in **Article 1** to reimburse the Board for certain systems constructed or installed at the Board's expense, Concessionaire will pay said sum upon execution of this Lease.

#### **Section 4.06 Manner of Payment**

The Board may require all payments of Percentage Rent, the MAG, and all Concessionaire Charges recurring monthly to be made by automatic withdrawal from Concessionaire's bank account, or such other method as designated in writing by the Board. Concessionaire shall provide the Finance Department with such information and authorizations as are necessary to facilitate such electronic payments.

#### **Section 4.07 Sales Reports, Record Keeping, End of Year Adjustment**

Concessionaire shall file with the Airport Concessions Department and the Airport Finance Department a weekly sales report stating Gross Receipts by and from each location comprising the Premises. The weekly sales reports shall be submitted through the Concessionaire Sales Application (CSA) and shall be filed not later than each Tuesday at Noon for the activity of the immediate prior week. Sales submitted into this application will be totaled at the conclusion of each month to determine the amount of percentage rent due where applicable. Concessionaire must calculate the amounts due and submit payment no later than the 20<sup>th</sup> of each month following the month of accrual. Concessionaire shall certify monthly sales, with any adjustments, together with payment. As the CSA process is enhanced, the Concessionaire's payment due date may be adjusted accordingly.

Concessionaire shall also file an income statement and balance sheet for the DFW Airport location(s) in whatever form directed by the Board, on an annual basis, on or before February 1st, or as requested by the Airport Concessions Department. The board reserves the right to require such additional information be reported as deemed necessary by the Board and in a format as developed by the Board from time-to-time. Concessionaire shall pay a fee as outlined in the Schedule of Charges per day per report if Concessionaire fails or refuses to file any sales report due hereunder within twenty-four (24) hours of its required filing. Late Payment Charges shall accrue as set forth in the Schedule of Charges.

All sales reports shall be filed using the technology and procedures designated by the Board. If the Board instructs Concessionaire to file the reports using future technology, the Board shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts, and the Board shall have the right, through its representatives, and at all reasonable times, to inspect the books and records of Concessionaire, any Sublessees, or other participants in the operations authorized in this Lease. Concessionaire hereby agrees that all such books and records will be made available to the Board at the

Premises, or at the Board's offices, upon five (5) days advance notice during the term of this Lease, and for two years thereafter.

On or before each January 1<sup>st</sup> during the Term of this Lease, Concessionaire shall provide a written statement to the Board, from an independent Certified Public Accountant or authorized Corporate Officer, stating the amounts of Concessionaire's Gross Receipts and the amounts paid to the Board as the total of MAG and Percentage Rents for said fiscal year of part thereof, and stating that in the Accountant's or Corporate Officer's opinion the Gross Receipts reported and the rental payments made by Concessionaire to the Board during the Airport's preceding fiscal year (Oct – Sept.) were made in accordance with the terms of this Lease (Annual Certified Sales Reports). If Concessionaire shall have paid to the Board an amount greater than Concessionaire is required to pay as Percentage Rent for such fiscal year under the terms hereof, the Concessionaire's refund will be issued in the form of a check ; or if Concessionaire shall have paid an amount less than the Percentage Rent required to be paid hereunder, Concessionaire shall pay such difference to the Board upon presentation of an invoice for payment.

#### **Section 4.08 Audit**

The Board shall have the right until three (3) years after the expiration or termination of this Lease, through its representatives, and at all reasonable times, to review all books, records, and agreements of Concessionaire (and where applicable, all individuals or other business entities who are party to this Lease) requested by the Board's representatives to substantiate the accuracy of gross receipts and other information reported to the Board. This includes, but is not limited to, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, bank deposit slips, bank statements, tax reports filed with state or federal agencies, discount or rebate agreements, records of refunds and joint venture or partnership agreements. Such books, receipts and records shall be kept for a period of three (3) years after the close of each calendar year.

Audits will be conducted at Dallas/Fort Worth International Airport. However, if first agreed to by the Vice President of Audit Services, the audit can be conducted off the Airport, in which event Concessionaire shall reimburse the Board for reasonable transportation, food and lodging costs associated with the audit. Concessionaire shall allow the Board's representatives to photocopy any records the representatives determine to be necessary to conduct and support their audit. Concessionaire shall provide the Board's representatives with retrievals of computer based record or transactions the representatives determine to be necessary to conduct the audit. Concessionaire shall not charge the Board for reasonable use of Concessionaire's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette or other storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested, within seven calendar days. If such records are not received within 14 calendar days, the Board may assess liquidated damages in the amount of \$100 per day for each record, retrieval not received. Such damages may be assessed beginning on the 15th day following the date the request was made.

If, as a result of the audit, it is established that Concessionaire underpaid fees related

to Gross Receipts by three percent (3%) or more for the period audited, the entire expense of the audit shall be borne by Concessionaire. Any additional payments due shall forthwith be paid by Concessionaire to the Board with interest thereon at the same rate specified for late fees, from the date the subject rent or fees became due. If it is established that Concessionaire underpaid fees related to gross receipts by ten percent (10%) or more for the period audited, the Board shall be entitled to terminate this Lease for cause upon sixty (60) days' written notice, regardless of whether the deficiency is paid.

## **ARTICLE 5: PERMISSIBLE USES, NON-EXCLUSIVE**

### **Section 5.01 Permitted Use**

The Premises shall be used only for the purposes listed in **Article 1**.

### **Section 5.02 Non-exclusive Rights**

The rights granted herein for the operation of the permitted concession at the Airport shall be Non-exclusive. The Board may, at any time, award space (existing or newly created) to accommodate other concessionaires who may have rights similar to those non-exclusively granted herein. The Board may, in its sole discretion, grant exclusive rights to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

### **Section 5.03 Prohibited Acts**

Concessionaire shall not:

- A. Commit any nuisance on the Premises, or any other portion of the Airport, or do or permit to be done anything which may result in the creation or commission of such nuisance, including without limitation the placing or permitting of any radio, television, loudspeaker or amplifier outside the Premises or where the same can be seen or heard outside the Premises;
- B. Cause or produce or permit to be caused or produced upon the Premises or upon any other portion of the Airport or to emanate therefrom any unusual, noxious, or objectionable smokes, gases, vapors, or odors;
- C. Permit to be used or use the Premises for any illegal purpose or for any purpose not expressly authorized hereunder;
- D. Do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Premises or elsewhere, or do or permit to be done anything which may interfere with free access and passage in the Terminal Buildings or in the streets and sidewalks adjacent thereto;
- E. Do or permit to be done any act or thing upon the Premises or upon any other portion of the Airport which will invalidate or conflict with, or increase the cost of, any fire insurance policies or other insurance policies covering the Premises or any part thereof, or which in the opinion of the Board may constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated herein and elsewhere at the Airport;
- F. Without the Board's written consent, which consent is completely discretionary with the Board, install or permit to be installed coin-operated vending machines or pay

telephones on the Premises. The Board reserves the right to install and maintain, through independent contractors, such coin-operated vending machines or pay telephones on the Premises. G. Without first receiving Board approval, close any location, change operating hours of any location, or introduce any goods for sale from the Premises not specifically provided for herein without prior written approval from the Airport Concessions Department.

## ARTICLE 6: STANDARDS OF OPERATION

### Section 6.01 Products and Pricing

A. Concessionaire has caused to be attached hereto as Exhibit "C" a complete listing of all goods and/or services Concessionaire is allowed to sell from the Premises as well as the prices to be charged to the public. The execution of this Lease constitutes acceptance by the Board of the merchandise, services and pricing all as reflected on the referenced exhibit subject to other challenges as set forth in this Lease.

B. Concessionaire shall not add, delete or sell merchandise categories and/or services not reflected on the aforesaid exhibit without first receiving written approval from the Airport Concessions Department, which shall not be unreasonably withheld or delayed. It is agreed that in the event of any conflict between Concessionaire and another lessee as to specific items sold, the Board or its designee shall have the sole authority to resolve the conflict as it deems appropriate. Concessionaire shall provide for the sale of any additional merchandise or the furnishing of any additional service as directed by the Airport Concessions Department.

C. If Concessionaire offers merchandise promoting the City of Dallas or Fort Worth, or promoting tourist attractions in either city, then Concessionaire shall offer merchandise promoting both such cities and their respective tourist attractions, as instructed by the Airport Concessions Department in its reasonable discretion.

D. Concessionaire further understands the Board's objective to limit the prices charged for products and services sold to the public at the Airport to no more than 10 percent above "street level pricing" (the off-Airport prices charged for comparable products and services). Accordingly, Concessionaire warrants and represents that Concessionaire, its employees, successors and assigns, if any, will adhere to the following:

1. Prices charged at the Premises for each item of products and services shall be no more than ten percent (10%) higher than comparable products or services sold outside the Airport. The Concessions Department shall have the discretion to define what constitutes an individual item sold, including without limitation combinations or bundling of items.
2. In determining which products and services off-Airport are to be used for street-level pricing comparisons, the parties agree that if Concessionaire owns or operates a similar business selling like products or services to the public within twenty (20) miles of the Airport, then prices at said business (other than non-traditional venues) shall be deemed

comparable. If Concessionaire owns or operates more than one (1) similar business selling like products or services to the public within twenty (20) miles of the Airport, then the average of all of the locations' prices for each such product or service shall be deemed comparable. The Concessions Department shall have the discretion to determine whether Concessionaire's off-Airport businesses are similar and whether particular products or services are alike. If Concessionaire does not own or operate a similar business selling like products or services to the public within twenty (20) miles of the Airport, then the parties agree to use comparisons from other off-Airport businesses. Concessionaire may provide to the Concessions Department names and addresses of local area businesses that Concessionaire believes to be comparable, together with the specific products and services that Concessionaire believes to be comparable, but the Concessions Department shall have the discretion to reject said suggestions from Concessionaire and to select other businesses and other products and services. Prices from area non-traditional venues, such as amusement parks, other entertainment venues, stadiums, other airports, hotels, hospitals, and zoos shall not be acceptable for use in establishing street-level pricing—regardless of whether the Concessionaire owns or operates such businesses.

3. The Concessions Department may at its discretion require Concessionaire to submit documentation verifying compliance with the street-level pricing requirements herein. The Board may require Concessionaire to submit their price comparison using an automated process method. If Concessionaire fails to submit said documentation of compliance within the time specified by Board, or if documentation submitted is erroneous, Concessionaire may be required to reimburse Board for the cost of independent surveys or verifications commissioned by Board.
  4. The Concessions Department may at any time compel Concessionaire to lower prices within five (5) business days on specific items to bring them into compliance with street-level pricing, but nothing herein shall negate the general default and remedies provisions of this Lease.
  5. The Concessions Department may grant exemptions from street-level pricing for specific items, or may determine that specific items have no comparable products or services off-Airport, but any such exception or determination must be in writing and signed by the Vice President of Concessions, and under no circumstances shall Concessionaire be entitled to any such exemption.
  6. If Concessionaire is required by this Lease to participate in product exclusivity contracts made by Board, said exclusivity contracts may include minimum or maximum prices that shall be binding on Concessionaire notwithstanding any higher price allowed or lower price required by the street-level pricing provisions herein.
- E. At any time during the Term hereof the Board may make or cause to be made a

survey of prices being charged for products or services offered by Concessionaire from the Premises hereunder. If the survey concludes that any prices being charged by Concessionaire on the Premises are not in accordance with the terms of this Lease, Concessionaire shall pay the cost of the survey and the Board shall so notify Concessionaire in writing.

F. Street level pricing as required may be monitored by or on behalf of the Airport Concessions Department. Price comparison shall be made in the Dallas/Fort Worth Metroplex with the comparison being made on a minimum of ten commonly purchased product items in the store. The Airport Concessions Department, at its sole discretion, may require Concessionaire to increase the number of product items and types being compared. If the comparison finds Concessionaire to be charging more than ten percent (10%) above the average street price for the same or similar items (excluding sales promotions and value package deals) then Concessionaire will be required to reduce prices to the ten percent (10%) level. If Concessionaire is found by the Board to have repeatedly charged prices in excess of what is allowed, then the Board shall have the right to charge and collect a penalty equal to ten percent (10%) of one month's Gross Receipts applicable to the month immediately prior to the Board giving written notice of the penalty due.

G. Failure to comply with the provisions of this section shall constitute a material default. If Concessionaire, after notice to reduce prices and/or application of any penalty is later found to have again violated the street level pricing policy, the Board shall have the right to terminate this Lease for cause by giving sixty (60) days written notice to vacate the Premises. Failure of the Board to exercise its right to terminate this Lease shall not constitute a waiver of the Board's right to terminate at a later date for the same, similar or continued violation of the street level pricing policy.

### **Section 6.02 Product Exclusive Rights**

The Board may enter into contracts with one or more manufacturers or suppliers granting to said companies certain exclusive rights pertaining to the sale of food, beverages, other products and technologies at the Airport. Concessionaire agrees to include products and technologies of said exclusive supplier or manufacturer in Concessionaire's menu or merchandise list, as applicable and purchase said products via the Airport's exclusive agreement. Concessionaire further acknowledges that price ceilings for exclusive rights shall be set by the Board or its designee and shall be reviewed annually for price adjustments. If the Board grants such an exclusive right during the Term of this Lease, Concessionaire shall have sixty (60) days from receipt of written notice to comply with the exclusive right. Concessionaire agrees not to sell, display, advertise, or promote similar products of or from other manufacturers or suppliers unless Concessionaire has first received written approval from the Airport Concessions Department. The Airport Concessions Department approval may be withheld at its sole discretion.

### **Section 6.03 Merchandise and Materials Deliveries**

It is necessary due to the number of vendors in the Terminal buildings that the Board protect the airside operation area and the landside curb utilization integrity for the flow of airline passengers. Therefore, Concessionaire agrees that the Board, in its sole discretion, may require that all merchandise and materials ordered by Concessionaire for resale or operation of its business on the Premises be delivered only within the

times and at the locations authorized by the Airport Concessions Department. In transporting merchandise and materials associated with operating the concessions to and from the premises, Concessionaire shall use only carts or conveyances that are sealed, leak-proof, and equipped with wheels suitable for operating on carpet or other flooring without damage thereto, as approved by the Airport Concessions Department. Concessionaire shall not use the Airport train system for the purpose of transporting merchandise or products. The Board may require changes in the method or time of the delivery of Concessionaire's merchandise or materials.

#### **Section 6.04 Hours of Operation**

A. If the concession location is in Terminals A, B, C, or E, each location shall open at least one hour prior to the scheduled departure of the first flight originating from a holdroom area within three (3) gates either side of the entrance of such location, and shall remain open for customers until the last departure in the evening from such holdroom areas. In Terminal D, where the Concession areas are not adjacent to particular airline gates, Concession operating hours shall be from 5:30 a.m. to 10:00 pm daily or as determined by Concessions staff. Further, any flight delays within the three (3) gate distance shall require Concessionaire to remain open to the public to provide its service until said flight leaves the subject gate including all night, if requested by Board staff. The hours of operation may be changed by the Board from time to time in its sole discretion. Any change thereof sought by Concessionaire shall be subject to the approval in advance in writing by the Board or designee, which may be withheld in its sole discretion.

B. Failing to open for business within thirty (30) minutes of the required time, or closing more than thirty (30) minutes early, shall constitute a violation of this Section. Any violation shall entitle the Board to require Concessionaire to submit a written staffing plan to avoid future violations. Repetitive violations (3 or more in any calendar month) shall constitute a material default under this Lease. If the Board gives Concessionaire written notice of such a material default, and another such material default occurs subsequent to said notice, it shall entitle the Board to terminate this Lease for cause upon sixty (60) days' written notice of termination. Failure by the Board to exercise any such remedy shall not constitute a waiver of the Board's rights to do so for any material default.

#### **Section 6.05 Management**

Concessionaire shall select and appoint an employee who shall serve as Managing Director of Concessionaire's operations at Airport. Such person must be a qualified and experienced manager vested with full power and authority to operate the concession business herein authorized, and to control the conduct and demeanor of Concessionaire's agents, servants and employees. Said Managing Director shall be assigned to an office at or near the Airport, where he or she shall ordinarily be available during regular business hours and where, at all times during his or other absences, a responsible subordinate shall be in charge and available. Concessionaire shall inform the Airport Concessions Department of the telephone numbers and e-mail addresses and changes thereto of the local office and Managing Director.

#### **Section 6.06 Personnel**

A. Concessionaire shall, in the operation of the concession under this Lease,

employ or permit the employment of only such personnel as will assure a high standard of service to the public. All the personnel, while on or about the Premises, shall be clean, neat in appearance, uniformly attired (with appropriate identification badge displaying no less than Concessionaire and employee name) and courteous at all times. No personnel employed by Concessionaire, while on or about the Premises, shall use improper language; act in a loud, boisterous, or otherwise improper manner; or be permitted to solicit business in a manner that is offensive or otherwise unprofessional.

B. Concessionaire shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service to the public and compliance with this Lease. The satisfactory performance of the obligation hereunder shall be determined at the sole discretion of the Board. Concessionaire shall take all proper steps to discipline employees who participate in acts of misconduct on or about the Premises.

### **Section 6.07 Cash and Record Handling Requirements**

A. Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting practices and as necessary to provide timely accurate reports to the Board under this Lease. The cash-handling and record-handling procedures shall be incorporated in the written policy and rules and regulations of Concessionaire covering their accounting and handling of all transactions relating to merchandise and services under this Lease.

B. Adequate fidelity bonds or theft insurance shall be maintained by Concessionaire on its employees engaged in the operation of the concession hereunder.

C. The Board shall have the right to monitor and test all of Concessionaire's controls.

D. Without waiving its rights hereunder, where Gross Receipts have not been recorded by Concessionaire, Concessionaire shall pay to the Board the amount which would have been due to the Board, plus fifteen percent (15%). The Board shall have the right to make a reasonable estimate of the amount due and not less than the MAG for the months at issue.

### **Section 6.08 Level of Public Service**

A. Concessionaire shall maintain and operate the Premises in a first-class manner and shall keep them in a safe, clean, orderly and inviting condition at all times, all as satisfactory to the Board. Concessionaire shall provide prompt, courteous and efficient service adequate to meet the reasonable demand therefor and shall take all necessary steps to ensure polite conduct on the part of its employees and representatives.

B. In entering into this Lease, Concessionaire acknowledges the desire and obligation of the Board to provide the public and the air traveler high quality merchandise and a high level of public service. Therefore, Concessionaire covenants and agrees to offer for sale from the Premises only high quality merchandise and services, goods and prices to be determined in accordance with this Lease.

C. The Board shall have the right to monitor and test all of Concessionaire's

services by a responsible shopping service or Board personnel.

### **Section 6.09 Paging, Audio, Video Systems**

Concessionaire shall not be permitted to install any paging, audio or video systems within the Premises without advance written approval of the Airport Concessions Department.

### **Section 6.10 Credit Cards**

Concessionaire agrees to accept at least three (3) major credit cards for services or merchandise at the Premises.

### **Section 6.11 Making Change for the Public**

Concessionaire agrees to make change for the public. This will include servicing both persons making a purchase in the store and persons not making a purchase.

### **Section 6.12 Technology**

During the Term of the Agreement, the Airport reserves the right to implement technology and procedures and to further modify the systems from time to time. Concessionaire must collaborate and participate fully in the development and implementation of any technology changes and procedures of such systems. If the Board instructs Concessionaire to use technology, equipment, software and systems, the Board shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. If Concessionaire fails to comply within the time designated by the Board, penalties will apply.

All business transactions, which occur in the Premises must be completed by a register transaction and a receipt must be offered to each customer.

During the Term of the Agreement, the Airport reserves the right to implement a computerized point of sale system (POS) and to further modify the system from time to time. Concessionaire must cooperate fully in the development and implementation of such a system. Upon implementation, the Vice President of Airport Concessions may direct a new method of collection and payment by providing written notice to Concessionaire. Concessionaire must cooperate with the Airport in implementing such modified collection procedures. If the Board instructs Concessionaire to use POS technology, equipment, software and systems, the Board shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. If Concessionaire fails to comply within the time designated by the Board, penalties will apply.

During the term of the Agreement, the Airport reserves the right to implement technology and procedures for submitting Product Lists and reporting price comparisons. Concessionaire must cooperate with the Airport in implementing such technology and procedures. If Concessionaire fails to comply within the time designated by the Board, penalties will apply.

### **Section 6.13 Floor Signs at Concession Entrances**

Concessions are limited to one floor sign at the main entrance to the location. If location has three or more entrances, Concessionaire is limited to two (2) total signs.

Signs must touch the lease line and must not interfere with passenger traffic or

visibility in the concourse. Entrance signage is limited to sixty inches (60") in height and twenty-four inches (24") in width. Any and all signage must be professionally designed and produced in colors and materials consistent with the overall store image. Signage must be double sided. Signage is subject to approval from DFW Airport Concession management.

#### **Section 6.14 Trash and Refuse**

A. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises, using the Board's designated contractor. Concessionaire shall provide and use suitable sealed fireproof receptacles approved by Board Staff for all trash and other refuse on or generated in connection with Concessionaire's use of the Premises. Piling of boxes, cartons, barrels or other similar items in, or within view from, a public area shall not be permitted. Concessionaire shall comply with all Board rules and regulations relative to trash disposal that may be made from time-to-time, and Concessionaire shall pay the costs associated with trash removal and disposal, as provided in the Board's Schedule of Charges, as it may be amended from time to time.

B. In transporting merchandise, products, trash and refuse associated with operating the concession to and from the Premises, where not otherwise restricted or prohibited by this Lease, Concessionaire shall use only carts, vehicles, or conveyances that are sealed and leak proof and that are equipped with wheels suitable for operating on carpets or other flooring without damage thereto and which shall be approved by the Airport Concessions Department. Concessionaire shall not use the Airport train system for the purpose of transporting trash or refuse. The Board shall have the right to require changes in Concessionaire's transporting of trash and refuse, including time of day transport can occur, equipment used for each activity and routes of transport.

C. Concessionaires who sell food and beverage products are required to use collapsible containers for all "grab and go" and leftover packaging, rigid plastic containers are prohibited for "grab and go" food and beverage products. Collapsible packaging is required. Eco-friendly, paper-based containers are preferred.

#### **Section 6.15 Tenant Design Handbook**

Concessionaire agrees to adhere to all guidelines that are outlined in the Tenant Design Handbook.

### **ARTICLE 7: AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES**

Concessionaire shall not discriminate on the basis of race, color, national origin or sex in the performance of this Lease. Concessionaire shall comply with the requirements of 49 C.F.R. Part 23 and 26 and as amended, guidance issued from time to time by the Federal Aviation Administration ("FAA") regarding the interpretation of the regulations including but not limited to the Joint Venture Guidance in the administration of this Lease. Concessionaire agrees to include the above non-discrimination statement in any concession, management agreement, subcontract, purchase or lease agreement or other agreements covered by 49 C.F.R. Part 23 or 26. Failure of the Concessionaire to carry out these requirements may be a material

breach of this Lease, and could result in suspension of the right to operate, termination, or such other remedy, as the Board deems appropriate.

If Concessionaire proposes to terminate, substitute or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor or sub-concessionaire in the Lease prior or after Lease award, prior to such change the Concessionaire shall immediately submit for review and prior approval to the Business Diversity and Development Department (the Board's ACDBE Liaison Officer) reasonable documentation regarding the proposed change in the ACDBE participation. Concessionaire shall include the specific reasons for the change in ACDBE participation and must produce any and all documents and information regarding the proposed change.

Concessionaire shall make a good faith effort as defined in 49 C.F.R. Part 26 to replace an ACDBE subject to the changes outlined above that has failed to complete its concession arrangement, joint venture commitment, lease, sublease or subcontracting arrangement with a certified ACDBE, to the extent needed to meet the concession specific goal.

Concessionaire shall also comply with this provision regarding any proposed change in ACDBE participation arising from or relating to any assignment, sublease, or transfer of the obligations under this Lease.

Concessionaire shall timely submit reports and verifications requested by the Business Diversity and Development Department (BDDD), and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE commitment for this Lease. The Board shall have the right until three (3) years after the expiration or termination of this Lease, through its representatives, and at all reasonable time, to review books, records and financial information of the Concessionaire (and where applicable, all individuals, joint venture partners or team members or other business entities that are a party or engaged in concession activity under this Lease) requested by the Business Diversity and Development Department to substantiate compliance with 49 C.F.R. Parts 23 and 26 as amended, and any guidance issued by FAA from time to time regarding the interpretation of the federal regulations.

The ACDBE participation percentage commitment made by Concessionaire at the time of Lease award is deemed to be contractual in nature. Therefore, failure of Concessionaire to meet the ACDBE participation percentage commitment in the Lease, to the extent needed to meet the concession specific goal, may constitute a material breach of the Lease. The BOARD shall have the right to suspend the right to operate, terminate the Lease, or pursue other such remedies at law or in equity to which the BOARD may be entitled.

Concessionaire shall file with the Business Diversity and Development Department and Department of Concessions on the anniversary date of the ACDBE's certification, a written affidavit, in a form acceptable to the Business Diversity and Development Department, stating any change(s) in the circumstances affecting the ACDBE's ability to meet ACDBE certification eligibility, including but not limited to size, ownership or

control criteria of 49 C.F.R. Part 23 and 26 or any material changes in the information provided with the ACDBE's application for certification.

Concessionaire shall also file with the Business Diversity and Development Department and Department of Concessions on an annual basis on or before January 1<sup>st</sup>, or as requested by the Vice President of Business Diversity or designee, a written affidavit, in a form acceptable to the Business Diversity and Development Department, stating any change(s) in the circumstances affecting the Concessionaire's ACDBE participation. The written affidavit shall show Concessionaire's compliance with 49 C.F.R Part 23 and 26 and the FAA Joint Venture Guidance including but not limited to capital contribution, roles, responsibilities, control, percentage of equity ownership and address any material change(s) in the ACDBE's participation in the operations authorized by the Lease and information provided in the Concessionaire's proposal regarding ACDBE participation to the Board.

## **ARTICLE 8: CONSTRUCTION AND CAPITAL INVESTMENT**

### **Section 8.01 Capital Investment Treatment**

A. If a minimum capital investment in the Premises is set forth in **Article 1**, Concessionaire shall use due diligence to complete the approved project. Later remodeling shall be done as reasonably deemed necessary by the Board; however, work subsequent to that described in the first sentence hereof shall not be considered "Capital Investment" as defined in this Article, unless the project and capital dollars are first approved in writing by the Airport Concessions Department as qualifying for capital investment treatment. Capital investment cost estimates on new construction or remodeling as well as renderings of the project shall be first submitted to the Airport Concessions Department prior to construction or installation thereof. Capital investment costs shall be amortized on a straight-line basis over the Term of this Lease. Title to all additions shall vest in the Board immediately upon installation by Concessionaire. The final cost of all items subject to amortization as defined in this Article, shall be certified to the Board by Concessionaire's Chief Financial Officer within ninety (90) days after installation on the Premises. Failure to timely file a Certification shall relieve the Board of any obligation on unamortized investments otherwise provided for in this Lease.

B. Capital investment(s), and any obligation of the Board to Concessionaire for any unamortized capital investment as may be provided in this Lease, shall be defined and subject to the following conditions:

Capital Investment dollars are those dollars spent in actual construction or remodeling as well as architectural and engineering fees relating thereto. Capital Investment dollars shall also include dollars paid to the Board or to a prior tenant of the space, in order to acquire a release of the space for Concessionaire's use.

Capital Investment shall be reported to the Airport Concessions Department in written form itemizing each element of expense. Further, the report must clearly reflect the total capital investment claimed per location. The report shall be submitted within ninety (90) days of the completion of each project (each location being a separate project), and Concessionaire shall during the Term hereof and for a period of twelve (12) months following termination retain all records in support of each report.

The Board shall have the right to audit each capital investment report at any time during the term of this Lease and for a period of twelve (12) months following termination.

In the event of an audit, any itemization of capital investment costs not supported by proper documentation, such as invoice, receipts, canceled checks, shall be disallowed.

Any obligation by the Board to pay unamortized capital investment after a termination without cause shall be based upon Concessionaire's timely submitted report as provided herein.

C. Capital investment costs associated with each shop location shall be reasonable in scope and subject to Board audit. Any shop being remodeled or newly constructed shall be renovated or constructed only after Concessionaire submits to the Board the estimated cost of the capital investment.

### **Section 8.02 Theme, Design and Decor**

The theme, design and decor of each location shall not deviate from that which is in keeping with the Tenant Design Handbook and which decor is first approved in writing by the Board staff. Any changes desired by Concessionaire shall be submitted to the Airport Concessions Department for approval. Changes that are made without approval will constitute a breach of this Lease.

### **Section 8.03 Due Diligence**

Within thirty (30) days from the date of the execution of this Lease, Concessionaire shall submit to Board the final plans and specifications for the construction of Concessionaire's location in accordance with Board's current design criteria. Concessionaire shall commence construction of said project within thirty (30) days from the date Board approves Concessionaire's plans and issues its permit and construction approval letter to Concessionaire, and Concessionaire shall diligently proceed with construction so as to complete said project and open for business on or before 90 days from issuance of the approval letter. Concessionaire acknowledges that the financial success of the Airport depends, in part, on both (i) the completion of the construction, remodel and renovation of the Premises as herein required; and, (ii) Concessionaire's opening for business in a timely manner, and that Board's damages arising from Concessionaire's failure to do so are extremely difficult and impracticable to fix. Therefore, should Concessionaire fail to either complete said project as required or open the Premises for business as required, Concessionaire shall pay to Board as liquidated damages and not as a penalty, upon receipt of invoice, the sum of Two hundred Fifty Dollars (\$250.00) per day per any and any location not in compliance. Concessionaire agrees that said amount of Two hundred Fifty Dollars per day per location is fair compensation to Board for said liquidated damages. In the event the Facility is not open for business on the date that is sixty (60) days after the scheduled opening date, the Airport shall have the option to terminate this Lease, or to remove the applicable facility from the Lease, any rent components based on square footage shall be removed accordingly. Tenant shall be liable for all damages associated with such termination or removal.

## **Section 8.04 Construction by Concessionaire**

Concessionaire shall not erect any structures, make any improvements or modifications, or do any other construction work on the Premises, or alter, modify, or make additions, improvements, or repairs (except emergency repairs) to, or replacements of any structure now existing or built, or install any fixtures (other than trade fixtures removable without permanent injury to the Premises or improvements thereon) without the prior written approval of the Board as provided herein and as more specifically provided in the DFW Design Criteria Manual and the Board's Tenant Design Handbook, as they may be amended from time to time in the Board's sole discretion. In the event that any construction, improvement, alteration, modification, addition, repair (excluding emergency repairs), or replacement is made without such approval, or in a different manner than approved, the Board may terminate this Lease in accordance with the provisions for termination herein, or upon notice to do so, Concessionaire will remove the same, or, at the discretion of the Board, cause the same to be changed to the satisfaction of the Board. In case of any failure on the part of Concessionaire to comply with the notice, the Board may, in addition to any other remedies available to it, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to the Board upon demand.

## **Section 8.05 Preliminary Activities**

Prior to commencement of any construction, demolition, additions or other modifications to the Premises during the term of this Lease, Concessionaire shall familiarize itself with the Board's Tenant Design Handbook and the DFW Design Criteria Manual. Concessionaire shall comply with the provisions of the Tenant Design Handbook and the prescribed provisions of the DFW Design Criteria Manual.

## **Section 8.06 Construction Contracts, Liens and Certificate of Occupancy**

A. Concessionaire shall include in all construction contracts entered into in connection with any or all of the construction work aforesaid, a provision requiring the contractor, or, in the alternative, Concessionaire, to indemnify, hold harmless, defend and insure the Airport Board, and the Cities of Dallas and Fort Worth including but not limited to the Board's directors, officers, agents, employees, and the Cities' councilmembers, officers, agents and employees against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of the Board, its directors, officers, agents, employees or contractors, acting within the course and scope of employment. Concessionaire shall furnish, or require the contractor to furnish, insurance, as required herein.

B. Concessionaire shall also include in any construction contract such provisions as may be required by the Board relating to the operations of the contractor on the Airport; such provisions, among any other, shall include the requirement for a payment and Performance Bond for any work in excess of \$100,000 to be performed by Concessionaire or the contractor.

C. Concessionaire shall not allow any liens to attach to the Premises or Concessionaire's leasehold interest therein without prior written approval of the Board. Prior to the commencement of any addition or non-emergency repair of a sum

greater than that stated above, Concessionaire or its contractor shall furnish the Board, on forms attached to the Tenant Construction Application, and without expense to the Board, a surety bond issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by the Board, with Concessionaire's contractor or Concessionaire as principal, in a sum not less than one hundred percent (100%) of the estimated or actual, as the case may be, total cost of the contract or contracts for the addition or non-emergency repair of the Premises or any part thereof. The bond shall guarantee prompt payment to all persons supplying labor, materials, provision, supplies and equipment used directly or indirectly by the contractor, subcontractor(s) and suppliers in the prosecution of the work provided for in the construction contract and shall provide for the full performance of the work contracted for by Concessionaire, and shall protect the Board from any liability, losses or damages arising therefrom. Upon completion of construction, Concessionaire shall obtain lien waivers from all contractors and subcontractors providing labor or materials to the construction project.

D. Prior to entering into any contract for construction work, Concessionaire shall submit to the Airport Project Coordinator, or his/her designee as named by the Airport Concessions Department, for approval the name of the general contractor and/or construction manager to whom Concessionaire proposes to award the contract for the construction work and/or construction management. The Airport Project Coordinator shall have the right to approve or disapprove any such contractor and/or construction manager and approval shall not be unreasonably withheld or delayed.

E. Concessionaire further agrees that all construction work to be performed, including all workmanship and materials, shall be of first-class quality and shall be in accordance with the plans and specifications approved by the Airport Project Coordinator. As used herein, the term "first-class quality" shall mean of the same quality as buildings used or to be used for the same or similar purposes already constructed on the Airport. Concessionaire agrees that it shall deliver to the Airport Project Coordinator, "as built" record documents of the construction, addition and other modifications constructed by it on the Premises and shall, during the term of this Lease, keep said documents current, showing therein any changes or modifications which may be made by it in or to the Premises or additions thereto. Concessionaire shall further provide the information described in this paragraph as described in the Tenant Design Handbook.

F. When the construction work hereinabove provided has been completed, Concessionaire shall certify to Board that such construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders. When the Airport Project Coordinator is satisfied that such construction is so in compliance, he shall deliver a Certificate of Occupancy to Concessionaire.

G. Concessionaire shall not, during the Term hereof, without first submitting for review the appropriate plans as may be required in the Tenant Design Handbook and obtaining written approval thereof, erect any additional structures, make any other additions, structural repairs, or do any other construction work on the Premises, or alter, modify, or make additions, improvements or structural repairs to or replacements of, any structure now existing or built at any time during the Term hereof, or install any fixtures except trade fixtures, furniture and other items of

personal property removable without material damage to the structure. Concessionaire shall further update the "as built" record documents and computer software to reflect said additions and changes. If the structure is damaged by such removal, it shall be immediately repaired by Concessionaire.

### **Section 8.07 Inspection of Premises**

Board representatives may enter upon the Premises at any and all reasonable times during the term of this Lease for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to rights of the Board hereunder. Board representatives may also take photographs as deemed necessary during inspection of premises. Board representatives will make best efforts not to interfere with Concessionaire's business operation.

### **Section 8.08 Default During Design and Construction**

In the event of default of Concessionaire during the design or construction period of any additions hereunder, the Board shall have the right, which right shall be set forth in all contracts between Concessionaire and its independent contractors and suppliers for work or materials relating to additions hereunder, to replace Concessionaire with itself and to continue the contracts of Concessionaire with said independent contractors and suppliers. A provision substantially similar to the following shall comply with this Section:

**"The Board of Directors of the Dallas/Fort Worth International Airport, acting for the Cities of Dallas and Fort Worth (and herein referred to as the "Board"), shall have the right, but not the obligation, in the event that the Board elects to replace Concessionaire with itself under the terms of the Board's contract with Concessionaire, to continue this contract between Concessionaire and contractor, upon assuming in writing all the liabilities of Concessionaire under this contract between Concessionaire and contractor; and Board thereby shall receive all the rights, title, interests and remedies that Concessionaire has under the terms of this contract between Concessionaire and contractor. The Board shall have the right to demand, collect (including suit for damages and cost of litigation and reasonable attorney fees) from Concessionaire all costs incurred by the Board in assuming the obligations of Concessionaire as provided in this Section."**

### **Section 8.09 Signs**

Concessionaire shall have the right to install and maintain signs on the Premises, provided that the design, installation and maintenance of all signs shall be subject to the terms of this Section and comply with the Tenant Design Handbook and DFW Design Criteria Manual. Concessionaire further acknowledges the Board's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Terminal Buildings. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to the Board, through a Tenant Construction Application, the size, design, content, construction or fabrication and intended location of each and every sign it proposes to install on or within the Premises and that no signs of any type shall be installed on or within the Premises without the specific prior written approval of the Board as to the size, design, content, construction or

fabrication and location, which approval shall not be unreasonably withheld or denied if the proposal is in compliance with the Board's criteria governing signage.

### **Section 8.10 Refurbishment**

If this Lease is for a Term of more than five years, Concessionaire shall refurbish the Premises at the midpoint of the Term. Said refurbishment shall include without limitation all refinishing, repair, replacement, redecorating, repainting and re-flooring necessary to keep said areas in first class condition and shall comply with all other terms and conditions of this Article. Concessionaire shall submit its plans for refurbishment to the Airport Concessions Department for review and approval within ninety (90) days following the beginning of the fourth year of operation. All refurbishment will be completed prior to the midpoint of the lease. Upon completion of the refurbishment, Concessionaire shall provide certified documentation to the Airport Concessions Department of all capital investment associated with the refurbishment within ninety (90) days of completion, which shall become eligible for reimbursement in the event of early termination according to Article 12.

## **ARTICLE 9: MAINTENANCE, UTILITIES AND REPAIRS**

### **Section 9.01 Concessionaire's Maintenance Obligations**

A. Except for such maintenance of the Premises as is to be provided by the Board under the express terms of this Lease, Concessionaire shall be obligated, without cost to the Board, to maintain the Premises and every part thereof, including personal and trade fixtures, in good appearance and repair, and in a safe as-new condition. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all leasehold improvements on the Premises (including, without limitation thereto, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by the Board). All of the maintenance, repairs, finishing and replacements shall be of quality at least equal to the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of the Airport Concessions Department by a Tenant Construction Application.

B. If it is determined that the maintenance is not in compliance herewith, the Board shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in the Board's notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of such written notice, or is thereafter not diligently prosecuted to completion, the Board or its agents shall have the right to enter upon the Premises and perform the subject maintenance, and Concessionaire agrees to promptly reimburse the Board for the cost thereof, including such charges as are provided in the then current Schedule of Charges of the Board.

C. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a directive from the Airport Concessions Department. At the sole discretion of the Board, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is removed.

D. Concessionaire agrees to comply with all present and future laws, orders and regulations, including any rules, regulations and procedures promulgated by the Board regarding centralized maintenance and distribution. If and when any system for

centralized maintenance and distribution are put in place for the Terminals that is capable of appropriately allocating to Tenant its proportional share of the cost, Concessionaire must pay its proportional share as determined by the Board of the portion of those costs actually charged by any third party contractor to the Board or billed directly to Concessionaire by the third party contractor.

### **Section 9.02 The Board's Maintenance and Utility Obligations**

A. The Board shall provide structural maintenance of the Terminal Buildings and shall (except as provided in the immediately following sentence) maintain and repair the exterior walls of the Premises in the Terminal Buildings. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.

B. The Board provides mains and utility lines throughout the terminal buildings. Concessionaire, at its sole cost, shall tie into the mains and the utility lines at the locations as specified by the Board. Supplemental air, electrical needs or other utilities required by Concessionaire in excess of what is customarily available in the terminal buildings will be, if approved, at the expense of Concessionaire.

C. The Board, its officers, employees, representatives and contractors may, for the benefit of Concessionaire, or for the benefit of others than Concessionaire at the Airport, maintain the utilities within the Premises and enter upon the Premises at all reasonable times to make the repairs, replacements and alterations as may, in the opinion of the Board, be deemed necessary or advisable, and from time to time, to construct or install over, on, in, or under the Premises new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that the Board shall exercise such right in a manner so as to interfere as little as reasonably possible with Concessionaire's operations.

D. The Board agrees that it will at all times maintain and operate with adequate, efficient and qualified personnel and keep in good repair the Terminal Buildings and all appurtenances, facilities and services now or hereafter connected therewith; provided, however, Concessionaire's sole remedy for interruption of any utilities provided by the Board shall be an abatement of the MAG on a per diem basis. Concessionaire shall have no remedy against the Board for interruption of any utilities or failure of any systems not caused by the Board.

E. The Board may implement a shared telecommunications system for telephone, facsimile, local access, long distance service, internet, intranet, or other such services. Concessionaire shall use such systems as and when implemented by the Board.

### **Section 9.03 Damage and Destruction**

A. If all or a portion of the Premises are partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by the Board at its own cost and expense subject to the limitations set forth herein, provided, however, that if the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees, Concessionaire shall be responsible for immediately reimbursing the Board for the cost and expenses incurred in the repair.

B. If such damages shall be so extensive as to render all or a portion of the Premises untenable, but capable of being repaired in thirty (30) days, the Premises

shall be repaired with due diligence by the Board at its own cost and expense, subject to the limitations as set forth herein, and rentals and fees payable hereunder shall be reasonably abated in whole or in part depending on the amount and nature of the Premises rendered untenable, from the time of the damage until the time the affected Premises are fully restored and certified by the Board's engineers as ready for occupancy; provided, however, that if the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees, the rentals and fees will not abate and Concessionaire shall be responsible for reimbursing the Board for the cost and expenses incurred in the repair and within thirty (30) days following completion.

C. In the event that all or a portion of the Premises are completely destroyed by fire, explosion, the elements, public enemy or other casualty or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, the Board shall be under no obligation to repair, replace and reconstruct the affected Premises, and the Board may terminate this Lease as to the affected Premises. If terminated, or during any period of non-tenability, rentals and fees payable hereunder shall abate as to the part of the Premises thus destroyed as of the time of the damage or destruction. If within twelve (12) months after the time of the damage or destruction the Premises shall not have been repaired or reconstructed, subject to extension due to delays for force majeure events, Concessionaire may cancel this Lease as regards the affected Premises by giving written notice of cancellation to the Board within ten (10) days after the expiration of such 12-month period, time being of the essence with respect to the giving of such notice. Notwithstanding the foregoing, if all or a portion of the Premises are completely destroyed as a result of the negligent act or omission of Concessionaire, rentals and fees shall not abate and the Board may, in its discretion, require Concessionaire to repair and reconstruct the affected Premises within twelve (12) months of the destruction and pay the costs therefor; or the Board may repair and reconstruct the affected Premises within twelve (12) months of the destruction and Concessionaire shall be responsible for immediately reimbursing the Board for the costs and expenses incurred in the repair.

D. It is understood that, in the application of the foregoing subsections, the Board's obligations shall be limited to repair or reconstruction of the affected Premises, where applicable, to the same extent and of equal quality as existed at the date immediately preceding the commencement of this Lease. Replacement and redecoration of improvements constructed and/or installed by Concessionaire and replacement of Concessionaire's furniture, fixtures, equipment, and supplies shall be the responsibility, and at the sole cost of, Concessionaire and any such replacement, redecoration and refurbishing or re-equipping shall be of equivalent quality to that originally installed hereunder.

#### **Section 9.04 Actual Repair Required**

Should additions or other improvements constructed and/or installed by Concessionaire be destroyed or damaged, they shall in all instances be repaired or replaced by Concessionaire whether or not the damage or destruction is covered by insurance, provided that this Lease has not been canceled in accordance with the terms hereof. If, after restoration by the Board in accordance with this Article, Concessionaire fails to repair or replace the damaged additions or other improvements subject to a schedule approved by the Board, and provided that this

Lease has not been canceled, the Board may make the repairs or replacements and shall thereafter be entitled to reimbursement from any insurance proceeds covering the loss. If the insurance proceeds are insufficient to cover the cost and expense of the repair or replacement, Concessionaire shall pay the Board the difference.

#### **ARTICLE 10: CASH DEPOSIT OR SURETY BOND**

If Concessionaire is obligated to furnish a Cash Deposit or Surety Bond pursuant to **Article 1**, Concessionaire shall furnish such deposit or bond, at Concessionaire's sole cost and expense, within thirty (30) days of execution of this Lease, **and shall keep such deposit or bond in full force and effect during the complete term of this Lease and any Extension of this Lease and any holdover period as applicable, as security for the full performance of every provision of this Lease by Concessionaire.** The Board may apply all or any part of the deposit or bond to cure any default by Concessionaire hereunder, and Concessionaire shall restore to the deposit or bond all amounts so applied upon receipt of invoice from the Board. If a Surety Bond is permitted, it shall be issued by a surety company authorized and licensed to transact business in the State of Texas, in the face amount as required herein, with the Airport Board as obligee, and shall not be subject to reduction in coverage or cancellation except after thirty (30) days' written notice by certified mail, return receipt requested, to the Board. The surety on the bond shall, by appropriate notation thereon, stipulate and agree that no change, extension of time, alteration or addition to the terms of this Lease, shall in any way affect its obligations under the bond, and shall consent to waive notice of any such matters. In the event of cancellation of the bond, and Concessionaire's failure to provide a substitute deposit or bond within (15) days from the date of the cancellation, then such failure shall be deemed a material default by Concessionaire.

#### **ARTICLE 11: INSURANCE AND INDEMNIFICATION**

All Insurance shall be filed using the technology and procedures designated by the Board. If the Board instructs Concessionaire to file Insurance using future technology, the Board shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

##### **Section 11.01 Insurance**

###### **A. GENERAL REQUIREMENTS**

Concessionaire shall, at its expense, maintain in effect not less than the following coverage and limits of insurance, which Concessionaire shall maintain with insurers, policy forms and deductibles satisfactory to the Board. If the coverage fails to comply with these requirements, Concessionaire agrees to amend, supplement or endorse the existing coverage to comply, at no additional cost to the Board, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. Any deviation from the requirements outlined below requires the prior written approval of the Department of Risk Management.

All policies must be written through a licensed company authorized by the Texas State Board of Insurance to transact that class of insurance business in the State of Texas, with a minimum rating of 'A -', and 'VII' by A. M. Best Company. If the rating of any insurer should fall below this standard, Concessionaire shall cause the policy to be

replaced promptly by an acceptable insurer.

All policies shall designate the following parties as "Additional Insured's":

***"Dallas/Fort Worth International Airport Board and the cities of Dallas and Fort Worth, Texas"***

Should this Lease require the use of contractors, it will be the sole responsibility of Concessionaire to require contractors to provide and maintain the insurance limits and coverage required herein, or to provide said insurance coverage for the contractors by designating the contractors as additional insureds, either by a blanket additional insured endorsement or by specific endorsement.

All policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.

If any policy is in excess of a deductible or self-insured retention (SIR), the amount of such deductible or SIR must be clearly identified, and may not exceed one (1%) percent of Concessionaire's net worth. The Board reserves the right to reject any deductible or SIR, or require Concessionaire to provide a bond at no additional cost to the Board.

All policies must be primary with respect to coverage provided for the Board.

All policies must be non-contributory with other coverage or self-insurance available to the Board.

**B. REQUIRED COVERAGE AND LIMITS**

Workers' Compensation..... Statutory Coverage

All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for the Board, or entering upon the Board's premises, must be covered by Workers Compensation.

If Concessionaire is a sole proprietorship without employees and will not be using any subcontractors in the performance of this Lease, it may substitute the following for workers compensation insurance: Concessionaire must provide the Board's Risk Management Department with proof of medical insurance covering the sole proprietor and, as sole proprietor.

Employer's Liability ..... \$500,000 Each Accident  
\$500,000 Each Disease, Each Employee  
\$500,000 Each Disease Policy Limit

Commercial General Liability (CGL)  
Limit Any One Occurrence ..... \$ 1,000,000  
Medical Payments..... \$ 5,000  
Damage to Rented Premises ..... \$100,000  
Personal and Advertising Injury ..... \$1,000,000

Policy Aggregate (per location or per project)..... \$2,000,000  
Products and Completed Operations Aggregate ..... \$2,000,000

CGL coverage applies unless Concessionaire provides only trucking, (no premises or operations other than driving, loading/unloading), or garage operations (see below).

#### Business Automobile Liability

Combined Single Limit for Each Accident ..... \$500,000

Coverage must apply to all vehicles (owned, non-owned, or hired) operating on the Board's site/location, or transporting the Board's personnel or property off the Board's site, except vehicles operated by Concessionaire or Concessionaire's employees commuting in personal vehicles to the Board's parking facilities, in which case Concessionaire must carry only Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.

Auto pollution liability coverage is required on vehicles hauling hazardous cargo up to the limit required to comply with TXDOT filings.

If your operations are solely a garage (vehicle maintenance and repair), Concessionaire must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

All liability policies, except Pollution & Professional, must be written on an "Occurrence Form." Neither "Modified Occurrence" nor "Claims-Made" policies are acceptable. If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of Concessionaire's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Aggregate limits of all liability policies shall be "per project" or "per location," as appropriate. If any aggregate limit is reduced by 25% or more by reserved or paid claims, Concessionaire must notify the Board and promptly reinstate the required aggregates.

All Liability policies must provide unlimited defense costs in excess of policy limits.

All liability policies shall name the Board and the Cities of Dallas and Fort Worth as "Additional Insureds," including coverage for Products/Completed Operations.

All liability shall include Broad Form Contractual Liability covering the indemnification provisions of this Lease.

All liability policies shall cover loss caused by Concessionaire's subcontractors, independent contractors, suppliers or other parties providing goods or services in connection with this Lease.

All liability policies must contain a "severability of interests" provision.

All liability policies must cover cross-suits between insureds.

If Concessionaire's operations involve any construction, no liability policy shall contain exclusions for hazards of explosion or collapse.

If Concessionaire's operations involve any construction, reconstruction, repair or similar work, no liability policy may contain any exclusion for such work.

C. ADDITIONAL COVERAGE AND LIMITS

Excess / Umbrella Liability – Provide applicable coverage

Air Operations Area

(When work is required within air operations area) ..... \$10,000,000

Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

Secure/Sterile Side Operations

(When work is required within secure side of terminal, but outside air operations area)..... \$5,000,000

Excess/Umbrella Liability coverage must apply in excess of all required primary liability insurance, and must be at least as broad as the underlying liability insurance.

Excess/Umbrella Liability coverage limit may be satisfied by adding the amounts of CGL and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000. The same would be applicable for Business Auto Liability and Excess/Umbrella Liability to arrive at a total of \$5,000,000 / \$10,000,000.

Pollution Liability Insurance..... \$1,000,000

If Concessionaire has any exposure to asbestos, lead, mold, (including any work that could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, Concessionaire shall provide appropriate Pollution Liability or Environmental Impairment insurance.

If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this Lease.

Liquor Liability (if liquor is served by Concessionaire or subtenant) ..... \$3,000,000

Not limited to "host liquor" coverage.

D. CERTIFICATION OF INSURANCE

Upon execution of this Lease or prior to commencement of work, whichever is first, Concessionaire shall have its insurance agents, brokers, or Insurers enter

Concessionaire's policy information into a Board-designated automated insurance reporting system and link Concessionaire's policy data to the Board. Concessionaire shall cause Concessionaire's insurance data to be kept current on the Board's designated automated insurance reporting system for the period of time Concessionaire is responsible pursuant to this Lease. Concessionaire further agrees to cause its insurance agents, brokers or Insurers to properly register, use and pay any applicable fees for using the Board's designated automated insurance reporting system.

Paper, faxed or e-mailed insurance certificates are not acceptable.

Concessionaire shall cause its insurance agent, broker or insurer to enter any restrictive or exclusionary provisions or endorsements that may affect Concessionaire, the Board, and those required to be named as Additional Insureds, into "Special Exclusions" in the Board's designated automated insurance reporting system.

Concessionaire, upon oral or written request, shall furnish copies of policies, certified by an authorized representative of the insurers, within ten (10) days of request.

All insurance policies shall contain a provision that written notice shall be given to the Board's Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium. In the event Concessionaire is not notified that an insurer intends to terminate or not renew a policy or reduce coverage below requirements of this Lease, Concessionaire shall arrange acceptable alternate coverage to comply with said requirements and cause replacement coverage data to be obtained. In addition, Concessionaire shall cause its agent, broker or insurer to enter a cancellation date into the Board's designated automated insurance reporting system, as soon as the effective date is known to the agency, brokerage, or insurer (if insurer enters data).

No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance requirements of this Lease.

Approval, disapproval or failure to act by the Board regarding any insurance obtained by Concessionaire shall not relieve Concessionaire of responsibility or liability for damages and accidents as set forth herein, nor shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate Concessionaire from liability.

## **Section 11.02 Indemnification and Hold Harmless**

**A.** Concessionaire covenants and agrees to indemnify and hold harmless the Board, and the Cities of Dallas and Fort Worth, including but not limited to the Board's directors, officers, agents, employees, and the Cities' council members, officers, agents, and employees, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon them directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE's activities under this Lease, including any acts or omissions of Concessionaire, any agent, officer, director, representative, employee, consultant, subcontractor or subtenant of Concessionaire, and their respective officers, agents, employees, directors, representatives and subcontractors while in the exercise of

performance of the rights or duties under this lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the gross negligence of Board in instances where such negligence causes personal injury, death, or property damage. In the event Concessionaire and the Board are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the Board under Texas law and without waiving any defenses of the parties under Texas law. The rights and obligations set forth in this Section and all indemnification obligations of Concessionaire elsewhere in this Lease shall survive the termination or expiration of this Lease.

B. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

C. Concessionaire shall promptly advise the BOARD in writing of any claim or demand against the BOARD or Concessionaire known to Concessionaire related to or arising out of Concessionaire's activities under this lease.

## **ARTICLE 12: TERMINATION WITHOUT CAUSE**

If the Board determines in its sole discretion that it is necessary or desirable that this Lease be terminated, that Concessionaire, its subtenants, successors or assigns vacate the Premises, the Board may terminate this Lease or compel Concessionaire to vacate part or all of the Premises, provided that the Board, in its sole discretion, either leases Concessionaire replacement space within the Terminals of the approximate size of the space vacated on the same terms (which does not require an extension of the "Term" of this Lease) or compensates Concessionaire for its reasonable damages arising from said termination. For purposes of this Article, such reasonable damages shall be exclusively defined as the unamortized capital investment in the Premises, as certified pursuant to Section 8.01. However, the Board shall have no obligation or liability to pay any cost associated with the replacement space, the cost of moving or any claim or demand for lost revenues or profits associated with the termination of this Lease or the relocation from the Premises. Reimbursement, if any, due Concessionaire shall be paid within sixty (60) days after Concessionaire vacates the Premises as required by this Article.

## **ARTICLE 13: DEFAULT AND REMEDIES**

### **Section 13.01 Concessionaire Remedies**

A. This Lease may be terminated by Concessionaire at any time after the happening, and/or during the existence, of one or more of the following events:

(i) The permanent abandonment of the Airport or the permanent removal of all certificated passenger airline service from the Airport.

(ii) The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in a manner as substantially to restrict Concessionaire for a period of at least one hundred fifty (150) days from operating thereon.

(iii) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of the injunction for a period of at least one hundred fifty (150) days.

(iv) The default by the Board in the performance of any covenant or agreement herein required to be performed by the Board and the failure of the Board to remedy the default for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

B. In the event of any Board default, recovery of damages by Concessionaire (excluding reasonable and necessary attorneys fees and costs) shall be limited to Concessionaire's unamortized capital investment in that part of the Premises affected by the default, as certified pursuant to Section 8.01, and said default by the Board shall not prejudice the Board's right to terminate the entire Lease without cause on the conditions set forth above. CONCESSIONAIRE EXPRESSLY ACKNOWLEDGES (i) THAT THE BOARD'S INVESTMENT IN THE AIRPORT TERMINALS IS MUCH GREATER THAN CONCESSIONAIRE'S INVESTMENT IN THE CONCESSION, (ii) THAT THE BOARD MUST HAVE TOTAL CONTROL OVER THE MANAGEMENT OF THE TERMINALS FOR THE SAFETY, CONVENIENCE AND COMFORT OF THE TRAVELING PUBLIC, (iii) THAT THE BOARD IS OBLIGATED BY FEDERAL LAW TO CHARGE RATES THAT ARE AT LEAST FULLY COMPENSATORY OF THE COSTS INCURRED BY THE BOARD, AND (iv) THAT THIS LIMITATION ON CONCESSIONAIRE'S DAMAGES AND REMEDIES IS THEREFORE FAIR AND REASONABLE.

### **Section 13.02 Board Remedies**

A. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, this Lease may be terminated by the Board at any time in the event:

(i) Concessionaire shall be in arrears in the payment of the whole or any part of the Rent, fees or charges due hereunder for a period of thirty (30) days after receipt of written notice from the Board of the failure to make the required payments;

(ii) Concessionaire is late in paying Rent, fees or charges more than six (6) times during any year, or more than twelve (12) times during the Term of this Lease, even if all late payments have been paid prior to termination, including Late Payment Charges;

(iii) Concessionaire shall make a general assignment for the benefit of creditors;

(iv) Concessionaire shall abandon the Premises or any part thereof;

(v) Concessionaire is found to have made a material misrepresentation in bidding for or otherwise soliciting the concession, including without limitation a misrepresentation concerning Concessionaire's experience in operating a retail concession of the type authorized by this Lease;

(vi) Concessionaire shall otherwise default in the performance of any of the covenants or conditions required herein to be kept and performed by Concessionaire, and the default continues for a period of thirty (30) days, or such other time as may be

provided herein, after receipt of written notice from the Board of the default; provided, however, that if the nature of the default is such that it cannot be cured within thirty (30) days but may with diligence be cured within a reasonable amount of time not to exceed ninety (90) days, Concessionaire shall not be deemed to be in default if it, or its nominees, shall within the applicable period commence performance and thereafter diligently prosecute the same to completion.

B. If Concessionaire has multiple concession locations pursuant to this Lease, any default constituting grounds for termination as to any location shall entitle the Board to terminate this Lease as to all locations, or fewer than all locations, in the Board's sole discretion. In the event the Board terminates this Lease for cause, the Board shall not be obligated to compensate Concessionaire for its unamortized capital investment.

C. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, if the Board is entitled to terminate the Lease for cause, then the Board shall also, in its sole discretion, be entitled (with or without terminating the Lease) to recover damages measured by the total rent to be paid over the remainder of the Term, less the fair rental value of the Premises for the same period, discounted to present value. In this event, the total Rent to be paid over the remainder of the Term shall be calculated by using an average of the Percentage Rent paid during the preceding two years, subject to the MAG.

D. Without limiting any other rights or remedies to which the Board may be entitled at law or in equity, or as otherwise provided in this Lease, if Concessionaire is late in paying Rent, fees or charges more than three (3) times during any year, the Board may (i) increase the required amount of Concessionaire's Cash Deposit or Security Bond to an amount deemed necessary by the Board in its sole discretion; or (ii) cancel Concessionaire's extension options, if any.

### **Section 13.03 Rights and Obligations Upon Expiration Or Termination**

A. Upon expiration or termination of this Lease, Concessionaire shall have the right, subject to the Landlord's Lien set forth below, to remove all removable furniture, fixtures and equipment installed by Concessionaire, and Concessionaire shall immediately remove same. Any damage to the Premises caused by Concessionaire's removal of its property shall be immediately repaired by Concessionaire and at Concessionaire's expense and to the satisfaction of the Airport Concessions Department. Notwithstanding the foregoing, if Concessionaire fails to remove its removable furniture, fixtures and equipment within thirty (30) days from the date of termination of this Lease, then the Board may, at its option, take title to the said property and sell, lease or salvage the same, as permitted by law. Any net expense the Board incurs in disposing of the property shall be immediately reimbursed by Concessionaire. No act by the Board shall be deemed an acceptance of a surrender of the Premises other than an agreement of acceptance of surrender, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by the Board.

B. Any holding over by Concessionaire of the Premises after the expiration or other termination of this Lease shall operate and be construed as a tenancy at sufferance with the Rent, fees and charges provided herein prorated by the day; and

Concessionaire agrees to surrender the Premises upon twenty-four (24) hours written notice.

C. Concessionaire shall, upon termination of this Lease, with or without cause, surrender the Premises to the Board peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or the Board, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore, excepted. Concessionaire shall remove all signage and provide temporary walls to seal all openings of premises that meet the guidelines outlined in the Tenant Design Handbook. Concessionaire shall also provide to Airport Concessions any and all keys to doors, window displays or any area of controlled access within the footprint of the space. The Board shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing the Board's right of possession, regardless of whether Concessionaire is delinquent in rental payments, including without limitation the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect the Board's governmental police powers to de-activate security credentials for security or other governmental reasons.

#### **Section 13.04 Landlord's Lien**

All property on the Premises is hereby subjected to a contractual landlord's lien, unless specifically waived by the Board, to secure payment of delinquent rent and other sums due and unpaid under this Lease, any and all exemption laws being hereby expressly waived in favor of such landlord's lien; and it is agreed that such landlord's lien shall not be construed as a waiver of any statutory or other lien given or which may be given to the Board but shall be in addition thereto. It is agreed by Concessionaire that in the event of default by Concessionaire hereunder the Board shall have the right, upon 30 days prior written notice, to sell Concessionaire's property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Concessionaire, with the surplus, if any, to be mailed to Concessionaire at the address herein designated. Concessionaire further agrees to hold harmless from and indemnify the Airport Board and the Cities of Dallas and Fort Worth including but not limited to: the Board's directors, officers, agents, employees, and the Cities' council-members, officers, agents and employees against any loss or damage or claim arising out of the action of the Board in pursuance of this paragraph, except for any loss, damage, or claim caused by the negligence or willful misconduct of the Board or its employees, acting within the course and scope of employment. The contractual lien granted hereunder is a security interest pursuant to the Texas Business and Commerce Code, and the Board shall have all rights and remedies of a secured party thereunder.

#### **Section 13.05 Attorney's Fees**

In addition to all other remedies provided in this Article, either party may recover reasonable and necessary attorney's fees (including time of in-house counsel) and costs incurred in prosecuting or defending any action concerning the subject matter of this Lease.

## **Section 13.06 Limited Guaranty of Lease**

If indicated in **Article 1**, this Lease is contingent upon execution of a Limited Guaranty of Lease by the person or entity designated, in the form shown in **Exhibit "D"**.

### **ARTICLE 14: ASSIGNMENT AND SUBLEASE**

A. Except as explicitly set forth herein, Concessionaire shall not assign, sublet, sell, convey, transfer, mortgage, or pledge this Lease or any part thereof without the prior written consent of the Board. Any restrictions which form a part of any written consent granted shall be incorporated into a written instrument and shall form a part of this Lease. Due to the significance of this Lease and the nature of the services to be provided hereunder, the Board shall have the right in its sole discretion, to withhold its consent. Concessionaire shall not use, or permit any person to use, the Premises, improvements thereon, or any portion thereof, except for the purposes as provided in this Lease.

B. In the event Concessionaire merges, consolidates, acquires, affiliates, or associates with any other person, company, corporation or other entity, or in any manner whatsoever either is bought out or buys out another person, company, corporation or other entity, and such merger, consolidation, acquisition, affiliation, association or buy out results in a change of control or management of the operations authorized herein, then in that event, such merger, consolidation, acquisition, affiliation, association or buy out shall be considered by the Board as an Assignment of this Lease by Concessionaire which requires the prior approval of the Board and any such merger, consolidation, acquisition, affiliation, association or buy out without such consent shall be violation of this Article, and shall subject this Lease to termination by the Board.

### **ARTICLE 15: REPRESENTATIVES OF THE BOARD**

Concessionaire agrees that the Board through its Chief Executive Officer, may designate certain of its employees to act in its behalf as its representative. The designation will specify the matter or area in which the representative may act, and any action taken by the representative shall be deemed as the action of the Board. Designation and changes related to the designation shall be provided in writing and forwarded to Concessionaire in accordance with the "Notices" section hereof. If any dispute arises between Concessionaire and the representative which is not satisfactorily and timely resolved, the matter shall be presented to the Board for final resolution.

### **ARTICLE 16: CITIES' RIGHT OF TRANSFER**

The Cities of Dallas and Fort Worth, Texas and/or the Board reserve the right to transfer their interests and obligations herein to any other governmental body set up to or authorized by law to operate the Airport. It is mutually understood and agreed that this Lease shall be subordinate to the provisions of any existing or future agreement between the Board and the United States of America, its Boards, Agencies, Commissions, the Cities, and other governmental agencies, relative to the operation or maintenance of the Airport, the execution of which has been, or may be, required as a condition precedent to the development or operation of the Airport.

## **ARTICLE 17: AGENT FOR SERVICE OF PROCESS**

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member or partner resident of the State, or is a foreign corporation, then in any such event Concessionaire does hereby designate the Secretary of State, State of Texas, its agent for the purpose of service of process in any court action between it and the Board arising out of or based upon this Lease and the service shall be made as provided by laws of the State of Texas for service upon a nonresident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of process is not possible after reasonable good-faith attempts, Concessionaire may be served with the process by the registered mailing of the complaint and the process to Concessionaire at the address set out in this Lease and that the service shall constitute valid service upon Concessionaire as of the date of mailing. It is further expressly agreed that Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction and waives any and all objections and protest thereto, any laws to the contrary notwithstanding.

## **ARTICLE 18: GENERAL PROVISIONS**

### **Section 18.01 No Waiver of Forfeiture**

Any failure or neglect of the Board or Concessionaire at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder shall not be taken or considered as a waiver of the right thereafter to declare a forfeiture for like or other or succeeding breach or default.

### **Section 18.02 Force Majeure**

Neither the Board nor Concessionaire shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not apply to failures by Concessionaire to pay the rentals and fees herein specified. Concessionaire shall not be entitled to any rent relief or other monetary compensation as a result of terminal evacuations ordered by the Board or any other governmental authority.

### **Section 18.03 Rules and Regulations**

The Board may adopt and enforce Rules and Regulations, to be uniformly applied to similar uses and users of similar space, which Concessionaire agrees to observe and obey with respect to the use of the Premises and the Airport, and the health, safety and welfare of those using the same. Concessionaire shall comply, and require compliance by its sublessees and both its and their respective contractors, suppliers of materials and furnishers of services, employees and business invitees, with all present and future laws, rules, regulations, or ordinances promulgated by the Board, or the Transportation Security Administration (TSA), Federal Aviation Administration (FAA), or other governmental agencies to protect the security and integrity of the Terminal Sterile area, Security Identification Display Area (SIDA), and Aircraft Operating Area (AOA), as defined by the Board, TSA and the FAA, and to protect against access to

these areas by unauthorized persons. Subject to the approval of the Board, Concessionaire shall adopt procedures to control and limit access to the Sterile area, SIDA and AOA by Concessionaire, its sublessees, and its and their respective contractors, suppliers of materials and furnishers of services, employees and business invitees in accordance with all present and future Board, TSA and FAA laws, rules and regulations. **Concessionaire further agrees to indemnify, hold harmless, defend and insure the Board, and the Cities of Dallas and Fort Worth including their directors, council members, officers, agents and employees against the risk of legal liability for death, injury, or damage to persons or property, direct or consequential, arising from entry to the Sterile area, SIDA or AOA permitted, allowed or otherwise made possible by Concessionaire, its sublessees or its or their respective contractor, suppliers of materials and furnishers of services, employees, business invitees or any person under the direction of Concessionaire in violation of Airport, TSA and FAA laws, rules or regulations or Concessionaire's Board-approved procedures for controlling access to the Sterile area, SIDA or AOA as provided hereinabove. Concessionaire shall obtain employee identification badges for all personnel authorized by Concessionaire to have access to the Sterile area, SIDA or AOA, in accordance with the provisions of federal regulations, and other laws, rules and regulations or Board policies. If Concessionaire is responsible for a security violation, Concessionaire may be subject to fines, suspension of access to the sterile area, SIDA or AOA and the cost of correction and reinstatement of privileges.**

#### **Section 18.04 Successors and Assigns**

Subject to the limitations upon assignment and transfer herein contained, this Lease shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

#### **Section 18.05 No Third Party Benefit**

No provision contained in or incorporated by this Lease shall create or give to third parties any claim, or right of action, against the Cities of Dallas or Fort Worth, the Board, or Concessionaire, beyond that which may legally exist in the absence of any such provision.

#### **Section 18.06 No Partnership or Joint Venture**

Nothing in this Lease shall be construed to create a partnership or joint venture between Concessionaire and the Board. The performance of Concessionaire's obligations pursuant to this Lease are within the exclusive control of Concessionaire, and the performance of the Board's obligations pursuant to this Lease are within the exclusive control of the Board.

#### **Section 18.07 Compliance with Laws**

A. Concessionaire shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders and directions. Failure to observe or comply with the aforementioned laws will subject this Lease to cancellation by the Board. In the event Concessionaire or any of its principals are convicted of any crime involving moral turpitude, a final conviction will be grounds for termination of this Lease.

B. Concessionaire shall, subject to and in accordance with the provisions hereof,

make any and all non-structural improvements, alterations, or repairs of the Premises that may be required at any time hereafter of similar users of similar areas by any rule, regulation, requirement, order, or direction of any entity with authority to do so, including without limitation the Americans With Disabilities Act, and if by reason of any failure on the part of Concessionaire to comply with the provision of this Section, any fire insurance rate on the Premises or the Terminal Buildings and improvements thereto shall at any time be higher than it otherwise would be, then Concessionaire shall pay the Board, upon demand, that part of all fire insurance premiums paid by the Board which shall have been charged because of such violation or failure of Concessionaire. Concessionaire shall, at its sole cost, remove, or otherwise abate the asbestos or other hazardous material, if any, within the Premises or other areas which will be disturbed by Concessionaire's additions or operations provided such additions and operations are submitted to, and approved in writing in advance by, the Airport Concessions Department.

C. Concessionaire agrees to comply with all environmental laws, rules, regulations, orders and/or permits applicable to Concessionaire's operations on or in the vicinity of the Airport, including but not limited to required permits and all applicable laws relating to the use, storage, generation, treatment, transportation and/or disposal of hazardous or regulated substances. Concessionaire shall not knowingly use, store, generate, treat, transport or dispose of any hazardous or regulated substances or waste on or near the Airport without first obtaining prior written approval from the Airport Board's Environmental Services Department and without first obtaining all required permits and approvals from all authorities having jurisdiction over Concessionaire's operations on or near the Airport. If Concessionaire determines at any time through any means that any threat of any potential harm to the environment, including but not limited to any release, discharge, spill or deposit of any hazardous or regulated substance, has occurred or is occurring which in any way affects or threatens to affect the Airport, or the persons, structures, equipment, or other property thereon, Concessionaire shall notify immediately by verbal report in person or by telephone, to be promptly confirmed in writing, (1) the Airport Board's Environmental Services Department, (2) the Airport Board's Fire Marshal, and (3) all emergency response centers and environmental or regulatory agencies, as required by law or regulation, and shall follow such verbal report with written confirmation within seventy-two (72) hours. Concessionaire agrees to cooperate fully with the Board in promptly responding to, reporting and remedying any threat of potential harm to the environment, including without limitation any release or threat of release of hazardous or regulated substance into the drainage systems, soils, ground water, waters or atmosphere, in accordance with applicable law or as authorized or approved by any agency having authority over environmental matters. Concessionaire shall be solely responsible to the Board, including for remediation and all costs associated therewith, for Concessionaire's action or inaction which is directly or indirectly responsible for any failure of the Airport to materially conform to all then applicable environmental laws, rules, regulations, orders and/or permits. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

D. Concessionaire shall pay all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Premises, leasehold, leasehold improvements, personal property, or operations hereunder and upon Concessionaire's rights to use the Premises, regardless of who owns taxable property

at the expiration of this Lease. Concessionaire shall pay any and all sales taxes arising in connection with its occupancy or use of the Premises whether the taxes are assessed against Concessionaire or the Board. Concessionaire shall provide to the Board, or to the Cities of Dallas or Fort Worth, upon ten days notice and at no cost, any information deemed necessary by them to verify taxes paid concerning Concessionaire's sales at the airport, or any other information directly or indirectly concerning amounts to be received by the Board or the Cities pursuant to interlocal tax or revenue sharing agreements.

E. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings and any other licenses necessary for the conduct of its operations hereunder. The Board shall assist Concessionaire where necessary in obtaining the permits.

F. Except for publicly traded stock transactions, or other transactions over which Concessionaire has no control, Concessionaire represents and warrants that neither Concessionaire nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not assign or transfer this Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

#### **Section 18.08 Article and Section Headings**

The titles and headings contained in this Lease and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Lease.

EXECUTED on behalf of the Dallas/Fort Worth International Airport Board and on behalf of Concessionaire, on the dates shown below.

**DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Vice President, Concessions  
Date: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Legal Counsel for the Board

ATTEST:

\_\_\_\_\_  
Staff Secretary to the Board

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit "A"**

**PREMISES DESCRIPTION**

A. The Premises shall consist of the following location, with estimated allocable square footage:

Terminal	ID Number	Column Number	Gate	Square Footage	Name of Business

B. The estimated square footage allocable to the location of the Premise is hereby adjusted to actual square footage upon completion of construction, using measurement criteria determined by the Board in its sole discretion:

Terminal	ID Number	Column Number	Gate	Square Footage	Name of Business

Acknowledged:

\_\_\_\_\_  
Agent of Concessionaire

\_\_\_\_\_  
Agent of the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Any rents, fees or charges based upon square footage will be adjusted based upon actual measurements.

Concessionaire's Initials: \_\_\_\_\_

Exhibit "B" – (Page 1 of 2)

DESIGNATED STORAGE AREA

A. The designated Storage Area shall consist of the following location, with estimated allocable square footage:

Terminal	ID Number	Column Number	Gate	Square Footage	

RENTS AND FEES:

Permittee shall pay rent annually beginning on the Rent Commencement Date and each year thereafter during the term of this Lease:

- A. Total rent in the amount of \$. This charge includes Operations and Maintenance Charges per the Board's Schedule of Charges.
- B. A \$3,000 Property Damage and Security Deposit shall be paid in advance of effective date and maintained during the term.

STORAGE TERM:

Storage Term shall be co-terminus with this Lease, unless otherwise specified.

SPECIFIC RESTRICTIONS:

Not to be used for food preparations or offices.

Exhibit "B" – (Page 2 of 2)

**DESIGNATED STORAGE AREA**

The Board may change or terminate the Designated Storage Areas at any time and for any reason, in the Board's sole discretion, upon thirty (30) days written notice.

Permitted Uses. Concessionaire shall use the Designated Storage Areas for the limited purpose of storage, and for none other. If a Designated Storage Area is terminated without cause, the Board shall refund the fees paid for that year, pro rata.

Restoration of Property. Upon termination of a Designated Storage Area, Concessionaire shall at its sole expense restore said Designated Storage Area to its original condition as required by the Board, exclusive of normal wear and tear. If Concessionaire fails to promptly so restore said Designated Storage Area, Board may perform the restoration itself and apply Concessionaire's Property Damage and Security Deposit (hereafter "Deposit") toward the cost of such restoration. If Deposit is insufficient to cover the Board's entire cost of any such restoration, Board shall bill Concessionaire for, and Concessionaire shall promptly pay, the balance of Board's cost to perform the work. Any property of Concessionaire placed on or kept within the Designated Storage Area shall be removed within thirty (30) days of the expiration or earlier termination of the Designated Storage Area.



## Exhibit "D"

### LIMITED GUARANTY OF LEASE

**WHEREAS**, a certain Lease Agreement, more fully described below, has been or will be executed:

Location:

Board: Dallas/Fort Worth International Airport Board

Concessionaire:

Guarantor:

**WHEREAS**, the Board under said Agreement requires as a condition to its execution of said Agreement that the undersigned (herein referred to as "Guarantor") guarantee the full performance of the obligations of concessionaire under said Agreement.

**WHEREAS**, the undersigned is desirous that the Board enter into said Agreement with Concessionaire.

**NOW THEREFORE**, in consideration of the execution of said Agreement by Board, Guarantor hereby unconditionally guarantees the complete and timely performance of each and all of the terms, covenants and conditions of said Agreement to be kept and performed by said Concessionaire, including the payment of all rents and other charges to accrue thereunder. Guarantor further agrees as follows:

1. That this Guaranty shall continue in favor of Board notwithstanding any extension, modifications, or alteration of said Agreement entered into by and between the parties thereto, or their successors or assigns, notwithstanding any assignment of said Agreement, with or without the consent of Board, and no extension, modification, alteration or assignment of the above referred-to Agreement shall in any manner release or discharge Guarantor and it does hereby consent thereto;
2. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of concessionaire or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee to Concessionaire;
3. Board, may, without notice, assign this Guaranty in whole or in part, and no assignment or transfer of the Agreement shall operate to extinguish or diminish the liability of Guarantor hereunder;
4. The liability of Guarantor under this Guaranty shall be primary and, in any right of action which shall accrue to Board under the Agreement, Board may, at its option, proceed against the undersigned without having commenced any action or obtained any judgment against Concessionaire;

Concessionaire's Initials: \_\_\_\_\_

5. Guarantor shall pay Board's reasonable attorney fees and all costs and other expenses incurred in any negotiations, action or proceeding commenced to enforce this Guaranty;
6. Guarantor hereby waives notice of any demand by Board as well as of any notice of Concessionaire's default in the payment of rent or any other amounts contained or reserved in the Agreement; and,
7. Guarantor hereby consents to personal jurisdiction and venue in the state and judicial district in which the Premises is located.

The use of the singular herein shall include the plural. The obligation of two or more parties shall be joint and several. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successor and assigns of the parties herein named.

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty of Lease Agreement to be executed as of the effective date of the above mentioned Agreement.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

**NOTE:** If Guarantor is a corporation, its authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. This Guaranty must be executed by the President or Vice President and the Secretary or Assistant Secretary, unless the bylaws or a resolution of the Board of Directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, shall be attached to this Guaranty. The appropriate corporate seal should be affixed hereto.

**Exhibit "E"**

**RENT COMMENCEMENT DATE/CONSTRUCTION SCHEDULE**

RENT COMMENCEMENT DATE:

Concessionaire's Initials: \_\_\_\_\_

TIMELINE SCHEDULE FOR TENANT PROJECTS:

<b>Design Process</b>	<b>Days</b>	<b>for</b>	<b>Completion</b>
▪ Commencement Date		Day	1
▪ Predesign Meeting (15 Days)		Day	16
▪ 30% Schematic Design (30 Days)		Day	46
▪ TPC Review of Schematic Design (5 Days)		Day	51
▪ 95% Construction Document Review (30 Days)		Day	81
▪ TPC Review of Construction Doc (5 Days)		Day	86
▪ Code Submittal for permit (5 Days)		Day	91
▪ Code Review (14 Days)		Day	105
▪ Potential Resubmittal (14 Days)		Day	119
▪ Code Approval Permit Issued (14 Days)			
▪ Pre Construction Meeting (5 Days)		Day	<b>138</b>
 <b>Construction Process</b>			
▪ Construction Timeline		<u>90 to 150</u>	
 <b>Total Project Process</b>			 <b>228 to 288</b>

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