

Retail Concession Lease

Between

Salt Lake City Corporation

And

Sample Document

March 2011



Package #

Table of Contents

SECTION 1: DEFINITIONS AND AGREEMENT	1
1.01 Definitions.....	1
1.02 Agreement.....	4
1.03 Interpretation.....	4
SECTION 2: AGREEMENT TO LEASE PREMISES	5
2.01 Lease of Premises.....	5
2.02 Transition Period.....	5
2.03 City's Right to Construct New Facilities.....	6
SECTION 3: TERM.....	6
3.01 Base Term.....	6
3.02 Holding Over.....	6
3.03 Termination of Rights under Prior Agreements.....	7
SECTION 4: RENT	7
4.01 Rent Defined.....	7
4.02 Minimum Annual Guarantee and Percentage Rent.....	7
4.03 Additional Rent.....	8
4.04 Gross Revenue Defined.....	9
4.05 Payment.....	10
4.06 Audits, Recordkeeping, and Reporting.....	12
SECTION 5: USES AND OBLIGATIONS	12
5.01 Right to Operate Retail Concession Business.....	12
5.02 Use of Premises.....	12
5.03 Use of Public Spaces.....	13
5.04 Use of Brands.....	13
5.05 Service Standards.....	13
5.06 Advertising.....	14
5.07 Signs.....	14
5.08 Response to Complaints.....	14
5.09 Liquidated Damages.....	14
5.10 Airport Security.....	16
5.11 Safety.....	16
5.12 Assignment and Subletting.....	17
5.13 Licenses, Permits and Taxes.....	17
5.14 Cooperation with Airport Development Activities.....	18
5.15 Wi-Fi Access.....	18
SECTION 6: PREMISES RIGHTS AND OBLIGATIONS	19
6.01 City's Access to Premises.....	19
6.02 City's Inspection and Repair of Premises.....	19
6.03 City's Right to Relocate Premises.....	20
6.04 Repair and Maintenance.....	20
6.05 Utilities.....	21
6.06 Telephone Service and Snow Removal.....	22
6.07 Interruption of Services.....	22
6.08 Damage or Destruction of Premises.....	22

6.09	No Liens.....	23
	SECTION 7: CONSTRUCTION.....	23
7.01	Construction and Capital Investment	23
7.02	Theme, Design and Decor	25
7.03	Due Diligence	25
7.04	Condition of the Premises	26
7.05	Construction by Concessionaire Tenant	26
7.06	Preliminary Activities	27
7.07	Construction Contracts, Liens, and Certificate of Beneficial Occupancy	27
7.08	Inspection of Premises.....	28
7.09	Default During Design and Construction.....	28
7.10	Construction Performance and Payment Bond	29
7.11	Signs	29
7.12	Refurbishment	30
	SECTION 8: INDEMNIFICATION, INSURANCE AND SECURITIES.....	30
8.01	Indemnification.	30
8.02	Insurance.....	30
8.03	Security for Performance and Payment.....	33
	SECTION 9: ENVIRONMENTAL REQUIREMENTS	33
9.01	Comply with All Requirements.	33
9.02	Status and Acceptance of the Premises.....	34
9.03	Environmental Indemnification.....	34
9.04	Hazard Communication Standard.	35
	SECTION 10: TERMINATION	35
10.01	Default by Concessionaire Tenant.....	35
10.02	Remedies.....	35
10.03	Past-due Amounts.	36
10.04	Default by City.....	36
10.05	City Termination for Orderly Development of the Airport.	36
10.06	Surrender Upon Termination.	36
10.07	Payments Upon Termination.	36
	SECTION 11: DISPUTE RESOLUTION	37
11.01	Dispute Resolution Process Required.....	37
11.02	Dispute Resolution Process.	37
11.03	Effect of Process.....	38
11.04	Attorneys Fees.....	38
	SECTION 12: MISCELLANEOUS PROVISIONS	38
12.01	FAA Nondiscrimination Clause.	38
12.02	Subordination to FAA Requirements.	39
12.03	Right of Flight/Airport Protection.	40
12.04	Right to Amend.	40
12.05	Comply with All Laws.	40
12.06	Damage to Property.....	40
12.07	Ethical Standards.....	41
12.08	Confidentiality and Government Records Act.	41
12.09	Employment Status Verification System (SB 81).....	41

12.10	Non-exclusive Remedies.....	42
12.11	Survival.....	42
12.12	Approvals.	42
12.13	Time of the Essence.	43
12.14	Relationship of Parties.	43
12.15	Force Majeure.	43
12.16	Notice Addresses.....	43
12.17	No Third-Party Beneficiaries.....	44
12.18	Further Assurances.	45
12.19	Severability Clause.....	45
12.20	Covenants, Conditions, and Restrictions.....	45
12.21	Joint and Several Obligations.	45
12.22	Limitation on City Liability.	45
12.23	No Limit on City's Powers.....	45
12.24	Non-Waiver.....	46
12.25	Nonliability of Agents and Employees.....	46
12.26	Representations by the Concessionaire Tenant.	46
12.27	Joint Venture Requirements	47
12.28	Americans with Disabilities Act.....	47
12.29	Complete Agreement.....	48
12.30	Governing Law and Venue.....	48

Sample Document

CONCESSION LEASE

THIS CONCESSION LEASE, is made and entered into as of _____ (“Concession Lease” or “Agreement”), by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation (“City”) for the benefit of its Department of Airports (“Department”), and _____ a _____ (corporation, LLC, etc.) (“Concessionaire Tenant”).

RECITALS

A. City owns and through its Department operates the Salt Lake City International Airport (“Airport”).

B. City desires to provide for the operation of retail concessions using City’s facilities located on Airport Property.

C. City and Concessionaire Tenant have negotiated this Concession Lease, and now desire to allow Concessionaire Tenant to lease certain Airport facilities in order to provide retail concession services for the convenience and necessity of the public at the Airport, and to raise revenue for the Department through rent payments.

AGREEMENT

In consideration of the foregoing recitals and the following terms, conditions and mutual promises, the parties agree as follows:

SECTION 1: DEFINITIONS AND AGREEMENT

1.01 Definitions.

The following terms, when capitalized in this Concession Lease, shall have the following meanings, unless the context clearly indicates a different meaning:

- (a) “Airport” means the Salt Lake City International Airport.
- (b) “Airport Rules and Regulations” means rules, policies, regulations, directives and orders promulgated by the Department as they may be amended from time to time.
- (c) “Base Term” means the initial term of this Concession Lease as set forth in Section 3.01 below.

- (d) "Beneficial Occupancy" means the date Concessionaire Tenant commences full business operations.
- (e) "Capital Investment" means those dollars spent by Concessionaire Tenant in the actual construction, furnishing, fixturing, and remodeling of the Premises including architectural and engineering fees relating thereto, not exceeding twelve percent (12%) of the investment amount, unless approved in writing by the City. Capital Investment excludes personal property.
- (f) "City" means Salt Lake City Corporation.
- (g) "City's Work" means collectively, the work to be done by or on behalf of the City to prepare the Premises for Concessionaire Tenant, as more fully set forth in the Tenant Design Standards.
- (h) "Commencement Date" means July 1, 2011.
- (i) "Concessionaire Tenant" means [REDACTED] and any officers, owners, employees, agents, or sublessees of Concessionaire Tenant.
- (j) "Concession Lease" means this Concession Lease, including all exhibits attached hereto, and other documents as set forth in Section 1.02 below.
- (k) "Contract Year" means a period of one year beginning on July 1 and ending on June 30, and for every year thereafter, a period of one year ending on June 30.
- (l) "Department" means the Salt Lake City Department of Airports, a subdivision and part of the City.
- (m) "Environmental Requirements" means laws and regulations pertaining to the environment and Concessionaire Tenant's use of the Premises and other areas at the Airport as further described in Section 8.01.
- (n) "Government Records Access and Management Act" or "GRAMA" means Chapter 2, Title 63, Utah Code Annotated or its successor.
- (o) "Gross Revenue" means revenue as defined in Section 4.04 below.

- (p) "Leasehold Improvements" means all improvements and equipment that are affixed to the Premises. Leasehold improvements may include, but are not limited to, all mechanical, electrical and plumbing work (MEP), floors, ceilings, demising walls, store fronts and signage, décor items, lighting fixtures, and built-in shelving.
- (q) "Minimum Annual Guarantee" or "MAG" means the fixed sum stated in Section 4.02 below.
- (r) "Notice Address" means the addresses for City and for Concessionaire Tenant set forth in Section 12.16 below.
- (s) "Notice to Proceed" means the written notice to Concessionaire Tenant by which the City makes the Premises available to Concessionaire Tenant to commence construction and installation of Leasehold Improvements.
- (t) "Package Completion Date" means the earliest to occur of (a) the opening for business of all concession locations within a package or (b) the latest of the dates established under the Concession Lease for completion of build-out of all Capital Investment for a package of concession locations identified herein.
- (u) "Premises" means the real property leased to Concessionaire Tenant under this Concession Lease as described in Section 2.01 below and as described in Exhibit A attached hereto, including both Concession Premises and Support Premises as described herein.
- (v) "Percentage Rent" means the rental payment required under Section 4.02 below and in Exhibit D.
- (w) "Rent" means all amounts described in Section 4.01 below.
- (x) "Restricted Activities" means acts in connection with use of the Premises and other areas at the Airport, whether or not regulated by law, that may pose a hazard to the health or safety of others as further described in Section 9.01.
- (y) "Service Standards" means the standards set by City for the operation of Concessionaire Tenant's business as further described in Section 5.05 and Exhibit B attached hereto and hereby incorporated by reference.
- (z) "Substantial Completion" means the stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by the City, so that (a) in the case of City's Work, Concessionaire Tenant is able to take possession of the Premises for the purpose of performing the Approved Project, and (b) in the case of Approved Project work, Concessionaire Tenant is able to occupy the Premises for the purpose

of opening for business, provided that in no event shall Substantial Completion of any work occur prior to the issuance by the City of a letter permitting the taking of possession or occupancy, as the case may be, of the Premises by Concessionaire Tenant.

- (aa) "Transition Period" means the period after the award of this Concession Lease during which City and Concessionaire Tenant shall make facility modifications as further described in Section 2.02 below.
- (bb) "Tenant Design Standards and Tenant Design Guidelines" means those documents produced by the City to provide guidance, standards, and other rules concerning the construction process called for in Section 7 of this Agreement. Tenant acknowledges receipt of those documents from City and they are hereby incorporated by reference.

1.02 Agreement.

This Concession Lease between the parties shall consist of this instrument, including exhibits A, B, C and D hereto, which are incorporated herein by this reference, and the following documents, which are incorporated herein by this reference. In the event of any direct conflict between this instrument and any of its exhibits or any other document incorporated herein, the terms of this instrument shall govern.

- (a) City's Request for Proposals in connection with this Concession Lease dated August 25, 2010, and all addenda and attachments thereto.
- (b) Concessionaire Tenant's Proposal ("Proposal") in connection with this Concession Lease in its entirety, except portions which have been rejected in writing by City, including all exhibits, schedules, addenda, ACDBE goals, presentation materials, letters, supplements and attachments or other documents, or any material representations. Contract is for **Package Number** within said Request for Proposal.
- (c) Information concerning Concessionaire Tenant.
- (d) All insurance policies, bonds, letters of credit, guaranties or other sureties or assurances.

1.03 Interpretation.

This is an arm's length transaction between City and Concessionaire Tenant, and the parties mutually agree that for the purpose of construing the terms of this Concession Lease neither party will be deemed responsible for the drafting of this Concession Lease. The headings of this Concession Lease are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Concession Lease, and will not be construed to

- (c) Possession and Commencement Date. If at the Commencement Date of this Concession Lease Concessionaire Tenant's Premises hereunder are not ready to be occupied, then the Rent provisions of Section 4 of this Concession Lease and other performance obligations hereunder shall not take effect until City can give possession of the Premises to Concessionaire Tenant. City and Concessionaire Tenant may enter a Letter Agreement signed by both parties describing additional terms that may apply during the Transition Period. Concessionaire Tenant will promptly take possession of the Premises upon receiving City's notice instructing Concessionaire Tenant to relocate, and by doing so, Concessionaire Tenant relinquishes any and all rights in any City property previously used by Concessionaire Tenant that is not a part of the Premises under this Concession Lease.
- (d) Work Cooperatively. Concessionaire Tenant agrees to work cooperatively and in good faith with City and other tenants to facilitate a prompt and effective transition during this period.
- (e) Acceptance "As-Is." Concessionaire Tenant agrees that when any contemplated improvements have been made and Concessionaire Tenant takes possession of any portion of the Premises, such possession shall constitute Concessionaire Tenant's acknowledgement that the Premises are in good condition, and such possession shall constitute an acceptance of such Premises in their "as-is" condition.

2.03 City's Right to Construct New Facilities.

City is in the process of planning and implementing a development program at the Airport. City reserves the right to pursue the planning, financing and construction of new facilities of any nature as City may determine to accommodate City's business needs, and City may take any action that City deems desirable in connection therewith. City also reserves the right to terminate this Concession Lease prior to the term hereof in order to commence construction.

SECTION 3: TERM

3.01 Base Term.

This Concession Lease shall commence as of the Commencement Date, and shall continue thereafter for a Base Term of approximately seven (7) years ending at midnight on June 30, 2018. At City's sole discretion City and Concessionaire Tenant may extend the term of this Concession Lease.

3.02 Holding Over.

In the event Concessionaire Tenant remains in possession of the Premises after the expiration of this Concession Lease without any written renewal or extension thereof,

3.03 Termination of Rights under Prior Agreements.

- ## SECTION 4: RENT

All amounts which may be due under this Concession Lease, or which are otherwise attributable to Concessionaire Tenant in connection herewith, shall constitute Rent for purposes of this Concession Lease, whether such amount is described as rent, additional rent, interest, charges, fees, late fees, damages, liquidated damages, fines, civil penalties or otherwise, and whether such sum is calculated in a manner relating to square footage, percentages of gross revenue, fees in connection with uses, or otherwise.

Prior to the date of Beneficial Occupancy, the Concessionaire Tenant shall pay only the Percentage Rent computed on the Gross Revenue of each unit of the Premises in

operation or on the Gross Revenue of any temporary units in operation.

The Minimum Annual Guarantee shall be as follows for the Term of the Concession Lease:

(a)

Time Period	Minimum Annual Guarantee
First Year of Beneficial Occupancy	\$(insert amount defined by City for the appropriate package)
Second Year of Beneficial Occupancy	Ninety percent (90%) of the actual Rent paid to City during the first year of Beneficial Occupancy, or one hundred three percent (103%) of the Minimum Annual Guarantee for the first year of Beneficial Occupancy, whichever is higher.
Third through Seventh Years of Beneficial Occupancy, including Months following end of Seventh Year of Beneficial Occupancy (if necessary)	Ninety percent (90%) of the actual Rent paid to City for the prior year of Beneficial Occupancy, or one hundred three percent (103%) of the Minimum Annual Guarantee for the prior year of Beneficial Occupancy, whichever is higher.

For any payment period of less than one calendar month, the Minimum Annual Guarantee shall be paid on a pro rata basis.

- (b) Minimum Annual Guarantee adjustment. Should total enplaning passengers at Airport decline by twenty-five percent (25%) or more in any one Contract Year, Concessionaire Tenant's Minimum Annual Guarantee for that Contract Year will be reduced in percentage proportionate to the percentage of passenger decline. Should such passenger traffic subsequently increase, Concessionaire Tenant's Minimum Annual Guarantee shall be increased by that same percentage proportionate to the passenger increase, provided that any such increase shall not exceed the original Minimum Annual Guarantee for that Contract Year.

- (c) Percentage Rent. The Percentage Rent shall be as shown in Exhibit D.

4.03 Additional Rent.

All other amounts due under this Concession Lease, or which are otherwise attributable to Concessionaire Tenant in connection herewith, are additional Rent under this Concession Lease. Without limitation, such amounts shall at least include City advances. If City pays any amount on behalf of Concessionaire Tenant, whether in

4.04 Gross Revenue Defined.

(a) All Sums Included. Gross Revenue includes all sums paid or payable to Concessionaire Tenant for retail concession services and for all ancillary activities allowed under this Concession Lease, except for sums specifically excluded in Section 4.04(b) below, regardless of how any sum may be stated to the customer, how or where Concessionaire Tenant received the order. Without limitation, Gross Revenue includes all revenues from the sale at Airport of any product or service, including Internet sales made as a result of shopping at the Airport, whether for cash or paid by credit card or otherwise, and whether wholesale or retail, regardless of when or whether paid for or not, together with the aggregate amount of all exchanges of goods, wares, merchandise and services for like property, or services at the sale price thereof, as if the same had been sold for cash or the sale price thereof, or the fair and reasonable value thereof, whichever is the greater.

(b) **Specific Exclusions.** There shall be no exclusions from Gross Revenue, except for the following:

- (1) The amount of any federal, state or local sales tax separately stated on the rental agreement and collected from the customer and actually remitted to the taxing authority.
- (2) The amount of any sum received as insurance proceeds or a judicial judgment or settlement to restore damage to property of Concessionaire Tenant, or to restore a tangible loss, theft or conversion.
- (3) The amount of any sale of Concessionaire Tenant's capital assets or trade fixtures.
- (4) Any sums which represent discounts or rebates, so long as the amount of the discount or rebate is shown on the face of the receipt issued to the customer.

- #### 4.05 Payment.

(a) Monthly in Advance. The following amounts shall be due and payable on a monthly basis, in advance and without notice or demand therefore, on the first (1st) day of each month during the term of this Concession Lease, and shall be prorated on a per diem basis for any time period of less than one (1) month:

- ## RETAIL CONCESSION LEASE
- Salt Lake City Corporation and

Concessionaire Tenant attributable to that month. Such payment shall be prorated on a per diem basis for any time period of less than one (1) month.

- (c) Annually in Arrears. Within sixty (60) days of the close of any Contract Year, Concessionaire Tenant shall pay to City any balance due for Rent of any nature attributable to that Contract Year. Without limitation, Concessionaire Tenant shall pay the balance due for Percentage Rent, which is payable monthly, but computed on the basis of the Contract Year. If the amount of Percentage Rent paid monthly during the Contract Year exceeds the amount due when computed on the basis of the Contract Year, then City shall credit the excess balance to Concessionaire Tenant's account against one (1) or more succeeding monthly payments. In the event this Concession Lease terminates, and Concessionaire Tenant does not hold a subsequent contract against which sums can be credited, then City will make a cash payment of any excess balance due to Concessionaire Tenant. It shall be the duty of Concessionaire Tenant to make a claim of overpayment and resulting credit due.
- (d) Late Fees and Interest. Without waiving any other right of action available to City, in the event of any monetary default hereunder, if Concessionaire Tenant fails to pay when due any amount required to be paid by Concessionaire Tenant under this Concession Lease, City may charge a sum equal to five percent (5%) of such unpaid amount as a service fee. In addition, if Concessionaire Tenant fails to pay within ten (10) days of the date due any amount required to be paid by Concessionaire Tenant under this Concession Lease, such unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum from the due date of such amount to the date of payment in full, with interest.
- (e) No Set-offs or Deductions. All Rent shall be paid without abatement, deduction, offset, or prior notice or demand, unless specifically provided otherwise by the terms of the Concession Lease.
- (f) Accord and Satisfaction. No payment by Concessionaire Tenant or receipt by City of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent due, and no endorsement or statement on any check or in any letter or other transmittal shall 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 any Rent, or to City's right to pursue any other remedy provided in this Concession Lease or by law.
- (g) Payment Address. Concessionaire Tenant shall make all payments and provide all financial information to City's Department of Airports at the following address:

Salt Lake City Department of Airports

Attn: Finance Division
Salt Lake City International Airport
P.O. Box 145550
Salt Lake City, UT 84114-5550
Fax No. (801) 575-2817

4.06 Audits, Recordkeeping, and Reporting.

City may audit and take copies of Operator's books, records and electronic data at any time and without prior notice as stated in Exhibit C attached hereto and hereby incorporated by reference.

SECTION 5: USES AND OBLIGATIONS

5.01 Right to Operate Retail Concession Business.

Concessionaire Tenant shall have the right, privilege and obligation to use the Premises to operate a retail concession business at the Airport on a non-exclusive basis for the convenience of Airport customers, and to raise revenue for the Department through the sale of goods or services.

5.02 Use of Premises.

Concessionaire Tenant, including all Concessionaire Tenant's franchisors, sublessees and licensors, will use the Premises solely for the operation of a retail concession business to the exclusion of any other use including without limitation the sale of any non-retail item unless approved of in advance by the City. Should a concept, franchise, license, or sublessee for portion of the Premises fail for any reason during the Term of this Concession Lease, City shall have the right to cancel the Lease for that portion of the Premises. If a sublessee fails, but can be replaced within a reasonable period of time as solely determined by the City with an equally-qualified sublessee as solely determined by the City, then the portion of the Premises occupied by such sublessee shall remain a part of the Concession Lease with the same terms, conditions, and expiration date as applies to the other portions of the Premises that were not replaced.

Concessionaire Tenant shall not engage in any other business activity at or on the Airport unless it is provided for by a separate written agreement with City. All franchise and/or license standards shall be met or exceeded. Copies of franchise and/or licensee standards and performance audit forms shall be submitted to City prior to the Commencement Date. Copies of inspections conducted by the franchise and/or licensing authority, or anonymous shopper service hired by said franchise or licensing authority, shall be submitted to City within ten (10) days of receipt by Concessionaire Tenant or any of its franchisors, sublessees and licensors.

- (a) **No Unlawful Use.** Concessionaire will make no unlawful, improper, or offensive use of Premises or any other area at the Airport. Without limitation, Concessionaire Tenant shall not suffer or permit the Premises or other areas at the Airport or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept thereon which would in any way (a) violate any law or requirement of public authorities, (b) cause structural injury to any building or structure, (c) interfere with the normal operations of heating, air-conditioning, ventilating, plumbing or other mechanical or electrical systems, (d) constitute a public or private nuisance, (e) alter the appearance of the exterior of any building or structure, or (f) which may be prohibited by either party's insurance policies or any endorsements thereto.
- (b) **No Interference or Unauthorized Activities.** Concessionaire Tenant agrees to refrain from and prevent any use of the Premises or other Airport property that would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard, obstruction or breach of security requirements. Concessionaire Tenant will not annoy, disturb or offend Airport customers or tenants. Concessionaire Tenant shall not engage in any unauthorized activities.

5.03 Use of Public Spaces.

Concessionaire Tenant will have the right to use all public Airport areas as reasonably required for access to and from the Premises, and any designated parking areas, provided its agents, employees, suppliers, or guests abide by Airport Rules and Regulations and any other applicable laws or policies as they may be amended from time to time.

5.04 Use of Brands.

Concessionaire Tenant shall operate at the Airport and make use of the Premises using only the brand name or names proposed by Concessionaire Tenant and agreed to by City upon entering this Concession Lease. Concessionaire Tenant shall not conduct operations using any other brand. The use of the brand or brands agreed to by City is a substantial and material condition precedent to entering this Concession Lease due to City's space constraints, service requirements to provide adequate service to the public, and financial requirements, and shall not be changed except as may be specifically agreed to in writing by City in connection with Section 5.12.

5.05 Service Standards.

Concessionaire Tenant shall comply with all Service Standards required by City for the operation of this concession business as set forth at Exhibit B. City may modify such Service Standards in writing as City may reasonably determine.

Concessionaire Tenant may not advertise at the Airport, including the advertising of prices, and the dispensing of brochures, pamphlets or leaflets or like items whether for profit or not, except through City's Airport advertising concessionaire, or at the Premises consistent with requirements in the Service Standards. Concessionaire Tenant shall only advertise Concessionaire Tenant's own business, and shall not advertise on behalf of any other business. Concessionaire Tenant affirms that its advertising shall be truthful, accurate and not misleading, and agrees to cooperate fully in any efforts by City to facilitate the same.

Concessionaire Tenant will, at its own expense, install and operate necessary and appropriate signs. The term "signs" as used herein shall mean advertising signs, billboards, identification signs or symbols, posters, or any similar device. The number, size, height, location, color and general type and design of all signs will be subject to the prior written approval of Department. At no time will hand-lettered, nonprofessional signs or posting of newspaper advertisements be permitted. The erection, construction, or placement of any sign at Airport or upon the Premises shall conform with signage requirements in Section 7.11.

Questions or complaints raised by customers or on City's own initiative or otherwise, may be submitted to Concessionaire Tenant for response. Concessionaire Tenant shall respond to Department and to any customer within two (2) business days, and thereafter promptly work toward a resolution of such questions or complaints. At Department's request, Concessionaire Tenant shall meet with Department to review any complaints or concerns and shall promptly correct any deficiencies. The Department's determination as to quality of operation or services shall be made in Department's reasonable judgment, and curative measures approved by Department shall be implemented by Concessionaire Tenant as expeditiously as possible.

Concessionaire Tenant's failure to adhere to the operating requirements set forth in this Concession Lease is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial retail business of the Airport, and reduce the amount of rent to be paid to City. Additionally, City resources will be expended in dealing with violations of this Concession Lease by Concessionaire Tenant. The parties hereby agree that total damages sustained by City for violations of the provisions of this Concession Lease addressing the subject matter listed below could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Concession Lease terms addressing the referenced subject matter are reasonable

estimates of the loss anticipated to be suffered or incurred by City. Concessionaire Tenant, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire Tenant agrees to pay immediately upon demand by City the following amounts as liquidated damages upon the occurrence of breaches related to the following subject matter:

VIOLATION	LIQUIDATED DAMAGES
Operating Hours Violation	\$100 per hour or portion thereof, during which location is not open - first occurrence (plus \$500 if breach occurs on a holiday)
	\$200 per hour or portion thereof, during which location is not open - second occurrence (plus \$500 if breach occurs on a holiday) \$300 per hour or portion thereof, during which location is not open - third occurrence (plus \$500 if breach occurs on a holiday) \$1,000 per occurrence thereafter (\$1,500 if breach occurs on a holiday)
Service Standards and Employee Standards Violation	\$50 per occurrence
Pricing and Quality Violations	\$250 first occurrence \$500 per occurrence thereafter
Signs and Lease Line Violations	\$50 first occurrence \$100 per occurrence thereafter
Sanitation, Hygiene, Cleanliness, Waste Disposal and Recycling Violations	\$100 per occurrence, for up to three (3) occurrences. \$1,000 per occurrence thereafter or a fee for any remedial sanitation work that must be performed by City billed at a rate determined by City at its sole discretion, notwithstanding the market rate.
Deliveries and Vendor Access Violations (including improper blocking of traffic lanes)	\$100 per occurrence

VIOLATION	LIQUIDATED DAMAGES
Aggressive selling techniques	\$100 per occurrence
Failure to Provide Documents to City in Accordance with Concession Lease Requirements	\$100 for each and every calendar day of delay (notwithstanding any other remedies or actions provided for herein)

Concessionaire Tenant may contest any liquidated damages under the dispute resolution procedures set forth in Section 11. City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right, or prohibit City from doing so for subsequent violations.

Except for lease violations regarding the minimum hours of operation, the liquidated damages for which shall be incurred immediately and without notice upon violation, other liquidated damage amounts shall not be imposed unless the lease violation continues for more than three (3) calendar days after City has given Concessionaire Tenant written notice (and this written notice may be in the form of an email) of the violation; provided, however, after City has given Concessionaire Tenant notice of the same violation more than twice during any given Lease Year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction. Additionally, after two (2) lease violations of the same type in the same Lease Year, City reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Concession Lease.

5.10 Airport Security.

Concessionaire Tenant acknowledges that security is of primary importance at the Airport, and that security requirements are likely to change during the term of this Concession Lease. Concessionaire Tenant shall at all times comply with all federal, state and local security laws, regulations, policies, requirements and directives whether written or verbal, including, without limitation, 49 C.F.R. Part 1542 "Airport Security" or any amendment or successor thereto, and Concessionaire Tenant will work cooperatively with City in connection with the same. Concessionaire Tenant understands and agrees that the same may impact Concessionaire Tenant's business operations and costs. Concessionaire Tenant further agrees that it shall be strictly liable for the payment of any civil penalties assessed against the Airport or Concessionaire Tenant relating to security, and shall be solely and fully responsible for any and all breaches of security and the consequences thereof resulting from the negligence or intentional acts of omission or commission of its officers, employees, representatives, agents, servants, subtenants, consultants, contractors, successors, assigns, and suppliers.

5.11 Safety.

Concessionaire Tenant agrees to take necessary safety precautions within its reasonable control and comply with applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to any of its employees, agents, customers or others on, about or adjacent to the Premises or any parking areas. This safety requirement shall not relieve any contractor or consultant performing work for Concessionaire Tenant from complying with the safety requirements of its contract or applicable law. City may, but is not obligated to, stop Concessionaire Tenant's operations if safety laws or safe work practices are not being observed.

5.12 Assignment and Subletting.

City has solicited retail concession firms in connection with this Concession Lease in a manner necessary to meet specific requirements of City. City's facilities are constrained in available space, and City needs to provide a quality level of service to the public and avoid congestion in the Airport. City considered a variety of factors relative to Concessionaire Tenant when determining whether City's requirements had been met, and determined to award this Concession Lease in City's best interests to meet those requirements, and consistent with applicable federal, state and local law giving City discretion to make this award in City's best interests. Therefore, City and Concessionaire Tenant expressly agree that Concessionaire Tenant shall not assign this Concession Lease or any right or privilege conferred hereunder, either in whole or in part, or sublet all or any part of the Premises, unless City in its sole judgment consents to such an assignment or sublease as being consistent with City's needs. Concessionaire Tenant further expressly agrees that 11 U.S.C. § 365(f) shall not apply to this Concession Lease, and that 11 U.S.C. § 365(c)(1) shall apply. Any change in the control of Concessionaire Tenant (defined for purposes of this Concession Lease as a sale or transfer of more than fifty percent (50%) of the ownership interests in Concessionaire Tenant) will be deemed an assignment for purposes of this Section. City shall have the right to transfer its interest in the Premises or this Concession Lease at any time. In the case of such a transfer, Concessionaire Tenant shall attorn to said transferee and recognize the same as the new lessor hereunder. Thereafter, City shall be relieved of any obligations accruing from and after the date of transfer as long as the transferee agrees to assume all obligations hereunder.

5.13 Licenses, Permits and Taxes.

Concessionaire Tenant shall comply with the following:

- (a) **Licenses and Permits.** Concessionaire Tenant will have and maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Concessionaire Tenant.
- (b) **Taxes.** Concessionaire Tenant agrees to bear, pay, and discharge, on or before their respective due dates, all federal, state, and local taxes, fees, assessments, and levies, including sales, franchise, ad valorem real estate, intangible, and personal property taxes, which are now or may hereafter be

levied upon Premises, the leasehold, or upon Concessionaire Tenant, or upon the business conducted on Premises, or upon any of Concessionaire Tenant's property used in connection therewith.

5.14 Cooperation with Airport Development Activities.

Concessionaire Tenant understands and agrees that City is pursuing development activities that may affect the Premises and other areas at the Airport. Concessionaire Tenant agrees to work cooperatively and in good faith with City and all other tenants or participants in City's Airport development activities to minimize any disruptions, and provide for successful services under this Concession Lease. If requested by City, Concessionaire Tenant will cooperate with and assist the Department in the development and implementation of any plans, designs, operational matters, or transition matters that may arise in connection with such activities.

5.15 Wi-Fi Access.

Concessionaire Tenant may install a wireless communications network within the Premises for the use of Concessionaire Tenant, its employees ("Network"), subject to this sub-section and all other terms of this Concession Lease. Concessionaire Tenant shall obtain written approval from City prior to installing the Network, such approval being at the sole discretion of City.

- (a) No solicitation. Concessionaire Tenant shall not solicit, suffer, or permit other concessionaires, tenants, occupants, visitors, or passengers of the Airport to use the Network or any other communications service, including, without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Premises.
- (b) Interference. Concessionaire Tenant agrees that Concessionaire Tenant's communications equipment and the communications equipment of Concessionaire Tenant's service providers and contractors located on the Premises or installed on the Airport to service the Premises including, without limitation, any antennas, switches, or other equipment (collectively, "Concessionaire Tenant's Communications Equipment") shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, City, other concessionaires, tenants, occupants, visitors, passengers, or any other party. In the event that Concessionaire Tenant's Communications Equipment causes or is believed to cause any such interference, upon receipt of notice from City of such interference, Concessionaire Tenant will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within 24 hours (or a shorter period if City believes a shorter period to be appropriate) then, upon request from City, Concessionaire Tenant shall shut down the Concessionaire Tenant's Communications Equipment pending resolution of

(c) Non-exclusivity. Concessionaire Tenant acknowledges that City has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Airport and to telecommunications service providers for the installation of a Wi-Fi network and related equipment at the Airport.

- (a) Inspect. To inspect such Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Concessionaire Tenant has complied and is complying with the terms and conditions of this Concession Lease with respect to such Premises.
- (b) Maintain. To perform maintenance or make repairs and replacements in any case where Concessionaire Tenant is obligated but has failed to do so after City has given reasonable written notice. If the work prescribed in the notice is not completed by Concessionaire Tenant in a manner reasonably satisfactory to City, and Concessionaire Tenant fails to correct such work within the time specified by City in the mailed notice, City may, at City's sole option, and at Concessionaire Tenant's sole cost and expense, enter upon the Premises and perform whatever work may, in the opinion of City, be required to correct the maintenance deficiencies. If City exercises this option, Concessionaire Tenant shall pay to City a sum equal to the direct cost of labor and materials expended for said work, plus a surcharge equal to twenty percent (20%) of said direct cost for administration.

- (c) Allow Other Things. To do any and all things that City deems necessary for the proper general conduct, security, maintenance and operation of Airport provided that City agrees not to treat Concessionaire less favorably than other tenants of City similarly situated.

6.03 City's Right to Relocate Premises.

City has the right to relocate or require the relocation of the Premises or any portion thereof at any time as City may determine in its sole discretion. In connection with any such relocation, Concessionaire Tenant shall pay the cost of Concessionaire Tenant's reasonable and necessary moving expenses.

6.04 Repair and Maintenance.

City shall maintain in good repair all real property owned by City which Concessionaire Tenant may lease as the Premises. Concessionaire Tenant shall maintain in good repair all personal property owned by Concessionaire Tenant. Concessionaire Tenant covenants and agrees at its expense and without cost or expense to City during the term hereof after the occupancy of Premises to the following:

- (a) Concessionaire Tenant shall maintain in good repair and keep in a clean, neat, safe, sanitary, and orderly condition at all times Premises and all leasehold improvements therein, whether installed by Concessionaire Tenant or City.
- (b) Concessionaire Tenant shall be responsible for all maintenance and repair of Premises except for structural maintenance, utility line maintenance and repairs necessitated by insured occurrences, or repairs necessitated by the negligence or willful acts of the Department, its employees, agents, and contractors which are the responsibility of Department. Structural maintenance shall include repairs and maintenance of the roof, exterior walls, foundation, and supporting members of the building, excluding doors. All maintenance shall be equal to or greater than the materials, workmanship, and appearance representative of similar areas in the Airport directly controlled by the Department.
- (c) Concessionaire Tenant shall provide or cause to be provided a complete and proper arrangement for the adequate sanitary handling and disposal, away from Airport, of all trash, garbage, and other refuse caused as a result of the operations conducted on the Premises. Concessionaire Tenant shall provide, at its sole expense, suitable covered receptacles of substantial quality and maintained in clean condition and in good repair for all such garbage, trash, and other refuse. Concessionaire Tenant shall keep Premises, at all times, free and clear of wastepaper, trash, rubbish, debris, discarded plastic, graffiti, discarded pallets, or anything unsightly or detrimental to health or likely to

create a fire hazard or conducive to deterioration to remain on any part of Premises.

- (d) Concessionaire Tenant agrees that all maintenance-type services to be performed hereunder shall be accomplished by qualified personnel, or where regulated by law, a properly licensed contractor. All repairs shall be of first class quality in both materials and workmanship, shall be equal to or better than the original materials and workmanship, and, except in emergencies requiring immediate response, must have the prior written approval of the Department. The Department shall be the sole judge of the quality of maintenance and repairs.

6.05 Utilities.

The City shall provide and maintain, water, sewer, gas, general lighting, electrical power, and heating and air-conditioning to the Terminals and the common areas within the Terminals. Concessionaire Tenant agrees to provide at its own expense all utility connections, equipment, and maintenance thereof to and within the Premises, including but not by way of limitation, fire extinguishers; maintenance, repair, and replacement of doors and windows; water (including water heaters), gas, electricity, lighting, heating, air conditioning, and power; and drain lines and connections; and telephone and other communication services. The City shall be the sole judge of the quality of maintenance. If Concessionaire Tenant requires additional capacity for lighting, electrical power, water, waste, or adjustments to the heating and air-conditioning system, beyond the capacities made available by the City, such additional improvements or services shall be subject to the prior written approval of the City, and any such approved improvements or services (including additional utility service costs) shall be made at Concessionaire's expense.

The City shall make every effort to provide utilities to the perimeter of the Premises or proximate thereto based on existing conditions at the Airport and the Concessionaire Tenant shall make such connections to the Premises as required and permitted by building code. All Concessionaire Tenant work shall be coordinated with the Terminal building systems. It is the Concessionaire Tenant's responsibility to confirm all existing conditions and infrastructure within the Terminals. At no time shall the Concessionaire Tenant's use of the utilities supplied exceed the capacity of the systems servicing the Premises.

- (a) Heating and Air Conditioning. The City shall provide heat and air-conditioning in the terminals, which shall provide ambient heating and cooling for the Premises. Additional heating and cooling equipment necessary for the conduct of business in the Premises shall be provided by the Concessionaire Tenant to ensure that temperatures are at levels such that the Premises are kept at reasonable temperatures for the conduct of the Concessionaire Tenant's activities. Temperatures in the Premises shall be comparable to temperatures within the terminals and concourses.

- ### 6.06 Telephone Service and Snow Removal.

6.07 Interruption of Services.

6.08 Damage or Destruction of Premises.

- (a) If feasible, City may make temporary repairs and require Concessionaire Tenant to continue operations from the Premises until repairs are complete.
- (b) City may designate alternate Premises for Concessionaire Tenant's use until repairs can be completed to the Premises.

(b) Capital Investment plans, work sequence phasing plans, and cost estimates for construction as well as renderings of all Leasehold Improvement to be undertaken by the Concession shall be submitted to the Department for review and written approval. Once Concessionaire Tenant receives written approval for the submitted Leasehold Improvements and the Department has issued a Notice to Proceed, the project to construct the Leasehold Improvements shall be considered an "Approved Project." Department reserves the right to issue "Partial Approval" should conditions such as phasing require it. The Leasehold Improvement costs shall be fully amortized on a straight-line basis over the Term of this Concession Lease. Mid-term refurbishment improvements to the Concession Premises must also be fully depreciated by the end of the initial Concession Lease Term and documented as described herein. The final cost of all Leasehold Improvement items subject to amortization as defined in this Section, shall be certified to City by Concessionaire Tenant's Chief Financial Officer within ninety (90) days after installation on the Concession Premises, supported by receipts and lien waivers from the contractors used to design and construct the Approved Project (the "Certification").

Failure to timely file the Certification shall relieve City of any obligation regarding unamortized investments otherwise provided for in this Concession Lease. The Certification must clearly reflect the total Capital Investment claimed and the depreciation schedule per concession location for all Leasehold Improvements. The Certification shall be submitted in parts within ninety (90) days of the completion of each Approved Project (each concession location making up the Concession Premises being a separate Approved Project), and Concessionaire Tenant shall during the Term hereof

and for a period of three (3) years following termination retain all records in support of each Certification.

- (c) Capital Investment(s), and any obligation of City to Concessionaire Tenant for any unamortized Leasehold Improvements as may be provided in this Concession Lease, shall be subject to the following conditions:
- City shall have the right to audit each Capital Investment Certification at any time during the Term of this Concession Lease and for a period of three years following termination or expiration of the Concession Lease.
 - In the event of an audit, any itemization of Capital Investment costs not supported by proper documentation, such as invoices, receipts, or canceled checks, shall be disallowed.
- (d) Any investments by Concessionaire Tenant in improving the Support Premises shall not be considered counted toward the minimum Capital Investment required hereunder and shall not be considered as part of the Leasehold Improvements, unless prior approved in writing by City.

7.02 Theme, Design and Decor

The theme, design and decor of each concession location shall not deviate from that which is in keeping with the Tenant Design Standards and approved in writing by City staff. Any changes desired by Concessionaire Tenant shall be submitted in writing to City for approval. Changes that are made without approval will constitute a breach of this Concession Lease. City shall have the right to reject or disallow any material or portion of Concessionaire Tenant's Work deemed not to be in accordance with Concessionaire Tenant's Approved Project plans or are deemed to be detrimental to the Airport.

7.03 Due Diligence

- (a) Within sixty (60) days from the Commencement Date of this Concession Lease, Concessionaire Tenant shall submit to City for approval the final plans and specifications for the construction of Leasehold Improvements to Concessionaire Tenant's concession location(s) comprising the Concession Premises in accordance with City's Tenant Improvement Guidelines and Tenant Design Standards.
- (b) Concessionaire Tenant shall commence construction of the Approved Project for each concession location within the timeframe set by the City in the Notice to Proceed letter, which timeframe shall not be less than thirty (30) days from the date the City issues the Notice to Proceed letter to the Concessionaire Tenant, and Concessionaire Tenant shall diligently proceed with construction so as to complete said Approved Project and open for business prior to

reaching the maximum number of days allowed for construction by the City as stated in the Notice to Proceed letter (the "Substantial Completion Date") to achieve Substantial Completion of the Approved Project. If Concessionaire Tenant fails to so complete the Approved Project by the Substantial Completion Date due to no fault of the City, nor due to a force majeure event, the City shall have the right to assess against Concessionaire Tenant liquidated damages of up to \$1,500 per day for each day until Concessionaire Tenant achieves Substantial Completion of such Approved Project and is ready to open for business to the public, which liquidated damages shall be payable upon demand.

7.04 Condition of the Premises

Subject to the other provisions of this Section, Concessionaire Tenant agrees (i) to accept possession of the Premises in the condition that shall exist on the Commencement Date "as is", and further agrees that, except for City's Work, City shall have no obligation, to perform any work or make any installations in order to prepare the Premises for Concessionaire Tenant's occupancy, and (ii) City and City's agents have made no representations, warranties or promises whatsoever with respect to the Premises, the rents, leases, taxes, or any other matter or thing, except as herein expressly set forth, and no rights, easements or licenses are acquired by Concessionaire Tenant by implication or otherwise except as expressly set forth in this Concession Lease. Concessionaire Tenant represents and warrants that it is fully familiar with the Premises and has thoroughly inspected same. The taking of possession of the Premises by Concessionaire Tenant shall be conclusive evidence as against Concessionaire Tenant that, at the time such possession was so taken, the Premises and City's Work, except for minor details of construction commonly referred to as "punch list" items were in good and satisfactory condition, and that all of the Premises and appurtenances thereto that are the subject of this Concession Lease have been received by Concessionaire Tenant.

7.05 Construction by Concessionaire Tenant

Concessionaire Tenant shall not erect any structures, make any improvements or modifications, or do any other construction work on the Premises, or alter, modify, or make additions, improvements, or repairs (except emergency repairs) to, or replacements of any structure now existing or built, or install any fixtures (other than trade fixtures removable without permanent injury to the Premises or improvements thereon) without the prior written approval of City as provided herein and as more specifically provided in the City's Tenant Design Standards and Tenant Improvement Guidelines, as they may be amended from time to time in City's sole discretion. In the event that any construction, improvement, alteration, modification, addition, repair (excluding emergency repairs), or replacement is made without such approval, or in a different manner than approved, City may terminate this Concession Lease in accordance with the provisions for termination herein, or upon notice to do so, Concessionaire Tenant will remove the same, or, at the discretion of City, cause the

- (e) Concessionaire Tenant's work shall be made under the supervision of a licensed architect and licensed structural, mechanical and electrical engineers and made in accordance with Concessionaire Tenant's City Approved Project.
- (f) When the Approved Project has been completed, Concessionaire Tenant shall certify to City that such construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders. Concessionaire Tenant shall provide City with a certification from the supervising architect and engineers that the Premises have been constructed in accordance with the Approved Project Plans and are one hundred percent (100%) complete.

City representatives may enter upon the Premises at any and all reasonable times during the Term of this Concession Lease for the purpose of determining whether or not Concessionaire Tenant is complying with the terms and conditions hereof, or for any other purpose. City representatives will make best efforts not to interfere with Concessionaire Tenant's business operation.

In the event of default by Concessionaire Tenant during the design or construction period of any Approved Project, City shall have the right, but not the obligation, following written notification to Concessionaire Tenant, to perform any work Concessionaire Tenant shall have failed to construct in accordance with Concessionaire Tenant's Approved Project plans at Concessionaire Tenant's sole cost and expense. City shall have the right, which right shall be set forth in all contracts between Concessionaire Tenant and its contractors and suppliers for work or materials relating to any Approved Project, to replace Concessionaire Tenant with itself and to continue the contracts of Concessionaire Tenant with said independent contractors and suppliers. A provision substantially similar to the following shall be included in all contracts between the Concessionaire Tenant and its independent contractors and suppliers in order to comply with this Section:

PAGE 28

Tenant under this contract between Concessionaire Tenant and contractor; and City thereby shall receive all the rights, title, interests and remedies that Concessionaire Tenant has under the terms of this contract between Concessionaire Tenant and contractor. City shall have the right to demand and collect (including suit for damages and cost of litigation and reasonable attorney fees) from Concessionaire Tenant all costs incurred by City in assuming the obligations of Concessionaire Tenant as provided in this Section."

City shall not be required to give any advance notice if, in City's sole and absolute judgment, City's action above is necessary to remediate a dangerous condition at the Premises which is a potential hazard to Concessionaire Tenant, Concessionaire Tenant's employees or agent, other tenants of the Airport or the public or that the Premises does not comply with the requirements of this Concession Lease.

7.10 Construction Performance and Payment Bond

Prior to any commencement of any Approved Project by Concessionaire Tenant that exceeds Twenty Thousand Dollars (\$20,000.00) in cost, Concessionaire Tenant shall furnish to the City, at Concessionaire Tenant's sole cost, a performance bond and a payment bond issued by a surety company licensed to transact business in the State of Utah and approved by the City, in a form approved by the City. The payable amount of each bond shall not be less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, or repair. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract, and the performance bond shall guarantee the full performance of the work.

7.11 Signs

Concessionaire Tenant shall have the right to install and maintain signs on the Premises, provided that the design, number, content, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the City's Tenant Design Standards and Tenant Improvement Guidelines. Concessionaire Tenant further acknowledges City's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Airport Terminals. Therefore, Concessionaire Tenant covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to City, through a Tenant Improvement Application, the size, design, content, construction or fabrication and intended location of each and every sign it proposes to install on or within the Premises and that no signs of any type shall be installed on or within the Premises without the specific prior written approval of City as to the size, design, content, construction or fabrication and location. Concessionaire Tenant shall reimburse City for Concessionaire Tenant's reasonable pro-rata share of City's cost of fabricating and

installing any signs for advertising or providing information on multiple named concessions.

7.12 Refurbishment

If this Concession Lease is for a Term of more than five years, then Concessionaire Tenant shall refurbish the Premises in the middle year of the Term. Said refurbishment shall include without limitation all refinishing, repair, replacement, redecorating, repainting and re-carpeting necessary to keep said areas and fixtures in like-new condition and shall comply with all other terms and conditions of this Section. Concessionaire Tenant shall submit its plans and schedule for refurbishment to the City for review and approval a minimum of ninety (90) days prior to the midpoint year, defined as the three and a half (3.5) year anniversary of the Package Completion Date. All mid-term investment shall be carried out using the processes described in the Tenant Design Standards and Tenant Design Guidelines.

SECTION 8: INDEMNIFICATION, INSURANCE AND SECURITIES

8.01 Indemnification.

Concessionaire Tenant agrees to indemnify, save harmless and defend City, its officers, agents, elected officials, volunteers and employees from and against all losses, claims, demands, actions, damages, costs, charges and causes of action of every kind or character, including without limitation attorneys' fees, to the extent they are caused by Concessionaire Tenant's wrongful, reckless, or negligent performance hereunder. If City's tender of defense, based upon this indemnity provision, is rejected by Concessionaire Tenant, and Concessionaire Tenant is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Concessionaire Tenant shall pay City's reasonable costs, expenses and attorneys' fees incurred in proving such indemnification, defending itself or enforcing this provision. Nothing herein shall be construed to require Concessionaire Tenant to indemnify City against City's sole negligence. The provisions of this Section 8.01 shall survive the termination of Concessionaire Tenant's tenancy or of this Concession Lease.

8.02 Insurance.

Concessionaire Tenant, at its own cost and expense, shall secure and maintain the following policies of insurance:

- (a) **Commercial General Liability Insurance.** Concessionaire Tenant shall provide commercial general liability insurance coverage for injury to property and person to protect City from such claims and actions. Said insurance shall have limits of not less than two (2) million* dollars per occurrence limit and cover products and completed operations. If the policy is issued on a claims-made basis, the policy shall be maintained for a period of one year following

the completion of this Concession Lease or contain a comparable "extended discovery" clause or "tail endorsement." (**The policy or policies shall have limits of not less than \$5 million per occurrence limit of liability if Concessionaire will be driving vehicle on the airside ramp [Ramp Access].*

- (b) Business Auto Coverage Form. The policy or policies shall provide coverage for owned, hired, and non-owned automobiles. The policy or policies shall provide for limits of at least two (2) million* dollars. (**The policy or policies shall have limits of not less than \$5 million per occurrence limit of liability if Concessionaire will be driving vehicle on the airside ramp [Ramp Access].*
- (c) Fidelity Bond. Provider shall provide a fidelity bond in the amount of two (2) Million Dollars (\$2,000,000) to protect against theft of property or service belonging to City and City's tenants as a result of acts on the part of Contractor, its officers, agents, employees, or subcontractors.
- (d) Fire and Property Insurance. Upon completion of construction, Concessionaire Tenant shall procure and maintain policies of insurance at its own expense, insuring the Premises and improvements thereon against all perils of direct physical loss, excluding earthquake and flood. The insurance coverage shall be for not less than one hundred percent (100%) of the full replacement value of said Premises and improvements with an agreed amount clause and a reasonable and customary deductible on said Premises and improvements. Such amount is subject to final approval by City. The Concessionaire Tenant shall furnish to City evidence that such coverage has been procured and is being maintained in full force and effect. City maintains property insurance that covers the Airport, but will not cover any improvements made by Concessionaire Tenant to the Premises.
- (e) Workers' Compensation Insurance. Concessionaire Tenant shall furnish to City adequate evidence of compliance with Workers Compensation, Social Security, and unemployment compensation provisions to the extent such are applicable to Concessionaire Tenant's operations hereunder. Concessionaire Tenant shall maintain in force Workers' Compensation and Employer's Liability insurance for all of Concessionaire Tenant's employees in accordance with all requirements of Utah law.
- (f) Builder's Risk Insurance. During any construction activity, Concessionaire Tenant shall obtain and maintain for the benefit of the parties to the Concession Lease, as their interest may appear, "special peril" Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. In the event Concessionaire Tenant fails to maintain such insurance, City may, at its option, arrange therefor, and any premium incurred shall be reimbursed by Concessionaire Tenant to City upon demand.

- (g) Business Interruption. Concessionaire Tenant shall maintain gross earnings and extra expense insurance that shall include coverage for all rent due in accordance with Section 4 of this Concession Lease for a minimum of a six (6) month period. The proceeds of such insurance shall be used first to continue rent payments to City.
- (h) Construction Payment and Performance Bonds. As noted in Section 7.10 of this Agreement.
- (i) Rating. All policies of insurance and bonds provided herein shall be issued by insurance companies listed on the current Department of the Treasury Fiscal Services List 570 or having a general policy holders rating of not less than "A-" in the most current available "Best's Insurance Reports," and be qualified to do business in the state of Utah.
- (j) Policy Requirements and Certificate Information. Certificates evidencing such insurance coverage shall be filed with City upon execution of this Concession Lease. Such certificates shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed shall be filed with City. If such insurance coverage is canceled or reduced, Concessionaire Tenant shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through an insurance company or companies qualifying under subparagraph B hereof.
- (k) All insurance policies, with the exception of Workers Compensation, shall name and certificates shall show City as an additional insured.
- (l) Failure to Provide. In the event that Concessionaire Tenant shall at any time fail to furnish City the certificate or certificates required, City, upon written notice to Concessionaire Tenant of its intention to do so, shall have the right to secure the required insurance, at the cost and expense of Concessionaire Tenant, and Concessionaire Tenant agrees to reimburse City promptly for the cost thereof and ten percent (10%) for cost of administration.
- (m) Waiver of Subrogation. Notwithstanding any other provisions contained in this Concession Lease, each of the parties hereby waives any rights it may have against the other party on account of any loss or damage to its property (including the Premises and its contents) which arises from any risk generally covered by the insurance or any other insurance required to be carried hereunder, whether or not such other party may have been negligent or at fault in causing such loss or damage. Each of the parties shall obtain a clause or endorsement in the policies of such insurance which each party

- (c) Without limiting the generality of the foregoing, Concessionaire Tenant shall not discharge any hazardous wastes or other materials down the storm drains on the Premises and any other areas at the Airport or on any other property of City. Concessionaire Tenant shall not cause contamination of the Premises and any other areas at the Airport arising from Restricted Activities or by "hazardous," "controlled," "regulated," or "waste," substances, or substances described by similar terms, within the meaning of Utah Code Title 19, the Utah Administrative Code on Environmental Quality, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Federal Resource Conservation and Recovery Act, the Federal Clean Air or Clean Water Act, or similar applicable law, regulation, policy, or standard, as amended from time to time, or as enacted or issued in the future by federal, state, or local governmental authorities, including, without limitation, City, concerning protection of the environment.
- (d) Concessionaire Tenant further agrees to execute and deliver to City any documents reasonably required by City in connection with any environmental matter, including disposal.

9.02 Status and Acceptance of the Premises.

Concessionaire Tenant understands and agrees that City has not performed any environmental assessments or studies of the Premises as of the Commencement Date, and Concessionaire Tenant accepts the same "as is." Concessionaire Tenant may conduct such assessments or studies in consultation with Department at Concessionaire Tenant's sole expense, and shall provide to the Department a copy of any results from such an assessment or study.

9.03 Environmental Indemnification.

Without limiting any other right, remedy or provision of this Concession Lease, Concessionaire Tenant hereby agrees to indemnify and to hold harmless City and its officers, agents, elected officials employees and volunteers of, from, and against any and all expense, loss, claim, damage, or liability suffered by them by reason of Concessionaire Tenant's breach of any of the environmental provisions of this Concession Lease or such a breach by the act of any of Concessionaire Tenant's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs, diminution in the value of the Premises and any other areas at the Airport, and reasonable legal fees and costs incurred by City in connection with enforcement of this provision. The provisions of this Section 9.03 shall survive the termination of Concessionaire Tenant's tenancy and of this Concession Lease. No subsequent modification or termination of this Concession Lease by agreement of the parties or otherwise shall be construed to waive or to modify any provision of this Section 9.03 unless the termination or modification agreement or other document so states in writing.

Concessionaire Tenant agrees at all times hereunder to be subject to regulations imposed by Code of Federal Regulation 1910.1200 "Hazardous Communication Standard" or any successor thereto. Concessionaire Tenant agrees that it shall be solely responsible for any and all violations of the Hazard Communication Standard resulting from the negligence of intentional acts of omission or commission of officers, employees, representatives, agents, servants, contractors, subcontractors, successors, assigns and suppliers of Concessionaire Tenant.

10.01 Default by Concessionaire Tenant.

The occurrence of any of the following events shall constitute a default by Concessionaire Tenant under this Concession Lease: (a) Concessionaire Tenant fails to timely pay any installment of rent when due or any other amount due under this Concession Lease; (b) Concessionaire Tenant assigns, transfers, or encumbers this Concession Lease or any part of Premises except when in strict compliance with the terms of this Concession Lease; (c) Concessionaire Tenant files a petition in bankruptcy, becomes insolvent, has a petition filed against Concessionaire Tenant in bankruptcy, or insolvency or for reorganization or appointment of a receiver or trustee, which is not dismissed within sixty (60) days; (d) Concessionaire Tenant petitions for or enters into an arrangement for the benefit of creditors or suffers this Concession Lease to become subject to a writ of execution, and such writ is not released within thirty (30) days; (e) Concessionaire Tenant abandons, deserts, or vacates any part of Premises or discontinues operation of any concession without prior written consent of the Department for seven (7) or more consecutive days; or (f) except as otherwise set forth above, Concessionaire Tenant violates or fails to perform any other obligation to be performed by Concessionaire Tenant under this Concession Lease and fails to cure the same within twenty (20) days following written notice of such violation from City.

On any default by Concessionaire Tenant under this Concession Lease, City may at any time, without waiving or limiting any other right or remedy available to City, (a) terminate Concessionaire Tenant's rights under this Concession Lease by written notice, (b) re-enter and take possession of Premises by any lawful means (with or without terminating this Concession Lease), or (c) pursue any other remedy allowed by law. Concessionaire Tenant shall pay to City the reasonable cost of recovering possession of the Premises, all reasonable costs of reletting the Premises, and all other reasonable costs and damages arising out of Concessionaire Tenant's default, including reasonable attorneys' fees and costs. Notwithstanding any termination of Concessionaire Tenant's rights under this Concession Lease or re-entry of the Premises, the liability of Concessionaire Tenant for the Rent payable under this

Concession Lease shall not be extinguished for the balance of the term, and Concessionaire Tenant agrees to compensate City on demand for any deficiency. No re-entry or taking possession of Premises or other action by City on or following the occurrence of any default by Concessionaire Tenant shall be construed as an election by City to terminate this Concession Lease or as an acceptance of any surrender of the Premises, unless City provides Concessionaire Tenant written notice of such termination or acceptance. Following a default by Concessionaire Tenant under this Concession Lease, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

10.03 Past-due Amounts.

Late fees and interest shall be changed as set forth in Section 4.

10.04 Default by City.

City shall not be in default under this Concession Lease unless City fails to perform an obligation required of City under this Concession Lease within twenty (20) days after written notice by Concessionaire Tenant to City, specifying the respects in which City has failed to perform such obligation. If the nature of City's obligation is such that more than twenty (20) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such twenty (20) day period and after such commencement diligently prosecutes the same to completion. In no event may Concessionaire Tenant terminate this Concession Lease or withhold the payment of Rent provided for in this Concession Lease as a result of City's default.

10.05 City Termination for Orderly Development of the Airport.

City shall have the right to terminate this contract pursuant to the conditions described in 2.03 of the Agreement. City shall compensate Concessionaire tenant as described in 10.07 below.

10.06 Surrender Upon Termination.

Upon the expiration of the Base Term or any extended term of this Concession Lease, Concessionaire Tenant agrees to return the Premises to City in the same condition as received, except for such changes in condition as may be caused by usual wear and tear. Concessionaire Tenant shall remove all of its personal property from the Premises and any other areas. Concessionaire Tenant shall, whenever necessary, protect the Premises and surrounding areas from any damage which might be occasioned by reason of such removal.

10.07 Payments Upon Termination.

Should City be required to terminate Agreement as called for herein, City shall only be obligated to compensate Concessionaire Tenant for the amount of any un-

depreciated investment on the improvements, the depreciation schedule being described in Section 7 herein. City shall not be responsible to pay Concessionaire Tenant or any of its agents, subcontractors, licensees, partners, or any others, for lost opportunity, business interruption, or any other future sums related to this Agreement.

SECTION 11: DISPUTE RESOLUTION

11.01 Dispute Resolution Process Required.

Compliance with the provisions of this Section 11 shall be a condition precedent to any legal action by either party hereto or any of such party's agents, affiliates, subconsultants, suppliers, employees, officers, board members, consultants, contractors, or subcontractors against the other party hereto.

11.02 Dispute Resolution Process.

Any dispute arising under this Concession Lease concerning a question of law or fact which is not disposed of by written amendment to this Concession Lease shall be decided pursuant to the procedure set forth below. Transmittals under this Section 11 shall be made by delivery to the Notice Addresses for City or Concessionaire Tenant in Section 12.16 of this Concession Lease in the manner set forth therein.

- (a) **Submit Dispute.** Concessionaire Tenant shall submit any dispute regarding this Concession Lease in writing to the Airport's Director of Administration and Commercial Services or his or her designee. Upon reviewing the circumstances, the Airport's Director of Administration and Commercial Services or designee shall issue a written decision within twenty (20) business days. A decision by the Airport's Director of Administration and Commercial Services or designee shall be final and binding unless it is appealed in writing as set forth below.
- (b) **City Determination.** When appealing any decision of the Airport's Director of Administration and Commercial Services or designee, Concessionaire Tenant shall submit an appeal in writing to the Airport's Executive Director or his or her designee within twenty (20) business days after the date of issuance of the decision. Such appeal shall specify all factual grounds and the general legal grounds for the appeal, and shall certify that the appeal is ready for decision. The Airport's Executive Director or designee shall issue a written decision within twenty (20) business days after Concessionaire Tenant submits the request for appeal, or within twenty (20) business days after the date on which City has received all information which City may reasonably request in connection with considering the appeal. A decision by City shall be final and binding unless it is appealed in writing as set forth in Section 11.02(c) below.

- (c) **Appeal and Facilitation Meeting.** Within ten (10) business days after a decision by the Airport's Executive Director or designee, Concessionaire Tenant may submit a request in writing for a facilitation meeting. City's Airport Executive Director and Concessionaire Tenant's chief executive officer shall participate in such facilitation meeting, which shall occur as soon as reasonably practicable and which shall be conducted by such facilitator or mediator and in Salt Lake City at such location as the parties agree.

11.03 Effect of Process.

Notwithstanding the pendency of any dispute or any appeal, Concessionaire Tenant shall, if so directed by City, comply with all directives concerning the performance of this Concession Lease, and City shall continue to fulfill its obligations hereunder. Concessionaire Tenant agrees that should Concessionaire Tenant discontinue services due to a dispute, City may terminate this Concession Lease for cause. City shall not pay any sum in dispute until after a final resolution of such dispute. Concessionaire Tenant's time and expenses incurred in the pursuit of Concessionaire Tenant's claims under this Section 11 shall not under any circumstances be subject to payment or reimbursement by City.

11.04 Attorneys Fees.

If either City or Concessionaire Tenant brings suit to enforce or interpret the Concession Lease, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees and costs incurred in such action, or in any appeal from such action, in addition to any relief to which the prevailing party is entitled.

SECTION 12: MISCELLANEOUS PROVISIONS

12.01 FAA Nondiscrimination Clause.

- (a) Concessionaire Tenant, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (b) 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, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (c) that Concessionaire Tenant will use 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, Nondiscrimination 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 Tenant acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprise (DBE), and 14 CFR, Part 152, Affirmative Action Employment Program, may be applicable to the activities of Concessionaire Tenant under the terms of this Agreement, and hereby agrees, if such provisions are applicable, to comply with all requirements of the Federal Aviation Administration, and the U.S. Department of Transportation, in reference thereto.

An Airport Concessions Disadvantaged Business Enterprise ("ACDBE") goal of eleven percent (11%) as measured by the share of total annual gross revenues generated by these concessions, has been established for the entire retail service concession program at the Airport. Concessionaire tenants shall take all necessary and reasonable steps to achieve these goals to the extent possible and feasible for their proposals for applicable Packages as described in the Request for Proposal. It is the objective of the City to meet or exceed these goals in the concession program at the Airport. Additionally, Concessionaire Tenant agrees to meet or exceed the ACDBE goals stated in their Proposals and made part of this Agreement.

ACDBE participation may be in the form of sole ownership, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire Tenant qualifies as an ACDBE, the goal shall be deemed to have been met.

- (b) In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Concession Lease and to re-enter and as if said Concession Lease had never been made or issued.
- (c) Concessionaire Tenant does hereby agree to include the above clauses in all subleases and cause sublessees to similarly include clauses in further subleases.
- (d) Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958, as amended.

12.02 Subordination to FAA Requirements.

This Concession Lease and all provisions hereof are subject and subordinate to the terms and conditions of any existing or future agreement entered into between City and the United States of America for the improvement or operation and maintenance of Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvements or development of Airport; this Concession Lease will be subject to any ordinances, rules or regulations which have been, or may hereafter be adopted pertaining to Airport.

12.03 Right of Flight/Airport Protection.

- (a) It will be a condition of this Concession Lease, that City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on Airport.
- (b) Concessionaire Tenant expressly agrees for itself, its successors, and assigns to prevent any use of Premises, which would interfere with or adversely affect the operation or maintenance of Airport, or otherwise constitute an Airport hazard.

12.04 Right to Amend.

In the event that the Federal Aviation Administration or Transportation Security Administration or their successors require modifications or changes in this Concession Lease as a condition precedent to the granting of funds for the improvement of Airport, or otherwise, Concessionaire Tenant agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Concession Lease, as may be reasonably required.

12.05 Comply with All Laws.

In providing its services hereunder, Concessionaire Tenant agrees to comply at its own expense with all applicable laws of the United States of America, the state of Utah, City and other local authorities, and lawful rules and regulations promulgated by their authority, including the Federal Aviation Administration and Transportation Security Administration with reference to Airport security; and all applicable lawful rules, regulations and ordinances of City now in force or thereafter prescribed and promulgated by authority of law, specifically including all fire codes and security regulations, and all Airport Rules and Regulations as they may be issued from time to time.

12.06 Damage to Property.

Concessionaire Tenant shall be responsible for any and all damage to property belonging to City and/or City's tenants to the extent caused by an act or omission of Concessionaire Tenant or any of their agents or employees. Concessionaire Tenant shall be responsible for repairing any damaged property to the Department's satisfaction and shall pay the costs thereof. Concessionaire Tenant shall promptly notify Department of any such property damage, or other potential claims or losses relating to such property.

the main (prime or general) concessionaire tenant by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided to Concessionaire Tenant prior to the notice to proceed for the subcontractor to perform the work.”

- (c) Manually or electronically signing the Agreement is deemed the Concessionaire Tenant’s certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including UCA Section 63G-11-103.

12.10 Non-exclusive Remedies.

City’s remedies under this Concession Lease shall be non-exclusive.

12.11 Survival.

Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Concession Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of the Concession Lease, and any covenant or condition which by their terms are to survive, shall survive the expiration or earlier termination of this Concession Lease and shall remain fully enforceable thereafter.

12.12 Approvals.

Wherever this Concession Lease requires City’s or Department’s consent or approval, such consent or approval may be given by the Airport Executive Director, the Director of Administration and Commercial Services or either of their designees. If Concessionaire Tenant requests a consent or approval pursuant to any provision of the Concession Lease and City fails or refuses to give such consent, Concessionaire Tenant shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Concessionaire Tenant’s sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if City has expressly agreed, in writing, not to act unreasonably in withholding its consent or may not unreasonably withhold its consent as a matter of law and City has, in fact, acted unreasonably in either of those instances. In no event shall any consent, approval, acquiescence, or authorization by City be deemed a warranty, representation, or covenant by City that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Concession Lease, and in no event shall City be deemed liable therefore. Concessionaire Tenant shall be solely responsible for such matters.

12.13 Time of the Essence.

Time is of the essence in the performance of every covenant and condition of this Concession Lease.

12.14 Relationship of Parties.

Nothing in this Concession Lease is intended to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to create or establish any partnership, joint venture or association or to make the Concessionaire Tenant the representative, employee or agent of City for any purpose whatsoever.

12.15 Force Majeure.

Neither City nor Concessionaire Tenant shall be liable in any manner for any failure or delay in the performance or fulfillment of any of its duties or obligations hereunder, other than Concessionaire Tenant's payment of rent and fees, resulting from any cause or circumstance beyond its reasonable control or reasonable ability to remedy, including, but not limited to, acts of God, federal or state laws, or governmental regulations, orders or restrictions, war, war-like conditions, hostilities, mobilization, blockades, embargo or other transportation delay, detention, revolution, riot, looting, strike, lockout or other labor disputes, shortages of labor, inability to secure fuel, materials, supplies or power or because of shortages thereof, epidemic, fire or flood. In connection therewith, City reserves the right to allocate its resources as it, in its sole discretion, deems fair and equitable. Notwithstanding the above, the term of this Concession Lease will not change by reason of this Section 12.15.

12.16 Notice Addresses.

Notice will be sufficient if sent to the following Notice Addresses by hand delivery directly to the named individual, by express U.S. mail postage prepaid, by overnight delivery service, or by facsimile transmission upon proof of confirmation or transmission and such proof of confirmation is placed in express U.S. mail to such addresses on the day of transmission.

- (a) To City:
- Contracts Manager
 - Salt Lake City Department of Airports
 - Salt Lake City International Airport
 - P.O. Box 145550
 - Salt Lake City, Utah 84114-5550
 - Fax No. (801) 575-2041

Overnight carrier or hand delivery:

- Contracts Manager
- Salt Lake City Department of Airports

Salt Lake City International Airport
776 North Terminal Dr.,
Terminal Unit One, Suite 250
Salt Lake City, Utah 84122

With a copy to:

Attorney
Salt Lake City Department of Airports
Salt Lake City International Airport
P.O. Box 145550
Salt Lake City, Utah 84114-5550
Fax No. (801) 575-2041

Overnight carrier or hand delivery:

Attorney
Salt Lake City Department of Airports
Salt Lake City International Airport
776 North Terminal Dr.,
Terminal Unit One, Suite 250
Salt Lake City, Utah 84122

(b) **To Concessionaire Tenant:**

Sample Document

Fax No. _____

With a Copy to:

- (c) Any notice delivered by hand or facsimile delivery shall be conclusively deemed received by the addressee upon actual delivery; any notice delivered by overnight or express mail as set forth in this Concession Lease shall be conclusively deemed received by the addressee on the following business day after deposit.
- (d) The parties may designate in writing other Notice Addresses for notice from time to time.

12.17 No Third-Party Beneficiaries.

Concessionaire Tenant and City assume no duty or responsibility under this Concession Lease which may be construed as being for the benefit of and/or thereby enforceable by any other person or entity. Concessionaire Tenant's and City's obligations are solely to each other. This Concession Lease shall confer no third party rights whatsoever.

12.18 Further Assurances.

Concessionaire Tenant shall execute any document or take any action in connection with the performance of this Concession Lease, including providing estopped certificates, as may be reasonably required by City.

12.19 Severability Clause.

Every provision of this Concession Lease is severable, and the illegality, invalidity, or unenforceability for any reason of any provision of this Agreement shall not affect the legality, validity, or enforceability of the remainder of this Agreement or any other provision thereof.

12.20 Covenants, Conditions, and Restrictions.

This Concession Lease is subject and subordinate to the effect of any bond requirement, covenants, conditions, restriction, easement, mortgages, deeds of trust, ground leases, rights of way, and any matters of record now or hereafter imposed upon the Premises, and to any applicable land use or zoning laws or regulations. Concessionaire Tenant shall, upon request of City, execute and deliver agreements of subordination in the form requested by City.

12.21 Joint and Several Obligations.

If Concessionaire Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several.

12.22 Limitation on City Liability.

City shall have no liability to Concessionaire Tenant for loss or damage suffered by Concessionaire Tenant on account of theft or any act of a third party including other tenants. City shall only be liable for its willful misconduct or gross negligence and then only to the extent of actual and not consequential damages. City shall not be liable for the consequence of admitting or refusing to admit to the Premises Concessionaire Tenant or any or its agents or employees or other persons claiming the right of admittance.

12.23 No Limit on City's Powers.

12.24 Non-Waiver.

12.25 Nonliability of Agents and Employees.

12.26 Representations by the Concessionaire Tenant.

(a) The Concessionaire Tenant is a **corporation** duly organized under the laws of the state set forth above and duly qualified to do business in the state of Utah, is in good standing in the state of Utah and the state of organization, has power to execute and enter into this Concession Lease, and by proper **corporate** action has been duly authorized to execute and deliver this Concession Lease.

(b) This Concession Lease constitutes the valid and binding obligation of the Concessionaire Tenant, enforceable against the Concessionaire Tenant in accordance with its terms.

(c) All approvals or consents necessary in order for the Concessionaire Tenant to execute and deliver this Concession Lease have been obtained.

(d) Neither the execution and delivery of this Concession Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Concession Lease, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction, ordinance or any agreement or instrument to which the Concessionaire Tenant is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the

property or assets of the Concessionaire Tenant under the terms of any instrument or agreement.

- (e) There is no litigation now pending or, to the Concessionaire Tenant's knowledge, threatened, challenging the **corporate** existence or powers of the Concessionaire Tenant, in any way affecting this Concession Lease or in any way having a material adverse affect on the operations or finances of the Concessionaire Tenant.

12.27 Joint Venture Requirements

- (a) For the purposes of the Airport Concession Disadvantaged Business Enterprise (ACDBE) program, a joint venture is defined as an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clear defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of joint venture are commensurate with its ownership interest.
- (b) Communications between the ACDBE and non-ACDBE participants must include regular or periodic submission of reports and other forms of communications. The firms agree to submit, to the airport, agendas, minutes, and attendance rosters from the managing entity's meetings; financial reports; and other information deemed appropriate by the airport.
- (c) Proposed material changes in the joint venture agreement, including management responsibilities among the participants, ownership, or control, should be submitted to the airport staff. The airport staff will review and respond to the proposed changes within a reasonable period of time.
- (d) Sanctions for failing to operate in accordance with the joint venture agreement will be similar to those imposed for other contract defaults.

12.28 Americans with Disabilities Act.

Concessionaire Tenant agrees to comply with the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Concessionaire Tenant's compliance will include but not necessarily be limited to the following:

- (a) Concessionaire Tenant will not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, compensation, benefits, discipline, layoffs, and termination of employment.

- (b) No qualified individual with a disability may be excluded on the basis of disability from participation in or be denied the benefits of services, programs, or activities of Concessionaire Tenant.
- (c) Concessionaire Tenant will post a statement addressing the requirement of the ADA in a prominent place at the work site.
- (d) Where required by law, Concessionaire Tenant will comply with SLCDA's disabled access requirements by bringing up to code and making accessible any areas of Premises which deny access to disabled persons. All such improvements and alterations will be at the sole cost of Concessionaire Tenant.

12.29 Complete Agreement.

This Concession Lease sets out the entire agreement between the parties. Except as expressly permitted in this Concession Lease, no agreement to modify the terms of this Concession Lease will be effective unless in writing and executed by both parties to this Concession Lease.

12.30 Governing Law and Venue.

This Concession Lease shall be governed by the laws of the state of Utah, and venue shall be in Salt Lake County, Utah.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Concession Lease on the date first written above.

SALT LAKE CITY CORPORATION

JOHN BUCKNER
DIRECTOR OF ADMINISTRATION AND
COMMERCIAL SERVICES
SALT LAKE CITY DEPARTMENT OF AIRPORTS

ATTEST:

CITY RECORDER

By _____

Its _____

STATE OF _____)
: ss.
COUNTY OF _____)

On _____, personally appeared before me
(Date)

_____, who being by me duly sworn,
(Name of person signing Agreement)

did say that s/he is the _____
(Title of person signing Agreement)

of _____, a corporation validly existing under the laws of the
state of _____; and that said instrument was signed on behalf of said corporation
by authority of a resolution or bylaws of its Board of Directors; and said person
acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

Residing at _____

My commission expires _____

PREMISES

RETAIL CONCESSION LEASE

Salt Lake City Corporation and

EXHIBIT B

Service Standards

Performance and Operational Standards

1. Personnel

- a. The Concessionaire Tenant will employ at all times a sufficient number of personnel necessary to assure prompt, courteous, and efficient service.
- b. All personnel will be clean, neat in appearance, and appropriately attired, with uniforms and nametags in such instances as appropriate.
- c. The personnel shall conduct themselves in a businesslike manner and not engage in public disputes or conflicts which would detract from the quality of service provided by this concession.
- d. Personnel will not engage in the use of improper language or act in a loud or improper manner.
- e. Concessionaire Tenant shall ensure that its agents and employees not engage in pressure sales tactics for services offered and furnish its goods and services on a fair, reasonable and non-discriminatory basis.
- f. Personnel shall be able to effectively communicate in English and shall be able to answer customer questions and complete transactions efficiently and accurately.

2. Hours of Operations

- a. Retail concessions at the Airport must be open 365 days per year, without exception, including extended operating hours. Concessions must remain continuously open during regular hours of operation. Staffing levels must meet the needs of the airport ensuring there are adequate numbers of competent personnel at each location, adjusting as necessary to meet the peaks and fluctuations of daily passenger traffic. The Concessionaire Tenant shall operate the concession units in the Airport in accordance with the following minimum hours of operation during the first ninety (90) days of service operation. Additional hours of operation may be proposed by Concessionaire Tenant.

Area

Minimum Hours of Operation

Terminal 1, Pre-Security

24-hours

Terminal 2, Pre-Security

6:00 a.m. to 12:00 midnight, daily

Terminal 1, Post-Security, Common Area	5:00 a.m. to 11:00 p.m., daily
Terminal 1, Post-Security, Concourse A	5:00 a.m. to 8:00 p.m., daily
Terminal 1, Post-Security, Concourse B	5:00 a.m. to 10:00 p.m., daily
Terminal 2, Post-Security, Common Area	6:00 a.m. to 11:00 p.m., daily
Terminal 2, Post-Security, Concourse C	6:00 a.m. to 10:00 p.m., daily

Concessionaire Tenant shall display and maintain signage indicating hours of operation at all service locations.

- b. After the first ninety (90) days of Beneficial Occupancy of a concession location, hours of operation may be changed upon prior written approval of the City based on a written request from Concessionaire Tenant providing specific and substantiated documentation and rationale. In such events as changes in flight schedules and other factors, Concessionaire Tenant shall be prepared to open all retail locations at least one hour before the first flight departs in the morning and remain continuously open until the last outgoing flight departs each day in accordance with the terminal and concourse flight schedules in which the concession units are located, unless otherwise agreed upon in writing with the City.
- c. Due to flight delays resulting from weather conditions and other situations Concessionaire Tenant shall extend operating hours on a timely basis (e.g., staying open later, adding additional staff, ensuring sufficient inventory) at the request of the City to accommodate travelers.

3. Manager

- a. The Concessionaire Tenant will select and employ a full-time, on-site, experienced manager, fully authorized to represent and act on behalf of the Concessionaire Tenant in all matters pertaining to the day-to-day operation of the Retail Concession.
- b. Concessionaire Tenant's operations shall be personally supervised at all times by the Manager or a qualified subordinate in the Manager's absence.

4. Service and Quality of Products

- a. Concessionaire Tenant shall maintain the highest level of service and quality of products.
- b. The level of service and quality of products shall be comparable to other similar first class establishments in international airports located in the United States.
- c. Concessionaire Tenant shall effectively manage customer demand so as not to interfere with other operations.

5. Pricing

The following "Street Pricing Policy" shall apply to all Retail concessions at the Airport:

- a. The prices of all items sold at the Airport shall not exceed the prices charged in comparable retail establishments within the Greater Salt Lake Metropolitan Area by more than ten percent (10%) for like size and quality of products.
- b. For each concept, Concessionaire Tenant shall designate approximately three (3) retail establishments, as determined by the City, in the Greater Salt Lake Metropolitan Area that sell like items that are comparable in size, quantity and quality to the retail concession(s) operating at the Airport. The comparable outlets designated by the Concessionaire Tenant must be valid comparables that will be used as the basis for price comparisons during the term of the Concession Lease to determine compliance with the Street Pricing Policy. Venues specifically excluded from consideration as comparables include locations in resort communities and any entertainment or sports venues, other transportation terminals, amusement parks, and hotels. All retail establishments to be used for price comparisons shall receive prior written approval by the City. If Concessionaire Tenant has existing similar retail operations in the Greater Salt Lake Metropolitan Area, prices charged at the Airport may be no more than ten percent (10%) higher than the existing similar outlet.
- c. During the term of this Concession Lease the Concessionaire Tenant shall provide documentation to the City comparing prices it charges at each location at the Airport with prices charged by the approved street retail service outlets, when requested, to establish the concessionaires' compliance with the Street Pricing Policy. All menu items shall be clearly and visibly displayed with accurate pricing. No hand-written menu items or signage is allowed unless approved in writing and in advance by the City.
- d. In the event it is determined by the City that Concessionaire Tenant is not in compliance with the Street Pricing Policy, the City shall give the Concessionaire Tenant written notice thereof and liquidated damages may be applied. If the Concessionaire Tenant does not make appropriate adjustments to comply with the Street Pricing Policy within three (3) days of such notice of non-compliance, Concessionaire Tenant shall be deemed to be in material breach of the Concession Lease and the Concession Lease shall be subject to termination.
- e. Promotional pricing, combination or package pricing and similar pricing structures shall be consistent with brand specific pricing at street locations. Any variations or exceptions must be approved of in advance and in writing by City.

6. Cleanliness

EXHIBIT C

Audits, Record Keeping, Reporting

City may audit and take copies of Concessionaire Tenant's books, records and electronic data at any time and without prior notice. Such information may include, but is not limited to, financial information, training records, or any and all data related to subcontractors, inventory, and any other data. If City requests that Concessionaire Tenant provide any such information, Concessionaire Tenant shall do so within seven (7) calendar days. In the event that City deems it necessary to utilize the services of legal counsel in connection with such examination, inspection, or audit, and such examination, inspection, or audit results in reimbursement to City, Concessionaire Tenant shall reimburse City for reasonable attorney fees and litigation expenses in addition to any deficiencies due.

Section 1. FINANCIAL RECORDS, STANDARDS, AUDITS, AND REPORTING REQUIREMENTS

Section 1.01 Books and Records Maintained and Standards Used by the Contractor

- A. Required Record Keeping Practices.** The Concessionaire Tenant shall maintain in a true and accurate manner and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records and data as necessary for an independent certified public accountant to perform an audit or examination of the Concessionaire Tenant's financial statements including balance sheet and income statements in accordance with GAAP and with generally accepted auditing standards. This includes, but is not limited to: general ledgers, subsidiary ledgers and account records, revenue journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, point of sale records, bank deposit slips, bank statements, debit and credit card service statements, bank reconciliations, payroll records, journal entries, tax reports filed with federal, state, county, city, or other agencies, discount or rebate agreements, and records of refunds, subtenants or third parties relating to this Agreement.
- B. Required Records.** Such books and records shall contain records of all of the Concessionaire Tenant's pertinent activity under this Agreement in a form consistent with GAAP accounting practice and may include, without limitation, electronic media compatible with the computers available to the City, or computer generated hard copies.
- C. Sections 1.01 and 1.02** of this Agreement shall also apply to all subcontractors.

The Concessionaire Tenant shall include the revised language in all subcontractor agreements issued in conjunction with this Agreement.

- D. Records Retention.** The Concessionaire Tenant shall retain and keep available all books and records relating to this Agreement in accordance with state of Utah record retention schedules. Such schedules may be obtained at: <http://archives.utah.gov/recordsmanagement>.
- E. Payment Card Industry Data Security Standard.** Systems and networks that store, process, and/or transmit cardholder data as defined by the Payment Card Industry (PCI) Security Standards Council (Cardholder Data) are required to comply with the PCI Data Security Standard (DSS). The Concessionaire Tenant and all sub-concessionaire tenants shall comply with the PCI DSS requirements for such systems, and acknowledges that the Concessionaire Tenant is responsible for the security of cardholder data handled by the Concessionaire Tenant.

Section 1.02 Audit and Inspection of Records

- A. Availability of Records for Inspection.** The Concessionaire Tenant's books and records relating to its operations under this Agreement shall be available for inspection and audit by the City or its duly authorized representative upon seven (7) calendar days advance notice and shall include without limitation, the books and records required to be maintained under this Agreement. The Concessionaire Tenant agrees to keep such records on the Premises or at another location within the Salt Lake area. If the Concessionaire Tenant maintains additional books, accounts, and records in another location outside the Salt Lake area, the Concessionaire Tenant shall make these documents available at the Contactor's local office or at an agreed-upon site in the Salt Lake area upon seven (7) calendar days notice from the City.
- B. Examination of Records not Available in the Salt Lake Area.** If the necessary books, records and original source documents are not in the Salt Lake area or cannot be provided for examination at the Concessionaire Tenant's local office in the Salt Lake area, and if agreed to in advance by the City's representative, the audit can be conducted outside the Salt Lake area at the Concessionaire Tenant's headquarters or other appropriate location. For such audits, the Concessionaire Tenant shall reimburse the City for air and ground transportation, mileage, food, lodging and other miscellaneous costs associated with the audit.

These reimbursements shall conform to the City's Travel Policy and Guidelines. The City shall invoice the Concessionaire Tenant for these expenses at the completion of the audit. Failure by the Concessionaire Tenant to pay the invoice with its own funds within thirty (30) days of the date of the invoice may result, at the City's sole discretion, in deduction of such expenses from payments to be

made by the City to Concessionaire Tenant or in a finding that the Concessionaire Tenant is in default.

- C. Access to Concessionaire Tenant Personnel and Facilities.** The City or its authorized representatives shall have full access to the Concessionaire Tenant's personnel for inquiry/interview, walk-through, and observation as deemed necessary to audit or inspect the books and records.
- D. Computer Generated Records.** If the Concessionaire Tenant's books and records have been generated from computerized data, the Concessionaire Tenant agrees to provide the City or its representative with extracts of the data files in a computer readable format on data disks, e-mail with attached files or suitable alternative computer data exchange formats. The Concessionaire Tenant shall not charge the City for retrieving, downloading to an electronic recording media, and/or printing any records or transactions stored in magnetic, optical, microform or other data storage media.
- E. Cost and Pricing Data.** The City or its authorized representatives shall have the right to examine the accuracy and completeness of cost and pricing data including computations and projections.
- F. Audited Financial Statements.** The Concessionaire Tenant shall provide a copy of its audited annual financial statements for the total corporate entity to the City within thirty (30) days of the completion of the audit.
- G. Penalty for Failure to Provide Requested Records.** The Concessionaire Tenant shall provide all records and retrievals when requested. If such records are not received within fourteen (14) calendar days, the Concessionaire Tenant shall be subject to liquidated damages in accordance with Section 5.09 of this Agreement.
- H. Right to Inspect Subcontractor and Subtenant Records and Accountants Workpapers.** The City's right to inspect and audit includes the books and records of all subcontractors and subtenants under this Agreement as well as to the workpapers of the Concessionaire Tenant's accountant as they relate to this Agreement.
- I. Accommodations for City's Representatives.** The Concessionaire Tenant agrees to reasonably accommodate the City's representatives by providing adequate workspace, allowing photocopying of any records and documents, and allowing the interviewing of such employees and subcontractors as the representatives deem necessary to conduct and support their audit.
- J. Concessionaire Tenant's Failure to Provide Books and Records.** The City

may make a determination to issue a default letter should the Concessionaire Tenant fail to provide the accounts, books, records and related operational data as the City determines are necessary in connection with its review or audit.

- K. Incomplete Audits.** Furthermore, if the audit reveals that the records of the Concessionaire Tenant are in such a state that the revenue cannot be audited, the entire expense of the City's efforts to conduct the audit shall be borne by the Concessionaire Tenant. The City shall invoice the Concessionaire Tenant for these expenses. Payment shall be made within thirty (30) days from the date of the invoice. If the Concessionaire Tenant fails to pay the invoice from its own funds, the City may, in its sole discretion, deduct the amount due from payments owed by the City to the Concessionaire Tenant or determine that the Concessionaire Tenant is in default under this Agreement.
- L. Operational / Performance Audits.** At any time City may cause to have performed, by an internal or external auditor and at the discretion of the City, operational and or performance audits of Concessionaire Tenant's operations at the Airport. Concessionaire Tenant shall comply with all requests for information and shall cooperate in providing auditor access to its operations. Such audit shall be in a format and in detail satisfactory to City. Except as otherwise provided herein, the cost of such audit shall be borne by City.
- M. Procedural Audits.** The Concessionaire Tenant shall have audits of its accounting and operational procedures performed by an internal auditor from the Concessionaire Tenant's corporate office. The results of the audit shall be presented and to and discussed with the City. Audits shall be performed at the Concessionaire Tenant's expense.

Section 1.03 General Ledger; Exclusions from Financial Records

- A. General Ledger.** The Concessionaire Tenant shall record correct, accurate, and complete transactions for all operations and maintain the general ledger, all subsidiary ledgers, and source documents for all transactions.
- B. General Ledger Reconciliation.** The Concessionaire Tenant shall reconcile all general ledger accounts on a regular basis, but in no case less frequently than each calendar month. Such monthly reconciliations shall be completed no later than the 20th day of each month.
- C. Revenue Control System.** If the Revenue Control System prevents or inhibits the accurate accumulation of the requested data for the Operating Reports listed in Section 1.06, the Concessionaire Tenant shall take immediate action to institute manual revenue control procedures to accurately document revenues until the Revenue Control System is restored or improved to meet the requirements of this Agreement.

Section 1.04 City Funding: Operating and Change Funds

Funds due to the City. All amounts due the City shall be deposited electronically to the City's designated bank account.

Section 1.05 Revenue Collection and Deposit of Gross Receipts

- A.** The Concessionaire Tenant shall completely and accurately account for all Gross Receipts generated under this Agreement. The Concessionaire Tenant shall collect, count, and record, all Gross Receipts to a separate bank account used specifically for the operation of businesses at the Salt Lake City Department of Airports.
- B. Inclusion in the Management Policy and Procedure Manual.** All revenue collection procedures shall be included in the manual.

Section 1.06 Accounting and Operating Reports.

The Concessionaire Tenant shall submit the reports listed below, in a format approved by the City:

- A. Preliminary Monthly Statement and Monthly Certified Statement.** The Concessionaire Tenant shall furnish to the City no later than the twentieth (20th) day of each month, a Monthly Certified Statement of Gross Receipts for the previous month. If the twentieth day of the month is a non-business day, then the Monthly Certified Statement shall be due on the next business day. The Statement shall be in the format specified by the City and submitted in hard copy and electronic copy acceptable to the City. The Statement shall be dated and certified as complete and correct by the Concessionaire Tenant's principal financial officer or Agreement Controller.

The Monthly Certified Statement shall, at a minimum, include the following information:

- (1) Certification of Monthly Certified Statement
- (2) Financials
 - (i) Balance Sheet
 - (ii) Income Statement by location
 - (iii) Statement of Cash Flow
 - (iv) Final Trial Balance
 - (v) Statement of Operating Fund Activity
- (3) Reconciliations. General Ledger Account Reconciliations with supporting documentation.
- (4) Source Documents
 - (i) Daily sales summary by category

- (ii) Bank Statements
- (iii) Shift closing records
- (iv) Detailed sale records in electronic format
- (v) Credit Card Processing Report
- (vi) Audited **corporate** financial statements (annual requirement)

(5) Analysis

- (i) Revenue. Revenue reconciliation by location, by payment type, and by bank statement reconciled to Audited revenues per general ledger. Deposit reconciliation by location, by payment type, starting from Audited revenues per general ledger to audited deposits per general ledger. Include list of deposits by location.

B. Monthly Operational Report. The Concessionaire Tenant shall furnish to the City no later than the twentieth (20th) day of each month, a Monthly Operational Report for the previous month. If the twentieth day of the month is a non-business day, then the Monthly Operational Report shall be due on the next business day. The statement shall be in the format specified by the City. The Statement shall, at a minimum, include the following information:

- (1) Summary of Events and Activities by location and activity.

C. Certification of Annual Statement of Operating Results. Within ninety (90) days following the end of each Contract Year, and within ninety (90) days following termination or expiration of the Agreement if such date does not coincide with a Contract Year, the Concessionaire Tenant shall prepare and deliver to the City an Annual Statement of Operating Results to include the items below:

- (1) The total Gross Receipts collected by the contractor by month and contract year reconciling to the general ledger accounts to net receipts. These shall be shown as follows:
 - (i) Gross Receipts collected by location, and,
 - (ii) Gross Receipts collected from credit cards, cash, and personal checks including a breakdown of sales by each type of credit card.
- (2) The Concessionaire Tenant's reconciliation of Gross Receipts with the general ledger and bank statement.

D. Annual Statement of Operating Results - Underpayment and Overpayment of Rents. If the Annual Statement of Operating Results described above indicates that the Rents for the Contract Year have been underpaid then, subject to City's acceptance and approval of such certification, the amount of such underpayment shall be refunded by the Concessionaire Tenant to the City within thirty (30) days after receipt of the Annual Statement unless the

E. Report Changes. As may be required from time to time during the Agreement Term, the City may direct, in writing, the Concessionaire Tenant to add, change or delete certain reports. The Concessionaire Tenant shall comply with the written requests within a reasonable time period as specified by the City.

PAGE 62

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