



REQUEST FOR PROPOSALS
RFP NO. 13-008

Pensacola International Airport
2430 Airport Blvd., Suite 225
Pensacola, FL 32504

FOOD & BEVERAGE CONCESSIONS LEASE



City of Pensacola, Florida
Ashton J. Hayward III, Mayor

REQUEST FOR PROPOSALS
Food and Beverage Concessions Lease
Pensacola International Airport
City of Pensacola

RFP NO.13-008

The City of Pensacola (hereinafter referred to as “City”) will receive SEALED PROPOSALS for Food and Beverage Concessions Lease (“Lease”) at **2:30 P.M.**, local time, on **June 14, 2013**. Immediately following said date and time, all submittals will be publicly opened. Any submittals received after the deadline will be returned to the sender unopened. All interested parties are invited and encouraged to attend.

An informational conference will be held prior to this date at **10:00 A.M.**, local time, on **April 12, 2013** in Suite 225 at the Pensacola International Airport, 2430 Airport Boulevard, Pensacola, Florida. Attendance is strongly encouraged as important information will be discussed.

Proposers should submit a certified check, cashier’s check or proposal bond, payable to the City of Pensacola in the amount of **seventy-five thousand dollars** (\$75,000.00) for a minimum period of six (6) months.

RESPONSES, with original signature and five (5) additional copies plus one (1) electronic copy are to be submitted to:

City of Pensacola
Purchasing Office
City Hall, 6th Floor
222 West Main Street
Pensacola, FL 32502

Submittals must be clearly marked “**Proposal for Food and Beverage Concessions Lease – Pensacola International Airport.**” All proposals shall be sealed and marked in the manner prescribed.

Any questions concerning the operation of the Food and Beverage Concessions Lease should be addressed and submitted in writing to:

Mr. George Maiberger
Purchasing Manager
City Hall, 6th Floor
222 West Main Street
Pensacola, Florida 32502
gmaiberger@cityofpensacola.com

Complete specifications, if not attached, or additional information may be obtained upon application to the Purchasing Office, 6th floor of City Hall, 222 W. Main Street, Pensacola, Florida. Contact Rebecca Donahue at rdonahue@cityofpensacola.com or telephone (850) 435-1835.

The City of Pensacola adheres to the Americans with Disabilities Act and will make accommodations for access to City services, programs, and activities. Please call 435-1835 for further information. Requests should be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.

The City of Pensacola reserves the right to accept or reject any or all submittals, to award to multiple firms, to waive any submittal informalities and to re-advertise for bids when deemed in the best interest of the City.

ATTEST:
Ericka L. Burnett
City Clerk

City of Pensacola
Ashton J. Hayward, III
Mayor

The City of Pensacola provides equal access in employment and public service.

SECURITY NOTICE

Visitors to City Hall are required to sign in and will receive a badge to access a specified floor. Metal detection devices might also be employed. Anyone hand-delivering a submittal is advised to arrive early to allow for the additional time needed due to security measures.

Late submittals will not be accepted.

SIGNATURE SHEET
PROPOSAL NO. 13-008

The undersigned, as Vendor, does declare that no other persons other than the Vendor herein named has any interest in this proposal or in the contract to be taken, and that it is made without any connection with any other person or persons making a proposal for the same articles, and it is in all respects fair and without collusion or fraud. The undersigned further declares that he has carefully examined the specifications and is thoroughly familiar with their provisions and penalties.

The Vendor proposes and agrees that, if this proposal is accepted, to contract with the City of Pensacola, Florida, in the form of contract specified, to furnish all the material, equipment, machinery, tools, apparatus, labor, means of transportation (including freight costs) necessary to provide:

Food and Beverage Concessions Lease
Pensacola International Airport

Legal Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Signature: _____

Name (type/print): _____

Title: _____

Telephone: _____ Fax No.: _____ Date: _____

Email Address _____

**To receive consideration for award,
this signature sheet must be returned as part of your response.**

52.209-5 FAR Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

1. The Offeror certifies, to the best of its knowledge and belief, that the Offeror and/or any of its Principals:
 - A. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.
 - B. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - C. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 1-B of this provision.
2. The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
 - A. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.
 - B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - C. A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
 - D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - E. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

52.209-6 FAR Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

1. The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
2. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
3. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
 - A. The name of the subcontractor.
 - B. The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - C. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - D. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

Company Name

Authorized Signature

Printed Name

Date

**To receive consideration for award,
this form must be returned as part of your response.**

DRUG-FREE WORK PLACE CERTIFICATE

IDENTICAL TIE BIDS - Pursuant to Florida Statue §287.087, preference shall be given to business with Drug-Free Work Place Programs. Whenever two or more bids which are equal with respect to price, quality, and service are received for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a Drug-Free Work Place Program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a Drug-Free Work Place Program. In order to have a Drug-Free Work Place Program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the work place and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the work place, the business's policy of maintaining a Drug-Free Work Place, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the work place no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free work place through implementation of this section.

AS THE PERSON AUTHORIZED TO SIGN THE STATEMENT, I CERTIFY THAT THIS FIRM COMPLIES FULLY WITH THE ABOVE REQUIREMENTS.

Signature

Printed Name

**To receive consideration for award,
this form must be returned as part of your response.**

GEOGRAPHIC BACKGROUND

Pensacola is proud of its rich heritage, historically significant events and landmarks. We recently marked our 450th anniversary. In celebration, we hosted the king and queen of Spain, the world's third largest tall ship the *Elcano*, and renowned winemakers and artists.

Every year, we invite visitors to celebrate with us at our many historic sites, festivals and parades. You might be surprised to learn that we're the first European settlement in the United States. Our rich history lends itself to fascinating historical and archaeological sites, allowing you to absorb our colorful past. Full motion 360 degree flight simulators, special hands-on exhibits and more than 150 historic aircraft will amaze you at the National Naval Aviation Museum. Furnished period houses, several museums and one of Florida's oldest churches at Historic Pensacola Village are located in downtown Pensacola near charming shops and eateries. And you can literally dig into our past at summer archaeological digs by the University of West Florida.

Whether you climb to the top of Pensacola Lighthouse, let the kids have fun in the Discovery Gallery inside the T.T. Wentworth, Jr. Florida State Museum or visit Veterans Memorial Park to see the only permanent replica of the Vietnam Veterans Memorial in Washington, D.C., the quality and variety of Pensacola's historical attractions delight more than just history buffs.

INQUIRIES REGARDING RFP

As discussed hereunder, interested parties will have an opportunity to pose questions at an Informational Meeting and may submit written questions or requests for clarification regarding the RFP until the date published. Inquiries regarding the RFP and all notifications of intent to request written modification or clarification of the RFP must be directed to:

Mr George Maiberger
Purchasing Manager
City Hall, 6th Floor
222 West Main Street
Pensacola, FL 32502
Email: gmaiberger@cityofpensacola.com

PROHIBITED CONDUCT BY BIDDERS

Upon the publication of any solicitation for sealed bids, requests for proposals, requests for qualifications, or other solicitation of interest or invitation to negotiate by any authorized representative of the City of Pensacola, any party interested in submitting a bid, proposal, or other response reflecting an interest in participating in the purchasing or contracting process shall be prohibited from engaging in any communication pertaining to formal solicitations with a member of the Pensacola City Council or any member of a selection/evaluation committee for RFQs, whether directly or indirectly or through any representative or agent, whether in person, by mail, by facsimile, by telephone, by electronic communications device, or by any other means of communication, until such time as the city council or member of a selection/evaluation committee has completed all action with respect to the solicitation. Any member of council or committee receiving a communication prohibited by this section shall be

obligated to disclose such communication to the entire city council prior to council taking any action with respect to the solicitation.

BUSINESS OPPORTUNITIES OVERVIEW

Please note that the economic and other terms of these concession opportunities, including the provisions relating to rent, Lease term, deposits, insurance, and operational and menu requirements, are described in more detail in the Lease included hereunder as Part II – Lease.

This Request for Proposals document and the Informational Conference are intended to inform interested parties about the RFP response and selection process for Concession Opportunities at Pensacola International Airport (“PNS” or the “Airport”).

By participating in this selection process, each proposer will be seeking the opportunity to conduct the Permitted Use, as described herein, at the Airport pursuant to the Lease, attached as Part II. The Lease describes the proposed business and operational requirements of the Concession Opportunity, including the premises, rent, lease term, deposits, insurance requirements, nondiscrimination requirements, and other important requirements. The City strongly encourages each proposer to review the Lease carefully. The City reserves the right to revise the form of the Lease prior to its execution to: (a) reflect the Concession Opportunity developed pursuant to this RFP; (b) incorporate any City requirements adopted or deemed applicable after the drafting of such draft Lease; and/or (c) incorporate any other non-substantive provisions desired by the City.

Concessions Program Goals

- The City desires a first-class Food & Beverage program that offers a broad variety of popular food options, featuring fresh, superior quality products in a customer friendly environment.
- The City and passengers alike desire a modern Food & Beverage program reflective of today’s trends.
- The City intends to select a proposer who will create and operate an innovative Food & Beverage Concessions program with respect to Concepts, Design and Passenger Experience initiatives.
- The City intends to select a proposer who will provide exceptional levels of customer service and satisfaction and quality products.
- The City encourages all proposers to consider supporting local vendors and businesses. Proposers are urged to incorporate a “buy local” program into their proposal.

PENSACOLA INTERNATIONAL AIRPORT – BACKGROUND

Pensacola International Airport (IATA: PNS, ICAO: KPNS, FAA LID: PNS), formerly Pensacola Gulf Coast Regional Airport, is a public airport located within the city of Pensacola in Escambia County, Florida. Pensacola International Airport PNS - which had just changed its name from Pensacola Gulf Coast Regional Airport - serves the extreme western portion of the Florida Panhandle. It provides easy

access to the area's numerous beaches, the National Museum of Naval Aviation and many other historical and natural attractions.

The Airport is located about three miles northeast of the central business district of Pensacola, Florida, and is easily accessible by State Highways 98 & 29, as well as by Interstate 10 (exit 12 to I-110 S; take first exit, Exit 5, turn left on Airport Blvd.).

With an estimated 1.5 million passengers in 2012, Pensacola International Airport is served by several major airlines and their affiliated regional jet services, offering nonstop flights to some U.S. hubs, with connections worldwide.

The new on-Airport Hyatt Place Hotel is under construction will have 127 rooms and will connect directly to the passenger terminal - opening is scheduled for April, 2013.

Pensacola has one passenger terminal consisting of 12 gates. The current terminal was expanded in 2011 at a cost of \$35 million. The expansion was designed by Gresham, Smith & Partners and STOA Architects. In 2011 Southwest Airlines announced that Pensacola would be one of the 22 cities to have AirTran service converted over to Southwest service. At the publication of this RFP Southwest had successfully completed the connection between the Southwest and AirTran networks. Customers are now able to purchase itineraries to the airlines' combined 97 destinations in one transaction.

OPERATING AT THE AIRPORT

Our customers, and yours, typically consist of a passenger who has limited time to spend in restaurants and shops and must be served quickly and efficiently. Concessionaires should pay close attention to how their facilities will accommodate customers who may have rolling luggage and who may be traveling with others including children. Facilities are open 365 days per year with longer operating hours than street-side businesses. Flight delays necessitate that tenants be prepared to extend hours to provide a valuable customer service and capture this additional business. Each employee at the Airport is also an ambassador at the Airport. Training is essential to ensure that knowledge of the terminals, the basic functioning of the airport and details about the region are known by all employees. It is very common for anyone wearing an airport identification badge to be approached by passengers with general questions. PNS strives for excellent customer service. The passengers experience at PNS is often the first and last impression they will have of their visit to Pensacola; we want this to be a positive and lasting impression.

SUMMARY OF BUSINESS TERMS

Term: Primary Term shall commence upon the expiration of the Transition Term and shall continue for 10 years. The City may, at its sole discretion choose to extend the Primary Term by two (2) additional years.

- Transition Term begins on the date the first Post-security Premise (Post-Security Location # 2, 880 sq. ft.) is delivered by the City to the Selected Respondent. The Transition Term shall include the period required for finish-out of and opening to the public but shall not exceed 90 days after permitting.

Permitted Use. The Lease is intended for the sale of Food & Beverage typically associated with Casual Dining, Quick Service, Quick Casual, Grab & Go and Coffee/Café Restaurant Concepts.

Pricing Policy. The City has established a Street + 10% pricing policy for this opportunity. Prior to the opening of each facility, and annually thereafter throughout the Primary Term and any option term exercised by the City, the concessionaire shall submit to the City and Airport a Market Basket survey of prices at the agreed comparable off-Airport locations.

Rent Per Lease Year. The base rent will be the greater of the Minimum Annual Guarantee (“MAG”) offered or the sum of the percentage rent structured as follows:

- **10% of gross sales** achieved from the sale of all Food & Non-Alcoholic Beverages generated from all **pre-security** locations of this Lease. **plus,**
- **12% of gross sales** achieved from the sale of all Food & Non-Alcoholic Beverages generated from all **post-security** locations of this Lease. **plus,**
- **14% of gross sales** achieved from the sale of all Alcoholic Beverage generated from **all locations of this Lease.**

Gross Sales shall include all sales generated minus all applicable Sales Taxes and Refunds

“Gross sales” to the Concessionaire shall be deemed received at the time the sales, lease, or service transaction occurs giving rise to Concessionaire's right to collect said monies, regardless of whether said transaction was conducted in person, by telephone or by mail, whether the transaction was for cash or credit, and if for credit, regardless of whether the Concessionaire ultimately collects the monies owed for said transaction from the customer involved.

Any gross sales included in the formula for determining percentage rentals owed the City and determined by Concessionaire at a later date to be uncollectible shall not offset future percentage rentals owed the City.

Concession Fee during the Interim Term

During the Transition Term, the Concessionaire shall pay the City, on a monthly basis, the greater of the Percentage Fee Proposed or Minimum Annual Concession Fee (“MAG”) as follows:

- **Percentage Fee.** The “Percentage Fee” is the sum of the percentages of Gross Revenues, as proposed by Selected Respondent.
- **Transition Term Minimum Annual Concession Fee.** The Minimum Annual Concession Fee during the Transition Term is **\$60,000.00**, pro-rated on a monthly basis, provided however; the Transition Term Minimum Annual Concession Fee is waived as of the opening of any portion of the additional Assigned Premises (**Post-Security Location #1, 3,107 sq. ft. plus Pre-Security Location #1, 2,500 sq. ft. (approximately)**) through the remainder of the Transition Term.

Concession Fee during the Primary Term

During each year of the Primary Term, Concessionaire shall pay to City the greater of the Percentage Fee or the Minimum Annual Concession Fee (“MAG”), as follows:

- **Percentage Fee.** The “Percentage Fee” is the sum of the percentages of Gross Revenues, as proposed by Selected Respondent.
- **MAG Definition.** The MAG for the first year of the Primary Term of the Contract is determined as the successful proposer’s MAG Offer (Submittal 5) for the first Lease Year and is adjusted annually. In the second and later years of the Primary Term, the MAG is 85% of the prior year’s total Percentage Fee, but never less than the MAG during the first year of the Primary Term.

•

Additional Fees:

- Utilities which shall be metered separately
- Taxes
- Office Space

Deposit Amount. During the life of the Primary Lease Term, the successful proposer is required to provide a deposit (Performance Bond or Letter of Credit) calculated at one-half (1/2) of the MAG, as the same may be adjusted annually.

Minimum Capital Investment. The Minimum Capital Investment for leasehold improvement established for this project is **Three Hundred Dollars (\$300.00)** per square foot.

Proposers should pursue professional advice on the cost of retail construction in the Pensacola area and, in particular, in an airport. Design must be in compliance with Pensacola International Airport Tenant Guidelines and approved by the Airport Design Committee.

PREMISES

Pre Security Location # 1 2,500 sq. ft. *

* The Pre Security location is currently (approximately) 8,136 sq. ft. Airport will re-demise space to 2,500 sq. ft. However, if operator requires more (additional) square footage (Storage, Office, Preparation), Airport will coordinate with operator after award and before contract execution for leasing of additional square footage at the terminal building rental rate identical to the rate paid by the Signatory Airlines.

Post Security Location # 2 880 sq. ft.
Post Security Location # 1 3,107 sq. ft.

MINIMUM QUALIFICATION REQUIREMENTS (PLEASE READ THOROUGHLY.)

- Proposer must have a minimum of three years (consecutive years) within the past five years (“qualifying years”) in the operation, ownership or management of a Food & Beverage business located in a shopping center, airport, transportation center, mall or street location generating a minimum of **\$2,000,000.00** in Annual Gross Sales. A Food & Beverage location is defined as a location that generates a minimum of 75% of its Gross Sales from Food Sales. Each proposer must submit with its Proposal, documentation that demonstrates it meets the preceding qualification and it proposing entity is authorized to conduct business in the State of Florida.
- Proposers may be newly-formed entities (e.g., limited liability companies, joint ventures, corporations) provided that the City and Airport is satisfied that the proposer is qualified as follows: Each of the principals (e.g., LLC members, joint venture partners, corporation shareholders) who own an aggregate of 51% or more of proposer must satisfy the Minimum Qualification Requirements. For example, if the newly-formed entity is:
 - A limited liability company comprised of two members, owning 51% and 49% respectively, the entity will be deemed qualified if the 51% member satisfies the Minimum Qualification Requirements; or
 - A limited liability company comprised of three members, owning 40%, 35%, and 25% respectively, the company will be deemed qualified if two of the three members each satisfy the Minimum Qualification Requirements.
 - Owned 50/50, then each principal must satisfy the Minimum Qualification Requirements.

The City and Airport must be satisfied that the party(ies) satisfying the Minimum Qualification Requirements will be in control of the proposing entity. Newly- formed entities cannot meet this RFP’s minimum qualifications through a sublease agreement. Entities proposing as joint ventures must include a copy of an executed joint venture or partnership agreement.

To qualify for the award of the Concession Opportunity, proposer must demonstrate to the City that the Minimum Qualification Requirements are satisfied. Determination of qualifications shall be based on the qualifications materials submitted by proposer.

Each submittal will be reviewed for relevant experience. For purposes of determining whether a proposer has the required business experience, City staff will consider (a) the nature of the proposer’s management experience, which is managing the operation of said business on a full-time basis (i.e. at least 40 hours a week), or (b) the nature of the proposer’s ownership of a business, the level of control enjoyed by the proposer, and whether the proposer’s ownership interest is active (such as managing general partner) or passive (such as limited partner).

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

The City encourages the participation of certified Airport Concessions Disadvantaged Business Enterprises (ACDBEs) as primes, joint-ventures, and/or sub-lessees on these Concession Opportunities. In order to be counted toward the Airport's overall Airport Concession DBE (ACDBE) goal program, the small businesses must be certified as an ACDBE by a certifying agency within the Florida Unified Certification Program, in accordance with the federal regulations, 49 CFR Part 23 prior to the execution of the Lease with the City.

An ACDBE is defined as a "concession that is a for-profit small business concern that is: (1) at least 51% owned by one or more individuals who are both socially and economically disadvantaged...." and (2) "whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it."

The City has set an aspirational Goal of **30% ACDBE Participation** for this concessions opportunity.

SCHEDULE AND INSTRUCTIONS TO PROPOSERS

SCHEDULE

ACTIVITY	DATES
Informational Conference	Friday April 12th, 2013, 10:00 a.m. CST Pensacola International Airport 2430 Airport Blvd., Suite 225 Pensacola, FL 32504
Deadline for submission of written questions or requests for clarification	Friday May 10th, 2013, 2:00 p.m., CST
RFP Response Submittal Deadline	Friday June 14 th , 2013, 2:30 p.m., CST
Submittal Address/Location	City of Pensacola Purchasing Office City Hall, 6 th Floor 222 West Main Street Pensacola, FL 32502
Estimated Concessions Award Date	August 8th, 2013
Estimated Lease Execution Date	September 1st, 2013

Please note that this schedule is subject to change at the sole discretion of the City Purchasing Office.

The City of Pensacola is located in the Central Standard Time (“CST”).

INFORMATIONAL CONFERENCE

Proposers are encouraged to attend the Informational Conference at Pensacola International Airport on **Friday April 12th, 2013 at 10:00 a.m. Central Standard Time**. Questions will be addressed at this Informational Conference and any available new information will be provided.

The Airport will keep a record of all parties who attend the Informational Conference. Any requests for information concerning the RFP, whether submitted before or after the Informational Conference, must be in writing, and any substantive replies will be issued as written addenda and sent via email to all registered proposers and posted on-line at www.cityofpensacola.com. Questions raised at the Informational Conference may be answered orally. If any substantive new information is provided in response to questions raised at the Informational Conference, it will also be memorialized in a written addendum to this RFP and posted on-line at www.cityofpensacola.com.

DEADLINE FOR QUESTIONS/CLARIFICATIONS CONCERNING THE RFP

- No questions or requests for interpretation will be accepted after **2:00 p.m. on May 10th, 2013**.

TIME AND PLACE FOR SUBMISSION OF PROPOSALS

- Proposals must be received by **2:30 p.m. CST on Friday, June 14th, 2013**. Postmarks will not be considered in judging the timeliness of submission. Late submissions will not be considered and will be promptly returned to the Proposer.

Proposals may be mailed or delivered in person to:

City of Pensacola
Purchasing Office
City Hall, 6th Floor
222 West Main Street
Pensacola, FL 32502
Phone: (850)435-1835

FORMAT

Proposers shall submit **one clearly marked (1) original and five (5) complete paper copies, and one electronic copy** of the proposal clearly marked with the Lease Name (Pensacola International Airport Food & Beverage Lease). Proposals should be bound in some manner to ease review and storage. Please use tabs or other separators within the document. Spiral-type bindings or 3-ring binders are discouraged.

Proposals submitted by fax or by email will not be accepted.

PROPOSAL CONTENTS

Proposers must submit all the information requested below. Statements must be complete, accurate and in the form requested. Omission, inaccuracy, misstatement or failure to submit any or all of the items required by this RFP may be cause for rejection of the proposal.

The following must be included in the proposal, in the order listed below:

Proposal Checklist: The Proposal Checklist is included as a prompt to assist proposers in compiling the documents needed for a successful proposal submittal.

Minimum Qualifications: Identity and Experience Questionnaire; Statement of Ability to Comply with Federal, City Ordinances, and Other Governmental Requirements.

The Identity and Experience Questionnaire: is required to introduce the proposer to the City and to prove that the Minimum Requirements set forth are met.

The successful proposer(s) must enter into a Lease encompassing the standard terms and conditions required by the City (within 30 days of the notification of intent to award), including those mandated by applicable local, state, and federal law.

As part of its proposal, each proposer must submit a written acknowledgement (attached hereunder that it has reviewed and understands City ordinances, and other governmental provisions including those set forth in the RFP and those set forth in the Lease.

Evaluation Criteria, Minimum Annual Guarantee Offer, and Financial Pro Forma

Proposer must propose a **Minimum Annual Guarantee** for the first Primary Lease Year which must be equal to 85% of the Proposed First Year Rent. The Minimum Annual Guarantee Offer must be submitted on Submittal 5.

The Financial Pro forma must be submitted using the format presented (or a format similar to and including all line items) in Submittal 7.

One Original Proposal Bond (Part VI, Submittal 6 hereunder)

- Proposer must submit a Proposal Bond in the amount of **Seventy-Five Thousand Dollars (\$75,000)**. The Proposal Bond must be an original and may be in the form of a Cashier's Check, Surety Bond or a Letter of Credit, samples of which are included hereunder. The Proposal Bond must be valid for a minimum of six (6) months after the Proposal Submittal Deadline.
- The Proposal Bond will be held to guarantee execution of the Lease and proposer's delivery of the deposit required by the Lease, and the Proposal Bond or the cash proceeds thereof will be retained by the City as liquidated damages in the event the successful proposer fails to perform. With express, written consent of the Airport Director, the Proposal Bond may be amended to serve as the Deposit under the Lease. The Proposal Bonds of the unsuccessful proposers will be returned within a reasonable period of time following award of the Concession Opportunity to the successful proposer or rejection of the proposal.

EVALUATION AND AWARD PROCESS

PROPOSAL EVALUATION PROCESS – GENERAL

To participate, each proposer must submit its proposal on or before the Submittal Deadline. The City will then verify that the proposers meet the Minimum Qualification Requirements. Upon that determination, the proposals deemed qualified will be reviewed by a panel (committee) based on the specified criteria.

Each proposer must:

- Provide, and the City will review, information confirming that the proposer satisfies the Minimum Qualification Requirements described herein, and
- **Submit a proposal which:**
 - Satisfies the requirements described herein,
 - Recognizes and addresses the goals described herein, and
 - Reflects a Concession Opportunity representing a quality experience at the Airport that is reflective of the City of Pensacola.

Proposals will be reviewed first to ensure the minimum qualification requirements, described are met. If the minimum qualification requirements are not met, the proposal will be rejected and deemed non-responsive. If the minimum qualification requirements are met, the proposal will then be reviewed and evaluated against the Evaluation Criteria defined.

EVALUATION CRITERIA

Each proposer must submit a proposal that responds to the instructions set forth. The evaluation criteria are specifically defined herein. It includes an evaluation of the proposer's proposed concept; the design intention and capital investment; the proposer's business plan; the proposer's plans for customer service and quality control; and the Minimum Annual Guarantee Offer.

ORAL INTERVIEW

Following the evaluation of the written proposals, staff may elect to invite proposers receiving the highest scores to an oral interview. The interview will consist of standard questions asked of each of the invited proposers. The City will provide specific details and guidelines for Oral Interviews should they be deemed necessary.

LEASE AWARD

The Airport will convene a panel to review all submittals that satisfy the minimum requirements. Following the panel's review, the panel's evaluation and recommendation will be forwarded to the Mayor for approval by the Pensacola City Council, which retains the authority to select the successful proposer.

The Airport intends to award the Lease to the firm that it considers to be the highest ranked, most responsive and responsible proposer. If the selected proposer fails to meet the requirements under this RFP within a reasonable time, the City, in its sole discretion, may elect to award the Lease to the next

highest ranked proposer. The City reserves the right to accept the proposal other than the highest financial offer and to reject any proposal that is not responsive to this request. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further approvals before the City may be legally bound thereby.

PROTEST OF NON-RESPONSIVENESS DETERMINATION

Within five (5) working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before close of business on the 5th working day following the City's issuance of the notice of non-responsiveness.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

PROTEST OF AWARD

Within five (5) working days of the City's issuance of a notice of the results of the RFP, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before close of business on the fifth (5th) working day after the City's issuance of the results of the RFP.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

DELIVERY OF PROTESTS

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered.

Protests must be delivered to:

Mr. George Maiberger
Purchasing Manager
City Hall, 6th Floor
Pensacola, FL 32502
Phone: (850) 435-1835

GENERAL INFORMATION

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

The Pensacola International Airport has established an ACDBE program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The program serves as an advocate and information disseminator for small and disadvantaged businesses, and initiates policies and activities to maximize their participation in Airport contracts. **The aspirational ACDBE Goal for this solicitation is 30%.**

INTERNET ACCESS AND PAPER COPIES OF RFP DOCUMENTS

In an effort to be environmentally responsible, it is the City's intent to limit paper documents where possible. If you do not have access to websites identified in this RFP, please contact Rebecca Donahue rdonahue@cityofpensacola.com or telephone 850-435-1835 at the City's Purchasing Office for assistance in obtaining the RFP or addenda.

ERRORS AND OMISSIONS IN RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Airport, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Airport's Revenue Development and Management Office promptly after discovery, but in no event later than five (5) working days prior to the date of receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

OBJECTIONS TO RFP TERMS

Should a proposer object on any ground to any provision or legal requirements set forth in this RFP, the proposer must provide written notice to the City at least forty-five (45) calendar days prior to the original bid opening date setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of such objection.

MODIFICATIONS TO RFP

The City may modify the RFP, prior to the Submittal Deadline, by issuing an addendum or addenda, which will be posted on-line at www.cityofpensacola.com. The City will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP.

Notwithstanding this provision, the proposer is responsible for ensuring that its proposal reflects any and all addenda issued by the City prior to the Submittal Deadline regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the Submittal Deadline, to determine if the proposer has downloaded all addenda.

TERM AND WARRANTY OF PROPOSAL

The proposal will remain subject to the City's acceptance for one hundred twenty (120) calendar days after the Submittal Deadline, or such later date as may be agreed by the parties. Submission of a proposal signifies that the financial offer is genuine and not the result of collusion or any other anti-competitive activity. In submitting its proposal, a proposer agrees that (a) if the proposal is accepted, proposer will execute a lease for the Concession Opportunity on or before the deadline specified by the City; and (b) proposer accepts all of the terms and conditions of this RFP, including the Lease. The successful proposer

will be required to enter into a lease substantially in the form of the Lease, attached hereto within 30 days after the notification of intent to award. Failure to timely execute the Lease, or to furnish any and all insurance certificates and policy endorsements, deposits, or other materials required in the Lease, shall be deemed an abandonment of a lease offer. The City, in its sole discretion, may select another proposer and may proceed against the original selectee for damages.

REVISION OF PROPOSAL

A proposer may revise its proposal on the proposer's own initiative at any time before the Submittal Deadline. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the Submittal Deadline. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the Submittal Deadline for any proposer. At any time during the proposal evaluation process, the City may require a proposer to provide oral or written clarification of its proposal. The City reserves the right to make an award without further clarifications of proposals received.

ERRORS AND OMISSIONS IN PROPOSAL

Failure by the City to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

FINANCIAL RESPONSIBILITY FOR COST OF PROPOSAL

The City accepts no financial responsibility for any costs incurred by a proposer in responding to this RFP. The proposal will become the property of the City and may be used by the City in any way deemed appropriate.

UNACCEPTABLE PROPOSALS

The City considers any of the following causes to be sufficient for disqualification of a proposer and rejection of a proposal:

- Evidence of collusion among proposers.
- Existence of any unresolved claims between the proposer and the City.
- Failure to meet the minimum qualifications.

RESERVATIONS OF RIGHTS BY THE CITY

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

- Waive any defect or informality in any response, proposal, or proposal procedure;
- Reject any or all proposals;
- Request a credit report and additional financial information from each proposer;
- Ask one or more proposers to clarify information in its proposal(s);
- Rescind or reissue the RFP;

- Page 21, RFP 13-008

Prior to the Submittal Deadline, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be

provided under this RFP, or the requirements for contents or format of the proposals;

- Determine that no project will be pursued.

NO WAIVER

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

CONFLICTS OF INTEREST

The successful proposer will be required to agree to comply fully with and be bound by the applicable state and local provisions related to conflicts of interest and laws governing conflict of interest. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement. Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign;
- a candidate for that officer's office;
- a committee controlled by the officer or candidate.

SUNSHINE ORDINANCE

In accordance with the State of Florida Administrative Code **Section 119.07** contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

STANDARD CONTRACT PROVISIONS

Proposers are urged to pay special attention to the requirements of the Federal Nondiscrimination Regulations (§19.8 and 9 in the Lease),

FEDERAL NONDISCRIMINATION REGULATIONS

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or gender in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The concessionaire agrees to include the above statements in any subsequent concession agreement or contracts covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

NONDISCRIMINATION IN CONTRACTS AND BENEFITS

Concessionaire, for itself, its personal representatives, successors in interest, assigns and subtenants, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, religion, sex, national origin, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises and any improvements thereon; (2) no person on the grounds of race, color, religion, sex, national origin, or disability shall be subjected to discrimination in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services therein; and (3) Concessionaire shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

Concessionaire shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service, PROVIDED THAT Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

In the event of breach of any of the above non-discrimination covenants, the City shall have the right to terminate this agreement and to re-enter and repossess said Leased Premises and hold the same as if said agreement had never been made.

PROPOSAL CONTENT & FORMS

SUBMITTAL 1	Proposal Checklist
SUBMITTAL 2	Minimum Qualifications: Identity and Experience Questionnaire
SUBMITTAL 3	Minimum Qualifications: Statement of Ability to Comply with Federal, City Ordinances, and Other Governmental Requirements
SUBMITTAL 4	Evaluation Criteria
SUBMITTAL 5	Minimum Annual Guarantee Offer
SUBMITTAL 6	Proposal Bond
SUBMITTAL 7	Financial Pro forma

**SUBMITTAL 1
PROPOSAL CHECKLIST**

Proposing Entity: _____

Lease Name: **Food & Beverage Concessions Lease – Pensacola International Airport**

The following information, forms and documentation are included in the attached proposal.

- Submittal 1, Proposal Checklist:** Please Check boxes to the left to ensure all required submittals are included in the proposal submittal. Sign below and include with proposal submittal.
- Submittal 2, Minimum Qualifications:** Identity and Experience Questionnaire - Complete and execute using form provided.
- Submittal 3, Minimum Qualifications:** Statement of Ability to Comply – Complete and execute using form provided.
- Submittal 4, Evaluation Criteria** – Provide responses to the evaluation criteria listed.
- Submittal 5, Minimum Annual Guarantee Offer** - Complete and execute using form provided.
- Submittal 6, Proposal Bond and Letter of Credit** - Samples of Proposal Bond and Letter of Credit Forms are provided - Complete and execute using one of the two forms provided OR provide a cashier’s check made payable to the City of Pensacola.
- Submittal 7, Financial Pro Forma** – Utilize this format when submitting the Financial Pro forma, which is required under the Evaluation Criteria.

Signature

Date

Print Name

Title

SUBMITTAL 2
MINIMUM QUALIFICATION: IDENTITY AND EXPERIENCE QUESTIONNAIRE

Proposing Entity: _____

Lease Name: Food & Beverage Concessions Lease

A. Identity of Proposing Entity

1. Name and contact details of proposer exactly as it is to appear in the Lease:

Phone No: _____ Fax No: _____

Email: _____

2. The proposer, if selected, intends to carry on the business as:

- Individual
- Partnership
- Joint Venture
- Limited Liability Company
- Corporation
- Other (attached detailed explanation)

3. If a Partnership or Joint Venture, attach an executed copy of the Partnership agreement or Joint Venture agreement, and answer the following:

(a) Name, address, and share of each partner of the Joint Venture or Partnership:

NAME	ADDRESS	SHARE(S)

(b) Date of Organization: _____

(c) General or Limited Partnership (if applicable): _____

(d) Where Recorded: _____

(e) Registered in Florida? _____ If so, when _____

4. If a Corporation or Limited Liability Company, answer the following:

a) When incorporated/formed _____

b) In what state/country _____

c) Authorized to do business in Florida? _____ If so, when? _____

d) Name, address, experience in the business, and amount of stock/membership interests held by the following officers. If the officer titles presented below do not exist within your organization, list officers of similar functions and include their actual title with their names

Officer	Name	Address	Percent of Stock or Interests

e) Name, address and shares of stock/membership interests held by other “principal” stockholders or members: (A “principal” stockholder or member is defined as a stockholder or member who holds 10% or more of the outstanding stock or membership interests of the corporation or Limited Liability Company.)

NAME	ADDRESS	% of Stock or Membership

Summary of Experience

In addition to completion of this Qualifications Questionnaire, each proposer must complete the table below with the information necessary to determine if it meets the Minimum Qualification Requirements. Proposer may also submit a narrative response that describes in detail how the proposer meets the Minimum Qualification Requirements. **Please follow the same format set forth below for your response.**

1.

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Concept Name			
Address/Location			
Gross Sales Achieved			
Owner/Entity			
Landlord/Contact			

Supporting Documentation: Each proposer must submit the following information and documentation which supports its' qualifications:

2. Provide the total number of years the proposer has owned or managed said Food & Beverage facility(ies) specializing in the concepts proposed.
3. Provide information sufficient to show that such facility(ies) specializes in the concept by summarizing the product or menu items, relative to the concept.

Acceptable forms of information will include, but not be limited to sales reports, narrative description, store layout maps with product categories identified and accompanying photos, or any other information demonstrating specialization in the proposed concept.

Submittal 2 – Page 3

Each proposer must provide evidence of ownership or management experience for each of the qualifying years, which evidence must be reasonably satisfactory to the City and Selection Committee. Without limiting the generality of the foregoing, each proposer should consider submitting one or more of the following items:

Ownership

- Organizational documents, such as joint venture/partnership agreement, corporate articles/bylaws, share certificates
- Financial Statements of proposer
- Tax Returns of proposer

Management

- Management charts
- W-2 forms
- Business cards
- Confirmation letter from employer

Provide audited financial statements for each qualifying year demonstrating that proposer has owned or managed a Food & Beverage facility(ies) similar in concepts to those proposed and which facility (ies) generated the required minimum gross revenue per qualifying year: Audited financial statements may include balance sheets and income statements that were prepared and attested to by a Certified Public Accountant (CPA).

If audited financial statements are not available, submit tax statements prepared by a CPA, along with unaudited financial statements per qualifying year. Include a detailed breakdown showing which of proposer’s facilities meet the Gross Revenue Qualification requirement for each qualifying year.

The financial reports should demonstrate good financial condition supporting a decision to open a new location at the Airport.

4. State if proposer has ever operated under another name and/or ownership structure.

B. REFERENCES

Please provide a minimum of three (3) reference letters from non-affiliated organizations on their company letterhead. Each letter must (1) have been issued within the last twelve months; and (2) include information directly related to proposer’s management or ownership experience in the Food & Beverage business.

FAILURE TO MAKE FULL DISCLOSURE IN RESPONDING TO THE QUESTIONS ABOVE MAY RESULT IN DISQUALIFICATION FROM PARTICIPATION IN THIS RFP PROCESS.

c. AFFIRMATIVE STATEMENT OF ACCURACY

The undersigned represent and warrant to the City of Pensacola as follows: (a) the undersigned person(s) are authorized representatives of proposer; (b) the person(s) signing below is authorized by proposer to obligate the proposer to perform the commitments contained in the proposal; (c) all information submitted by proposer in the proposal is complete, accurate, and truthful; and (d) submission of this proposal constitutes a representation by the proposer that it is willing and able to perform the commitments contained in this proposal. (Note: If proposer is a joint venture, all joint venture partners must sign; if proposer is a corporation, at least proposer's President and Secretary must sign; if proposer is a limited liability company, at least proposer's manager or managing member must sign.)

Signature

Date

Print Name

Title

Submittal 3

MINIMUM QUALIFICATION: STATEMENT OF ABILITY TO COMPLY WITH FEDERAL, CITY ORDINANCES, AND OTHER GOVERNMENTAL REQUIREMENTS

Proposing Entity: _____

Lease Name: Food & Beverage Concessions Lease _____

The undersigned is a proposer for this Concession Opportunity.

The undersigned has reviewed the applicable City ordinances, and other governmental requirements applicable to this Concession Opportunity (“Governmental Requirements”), including those described in this RFP and the Lease.

Proposer is ready, willing, and able to comply with all Governmental Requirements.

The undersigned are authorized representatives of proposer.

Signature

Date

Print Name

Title

Submittal 4
EVALUATION CRITERIA

Proposing Entity: _____

Lease Name: Food & Beverage Concessions Lease

Submittal 4 will consist of the proposer’s response to the Evaluation Criteria below. A thorough discussion/demonstration of all points below must be included in proposal with the exception of the Minimum Annual Guarantee Offer, which will be submitted on the attached form “Submittal 5.” Proposals will be evaluated on the criteria below and scored according to the point scale shown.

Evaluation Criteria
<p>Proposed Concept – 30 Points</p> <ul style="list-style-type: none"><input type="checkbox"/> Explain the overall appeal of your proposed concept to passengers.<input type="checkbox"/> Describe your level of experience in operating the proposed concept, including successful business practices you’ve implemented in the past five years.<input type="checkbox"/> Detail how your concept will enhance the passenger’s experience.<input type="checkbox"/> Discuss how you plan to keep the concept fresh, up-to-date and ahead of the competition.<input type="checkbox"/> Discuss your plan on maximize sales, revenue, and customer satisfaction.<input type="checkbox"/> Explain how your concept will complement and enhance the Airport<input type="checkbox"/> Provide your proposed Menu, prices, and pricing strategy.
<p>Design Intention and Capital Investment – 20 Points</p> <ul style="list-style-type: none"><input type="checkbox"/> Provide documentation verifying the source of funds (commercial/bank loan pre-approval letter, bank statements, etc.) and amounts for capital investment required by the Lease and working capital.<input type="checkbox"/> A description of proposed store designs<input type="checkbox"/> Discuss the overall appeal and quality of your store designs.<input type="checkbox"/> Include images depicting the front elevation, signage, floor plan and interior design intent.<input type="checkbox"/> Provide color photographs of your existing restaurant facility that specializes in the concept proposed for the RFP. Photographs must be taken within the past two years.<input type="checkbox"/> Describe how you will incorporate sustainable materials into your design initiatives.

Evaluation Criteria

Business Plan – 15 Points

- 1 - 5 Year financial pro forma for each concept proposed and 1 – 5 Year pro forma showing all facilities (cumulative of all concepts proposed) showing projected sales, revenue to the Airport, expenses and net income. Proposers are to use the format shown on Submittal 7, attached hereunder. The pro forma should demonstrate an understanding of the proposed lease and will be considered for its reasonableness and viability of proposed operation and financial offer and the ability to fund continuing operations from the cash flow generated by the operation.
- Provide a Profit & Loss Statement of your existing Food & Beverage facility that specializes in the concept (s) proposed and explain how it supports your 10 year financial pro forma.
 - Relative to your business operations, please answer “Yes” or “No” to the following questions. The following questions pertain to any lease(s) or sub-lease(s) that you hold or have held in the past five years. Please provide a detailed explanation for those questions in which you responded with “Yes.” In approximately the past five (5) calendar years:
 - Have you received a letter/notice (e.g. Event of Default Notice) from the landlord requesting that your remedy/cure any type of default under the lease, e.g. non-payment of rent, maintenance?
 - Have you received a letter/notice demanding that you “Pay or Quit” the premises for non-payment of rent?
 - Have you (or any member of the proposing entity – i.e. Joint Venture, Sub-tenant), filed for bankruptcy?
 - Have you terminated a lease before the expiration of the lease term?
 - Have you been or are you currently on a "payment plan" to pay past due rent or fees that are owed to the landlord?
 - Have any vendors ever placed accounts related to your operation in Collections?
 - Are there any outstanding Liens on any of contracts or businesses related to you or any member of your proposing team?

Evaluation Criteria

Operations and Management Plan – 15 Points

- Provide your customer service plan, including a thorough description of your customer service policies, procedures and programs.
- Discuss your approach to customer service and corporate monitoring of the concession to ensure high standards are maintained and overall performance of the business is strong.
- Provide a Contract Management & Typical Unit staffing plan for each location (Organization Chart – PNS Airport Food & Beverage Operations)
- Provide Resumes of Key Personnel of your organization and
- Discuss how customer complaints will be handled.
- Discuss your approach to product quality control.
- Discuss how your facilities will be maintained to ensure excellent repair, cleanliness and appealing product presentation.
- Discuss your logistics plan including expected delivery schedule of product and replenishment

Construction & Transition Plan – 10 Points

- Provide a construction schedule, identifying the projects start and completion dates
- Provide a Transition Plan explaining the level and type of Food & Beverage service to be provided during the construction phase
- Provide renderings or photos of proposed Temporary facilities

Minimum Annual Guarantee Offer – 10 Points

Total Possible Points

100 Points

Submittal 5
MINIMUM ANNUAL GUARANTEE

Proposing Entity: _____

Lease Name: Food & Beverage Concessions Lease

Address: _____

Phone No.: _____ Fax No.: _____

TO THE AIRPORT DIRECTOR:

This proposal is being submitted in response to the Request for Proposal for the above-referenced Food & Beverage Lease Package, which is incorporated in this RFP by reference. Defined terms below shall have the meanings given them in the Request for Proposal.

Minimum Annual Guarantee Offer: The proposed amount for the First (Primary) Lease Year's Minimum Annual Guarantee is: _____ (Dollars) \$ _____.

Minimum Annual Guarantee Proposed is calculated as follows:

	SALES	%	RENT
First Year F&B Sales (Pre-Security Unit):	\$ _____	x 10%	= \$ _____
First Year F&B Sales (Post Security Units):	\$ _____	x 12%	= \$ _____
First Year Alcoholic Beverage Sales (All Units):	\$ _____	x 14%	= \$ _____
Total:	\$ _____		\$ _____

The undersigned represent and warrant to the City as follows: (a) the undersigned person(s) are authorized representatives of proposer; (b) all information submitted by proposer in the proposal is complete, accurate and truthful. (Note: If proposer is a joint venture, all joint venture partners must sign; if proposer is a corporation, at least proposer's President and Secretary must sign; if proposer is a limited liability company, at least proposer's manager or managing member must sign.)

Signature

Date

Print Name

Title

Submittal 6
Proposal Bond Sample Format
~ Sample Format of Surety Bond ~

(Surety)

KNOW ALL MEN BY THESE PRESENTS:

That we _____, as Principal, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____, as Surety, are held and firmly bound unto the City Pensacola, acting by and through its City, as obligee, in the sum of _____ Dollars (\$_____) lawful money of the United States of America, to be paid to the City of Pensacola, acting by and through its City, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a proposal for the **Food & Beverage Concessions Lease at the Pensacola International Airport.**

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall enter into a Lease or other agreement (the "Agreement") with the Obligee in accordance with the terms of such proposal (which by reference is made a part hereof), and give such deposit as may be specified in the Agreement and the RFP process, then this obligation shall be null and void, otherwise to remain in full force and effect; and shall be effective: _____

This bond may be called upon by Obligee by a notice sent to the Surety by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at: _____

Signed, sealed and dated this _____ day of _____, 201__

Principal: By: _____
 Title: _____

Seal:

Surety Company: By: _____
 Title: _____

Seal:

(Attach Notary Public Certificate and Attorney-in-Fact form)

~ Sample Format of Irrevocable Letter for Credit~

Issue Date _____

Irrevocable Letter of Credit No. _____
Account Party's Name _____
Account Party's Address _____
For Solicitation No. _____ (for reference only)

City of Pensacola
222 West Main Street
Pensacola, FL 32502

Ladies and Gentlemen:

1. We hereby establish this irrevocable and transferable letter of credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at _____ office
[Issuing financial institutions and, if any, confirming financial institutions]
at _____
[Issuing financial institutions address and, if any, confirming financial institutions address] and expires with our close of business on _____, or any automatically extended expiration date.
2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.
3. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be affected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the City of Pensacola, Florida (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.
4. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____. [State of confirming financial institution, if any, otherwise State of issuing financial institution]
5. If this credit expires during an interruption of business of the financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

[Issuing financial institution]

Submittal 6 – Page 2

LETTER OF CONFIRMATION
FOR IRREVOCABLE LETTER OF CREDIT

Date _____

Our Letter of Credit Advice No. _____
Beneficiary City of Pensacola, Florida
Issuing Finance Institution _____
Issuing Financial Institution _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____
[Issuing financial institution]
for drawing of up to United States dollars _____ U.S. \$ _____ and expiring with our close of business on _____, or any automatically extended expiration date.
2. Draft(s) drawn under this Letter of Credit and this Confirmation are payable at our office located at _____.
3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.
4. It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:
 - a. At least 60 days prior to any such expiration date, we shall notify the Contract Administrator, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or
 - b. The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.
5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [State of confirming financial institution].
6. If this confirmation expires during an interruption of business of the financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

[Confirming financial institution]

Submittal 6 – Page 3

**Request for Proposal
Glossary of Terms**

Airport Concession Disadvantaged Business Enterprise (ACBDE)	A concession that is a for-profit small business concern that is (1) at least 51% owned by one or more individuals who are both socially and economically disadvantaged, and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
City	The City of Pensacola.
Concession Opportunity	The business opportunity described in this RFP to lease the premises at the Airport for the permitted use under the terms and conditions in the Lease.
Deplaning Passenger	Passenger exiting an aircraft.
Enplaning Passenger	Passenger entering an aircraft.
Lease	The agreement to be executed by the successful proposer(s) and City following the award of each Concession Opportunity to the successful proposer(s) at the end of the RFP process described herein. The form of the Lease is attached as Part II.
Minimum Annual Guarantee (MAG)	The amount proposed by the successful proposer, which the successful proposer guarantees as the minimum payment to the Airport for the first year of the Primary Lease Term.
Percentage Rent	In addition to the MAG, Concessionaires shall pay percentage rent but only to the extent that the percentage rent exceeds the monthly installment of the MAG.
Premises	The concession spaces at the Airport undergoing this RFP process
Proposer(s)	Person(s) or entity(ies) who submits a proposal for this Concession Opportunity.
Tenant	The individual proposer chosen to operate the Concession Opportunity pursuant to this RFP process, following award by the City and, if required, approval by the Pensacola City Council.

CATEGORY / CONCEPT GUIDELINES

Each location available under this RFP has a preferred concept, developed in accordance with a concession plan. The concept has been chosen based on an analysis of historic customer preferences, both here at the Airport, and at other airports of similar size and passenger traffic mix.

Although the City prefers that the selected Proposers operate the locations with concepts that comply with the designated concept categories, Proposers may propose alternative concepts. The City has the right of final concept approval. Proposers should detail why they believe alternative categories / concepts would be applicable to the PNS Food & Beverage Concessions program.

Post – Security Location # 1, 2 Concepts, 3,107 sq. ft.

- 1 - Casual Dining + 1 Coffee Café

Proposer should demonstrate how they will effectively “demise” the space to allocate space to accommodate a Casual Dining plus a Coffee Café. Design should enable flow between the two concepts.

Casual Dining Restaurant with a Bar:

- Restaurant with a full bar offering table service
- Menu should include breakfast, lunch and dinner menu options.
- Menu items should be available for take-away
- Children menu option is highly recommended

Coffee Café:

- Coffee / Café serving coffee & espresso drinks, tea, baked goods (muffins, bagels, pastries), juices

Post – Security Location # 2, 1 Concept, 880 sq. ft.

The proposer is free to recommend the appropriate concept for this location. Proposer should clearly articulate why the proposed concept was chosen and how it will complement the overall program being proposed. Proposer should take into consideration concepts featuring healthy alternatives.

Pre-Security Location # 1, 1 Concept, (approximately) 2,500 sq. ft.

- Bistro Café featuring Sandwiched, Salads, Snacks, and Coffee

This pre-security location services all Employees, Meeters & Greeters, and the USO Lounge (adjacent). PNS is home to a large Military Base. Military families often await the return of their loved ones in this pre-security location. Moreover, many employees at PNS may use this location for their meals. Although the location currently features a full service bar, consideration should be given to the perception of a “pre-security” bar and its implication on Driving Laws.

Historic Activities

The existing food and beverage program at the Airport is comprised of a generic landside full-service restaurant as well as one (1) generic airside restaurant on the concourses. The current retail program includes one landside news and gift shop and one airside news and gift shop on the concourses.

In 2012, total Food & Beverage sales reached approximately \$2.3 million.

Historic Performance:

FY	EP's	SALES	SPE
2009	700,662	\$ 2,428,938	\$ 3.47
2010	719,648	\$ 2,109,027	\$ 2.93
2011	780,621	\$ 2,210,731	\$ 2.83
2012	750,190	\$ 2,342,760	\$ 3.12

Concession sales are expected to improve significantly with the completion of renovations, a new and relocation security checkpoint, and the expansion of Southwest Airlines into PNS.

Forecasted Enplanements

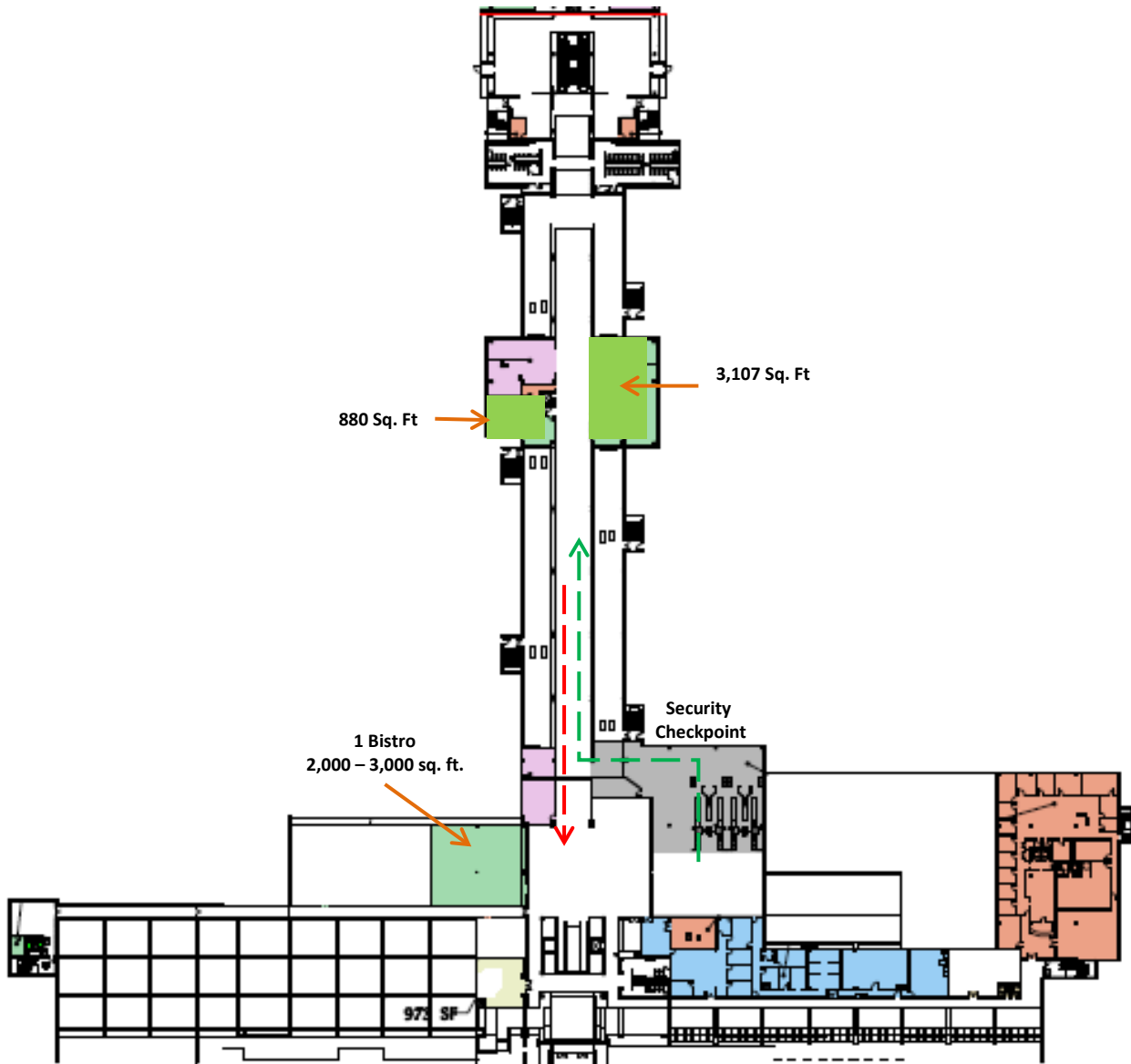
ACTUAL EP's		FORECASTED EP's				
2011	2012	2013	2014	2015	2016	2017
780,621	750,190	780,198	811,406	843,862	877,616	912,721

Airlines currently servicing PNS:

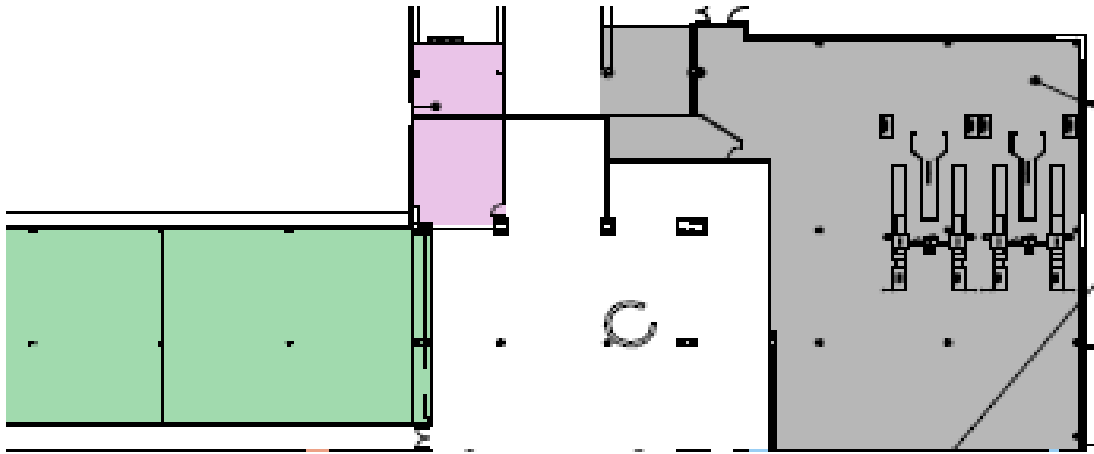
- AirTran Delta Airlines US Airways & US Airways Express
- American Eagle United United / Silver

- Southwest Airlines has committed to services at PNS. At the publication of this RFP Southwest had successfully completed the connection between the Southwest and AirTran networks. Customers are now able to purchase itineraries to the airlines' combined 97 destinations in one transaction.

**EXHIBIT A –
TERMINAL MAP & MERCHANDISE PLAN**



PRE SECURITY



POST SECURITY

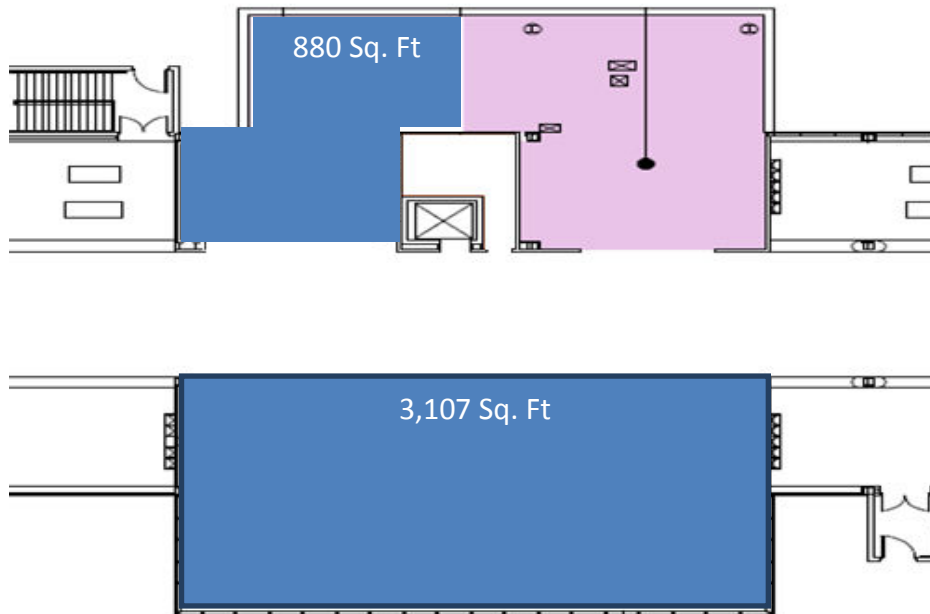


EXHIBIT C

Pro Forma Example – Years 1 to 5

10 Year Pro Forma											
Projected Sales, Net Income and Cash Flow											
Pensacola International Airport											
Store Operator:			Store Location:			Size					
Store Name:											
Category	YEAR 1		YEAR 2		YEAR 3		YEAR 4		YEAR 5		
	\$	%	\$	%	\$	%	\$	%	\$	%	
Gross Sales F & B											
Gross Sales Alcohol											
TOTAL GROSS SALES											
Less Cost of Goods F&B											
Less Cost of Goods Alcohol											
TOTAL COST OF GOODS											
Gross Margins											
Operation Expenses											
Rents to the City											
Employee Benefits											
Employee Salaries/Wages											
Utilities and Telephone											
Maintenance/Cleaning/Supplies											
Insurance											
Marketing/Advertising											
Franchise/Royalty Fees											
General & Administration											
Interest											
Depreciation and Amortization											
Other Expenses											
Total Expense											
Net Income											

Please use 11 x 17 Paper to format your Pro Forma so that Years 1 – 10 are contained on one Sheet (per concept).

EXHIBIT C

Pro Forma Example – Years 5 to 10

10 Year Pro Forma											
Projected Sales, Net Income and Cash Flow											
Pensacola International Airport											
Store Operator:					Store Location:			Size			
Store Name:											
Category	YEAR 6		YEAR 7		YEAR 8		YEAR 9		YEAR 10		
	\$	%	\$	%	\$	%	\$	%	\$	%	
Gross Sales F & B											
Gross Sales Alcohol											
TOTAL GROSS SALES											
Less Cost of Goods F&B											
Less Cost of Goods Alcohol											
TOTAL COST OF GOODS											
Gross Margins											
Operation Expenses											
Rents to the City											
Employee Benefits											
Employee Salaries/Wages											
Utilities and Telephone											
Maintenance/Cleaning/Supplies											
Insurance											
Marketing/Advertising											
Franchise/Royalty Fees											
General & Administration											
Interest											
Depreciation and Amortization											
Other Expenses											
Total Expense											
Net Income											

Please use 11 x 17 Paper to format your Pro Forma so that Years 1 – 10 are contained on one Sheet (per concept).

LEASE AGREEMENT
FOR THE
FOOD & BEVERAGE CONCESSIONS
AT PENSACOLA INTERNATIONAL AIRPORT

By and between

as tenant

and

CITY OF PENSACOLA, FLORIDA
as Landlord

Ashton J. Hayward, III Mayor

TABLE OF CONTENT

MAJOR LEASE TERM SUMMARY Pages 6 - 8

1. PREMISIS

- 1.1. Extent of Leasehold**
- 1.2. Relocation, Expansion, Contraction**
- 1.3. Changes to Airport**
- 1.4. Common Area**

2. TERM

- 2.1. Commencement and Expiration**
- 2.2. Phased Delivery and Required Opening**
- 2.3. Late Opening Charges**
- 2.4. Delivery Delay by City**
- 2.5. Holding Over**

3. USE AND OPERATION

- 3.1. Permitted Use**
- 3.2. Operation of Business**
- 3.3. Hours of Operation**
- 3.4. Prices**
- 3.5. Reference to Airport**
- 3.6. Other Operational Requirements**
- 3.7. Prohibited Activities**
- 3.8. Audit of Operations**
- 3.9. Representative of Lessee**
- 3.10. Investigation Reports**
- 3.11. Compliance with Rules and Regulations**

4. RENT

- 4.1. Definitions**
- 4.2. Monthly Rent Payments**
- 4.3. Adjustment to Minimum Annual Guarantee**
- 4.4. Construction Period Operations**
- 4.5. Rent During Construction**
- 4.6. Sales Reports**
- 4.7. Annual Certification of Sales and Adjustments**
- 4.8. Cash Register Requirements**
- 4.9. Books and Records; Audit Rights**
- 4.10. Other Reports and Submissions**
- 4.11. Additional Rent**
- 4.12. Prepay Rent**
- 4.13. Nature of Lease**
- 4.14. Severe Decline in Enplanements**

5. ASSIGNMENT AND SUBLETTING

- 5.1. No Assignment**
- 5.2. Change in Tenant**
- 5.3. No Release**

- 5.4. Subleasing
- 5.5. Excess Rent
- 5.6. Acceptance of Rent
- 6. TAXES ASSESSMENT AND LIENS
 - 6.1. Taxes
 - 6.2. Other Liens
- 7. INVESTMENT; ALTERATIONS
 - 7.1. Minimum Investment
 - 7.2. City's Approval Rights
 - 7.3. Structure and Fixtures
 - 7.4. Notice and Permits
 - 7.5. Title to Alterations
 - 7.6. Effect of Alterations to Airport
- 8. UTILITIES
 - 8.1. Service Provided
 - 8.2. Utility Costs
 - 8.3. Waiver of Damages
 - 8.4. Other
- 9. MAINTENANCE AND REPAIR
 - 9.1. "As-Is" Condition
 - 9.2. Tenant's Maintenance Obligations
 - 9.3. Tenant's Pest Management Obligations
 - 9.4. General
 - 9.5. Damage to the Airport
- 10. SIGNS AND ADVERTISING
 - 10.1. Signs and Advertising
- 11. WAIVER; INDEMNITY; INSURANCE
 - 11.1. Waiver
 - 11.2. Indemnity
 - 11.3. Losses
 - 11.4. Immediate Obligations to Defend
 - 11.5. Notice
 - 11.6. Insurance
 - 11.7. Form of Policy
 - 11.8. Delivery of Policy or Certificates
 - 11.9. Subrogation
- 12. DEPOSIT
 - 12.1. Form of Deposit
 - 12.2. Maintenance of Deposit
 - 12.3. Use of Deposit
 - 12.4. Other Agreements
- 13. DAMAGE OR DESTRUCTION
 - 13.1. Partial Destruction of Premises
 - 13.2. Total Destruction of Premises
 - 13.3. Partial Destruction of Terminal Building
 - 13.4. Damage Near End of Term
 - 13.5. No Abatement of Rent; Tenant's Remedies

14. DEFAULT;REMEDIES

- 14.1. Event of Default**
- 14.2. Remedies**
- 14.3. City's Right to Perform**
- 14.4. Rights Related to Termination**
- 14.5. Cumulative Rights**
- 14.6. Prepayment**
- 14.7. Fines**
- 14.8. City Lien**
- 14.9. Commencement of Legal Action**
- 14.10. Waiver of Notice**

15. SURRENDER

16. HAZARDOUS MATERIALS

- 16.1. Definitions**
- 16.2. Tenant's Covenants**
- 16.3. Environmental Indemnity**
- 16.4. Environmental Audit**
- 16.5. Closure Permit**

17. EMINENT DOMAIN

- 17.1. Definitions**
- 17.2. Total Taking; Automatic Termination**
- 17.3. Partial Taking; Election to Terminate**
- 17.4. Tenant's Monetary Obligations; Award**
- 17.5. Partial Taking; Continuation of Lease**
- 17.6. Temporary Taking**

18. FEDERAL NONDISCRIMINATION REGULATIONS

- 18.1. Federal Affirmative Action Regulations**
- 18.2. City's Nondiscrimination Ordinance**
- 18.3. Drug-Free Workplace**
- 18.4. Compliance with American With Disabilities Act**
- 18.5. Sunshine Ordinance**

19. GENERAL PROVISIONS

- 19.1. Notices**
- 19.2. No Implied Waiver**
- 19.3. Entire Agreement**
- 19.4. Amendments**
- 19.5. Interpretation of Lease**
- 19.6. Successors and Assigns**
- 19.7. No Third Party Beneficiaries**
- 19.8. No Joint Venture**
- 19.9. Brokers**
- 19.10. Severability**
- 19.11. Governing Law**
- 19.12. Attorney Fees**
- 19.13. Cumulative Remedies**
- 19.14. Time of Essence**
- 19.15. Reservations by City**

- 19.16. Survival of Indemnities**
- 19.17. Quiet Enjoyment and Title**
- 19.18. Accord and Satisfaction**
- 19.19. Joint and Several Liability**
- 19.20. Estoppel Statements**
- 19.21. Authority**
- 19.22. Consents**
- 19.23. Options Personal**
- 19.24. Inspections**
- 19.25. Collateralization Rights**
- 19.26. Bond Resolution**
- 19.27. Counterparts**

LIST OF EXHIBITS

- EXHIBIT A – Description of Premises
- EXHIBIT B – Use and Operational Requirements
- EXHIBIT C-1 – Form of Performance Bond
- EXHIBIT C-2 – Form of Letter of Credit

**Lease Agreement
For The
Food and Beverage Concessions
At Pensacola International Airport**

MAJOR LEASE TERM SUMMARY

Effective Date	_____ day of _____, _____
Tenant	_____, a _____ Corporation _____
Tenant's Notice Address	_____ _____ Fax: _____ Phone: _____ Email: _____ Main Contact: _____
City	The City of Pensacola Florida
City's Notice Address	_____ _____ Fax: _____ Phone: _____ Email: _____ Main Contact: _____
City's Rent Payment Address	_____ _____ Fax: _____ Phone: _____ Email: _____ Main Contact: _____
City's Insurance / Deposit Notice Address	_____ _____ Fax: _____ Phone: _____ Email: _____ Main Contact: _____

--	--

Premises	Space No: _____, comprised approximately _____ sq. ft. Space No: _____, comprised approximately _____ sq. ft. Space No: _____, comprised approximately _____ sq. ft.
Term:	Interim Term plus Transition Term, plus the Primary Term, plus a two (2) years Option Term <ul style="list-style-type: none"> - Interim Term: The operation of Unit No. _____ plus any Temporary Facilities Lessee may operate during the Construction of Units _____ and _____ - Transition Term: the fit out of Unit No. _____ - Primary Term: The Date of Beneficial Occupancy of Units No. _____ and _____
Rent For Interim Term	The Lessee shall pay Rents for any Temporary Units plus Rents For Unit No. _____ in the amount of 12% of Gross Sales as defined by the Lease.
Rents for Primary Term	On the Completion of Construction and Opening of Units No. _____ & _____ The Primary Term shall commence and Lessee shall pay the Greater of MAG or Percentage Rents
Rent Commence Date	Interim Term: <ul style="list-style-type: none"> - The Operation of Temporary Services - The opening of Unit No. _____, but in no event 90 Days after City has turned space over to Lessee. - The opening of Units No. _____ and _____, but in no event 120 Days after the City has turned spaces over to Lessee.
Expiration Date – Primary Term	11:59 p.m. on the day before the tenth (10 th) anniversary of the Primary Term Commencement Date
Permitted Use	For the Operations of Food and Beverage Concessions as proposed by Lessee in the RFP Response
Base Rent	Primary Lease Year: <ul style="list-style-type: none"> - 10% of gross sales from the sale of all Food & Non-Alcoholic Beverages from all <u>pre-security</u> locations, plus, - 12% of gross sales from the sale of all Food & Non-Alcoholic Beverages from all <u>post-security</u> locations, plus, - 14% of gross sales from the sale of all Alcoholic Beverage from all locations.

--	--

Minimum Annual Guarantee (“MAG”)	\$ _____ Subject to (a) adjustment upwards as described in the Lease herein.
MAG Adjustment Date	The first MAG Adjustment shall occur on January 1 st on the first full year after the Primary Term Commencement Date. Thereafter, every January 1 st
Deposit Amount	Equal to one-half (1/2) of the then current MAG (subject to adjustment)
Late Opening	Five Hundred Dollars (\$500) per day
Minimum Investment Amount	Three Hundred Dollars (\$300) per Square Foot of the Premises, which: - Unit No. _____ x \$300 = _____ - Unit No. _____ x \$300 = _____ - Unit No. _____ x \$300 = _____
Mid-Term Refresh Amount	- Unit No. _____ x \$ 50 = _____ - Unit No. _____ x \$ 50 = _____ - Unit No. _____ x \$ 50 = _____
Utilities	Metered Separately
Initial Tenant Representative:	_____ Telephone No: _____ Email: _____
Exhibits	- Premises - Use and Operational Requirement - Form of Performance Bond

Signature of Authorized City Representative: _____

Signature of Authorized Lessee Representative: _____

**FOOD AND BEVERAGE LEASE AND CONCESSION AGREEMENT
PENSACOLA INTERNATIONAL AIRPORT**

THIS CONCESSION AGREEMENT made and entered into this _____ day of _____, 2013, by and between the City of Pensacola, a municipal corporation of the State of Florida, herein referred to as the "City" or "Lessor", and _____, a _____ Corporation authorized to do business in Florida herein referred to as "Tenant"

Following a competitive process, the City has determined that _____ is the highest or best responsible bidder or proposer. Pursuant to the Resolution, City has awarded this Food & Beverage Concessions Lease to Tenant. In consideration of the proposal dated _____, 2013 submitted by Tenant for the operation of the Food & Beverage concession at Pensacola International Airport, the City's acceptance of said proposal, and the mutual promises set forth below, the parties hereby agree as follows:

ARTICLE I TERM

The **Primary Term** (the "Term") of this Food and Beverage Lease shall commence upon full execution of the same as evidenced by the date above, and shall continue for a period of ten (10) years from the date of beneficial occupancy of the Food and Beverage units currently operational (Units #: _____ and _____) but in no case later than three months from the date Units #: _____ and _____ are turned over to the Lessee by the City.

Renewals: This Concessions Lease is subject to a single two (2)-year renewal at the sole option of the City. Notice of the City's intention to renew the Concessions Agreement will be provided to Concessionaire within thirty (30) days of the end of the seventh anniversary of the Commencement Date. Renewal shall require the approval of the Mayor and, if granted, will require the execution of an appropriate Renewal document.

ARTICLE II PROPOSAL DOCUMENTS

All instructions, specification, statements accompanying the proposal, and the proposal itself, all of which do not conflict with the provisions contained herein shall be considered a part of this Agreement and Tenant shall operate its Food and Beverage concession in accordance with, and subject to, all of the terms and conditions of this Lease and the Proposal Documents.

**ARTICLE III
POSSESSORY INTEREST AND OPERATING PRIVILEGES**

Subject to any exceptions listed herein, the City grants to Tenant the exclusive right, privilege and obligation to operate the Food and Beverage concession in both the main terminal and the concourse at the Pensacola International Airport pursuant to the Proposal submitted by Tenant for the operation of the Concession at Pensacola International Airport ("Airport") and in accordance with the terms and conditions of the Lease.

The Tenant shall use the premises solely for the installation and operation of a Food and Beverage concession and for no other purpose whatsoever. Tenant shall not use, nor permit others to use, its leased premises, and any improvements thereon, for any commercial or non-commercial purpose, other than the authorized purpose set forth herein, unless the City authorizes said additional use of the leased premises, in writing, in the future. Should Tenant wish to perform or provide additional commercial or non-commercial services or activities from its premises, Tenant shall make written application(s) to the City requesting permission to provide such additional activity or service. If the City determines that Tenant is qualified to perform the additional activity or service, and that Tenant's provision of said additional activity or service would be in the Airport's best interests, and if the City and Tenant are able to negotiate and execute an addendum to this Lease setting forth the terms and conditions by which Tenant shall perform the additional activity or service and the rental to be paid by Tenant to the City for the privilege of performing said additional activity or service, then Tenant shall be deemed authorized to perform said additional commercial or non-commercial activity or service from its leased premises.

The Tenant is specifically prohibited from operating or selling the following items unless otherwise agreed upon, in writing, by the Airport Director:

- Any Retail or items typically associated with an Airport Retail, Specialty Retail or News & Gifts Concessions Operations, including, Magazines, Candy, Books, or Gift items.
- Vending machines (dispensing food, drinks, snack items, newspapers, cigarettes, or other goods and sundry items).
- Other coin operated devices including, but not limited to, pay telephones, video games, and pay televisions.
- Travel and baggage insurance.
- Automatic Teller Machines ("ATM") or similar Cash Dispensing Systems
- Gourmet or branded specialty food & beverage items

The Airport retains the right to provide the above services by entering into agreements with parties other than Tenant. Should a conflict arise between the Tenant and other concession operators at the Airport regarding the scope of the concession privileges, the Airport Director's decision on the matter shall be final and conclusive.

Accordingly, Tenant and City agree as follows:

1. PREMISES

1.1 Extent of Leasehold Extent of Leasehold on the terms, conditions, and covenants in this Lease, City hereby leases to Tenant and Tenant hereby leases from City, the Premises. In addition, Tenant shall possess the non-exclusive right of ingress and egress to and from the Premises as may

be necessary on areas designated by Director, subject to Airport Rules and Regulations, as amended from time to time (as amended, the "Airport Rules"), provided that Tenant's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers, and other authorized occupants. Tenant shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Airport property outside the Premises, without the express prior consent of Director. In no event will Tenant engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business. For purposes of this Lease relating to Tenant's responsibilities, the "Premises" shall mean the area(s) shown on Exhibit A, where (a) the exact boundaries are deemed to be three inches (3") inside each wall separating the Premises from the adjacent premises or the external Terminal wall, and (b) with respect to the facade and/or wall on the front of the Premises, separating the Premises from the Terminal common areas, the exact boundary is deemed to be the external face of the facade and/or wall.

1.2 Relocation, Expansion, Contraction.

- a) At any time during the Term, City may require that (i) Tenant relocate and surrender all or part of the Premises (such change to the Premises referred to as a "Required Relocation"), and/or (ii) the Premises be contracted or expanded (such change to the Premises referred to as a "Premises Change") on the terms set forth in this Section 1.2. City shall give notice (the "Change Notice") setting forth a description of the Required Relocation or the Premises Change, as applicable, the approximate effective date thereof (the "Target Effective Date"), and with respect to a Required Relocation, the location of comparable on-Airport replacement premises. The Change Notice shall be given no less than six (6) months prior to the Target Effective Date.

- b) (i) With respect to a Required Relocation, if the replacement premises are deemed unsatisfactory to Tenant, then Tenant may terminate this Lease by giving notice thereof to City within thirty (30) days after the Change Notice is given. In the event Tenant gives such notice of termination, then this Lease shall terminate on the Target Effective Date, and on such date, Tenant shall surrender the Premises in the condition required by this Lease. (ii) Provided Tenant does not terminate this Lease pursuant to the foregoing, Tenant shall surrender the Premises and relocate to the replacement premises on a date (the "Surrender Date") determined by City (which shall be no earlier than the Target Effective Date). On the Surrender Date, Tenant shall surrender the Premises in the condition required below. In the event of relocation pursuant to this Section 1.2(b), Tenant shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement premises, such that the replacement premises are of at least the same quality as the original premises. As part of City's approval of Tenant's plans and specifications and Tenant's budget for its remodeling, City may specify a maximum dollar amount to be reimbursed (the "Maximum Reimbursement Amount"). Once the remodeling of the replacement premises is completed, and City has approved the work, Tenant must submit to City (i) a certificate from Tenant's architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by City, (ii) copies of paid invoices showing the costs actually paid by Tenant for the remodeling of the replacement premises and Tenant's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and material men entitled to payment in connection with the remodeling of the replacement premises. Following its review and approval of those submissions, City will reimburse Tenant for all

reasonable costs of remodeling the replacement premises and moving its merchandise and other personal property to the replacement premises from the original Premises; provided that in no event will City be required to reimburse Tenant for more than the Maximum Reimbursement Amount and further provided that City may, in City's sole discretion, make such reimbursement by issuing Tenant a rent credit. In no event will City be obligated to pay or reimburse Tenant for any other costs or expenses, including business interruption costs.

- c) With respect to a Premises Change where the aggregate square footage of the original Premises will be expanded or contracted by more than ten percent (10%), Tenant may terminate this Lease by giving notice thereof to City within thirty (30) days after the Change Notice is given. In the event Tenant gives such notice of termination, then this Lease shall terminate on the Target Effective Date and on such date, Tenant shall surrender the Premises in the condition required below. (ii) Provided Tenant does not terminate this Lease pursuant to the foregoing, Tenant shall cause the Premises to be expanded or contracted as described in the Change Notice on or before the date described therein. As part of City's approval of Tenant's plans and specifications and Tenant's budget for its expansion/contraction work, City may specify a Maximum Reimbursement Amount. Once the expansion/contraction work is completed, and City has approved the work, Tenant must submit to City (i) a certificate from Tenant's architect certifying that the expansion/contraction work was completed in strict compliance with the plans and specifications approved by City, (ii) copies of paid invoices showing the costs actually paid by Tenant for the remodeling and Tenant's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and material men entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, City will reimburse Tenant for all reasonable costs of the expansion/contraction work; provided that in no event will City be required to reimburse Tenant for more than the Maximum Reimbursement Amount and further provided that City may, in City's sole discretion, make such reimbursement by issuing Tenant a rent credit. In no event will City be obligated to pay or reimburse Tenant for any other costs or expenses, including business interruption costs.
- d) With respect to a Required Relocation, the Minimum Annual Guarantee shall be increased, or decreased, as the case may be, pro rata, to reflect the increase or decrease, as the case may be, in the size of the replacement premises compared to the original premises.
- e) With respect to a Premises Change where the aggregate square footage of the original premises will be expanded or contracted by more than ten percent (10%), the Minimum Annual Guarantee shall be increased, or decreased, as the case may be, pro rata to reflect the increase or decrease, as the case may be, in the size of the expanded or contracted premises compared to the original premises.
- f) Any Required Relocation or Premises Change described herein can be effected on the terms and conditions set forth above without need for a formal amendment of this Lease.
- g) Notwithstanding anything to the contrary herein, City shall not require a Required Relocation or a Premises Change unless City shall have considered other reasonable alternatives and rejected them.

1.3 Changes to Airport. Tenant acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex; (b) City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport, and Tenant shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, City may, without the consent of Tenant, and without affecting Tenant's obligations under this Lease, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses, piers, boarding areas, concession areas and security areas located within the Terminal Building, (b) build additional stories above or below the Airport buildings, including of the Terminal Building, (c) eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the Premises, (d) construct multi-level, elevated or subterranean parking facilities, and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Lease, Tenant hereby waives all claims against City and releases City from all Losses (as defined below) that Tenant suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Tenant further agrees that Tenant will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport.

1.4 Common Areas: The term "common areas" means all areas and facilities located within the Airport that are designated by City from time to time for the general use and convenience of the tenants of the Airport and other occupants of the airport, and airline passengers and other visitors to the Airport such as concourses, sidewalks, elevators, escalators, moving walkways, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Tenant (a) change the common areas, (b) increase or decrease the common areas (including the conversion of common areas to leasable areas and the conversion of leasable areas to common areas), and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport Rules concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic. City reserves the right to make additional Airport Rules affecting the Airport throughout the Term, including the requirement that Tenant participate in a parking validation program.

2. TERM

2.1 Commencement and Expiration: The Term shall commence on the Rent Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein. If for any reason (including, without limitation, the existing tenant's failure to vacate timely the Premises) City cannot deliver possession of the Premises to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Tenant, or Tenant's principal, affiliate, contractor, employee, agent, licensee or invitee (a "Tenant Entity"), the Rent Commencement Date shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on the date that is one hundred eighty (180) days after the Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other. After the Rent Commencement Date has occurred, upon Director's request, Tenant will execute a written acknowledgment of the Commencement Date and the Rent Commencement Date. In the event Tenant fails to execute and return promptly such acknowledgment to City, the dates described therein shall be deemed conclusive.

2.2 Phased Delivery and Required Opening. City may deliver the Facilities to Tenant in phases, with one or more Facilities delivered to Tenant at different times. Tenant shall have no right to use or occupy any Facility until the Facility is so delivered. As to each Facility, on the Delivery Date, Tenant shall (i) take possession of such Facility, (ii) cause the initial improvements necessary and appropriate to commence operations in the Premises (the "Initial Improvements") to be substantially completed at Tenant's sole cost, and (iii) cause the Facility to be open for business within ninety (90) days. As used herein, the term "Tenant's Work" shall mean all improvements, alterations, fixture, equipment, and signage installation, and furniture placement necessary or appropriate for the conduct of the Permitted Use.

2.3 Late Opening Charge: In the event Tenant fails to open a Facility for business on or before the Rent Commencement Date applicable to such Facility, City will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which Tenant opens the Facility for business, Tenant shall pay to City Five Hundred Dollars (\$500.00) (in addition to Rent as provided below), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by City in the event Tenant shall fail to open on or before the Rent Commencement Date. In the event the Facility is not open for business on the date that is sixty (60) days after the Rent Commencement Date, City shall have the option to terminate this Lease, or to remove the applicable Facility from the Lease, exercisable by notice to Tenant. In the event the applicable Facility is removed from the Lease, any Rent components based on square footage shall be reduced accordingly. Tenant shall be liable for all damages associated with such termination or removal, including City's releasing costs.

2.4 Delivery Delay by City: If for any reason City cannot deliver possession of a Facility to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Tenant, or Tenant's principal, affiliate, contractor, employee, agent, licensee or invitee (a "Tenant Entity"), the Rent Commencement Date applicable to such Facility shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on the date that is one (1) year after the

Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other.

2.5 Holding Over. If, without objection by City, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month to month, upon the terms of this Lease except that, the MAG shall not be applicable, and Base Rent shall be the Percentage Rent specified in the Summary during any such holdover period. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' notice of termination to the other at any time. Tenant shall have no rights to renew or extend the Term of this Lease.

3. USE AND OPERATION

3.1 Permitted Use. Tenant shall use the Premises for the Permitted Use and for no other purpose. Tenant shall, at all times, operate the Premises in strict conformance with the Permitted Use attached as Exhibit B herein. In the event Tenant desires to use the Premises for any purpose other than the Permitted Use (including selling an item or service outside the scope of the Permitted Use) Tenant must submit a request to Director. Director may, in his/her sole and absolute discretion approve or deny such request. Any such decision shall be binding on Tenant. Without limiting the generality of this Section 3.1 or any of the requirements set forth on Exhibit B, Tenant shall not operate any Facility under any name or brand, other than a name or brand specifically proposed and permitted or required herein, or as otherwise approved by Director. Without limiting Section 5 [Assignment or Subletting], Tenant shall not, without the prior consent of Director, engage a third-party operator or conduct the Permitted Use or otherwise operate on the Premises.

3.2 Operation of Business. Subject to the terms of this Lease, Tenant will operate Tenant's business in the Premises so as to maximize Gross Revenues (as defined below) and in accordance with the requirements set forth on Exhibit B relating to, among other things, merchandise requirements and price requirements. Without limiting the generality of the foregoing, Tenant shall (a) conduct the business in a first-class, businesslike, safe, efficient, courteous and accommodating manner; (b) carry a wide-range of food and beverage items of top character, quantity, and quality; and (c) employ sufficient and experienced staff. In the event Director shall give notice to Tenant that any of the foregoing covenants (a) - (c) are not being satisfied, Tenant shall immediately discontinue or remedy the objectionable practice. In addition, Tenant shall render the following public services: make reasonable change, give directions, and assist the public generally. Tenant shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it. Tenant will not divert or cause to be diverted any business from the Airport.

3.3 Hours of Operation. Tenant will carry on its business diligently and continuously in the Premises and will keep the Premises open for business seven (7) days per week, including holidays. Director or his/her representative may, from time to time, change such required hours of operation, in which event, Tenant will remain open during such revised hours. Similarly, Tenant may, from time to time, request to revise its hours of operation. Such change must be approved by Director or his/her representative, in writing, prior to its occurrence. Tenant may not, at any time, vacate or abandon the Premises.

The Food and Beverage concession shall be operated at such hours as to adequately provide a high level of service to the public using the Terminal Building. Lessee / Concessionaire shall keep its

operation open seven days per week. The minimum hours the Food and Beverage Concessions shall be operated are as follows:

Pre-Screening Concession Area

- One hour prior to the first scheduled airline departure for said day through one hour prior to the last scheduled arrival.

Concourse Concession Areas

- All locations shall open one hour prior to the first scheduled airline departure for said day and at least one location must remain open through the last scheduled airline departure for said day.

3.4 Prices. Tenant’s prices for the food and beverage comprising the Permitted Use shall be the same or comparable to prices found in Tenant’s menu at Tenant’s other food and beverage facilities, if any, or as determined by Director to be comparable, and shall otherwise comply with the Airport’s “street + 10% pricing program.” As used herein, the price shall be deemed “comparable” if it is no more than ten percent (10%) higher than the price for the comparable item at Tenant’s other off-Airport locations. For purposes of this paragraph, if Tenant is a licensee of a restaurant concept, then the street pricing comparison shall be to the other restaurants with the same concept operated by the licensor or other licensees

3.5 References to Airport. Tenant shall not, without the prior written consent of Director, reference City or the Airport for any purpose other than the address of the business to be conducted by Tenant in the Premises, nor will Tenant do or permit anything in connection with Tenant’s business or advertising which in the judgment of City may reflect unfavorably on City or the Airport, or confuse or mislead the public as to the relationship between City and Tenant.

3.6 Other Operational Requirements.

- a) Tenant must keep the display cases and windows within the Premises presentable, clean, and suitably illuminated at all times.
- b) Tenant must dispose of all trash and debris in areas and in containers designated by Director. If City provides common trash areas, Tenant may request a permit to use the same for a charge determined by Director from time to time. Tenant may not place or leave or permit to be placed or left in or upon any part of the common areas or corridors adjacent to the Premises any garbage, debris or refuse.
- c) Tenant acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Tenant acknowledges and agrees that it must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Tenant waives all claims for any Losses arising out of or connected to the operation of the Airport as an airport facility. Without limitation on the foregoing, Tenant must:
 - i. comply with the Airport Rules;

- ii. cause all deliveries and dispatches of merchandise, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Premises by means and during hours established by Director in Director's sole discretion. City has no responsibility regarding the delivery or dispatch of Tenant's merchandise, supplies, fixtures, equipment and furniture. Tenant may not at any time park its trucks or other delivery vehicles in common areas; and
 - iii. not park within the parking areas of the Airport except in those areas, if any, designated by City pursuant to permits obtained from the Airport's Permit Bureau. Nothing herein shall imply that Tenant shall be able to secure any on-Airport parking privileges.
- d) Lessee/Concessionaire agrees that its employees shall be of sufficient number so as to properly conduct Lessee/Concessionaire's operation.
 - e) Lessee/Concessionaire agrees that its employees shall:
 - a. Be required to wear the appropriate approved uniform at all times when on duty.
 - b. Maintain their uniforms in a clean and neat appearance.
 - c. Maintain a clean, neat and well-groomed appearance.
 - d. Conduct themselves in a professional and courteous manner at all times.
 - f) Lessee/Concessionaire agrees that it will be obligated to control the actions of its employees and that it will cooperate with the City in controlling any employee whose conduct the City fees is detrimental to the best interests of the Airport and Public.
 - g) Lessee/Concessionaire shall maintain at all times adequate fidelity bonds on its employees who handle cash.
 - h) Lessee/Concessionaire shall be required to honor at least three (3) major credit cards and to accept traveler's checks.
 - i) Tenant shall at all times observe prudent cash handling procedures, the same of which shall be incorporated into its written policy, rules and regulations covering accounting and handling of all transactions of merchandise. Tenant shall immediately implement any new procedures, or revise any existing procedures, in such a manner as the City may, in its sole discretion, require from time to time, provided that the City gives written notice thereof to Tenant.

3.7 Prohibited Activities. Without limiting any other provision herein, Tenant shall not, without the prior written consent of Director: (a) use or permit the use of the Premises for the conduct of an outlet store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) cause or permit anything to be done in or about the Premises, or bring or keep anything thereon, which might (i) increase in any way the rate of fire insurance on the Terminal Building Complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the Terminal Building Complex or injure or annoy them; (d) commit or suffer to be committed any waste upon the Premises; (e) use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; (f) place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the Terminal Building Complex; (g) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers); (h) distribute handbills or circulars to Airport patrons or to cars in the parking lots,

or engage in any other advertising in the Airport; (i) engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business; or (j) do or permit to be done anything in any way tending to injure the reputation of City or appearance of the Airport.

3.8 Audit of Operations. At any time and from time to time, City may conduct an audit of Tenant's operations at the Airport (in addition to City's right to audit pursuant to Section 4.7 [Books and Records; Audit Rights] hereof) to confirm that such operations comply with the requirements set forth herein. Tenant shall cooperate with such audit. In the event such audit shows that Tenant is not complying with such requirements, without limiting City's ability to call a default hereunder, City may require that Tenant reimburse City for the costs of such audit. Tenant shall promptly remedy any noncompliance shown in any such audit.

3.9 Representative of Tenant. Tenant shall at all reasonable times retain in the Terminal Building Complex at least one qualified representative authorized to represent and act for it in matters pertaining to its operation, and shall keep Director informed in writing of the identity of each such person. The initial person so designated is the Initial Tenant Representative.

3.10 Investigation Reports. Tenant shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Premises. Tenant shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made to Tenant.

3.11 Compliance with Rules and Regulations.

- A. It is expressly understood that the Lessee/Concessionaire agrees to conform to all Federal, State or local laws and regulations, as well as all City of Pensacola Codes and Ordinances, all of which may apply to the services to be performed and that the City of Pensacola is to be held free and harmless from any act or failures by the Lessee/Concessionaire to do so.
- B. The Lessee/Concessionaire shall obtain and maintain in force all licenses, permits and other certificates required by Federal, State, County, or Municipal authorities for its operation under the terms of this Agreement.
- C. The Lessee/Concessionaire agrees to observe all security requirements of Transportation Security Administration Regulations 49 CFR Part 1542, and the Airport Security Program, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the City to ensure that employees, invitees, agents and guests observe these requirements.
- D. If the City incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities as a result of the act or omissions of Lessee/Concessionaire, its employees, invitees, agents and guests, then Lessee/Concessionaire shall be responsible to pay or reimburse the City for all such costs and expenses.

4. RENT

4.1 Definitions. For purposes of this Lease, the following capitalized terms shall have the following meanings:

a) “Gross Revenues” means:

- i. The retail price of all merchandise sold and services rendered in, on, about or from the Premises or from such other locations on Airport operated by Tenant, whether operated by a subtenant or a concessionaire, or by any other person or entity, as may herein be provided, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; provided, however, that in the event merchandise is returned by a customer and the sale is canceled, the selling price shall be excluded; plus,
- ii. The full amount of all deposits forfeited by customers in connection with any business of Tenant in, on, about or from the Premises; plus,
- iii. The full amount of all orders for goods or services accepted by Tenant in, on, about or from the Premises, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Tenant elsewhere, but to be filled or performed in, on, about or from the Premises. In determining Gross Revenues, retail sales taxes shall not be included.
- iv. The retail price of all merchandise orders placed on the Premises from Tenant’s menu.

The following shall not be included in Gross Revenues:

- i. Any exchange of merchandise between facilities of Tenant where such exchange is made solely for the convenient operation of Tenant’s business and not for the purpose of consummating a sale made in, at or from the demised premises, or for the purpose of depriving City of the benefit of sales which would otherwise be made in or at the Premises;
- ii. Returns to the shippers or manufacturers;
- iii. Cash or credit refunds to customers on transactions (not to exceed the actual selling price of the item returned) otherwise included in Gross Revenues;
- iv. Discount sales to employees, to the extent of the discount.

b) “Consumer Price Index” means that index published by the United States Department of Labor, Bureau of Labor Statistics known as “All Urban Consumers-Not Seasonally Adjusted- Pensacola GulfCoast Region.” In the event such index is discontinued, then “Consumer Price Index” shall mean an index chosen by Director which is, in Director’s reasonable judgment, comparable to the index specified above.

c) “MAG Adjustment Date” has the meaning given it in the Summary.

d) “Base Index” means the most recent Consumer Price Index published immediately prior to the Commencement Date.

- e) **“Comparison Index”** means the most recent Consumer Price Index available at the time of MAG Adjustment review.
- f) **“Enplanements”** means the total number of passengers boarding airline carriers.
- g) **“First Month”** means the month in which the Rent Commencement date occurs.
- h) **“Lease Year”** means the period commencing on the Rent Commencement Date and terminating on the day before the first MAG Adjustment Date, and each subsequent 12-month period, commencing on each MAG Adjustment Date and expiring on the day the day before the subsequent MAG Adjustment Date, or expiring on the Expiration Date, as the case may be.

4.2 Monthly Rent Payments. Tenant shall pay, as rent for the Premises, estimated monthly Base Rent in advance, on or before the first (1st) day of each calendar month of the Term, as set forth below:

- a) On or before the Rent Commencement Date and the first (1st) day of each calendar month thereafter, Tenant shall pay the current monthly Minimum Annual Guarantee to the City’s Rent Payment Address.
- b) On or before the twentieth (20th) day of each calendar month after the First Month, concurrently with its submission of the Sales Reports described below covering the prior calendar month, Tenant shall pay to City the deficiency, if any, between the Base Rent payable by Tenant with respect to such prior calendar month (based on the Gross Revenues achieved with respect to such prior month), and the amount actually paid by Tenant pursuant to the foregoing subsection (a) with respect to such month.
- c) All payments hereunder shall be paid to City’s Rent Payment Address, or at such other place as City may from time to time designate in writing.
- d) All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind.
- e) Any Rent not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1½%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of Tenant’s default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

4.3 Adjustments to Minimum Annual Guarantee. On each MAG Adjustment Date, the Minimum Annual Guarantee will be adjusted if the Comparison Index exceeds the Base Index. The Minimum Annual Guarantee with respect to the Upcoming Lease Year shall then be increased to equal the following amount:

$$\text{Initial MAG} \times \frac{\text{Comparison Index}}{\text{Base Index}}$$

Notwithstanding anything to the contrary herein, in no event will the Minimum Annual Guarantee for any Lease Year of the Term be lower than the Minimum Annual Guarantee with respect to the prior Lease Year. The first MAG Adjustment shall occur on January 1st on the first full year after the Primary Term Commencement Date. Thereafter, every January 1st

4.4 Construction Period Operations. In the event Tenant desires to operate and conduct operations constituting the Permitted Use prior to substantial completion of the Initial Improvements and the Rent Commencement Date, then prior to the Commencement Date, Tenant shall give notice thereof to Director requesting Director's approval of such interim operations. Such notice shall specify the nature of such operations, including the proposed area for such operations, the hours of such operations, and the inventory to be offered for sale. Director shall have the right to grant or deny such approval in Director's sole and absolute discretion. In the event Director grants approval of such interim operations, then such operations shall be on such items and conditions required by Director, including the following terms and conditions: (a) Director may revoke Director's approval at any time, and following such revocation, Tenant must immediately cease such operations until the Rent Commencement Date; (b) Such interim operations may be conducted only in the area designated by Director. Tenant's responsibilities and liabilities with respect to such designated area shall be the same responsibilities and liabilities that Tenant has with respect to the Premises, except that Tenant shall not be obligated to perform the Initial Improvements or any other Alterations on such designated area; (c) As rent for the interim period, Tenant shall pay to City Twelve Percent (12%) of all Gross Revenues achieved from products from such designated area during each month of such interim period. All such rent shall be due and payable on the twentieth (20th) day of the month following each month of operation, and otherwise as provided in Section 4 of the Lease. Tenant shall report all Gross Revenues achieved during such interim period and such Gross Revenues shall not be included as Gross Revenues for the purposes of calculation of rent following the Rent Commencement Date; and (d) Tenant shall be solely responsible for making the designated area useable for Tenant's interim operations, and for protecting such area from construction and other activities in the Premises. At Director's request, Tenant shall restore such area to the condition existing prior to Tenant's use thereof.

4.5 Rent During Construction. In the event Tenant elects to operate a temporary facility during the construction period, Tenant shall pay, as rent to the Airport, Twelve Percent (12%) of all Gross Revenues achieved from all products from its temporary operation. On or before the twentieth (20th) of each calendar month, Tenant shall submit with its payment to the Airport, accompanied by a Sales Report showing all Gross Revenues achieved with respect to the prior calendar month for which payment is made.

4.6 Sales Reports. On or before the twentieth (20th) calendar day of each month after the First Month, Tenant shall submit to City a report (the "Sales Report") showing all Gross Revenues achieved with respect to the prior month by location, segregated by each source or general type of article sold or service rendered. Such report shall be certified as being true and correct by Tenant and shall otherwise be in form and substance satisfactory to Director. As described below, City shall have the right, in addition to all other rights herein, to impose a fine in the event Tenant shall fail to submit such Sales Report timely.

4.7 Annual Certification of Sales and Adjustment. Within ninety (90) days after the

end of each Lease Year, Tenant shall submit to Director an unqualified year-end financial report certified by an independent Certified Public Accountant showing Gross Revenues achieved with respect to the prior Lease Year. If such report shows that the total Base Rent actually paid by Tenant with respect the prior Lease Year was less than the Base Rent payable with respect to such year, then Tenant shall immediately pay to City such deficiency. If such report shows that the total Base Rent actually paid by Tenant with respect to such prior Lease Year exceeded the Base Rent payable with respect to such year, then such excess shall be applied as a rent credit to amounts next coming due. Notwithstanding anything to the contrary herein, in no event will the Base Rent payable to City be less than the Minimum Annual Guarantee. In addition, Tenant shall submit to City such other financial or other reports as Director may reasonably require. Tenant shall also certify any Gross Revenues earned prior to the Rent Commencement Date and a true-up for that period alone will take place in the manner stated immediately above.

4.8 Cash Register Requirements. Tenant shall install in the Premises at least one cash register. Such cash register and any other cash register used on the Premises shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue, and the tape or digital record of each said cash register shall be accessible to and subject to inspection by Director or his/her agent. All cash receipts must include Tenant's identification thereon. Each sale or other transaction in the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, all receipts from such sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers (including computerized cash registers or other similar electronic devices) serviced by an established agency approved by Director. Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Director based on the type of business, with a four-digit overrun counter. At Director's request, Tenant must furnish to City a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Director. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales at the Premises and be no more subject to tampering than mechanical cash register(s). Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used in the Premises, Tenant must immediately furnish to Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair agency employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) in the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register (including computerized cash registers or other similar electronic devices if used). Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers or other similar electronic devices if used) used in the Premises and to inspect for compliance with this section.

4.9 Books and Records; Audit Rights.

- a) Tenant shall maintain for a period of five (5) years after the Expiration Date, or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate daily records of Gross Revenues, whether for cash, credit, or otherwise. Tenant must require each subtenant, concessionaire, licensee, and assignee to maintain the same records. All such books and records shall be kept in accordance with “generally accepted accounting principles,” consistently applied, showing in detail all business done or transacted in, on, about or from or pertaining to the Premises, and Tenant shall enter all receipts arising from such business in regular books of account, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. The books and source documents to be kept by Tenant must include records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by all persons or entities conducting business in or from the Premises. Pertinent original sales records include: (i) cash register tapes, including tapes from temporary registers, (ii) serially pre-numbered sales slips, (iii) the original records of all mail and telephone orders at and to the Premises, (iv) settlement report sheets of transactions with subtenants, concessionaires, licensees and assignees, (v) original records indicating that merchandise returned by customers was purchased at the Premises by such customers, (vi) memorandum receipts or other records of merchandise taken out on approval, (vii) detailed original records or any exclusions or deductions from Gross Revenues, (viii) sales tax records, and (ix) all other sales records, if any, that would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Gross Revenues. Tenant must keep the required books, source documents and records of Gross Revenues available for inspection by City and its agents and employees at the Premises or at another location within the continental United States at all times during regular business hours. In addition, Tenant shall maintain monthly and annual reports of Gross Revenues derived from its operation under this Lease, using a form and method as is directed by Director. Such forms and methods shall be employed by Tenant throughout the term of this Lease. Upon Director’s written request, Tenant shall make available immediately to City and/or its auditors any and all books, records and accounts pertaining to its operations under this Lease. The intent and purpose of the provisions of this section are that Tenant shall keep and maintain records which will enable City and City’s Controller to ascertain, determine and audit, if so desired by City, clearly and accurately, Gross Revenues achieved, and the adequacy of the form and method of Tenant’s reporting thereof.
- b) Should any examination, inspection, and audit of Tenant’s books and records by City disclose an underpayment by Tenant of the total Base Rent due, Tenant shall promptly pay to City such deficiency, and if such deficiency exceeds two percent (2%) of the total Base Rent due, Tenant shall also promptly reimburse City for all costs incurred in the conduct of such examination, inspection, and audit. Further, should any examination, inspection, and audit of Tenant’s books and records by City disclose an underpayment by Tenant of the total Base Rent due and such deficiency exceeds five percent (5%) of the total Base Rent due, City shall have the right to terminate this Lease. In the event that City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection, and audit, then Tenant shall reimburse City for reasonable attorneys’ fees and litigation expenses as part of the aforementioned costs incurred.

4.10 Other Reports and Submissions. Tenant shall furnish City with such other financial or statistical reports as Director or his/her representative from time to time may reasonably require. Upon request by Director, Tenant shall furnish to City copies of its quarterly Florida sales and use tax returns covering the Premises operations as well as that pertinent portion of both the Florida and Federal income tax returns and possessory interest tax returns on the Premises operations at the time of filing, and any amendments thereto. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Tenant and all subtenants (to the extent permitted) shall also promptly notify Director of and furnish to City copies of any audit reports covering this facility conducted by any governmental agency.

4.11 Additional Rent. Tenant shall pay to City any and all charges and other amounts under this Lease as additional rent, at the same place where Base Rent is payable. City shall have the same remedies for a default in the payment of any such additional charges as for a default in the payment of Base Rent.

4.12 Prepay Rent. Notwithstanding anything to the contrary herein, in the event Tenant shall fail to pay any Rent when due hereunder, Director shall have the right to require Tenant to pay estimated monthly Rent (including Base Rent, utility charges, and all other amounts) one (1) month in advance of when such payment would otherwise be due. Such prepayment would be based on the highest monthly Rent previously due from Tenant. Such right shall be exercised by a notice from Director to Tenant, which notice may be given any time after such default by Tenant, regardless of whether the same is cured by Tenant.

4.13 Nature of Lease. Under no circumstances will City be expected or required to make any payment of any kind with respect to Tenant's use or occupancy of the Premises, except as may be otherwise expressly set forth herein. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, shall relieve Tenant from its liability to pay all of the sums required by this Lease, or relieve Tenant from any of its other obligations under this Lease, or give Tenant the right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums, on account of such occurrence or situation. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any improvements thereon, or any taking thereof in eminent domain; (b) any restriction or prevention of or interference with any use of the Premises or the improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to City, Tenant or any constituent partner of Tenant or any sublessee, licensee or concessionaire or any action taken with respect to this Lease by a trustee or receiver, or by any court, in any proceeding; (d) any claim that Tenant or any other person has or might have against City; (e) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Tenant or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Tenant and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other

occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Tenant shall have notice or knowledge of any of the foregoing.

4.14 Severe Decline in Enplanements.

- a) **Defined Terms.** For purposes of this Section, the following capitalized terms shall have the following meanings:
- i. **“Relevant Boarding Area”** shall have the meaning given it in the Summary.
 - ii. **“Enplanements”** shall mean the total number of passengers boarding airline carriers. For purposes of this Section 4.14, all Enplanement comparisons shall be done by Relevant Boarding Area.
 - iii. **“Reference Month(s)”** shall mean the corresponding month in the Reference Year.
 - iv. **“Reference Year”** shall have the meaning given it in the Summary.
 - v. **“Percentage Rent”** shall have the meaning given it in the Summary.
 - vi. **“Severe Decline in Enplanements for Three Months”** shall mean that the actual Enplanements achieved during a one month period is less than 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such shortfall continues for three (3) consecutive months.
 - vii. **“Enplanement Stabilization for Two Months”** means that actual Enplanements for a particular month equals or exceeds 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such threshold is achieved for two (2) consecutive months.
- b) **MAG Suspension.** If at any time during the term, there is a Severe Decline in Enplanements for Three Months, then the MAG shall be temporarily suspended as follows:
- i. The MAG suspension shall be effective on the first day of the month immediately following the Severe Decline in Enplanements for Three Months.
 - ii. During such MAG suspension period, Tenant shall be required to pay only the Percentage Rent, unless and until the MAG is reinstated as provided below. On or before the 20th day of each month, Tenant will submit to City a Sales Report showing Tenant’s Gross Revenues achieved with respect to the prior month, together with the Percentage Rent calculated on such Gross Revenues, cumulated by Lease Year.
- c) **MAG Reinstatement.** Once there is Enplanement Stabilization for Two Months, then the MAG is reinstated, and will continue unless and until there is another Severe Decline in Enplanements for Three Months, as follows:

- i. Such MAG reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Two Months.
 - ii. In the event the MAG is reinstated after the commencement of a “Lease Year” or other period of time for annual gross revenue accumulation specified in the Lease, the MAG will be pro-rated accordingly.
- d) **Determination of Enplanements and “True-Ups”**. The parties acknowledge that Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the MAG is suspended as provided herein, Tenant shall continue to pay the MAG as and when required hereunder. If and when a MAG is later suspended pursuant to Section 4.12(b), then City shall issue a rent credit to reflect any resulting overpayment in rent. If and to the extent Tenant has any outstanding obligations to City hereunder, City may decline to issue such rent credit or reduce the rent credit by the amount outstanding. If and when the MAG is reinstated, Tenant shall pay to City within five (5) days after City shall have given notice to Tenant of such reinstatement, the deficiency, if any, between the Percentage Rent paid by the Tenant and the MAG, for the month(s) following such reinstatement.
- e) **Enplanement Determinations**. Director shall have the sole discretion as to the Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three Months and/or an Enplanement Stabilization for Two Months.
- f) **No Effect**. The MAG suspension shall have no effect on (i) any adjustments specified in this Lease to be made to the MAG, including those based on increases in the Consumer Price Index; or (ii) the Deposit Amount.
- g) **Effect of Default**. Notwithstanding anything to the contrary herein, in the event Tenant shall default under this Lease or any Other Agreement, the Airport Director may immediately reinstate the MAG, without giving to Tenant the benefit of any notice or right to cure as may otherwise be provided under this Lease or Other Agreement.
- h) **Subtenants**. Without limiting the provisions of Section 5 [Assignment or Subletting] if Tenant subleases any portion of the Premises, Tenant shall offer to such subtenant(s) the same types of MAG suspension as are provided herein.

5. ASSIGNMENT OR SUBLETTING

5.1 No Assignment. Tenant shall not assign, sublet, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof, or any interest herein, without City’s prior written consent, which consent may be granted or denied in City’s sole and absolute discretion (the term “Transfer” shall mean any such assignment, subletting, encumbrance, or transfer). City’s consent to one Transfer shall not be deemed consent to subsequent Transfers. Any Transfer made without City’s consent shall constitute a default hereunder and shall be voidable at City’s election. Notwithstanding or limiting the foregoing, the City will allow a Tenant, including an individual or entity with any level of ownership in an Airport tenancy, to hold

a maximum of eight (8) retail or food and beverage, or a combination therein, leases at the Airport at any given time. This policy does not included subleases. Any transfer made without the City's consent shall constitute a default hereunder and shall be voidable at the City's election.

5.2 Changes in Tenant. The merger of Tenant with any other entity or the transfer of any controlling ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located on the Premises, shall constitute a Transfer. Without limiting the generality of the foregoing, if Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning twenty-five percent (25%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Tenant, shall be deemed a Transfer. If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of Tenant, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Tenant, shall be deemed a Transfer. The phrase “controlling percentage” means the ownership of, and the right to vote, stock or interests possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant’s capital stock or interests issued, outstanding and entitled to vote for the election of directors. Without limiting the restrictions on asset transfers, this paragraph shall not apply to stock or limited liability company interest transfers of corporations or limited liability companies the stock or interests of which is traded through an exchange or over the counter.

5.3 No Release. In no event will City’s consent to a Transfer be deemed to be a release of Tenant as primary obligor hereunder.

5.4 Subleasing. Without limiting City’s discretion in approving or disapproving a proposed Transfer, if and to the extent City permits Tenant to sublease the Premises, the following shall apply: (a) Prior to negotiating a sublease agreement, Tenant must submit to City a sublease proposal for City’s approval, which approval may be granted or withheld in City’s absolute and sole discretion; (b) Every sublease must be on a Standard Sublease Agreement form approved by Director, and the actual sublease must be approved by Director; (c) Each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded City by this Lease will not be impaired or diminished as a result of any sublease agreement; (d) No subtenant shall be obligated to pay to Tenant, and Tenant shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administration fee, or the like, which exceeds, in the aggregate, the total sums that Tenant pays to City under this Lease for the portion of the Premises subleased by the subtenant under its sublease agreement (the “Excess Rent”). If, notwithstanding the foregoing prohibition, Tenant receives any Excess Rent, Tenant shall pay the same to City; (e) Tenant assigns to City all rent and other payments due from all subtenants under any sublease agreements; provided however, Tenant is hereby granted a license to collect rents and other payments due from subtenants under their sublease agreements until the occurrence of an Event of Default, regardless of whether a notice of that default has been given by City. At any time, at Director’s option, City may notify a subtenant of this assignment and upon such notice the subtenant will pay its rent other payments directly to City. City will credit Tenant with any rent received by City under such assignment, but the acceptance of any payment on account of rent from any subtenants as a result of an Event of Default will in no manner whatsoever serve to release Tenant from any liability under this Lease. No payment of rent or any other payment by a

subtenant directly to City or other acceptance of such payments by City, regardless of the circumstances or reasons therefor, will in any manner whatsoever be deemed an attornment by the subtenants to City in the absence of either a specific written agreement signed by City to such an effect.

5.5 Excess Rent. City shall receive fifty percent (50%) of all Excess Rent payable in connection with any Transfer. “Excess Rent” means the excess of (a) all consideration received by Tenant from a Transfer over (b) Rent payable under this Lease after deducting reasonable tenant improvements paid for by Tenant, reasonable attorneys’ fees and any other reasonable out-of-pocket costs paid by Tenant as a result of the Transfer (but specifically excluding any Rent paid to Landlord while the Premises is vacant).

5.6 Acceptance of Rent. The acceptance of rent by City from any person or entity does not constitute a waiver by City of any provision of this Lease or consent to any Transfer. City’s consent to one Transfer will not be deemed to be consent to any subsequent Transfer. If Tenant defaults in the performance of any of the terms of this Lease, City may proceed directly against the transferor (or if there has been more than one Transfer, then each transferor) without necessity of exhausting remedies against Tenant. City may consent to subsequent Transfers or amendments or modifications to this Lease with transferees, without notifying transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Lease as amended.

6. TAXES, ASSESSMENTS AND LIENS

6.1 Taxes.

- a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any Transfer permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant shall pay all taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant’s usage of the Premises, all of which shall be paid when the same become due and payable and before delinquency.
- b) Tenant shall report any Transfer, or any renewal or extension hereof, to the City within sixty (60) days after such Transfer transaction, or renewal or extension. Tenant further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests and any applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission in connection with any tax-exempt Airport revenue bonds financing the property leased to Tenant hereunder. Tenant agrees to make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased hereunder.

- c) In accordance with Florida law, every person who rents or leases any real property or who grants a license to use, occupy, or enter upon any real property is exercising a taxable privilege. The tax shall be added to the sales price or rental and the amount of the tax shall be separately stated as Florida tax on any charge tickets, sales slip, invoices, or other tangible evidence of sale or rental.
- d) In consideration of the Tenant's use of the leased premises, the City has determined that the taxable annual rental amount for the area for the lease and concession agreement shall be \$ _____. The taxable annual rental amount shall be divided into twelve equal monthly rental amounts. The taxable monthly rental amount shall be multiplied by the current State and Local sales and use tax percentage to determine monthly taxes due. Anything over and above taxable annual rental amount is considered a non-taxable privilege fee.

6.2 Other Liens. Tenant shall not permit or suffer any liens to be imposed upon the limitation, mechanics', materialmen's and tax liens, as a result of its activities without promptly discharging the same. Notwithstanding the foregoing, Tenant may in good faith contest any such lien if Tenant provides a bond in an amount and form acceptable to City in order to clear the record of any such liens. Tenant shall assume the defense of and indemnify and hold harmless City against any and all liens and charges of any and every nature and kind which may at any time be established against said premises and improvements, or any part thereof, as a consequence of any act or omission of Tenant or as a consequence of the existence of Tenant's interest under this Lease.

7. INVESTMENTS; ALTERATIONS

7.1 Minimum Investment. Prior to the Rent Commencement Date, Tenant shall refurbish, redecorate and modernize the interiors and exteriors of the Premises, and otherwise complete the Initial Improvements, at a minimum cost of the Minimum Investment Amount. Within ninety (90) days after substantial completion of Tenant's Work, Tenant must provide to City an electronic AUTOCAD file and a hard copy set of as-built drawings and an affidavit, signed under penalty of perjury by both the Tenant and the Tenant's general contractor, architect or construction manager, stating the hard construction costs paid by Tenant to complete Tenant's Work, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit. Such "hard construction costs," which must equal or exceed the Minimum Investment Amount, may include architectural and engineering fees, provided the credit for such costs against the Minimum Investment Amount shall not exceed fifteen percent (15%) of the Minimum Investment Amount. The minimum investment may not include financial costs, interest, inventory, pre-opening expenses, inter-company charges related to construction, business interruption, overhead, or debt service on any construction loan, or any charges paid by Tenant to an affiliate. If City determines that the said actual investment cost is less than the Minimum Investment Amount, the deficiency will be paid to City within sixty (60) days from the date City provides Tenant with written notice of said deficiency. If Director disputes the amount of investment claimed by Tenant, Director may, at City's expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the Minimum Investment Amount, the deficiency, as well as City's costs of hiring such independent appraiser, will be paid to City by Tenant within sixty (60) days of City's written notice of the appraiser's determination. At any time, upon three (3) business days' notice, City or its representatives may audit all of Tenant's books,

records and source documents related to the hard construction costs paid by Tenant to complete Tenant's Work. If the audit reveals that the hard construction costs paid by Tenant were less than those stated in Tenant's affidavit, then Tenant must pay City for the costs incurred by City in connection with the audit plus any additional deficiency discovered between the hard construction costs paid by Tenant and the Minimum Investment Amount.

7.2 City's Approval Rights. Tenant shall not make or suffer to be made any alterations, additions, or improvements to the Premises or any part thereof or attach any fixtures or equipment thereto, including the Initial Improvements (collectively, "Alterations") without City's prior written consent. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to City's established architectural design scheme for the Terminal Building Complex. Prior to the construction of any Alterations (including the Initial Improvements), Tenant shall submit detailed plans and specifications to the Airport's Design Committee for approval. Tenant shall include with its plans and specifications schematic renderings of the public retail area, materials, a color board(s) and a detailed layout of the overall merchandising plan. All decisions by the Airport's Review Committee shall be made subject to the approval of the City. City's approval rights will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Tenant to resubmit designs and layout proposals until they meet City's approval. The Rent Commencement Date shall not be extended if City elects to reject any designs or layout proposals submitted. In the event of disapproval by City of any portion of the plans and specifications, Tenant will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by City. City agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by City, be signed by Tenant and deposited with City as an official record thereof. All Alterations shall be effected through the use of contractors approved by City who shall furnish to City upon demand such completion bonds and labor and material bonds as City may require so as assuring completion of the Alterations on a lien-free basis. Without limiting the requirements set forth above, Tenant acknowledges and agrees that Tenant may be required to obtain approvals for any desired Alterations from the Airport.

7.3 Structures and Fixtures. Tenant shall, at its sole cost and expense, design, erect, construct and install all fixtures, furnishings, carpeting, decorations, finishing, equipment, counters, or other necessary Alterations for its operation under this Lease. All construction shall be in conformity with the approved plans and specifications submitted by Tenant, and shall meet all applicable local building codes and ordinances as well as all other Laws. Tenant shall submit complete plans and specifications to Director, and prior to the commencing any construction work, obtain Director's written approval of said plans and specifications. Tenant shall make no change or alteration in the plans and specifications without prior written approval of Director. In the event that Tenant fails to submit plans and specifications which meet the approval of City within thirty (30) days after the Effective Date, City may terminate this Lease. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

7.4 Notice and Permits. Tenant shall give written notice to Director not less than seven (7) days prior to the commencement of any work in construction, alteration or repairs of the Premises, in order that City may post appropriate notices of non-responsibility, and agrees that such notices

may remain posted until the acceptance of such work by City. Tenant shall obtain, and pay all fees for all permits required by the City or other legal jurisdictions, for improvements that it is required to construct or install and it shall furnish copies of all such permits to City prior to the commencement of any work.

7.5 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without damage to the Terminal, including all carpeting, decorations, finishing, and counters, shall vest in City on the Expiration Date. All other equipment of such nature as to constitute trade fixtures shall remain the property of Tenant. On the Expiration Date, Tenant may remove said trade fixtures or Director may require that Tenant remove same at Tenant's expense. Prior to the Rent Commencement Date, Tenant shall submit to Director a proposed list of such trade fixtures; said list may be subsequently amended during the term of this Lease to reflect any changes in said trade fixtures. Tenant agrees and understands that "fixture" is defined as a thing affixed to premises that is bolted, nailed, screwed, cemented and/or plastered. For the purpose of this Lease, fixtures shall include slat wall, counters and the like, attached to the physical structure of the premises in any matter whatsoever. On the Expiration Date, all fixtures, other than those deemed trade fixtures by City, shall become the property of City. Tenant shall be liable to City for City's costs for storing, removing and disposing of any alterations of Tenant's personal property, and of restoration of the Premises.

7.6 Effect of Alterations on Airport. If and to the extent that Tenant's activities or proposed Alterations trigger an obligation or requirement on the part of City to make changes to the Airport premises (including ADA requirements), Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses (as defined below) arising out of such activities or Alterations.

8. UTILITIES

8.1 Services Provided. City shall provide in the Terminal Building Complex the following utility services: reasonable amounts of water, electricity, telephone, sewage outlets, heating, ventilation, and air conditioning, to a point determined by the Director. All extensions of the facilities requested by Tenant for said utility services from said points shall be at the sole cost and expense of Tenant. In the event of any change desired by Tenant as to said points of supply by City, the expense of making such changes or alterations shall be at the sole cost of Tenant.

8.2 Utility Costs. Tenant shall pay the whole cost for all utility services which shall be metered separately at each concession space and for such other special services which it may require in the Premises

8.3 Waiver of Damages. Tenant hereby expressly waives any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences. Without limiting the generality of the foregoing, Tenant shall have no rights to abate Rent or terminate this Lease in the event of any interruption or failure of utility services.

8.4 Other. Tenant shall be responsible for the maintenance and repair of all utility lines from the above referenced point up to and including the distribution system inside the Leased Premises.

The City reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Leased Premises as necessary or appropriate, along with the right to enter the Leased Premises at all reasonable time in order to accomplish the foregoing, provided, however, that the City shall take reasonable precautions to avoid the disruption of the Tenant's authorized activity.

9. MAINTENANCE AND REPAIR

9.1 "As-Is" Condition. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi- governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Tenant has knowledge.

9.2 Tenant's Maintenance Obligations. Tenant, at all times during the Term and at Tenant's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws, including the replacement of any facility of City used by Tenant which requires replacement by reason of Tenant's use thereof, excepting (a) ordinary wear and tear, and (b) damage due to casualty with respect to which the provisions of Section 14 [Damage or Destruction] shall apply. In addition, if it becomes reasonably necessary during the term of this Lease, as determined by Director, Tenant will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Without limiting the generality of the foregoing, at all times, Tenant shall be solely liable for the facade of the Premises separating the Premises from the Terminal common areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. As provided below in Section 15.4 [City's Right to Perform], in the event Tenant fails to perform its maintenance and repair obligations hereunder, City shall have the right to do so, at Tenant's expense. The parties acknowledge and agree that Tenant's obligations under this Section are a material part of the bargained-for consideration under this Lease. Tenant's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Initial Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to

which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

9.3 Tenant's Pest Management Obligations. Tenant shall, at all times during the Term of the Lease and at Tenant's sole cost and expense, keep the Premises and every part thereof in clean and sanitary conditions. Airport shall provide reasonable pest control in accordance to the Airport's standards. Tenant shall be responsible for the cost of any additional pest control services as a result of Tenant's failure to maintain the Premises and every part thereof in clean and sanitary conditions.

9.4 General. Should Tenant fail to maintain the Leased Premises in conformance with the terms and conditions of this article within a period of seven (7) days following written notice of such failure, the City reserves the right to take any action to cure said failure. Should the City take action to cure failures, the Tenant shall pay to the City an amount equal to the City's cost for such actions plus a ten percent (10%) administrative charge.

9.6 Damage to the Airport.

- a. Tenant shall be liable for any damage to its leased area and fixtures therein and to the Airport and to any improvements thereon caused by Tenant, its partners, officers, agents, employees, invitees, contractors, subcontractors, assign, subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted. All repairs for which Tenant is liable shall be made by Tenant with due diligence and in a manner acceptable to the City unless the City determines that it is more appropriate for the City to make the repairs. In such a case, the City shall make the repairs at Tenant's expense. All repairs for which Tenant is liable and which are not undertaken after the City has given Tenant notice to so do shall be performed by the City, in which event Tenant shall reimburse the City for the cost thereof, plus a ten percent (10%) administrative charge, and said amount shall be due no later than the next minimum guarantee payment.
- b. The city shall not be liable to Tenant, the Tenant's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment unless caused by the sole negligence of the City, its employees or agents.

10. SIGNS AND ADVERTISING

10.1 Signs and Advertising. Tenant may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director and the requirements of the Airport, including but not limited to, the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Tenant shall not display any

advertising, promotional, or informational pamphlets, circulars, brochures or similar materials.

11. WAIVER; INDEMNITY; INSURANCE

11.1 Waiver. Tenant, on behalf of itself and its assigns, waives its rights to recover from and releases and discharges City and all City Entities and their respective heirs, successors, personal representatives and assigns, from any and all Losses whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with (a) the physical or environmental condition of the Premises or any law or regulation applicable thereto, (b) any damage that may be suffered or sustained by Tenant or any person whosoever may at any time be using or occupying or visiting the Premises, or in or about the Airport, or (c) any act or omission (whether negligent, non-negligent or otherwise) of Tenant or any Tenant Entity, whether or not such Losses shall be caused in part by any act, omission or negligence of any of City, Commission, its members, or any officers, agents, and employees of each of them, and their successors and assigns (each, a "City Entity"), except if caused by the sole gross negligence or willful misconduct of City. "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

11.2 Indemnity. In addition to, and not in limitation of the foregoing, Tenant shall forever indemnify, defend, hold and save City and each City Entity free and harmless of, from and against any and all Losses caused in whole or in part by or arising out of (a) any act or omission of Tenant or any Tenant Entity, (b) Tenant's use of the Premises or operations at the Airport, or (c) any default by Tenant or any Tenant Entity hereunder, whether or not Losses shall be caused in part by any act, omission or negligence of City or any City Entity. The foregoing indemnity shall not extend to any Loss caused by the sole gross negligence or willful misconduct of City.

11.3 Losses. For purposes hereof "Losses" shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs, and court costs), of any kind or nature.

11.4 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend City or the City Entity from any claim which is actually or potentially within the scope of the indemnity provision of this Section 12 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant and continues at all times thereafter.

11.5 Notice. Without limiting the foregoing waiver and indemnity, each party hereto shall give to the other prompt and timely written notice of any Loss coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

11.6 Insurance. Tenant shall procure and maintain during the Term the following insurance:

- a) **Workers' Compensation Insurance** as legally required.

- b) **Employer's Liability Insurance** limits not less than \$1,000,000 each accident.
- c) **Commercial General Liability Insurance** with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverage.
- d) **Commercial Automobile Liability Insurance** with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverage.
- e) **Property Insurance** on all causes of loss-special form covering all Premises tenant improvements, fixtures, and equipment insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in the demised premises in an amount equal to the full replacement value of tenant improvements, fixtures and equipment.
- f) **Liquor Liability Insurance** written on an occurrence basis, with limits not less than \$1,000,000 each common cause and \$1,000,000 in the aggregate.
- g) **Business Interruption Insurance** insuring that the Base Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Said insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Base Rent during any such interruption of business, the Gross Revenues for the 12-month period immediately preceding the incident causing the business interruption shall be used.

11.7 Form of Policies. All insurance required by Tenant hereunder shall be pursuant to policies in form and substance and issued by companies satisfactory to City and City's City Attorney. City may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Tenant shall obtain such required insurance. Without limiting the generality of the foregoing, all Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Liquor Liability policies shall be endorsed to provide the following:

- a) Name as additional insured the City, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.
- b) That such policies are primary insurance to any other insurance available to the Additional Insured's, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c) That the insurance company shall give thirty (30) days prior written notice to City of cancellation, non-renewal or reduction in coverage or limits, delivered to City at

City's Insurance/Deposit Notice Address.

11.8 Delivery of Policies or Certificates. Within five (5) days after Director's request, and in any event on or before the Commencement Date, Tenant shall provide to City copies of its insurance policies or certificates thereof evidencing the above insurance, at City's Insurance/Deposit Notice Address.

11.9 Subrogation. Notwithstanding anything to the contrary herein, Tenant waives any right of recovery against City for any loss or damage to the extent the same is required to be covered by Tenant's insurance hereunder. Tenant shall obtain from its insurer, if possible, a waiver of subrogation the insurer may have against City or any City Entity in connection with any Loss covered by Tenant's property insurance policy.

12. DEPOSIT

12.1 Form of Deposit. On or before the date specified by the Director, Tenant will deliver to Director a security deposit (the "Deposit") in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, in the form attached as Exhibit C-1, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or a (b) letter of credit naming City as beneficiary, in the form attached as Exhibit C-2, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Such Deposit shall be renewed annually and increased annually such that at all times, the Deposit is equal to one-half ($\frac{1}{2}$) the then current Minimum Annual Guarantee, all at Tenant's cost. Such Deposit shall be kept in full force and effect during the Term to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. The sum designated as the "Deposit" is and will remain the sole and separate property of City until actually repaid to Tenant (or at City's option, the last assignee (if any) of Tenant's interest hereunder), said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. For Deposits in the form of a bond or letter of credit, Tenant shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of its intention not to renew said bond or letter of credit.

12.2 Maintenance of Deposit. Tenant shall cause the Deposit to be increased from time to time such that at all times the Deposit is equal to one-half ($\frac{1}{2}$) the then current Minimum Annual Guarantee, all at Tenant's cost. Tenant shall cause the bond or letter of credit to be kept in full force and effect during the Term and any holdover period to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. If and to the extent City accepts a Deposit which has an expiration date or cancellation/termination provision, Tenant shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of its intention not to renew or to cancel or terminate said bond or letter of credit. Tenant shall cause such bond or letter of credit to be renewed, extended, or replaced, at Tenant's sole cost, at least thirty (30) days before the expiration date or cancellation date of the bond or letter of credit, with another bond or letter of credit that complies with the requirements herein. If Tenant fails to do so, City may, without notice to Tenant, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. Tenant shall cause all notices to be given to City under this Section 13 to be given to City at City's Insurance/Deposit Notice Address.

12.3 Use of Deposit. If Tenant fails to pay Rent or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Deposit for the payment of Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Tenant, within ten (10) days after request therefore, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a breach of this Lease. City shall not be required to keep the Deposit or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Deposit is and will remain the sole and separate property of City until actually repaid to Tenant, said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at City's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days after the expiration of the Term, and after Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit or any proceeds thereof.

12.4 Other Agreements. If Tenant defaults with respect to any provision of any other agreement between City and Tenant, City may use, apply or retain all or any portion of the Deposit for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. Likewise, if Tenant defaults with respect to any provision under this Lease, City may use, apply, or retain all or any portion of any deposit provided under any other agreement between City and Tenant, for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. In the event the Deposit or any other deposit is so used, Tenant shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof.

13. DAMAGE OR DESTRUCTION

13.1 Partial Destruction of Premises.

- a. In the event the improvements on the Premises are damaged by any casualty which is required to be insured against pursuant to this Lease, then Tenant shall repair such damage as soon as reasonably possible, at its own cost, and this Lease shall continue in full force and effect.
- b. In the event such improvements are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City may, at City's option, either (i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of City's intention to terminate this Lease. Such termination shall be effective as of the date specified in such notice.

- c. Notwithstanding the foregoing, if such damage is caused by an act or omission to act of Tenant or a Tenant Entity, then Tenant shall repair such damage, promptly at its sole cost and expense.
- d. In the event City elects to terminate this Lease pursuant to this Section 13.1, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this Lease shall be terminated as of the date specified in City's notice. City shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall be required to restore or replace same in the event of damage.

13.2 Total Destruction of Premises. If the improvements on the Premises are totally destroyed during the Term from any cause whether or not covered by the insurance required herein (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

13.3 Partial Destruction of Terminal Building. If fifty percent (50%) or more of the Terminal Building shall be damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of the Terminal Building shall be damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected thereby, each of City and Tenant may elect to terminate this Lease by giving notice to the other within ninety (90) days from the date of occurrence of such damage or destruction, in which event the Term of this Lease shall expire on a mutually agreed upon date and Tenant shall thereupon surrender the Premises to City as required hereunder.

13.4 Damage Near End of the Term. If during the last year of the Term the improvements on the Premises are partially destroyed or damaged, City may at City's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of City's election to do so within thirty (30) days after the date of occurrence of such damage. In the event City elects to terminate this Lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible.

13.5 No Abatement of Rent; Tenant's Remedies.

- a. If the Premises are partially destroyed or damaged, Tenant shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration.

- b. In no event will Tenant be entitled to an abatement of Rent resulting from any damage, destruction, repair, or restoration described herein.

14 DEFAULT; REMEDIES

14.1 Event of Default. The occurrence of any one or more of the following events shall constitute a breach of this Lease and an “Event of Default” hereunder:

- a. Tenant shall fail duly and punctually to pay Rent, or to make any other payment required hereunder, when due to City, and such failure shall continue beyond the date specified in a written notice of such default from Director, which date shall be no earlier than the third (3rd) day after the effective date of such notice. Notwithstanding the foregoing, in the event there occurs two (2) defaults in the payment of Rent or other payment during the Term, thereafter Tenant shall not be entitled to, and City shall have no obligation to give, notice of any further defaults in the payment of Rent or other payment. In such event, there shall be deemed to occur an Event of Default immediately upon Tenant’s failure to duly and punctually pay Rent or other payment hereunder; or
- b. Tenant shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c. A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Tenant and shall not be dismissed within thirty (30) days after the filing thereof; or
- d. There shall occur a Transfer without the prior approval of the City; or
- e. Tenant shall voluntarily abandon, desert or vacate the Premises; or
- f. Any lien shall be filed against the Premises as a result of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Tenant; or herein; or
- g. Tenant shall fail to provide, maintain, increase, or replace, the Deposit as required
- h. Tenant shall fail to obtain and maintain the insurance required hereunder, or provide copies of the policies or certificates to City as required herein; or
- i. Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a

period of more than three (3) days after delivery by Director of a written notice of such failure (the "First Notice"); or if satisfaction of such obligation requires activity over a period of time, if Tenant fails to commence the cure of such failure within three (3) days after receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within thirty (30) days after the giving of the First Notice; or

- j. Tenant shall use or give its permission to any person to use any portion of Airport or the Terminal Buildings used by Tenant under this Lease for any illegal purpose, or any purpose not approved by Director; or
- k. There shall occur a default under any other agreement between Tenant and City, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Tenant shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement.
- l. The management, ownership, or operation of the Tenant should change to such an extent that it would not satisfactorily perform, then the City shall have the right to terminate this agreement.

14.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

- a. In the event this Lease is so terminated, City may recover from Tenant the following damages:
 - i. The "worth at the time of the award" of the unpaid Rent earned to the time of termination hereunder;
 - ii. The "worth at the time of the award" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;
 - iii. The "worth at the time of the award" of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and
 - iv. Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

For purposes of the foregoing, the "worth at the time of award" of the amounts referred to in clauses (i) and (ii) above is computed by allowing interest at the lower of 18% (eighteen percent)

per annum and the highest rate legally permitted under applicable law. The “worth at the time of award” of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Florida at the time of award plus 1% (one percent). Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Tenant’s breach of this Lease shall not constitute a waiver of City’s right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Section 12 [Waiver; Indemnity; Insurance] hereof. For purposes of calculating City’s damages comprising Base Rent based on Gross Revenues, that amount will be computed by determining the highest Base Rent accruing in any Lease Year during the immediately preceding three Lease Years or such shorter period if the Term prior to termination was less than three Lease Years. Tenant agrees that Tenant’s obligations under this Lease, including the payment of Base Rent, are independent covenants and are not conditioned on the covenants or warranties of City.

- b. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of City to protect City’s interest under this Lease shall not constitute a termination of Tenant’s right to possession.
- c. City shall have the right and power, as attorney in fact for Tenant, to enter and to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant (as permitted in accordance with the terms of this Lease) and City is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as City deems necessary in connection therewith. Tenant shall be liable immediately to City for all costs and expenses City incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. City is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as City in its sole discretion may deem proper. Tenant shall be liable immediately to City for all reasonable costs City incurs in reletting the Premises required by the reletting, and other costs. If City relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate City for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. City may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by City of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. City shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant’s interest therein, or be deemed to have otherwise

terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless City shall have given Tenant express written notice of City's election to do so as set forth herein.

- d. City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 14.2.
- e. City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the laws of the State of Florida or the equitable powers of its courts, and not otherwise specifically reserved herein.
- f. City may elect to terminate any other agreement between Tenant and City, including the Other Agreements, if any.
- g. The City may utilize any other remedy provided by law or equity as a result of Tenant's default(s).

14.3 City's Right to Perform. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Tenant shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent. The City reserves the right to impose a ten percent (10%) administrative charge for any payments made under this section.

14.4 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Lease, City shall have the option at once and without further notice to Tenant to enter upon the Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Tenant without City being liable to Tenant for damage or loss thereby sustained by Tenant. Upon such termination by City, all rights, powers and privileges of Tenant hereunder shall cease, and Tenant shall immediately vacate any space occupied by it under this Lease, and Tenant shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Tenant shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Tenant in or on the Premises.

14.5 Cumulative Rights. The exercise by City of any remedy provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

14.6 Prepayment. As provided in Section 4.12 [Prepay Rent], if Tenant defaults in the payment of Rent, City may require prepayment of Rent. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.

14.7 Fines. If Tenant defaults under any of the Lease terms specified below, Director may elect to impose the fines described below on the basis of per violation per day:

Violation	Section	Fine
Violation of Premises Clause	1	\$100
Violation of Use Section	3	\$300
Failure to open Facility by Rent Commencement Date	2.3	\$500
Failure to cause operations or Premises to comply with Laws	3.13	\$100
Failure to submit required documents and reports, including Sales Reports	4.4, 4.5,	\$100
	4.6	
Construction or Alterations without City approval	7	\$100
Failure to make required repairs	9	\$300
Unauthorized advertising or signage	10	\$100
Failure to obtain/maintain insurance	12	\$300
Failure to obtain or maintain Deposit	13	\$300
Failure to abide by any other term in this Lease		\$300

Director’s right to impose the foregoing Fines shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules, or at law or in equity. City shall have no obligation to Tenant to impose Fines on or otherwise take action against any other tenant at the Airport. Such Fines shall constitute “Additional Rent.”

14.8 City Lien. Tenant hereby grants to City a lien upon and security interest in all fixtures, chattels and personal property of every kind now or hereafter to be placed or installed in or on the Premises, and agrees that in the event of any default on the part of Tenant City has all the rights and remedies afforded the secured party by the chapter on “Default” of the Uniform Commercial Code in the state wherein the Premises are located on the date of this Lease and may, in connection therewith, also (a) enter on the Premises to assemble and take possession of the collateral, (b) require Tenant to assemble the collateral and make its possession available to the City at the Premises, (c) enter the Premises, render the collateral, if equipment, unusable and dispose of it in a manner provided by the Uniform Commercial Code on the Premises. Tenant agrees to execute such instruments as City may request to perfect such lien, and designates also Director his attorney-in-fact for purposes of executing such documents.

14.9 Commencement of Legal Actions. Any legal action by City to enforce any obligation of Tenant or in the pursuit of any remedy hereunder shall be deemed timely filed if

commenced at any time prior to one (1) year after the expiration or termination of the Term hereof or prior to the expiration of the statutory limitation period that would be applicable except for this Section 14.9, whichever period expires later.

14.10 Waiver of Notice. Except as otherwise expressly provided in this Section 14, Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re- enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any right of redemption or relief from forfeiture under Florida Code of Civil Procedure, or under any other present or future law, if Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant hereunder.

15 SURRENDER

Tenant shall at the end of the Term surrender to City the Premises and all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Subject to City's right to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's trade fixtures), shall, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person. In the event that Tenant shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Tenant or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such personal property.

16 HAZARDOUS MATERIALS

16.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

- a) **"Environmental Laws"** shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.)
- b) **"Hazardous Material"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos

containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any materials listed in the Airport's Policies and Procedures Guide.

- c) **"Release"** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.
- d) **"Pre-Existing Condition"** means the existence of any Hazardous Materials on the Premises immediately prior to the Commencement Date.

16.2 Tenant's Covenants.

- a) Neither Tenant nor any Tenant Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises or the Airport; provided that Tenant may use such substances as are customarily used in retail sales so long as such use is in compliance with all applicable Environmental Laws and the Airport's Policies and Procedures Guide.
- b) Tenant shall handle Hazardous Materials discovered or introduced on the Premises during the Term in compliance with all Environmental Laws and the Airport's Policies and Procedures Guide. Tenant shall protect its employees and the general public in accordance with all Environmental Laws.
- c) In the event Tenant becomes aware of the actual or possible Release of Hazardous Materials on the Premises or elsewhere on the Airport, Tenant shall promptly give notice of the same to City. Without limiting the generality of the foregoing, Tenant shall give notice to City of any of the following: (i) notice of a Release of Hazardous Materials given by Tenant, any subtenant, or other occupant to any governmental or regulatory agency; (ii) notice of a violation or potential or alleged violation of any Environmental Law received by Tenant, any subtenant, other occupant on the Premises from any governmental or regulatory agency; (iii) any inquiry, investigation, enforcement, cleanup, removal, other action that is instituted or threatened by a government or regulatory agency; (iv) any claim that is instituted or threatened by a third party against Tenant, any subtenant, or other occupant on the Premises that relates to Hazardous Materials; and (v) any notice of termination, expiration, or material amendment to any environmental operating permit or license necessary for the use of the Premises.
- d) At Director's request, Tenant shall provide information necessary for City to confirm that Tenant is complying with the foregoing covenants.

16.3 Environmental Indemnity. Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses arising during or after the Term as a result of or arising from: (a) a breach by Tenant of its obligations contained in the preceding Section 16.2 [Tenant's Covenants], or (b) any Release of Hazardous Material from, in, on or about the Premises or the

Airport caused by the act or omission of Tenant or any Tenant Entity, or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Tenant can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

16.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary contamination. No such testing or investigation shall limit Tenant's obligations hereunder or constitute a release of Tenant's obligations therefor. Tenant shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Tenant is liable hereunder.

16.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Tenant to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's Policies and Procedures Guide, the Airport Rules, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination. Without limiting the foregoing provision, City reserves the right to require Tenant to, and in such event Tenant shall, at Tenant's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

17 EMINENT DOMAIN

17.1 Definitions. For purposes of this Section 17, the following capitalized terms shall have the following meanings:

- a) **"Award"** means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.
- b) **"Date of Taking"** means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemner, and (b) the date on which Tenant is dispossessed
- c) **"Taking"** means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable Laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

17.2 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

17.3 Partial Taking; Election to Terminate.

- a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant for the Permitted Use; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition; and (c) City elects to terminate.
- b) If a partial Taking of a material portion of the Terminal occurs, City shall have the right to terminate this Lease in its entirety.
- c) City's elections to terminate this Lease pursuant to this Section 17 shall be exercised by City's giving notice to Tenant on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Lease shall terminate upon on the thirtieth (30th) day after such notice is given.

17.4 Tenant's Monetary Obligations; Award. Upon termination of this Lease pursuant to an election under Section 17.3 [Partial Taking; Election to Terminate] above, then: (a) Tenant's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

17.5 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 17.3 [Partial Taking; Election to Terminate] above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) the Minimum Annual Guarantee shall be adjusted by Director to reflect the Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

17.6 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent, and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive any Award.

18 FEDERAL NONDISCRIMINATION REGULATIONS.

- a) Tenant understands and acknowledges that City has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal Regulations, Subtitle A - Office of the Secretary of Transportation, Part 21, as amended, as a condition precedent to the government making grants in aid to City for certain Airport programs and activities, and that City is required under said Regulations to include in every agreement or concession pursuant to which any person or persons other than City, operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Tenant agrees as follows: "Tenant in its operation at and use of Pensacola International Airport, covenants that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the grantee, licensee, permittee, etc., shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended."
- b) (i) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23. (ii) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in the further agreements.

18.1 Federal Affirmative Action Regulations. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

18.2 City's Nondiscrimination Ordinance.

- a) In the performance of this agreement, Tenant agrees not to discriminate against any

employee, City and County employee working with Permittee, applicant for employment Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

- b) Tenant shall include in all subleases and other subcontracts relating to the Premises hereunder a nondiscrimination clause in substantially the form of subsection (a) above. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

18.3 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by Tenant or any Tenant Entity shall constitute a default hereunder.

18.4 Compliance with Americans With Disabilities Act. Tenant acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Tenant shall provide the services specified in this Lease in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Tenant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Lease, and further agree that any violation of this prohibition on the part of Tenant, its employees, agents or assigns shall constitute a material breach of this Lease.

18.5 Sunshine Ordinance. In accordance with Section 119.07 Florida Statutes, contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

19 GENERAL PROVISIONS

19.1 Notices. All notices by either party to the other shall be made either by utilizing the registered or certified mail of the United States of America, postage prepaid, or by utilizing any other method of delivery requiring signature for receipt, and such notice shall be deemed to have been delivered and received on the date of such utilization. All notices to the City shall be mailed to:

Airport Director
Pensacola International Airport
2430 Airport Boulevard, Suite 225
Pensacola, Florida 32504

All notices to Tenant shall be mailed to:

19.2 No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

19.3 Entire Agreement. The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

19.4 Amendments. Except as specifically provided herein, neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

19.5 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days. Use of the word "including" shall mean "including, without limitation." References to statutes, sections, ordinances or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, partnership, firm, limited liability company, and association.

19.6 Successors and Assigns. Subject to the provisions of Section 5 [Assignment or Subletting], the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Tenant and City and, except as otherwise provided herein, their personal representatives and successors and assigns.

19.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Lease.

19.8 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Tenant in the conduct of Tenant's business or a member of a joint enterprise with Tenant, and does not assume any responsibility for Tenant's conduct or performance of this Lease.

19.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, nor any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his/her claim shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination or expiration of this Lease.

19.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

19.11 Governing Law. The law of the State of Florida shall be the law applied to the resolution of any action, claim or other proceeding arising out of this contract. Venue for any claim, action or proceeding arising out of this contract shall be Escambia County, Florida.

19.12 Attorneys' Fees. In the event of a breach of this Agreement by the Tenant, the Tenant shall pay to the City all attorneys' fees, costs and other expenses incurred by the City in enforcing its rights as a result of said breach.

The prevailing party in any action, claim or proceeding arising out of this contract shall be entitled to attorney's fees and costs from the losing party. This Section shall survive expiration or earlier termination of this Lease.

19.13 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

19.134 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

19.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to

minimize disruption in Tenant's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive of Tenant from the Premises. City reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs the Premises. City reserves the exclusive right to use such areas together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Lease.

19.16 Survival of Indemnities. Expiration or termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee. Further, Tenant's obligation to make payments to City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to City) which are accrued at the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.

19.17 Quiet Enjoyment and Title. Tenant, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term as against all persons or entities claiming by and through City. Tenant expressly acknowledges that Tenant's right to quiet possession of the Premises does not preclude City's right to make changes and additions to the Airport, including the Premises, and to do work in the Premises as permitted by this Lease.

19.18 Accord and Satisfaction. The payment by Tenant or the receipt by City of a lesser amount than the rent stipulated in this Lease may be, at City's sole option, deemed to be on account of the earliest due stipulated rent, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of Tenant to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in otherwise, including possession of the Premises. City may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law

19.19 Joint and Several Liability. The liabilities hereunder of the entities and/or person(s) comprising Tenant shall be joint and several.

19.20 Estoppel Statements. Within ten (10) days after request therefor by City, Tenant shall deliver, in recordable form, an estoppel statement certifying that this Lease is in full force and effect; the date of Tenant's most recent payment of Rent, and that Tenant has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested. Failure to deliver said statement within the specified period shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by City; (ii) there are

no uncured defaults in City's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (iii) no more than one month's Base Rent has been paid in advance. Notwithstanding the conclusiveness of Tenant's failure to deliver such statement, Tenant's failure shall constitute a breach of this Lease.

19.21 Authority. If Tenant signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is duly qualified to do business in Florida, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

19.22 Consents. If City is required to reasonably grant consent or approval, but does not do so, Tenant's sole and exclusive remedy is to seek specific performance and in no event will City be liable for any monetary damages.

19.23 Options Personal. If and to the extent Tenant has an option to extend the Term of this Lease, such option is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Transfer, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant, unless the foregoing prohibition is waived by Director. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

19.24 Inspection. The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the Leased Premises for the following purposes:

- a. To inspect the Leased Premises to determine whether Tenant has complied with and is complying with the terms and conditions of this Concession Agreement.
- b. To perform maintenance and make repairs in any case where Tenant is obligated but has failed to do so.
- c. To perform any and all things which the Tenant is obligated to and has failed after reasonable notice so to do.
- d. In the exercise of City's police powers.

19.25 Collateralization Rights

- a. Tenant is hereby authorized to utilize as collateral any improvements or trade fixtures it constructs or installs on the Leased Premises, and any of its personal property used or stored on the Leased Premises.
- b. Tenant shall not use as collateral this Concession Agreement itself, its operating rights under this Agreement, or its rights to occupy or use any improvements or fixtures it constructs or installs on its Leased Premises. If Tenant assigns this Concession Agreement, or its operating rights under this Concession Agreement, or its right to occupy or use any improvements or fixtures it constructs or installs on its Leased Premises, to a third party as collateral for a loan Tenant obtains from said third party, or to secure performance of Tenant's obligations under an agreement with said third party, or for any other reason whatsoever, said agreement shall be deemed a

material breach of this Agreement. Furthermore, said collateralization shall not be binding upon the City, and the assignee or lienor shall have no interest in the Concession Agreement, nor shall assignee or lienor enjoy any concession operating rights upon the Airport, or any right to occupy or use any improvement or fixtures upon the Airport, should Tenant default in the payment of its loan, or performance of its agreement, with said third party.

- c. Should Tenant encumber any improvements or trade fixtures it constructs or installs upon the Leased Premises, Tenant shall be responsible for eliminating said lien or encumbrance, and holding the City harmless from said encumbrance, at the time said improvements and trade fixtures are conveyed to the City, following the expiration or sooner termination of this Concession Agreement, pursuant to Article 15 SURRENDER.

19.26 Bond Resolution This Agreement shall be subordinate to existing and future airport Bond Resolutions and to agreements between the City and State and Federal agencies for grants-in-aid.

19.27 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(END OF TEXT; SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the parties hereto have signed this instrument the day and year first above written.

ATTEST:

City of Pensacola, Florida, a
Municipal Corporation

Ericka Burnett
City Clerk

By: _____
Ashton J. Hayward, III
Mayor

Company
Operator

WITNESS:

By: _____

1) _____

Title: _____

2) _____

Date: _____

Approved As to Content:

Legal in Form and Valid as Drawn:

Airport Director

City Attorney

LIST OF EXHIBITS

- EXHIBIT A – Description of Premises
- EXHIBIT B – Use and Operational Requirements
- EXHIBIT C-1 – Form of Performance Bond
- EXHIBIT C-2 – Form of Letter of Credit

EXHIBIT A PREMISES

EXHIBIT B
USE AND OPERATIONAL REQUIREMENT

< Menus based on Proposals with Prices – not to exceed “Street +10%”>

EXHIBIT C-1
FORM OF PERFORMANCE BOND FOR AIRPORT LEASES

_____(Surety)

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____, as Surety, are held and firmly bound unto the City of Pensacola, acting by and through its City, as Obligee, in the sum of _____ Dollars (\$ _____) lawful money of the United States of America, to be paid to the City of Pensacola, acting by and through its City, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into one or more leases, permits, or agreements with the City (collectively, the “**Agreements**”).

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall perform all terms of the Agreements (which by reference are made a part hereof), including the payment of rent or fees, in accordance with the terms of such Agreements, then this obligation shall be null and void, otherwise to remain in full force and effect; and shall be effective _____.

This bond may be called upon by Obligee by a notice sent to the Surety in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

_____.

Any such call by Obligee shall include a statement signed by the Airport Director of the City of Pensacola, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Principal has defaulted under one or more of the Agreements; or
- b) Principal has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Principal, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Principal; or
- d) This bond is cancelled, terminated, or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation, termination, or expiration date.

We shall honor and pay on such call within ten (10) days after receipt.

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date, termination date or expiration date of this bond, if any is stated, of our intention to cancel, terminate, or non-renew this bond. In the event we fail to give such notice promptly, then this bond shall be deemed renewed for an additional one-year period.

Signed, sealed and dated this ___ day of _____, 20__.

Principal: By: _____

Title: _____

Seal: _____

Surety Company:

by: _____ Title: _____

Seal:

(Attach Notary Public Certificate and Attorney-in-Fact form)

EXHIBIT C-
2

FORM OF LETTER OF CREDIT FOR AIRPORT LEASES

Date _____

Irrevocable Letter of Credit No. _____

City of Pensacola
222 West Main Street
Pensacola, FL 32502

Ladies and Gentlemen:

We hereby establish an irrevocable letter of credit in your favor in the amount of _____ United States Dollars (US\$ _____) for the account of _____ (“**Account Party**”), available by your draft at sight, when accompanied by the following document:

A statement signed by the Airport Director of the City of Pensacola, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Account Party has defaulted under the one or more agreements with the City of Pensacola, acting by and through its Airport Director at Pensacola International Airport; or
- b) Account Party has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Account Party, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Account Party; or
- d) This letter of credit is cancelled or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation or expiration date.

Drafts drawn under and in compliance with the terms of this letter of credit will be duly honored by us upon presentation and delivery of the statement specified above. Partial draws are permitted. Such drafts may be presented in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at: _____.

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date or expiration date of this letter of credit, if any is stated, of our intention to cancel or non-renew this letter of credit. In the event we fail to give such notice promptly, then this letter of credit shall be deemed renewed for an additional one-year period. Notwithstanding the foregoing, this letter of credit shall finally expire on _____, 20_.

Sincerely,
