GS
03/20/08
Item No. 15

AN ORDINANCE 2008-03-20-0220

AUTHORIZING THE EXECUTION OF A CONCESSION AGREEMENT WITH GENERATIONS COMMUNITY FEDERAL CREDIT UNION AT SAN ANTONIO INTERNATIONAL AIRPORT FOR A PRIMARY TERM BEGINNING APRIL 1, 2008 AND EXPIRING ON MAY 31, 2015 WITH GUARANTEED ANNUAL RENTALS OF AT LEAST $6,000.00.

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WHEREAS, to ensure the continued presence of a full-service financial institution at San Antonio International, City staff and Unison-Maximus have negotiated a concession agreement with Generations Community Federal Credit Union for the operation of a full-service financial institution in Terminal 1 and at least one ATM in each Terminal 1, Terminal 2 and Terminal B; and

WHEREAS, it is now necessary to authorize the execution of the attached San Antonio International Airport Concession Agreement; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute the attached San Antonio International Airport Concession Agreement with Generations Community Federal Credit Union for the operation of a full-service financial institution for an initial term starting on April 1, 2008 and ending on May 31, 2015, providing for annual guaranteed rentals of $6,000.00 plus forty percent (40%) of the gross transaction fees generated from non-member transactions.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 51001000 Aviation Operations, Internal Order 233000000111 Generations Federal Credit Union, General Ledger 4409043 Aviation Retail Space Rental.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 20th day of March, 2008.

MAYOR
PHIL HARDBERGER

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 15

Name:	6, 8, 9, 10, 11, 15, 16, 18, 20, 21, 22, 24
Date:	03/20/2008
Time:	10:27:36 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a concession agreement with Generations Community Federal Credit Union at San Antonio International Airport for a primary term beginning on April 1, 2008 and expiring on May 31, 2015 with guaranteed annual rentals of at least $6,000.00. [Penny Postoak Ferguson, Assistant City Manager; Mark Webb, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2	x					
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				x

CMS or Ordinance Number: CN0040002425

TSLGRS File Code:1000-25

Document Title:
CONT - Credit Union Banking Services Space #188

Commencement Date: 6/1/2008

Expiration Date: 5/31/2015

SAN ANTONIO INTERNATIONAL AIRPORT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is made and entered into on _____, 200_, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its Director of Aviation ("Director"), pursuant to **Ordinance Number** 2008-03-20-0220 passed and approved by the San Antonio City Council on March 20, 2008 ("City") and Generations Community Federal Credit Union, acting by and through its authorized representative whose address is stated below.("Concessionaire").

The City, as the owner/operator of San Antonio International Airport ("Airport"), does hereby lease unto Concessionaire, and Concessionaire hereby leases from the City, the premises identified herein ("Premises") which is in and part of Terminals 1 & 2 ("Terminals") at the Airport. **Exhibit A1** is a general site plan of the Airport including the location of the Terminal. The Premises are known as Space #184 & #192 containing approximately 786 square feet of Floor Area as shown on **Exhibit A2**.

☐Specialty Retail ☐Food & Beverage (☐ Food Court Location) ☑Service

☐In-Line ☐Wall-Shop ☐Kiosk

DATA SHEET

The following references furnish data to be incorporated in the specified sections of this Agreement and shall be construed to incorporate all of the terms of the entire Section as set forth in this Agreement:

(1) **Section 1.02: Commencement Date and Ending Date of Term:**

Latest Rental Commencement Date: June 1, 2008.

Expiration Date of Term: May 31, 2015. The term may be extended by an additional three one-year periods at the City's sole option.

(2) **Section 2.01: Minimum Annual Guaranteed Rent ("Guaranteed Rent"):**

Lease Year 1 to end of term: Six Thousand Dollars ($6,000.00) per Lease Year, payable in equal consecutive monthly installments of Five Hundred Dollars ($500.00)

(3) **Section 2.02: Percentage Rent ("Percentage Rent"):** Forty percent (40%) of the gross transactions surcharge fees generated from non-credit union member transactions.

(4) **Section 2.03: Storage Premises Rent:** If available and Concessionaire leases Storage Premises, Concessionaire shall pay to the City, as determined by the City from time to time, a "Storage Premises Rent" calculated on a per square foot of Floor Area basis per Lease Year. The Storage Premises Rent shall be payable in equal consecutive monthly installments as set forth in the separate Storage Premises Lease.

(5) **Address for Rental Payments to the City:** City of San Antonio, c/o Frost National Bank, P.O. Box 1958 San Antonio, TX 78297-1958. All payments shall be made payable to the "City of San Antonio".

(6) **Section 7.01: Permitted Use:** For the operation of a banking facility in Terminal 1 and automated teller machines concession providing for the operation of a minimum of one (1) ATM machine in Terminal 1, one (1) ATM machine in Terminal 2 and one (1) in Terminal B.

(7) **Section 16.01: Trade Name:** "Generations Community Federal Credit Union".

(7) **Section 2.06: Additional Rent:**

(a) **Section 8.03: Trash Removal Charge:** From and after the Rental Commencement Date, Concessionaire shall pay its proportionate share of the Trash Removal Charge as provided in Section 8.03, which shall be charged on the basis of each square foot of Floor Area in the Premises on an annual basis, payable in equal monthly installments, subject to adjustment.

(b) **Section 8.05: Food Court Maintenance Charge:** Omitted

(c) **Section 12.01: Utilities:** From and after the Rental Commencement Date, Concessionaire shall pay its proportionate share of certain utilities consumed in the Premises as provided in Section 12.01.

(d) **Section 16.03: Concession Marketing Fund**: Calculated on the basis of one percent (1%) of Concessionaire's Gross Receipts per month, payable monthly, subject to adjustment as described in Section 16.03.

(8) **Section 26.01: Performance Guarantee:** As required by the City, an irrevocable standby letter of credit or a surety bond in an amount not less that 50% of the average minimum annual guaranteed rent specified in item (2) of the Data Sheet shall be delivered to the City as a payment and performance guarantee. Such letter of credit must be in form and content as set forth in **Exhibit G** and issued by a commercial banking institution acceptable to the City authorized to conduct business in Texas, which is to be delivered to the City within ten (10) days following the City's execution of this Agreement and in all instances prior to delivery of the Premises to Concessionaire. The named beneficiary shall be the City, permitting the City to draw thereon.

(9) **Section 27.05: Legal Notice Addresses:**

If to the City:
City of San Antonio
9800 Airport Blvd.
San Antonio, Texas 78216
Attention: Aviation Director

If to Concessionaire:
Generations Community Federal Credit Union
123 N. Medina
P.O Box 830968
San Antonio, Texas 78283-0968
Attention: Steve Schipull, CFO

With a copy to:
Unison-Maximus
San Antonio International Airport
9700 Airport Blvd.
Terminal 2, Suite 246
San Antonio, Texas 78216
Attention: General Manager

Concessionaire's Billing Address:
Generations Community Federal Credit Union
123 N. Medina
P.O Box 830968
San Antonio, Texas 78283-0968
Attention: Accounts Receivable

(10) **Disadvantaged Business Enterprises ("DBE").** If Concessionaire is applying as a DBE, please check here (☐) and refer to **Exhibit C**. Concessionaire represents and warrants to the City that it and/or its DBE participant does meet all standards of qualification as a DBE and will become certified as a DBE by the South Central Texas Regional Certification Agency. In such event, the City shall not execute this Agreement until Concessionaire has been completely certified as a DBE by such Agency or, at the City's option determined in its sole discretion, the City may execute this Agreement pending Concessionaire's DBE certification but the Director shall not allow Concessionaire to initially open for business in the Premises until Concessionaire has been completely certified as a DBE by the South

Central Texas Regional Certification Agency. Concessionaire shall immediately take all steps necessary to obtain such certification from the South Central Texas Regional Certification Agency as soon as possible and in no event later than the Rental Commencement Date. If the DBE participant is an individual or the individual is the sole owner of Concessionaire, the participating DBE percentage, as so certified, shall not be less than one hundred percent (100%) at all times during the Term hereof. If the DBE participant is a member/partner of a limited liability company/general partnership with Concessionaire or joint venturer of a joint venture with Concessionaire, the participating DBE percentage, as so certified, shall not be less than twenty-percent (100%) at all times during the Term hereof. Any change in the ownership structure involving the certified DBE participant must be reported in writing to the City immediately and in no event later than 30 days following any such change in DBE ownership status.

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ARTICLE I. GRANT AND TERM

Section 1.01 **CONDITIONS OF GRANT.** The City has the right to make any modifications to the Airport. Concessionaire acknowledges that the City may change the shape, size, location, number and extent of the improvements generally shown on **Exhibits A1** and **A2** and eliminate or add any improvements to any portion of the Terminal and the Airport at any time without Concessionaire's consent. The City shall have the right to locate, install, maintain, use, repair and replace pipes, utility lines, conduits, ducts, flues, refrigerant lines, drains, sprinkler mains and valves, wires and wiring and structural elements leading through the Premises serving the Premises or any other parts of the Terminal. The City, to the extent possible, shall use reasonable efforts to locate any such items (other than existing items and/or necessary structural elements) in locations that do not materially interfere with Concessionaire's use of the Premises. Concessionaire, upon approval by the Director, shall have the right to install those utilities lines which exclusively serve the Premises in the area between Concessionaire's finished ceiling and the roof above at Concessionaire's sole cost. In the event the City elects to enlarge or alter the Airport or the Terminal, the City may include any additional area in the definition of either Airport or Terminal for purposes hereof.

Section 1.02 **COMMENCEMENT AND ENDING DATE OF TERM.** The Term shall commence on **April 1, 2008** ("Commencement Date"). Concessionaire's obligation to pay Guaranteed Rent, Percentage Rent, and Additional Rent shall commence upon the date ("Rental Commencement Date") which is the earliest to occur of the: (a) date on which Concessionaire opens the Premises for business to the public; or (b) Latest Rental Commencement Date specified herein. Any occupancy of the Premises by Concessionaire following the Commencement Date and prior to the Rental Commencement Date shall be subject to all terms and conditions hereof other than payment of Rental. The Term hereof shall end on the expiration date set forth herein, unless sooner terminated in accordance with this Agreement. However, the term may be extended by an additional three-year period at the sole discretion of the City, acting through the Director. Unless otherwise approved in writing by the Director, Concessionaire shall open its concession for business to the public (with all required improvements substantially completed and the Premises fully fixtured, stocked with high quality merchandise and products and staffed, with Concessionaire prepared to engage in selling high quality merchandise and products and/or services as permitted hereunder) by the Latest Rental Commencement Date. "Lease Year" shall mean a fiscal year of 12 consecutive calendar months ending on December 31 of each calendar year.

Section 1.03 **LATE OPENING.** Except as otherwise provided in Section 27.04, if Concessionaire fails to open for business in the Premises by the Latest Rental Commencement Date and such failure shall be due to the fault of Concessionaire (including, but not limited to, obtaining approval from the Director of Concessionaire's plans to construct the Premises and obtaining any permits or certificates from the City) and not due to delays caused by the City for: (a) City's failure to timely approve or provide comments to Concessionaire's plans within 45 days after submittal by Concessionaire; provided, however, such plans strictly meet the requirements set forth in this Agreement and the construction requirements referred to herein; or (b) City's failure to timely deliver the Premises; then the parties agree that it is and will be impracticable to determine the actual damages suffered by the City. The parties have agreed that in order to compensate the City for its loss, Concessionaire shall pay as Additional Rent, upon demand, the sum of not more than $500.00 per day for each day Concessionaire delays its initial opening as required in Section 1.02. This remedy shall be in addition to any other remedies available to the City in the event of such failure to open by Concessionaire. Such Additional Rent shall be deemed to be in lieu of Percentage Rent only that might have been earned during the period of Concessionaire's failure to open. The amount has been determined based on numerous considerations including the fact that the City may have expended considerable sums of money, time and effort in reliance upon and based upon Concessionaire opening for business as required herein.

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ARTICLE II. RENTAL

Section 2.01 **MINIMUM ANNUAL GUARANTEED RENT. (MAG)** From and after the Rental Commencement Date, Concessionaire shall pay to the City as Guaranteed Rent the sum set forth in the Data Sheet for each Lease Year during the Term in equal consecutive monthly installments in advance on or before the 1st day of each month, without prior demand or notice. Guaranteed Rent, Percentage Rent, Additional Rent and all other sums payable hereunder shall be paid in U.S. currency or other customary commercial manner at the address set forth in the Data Sheet, or such other place as the Director may designate in writing, without any deductions or offsets whatsoever. Should the Rental Commencement Date occur on a day other than the 1st day of a calendar month, then Guaranteed Rent for such fractional month shall be 1/365th of the Guaranteed Rent multiplied by the number of days remaining in the month. Should any Lease Year contain less than 12 calendar months, Guaranteed Rent shall be prorated.

Section 2.02 **PERCENTAGE RENT.** (a) In addition to Guaranteed Rent, Additional Rent and other charges set forth herein, from and after the Rental Commencement Date, Concessionaire shall pay to the City, for each month of the Term, Percentage Rent equal to the product of the Percentage Rent Rate times the amount by which Concessionaire's Gross Receipts (as defined below) during such month exceeds the Monthly Breakpoint as set forth in the Data Sheet. Each such monthly period may be referred to as a Lease Month. Concessionaire shall pay Percentage Rent to the City monthly without prior notice or demand within 15 days after the expiration of each Lease Month. All Percentage Rent payments shall be computed based on all Gross Receipts made during the previous Lease Month which exceed the Monthly Breakpoint for such previous Lease Month as all of such Gross Receipts are indicated on "Concessionaire's Monthly Statement". If no annual or monthly breakpoints are established in the data sheet, said breakpoints shall be $0.00. Should the Rental Commencement Date occur on a day other than the 1st day of a Lease Month or should the Term expire or this Agreement be otherwise terminated on a day other than the last day of a full Lease Month, then Percentage Rent due for such partial Lease Month shall equal the product of the Percentage Rent Rate times the amount by which Concessionaire's Gross Receipts exceed the product obtained by multiplying the Monthly Breakpoint by a fraction, the numerator of which is the number of days in any partial Lease Month and the denominator of which is 30.

(b) If, at the end of any Lease Year, the total amount of monthly installments of Percentage Rent paid for such Lease Year is less than the total amount of annual Percentage Rent required to be paid for such Lease Year, Concessionaire shall pay the amount of such deficiency on or before the time Concessionaire provides "Concessionaire's Annual Statement". If, at the end of any Lease Year, the total amount of monthly installments of Percentage Rent paid based on Gross Receipts for such Lease Year exceeds the total amount of annual Percentage Rent required to be paid for such Lease Year, as indicated in Concessionaire's Annual Statement, Concessionaire shall receive a credit equivalent to such excess, which shall be credited by the City to the next monthly payment(s) of Percentage Rent and/or MAG due from Concessionaire to the City hereunder. If at the end of the final Lease Year the total amount of Percentage Rent paid by Concessionaire exceeds the total amount of annual Percentage Rent required to be paid by Concessionaire for such final Lease Year (calculated in the same manner provided hereinabove for non-final Lease Years), such excess shall be refunded to Concessionaire within 60 days after Concessionaire has vacated the Premises at the conclusion of this Agreement and the Premises are in the condition required by this Agreement, and any other sums due the City from Concessionaire under this Agreement have been paid in full or the City shall be entitled to deduct such remaining sums due from any such excess.

(c) Percentage Rent is agreed to be a portion of the consideration for the City to enter into this Agreement and the City expects to supplement Guaranteed Rent and Additional Rent to provide a fair rental return. If Concessionaire fails to continuously operate its business, keep the required hours or vacates the Premises prior to the expiration of the Term, the City will suffer damages not readily ascertainable. The City shall have the right to treat any of such events as a material default and breach by Concessionaire and the City

shall be entitled to all remedies provided hereunder or at law.

(d) The term "Gross Receipts" as used herein shall mean and include all monies paid or payable to Concessionaire, whether for cash, credit or otherwise, for sales made and services rendered at or from the Terminal or Airport regardless of when or where the order therefor is received and outside the Terminal or Airport if the order is received at the Terminal or Airport and other revenues of any type arising out of or in connection with Concessionaire's operations at the Terminal or Airport, including, without limitation: mail, catalogue, closed circuit television, computer, other electronic or telephone orders; all deposits not refunded to or otherwise forfeited by customers; orders taken, although said orders may be filled elsewhere; the entire amount of the actual sales price and all other receipts for sales and services rendered; all insurance proceeds received due to loss of gross earnings paid under Concessionaire's business interruption insurance policy because of business interruptions; retail display allowances or other promotional incentives received from vendors and suppliers, etc.; and the spread earned on any exchange or foreign currency transaction whether for an exchange service or for merchandise, products and/or services. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of billing or payment. Losses from "bad" checks or credit card fee transactions are Concessionaire's sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Concessionaire's subtenants or anyone else conducting business pursuant to an arrangement with Concessionaire within the Premises.

(e) Gross Receipts shall not include: (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise and products or services but only if separately stated from the sales price and only to the extent paid by Concessionaire to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Concessionaire and such charges are merely an accommodation to customers; (iv) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (v) receipts in the form of refunds from or the value of merchandise and products; services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from vendors, suppliers or manufacturers; (vi) customary discounts given by Concessionaire on sales of merchandise and products or services to Concessionaire's employees, if separately stated, and limited in amount to not more than 1% of Concessionaire's Gross Receipts per Lease Month; (vii) gratuities for services performed by employees of Concessionaire which are paid by Concessionaire's customers to such employees; (viii) exchange of merchandise and products between stores or warehouses owned by or affiliated with Concessionaire (where such exchange is made solely for the convenient operation of the business of Concessionaire and not for purposes of consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of depriving the City of the benefit of a sale which otherwise would be made in or from the Premises); (ix) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Concessionaire's record keeping system; (x) the sale or transfer in bulk of the inventory of Concessionaire to a purchaser of all or substantially all of Concessionaire's assets in a transaction not in the ordinary course of Concessionaire's business; (xi) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in Section 2.02(d), receipts from all other insurance proceeds received by Concessionaire as a result of a loss or casualty, and (xii) sales reported by Concessionaire under another Lease with the City.

Section 2.03 **STORAGE PREMISES AND RENT.** If available, commencing on the date of actual delivery of the Storage Premises, Concessionaire shall pay as Additional Rent, the amount set forth in the

related Storage Premises Lease as determined by the City from time to time and thereafter all of the terms, provisions and conditions of Concessionaire's use and occupancy of the Premises set forth herein shall apply fully to Concessionaire's use and occupancy of the Storage Premises and for all purposes of this Agreement, the Premises shall be deemed to include the Storage Premises. The City has the right at any time, in its reasonable discretion, to designate alternative Storage Premises. In the event of the relocation of the Storage Premises, Concessionaire shall be solely responsible for all moving and other costs related thereto. Additional Rent for the Storage Premises shall be payable in equal consecutive monthly installments in advance on or before the 1st day each month, without prior demand or notice. If delivery occurs on a date other than the 1st day of a month, the Additional Rent for the Storage Premises shall be prorated on a daily basis for any such partial month.

Section 2.04 **TRASH REMOVAL.** Concessionaire, at its sole expense, shall at all times keep the Premises orderly, neat, safe, clean and free from rubbish and dirt, and shall store all trash, garbage and other waste within the Premises or in such areas as may be designated by the Director for such storage and shall properly dispose of the same in accordance with the City's requirements. Concessionaire shall pay its proportionate share of the cost and expense incurred by the City to provide trash removal services for all of the concession operators in the Airport as provided in Section 8.03.

Section 2.05 **MISCELLANEOUS CHARGES.** (a) Employee Parking. The City, while providing parking facilities at the Airport to Concessionaire's employees in common with employees of other concessionaires and users of the Airport, retains the right to institute a reasonable charge for the privilege of using these parking facilities. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time. (b) Identification Security Badges. All persons employed at the Airport, including Concessionaire's employees, are required to obtain identification security badges from the City and the City reserves the right to institute a reasonable charge for the issuance and replacement of these identification security badges. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time. (c) Maintenance and Repairs Performed by the City. If the City is required to perform any emergency and other routine maintenance and repairs to the Premises as provided in Section 10.03, the cost of all labor and materials required to complete the work will be paid by Concessionaire to the City within ten (10) days following written demand from the Director for said reimbursement payment at the City's standard rates then in effect plus any overhead which may be reasonably determined by the Director. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time. Each of the forgoing charges shall be collectively referred to as "Miscellaneous Charges".

Section 2.06 **ADDITIONAL RENT.** In addition to Guaranteed Rent and Percentage Rent hereunder, Concessionaire shall pay, as Additional Rent (whether or not so designated herein), in a manner and at the place provided herein, all sums of money required to be paid by Concessionaire hereunder, including but not limited to: rent for the Storage Premises, if any, Trash Removal Charge, Miscellaneous Charges, Food Court Maintenance Charge, if any, utility charges, if any, and contributions to the Concession Marketing Fund. If such amounts or charges are not paid at the time and in the manner as provided herein, they shall nevertheless be collectible as Additional Rent with the next installment of Guaranteed Rent thereafter falling due, but nothing herein shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the City. All amounts of Guaranteed Rent, Percentage Rent and Additional Rent (collectively "Rentals") payable in a given month shall be deemed to comprise a single rental obligation of Concessionaire to the City.

Section 2.07 **LATE PAYMENT CHARGE.** If any Rentals required to be paid to the City hereunder is

not made when such Rentals are due including as a result of any audit findings, Concessionaire shall pay interest on any such overdue amounts at the rate of ten percent (10%) per year or the highest rate permitted by the laws of the State of Texas, whichever is less, commencing on the date that is 5 days following the due date; provided, however, any such late charges shall be waived in the event any such late payments are in fact received by the City within 5 days following the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses the City will incur by reason of any such late payment. Either (i) the acceptance of such late payment charge by the City, or (ii) if Concessionaire pays the late payment charge but fails to pay contemporaneously therewith all unpaid amounts of Rentals due hereunder; the City's acceptance of this late payment charge shall not constitute a waiver of Concessionaire's default with respect to Concessionaire's nonpayment nor prevent the City from exercising all other rights and remedies available to the City under this Agreement or at law.

Section 2.08 **CONCESSIONAIRE'S PAYMENT OBLIGATIONS.** The City may apply any payments received from Concessionaire to any Rentals which are then due. If the City shall not make any specific application of a payment received from Concessionaire, then any such payment received shall be applied first to the Rentals which has been overdue for the longest period of time. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding unless otherwise required under the Texas law. Concessionaire covenants to pay all Rentals hereunder independent of any obligation of the City. No breach of this Agreement by the City shall relieve Concessionaire of its obligation and duty to pay all such Rentals when due under the terms hereof. Except as otherwise specifically set forth herein, all Rentals shall be paid by Concessionaire to the City without set-off, deduction, demand, notice or abatement. All payments received by the City shall be credited and be deemed to be on account of the Rental and other charges first then due. No statements or endorsements on any check or any letter accompanying any check or payment of Rental or other charges shall be deemed an accord and satisfaction of any debt or obligation of Concessionaire hereunder. The City reserves the right to accept any check or payment without prejudicing in any way the City's right to recover the balance of any and all Rental and other charges due from Concessionaire after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

ARTICLE III. RECORDS AND SALES REPORTS

Section 3.01 **CONCESSIONAIRE'S RECORDS.** Concessionaire shall keep and maintain full and accurate books and source documents, in accordance with GAAP, of the Gross Receipts, whether for cash, credit or otherwise, of Concessionaire's business at any time operated within the Premises and of the operations of each subconcessionaire or licensee and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Concessionaire (collectively, "Records"). The Records to be kept by Concessionaire at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Concessionaire's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom. Concessionaire must also provide an electronic cash control system which will provide all significant point-of-sale information reasonably satisfactory to the Director which must include: (i) sales by general product category, if applicable; (2) sales transactions by time of day and day of week, if requested by the Director; and (3) average sales transactions. Concessionaire's electronic cash control system must ensure tight cash control, have complete audit capability and include: (1) the ability to record transactions by sequential control number which can be printed on audit tape(s); (2) be capable of printing transactions on tape or receipt for customers showing time of day and day, month and year; (3) print out

customer receipts showing the amount of the transaction, the amount of cash, check or credit tendered and the amount of cash or credit returned to the customer; and (4) the point-of-sale device shall have a provision for non-resettable totals and access for resetting the control totals shall be reserved solely to the point-of-sale device supplier. The Records shall be preserved by Concessionaire for a period of five (5) years following the expiration of the Term or earlier termination of this Agreement. All Records maintained pursuant hereto shall at all reasonable times, during Concessionaire's normal business hours after 20 days prior written notice, be open to the inspection of, and may be copied or extracted from, in whole or in part, by, the City, or the City's designated management representatives or agents.

Section 3.02 **REPORTS BY CONCESSIONAIRE.** Concessionaire shall deliver to the City: (a) within 15 days after the expiration of each Lease Month, a written statement on a form reasonably satisfactory to the Director signed by an officer of Concessionaire, showing the Gross Receipts made from the Premises during such period including an itemization of any exclusions or deductions made to Gross Receipts and the amount of Percentage Rent paid, if any, and Additional Rent paid among other matters ("Monthly Statement"); and (b) within 60 days after the expiration of each Lease Year and after termination of this Agreement, a written statement on a form reasonably satisfactory to the Director signed by an officer of Concessionaire and audited by an independent certified public accountant ("CPA") employed by Concessionaire ("Annual Statement") showing in reasonable detail the amount of Gross Receipts made by Concessionaire from the Premises during the preceding Lease Year including an itemization of any exclusions or deductions made to Gross Receipts, the payments of Guaranteed Rent, Percentage Rent and Additional Rent paid among other matters. Concessionaire shall certify in its Annual Statement that (i) such statements have been prepared in accordance with the terms of this Agreement and GAAP, (ii) that all revenues derived from Concessionaire's activities hereunder which are required to be included in Gross Receipts have been so included, and (iii) that all payments of Guaranteed Rent, Percentage Rent and Additional Rent have been made in accordance with the terms of this Agreement. The written audit by the independent CPA with respect to the Annual Statement shall state that in the CPA's opinion Concessionaire's total Gross Receipts for the previous Lease Year and the Guaranteed Rent, Percentage Rent and Additional Rent paid by Concessionaire to the City were calculated and reflected by Concessionaire in its Annual Statement in accordance with the applicable terms of this Agreement and prepared in accordance with GAAP. Concessionaire shall require all subconcessionaires, licensees and/or assignees, if any, to furnish a similar statement. The Monthly Statements and Annual Statements prepared by Concessionaire shall also provide an analysis of operations, which shall include the following data: (1) total Gross Receipts and, if requested, Concessionaire shall calculate such Gross Receipts per square foot of Floor Area in the Premises; (2) sales by general product category; (3) total number of transactions; (4) average dollar amount per transaction; (5) sales variance analysis as compared to the immediately prior Lease Month and/or Lease Year; and (6) sales time distribution if requested by the Director. The Director may make reasonable changes to the form of the Monthly Statement or Annual Statement from time to time upon 30 days prior notice to Concessionaire. If Concessionaire or any subconcessionaire, licensee and/or assignee fails to furnish to the Director any Monthly or Annual Statement within the time required by this Section 3.02, then Concessionaire shall pay within 10 days of written demand therefor by the City as Additional Rent, a special handling fee of not more than $150.00 per statement per day until such statement is delivered to the Director. This remedy shall be in addition to other remedies provided herein or by law to the City.

ARTICLE IV. AUDIT

Section 4.01 **RIGHT TO EXAMINE BOOKS.** Notwithstanding the acceptance by the City of payments of Rentals or installments thereof, the City shall have the right to audit all Rentals and other charges actually due hereunder. Concessionaire shall make available to the Director within 20 days following the City's written request for the same at the Director's office in the Airport for the purpose of examination, extracting and/or copying all books, source documents, accounts, records and sales tax reports

filed with applicable government agencies of Concessionaire and any subconcessionaires, licensees and/or assignees, if any, in order to verify the amount of Gross Receipts in and from the Premises and the amount of all Rentals.

Section 4.02 **AUDIT.** The City may at any time upon 20 days prior written notice to Concessionaire, cause a complete audit to be made by an auditor or accountant ("CPA") selected by the City of the entire records and operations of Concessionaire and/or any subconcessionaires, licensees and/or assignees, if any, relating to the Premises for the period covered by any statement issued or required to be issued by Concessionaire as above set forth in Article III. Concessionaire shall make available to the City's auditor at its office in the Airport within 20 days following the City's written notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Concessionaire which such auditor deems necessary or desirable for the purpose of making such audit. If such audit discloses that Concessionaire's Gross Receipts as previously reported for the period audited were understated, Concessionaire shall immediately pay to the City the additional Percentage Rent due for the period audited together with interest at the Interest Rate from the date(s) such amount was originally due. Further, if such understatement was in excess of five percent (5%) of Concessionaire's actual Gross Receipts as disclosed by such audit, Concessionaire shall immediately pay to the City the reasonable and actual cost of such audit, within 30 days of an invoice therefor. If such understatement was in excess of ten percent (10%) of Concessionaire's Gross Receipts as disclosed by such audit due to Concessionaire's intentional, willful or fraudulent act or omission, the City may declare this Agreement terminated and the Term ended, in which event this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date set forth in this Agreement for expiration of the Term, and Concessionaire shall vacate and surrender the Premises on or before such date in the condition required by this Agreement for surrender upon the expiration of the Term. If upon examination or audit the City's CPA or representative reasonably determines that sufficient documentation is not maintained, retained, recorded, or available in accordance with GAAP to verify Concessionaire's actual Gross Receipts, Concessionaire shall pay for the reasonable and actual cost of such audit and, in addition, should the City deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Receipts for any period being audited.

ARTICLE V. CONSTRUCTION OF PREMISES

Section 5.01 **CONSTRUCTION OF PREMISES.** (a) The City shall deliver and Concessionaire will take possession of the Premises in an **"AS IS", "WHERE LOCATED"** condition. All improvements to be made to the Premises shall be substantially as set forth in **Exhibit B**, the Tenant Design Criteria and Handbook ("Design Handbook") and pursuant to the Aviation Department's Tenant's Design Guidelines and permitted in accordance with the Building Inspection Department's Building Permit Applications ("BPA") process and any other requirements required by the City. Concessionaire shall construct and install all of its improvements (including both Fixed Improvements and Operating Equipment) to the Premises so that the Premises will provide attractive, well-designed concession facilities that promote the marketing of merchandise, products and/or services and present a positive image to the Terminal's users. Each of the parties hereto shall perform the obligations imposed upon such party in **Exhibit B**, the Design Handbook and the BPA process at the times and in the manner therein provided. It is understood and agreed by Concessionaire that any non-material changes from any plans and specifications covering the City's Work (if any), as described in **Exhibit B**, shall not affect, change or invalidate this Agreement. In the event of an ambiguity or conflict between the construction-related provisions contained in this Article V, **Exhibit B**, the Design Handbook and the City's BPA process, the City's BPA process shall control over any such construction-related provisions.

(b) Within 20 days of the Commencement Date, Concessionaire, at its expense, shall submit its conceptual drawings and plans ("Conceptual Plans") for approval by the City, such approval to be determined in its

discretion. Once the Conceptual Plans are so approved, Concessionaire shall, at its expense, prepare final drawings and specifications ("Final Drawings") no later than 30 days or such shorter period of time in order for Concessionaire to complete Concessionaire's Work and open the Premises for business to the public no later than the Rental Commencement Date. The Final Drawings shall be based upon the approved Conceptual Plans meeting the requirements set forth in this Agreement and the documents referenced herein and shall be submitted for the approval of the City pursuant to the BPA process. The City shall have the right to approve or disapprove the Final Drawings as determined in its discretion. In the event of disapproval, Concessionaire shall immediately revise the Final Drawings and shall promptly and continually re-submit them for approval of the City until such approval is obtained. Concessionaire's failure to furnish the Conceptual Plans and Final Drawings within the time frames set forth herein and in the form required by this Agreement, **Exhibit B** and the documents referenced therein, or failure to perform any other obligation under this Section, **Exhibit B** and the BPA process, shall constitute a material default by Concessionaire hereunder, which shall entitle the City to all remedies set forth in Article XIX. If the Director reasonably determines that the parties are unable to agree upon the Conceptual Plans and/or the Final Drawings or if Concessionaire fails to timely provide the Conceptual Plans and Final Drawings, including any revisions required thereto within 30 days from the dates required, the City may at its option, terminate this Agreement upon 24 hours notice to Concessionaire, in which event this Agreement shall terminate on the date specified in such notice and thereafter neither party shall have any further obligations to the other party. No deviation from the Final Drawings, once approved by the City (and once so approved they are incorporated into this Agreement by reference herein), except minor deviations required due to existing field conditions, shall be made by Concessionaire without the City's prior written consent. Approval of the Conceptual Plans and Final Drawings by the City shall not constitute any representation or warranty or the assumption of any responsibility or any liability by the City for their accuracy, efficacy or sufficiency and Concessionaire shall be solely responsible for such items. Storefront barricades, reasonably acceptable to the City, attractively screening the Premises from view during construction shall be erected and maintained by Concessionaire in accordance with the City's BPA process at all times prior to Concessionaire's opening for business and shall be removed and properly disposed of by Concessionaire prior to such opening, all at Concessionaire's sole cost and expense. If Concessionaire fails to construct, erect, maintain, remove and dispose any such storefront barricades, Concessionaire shall reimburse the City for all reasonable and actual costs incurred by the City in performing any of the same.

(c) After receipt of all approvals of the Final Drawings, Concessionaire shall immediately apply for and diligently pursue, at Concessionaire's expense, any and all permits required under the BPA process necessary to perform Concessionaire's Work. Concessionaire, at its expense, shall construct, equip and complete the Fixed Improvements and install its Operating Equipment proceeding at all times with due diligence and in a good and workmanlike manner under the supervision of a Texas licensed architect or engineer in accordance with all applicable legal and code requirements, the BPA process and the permits in order to complete the same and open the Premises for business to the public no later than the Rental Commencement Date. All such construction shall be completed free and clear of all liens, encumbrances and security instruments. If any mechanics', materialmens' or other lien is filed against the Premises, the Terminal, the Airport, the City or any interest in this Agreement as a result of any work or act of Concessionaire, Concessionaire shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 days after the filing thereof. If Concessionaire fails to discharge and have the lien released from record as provided above, the City may, at its option, bond or pay the lien or claim for the account of Concessionaire without inquiring into the validity thereof and Concessionaire shall, within 30 days after notice, completely reimburse the City for any funds so spent to bond or pay the lien or claim. The term "Fixed Improvements" shall mean any addition, alteration, annexation or improvement which shall become affixed to the Premises which cannot be removed, modified or changed without damage to, or destruction of, either itself or any portion of the Premises. "Operating Equipment" shall mean any removable trade furniture, furnishings, equipment and fixtures that are fabricated, furnished and installed by Concessionaire and used in its operations in the Premises, but does not

include Fixed Improvements nor any displays, advertising materials or decorations that are of a seasonal or temporary promotional nature.

(d) All contracts and subcontracts for the performance of Concessionaire's Work shall require (1) that all contractors and subcontractors provide labor that can work in harmony with other labor employed or to be employed at the Airport in accordance with this Agreement, properly bonded and badged for Airport security purposes; (2) insurance coverage and suretyship reasonably satisfactory to the City; (3) that all contractors and subcontractors comply with all of the requirements of this Agreement, the BPA process, all applicable permits, and/or as otherwise required by code; (4) in the case of Fixed Improvements, performance and payment bonds from Concessionaire or its contractor, in form and substance reasonably satisfactory to the City, each of which shall name the City as an additional obligee and aggregating in the penal sum equal to all of Concessionaire's construction contracts.

Section 5.02 **OCCUPANCY PERMITS, LIEN WAIVERS AND OTHER DOCUMENTS.** Within 60 days after Concessionaire's opening for business in the Premises, Concessionaire shall deliver to the City executed copies of all mechanics' lien waivers and/or releases or other lien waivers and/or releases on account of Concessionaire's Work, notarized and unconditional, in such form as the Director shall have reasonably approved and an architect's certification that the Premises have been constructed in accordance with the approved Final Drawings and are fully complete in accordance with all of such requirements specified or referenced herein. Further, Concessionaire shall also deliver to the Director a copy of the Certificate of Occupancy with respect to the Premises within 20 days after Concessionaire's receipt thereof from the City. Within 90 days after Concessionaire's opening for business in the Premises, Concessionaire shall deliver to the Director (i) final and complete sets of "as-built" Final Drawings and Computer Aided Drafting and Design ("CADD") drawings, duly certified by a registered architect or registered engineer licensed in the State of Texas; and (ii) statements of the total construction costs incurred by Concessionaire which is certified by a responsible officer of Concessionaire as correct together with copies of all supporting documentation required by the City. If Concessionaire shall fail to provide any of the same within such 90 day period, Concessionaire shall pay to the City as Additional Rent, within 10 days after demand, the sum of not more than $150.00 per day for each day that such certified drawings, construction costs and required documents have not been delivered to the City within such period of time. If such failure shall continue for a period exceeding 6 months after Concessionaire's opening for business in the Premises, such shall be a material default by Concessionaire hereunder entitling the City to all remedies available to it hereunder or at law.

Section 5.03 **CONDITION OF PREMISES.** Except as otherwise specifically provided herein (including, without limitation, in **Exhibit B**), Concessionaire hereby agrees that upon delivery of possession of the Premises to Concessionaire, Concessionaire shall accept such delivery of possession of the Premises in its then existing **"AS IS"** condition, and Concessionaire acknowledges (i) that Concessionaire shall have inspected the Premises and shall be fully aware of the condition of the Premises as of delivery of possession; (ii) that the City shall have no obligation to improve or alter the Premises for the benefit of Concessionaire other than to complete any remaining portion of the City's Work, if any, under **Exhibit B**; (iii) that, except as may be expressly provided herein, neither the City nor any of the City's employees, agents, designated management representatives, contractors nor brokers has made any representation or warranty of any kind respecting (a) the condition of the Premises, and/or the Terminal, (b) the suitability thereof for Concessionaire's permitted use or the conduct of Concessionaire's business, or (c) occupancy or operation within the Terminal by any other airline, person or entity including forecasted or estimated enplaned passenger volume in the Terminal. Concessionaire irrevocably waives any claim based upon or related to any such claimed representation by the City or its designated management representatives as to public traffic to be expected at the Premises or sales to be expected at the Premises. Concessionaire's taking possession of the Premises shall constitute Concessionaire's formal acceptance of the same and acknowledgment that the Premises are in the condition called for hereunder, subject to all field conditions existing at the time of

delivery of possession. In no event shall the City be liable for damages or otherwise as a result of any failure to make the Premises available within the time and/or in the condition provided herein.

Section 5.04 **ULTIMATE RENTAL COMMENCEMENT DATE.** Notwithstanding anything to the contrary contained herein, if for any reason whatsoever (excluding, without limitation, force majeure), the Rental Commencement Date shall not have commenced prior to such date as shall be one (1) year from the Commencement Date or such longer period of time as the Director may approve in writing to Concessionaire, then, at the City's option, this Agreement shall be automatically terminated without further act of either party hereto and each of the parties hereto shall be released from any further obligation hereunder.

ARTICLE VI. ALTERATIONS, CHANGES AND ADDITIONS

Section 6.01 **ALTERATIONS BY CONCESSIONAIRE.** Concessionaire shall not make or cause to be made any alterations, additions or improvements to the Premises (for example, Concessionaire shall not install or cause to be installed any signs, floor covering, interior or exterior lighting, plumbing fixtures, shades, canopies, awnings, electronic detection devices, antennas, mechanical, electrical or sprinkler systems, or make any changes to the storefront or the general appearance of the Premises), without the prior written approval of the City pursuant to the BPA process. Concessionaire, with the prior written approval of the Director, may make such voluntary alterations, additions and improvements to the interior of the Premises provided: (a) the same are cosmetic and not structural in nature, do not affect a utility system, the storefront or storefront sign and are not inconsistent with the Final Drawings approved by the City; (b) that Concessionaire complies with the provisions concerning contractors, labor relations, reporting of costs and insurance and bonds, the provisions of **Exhibit B** and the Design Handbook; (c) that after Concessionaire has obtained the City's approval, Concessionaire shall submit to the Director 15 days written notice prior to undertaking any of the foregoing together with a schedule of the commencement and completion dates of the work; and (d) Concessionaire shall comply with the BPA process. Concessionaire shall present to the City, Final Drawings for all alterations, additions or improvements, voluntary or otherwise, at the time approval is sought, in accordance with criteria and procedures as provided in **Exhibit B**, the Design Handbook and the BPA process.

Section 6.02 **REMOVAL BY CONCESSIONAIRE.** All Fixed Improvements and any alterations thereto made by Concessionaire shall be deemed to have permanently attached to the Premises and title shall immediately be deemed vested in the City. Upon the expiration or earlier termination of this Agreement, Concessionaire shall not remove any of such Fixed Improvements; provided, however, that Operating Equipment, removable trade fixtures installed by Concessionaire and not permanently affixed to the Premises and Concessionaire's personal property shall remain the property of Concessionaire and may be removed throughout the Term hereof or upon expiration or earlier termination of the Term hereof if all Rental and other charges due hereunder are paid in full and Concessionaire is not otherwise then in default of any of the covenants, terms or provisions of this Agreement beyond applicable notice and cure periods; provided that Concessionaire immediately repairs any damage caused by such removal. Under no circumstances shall Fixed Improvements be demolished or removed except with the prior written consent of the Director. If Concessionaire shall fail to remove any of its personal property and Operating Equipment, the City may, at its option, retain either any or all of such property, and title thereto shall thereupon vest in the City without compensation to Concessionaire; or the City may remove all or any portion of the property from the Premises and dispose of the property in any manner, without compensation to Concessionaire. In the latter event, Concessionaire shall, upon demand, pay to the City the reasonable and actual expense of such removal and disposition and the repair of any damage to the Premises resulting from or caused by such removal. Concessionaire shall, at its expense, execute all documents requested and deemed necessary by the City to evidence the title to any Fixed Improvements. The obligations contained in this Section 6.02 shall survive the expiration or earlier termination of this Agreement.

Section 6.03 **CHANGES AND ADDITIONS.** The City reserves the right at any time, and from time to time, to make extensive alterations to, and to build additional stories on, the Terminal and to construct other buildings and improvements in the Airport, including any extensive modifications of the public areas in connection therewith, to enlarge or reduce the Terminal, to add decks or elevated parking facilities, and to sell or lease any part of the land comprising the Airport, for the extensive construction thereon of a building or buildings which may or may not be part of the Airport. The City reserves the right at any time to relocate, reduce, enlarge, or reconfigure the Terminal, the Airport, parking areas and other public areas shown on **Exhibits A1** and **A2**. Concessionaire agrees to accommodate and cooperate with the City in such matters, even though Concessionaire's own operations may be inconvenienced or impaired thereby and Concessionaire agrees that no liability shall attach to the City (including its agents, contractors, designated management representatives, directors, employees, officers and subcontractors) by reason of such inconvenience or impairment and Concessionaire hereby waives any and all claims for damages and other consideration by reason of such inconvenience or impairment. The City shall use reasonable efforts not to materially inconvenience Concessionaire or materially impair Concessionaire's operations and the Director shall give reasonable notice to Concessionaire of any such construction, repair or related activity. The City shall have the exclusive right to use all or any part of the roof of the Terminal for any purpose; to erect additional stories or other structures over all or any part of the Premises; to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises, provided that access to the Premises shall not be materially impaired; and to install, maintain, use, repair and replace within the Premises pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Terminal, the same to be in locations as will not unreasonably deny Concessionaire's use thereof. The City may make any use it desires of the side or rear walls of the Premises (including, without limitation, freestanding columns and footings for all columns) and the City, at its expense, shall repair all damage to the Premises resulting from any work related to such use.

Section 6.04 **RELOCATION, REDUCTION OR TERMINATION.** (a) At any time during the Term hereof, due to the nature of the commercial air public transportation facilities in general, it may be necessary to relocate and/or reduce all or any part of the Premises if the Director determines such action to be necessary for airline and/or airport operational considerations (e.g., the operation of non-concession services in the Terminal, the operation of non-concession services for any airline or Airport operations in the Terminal or due to public health or safety issues relating to the operation of the Terminal). For purposes hereof, relocation is defined as the City's decision to terminate possession of an existing concession facility and to provide a reasonably comparable space for the substitute concession facility in terms of size, location, relation to airline gates and exposure to the Terminal's users' pedestrian traffic flow patterns (particularly enplaned passengers) within the Terminal. Reduction of the Premises includes, but is not limited to, the movement of walls of the Premises or any other action which may reduce the Floor Area of the Premises. In the event the Director elects to exercise any such rights as the City deems reasonably necessary or desirable, it shall advise Concessionaire by 60 days prior written notice and Concessionaire hereby agrees to be bound by such election and to execute; upon receipt from the Director, whatever amendments, terminations or other instruments as may be necessary. If the Premises are relocated or reduced to a size reflecting a 10% or greater decrease in the Floor Area, the parties agree to negotiate in good faith on a commercially reasonable basis with respect to an equitable adjustment to Guaranteed Rent and corresponding adjustment to the Monthly and Annual Breakpoints for Percentage Rent, if applicable under the circumstances. Any such relocation or reduction of the Premises shall be accomplished, with Concessionaire's complete cooperation, as expeditiously as is reasonable under the circumstances but in no event later than the date specified by the Director to ensure the proper and efficient operation of the Terminal. From and after the Commencement Date, in the event any such relocation or reduction occurs after the Premises have been constructed and opened for business to the public, the City agrees to reimburse Concessionaire (through appropriate credits against future payments of Guaranteed Rent and/or Percentage Rent) for the reasonable and proper costs of renovating the relocated and/or reduced Premises (in accordance with Final Drawings and total renovation

costs approved by the Director) so that the same are reasonably comparable to the original Premises. The City also agrees to reimburse Concessionaire (through appropriate credits against future payments of Guaranteed Rent and/or Percentage Rent) for the reasonable and proper costs of moving Concessionaire's Operating Equipment and exterior storefront signage. Concessionaire shall be responsible for any and all other costs involved. The City shall not have any liability for such relocation or reduction of the Premises other than as specifically set forth in this Section 6.04(a) and Concessionaire hereby waives any such claims, including, without limitation, claims for lost business opportunity, claims for lost profits and claims for relocation benefits under Federal and any state law. If Concessionaire is unable to operate its business in the Premises or any portion thereof as a result of the exercise of any of the City's rights, Concessionaire's payment of Rentals shall be abated during the period which Concessionaire is unable to operate. Notwithstanding the foregoing, if the Director desires to relocate Concessionaire to a substitute concession facility as provided in this Section 6.04(a) above, Concessionaire shall have the right, in its sole discretion, to terminate this Agreement within 30 days after receipt of the Director's relocation notice. If Concessionaire elects to terminate this Agreement as provided in this Section 6.04(a) due to the proposed relocation of the Premises, this Agreement shall terminate on the effective date thereof as reasonably specified by the Director and Concessionaire shall remain liable for the payment of all Rentals and the performance of all other accrued obligations of Concessionaire under this Agreement up to and including the effective date of such termination. Upon the early termination of this Agreement by the Concessionaire as provided in this Section 6.04(a), other than by reason of Concessionaire's default, Concessionaire shall be entitled to be reimbursed by the City for any unamortized investment in Fixed Improvements to the nearest full month as established by its amortization period for Cost of Fixed Improvements in accordance with the requirements set forth in Section 6.04(b) below, such reimbursement to be made in United States currency.

(b) In the event the Director in its reasonable judgment believes it desirable for the City to obtain possession of the Premises for airline and/or airport operational considerations (e.g., the operation of non-concession services in the Terminal, the operation of non-concession services for any airline or Airport operations in the Terminal or due to public health or safety issues relating to the operation of the Terminal), the Director, upon 90 days prior notice in writing to Concessionaire, may terminate this Agreement. In the event of such termination, within 30 days following the date that Concessionaire shall have vacated the Premises, paid all Rentals and performed all other accrued obligations hereunder through to the effective date of such termination, the City shall pay to Concessionaire a sum equal to net book value of "Cost of Fixed Improvements". Within 90 days after Concessionaire's completion of construction of the Premises, Concessionaire shall furnish to the Director such information as the City may reasonably require in connection with the determination of such costs. At a minimum, such cost information shall include copies of all contracts, copies of all invoices for the work which clearly identified the work completed and copies of all canceled checks for payment, all of which shall be evidenced by a certificate from Concessionaire. In order to obtain any funds from the City, at a minimum, Concessionaire must furnish to the Director on a timely basis, all such relevant information concerning the net book value of the "Cost of Fixed Improvements". The following will be considered the net book value of the "Cost of Fixed Improvements": (i) the unamortized balance of reasonable amounts paid by the Concessionaire for the construction and installation of Fixed Improvements upon the Premises; (ii) the unamortized balance of reasonable amounts paid by the Concessionaire to extend utility lines into the Premises; and (iii) the unamortized balance of reasonable sums paid to external architects, engineers, surveyors, and construction managers in connection with the design, development and construction of Fixed Improvements upon the Premises.

Such payments under Sections 6.04(a) and (b) shall be in lieu of any claims, causes of actions, suits, or damages that Concessionaire may have as a result of its use and occupancy of the Premises, including, without limitation, any and all rights and/or awards under any applicable Federal or state law. The City reserves the right to audit documentation of all Cost of Fixed Improvements for the same period that the City has to audit Concessionaire's other Records as set forth in this Agreement. Concessionaire must cooperate in such an audit and provide other supporting cost documentation (including books, records,

documents and other evidence and accounting procedures and practices sufficient to reflect properly all construction costs claimed to have been incurred in performing Concessionaire's Work) upon request within 15 days after notice from the Director. If the City disagrees with the Concessionaire's determination of: (i) Cost of Fixed Improvements, or (ii) the reasonableness of the cost of the item, or (iii) if supporting cost documentation is not sufficient, the Director shall notify the Concessionaire in writing. Concessionaire shall have 15 days following receipt of the Director's notice in which to respond or provide any additional information. After consideration of any response or additional information provided, the City will make a reasonable final determination as to whether or not the construction costs will qualify as Cost of Fixed Improvements and will be paid, with such payment, if any, made by the City within 120 days after the date of such determination by the City; provided, however, before any such payment is made, Concessionaire shall have vacated and surrendered possession of the Premises to the City in the conditioned required under this Agreement and Concessionaire shall have paid all Rentals and other charges due hereunder in full that have accrued up to and including the effective termination date of this Agreement. For purposes of this Agreement, the Concessionaire's Cost of Fixed Improvements shall be amortized by Concessionaire, depreciated monthly, using the straight-line method, over a period not to exceed the balance of the Term of this Agreement or the useful life of each Fixed Improvement in accordance with GAAP, whichever period is shorter. Upon the early termination of this Agreement by the City as provided in this Section 6.04(b), other than by reason of Concessionaire's default, Concessionaire shall be entitled to be reimbursed by the City for any unamortized investment in Fixed Improvements to the nearest full month as established by its amortization period for Cost of Fixed Improvements, such reimbursement to be made in United States currency.

ARTICLE VII. CONDUCT OF BUSINESS BY CONCESSIONAIRE

Section 7.01 **PERMITTED USE.** Concessionaire shall use the Premises only for the purpose of conducting the business of selling only those items of merchandise and products and/or providing services specifically set forth in the Data Sheet ("Permitted Use") and for no other use or purpose. Notwithstanding anything to the contrary contained herein, including Concessionaire's Permitted Use, if the Director reasonably determines that any item and/or service displayed, offered for sale or sold by Concessionaire is objectionable or inappropriate for display or sale at the Terminal and/or Airport, Concessionaire shall, within 1 day after delivery of the Director's written notice to the Premises, immediately remove such item and/or service from display and its inventory (if the objectionable item and/or service displayed, offered for sale or sold shall be deemed to be offensive or potentially dangerous to the general public, as reasonably determined by the Director from time to time, Concessionaire shall remove such offensive or potentially dangerous item and/or service immediately upon verbal notice from the Director or his/her designee) and Concessionaire shall not thereafter display, offer for sale or sell any such objectionable or inappropriate item and/or service. If Concessionaire shall fail to remove any such item and/or service from display as may be required from time to time by the City within such 1 day period, then Concessionaire shall pay, within 10 days of demand therefor by the Director, Additional Rent in the amount of not more than $150.00 per day until such time as Concessionaire has removed any such item and/or service from display. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to the City. Concessionaire represents and warrants that it holds all certificates, permits, licenses or other entitlements required by federal, state or local, laws, rules or regulations in order to enable Concessionaire to conduct its operations and to engage in its Permitted Use and that such certificates, permits, licenses or other entitlements are and shall be kept current, valid and complete at all times during the Term hereof. Concessionaire shall submit any of the foregoing for inspection by the City from time to time. Concessionaire, at Concessionaire's expense, shall at all times comply with the requirements of any and all such certificates, permits, licenses or other entitlements.

Section 7.02 **OPERATION OF BUSINESS.** (a) Concessionaire agrees to be open for business and to continuously and uninterruptedly operate in all of the Premises during the entire Term following the Rental

Commencement Date, to actively and diligently conduct its business at all times in a first class and reputable manner, making every reasonable and lawful effort to develop, maintain and increase Concessionaire's business, using best efforts to achieve maximum sales volumes, customer satisfaction and maintaining at all times a complete stock of high quality merchandise and products. Concessionaire shall maintain a sufficient number of personnel at all times to service customers. All such personnel shall be knowledgeable, helpful to Terminal users, courteous, efficient, neat in appearance and appropriately attired and shall not act in a loud, offensive or otherwise objectionable manner. Concessionaire's employees shall wear name tags and security badges at all times. Concessionaire shall not employ at or about the Premises any person who shall use offensive language, makes persistent announcements of its merchandise and products and/or services over loud speakers or whose conduct is loud or offensive or otherwise detrimental to the best interests of the Terminal and/or Airport. Concessionaire also agrees not to divert or allow or cause to be diverted any business from the Terminal and/or Airport. Concessionaire agrees that it will reasonably and promptly respond to all customer complaints regarding unsatisfactory service and/or unsatisfactory quality of merchandise, products and/or services, including all refunds as appropriately requested from time to time by any customer. Concessionaire agrees to accept at least 2 nationally recognized credit cards for payment of purchases made at the Premises and Concessionaire shall offer all of its customers shipping of purchased products at cost. Concessionaire shall not abandon or permanently vacate the Premises without the prior, advance written approval of the Director. For purposes hereof, "abandonment" shall mean closing the Premises to public trade for 5 or more consecutive days, unless other provisions hereof permit such closing. Concessionaire shall install and maintain at all times a display of merchandise and products in the display windows, if any, as required herein and shall keep the display windows well lighted. Concessionaire shall be obligated to be open for business and to operate continuously during all hours established as Terminal concession business hours. Concessionaire's obligation to be open for business shall include, but not be limited to, opening for business not more than fifteen (15) minutes late, closing the business not more than fifteen (15) minutes early, and closing the business for not more than fifteen (15) minutes during Terminal and/or Airport business hours, and, if Concessionaire fails to comply with any of the foregoing operating requirements, then Concessionaire shall pay Additional Rent in the amount of not more than $150.00 per day for each such violation that occurs more than 1 time during any Lease Month. This remedy shall be in addition to any and all other remedies provided herein or by law to the City. Concessionaire understands and agrees that its operation hereunder is a service to airline customers and the users of the Terminal and the Airport. Notwithstanding the requirements set forth herein, the Director shall have the right to make reasonable objections to the number or quality of sales staff used by Concessionaire, the prices for merchandise and products sold or services rendered, the number or quality of articles sold or services rendered, the character of the service offered to the public, responses to customer complaints and the appearance and condition of the Premises. Concessionaire agrees to take reasonable steps to promptly comply with the Director's reasonable objections. If Concessionaire fails to comply with any of the provisions of this Section 7.02(a), then Concessionaire shall pay, within 5 days after notice thereof and failure to cure the same, Additional Rent in the amount of not more than $150.00 per day until such time as Concessionaire is in compliance with this Section 7.02(a). This remedy shall be in addition to any and all other remedies provided herein or by law to the City. Failure by Concessionaire to be open for business and to operate shall entitle the City, in addition to other remedies provided in this Section 7.02, this Agreement or by law, to mandatory injunctive relief if awarded by a court of competent jurisdiction. The Director shall be the sole judge of which hours and days shall be Terminal concession business hours and days.

(b) Concessionaire, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of the City and all governmental authorities having jurisdiction affecting or applicable to the Premises or the cleanliness, safety, occupancy, operation and use of the same, whether or not any such law, ordinance, order, rule, regulation or requirement is foreseen or unforeseen, ordinary or extraordinary, shall necessitate changes or improvements (other than structural changes or structural improvements) and/or interfere with the use and enjoyment of the Premises. Concessionaire shall promptly correct any deficiencies reported by the City and all other

governmental authorities having jurisdiction. Concessionaire shall not do or permit anything to be done in or about the Premises, nor bring anything therein, which will in any way conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the Premises or the Terminal which has been or may hereafter be enacted or promulgated by the City and all governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Concessionaire use or allow the Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the Terminal and/or Airport. Any area occupied by Concessionaire and all equipment and materials used by Concessionaire shall at all times be kept clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean materials, flies and other insects, rodents and vermin in accordance with any and all applicable rules, regulations and requirements of the City and in accordance with any and all laws, statutes, ordinances and regulations that may be promulgated from time to time by governmental agencies and authorities. All apparatus, utensils, devices, cooking equipment, machines and piping used by Concessionaire shall be constructed so as to facilitate the cleaning and inspection thereof and shall be properly cleaned and sterilized on a daily or more frequent basis after each period of use (at no time to exceed eight (8) hours). All trays, dishes, cookery, glassware, cutlery and other such equipment used in the preparation of and serving of all food & beverage products shall be properly cleaned and sterilized on a daily or more frequent basis immediately before each use thereof. Bottles, vessels, cooking equipment and other reusable containers shall be properly cleaned and sterilized on a daily or more frequent basis immediately before each use thereof. From time to time and as often as required by the City, Concessionaire shall conduct pressure, water-flow, and other appropriate tests of the fire-extinguishing system and apparatus located within the Premises. Concessionaire shall keep in proper functioning order all firefighting equipment on the Premises and Concessionaire shall at all times maintain on the Premises adequate stocks of fresh, usable chemicals for use in such system and apparatus. Concessionaire shall notify the City prior to conducting such tests. If requested, Concessionaire shall furnish the City with copies of written reports of such tests. No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted or advertised by sign or otherwise in the Premises. Concessionaire shall not permit the installation or operation of any coin operated or vending machines or pay telephones in the Premises, including, but not limited to, sales of entertainment event tickets and lottery tickets, pre-paid telephone calling cards and reservations for ground transportation, hotels or other lodging. Concessionaire shall not sell or display any merchandise and products or service except within the areas outlined in the Design Handbook unless such sale or display shall be expressly approved on the Final Drawings or otherwise approved by the Director, in writing, except that Concessionaire shall be permitted to display merchandise and products in the display windows, if any. Concessionaire shall not use the areas adjacent to or outside the Premises for business purposes or any other purposes, including the display and sale or merchandise, products or services in any areas outside of the Premises without the Director's advance written approval, which approval may be withheld in the Director's sole discretion. Concessionaire shall not store anything in service or exit corridors. All receiving and delivery of goods and merchandise and products for the Premises, and all removal of merchandise and products, supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas provided therefor. No trash, trash containers, hand trucks, carts, racks or movable fixtures designed for the movement of merchandise and products and/or trash within the Premises or to or from the Premises may be left unattended in the storefront, corridors or other public areas, nor may such items or devices in non-public areas be visible from public areas of either the Premises or the Terminal. Concessionaire shall be solely responsible for prompt disposal within the Premises or in such areas as may be provided for such disposal of all trash and debris from the Premises. Concessionaire shall not use or permit the use of any portion of the Premises for any unlawful purposes or, except as specifically permitted in Section 7.01. Concessionaire shall not install any radio, television, communication dish or other similar device or related equipment exterior to the Premises, shall not cause or make any penetration of the roof of the Premises or the building in which the Premises is located and shall not erect any aerial or antenna on the roof or exterior walls of any building within the Terminal. Concessionaire, at its sole cost and expense, shall contract directly with a pest control service reasonably acceptable to the Director at such intervals as the City may require. If Concessionaire shall fail to comply with any of the provisions of this Section

7.02(b), then Concessionaire shall pay, within 10 days of demand therefor by the City, Additional Rent in the amount of not more than $150.00 per day until such time as Concessionaire is in compliance. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to the City.

(c) As the owner and operator of the Airport, the City has the right to regulate and control certain aspects of Concessionaire's operations at the Premises including but not limited to the matters listed below in this Section 7.02(c):

(i) The City has the right to control the hours of operation of all concessions at the Terminal. The hours of operation of concessions are in general, at a minimum, from 7:00 AM to 9:00 PM, local time, 7 days a week, 365 days a year or other hours necessary to service the earliest daily incoming and outgoing flights and the latest daily incoming and outgoing flights except as may otherwise be approved in writing by the Director. These hours of operation are subject to permanent modification at the sole discretion of the Director upon 15 days advance notice to Concessionaire (if the City determines that passenger traffic conditions, flight scheduling, flight delays or other considerations make it necessary, in the reasonable opinion of the Director, services shall be available at times not then scheduled). For concessionaires whose Permitted Use authorizes the primary sale of news & sundries items and/or food & beverage items, the hours of operation for news, news & sundries and/or food & beverage concessions shall be a minimum of 18 hours each day, 7 days a week, 365 days a year with the opening for business each day at least 30 minutes before the departure time of the earliest scheduled commercial flight and with the closing for business each day not less than 30 minutes after the departure time of the latest scheduled commercial flight. Any modifications to the required operating hours that may be requested from time to time by Concessionaire shall be subject to the Director's prior written approval determined in its discretion. Concessionaire agrees to otherwise abide by all hours of operation as set by the Director. Concessionaire shall assure that a local representative of Concessionaire is available, by telephone, on a 24 hour per day, 7 day per week, basis in case of emergencies and Concessionaire shall notify the City of the name and telephone number of such representative and shall update such information promptly as necessary.

(ii) The City requires that Concessionaire provide to customers high quality products and services and competitively price all products sold and services rendered from the Premises such that the prices are non-discriminatory and substantially comparable to average "street" prices for similar brands sold by retailers in the San Antonio metropolitan so that customers do not expect to pay more for products and services in the Terminal than they would for average prices in locations outside the Terminal. Concessionaire agrees to adjust its prices to ensure that they meet the "street" pricing criteria in accordance with the City's pricing policy and enforcement guidelines without any further notice or immediately upon written notice from the Director if Concessionaire is not in compliance therewith. Prior to opening for business, Concessionaire agrees to supply to the Director a detailed list of all products and services to be offered at the Premises and the prices to be charged therefor. Concessionaire agrees to continue to provide this data on an anual basis throughout the Term hereof. Concessionaire shall, at all times, observe and comply with the City's street pricing policy as set forth in **Exhibit F**. Further, for the benefit of the users of the Terminal, the City has the right to promote a "free market" competitive environment within the Terminal and, to the extent possible, the City may cluster concession operators with similar products and services in groups to help stimulate competition, provide superior service and competitive pricing, and under no circumstances shall Concessionaire receive any type of "exclusives" or protection related thereto. To ensure that Concessionaire is in compliance with the quality of products, pricing and service standards set forth in this Section 7.02(c), and the City's objectives are met, the City or its designated management representative may perform service audits, such as "surprise shopper programs," of the conduct of Concessionaire's operation in the Premises at any time. The results of such service audits performed on behalf of either the City may be employed by the City to enforce Concessionaire's obligations hereunder. Concessionaire agrees that after it has taken delivery of the Premises, it will contact the Director on all operational matters pertaining to its occupancy including but not limited to the following areas: (a) hours of operation, (b)

employee parking and security requirements, (c) customer inquiries and complaints, (d) facility maintenance issues, (e) utility services, and (f) staffing issues.

Section 7.03 **ENVIRONMENTAL COMPLIANCE.** (a) Concessionaire shall, in conducting any activity on the Premises, comply with all environmental laws and regulations, including but not limited to environmental laws and regulations regarding the generation, storage, use, transportation and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants and shall comply with all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Concessionaire shall not cause or permit its employees, agents, permittees, contractors, subcontractors, subconcessionaires or others in Concessionaire's control, supervision, or employment to release (whether by way of uncapping, pouring, spilling, spraying, spreading, attaching, or otherwise) into or onto the Premises or any other location upon the Airport (including the air above, the ground and ground water thereunder and the sewer and storm water drainage systems therein) any quantity of hazardous substances (as defined or established from time to time by applicable local, state, or federal law and including, among other things, hazardous waste and any other substances that have been or may in the future be determined to be toxic, hazardous, or unsafe). To the extent any such release may exceed quantities or volumes permitted by applicable federal, Texas, or local law, Concessionaire shall immediately notify the Director, the Texas Natural Resource Conservation Commission (TNRCC) and the Local Emergency Planning Committee (LEPC) as may be required under the federal Emergency Planning And Community Right To Know Act. Concessionaire shall be responsible for compliance with the Emergency Planning And Community Right To Know Act if any such release occurs.

(b) Concessionaire shall remedy any such release or threatened release as described above and, whether resulting from such release or otherwise, shall remove any hazardous materials, and special wastes and any other environmental contamination as are caused by Concessionaire on or under or upon the Premises, as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Premises into compliance with all environmental laws and regulations. Such work shall be performed at Concessionaire's sole expense after Concessionaire submits to the City a written plan for completing such work. The City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The cost of such review and inspection shall be paid by Concessionaire. Specific cleanup levels for any environmental remediation work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate regulatory agency and the City.

(c) Except for the environmental matters not caused by Concessionaire, Concessionaire agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents, designated management representatives and employees from and against any and all loss, claim, liability, damages, injunctive relief, injuries to person, property or natural resources, cost, expense, enforcement actions, action or cause of action, fines and penalties arising as a result of action or inaction by the Concessionaire, its employees, agents or contractors in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Premises, the Terminal and the Airport, whether foreseeable or unforeseeable, regardless of the source of such release or threatened release or when such release or threatened release or presence occurred or is discovered. The foregoing indemnity includes without limitation, all costs at law or in equity for removal, clean-up, remediation any kind and disposal of such contaminants, all resultant and associated costs of determining whether the Premises, the Terminal or the Airport is in compliance and causing the Premises, the Terminal or the Airport to be in compliance with all applicable environmental laws and regulations and all costs associated with claims for damages to persons, property or natural resources. In the event that the City is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Premises, the Terminal or the Airport caused by the action or inaction of

the Concessionaire, Concessionaire shall defend the City and indemnify and hold harmless the City its elected and appointed officials, officers, agents, designated management representatives and employees from any costs, damages, fines and penalties resulting therefrom.

(d) In addition to any other rights of access regarding the Premises herein contained, the City shall have access to the Premises to inspect the same in order to confirm that the Concessionaire is using the Premises in accordance with all applicable environmental laws and regulations. Concessionaire shall, upon the Director's demand and at Concessionaire's sole expense, demonstrate to the Director (through such tests, professional inspections, or samplings, or otherwise as is in the Director's reasonable judgment sufficient for the purpose) that Concessionaire has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, state or local law. Any such tests and assessments shall be conducted by qualified independent experts chosen by Concessionaire and subject to the City's approval. Copies of reports from any such testing or assessments shall be provided to the City upon receipt by Concessionaire. Should Concessionaire not provide such tests, inspections, or samplings, or assessments, the City may conduct or cause to be conducted such tests, inspections, samplings and assessments and Concessionaire shall reimburse the City for all costs of such actions, no later than thirty (30) days following receipt by Concessionaire of invoices therefore. The City reserves the right to conduct any of the above actions at the Director's discretion, when in the opinion of the Director, additional or supplemental assessment is in the best interest of the City. Concessionaire, at the request of the City, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials the Concessionaire has prepared pursuant to any environmental law or regulation, which may be retained by the City or submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental regulatory compliance and are pertinent to the Premises, the Terminal or the Airport. If any environmental law or regulation requires the Concessionaire to file any notice or report of a release or threatened release of regulated materials on, under or about the Premises, the Terminal or the Airport, Concessionaire shall promptly submit such notice or report to the appropriate governmental agency and shall simultaneously provide a copy of such report or notice to the City. In the event that any allegation, claim, demand, action or notice is made against Concessionaire regarding Concessionaire's failure or alleged failure to comply with any environmental law or regulation, Concessionaire immediately shall notify the City in writing and shall provide the City with copies of any such written allegations, claims, demands, notices, or actions so made.

(e) The parties to the Concession Agreement, including subconcessionaires who may enjoy a future right of occupation through the Concessionaire, acknowledge a right and a duty in the City, exercised by the Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance activity, or other activity of the Concessionaire and its subconcessionaires. To this end, the Director shall have authority to disapprove an activity of the Concessionaire and/or any subconcessionaire on the basis of a risk assessment. Discretion and judgment are reserved to the Director for reason that combinations and proximity of such materials are synergistic. The Director's decision in this regard is final. The Director shall exercise such review prior to any lease or sublease and shall exercise such review from time to time as he or she may deem necessary for appropriate risk assessment of existing leases and subleases.

ARTICLE VIII. PUBLIC AREAS, TRASH REMOVAL AND FOOD COURT MAINTENANCE CHARGES

Section 8.01 **OPERATION AND MAINTENANCE OF PUBLIC AREAS.** The manner in which all interior and exterior public areas of the Terminal and/or the Airport are operated and maintained, and the expenditures therefor, shall be determined at the City's sole and absolute discretion. The use of such interior and exterior public areas shall be subject to reasonable and non-discriminatory rules and regulations

as the City may make from time to time.

Section 8.02 **USE OF PUBLIC AREAS.** The term "public areas" as used herein shall mean, to the extent provided by the City, all improved interior and exterior areas within the Terminal which are not devoted to the exclusive use by any airline, concessionaire or other occupant occupying space in the Terminal including, without limitation, public transportation loading and unloading facilities, pedestrian walkways and horizontal pedestrian movers, delivery areas, landscaped areas, community rooms, elevators, escalators, stairs and ramps, public restrooms and comfort stations, service areas, service and fire exit corridors, passageways and parking facilities. Concessionaire shall have as appurtenant to the Premises the right to the non-exclusive use in common with others all public areas in the Terminal as designated by the Director from time to time, and such reasonable access, during Concessionaire's normal operating hours, to the Premises. Such appurtenant rights shall be subject to such reasonable rules, regulations, fees and security directives from time to time established by the City by suitable notice. The City shall have the right, but not the obligation, from time to time, to modify the public areas, remove portions of the public areas from common use, to permit entertainment events, advertising displays, educational displays and other displays in the public areas that in the City's judgment tend to attract the public, and to allow the City to lease retail merchandising units or temporary pushcarts or carts ("RMUs"). If the City determines in its discretion to place RMUs in the public areas near the Premises, such placement shall not be within 15 feet of Concessionaire's storefront entrance and shall not materially interfere with ingress or egress to the Premises by the public. Concessionaire shall not be entitled to any credit for income earned by the City with respect to the public areas. Concessionaire and its employees shall not park their cars or any other vehicles in the parking facilities except in the areas specifically designated by the Director for employee parking. There is no free parking at the Airport for Concessionaire or any of Concessionaire's employees, contractors or customers. Concessionaire and its agents, employees, contractors or subcontractors shall comply with the City's rules and regulations with respect to parking as the same may be amended or modified from time to time and will be subject to any enforcement action (including towing) pursued by the City's airport police without any notice thereof. The City may at any time close any public areas to make repairs or changes, to prevent the acquisition of public rights in such area, to use areas for attendant or valet parking, and may do such other acts in and to the public areas as in its judgment may be desirable.

Section 8.03 **CONCESSIONAIRE'S PROPORTIONATE SHARE OF THE TRASH REMOVAL CHARGE.** All trash, refuse and non-hazardous waste removal services required to support the operations of the Concessionaire shall be controlled by the City. Such responsibilities shall include, but not be limited to, removing all trash, refuse and non-hazardous waste from all of the concession facilities located within the Terminal and depositing the same into a central trash dumpster area to be provided by the City for each Terminal at the Airport. Concessionaire agrees to pay as Additional Rent for the benefit of the City, the Trash Removal Charge as further described in this Section 8.03 and the following shall apply.

(a) Concessionaire shall pay to the City, as Additional Rent in the manner and at the place hereinafter provided, Concessionaire's proportionate share of the Trash Removal Charge as follows: (collectively, "Waste Removal Operating Costs and Expenses"): all costs and expenses of every kind or nature paid or incurred by the City with respect to the removal of all trash, refuse and non-hazardous waste for the concession facilities, including the Premises, within the Terminal. By way of example, Waste Removal Operating Costs and Expenses shall include, but not be limited to, the full cost and expense of: (1) all labor costs for persons employed to remove trash, refuse and non-hazardous waster from the concession facilities to the central trash dumpster areas, to clean the area surrounding the central trash dumpsters and to operate the central trash dumpster areas as well as the cost of uniforms and identification badges for all such personnel; (2) the cost to maintain, repair and/or replace all trash removal receptacles, supplies and equipment utilized to remove trash, refuse and non-hazardous waste from the Airport; (3) any and all other direct costs and expenses which the Director deems reasonably necessary or desirable in order to properly perform the removal of trash, refuse and non-hazardous waste in order to implement an efficient removal

program; and (4) an administrative fee not to exceed ten percent (10%) of the total annual amount of the actual Waste Removal Operating Costs and Expenses. With respect to the replacement cost of any procurement of any receptacles and equipment and other items necessary for the operation of the trash, refuse and non-hazardous waste removal program, the City shall use commercially reasonable efforts to control such replacement costs.

(b) The proportionate share to be paid by Concessionaire shall be that portion of Waste Removal Operating Costs and Expenses which the number of square feet of Floor Area in the Premises bears to the total number of square feet of Floor Area of gross leased and occupied Floor Area of all concession facilities in the Terminal; provided, however, any vacant Floor Area excluded shall not exceed twenty-five percent (25%) of the gross leaseable Floor Area of all such concession facilities in the Terminal but such restriction on the exclusion of vacant space, if any, shall not be applicable until the City has completed the approximate 2 year phase-in schedule with respect to the implementation of the new concession program in the Terminal. The gross leased and occupied Floor Area in effect for the whole of any Lease Year shall be the average of the gross leased and occupied Floor Area on the 1st day of each calendar month in such Lease Year.

(c) Concessionaire's proportionate share of Waste Removal Operating Costs and Expenses for the Trash Removal Charge following the Rental Commencement Date shall be paid to the City as Additional Rent in equal, consecutive monthly installments on or before the 1st day of each calendar month, in advance, in an amount reasonably estimated by the Director from time to time. Subsequent to the end of each Lease Year, the City shall furnish Concessionaire with a detailed statement of Concessionaire's actual proportionate share of such Waste Removal Operating Costs and Expenses for such period showing the general method of computing such actual proportionate share. Concessionaire shall not have any inspection or audit rights of any of the City's books and records pertaining to Waste Removal Operating Costs and Expenses and the Trash Removal Charge and Concessionaire hereby expressly waives any rights, whether by statute or otherwise, to conduct any such inspection or audit. If the total amount paid by Concessionaire for any such Lease Year shall be less than the actual amount due for any such Lease Year as shown on the City's statement, Concessionaire shall pay the difference between the amount paid and the actual amount due, within 30 days after the furnishing of each such statement. If the total amount paid by Concessionaire for any such Lease Year shall exceed the actual amount due for such Lease Year, such excess shall be credited against the next payment(s) due from Concessionaire to the City for Waste Removal Operating Costs and Expenses under this Agreement. If at the end of the Term of this Agreement, the total amount paid by Concessionaire for such final Lease Year shall exceed the actual amount due for such final Lease Year, such excess shall be refunded to Concessionaire within 60 days after Concessionaire has vacated the Premises in the condition required at the conclusion of this Agreement and all Rentals and other sums due the City from Concessionaire under this Agreement have been paid in full or the City shall be entitled to deduct any such remaining sums due from any such excess. The City may estimate the annual budget and charge the same to Concessionaire on a monthly basis, subject to revision of the budget from time to time and final annual adjustment based upon actual Waste Removal Operating Costs and Expenses for the Trash Removal Charge. Notwithstanding anything herein to the contrary, there will be no duplication in charges to Concessionaire in this Section 8.03 under any other provisions of this Agreement; and, provided, further, although the Waste Removal Operating Costs and Expenses shall be adjusted each Lease Year as determined in the City's reasonable discretion, Concessionaire's proportionate share thereof shall not exceed 110% of the Trash Removal Charge for the immediately preceding Lease Year then ended following completion of the approximate 2 year phase-in schedule with respect to the implementation of the new concession program in the Terminal.

Section 8.04 <u>CONCESSIONAIRE'S LOGISTICAL SUPPORT.</u>

All deliveries of supplies, materials, inventory or merchandise and products required to support the operations of Concessionaire shall be made to the dock area controlled by the City. No deliveries of any items shall be made by any persons or entities directly to the Premises without the prior written

authorization of the Director and if given by the Director, the Director shall have the right to revoke any such authorization at any time and for any reason. Following notice of all shipments for all items received at the dock area, Concessionaire shall be responsible, at its sole cost and expense, for promptly transporting all of such items from the dock area to storage and/or the Premises. All equipment to be utilized, methods of operation and employment of personnel shall be at the sole determination of the City as they relate to the transporting of supplies, materials, inventory or merchandise and products in the Terminal and at the Airport and shall be in compliance with all applicable federal, state and local laws, regulations and ordinances as well as all Airport rules and regulations promulgated from time to time by the City. The dock area controlled by the City may be located within the airfield of the Airport and may be subject to all post-security regulations with respect to access to secured areas in airports in the United States. Therefore, all delivery vehicles may have to be escorted to the dock by authorized service personnel and vehicles. The City, in its discretion, shall have the right to establish rules and regulations with respect to such deliveries including, but not limited to: (i) restrictions on delivery times (days and hours) and the time period in which any vehicle may remain in the dock area; (ii) methods of delivering supplies, materials, inventory or merchandise and products from the dock area to storage and/or the Premises such as pallet or plastic wrap requirements, for example; and (iii) delivery vehicle escort guidelines, rules, instructions and training if so required which must be complied with by Concessionaire and all transportation companies and vendors delivering any such items to the dock area. The City may deny access or require any vehicle to be removed for failure to follow any such rules, regulations and guidelines that may be established by the City from time to time.

Section 8.05 CONCESSIONAIRE'S PROPORTIONATE SHARE OF THE FOOD COURT MAINTENANCE CHARGE. Omitted

ARTICLE IX. SIGNS

Section 9.01 CONCESSIONAIRE'S SIGNS. The design, construction, location, use and maintenance of Concessionaire's signs are subject to the provisions of the Design Handbook and the approved Final Drawings. Concessionaire shall affix a sign to the exterior surface of the storefront of the Premises located inside the Terminal, subject to the advance approval of the Director. Concessionaire shall pay all costs of fabricating, constructing, operating and maintaining such sign. Concessionaire shall keep said sign well lighted, if applicable, during such business hours and shall maintain said sign in good condition and repair at all times. Said sign shall conform to the criteria for signs contained in the approved Final Drawings and the Design Handbook, and the size, content, design and location thereof shall be subject to the prior written approval of the Director. Except as hereinabove mentioned, Concessionaire shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Premises, or on the interior or exterior surface of the glass of any window or door of the Premises, or on any other location outside the Premises, or within any display window space in the Premises, or within one foot of the front of the storefront leaseline, whether or not there is display window space in the Premises, or within any entrance to the Premises, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description; provided, Concessionaire may place small decals relating to charge cards accepted and alarm system used for safety purposes on glass storefronts. No symbol, design, name, mark or insignia adopted by the City for the Terminal or the Airport shall be used without the prior written consent of the Director. All signs located in the interior of the Premises shall be in good taste so as not to detract from the general appearance of the Premises and Terminal. If Concessionaire shall be in violation of any requirements of this Section 9.01, which are not cured within 2 days after notice, Concessionaire shall pay Additional Rent in the amount of not more than $150.00 per day for each such violation until cured to the reasonable satisfaction of the Director.

Section 9.02 CONCESSIONAIRE'S DISPLAY WINDOWS. Concessionaire acknowledges and

agrees that the condition and appearance of its interior advertising stanchions and display windows facing into or in any manner visible from the Terminal property including exterior glass windows (if any) is important and significant to the City. If Concessionaire installs such interior advertising display stanchions or window display or any signs in the window display facing into or in any manner visible from the public areas of the Terminal which the Director reasonably determines to be objectionable to the general character and appearance of the Terminal, Concessionaire agrees to remove the stanchions, window display and/or signs within 2 days after notice. If Concessionaire fails or refuses to remove such stanchion, window display or sign, Concessionaire hereby grants the City the right to remove the stanchion, display or sign at the Concessionaire's expense. Concessionaire agrees that its interior advertising display stanchions and display windows will be designed and printed in a professional manner and will contain only first class items. No temporary signs or displays will be used by Concessionaire including any employment opportunity signs, except for temporary holiday decorations, which shall also be designed and printed in a professional manner. At a minimum, Concessionaire shall refresh and change the items and signs in the display windows on a quarterly basis during each Lease Year and if Concessionaire shall fail to perform the same and such failure is not cured within 10 days after notice, Concessionaire shall pay Additional Rent in the amount of not more than $150.00 per day for each such violation until cured to the reasonable satisfaction of the Director.

ARTICLE X. MAINTENANCE AND REPAIRS

Section 10.01 CITY'S MAINTENANCE AND REPAIRS. The City shall keep and maintain the Terminal property, which is not part of the Premises, and the roof (excluding any skylights, Concessionaire installed rooftop HVAC units and/or roof penetrations made by Concessionaire, any of which shall only be permitted with the Director's prior written consent), structural elements and structural foundation and the exterior surface of the exterior walls of the building in which the Premises is located (exclusive of storefronts, doors, door frames, door checks, other entrances, windows or window frames which are part of the Premises or which are not part of the public areas of Terminal), the public areas of the Terminal adjacent to the Premises in good repair, except that the City shall not be required to undertake any maintenance or repair required or occasioned by any act, negligent act or omission to act of Concessionaire, its agent, employees, licensees, contractors or subcontractors or caused by any alteration, addition, construction or improvement by Concessionaire, its agents, employees, licensees, contractors or subcontractors. Such maintenance of the Terminal required by the City herein shall be maintained in a condition which the City determines for the proper operation thereof, determined in the City's sole discretion. The City shall not be called upon or required to make any other improvements or repairs of any kind upon the Premises and appurtenances, except as specifically required under this Agreement. In no event shall the City be liable for any damages, whether consequential damages or otherwise or lost profits claimed to be caused by any failure of maintenance or repair by the City and nothing contained in this Section 10.01 shall limit the City's right to reimbursement from Concessionaire for maintenance costs, repair costs and replacement costs confirmed elsewhere in this Agreement.

Section 10.02 CONCESSIONAIRE'S MAINTENANCE AND REPAIRS. (a) Except as provided in Section 10.01, Concessionaire, at it's sole cost and expense, shall keep and maintain in a first-class appearance, reasonable wear and tear and damage by fire and other casualty excepted, and in a safe, clean, neat, sanitary and lawful order, good condition and repair (including replacement of parts and equipment, the Premises and every part thereof and any and all appurtenances thereto wherever located, including, without limitation, surfaces of all walls, windows and window casings and sills (both interior and exterior), the interior and exterior portion of all doors, door frames and door checks, other entrances, plate glass (except outside surfaces of windows, window casings and sills located on the exterior of the Terminal building, if any), storefronts, wall coverings, floor coverings, ceilings, relamping and/or replacement of light fixtures, trade fixtures, Fixed Improvements, Operating Equipment, HVAC and electrical and other utility systems and utility branch lines exclusively serving the Premises (whether or not located within the

Premises), sprinkler systems and sprinkler heads exclusively serving the Premises (whether or not located within the Premises), and all other repairs, replacements, renewals, restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen that relate to all work by or on behalf of Concessionaire pursuant to Article V, Article VI, **Exhibit B** and the Design Handbook.

(b) Concessionaire shall also keep and maintain the Premises in accordance with applicable City regulations and all directions, rules and regulations of the applicable health, fire and building inspector officials or other proper officials of governmental agencies having jurisdiction. Concessionaire shall comply with all requirements of laws, ordinances and otherwise affecting the Premises at Concessionaire's sole cost and expense, including complying with the requirements of any insurance underwriters, inspection bureaus or similar agencies designated in writing by the City upon suitable notice. Concessionaire shall promptly undertake and complete diligently any repair, replacement or maintenance to any of the foregoing as may be considered reasonably necessary by the City with materials and labor reasonably approved by the City. At the end of the Term or upon the earlier termination of this Agreement, Concessionaire shall surrender the Premises broom-clean and in good order, condition and repair, reasonable wear and tear and damage by fire, loss or other casualty not covered or required to be covered by Concessionaire's insurance or not otherwise attributable to Concessionaire's fault or negligence excepted.

(c) Concessionaire's maintenance and repair of the Premises includes all of the following duties, to be performed at Concessionaire's sole cost and expense: (i) Install and maintain fire extinguishers, fire hoses and other fire protection devices as may be required by the Director, fire marshall official and any agency having jurisdiction thereof or by the insurance underwriter insuring the Terminal; (ii) Obtain the Director's prior written approval of the materials used in any plate glass or window glass installation, repair or replacement and contractor performing any such repair and replacement; (iii) At all times, Concessionaire shall use the Premises with care. Maintenance, repairs and replacements shall be accomplished as necessary to maintain the Fixed Improvements and Operating Equipment and trade fixtures in good condition. Concessionaire shall repaint, retile, recarpet or replace wall coverings, floor coverings and ceiling coverings as reasonably necessary, and high traffic areas shall be repainted, retiled, recarpeted on a regular basis or as otherwise reasonably directed by the Director to maintain a high quality, first-class appearance; and all furniture and furnishings that become worn or torn shall be promptly replaced by Concessionaire as necessary; (iv) Provide complete and adequate arrangements for the sanitary handling and disposal of all trash, garbage, recycling materials and other refuse generated in the Premises, including suitable receptacles situated in locations reasonably determined by the Director. Such shall be removed at times and in a manner which will cause minimum interference with the use of the Terminal by the public and other authorized persons. Concessionaire shall also furnish custodial services for the Premises. Piling of boxes, cartons, containers or other similar items in the public areas or in the Premises is not permitted; (v) With respect to utility systems and lines servicing the Premises, (a) in areas where they serve other areas in the Terminal in addition to the Premises, Concessionaire shall only be responsible for the maintenance of the utility branch systems and utility branch lines located within or exclusively serving the Premises, (b) where utility systems and lines are installed by Concessionaire and solely for its use, Concessionaire shall solely be responsible for the maintenance, repair and replacement thereof from the Premises up to the City - maintained main utility systems or lines or to the shut-off valves located in the Terminal, as appropriate, (c) Concessionaire on a regular basis as reasonably required by the Director from time to time shall have sole responsibility for the maintenance, repair and replacement, as necessary, of all electrical, grease traps, exhaust systems, cooking and refrigerant apparatus, telephone, data transmission and other communication cables, conduits, wiring, fire alarm systems and protection devices, wiring panels, waster water and sewage disposal lines and associated equipment located within or exclusively serving the Premises; (vi) Concessionaire shall provide a comprehensive preventive maintenance program for everything that it is responsible for maintaining and submit the same to the Director and shall maintain such program on a current basis and provide evidence to the Director from time to time by submission of paid invoices. Concessionaire shall report all malfunctions to all systems, lines, devices and equipment installed or located within the Premises to the City in

accordance with the City's regulations and as promptly as possible after discovery and provide timely notice to the City as required by this Agreement with respect to maintenance; and (vii) All repairs, replacements and maintenance by Concessionaire hereunder shall comply with all of the applicable provisions of the City's BPA process, as the same may be amended from time to time by the City in its sole discretion, shall be performed in accordance therewith and with the applicable provisions of the Design Handbook and shall be subject to the City's prior written approval (except in the case of emergencies when only prior notice to the City shall be required), such approval to be determined in the City's sole discretion. All such maintenance, repairs and replacements shall be of a quality equal to the original in materials and workmanship, the City shall have the right to disapprove any improvements, replacements or alterations which, in its judgment, are of a design, quality, condition or in any color or in any other way deemed to be inconsistent with the Design Handbook, the City's BPA process or the general character and design of the Terminal.

Section 10.03 **RIGHTS OF THE CITY.** If at any time Concessionaire shall fail to comply with any of its obligations under Section 10.02 hereof, the City reserves the right to perform and complete such maintenance, repairs, replacements or alterations after reasonable notice to Concessionaire of its default thereunder and Concessionaire's failure to timely cure the same, and charge back to Concessionaire the full cost thereof for such work performed on behalf of Concessionaire. The City, without prior notice to Concessionaire, may enter the Premises and make inspections as often as it considers necessary, to determine the proper maintenance of the Premises by Concessionaire. Further, the City reserves the right to interrupt, temporarily, all utility services provided by the City when necessary to make repairs, alterations, replacements or improvements in such systems. The City shall not have any responsibility or liability to Concessionaire (including consequential damages and lost profits) for failure to supply heat, air conditioning, all other utilities or plumbing or, when prevented from doing so by laws, orders or regulations of any federal, state or local agency as a result of strikes, accidents, force majeure or by any other cause whatsoever beyond the City's control. The City shall provide Concessionaire with as much advance notice as reasonably possible and under the circumstances shall use reasonable efforts to avoid interrupting Concessionaire's business operations except as deemed necessary by the Director.

ARTICLE XI. INSURANCE AND INDEMNITY

Section 11.01 **CONCESSIONAIRE'S INSURANCE.** (a) Concessionaire, at its sole cost and expense, shall, during the entire Term hereof, procure and keep in force: (i) Commercial General Liability Insurance with respect to the Premises and the operations of Concessionaire therein, in which the combined limits shall be not less than $2,000,000.00 per occurrence, broad form/extended coverage, insuring for bodily injury, death and property damage, and business automobile liability insurance covering all owned, non-owned and hired or borrowed vehicles of Concessionaire used in connection with the operation of its business, in which the limits for landside vehicle/mobile equipment operation shall be not less than $1,000,000.00 per occurrence combined single limit, insuring for bodily injury, death and property damage, and, if applicable, in which the limits for the Airport's Air Operations Area (A.O.A.) vehicle/mobile equipment operation shall be not less than $5,000,000.00 per occurrence combined single limit, insuring for bodily injury, death and property damage; (ii) plate glass insurance (which may be self-insured), at full replacement value; (iii) insurance against fire, extended coverage, vandalism, malicious mischief, water damage which does not exclude backup from sewers or drains and/or sprinkler leakage, and such other additional perils including flood as now are or hereafter may be included in a standard extended coverage endorsement from time to time in general use in the county in which the Terminal is located, and including business interruption coverage in an amount equal to at least 12 months of Rentals, insuring Concessionaire's merchandise and products, Fixed Improvements, trade fixtures, furnishings, Operating Equipment and all other items of personal property of Concessionaire located on or in the Premises, in an amount equal to the full replacement cost thereof; (iv) workers' compensation coverage as required by the State of Texas and including Employer's Liability Insurance in the amount of $500,000.00 each accident,

$500,000.00 each employee, by disease, $500,000.00 policy aggregate by disease; (v) with respect to alterations, improvements and the like required or permitted to be made by Concessionaire hereunder, builders' risk insurance in an amount reasonably satisfactory to the City, which coverage may be provided and accepted from Concessionaire's contractors rather than Concessionaire; (vi) the insurance required under **Exhibit B** or the BPA process, if any; (vii) if the Permitted Use contemplates the sale of alcoholic beverages, Concessionaire shall also procure and keep in force liquor law liability insurance (on an occurrence basis), in which the limits shall not be less than Two Million Dollars ($2,000,000.00) per occurrence (the City reserves the right upon thirty (30) days notice to Concessionaire to require that Concessionaire increase the coverage limits on the liquor law liability insurance), broad form/extended coverage, which shall insure against all claims, demands or actions for injury to, or death or, one or more persons in one or more accidents, and for property damage, as well as for damages due to time loss or means of support; so that at all times the City and its additional insureds will be fully and completely protected against any claims that may arise by the dispensing of beer, wine and other alcoholic beverages in the Premises; provided, however, that the City and Concessionaire acknowledge and agree that commercially available liquor law liability insurance coverage contains specific exclusions. Concessionaire agrees to indemnify and hold harmless the City, its respective affiliates, parent corporations, subsidiaries, directors, officers, partners, shareholders, representatives, members, management companies, agents and employees, from and against any loss or claim arising under such exclusions; and (viii) such other insurance as may be reasonably required by the City from time to time after suitable notice thereof based upon circumstances in the Terminal and imposed in a non-discriminatory manner upon other concession facility operators in the Airport. All required insurance coverage may be provided by a combination of primary, excess or umbrella policies. The City reserves the right to review the insurance requirements of this Section during the Term of this Agreement and to modify coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in law, court decisions and/or circumstances surrounding this Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk. All policies of insurance required to be carried by Concessionaire pursuant to this Section 11.01 shall be written by insurance companies of adequate financial capacity (having a Best's rating and Financial Size Category of not less than A/VII) and qualified to do business in the State of Texas. Any such insurance required of Concessionaire hereunder may be furnished by Concessionaire under any blanket policy carried by it or under a separate policy therefor. An insurance certificate (and endorsements where same become necessary) Concessionaire's insurer, certifying that such policy has been issued, provides the coverage required by this Section 11.01 and contains all of the provisions specified in this Section 11.01 (including, without limitation, naming of additional insured entities as required by Section 11.01(b) below) shall be delivered to the Director prior to the commencement of the Term hereof, and certificates in connection with all renewals (if any), not less than 30 days prior to the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Concessionaire.

(b) Each policy evidencing insurance required to be carried by Concessionaire pursuant to this Section 11.01 shall contain the following clauses and provisions: (i) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by the City and that any coverage carried by the City be excess insurance; (ii) a provision including the City and the parties set forth on **Exhibit E** and any other parties designated in writing by the City from time to time as additional insured entities; (iii) with respect to the insurance carried by Concessionaire under Section 11.01(a) (iii) and (iv) above, a waiver by the insurer of any right to subrogation against the City and other additional insured entities, their respective agents, elected officials, directors, employees, officers and designated management representatives which arises or might arise by reason of any payment under such policy or by reason of any act or omission of the City, its agents, elected officials, directors, employees, officers or designated management representatives; (iv) a severability of interest clause or endorsement; (v) a provision that the insurer will not cancel or change the coverage provided by such policy without giving the City 30 days' prior written notice; and (vi) such policy shall be an occurrence form policy.

(c) If Concessionaire fails to procure or to maintain. at the times and for the duration specified in this Section 11.01, any insurance required herein, or fails to carry insurance required by law or governmental regulation, the City may (but shall not be required to) at any time or from time to time, and upon 5 days notice to Concessionaire, procure such insurance and pay the premiums therefor, and the cost of same, shall be deemed Additional Rent and shall be payable within 10 days after receipt of the Director's written demand. Concessionaire will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate the City's or the Airport's policies of hazard or liability insurance or which will prevent the City from procuring such policies in companies acceptable to the City.

(d) Concessionaire may provide such insurance through self-insurance program in lieu of a commercially purchased insurance program; provided that such self-insurance program meets the State of Texas requirements and the City's self-insurance requirements as promulgated from time to time by the City's Risk Manager and such self-insurance program is adequately funded and properly serviced. No such self-insurance program shall be permitted unless and until Concessionaire obtains the prior written approval of the City, determined in the City's sole discretion. Notwithstanding such acceptance of Concessionaire's self-insurance program, if any, the City in its sole discretion reserves the right to rescind such acceptance or to amend the City's self-insurance requirements from time to time upon 30 days written notice to Concessionaire.

Section 11.02 INDEMNITY. CONCESSIONAIRE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this Agreement, including any acts or omissions of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant or subcontractor of CONCESSIONAIRE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONCESSIONAIRE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONCESSIONAIRE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONCESSIONAIRE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONCESSIONAIRE of any of its obligations under this paragraph

Section 11.03 INJURY CAUSED BY THIRD PARTIES. Concessionaire covenants and agrees that the City (including its agents, employees, officers, directors, elected officials, designated management representatives and shareholders) shall not be responsible or liable to Concessionaire, or any entity or person claiming by, through or under Concessionaire, for any injury, death or damage to persons or property resulting from any latent defect in the Premises, the Terminal, the Airport and appurtenant areas; or from

any acts or omissions of entities, persons, concessionaires or other occupants occupying adjoining premises in the Terminal or any other part of the Airport or the agents, servants, employees, contractors or invitees of such entities, persons, concessionaires or occupants; or from fire, electricity, water, snow or leaks from any part of the Terminal or Terminal systems, including sprinkler systems; or from any other cause of whatever nature, unless caused by or due to the direct and sole negligence or direct and sole misconduct of the City, its agents and employees.

ARTICLE XII. UTILITIES

Section 12.01 UTILITY SERVICES AND CHARGES. (a) The City shall provide access to commercially reasonable and normal amounts (as determined by the City) of electric, heat, air conditioning, and if applicable, gas, domestic cold water, high temperature hot water and sewage services to the Premises for use by Concessionaire provided by utility systems, connections and related equipment existing as of the Commencement Date but shall have no obligation to provide telephone or data communication services to the Premises. With respect to telephone and data transmission services, Concessionaire (including all retail, service and food & beverage concessions) shall make separate arrangements with the applicable public utility service provider and shall pay directly to the applicable public utility service provider all charges incurred. Notwithstanding the foregoing and if the required by the City, all concessionaires operating food and beverage concessions shall pay for the cost of the installation of separate meters for electric, gas (if applicable), gas lines (if applicable) and hot water heaters. Should Concessionaire require access to utility services over and above those provided by the City as determined by the Director from time to time, Concessionaire shall pay directly for the costs of extending those additional utilities to the Premises and Concessionaire shall pay for all such additional utilities consumed within the Premises within 10 days following receipt of an invoice from the City. Concessionaire shall be solely responsible for and shall promptly pay for the construction and installation of all utility submeters required for electric and gas (if applicable) to be consumed by Concessionaire within the Premises as well as all fees, deposits and charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for discontinued or interrupted service, and the like, for water (domestic cold and high temperature hot, if applicable), gas (if applicable), sewage (if applicable), electric, fire alarm, burglar alarm, telephone, data transmission, cable television, sewer and sanitation, solid waste disposal and any other service or utility used in or upon or furnished to the Premises, including, without limitation, any services to be supplied by the City, irrespective of whether any of the foregoing are initially paid in advance by the City, or otherwise. Any such submeters required for the conduct of Concessionaire's business operations in the Premises shall be installed by Concessionaire, at its sole cost and expense, in locations approved by the City and/or the appropriate public utility service provider.

(b) For all food & beverage concessions, at the election of the City, Concessionaire shall pay to the City for certain utilities used and consumed by Concessionaire for the conduct of its business within the Premises on a pro-rata square foot basis, or on a submetered basis where possible, including, without limitation, charges relating to and determined on the following basis: (i) for electric, Concessionaire shall make separate arrangements with the applicable public utility service provider for supply and separate submetering of electricity and shall pay directly to the applicable public utility service provider all charges incurred; (ii) for gas (if applicable), Concessionaire shall make separate arrangements with the applicable public utility service provider for supply and separate submetering of gas and shall pay directly to the applicable public utility service provider all charges incurred for food & beverage concessions that are not located within or reasonably adjacent to the food court(s) in the Terminal(s); (iii) for food court food & beverage concessions for gas consumption (if applicable), Concessionaire shall pay to the City on a pro-rata square foot basis, the proportionate share of all gas consumption charges incurred for the operation of all concessions in the food court area which will reflect fully compensatory, non-discriminatory rates reasonably established and allocated to the Premises by the City from time to time and Concessionaire's proportionate share of gas consumption charges shall be determined by multiplying the total gas consumption charges incurred by the

City for the operation of the food court area by a fraction, the numerator of which is the number of square feet of Floor Area in the Premises and the denominator of which is the number of square feet of all food & beverage concession facilities located within or reasonably adjacent to the food court area. Where possible, in those cases where the Concessionaire is paying for certain utilities, utility consumption shall be determined by separate submetering. If separate submetering is not possible for any such utility services, the Director shall make a reasonable allocation to calculate the amount owed by Concessionaire at rates which will reflect fully compensatory, non-discriminatory, standard rates established by the City and/or applicable public utility service providers, as the case may be, from time to time. Any such utility charges shall be billed by the City to Concessionaire in arrears and shall be paid, as Additional Rent, with the next monthly installment of Guaranteed Rent following Concessionaire's receipt of the invoice therefor.

(c) In no event shall the City be liable for damages, loss of business, loss of profits or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of electricity, services from a central utility plant or any other utility or other service, or if either the quantity, quality or character thereof supplied to or by the City is changed or is no longer available for Concessionaire's requirements, nor shall any such interruption, reduction, disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to constitute actual or constructive eviction of Concessionaire, or excuse or relieve Concessionaire from its obligations hereunder, including but not limited to the payment of Rental or all other sums, damages, fees, costs and expenses payable under this Agreement. Any obligation of the City to furnish light, power and services from a central utility plant shall be conditioned upon the availability of adequate energy sources. The City shall have the right to reduce heating, cooling and lighting within the Premises and the public areas as required by any mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program. Notwithstanding anything to the contrary contained in this Section 12.01(c), if any utility to the Premises is supplied by or through the City and, due to the sole negligence of the City, such utility to the Premises is interrupted which forces Concessionaire to close its business within the Premises for more than 2 complete and consecutive days, then Guaranteed Rent shall abate for the period commencing on the 3rd day after Concessionaire is forced to close its business within the Premises and shall continue until the earlier of: (i) the date such utility is restored to the Premises, or (ii) the date Concessionaire reopens its business in the Premises.

(d) If applicable, Concessionaire shall operate its additional heating, ventilating and air conditioning ("HVAC") system(s), if applicable, serving the Premises so as to maintain comfortable conditions during regular Terminal concession business hours. Temperatures in the Premises shall be compatible with temperatures in the Terminal. Concessionaire's obligation to connect to the services supplied by the City, as set forth in this Section 12.01 and **Exhibit B**, as well as Concessionaire's operation and maintenance of its additional HVAC system(s) within the Premises, shall be as set forth herein, in **Exhibit B** and in any related exhibit(s), such as the Design Handbook or approved Final Drawings. If Concessionaire desires to install any equipment which shall exceed the capacity of any utility facilities or which shall require additional utility facilities, Concessionaire shall not have the right to do so without the Director's prior written approval of Concessionaire's plans and specifications therefor. If such installation is approved by the Director, and if such additional facilities are provided to accommodate Concessionaire's installation, Concessionaire agrees to pay the City, on demand, the cost of providing such additional utility facilities or utility facilities of greater capacity. Concessionaire shall in no event use any of the utility facilities in any way which would overload or overburden the utility systems at the Terminal and the Airport. The City shall have the right to impose reasonable restrictions and require Concessionaire to comply with any state or local regulations or measure adopted from time to time with respect to conservation of any utilities including water usage.

ARTICLE XIII. SUBORDINATION AND TIME OF EMERGENCY

Section 13.01 **SUBORDINATION.** This Agreement shall be subordinate to the provisions of any

existing or future agreement between the City and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to take any of the property under lease or substantially alter or destroy the commercial value of the leasehold interest granted herein, the City shall not be held liable therefore, but in such event Concessionaire may cancel this Agreement upon ten (10) days' written notice to the City. Notwithstanding the foregoing, however, the City agrees that, in the event the City becomes aware of any such proposed or pending agreement or taking, the City shall utilize the City's best efforts to (i) give the maximum possible notice thereof to Concessionaire, and (ii) cooperate with Concessionaire to mitigate the impact of such agreement or taking or other government action upon Concessionaire, including but not limited to reasonably assisting Concessionaire in securing alternate premises, and minimizing any disruption of or interference with Concessionaire's business.

Section 13.02 **TIME OF EMERGENCY.** During time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

ARTICLE XIV. ASSIGNMENT AND SUBLETTING

Section 14.01 **RESTRICTIONS, PROCEDURES AND OTHER ASPECTS GOVERNING THE CONCESSIONAIRE.** (a) Concessionaire shall not transfer or assign this Agreement or Concessionaire's interest in or to the Premises or any part thereof without having first obtained the prior written consent of the City which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas; provided, however, the transfer of Concessionaire's securities in connection with Concessionaire becoming a publicly held company or issuing securities in connection with an additional public offering of securities shall not constitute a transfer or assignment of this Agreement. The public trading of Concessionaire's securities on a nationally recognized exchange or on the NASDAQ market shall not constitute or be considered to result in any such transfer or assignment of this Agreement. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of Concessionaire's interest in the Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of the City to such pledge or collateral assignment may be given by the City acting by and through the Director. Each transfer, assignment or subletting to which there has been consent shall be by instrument in writing, in form satisfactory to the City, and shall be executed by the transferee, assignee or subconcessionaire who shall agree in writing for the benefit of the City to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to first obtain in writing the City's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective. The receipt by the City of rent from an assignee, subtenant or occupant of the Premises shall not be deemed a waiver of the covenant in this Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Concessionaire from further observance or performance by Concessionaire of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by the City unless such waiver be in writing, signed by the Director.

(b) Notwithstanding the foregoing provisions of this Article XIV, Concessionaire shall have the right to transfer or assign this Agreement, with the City's consent, such consent not to be unreasonably withheld, to: (i) a subsidiary of Concessionaire or its parent corporation or to an entity that is an affiliate of Concessionaire or its parent corporation; (ii) any corporation with which Concessionaire shall merge, reorganize or consolidate; or (iii) any corporation acquiring all or substantially all of the assets of

Concessionaire or which may succeed to a controlling interest in the business of Concessionaire; provided that in the case of any and each such transfer or assignment under clauses (ii) and (iii) above which is permitted hereunder, the City shall have the discretionary right to withhold its consent unless; (1) such transferee or assignee shall have a net worth equal to or greater than Concessionaire (or its guarantor, if any) as of the effective date of any proposed transfer or assignment; (2) such transferee or assignee shall have proven airport concession operating experience and the ability to efficiently and effectively operate the business in the Premises consistent with at least as high a standard as then exists in the Premises; (3) the business conducted in the Premises by such transferee or assignee shall be conducted under the same use and under a trade name permitted to be used by Concessionaire hereunder; (4) Concessionaire shall not be in default after the applicable notice and cure periods under any of the terms and provisions hereof; (5) the use of the Premises by such Concessionaire shall not violate any agreements affecting the Premises, the City or other tenants or occupants in the Airport and shall not disrupt the concession mix within the Terminal as determined in the sole and absolute discretion of the City; (6) if Concessionaire is a certified DBE or if Concessionaire's certified DBE participant is a member/partner of a limited liability company/general partnership or joint venturer of a joint venture with Concessionaire, any such transfer or assignment of this Agreement shall not effect, modify or otherwise jeopardize the required DBE participation interest under this Agreement; (7) except as may otherwise be prohibited under federal securities laws, notice of any proposed transfer or assignment shall be given to the City at least 30 days prior to its proposed effective date, and there shall be delivered to the City instruments evidencing such proposed transfer or assignment and the agreement of such transferee or assignee to assume and be bound by all of the terms, conditions and covenants hereof, all in form acceptable to the City; and (8) Concessionaire and its guarantor, if any, shall continue to remain fully liable for the payment of all sums due and the performance of all the terms and conditions hereof.

(c) Concessionaire shall not sublet the Premises or any part thereof without having first obtained the prior written consent of the City which may be given by the City acting by and through the Director. In the event Concessionaire requests permission to sublease, the request shall be submitted to the Director prior to the effective date of the sublease requested and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the subconcessionaire, the area or space to be subleased, the rental to be charged, the type of business to be conducted, recent audited financial statements and history and all other information requested by said Director shall be specified. Concessionaire shall not sublease a total of more than 25% of the Premises. The City acknowledges that Concessionaire will immediately sublease the Premises to Host-Chelsea Joint Venture.

(d) In the event of a sublease where the rental per square foot established in the sublease exceeds the rental per square foot established in this Agreement, Concessionaire shall pay to the City as Additional Rent the excess of the rental received from the subconcessionaire over that specified to be paid by Concessionaire herein per square foot. Should any method of computation of rental to be paid by a subconcessionaire, other than computation based upon a rental rate per square foot be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Premises by Concessionaire exceeds the rental paid to the City for said proportionate area of the Premises.

(e) Should the transfer or assignment of this Agreement be approved by the City and to the extent that such transferee or assignee assumes Concessionaire's obligation hereunder, Concessionaire shall by virtue of such assignment be released from such obligation to the extent to City approves such release in writing. Should the subletting of the Premises be approved by the City, however, Concessionaire agrees and acknowledges that Concessionaire shall remain fully and primarily liable under this Agreement, notwithstanding any such sublease and that any such subconcessionaire shall be required to attorn to the City under the terms of this Agreement.

ARTICLE XV. WASTE OR NUISANCE

Section 15.01 **WASTE OR NUISANCE.** Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to injure, deface or otherwise harm the Premises, the Terminal or the Airport, nor commit any waste upon the Premises, the Terminal or the Airport, and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to commit any nuisance or other act or thing which may constitute a menace or which may impact either the City's operation of the Terminal or the Airport or disturb the quiet enjoyment of any other occupant or concessionaire of the Airport. Concessionaire shall not use or permit to be used any medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or any other sound producing or other device which will carry sound or odors outside the Premises except as may otherwise be approved in advance in writing by the Director and, upon notice from the Director to Concessionaire's business representative at the Premises, Concessionaire shall cause any such noise or odors to cease immediately. Concessionaire shall not allow any use of the Premises or any other portion of the Terminal and/or Airport in a manner which is a source of annoyance, disturbance or embarrassment to the City, or to the other concessionaires and occupants of the Terminal and/or Airport or which is deemed by the City, in its sole discretion, as not in keeping with the character of the Terminal and/or Airport. The Premises shall not be used for any unlawful or immoral purpose or which will invalidate or increase the premiums on any of the City's insurance.

ARTICLE XVI. TRADE NAME; CONCESSION MARKETING FUND

Section 16.01 **TRADE NAME.** Concessionaire shall operate its business in the Premises under the name specifically set forth in the Data Sheet ("Trade Name") and shall not change the advertised name or character of the business operated in the Premises without the prior written approval of the Director, which may be withheld in the City's absolute discretion.

Section 16.02 **SOLICITATION OF BUSINESS.** Concessionaire shall not give samples, approach customers, distribute handbills or other advertising matter or otherwise solicit business in the parking or other public areas or any part of the Terminal or the Airport other than in the Premises. In the event Concessionaire violates the foregoing, Concessionaire shall, at Concessionaire's sole cost and expense, be responsible to clean the area of any such materials so distributed by Concessionaire, its agents or employees. Notwithstanding the foregoing, the Aviation Director may approve in writing activities, prohibited in this Section 16.02, to be conducted for a limited period of time.

Section 16.03 **CONCESSION MARKETING FUND.** The City shall cause to be provided a central marketing and promotional program which, in the City's sole judgment, will serve to promote the overall concession program and facilities in the Airport. Concessionaire, along with other concession facility operators will contribute to the fund for this program, which shall be known as the Concession Marketing Fund. Concessionaire, from and after the Rental Commencement Date, shall contribute during each month, as Concessionaire's share to the Concession Marketing Fund, and pay to the City as Additional Rent, an amount equal to one percent (1%) of Concessionaire's monthly Gross Receipts. This amount is payable to the City and must be paid no later than the 15th day following the end of each Lease Month. The City shall not be obligated to expend more for marketing and promotional programs than is actually collected from Concessionaire and other concession facility operators in the Airport. Any services and personnel so provided shall be under the exclusive control and supervision of the Director, who shall have the sole authority to employ and discharge personnel, retain third party independent contractors and to establish all budgets with respect to the Concession Marketing Fund. The primary purpose, but in no way a limitation, of the Concession Marketing Fund, will be used to fund intra-Airport promotional and advertising programs such as permanent directories, graphics, take-one directory pamphlets and establishing customer service and

training programs with respect to the operations of the concession facilities in the Airport, such as customer surveys, "secret shopper" programs and sales technique seminars or on any other items that may enhance the user's overall experience in the Airport. The City shall conduct quarterly meetings to discuss the promotional and advertising programs and customer service and training programs. The City reserves the right at any time to terminate the Concession Marketing Fund and, in such event, shall notify Concessionaire in writing. Thereafter, in the event of such termination, Concessionaire shall no longer be obligated to make any further contributions to the Concession Marketing Fund and any remaining funds previously contributed to the Concession Marketing Fund shall be used by the City to promote the overall concession program and facilities within the Airport.

ARTICLE XVII. DAMAGE AND DESTRUCTION

Section 17.01 **FIRE AND OTHER DAMAGE.** (a) If the Premises shall be partially damaged by fire or other casualty, the Concessionaire shall give immediate notice thereof to the City and the same shall be repaired at the expense of the City without unreasonable delay unless the City determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until said building is so repaired, monthly Rental payments hereunder shall abate in such proportion as the part of the Premises thus destroyed or rendered untenable bears to the total Floor Area of the Premises; provided, however, that if the Premises shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, the Rentals hereunder shall not cease or be abated during any repair period. In the event that the damage to the Premises should be so extensive as to render it untenable, the Rentals shall cease until such time as it shall be put in repair, but in the event the Premises is damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of the City not to rebuild the same, then at the option of the City, and upon notice to Concessionaire, this Agreement shall cease and come to an end and the Rentals hereunder shall be apportioned and paid up to date of such damage. If the City elects to rebuild the Premises, the City shall notify Concessionaire of such intention within thirty (30) days of the date of the damage, otherwise this Agreement shall be deemed canceled and of no further force or effect. Notwithstanding any provision above, should the destruction or damage to the Premises (to the extent of work that is to be provided as part of the City's obligation) be so great that it will not be reasonably repaired or restored by the City within one hundred twenty (120) days to the state of fitness that existed prior to the commencement of improvements, if any, performed by Concessionaire, Concessionaire may, at Concessionaire's option, terminate this Agreement by written notification of same given to the City within thirty (30) days after the occurrence of such casualty, or upon notification that the work will not be completed within the one hundred twenty (120) days.

(b) The City's obligations to rebuild or repair under this Article shall, in any event, be limited to restoring the Premises to substantially the condition that existed prior to the commencement of improvements, if any, performed by Concessionaire and shall further be limited to the extent of the insurance proceeds available to the City for such restoration. Concessionaire agrees that if the City elects to repair or rebuild as set forth herein, then Concessionaire will proceed with reasonable diligence and, at its sole cost and expense, to rebuild repair and restore its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Concessionaire in or about the Premises in a manner and to a condition at least equal to that which existed prior to the damage or destruction. Should the commencement, construction or completion of said repair, reconstruction or replacement be prevented or delayed by reason of war, civil commotion, acts of God, strikes, governmental restrictions or regulations, fire or other casualty, or any other reason beyond the control of either party, the time for commencing or completing the repair, reconstruction or replacement, as the case may be, shall automatically be extended for the period of each such delay.

ARTICLE XVIII. NON-DISCRIMINATION

Section 18.01 GENERAL PROHIBITION. Any discrimination by Concessionaire, its agents or employees on account of race, creed, color, sex, age, disability, religion or national origin, in employment practices or in the use of or admission to the Premises is prohibited. Concessionaire, as a part of the consideration hereof, does hereby covenant and agree that: (a) no person on the grounds of race, creed, color, sex, age, disability, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (b) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age disability, religion or national origin shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination, (c) that Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended and/or supplemented.

Section 18.02 AFFIRMATIVE ACTION. To the extent required by law, Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, sex, age, disability, religion or national origin be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to Concessionaire that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect. Concessionaire shall comply with the City's Nondiscrimination Clause as set forth in the Concessionaire Handbook which shall include submittal of Concessionaire's affirmative action plan for equal employment opportunity relating to the conduct of its business in the Premises. If requested by the City, this plan shall be submitted on an annual basis and monitored through the submission of an annual status report reflecting prior year activity. Quarterly affirmative action status reports shall also be provided, if requested by the City. Any and all of the provisions of this Article which pertain to Concessionaire shall also apply to any MBEs/WBEs/AABEs/SBEs utilized by Concessionaire in the operation of its business in the Premises.

ARTICLE XIX. DEFAULT

Section 19.01 CONCESSIONAIRE'S DEFAULT. (a) Notwithstanding any provision herein to the contrary and irrespective of whether all or any rights conferred upon the City by this Article XIX are expressly or by implication conferred upon the City elsewhere herein, each of the following shall constitute an the event of default by Concessionaire: (i) Concessionaire shall fail to pay any Rentals or any other charges whatsoever due as provided for in this Agreement and such failure shall continue for a period of 10 days after written notice thereof, provided that such notice from the City shall be in lieu of, and not in addition to, any notice of default required by applicable laws; or (ii) Concessionaire shall neglect or fail to perform or observe any of the other terms, conditions, or covenants herein contained, and on Concessionaire's part to be performed or in any way observed if such neglect or failure shall continue for a period of 30 days after written notice of such neglect or failure (or if more than 30 days shall be required because of the nature of the default, if Concessionaire shall fail within said 30 days to commence and thereafter diligently proceed to cure such default to completion, provided that in no event shall such cure period extend beyond 60 days or such longer period of time as is approved by the Director in writing and if Concessionaire's cure period is so extended, Concessionaire must, within 5 days after the written extension notice provide a written plan to the Director outlining all steps Concessionaire is taking to cure the default and when the cure shall be completed), provided that such notice from the City shall be in lieu of, and not in addition to, any notice of default required by applicable laws; or (iii) Concessionaire shall fail to commence construction of Concessionaire's Work within 30 days of the City's issuance of the City's building permits and such failure is not occasioned by reason of force majeure; or (iv) Concessionaire shall fail to move into

the Premises and to initially open for business on or before the Latest Rental Commencement Date and such failure is not occasioned by reason of force majeure; or (v) Concessionaire shall fail to operate continuously in the manner and during the hours established by the Director pursuant to Section 7.02 hereof or for the Permitted Use specified in the Data Sheet; or (vi) Concessionaire shall voluntarily discontinue its operations at the Premises for a period of 3 consecutive days and such failure is not occasioned by reason of force majeure or permitting this Agreement to be taken under any writ of execution or similar writ or order; or (vii) Concessionaire shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or (viii) an Order of Relief shall be entered at the request of Concessionaire or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof and shall not be vacated within 60 days; or (ix) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed within 90 days after the filing thereof; or (x) by or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of 60 days; (xi) if applicable, Concessionaire shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter; or (xii) Concessionaire shall fail to carry insurance as required under this Agreement or to comply with any applicable law, rule or regulation concerning security, and such failure continues for forty-eight (48) hours after written notice from the City thereof; or (xiii) a governmental authority, board, agency or officer with competent jurisdiction terminates or suspends any certificate, license, permit or authority held by Concessionaire without which Concessionaire shall not be lawfully empowered to conduct its business operations in the Premises (xiv) the rights of Concessionaire hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity by or in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other similar proceedings or occurrences; or (xv) if applicable, the failure of Concessionaire to initially obtain and thereafter maintain continuously throughout the Term, its eligibility and certification from the City of its DBE status and/or to renew such eligibility and certification as may be required by the City from time to time and such failure shall continue for a period of 30 days.

(b) If any condition of Concessionaire's event of default shall occur which shall not be timely cured as provided in Section 19.01(a), in addition to any other rights or remedies the City may have by law, the City, then, or at any time thereafter, but prior to the removal of such event of default shall have the right, either to terminate this Agreement by giving at least 5 days written notice to Concessionaire at which time Concessionaire will then quit and surrender the Premises to the City, but Concessionaire shall remain liable as hereinafter provided, or, to enter upon and take possession of the Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly if necessary, without prejudice to any remedy for arrears of Rentals or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession, in which event the City shall have the right to enforce all of the City's rights and remedies hereunder including the right to recover all Rentals and other charges payable by Concessionaire hereunder as they become due hereunder. The City's repossession of the Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of Rentals or any other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction. If the City elects to terminate this Agreement, the City shall have the right to recover immediately from Concessionaire damages calculated

as follows: (i) all unpaid Rentals that had been earned at the time of termination of the Agreement; and (ii) the worth at the time award of the amount by which the unpaid Rentals which would have been earned after termination until the time of the award exceeds the amount of the loss of such Rentals that Concessionaire affirmatively proves has been or could have reasonably been avoided; (iii) the worth at the time of award of the amount by which the unpaid Rentals for the balance of the Term after the time of award exceeds the amount of the loss of Rentals that Concessionaire affirmatively proves could reasonably be avoided; and (iv) any other amount necessary to compensate the City for all damages proximately caused by Concessionaire's default or which in the ordinary course would likely result therefrom (for purposes of subsection (ii) above, "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by Texas law and for purposes of subsection (iii) above, "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the Airport at the time of the award, plus one (1%) percent per annum to its present worth). Upon repossession, the City shall have the right (at its election and whether or not this Agreement shall be terminated) to relet the Premises or any part thereof for such period or periods (which may extend beyond the Term of this Agreement) at such rent or rent and upon such other terms and conditions as the City may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Concessionaire and the City agree that the City's duty to relet the premises or otherwise to mitigate damages under this Agreement shall be limited to those requirements set forth in the Texas Property Code, as amended. The City shall in no event be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever for failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rent under such reletting, so long as the City uses objectively reasonable efforts to comply with said Texas Property Code. The City and Concessionaire agree that any such duty shall be satisfied and the City shall be deemed to have used objective reasonable efforts to relet the Premises and mitigate the City's damages by: (1) posting a "For Lease" sign on the Premises; (2) advising the City's leasing agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises.

(c) If the City shall elect to relet, then rent received by the City from such reletting shall be applied: first, to the payment of any indebtedness other than Rentals due hereunder from Concessionaire to the City under this Agreement, second, to the payment of any cost of such reletting; third, to the payment of Rentals due and unpaid hereunder; and the residue, if any, shall be held by the City and applied hereunder. Should that portion of such rent received from such reletting during any month, which is applied to the payment of Rentals hereunder, be less than the Rentals payable during that month by Concessionaire hereunder then Concessionaire shall pay such deficiency to the City. Such deficiency shall be calculated and paid monthly. Concessionaire shall also pay to the City, as soon as ascertained, any costs and expenses incurred by the City in such reletting not covered by the rent received from such reletting of the Premises.

(d) If the City shall terminate this Agreement or take possession of the Premises by reason of an event of default, Concessionaire and those holding under Concessionaire, shall forthwith remove their goods and effects from the Premises. If Concessionaire or any such claimant shall fail to effect such removal forthwith, the City may, without liability to Concessionaire or those claiming under Concessionaire, remove such goods and effects and may store the same for the account of Concessionaire or of the owner thereof at any place selected by the City, or, at the City's election, and upon giving 15 days written notice to Concessionaire of date, time and location of sale, the City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as the City in its sole discretion may deem advisable. If, in the City's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale price thereof, as the case may be, the City shall have the right to dispose of such goods in any manner the City may deem advisable. Concessionaire shall be responsible for all costs of removal, storage and sale, and

the City shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by the City. If any surplus sale proceeds remain after such reimbursement, the City may deduct from such surplus any other sums due to the City hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds. Any amount paid or expense or liability incurred by the City for the account of Concessionaire may be deemed to be Additional Rent and the same may, at the option of the City, be added to any Rentals then due or thereafter falling due hereunder.

(e) If the City shall enter into and repossess the Premises for reason of the default of Concessionaire in the performance of any of the terms, covenants or conditions herein contained, then, and in that event, Concessionaire hereby covenants and agrees that Concessionaire will not claim the right to redeem or re-enter the Premises to restore the operation of this Agreement and Concessionaire hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Concessionaire, expressly waive its right, if any, to make payment of any sum or sums of Rentals, or otherwise, of which Concessionaire shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Concessionaire under these presents, or any of the covenants thereof, by reason of such payment

(f) Anything to the contrary notwithstanding, the City shall not be required to give notice under this Article XIX more than three (3) times for the same type of default in any consecutive (12) twelve month period. All rights and remedies of the City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed desirable. If proceedings shall, at any time, be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Concessionaire shall be permitted to retain possession of the Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Agreement.

Section 19.02 **CITY'S DEFAULT.** (a) Each of the following shall constitute an the event of default by the City: (i) the permanent abandonment of the Airport by the City; or (ii) the issuance by a court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting business operations within the Premises and the remaining in force of such injunction for at least 60 days; or (iii) the default by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed or observed by the City and the failure of the City to remedy such default for a period of 60 days after written notice from Concessionaire of the existence of such default has been received by the City or if more than 60 days shall be required because of the nature of such default, if the City shall fail within said 60 day period to commence and thereafter diligently proceed to cure such default; or (iv) the assumption by the United States government, or any authorized agency thereof, or the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict the Concessionaire from conducting business operations within the Premises hereunder if such restriction shall be continued for a period of 3 consecutive months or more.

(b) If any event of default shall occur which is not cured by the City as provided in Section 19.02(a) and notwithstanding any waiver or indulgence granted by Concessionaire with respect to any event of default in any form or instance, Concessionaire's sole right and remedy shall be to declare this Agreement to be terminated upon not less than 30 days prior written notice to the City. If Concessionaire elects to terminate this Agreement due to the City's default, this Agreement shall terminate upon the expiration of such 30 day notice period to the City and Concessionaire shall pay to the City all Rentals and other charges due under this Agreement which shall have accrued prior to the effective date of any such termination. Concessionaire shall not be entitled to any other claims or remedies and Concessionaire hereby waives any such claims,

including, without limitation, claims for lost business opportunity, claims for lost profits and all monetary claims for breach of this Agreement under Federal and any state law.

ARTICLE XX. BANKRUPTCY OR INSOLVENCY

Section 20.01 CONCESSIONAIRE'S INTEREST NOT TRANSFERABLE. Neither Concessionaire's interest in this Agreement, nor any estate hereby created in Concessionaire nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the United States Bankruptcy Code, as amended ("Code").

Section 20.02 ELECTION TO ASSUME AGREEMENT. Even though this is an Agreement of real property in an airport, the parties contractually agree that this Agreement shall be construed to be a lease of real property in a shopping center within the meaning of Section 365 of the Code. If Concessionaire becomes a Debtor under Chapter 7, 11 or 13 of the Code, and the Trustee or Concessionaire, as Debtor-In-Possession, elects to assume this Agreement for the purpose of assignment to a third party or otherwise, such election and assignment, if any, may only be made if all the terms and conditions of the applicable provisions of the Code are satisfied. If the Trustee or Concessionaire, as Debtor-In-Possession, fails to elect to assume or reject this Agreement by the 60th day after the entry of the Order for Relief in a case under Chapter 7, 11 and 13 of the Code, this Agreement shall thereafter be deemed rejected and terminated in accordance with Section 365 of the Code. The Trustee or Concessionaire, as Debtor-In-Possession, shall thereupon immediately surrender possession of the Premises to the City and the City shall have no further obligation to Concessionaire or Trustee hereunder. The acceptance of Rental by the City after the 60th day shall not be deemed a waiver of the City's rights herein and under Section 365 of the Code, and the City's right to be compensated for damages in such bankruptcy case shall survive.

Section 20.03 OCCUPANCY CHARGES. When, pursuant to the Code, the Trustee or Concessionaire, as Debtor-In-Possession shall be obligated to pay reasonable use and occupancy charges for the use of the Premises or any portion thereof, such charge shall not be less than the Guaranteed Rent and Percentage Rent and all other monetary obligations of Concessionaire for the payment of Additional Rent.

ARTICLE XXI. ACCESS BY THE CITY

Section 21.01 RIGHT OF ENTRY. The City, its agents and designated management representatives shall have the right to enter the Premises for any reasonable purpose (including inspecting the condition of the Premises) upon reasonable notice to Concessionaire. Concessionaire shall cooperate upon receipt of any such notice and arrange for its personnel to be available during any such entry. The City shall have the further right to enter the Premises to make such repairs, alterations, improvements or additions as it may deem necessary or desirable, and shall be allowed to take all material into and upon the Premises that may be required without the same constituting an eviction of Concessionaire in whole or in part, and Guaranteed Rent, Percentage Rent, Additional Rent and other charges reserved hereunder shall not abate while said repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Concessionaire, or otherwise. If the City exercises the foregoing rights and as a result thereof there is a material adverse effect to Concessionaire's use and occupancy of the Premises to the extent that Concessionaire is forced to close its business in the Premises for 2 or more complete consecutive days, Concessionaire's obligation to pay Guaranteed Rent shall be abated during the period that Concessionaire is totally prohibited from operating. Upon the reopening of the Premises, which Concessionaire shall reopen on the day following the cessation of such material adverse effect, Concessionaire's payment of Guaranteed Rent to the City shall immediately recommence on the date of the reopening of the Premises. In exercising such right of entry, the City shall use reasonable efforts not to disrupt Concessionaire's business in the Premises. The City or its agents and designated management representatives shall have the further right to

enter the Premises without notice at any time in the event of emergency. Finally, the City, during the last 12 months prior to the expiration of the Term, may enter the Premises for the purpose of exhibiting the same to prospective concessionaires and their representatives.

ARTICLE XXII. CONCESSIONAIRE'S PROPERTY

Section 22.01 TAXES ON CONCESSIONAIRE'S PERSONAL PROPERTY. Concessionaire shall be responsible for, and agrees to pay prior to delinquency, any and all taxes or other taxes, assessments, levies, fees and other governmental charges and impositions of every kind of nature, regular or special, direct or indirect, presently foreseen or unforeseen or known or unknown, levied or assessed by municipal, county, state, federal or other governmental taxing or assessing authority, upon, against or with respect to (i) Concessionaire's leasehold interest in the Premises, and (ii) the Fixed Improvements, the Operating Equipment, all furniture, fixtures, equipment, inventory and any other personal property of any kind owned by, or placed, installed or located in, within, upon or about the Premises by Concessionaire (collectively, "Concessionaire's Taxes"). Concessionaire shall provide the Director with evidence of Concessionaire's timely payment of such Concessionaire's Taxes upon the Director's request. If at any time any of such Concessionaire's Taxes are not levied and assessed separately and directly to Concessionaire (for example, if the same are levied or assessed to the City, or upon or against, the building containing the Premises and/or the land underlying said building), Concessionaire shall pay to the City Concessionaire's share thereof as reasonably determined and billed by the City.

Section 22.02 LOSS AND DAMAGE. The City shall not be responsible or liable to Concessionaire for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying premises or any part of the premises adjacent to or connected with the Premises or any part of the building of which the Premises are a part, or any other area in the Airport, or for any loss or damage resulting to Concessionaire or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the foregoing) for any damage or loss of property within the Premises from any cause whatsoever. Concessionaire shall give immediate notice to the Director in case of any damage to or destruction of all or any part of, or of accidents occurring within the Premises, or of defects therein or of any damage to or destruction of any inventory, fixtures or equipment within the Premises.

Section 22.03 THE CITY'S LIEN. Concessionaire hereby gives to the City a lien upon all of its property, now, or at any time hereafter placed in or upon the Premises to secure the prompt payment of the charges herein stipulated to be paid for the use of the Premises; all exemptions of such property, or any of it, being hereby waived. In the event that the amount of the Letter of Credit provided by Concessionaire to the City under the terms of this Agreement at all times during the term of this Agreement shall equal the greater of the Rentals payable by Concessionaire to the City for the current calendar year, then, and in such event, the provisions set forth above shall not be applicable to this Agreement.

ARTICLE XXIII. HOLDING OVER

Section 23.01 HOLDING OVER. Any holding over after expiration of the Term with the consent of the Director shall be construed to be a tenancy from month to month pursuant to the terms hereof at one-twelfth (1/12th) of an amount equal to one hundred percent (100%) the Guaranteed Rent required to be paid by Concessionaire for the last full Lease Year of the Term, together with Percentage Rent and an amount estimated by the City for the monthly Additional Rent payable pursuant hereto, and shall be on the same terms and conditions as herein specified so far as applicable. Any holding over without the Director's written consent shall entitle the City to reenter the Premises. Concessionaire shall indemnify, defend and hold harmless the City from and against any and all loss, claims, demands, liabilities, damages (including,

without limitation, consequential damages), costs and/or expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Concessionaire to surrender the Premises in the manner and condition required by this Agreement upon the expiration of the Term or earlier termination of this Agreement, including, without limitation, any claims made by any proposed new concessionaire founded upon such failure.

Section 23.02 **SUCCESSORS.** All rights and liabilities herein given to, or imposed upon, the parties hereto shall inure to and be imposed upon the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one entity or individual comprising Concessionaire, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Concessionaire unless the assignment to such assignee has been approved in advance by the Director in writing as required by Article XIV.

ARTICLE XXIV. RULES AND REGULATIONS

Section 24.01 **RULES AND REGULATIONS.** Concessionaire agrees to comply with and observe all reasonable rules and regulations, including, without limitation, the Concessionaire Handbook, established by the City from time to time, with respect to the Airport, the Terminal, the Premises or any related matter. Concessionaire and its employees shall faithfully observe and comply with any other reasonable rules which the Director may from time to time make after notice to Concessionaire, provided such rules apply to all similarly situated concession operators in the Airport and are reasonably related to the safety, care, appearance, reputation, operation or maintenance of the Terminal or the Airport or the comfort of occupants and others using the Airport. The City shall have not any duty or obligation to enforce such rules or the terms and conditions in any other concession agreement, lease or sublease as against any other concessionaire, lessee or tenant and the City shall not be liable to Concessionaire for violations of the same by other concessionaires, lessees, tenants, subtenants, invitees, their servants, employees, contractors, subcontractors and agents. Concessionaire's failure to keep and observe said rules and regulations shall constitute a breach of the terms hereof in the same manner as if the rules and regulations were contained herein as covenants.

ARTICLE XXV. QUIET ENJOYMENT

Section 25.01 **CITY'S COVENANT.** Subject to the terms and conditions hereof, upon payment by Concessionaire of the Rentals herein provided and other charges payable by Concessionaire hereunder, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the City.

ARTICLE XXVI. PERFORMANCE GUARANTEE

Section 26.01 **PERFORMANCE GUARANTEE.** Concessionaire shall deliver to the City and shall keep in force throughout the term of this Agreement either an irrevocable standby letter of credit in favor of City drawn upon a bank satisfactory to City or a surety bond payable to City. If a letter of credit is delivered it shall be in the exact form as set forth in Exhibit G to this Agreement. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Concessionaire to the Director on or before the date of the Agreement shall be in an amount not less than one half of the average minimum annual guarantees in effect during the initial term of this lease or THREE THOUSAND U.S. DOLLARS (U.S. $3,000.00). The City shall retain said performance guarantee for the benefit of the City throughout the Term of this Agreement as security for the faithful performance by Concessionaire of all of the terms, covenants and conditions of this Agreement. If Concessionaire defaults with respect to any

provision of this Agreement, including but not limited to the provisions relating to the payment of Rentals, the City may use, apply or retain all or any part of the performance guarantee for the payment of any Rentals or any other sum in default, or for the payment of any loss or damage which the City may suffer by reason of Concessionaire's default, or to compensate the City for any other amount which the City may spend or become obligated to spend by reason of Concessionaire's default. In no event, except as specifically hereinafter provided, shall the City be obliged to apply the same to Rentals or other charges in arrears or to damages for Concessionaire's failure to perform said covenants, conditions and agreements; however, the City may so apply the performance guarantee, at its option. The City's right to bring a special proceeding to recover or otherwise to obtain possession of the Premises before or after the City's declaration of the termination of this Agreement for non-payment of Rentals or for any other reason shall not in any event be affected by reason of the fact that the City holds the performance guarantee. In the event that the City regains possession of the Premises, whether by special proceeding, reentry or otherwise, because of Concessionaire's default or failure to carry out the covenants, conditions and agreements of this Agreement, the City may apply such performance guarantee to all damages suffered through the date of said repossession and may retain the performance guarantee to apply to such damages as may be suffered or shall accrue thereafter by reason of Concessionaire's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Concessionaire, or its successors or assigns, or any guarantor of Concessionaire hereunder, such performance guarantee shall be deemed to be applied first to the payment of any Rentals and/or other charges due the City for all periods prior to the institution of such proceedings, and the balance, if any, of such performance guarantee may be retained by the City in partial liquidation of the City's damages. The performance guarantee shall not constitute a trust fund. The City shall not be obligated to keep such performance guarantee as a separate fund but may commingle the performance guarantee with its own funds. Concessionaire shall not be entitled to interest on the performance guarantee. In the event the City applies the performance guarantee in whole or in part, Concessionaire shall, within 10 days after written demand by the City, deposit sufficient funds by delivering an amendment to the existing clean irrevocable standby letter of credit or delivering a new clean irrevocable standby letter of credit to maintain the performance guarantee in the initial amount. Failure of Concessionaire to supply such additional funds shall entitle the City to avail itself of the remedies provided in this Agreement for non-payment of Rentals by Concessionaire. If Concessionaire fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof, less any sums then due the City from Concessionaire under this Agreement, shall be returned to Concessionaire (or, at the City's option to the last assignee of Concessionaire's interest thereunder) within 30 days following the later of the expiration of the Term of this Agreement, the earlier termination thereof or Concessionaire's vacating and surrendering possession of the Premises to the City.

ARTICLE XXVII. MISCELLANEOUS

Section 27.01 WAIVER; ELECTION OF REMEDIES. One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same covenant or condition by the other party, and the consent or approval by the City to or of any act by Concessionaire requiring the City's consent or approval shall not be deemed to render unnecessary the City's consent or approval to or of any subsequent similar act by Concessionaire. No breach by either party of a covenant or condition hereof shall be deemed to have been waived by the non-breaching party unless such waiver is in writing and signed by a representative of the non-breaching party. The rights and remedies of the City hereunder or in any specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights and remedies which the City has or may have elsewhere hereunder or at law or equity, whether or not such Section, subsection or clause expressly so states.

Section 27.02 ENTIRE AGREEMENT. This Agreement supersedes all prior agreements between the parties and sets forth all the covenants, promises, agreements and conditions, and understandings between

the City and Concessionaire concerning the Premises, the Terminal and the Airport and there are no actual or implied covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth herein and none thereof shall be used to interpret, construe, supplement or contradict this Agreement. Neither the City nor its designated management representatives, employees, elected officials and/or agents have made any representation or warranty regarding the profitability of the Premises, the enplaned passenger and/or airline volume in the Terminal and/or the Airport or operating airlines in the Terminal and/or the Airport, and Concessionaire has not entered into this Agreement in reliance on any such representations, warranties or financial projections prepared or furnished to Concessionaire by the City or its designated management representatives, employees, elected officials and/or agents. No alteration, amendment, change or addition to this Agreement shall be binding upon the City or Concessionaire unless reduced to writing and signed by each party.

Section 27.03 INTERPRETATION; USE OF PRONOUNS; AUTHORIZATION. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint ventures between the parties hereto, it being understood and agreed that neither the method of computation of Rentals, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If this Agreement is signed on behalf of a corporation, partnership or other entity, the signer is duly authorized to execute this Agreement on behalf of such corporation, partnership or entity.

Section 27.04 DELAYS; FORCE MAJEURE. In the event either party is delayed in the performance of any obligation required by this Agreement, such performance shall be excused (unless the specific provision otherwise provides) for the period of the delay and performance of any such obligation shall be extended for a period equal to the delay, if and only if the delay is by reason of "force majeure", which as used herein shall mean fire, earthquake, hurricane, flood and a similar act of God constituting a natural disaster, explosion, terrorist action, war, executive order of government or similar causes not within the control of the entity being delayed. However, the time for Concessionaire's performance of any obligation shall not be extended due to any lack of funds, financial or economic problems of either Concessionaire or Concessionaire's architects, contractors, suppliers, agents, consultants and/or employees. If Concessionaire shall claim a delay due to force majeure, Concessionaire must notify the Director in writing for receipt by the City within 15 days of the first occurrence of an event of force majeure. Such notice must specify in reasonable detail the cause or basis for claiming force majeure and the anticipated delay in Concessionaire's performance. In no event shall any delay extend Concessionaire's performance beyond a 75 day period without the specific written approval of the Director. Under no circumstances shall any such condition or delay (unless the specific provision provides for abatement of Rentals), whether such condition or delay is claimed by the City or Concessionaire, excuse or delay Concessionaire's payment of any Rentals and other charges due hereunder. Further, the City's reasonable reduction of heat, light, air conditioning or any other services whatsoever to the Terminal, the Airport or the Premises shall not relieve or excuse Concessionaire from any of its obligations hereunder.

Section 27.05 NOTICES. Notwithstanding the fact that certain descriptions elsewhere in this Agreement of notices required to be given by one party to the other may omit to state that such notices shall be in writing, any notice, demand, request or other instrument which may be or is required to be given hereunder shall be in writing and sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) United States express mail, (iii) recognized national air courier (such as Federal Express), (iv) personal delivery or (v) any other method creating a receipt, waybill or other indication of delivery, and shall be addressed (a) if to the City, at the address as set forth on the Data Sheet, or such other address or addresses as the City may designate by written notice, together with copies thereof to such other parties designated by the City and, (b) if to Concessionaire, the address set forth on the Data Sheet, or such other address or

addresses as Concessionaire shall designate by written notice, together with copies thereof to such other parties designated by Concessionaire.

Section 27.06 **CAPTIONS AND SECTION NUMBERS.** The captions, section numbers and article numbers appearing herein are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles hereof nor in any way affect this Agreement.

Section 27.07 **BROKER'S COMMISSION.** Each party shall be solely responsible for the payment of any claims for brokerage commissions or finder's fees due as a result of such party retaining a broker or similar entity in connection with this Agreement, and Concessionaire agrees to indemnify the City and hold the City harmless from all liabilities arising from any claim for brokerage commissions and finder's fees in connection with this Agreement. Such indemnity shall survive the termination hereof.

Section 27.08 **RECORDING.** Concessionaire shall not record this Agreement or any short form or memorandum hereof.

Section 27.09 **FURNISHING OF FINANCIAL STATEMENTS.** Concessionaire has provided the City at or prior to the date of this Agreement with statements reflecting its financial condition and a credit report as of a date within the last 12 months as an inducement to the City to enter into this Agreement, and Concessionaire hereby represents and warrants that its financial condition and credit rating have not materially changed since the date of those statements and reports. Upon the Director's written request, Concessionaire shall promptly furnish the City, from time to time, but not more frequently than once in any Lease Year, with financial statements and a credit report reflecting Concessionaire's then current financial condition. The City shall treat such financial statements, credit reports and information provided to it confidentially, and shall not disclose them except to the City's lenders or otherwise as reasonably necessary for the operation of the Terminal or the Airport or administration of the City's business or unless disclosure is required by any judicial or administrative order or ruling.

Section 27.10 **CONCESSIONAIRE'S WAIVERS IN ACTION FOR POSSESSION.** The City and Concessionaire agree that in any action brought by the City to obtain possession of the Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Concessionaire shall not file and hereby waives the right to file any non-compulsory counterclaim in such action. Concessionaire also shall not file and hereby waives the right to file any defense to such action for possession other than the defense that the default alleged by the City did not occur unless Concessionaire would otherwise be precluded from the filing of any such other defense in a separate action.

Section 27.11 **FLOOR AREA.** Floor Area as used in this Agreement means with respect to any leasable area of the Premises the aggregate number of square feet of interior floor space of all floor levels therein, including any mezzanine space which shall be measured: (i) with respect to the front and rear width thereof, from the exterior face of the adjacent exterior or corridor wall, or if none, to the center of the demising partition, and (ii) with respect to the depth thereof, from the front of the lease line as shown on **Exhibit A2** to the exterior face of the exterior wall, or corridor wall, or if none, to the center of the demising partition. No deduction or exclusion from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts or other interior construction or equipment.

Section 27.12 **INTEREST ON PAST DUE OBLIGATIONS.** Any amount due from Concessionaire to the City hereunder which is not paid when due (including, without limitation, amounts due as reimbursement to the City for costs incurred by the City in performing obligations of Concessionaire hereunder upon Concessionaire's failure to so perform) shall bear interest at the lesser of (a) the rate of ten percent (10%) per annum; or (b) the maximum rate then allowed under the laws of the State of Texas from the date due until paid, unless otherwise specifically provided herein, but the payment of such interest shall

not excuse or cure any default by Concessionaire hereunder.

Section 27.13 **EXECUTION OF AGREEMENT; NO OPTION.** The submission of this Agreement to Concessionaire shall be for examination purposes only, and does not and shall not constitute a reservation of an option for Concessionaire to lease, or otherwise create any interest by Concessionaire in the Premises or any other premises in the Terminal or the Airport. Execution of this Agreement by Concessionaire and the return of same to the City shall not be binding upon the City, notwithstanding any time interval, until the City has executed and delivered this Agreement to Concessionaire. Once so executed and delivered by the City as aforesaid, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

Section 27.14 **GOVERNING LAW.** All obligations of the parties created hereunder are performable in Bexar County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas except where state law shall be preempted by any rules, laws or regulations of the government of the United States of America. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions hereof shall be deemed valid and enforceable to the full extent.

Section 27.15 **SPECIFIC PERFORMANCE OF RIGHTS.** Each party shall have the right to obtain specific performance of any and all covenants or obligations of the other party hereunder except to the extent otherwise provided herein for the benefit of the City excusing any such performance by the City, and nothing contained herein shall be construed as or shall have the effect of abridging such right.

Section 27.16 **SURVIVAL OF OBLIGATIONS.** All obligations of either party hereunder which cannot be ascertained to have been fully performed prior to the end of the Term or any earlier termination hereof shall survive any such expiration or termination. All of the terms, conditions, covenants, provisions, restrictions or requirements imposed upon Concessionaire hereunder shall be deemed to extend to Concessionaire's agents, employees, officers, directors, partners, guarantors, contractors, licensees, subconcessionaires and subcontractors and Concessionaire shall cause any such persons or entities to comply therewith and include any applicable provisions in any agreements, contracts, subcontracts or the like entered into by Concessionaire with respect to its activities and operations in the Premises, the Terminal and the Airport.

Section 27.17 **CERTAIN RULES OF CONSTRUCTION.** Time is of the essence in Concessionaire's performance of this Agreement. Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by Concessionaire hereunder, or to breaches or defaults of this Agreement by Concessionaire, omit to state that such acts shall be performed at Concessionaire's sole cost and expense, or omit to state that such breaches or defaults by Concessionaire are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by Concessionaire pursuant hereto shall be performed or fulfilled at Concessionaire's sole cost and expense, and all breaches or defaults by Concessionaire hereunder shall be deemed material. Concessionaire shall be fully responsible and liable for the observance and compliance by franchisees and licensees of Concessionaire and with all the terms and conditions of this Agreement, which terms and conditions shall be applicable to franchisees and licensees as fully as if they were the Concessionaire hereunder; and failure by a franchisee or licensee fully to observe and comply with the terms and conditions of this Agreement shall constitute a default by Concessionaire. Nothing contained in the preceding sentence shall constitute consent by the City to any subconcession, subletting or other arrangement. Further, although the printed provisions of this Agreement were drawn by the City, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either the City or Concessionaire

and the deletion of language from this Agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, adverse or opposite of the deleted language.

Section 27.18 CONFIDENTIALITY. Any and all information contained in this Agreement or provided to or by Concessionaire and/or the City by reason of the covenants and conditions hereof, economic or otherwise, shall remain confidential between the City and Concessionaire and shall not be divulged to third parties except as required to be disclosed by law. The City shall be permitted to disclose any and all such information consistent with its policies and procedures as such determination is made by the City in its sole and absolute discretion; and, in addition, the City shall be permitted to divulge the contents of statements and reports derived and received in connection with the provisions of Article III and Article IV in connection with any contemplated sales, transfers, assignments, encumbrances or financing arrangements of the City's interest in the Airport or the Terminal or in connection with any administrative or judicial proceedings in which the City is involved where the City may be required to divulge such information.

Section 27.19 ATTORNEY FEES. If the City brings any action under this Agreement, and prevails in said action, then the City shall be entitled to recover from Concessionaire its reasonable and actual attorney's fees incurred in the defense or prosecution of such action to the extent and in the manner that the City is awarded any such fees from the court.

Section 27.20 WAIVER OF TRIAL BY JURY. The City and Concessionaire desire and intend that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore, the City and Concessionaire each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either the City against Concessionaire or Concessionaire against the City or any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of the City and Concessionaire, Concessionaire's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

Section 27.21 A.D.A. COMPLIANCE. Concessionaire agrees that within the Premises Concessionaire shall be fully and solely responsible for compliance with the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et. seq.), and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Further, Concessionaire agrees to construct its Fixed Improvements and install its Operating Equipment and operate the Premises so that the Premises shall at all times accommodate customers with luggage.

Section 27.22 SECURITY. (a) Concessionaire shall be fully responsible, at its sole cost, for providing security for the Premises with no right of reimbursement from the City. Notwithstanding the foregoing, Concessionaire shall take such reasonable security precautions with respect to the Premises and its operations and personnel as the City in its discretion may require from time to time. To the extent applicable with respect to security requirements for the Air Operations Area (A.O.A.) and/or Security Identification Display Area (S.I.D.A.), Concessionaire shall provide for the security of the A.O.A. and/or S.I.D.A. to prevent entry or movement of unauthorized persons thereupon in accordance with Chapter 3, Section 3-23 of the City Code of San Antonio, Texas as such section currently exists or as it may be amended or replaced in the future. Additionally, in appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed by Concessionaire upon the Premises and supervised by Concessionaire during construction upon the Premises. Concessionaire's employees who must have demonstrated a requirement to access the A.O.A. and/or the S.I.D.A. will, after a needs assessment by the Airport Police be provided with a proper identification security badge. Qualified employees must complete the appropriate forms and provide appropriate employment history and other background

investigation materials as mandated by law and the City from time to time.

(b) Concessionaire shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States of America or of the State of Texas regarding security requirements or security measures upon the Airport, including, but not limited to, compliance with any badging requirements for all of its personnel employed at the Airport. Concessionaire shall also comply with the mandates of the FAA and/or the TSA for background investigations of its personnel, as such mandates now exist or as they may be changed, amended or replaced with new and different mandates in the future. Concessionaire shall indemnify and hold harmless the City, its elected officials, officers, designated management representatives and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America, including the FAA, the TSA or of the State of Texas by reason of Concessionaire's failure to comply with any applicable security provision and/or with any provision or requirement for compliance set forth in this Section 27.22.

Section 27.23 **LABOR HARMONY AND WAGES.** Concessionaire agrees that in the use of the Premises or any work performed in or about the Premises that Concessionaire will employ only labor which can work in harmony with all elements of labor being employed at the Airport or as otherwise reasonably required by the Director from time to time. Concessionaire shall pay wages that are not less than the minimum wages required by Federal and State statutes and City ordinances to persons employed in its operations hereunder.

Section 27.24 **CROSS DEFAULT.** Notwithstanding anything to the contrary contained in this Agreement, an event of default of Concessionaire's obligations under the provisions of any other agreement with the City covering any other concession facilities within the Airport shall constitute a default by Concessionaire under this Agreement, entitling the City to the rights and remedies provided to it under this Agreement and at law.

Section 27.25 **CONFLICT OF INTEREST.** Concessionaire acknowledges that it is informed that Texas law prohibits contracts between the City and its "officers" and "employees", and that the prohibition extends to an officer and employee of City agencies such as City owned utilities and certain City boards and commissions, and to contracts with any partnership, corporation or other organization in which the officer or employee has an interest. Concessionaire certifies (and this Agreement is made in reliance thereon) that neither he nor any person having an interest in this Agreement is an officer or employee of the City or any of its agencies.

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Section 27.26 **APPROVALS BY THE CITY.** Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the prior written approval of the Director and/or the City Manager or its designee.

IN WITNESS WHEREOF, the City and Concessionaire, personally or by their duly authorized agents, have executed this Agreement as of the day and year first above written.

CONCESSIONAIRE:

GENERATIONS COMMUNITY
FEDERAL CREDIT UNION

By: _____

ATTEST:

By: _____

Print Name: Geraldine Bracding

Its: VP-Finance

CITY:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
MKW

City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
for City Attorney:

SA Concession Agreement Form #6.doc

EXHIBIT A1

[GENERAL SITE PLAN OF SAN ANTONIO INTERNATIONAL AIRPORT]

EXHIBIT A1

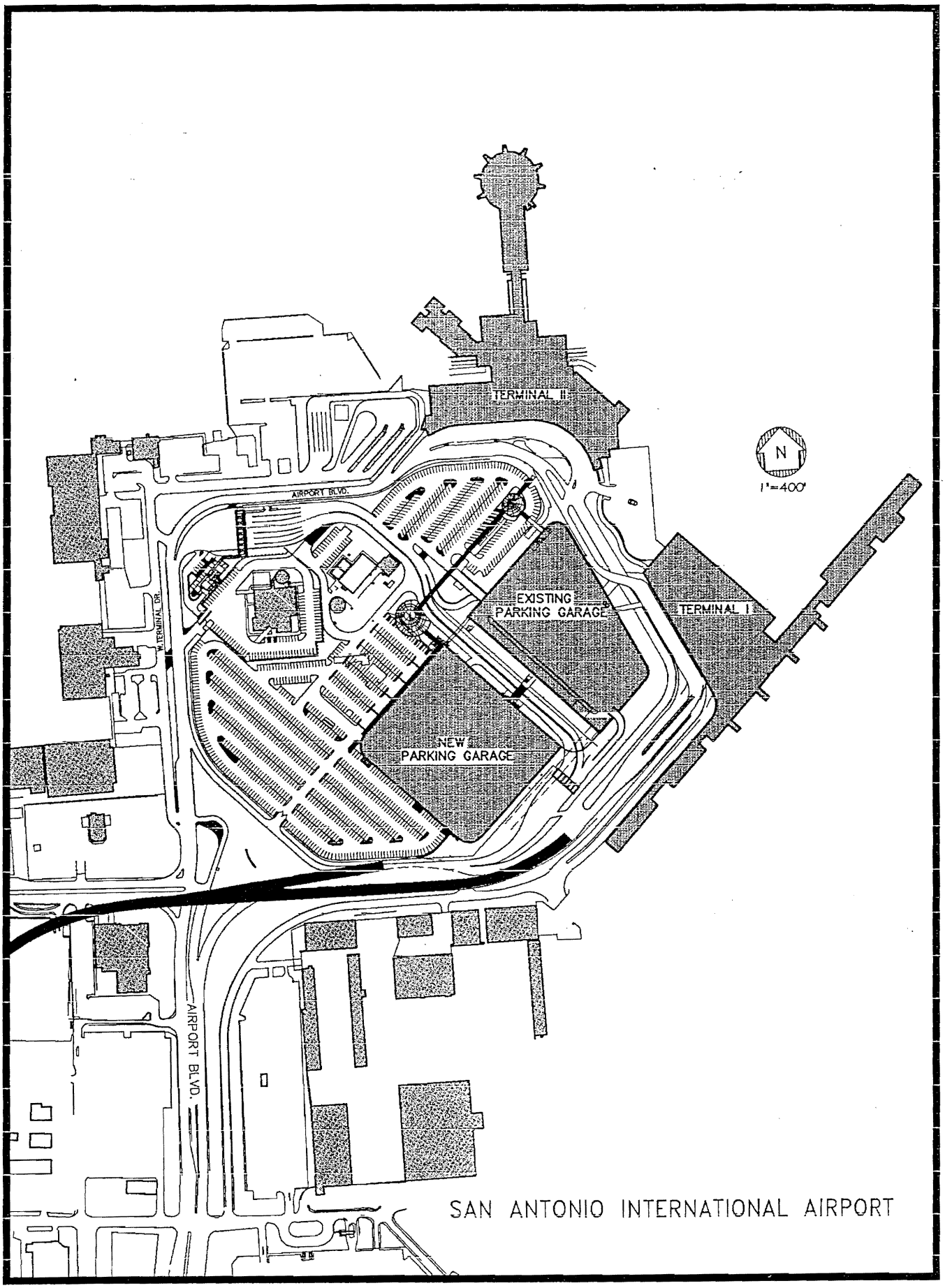
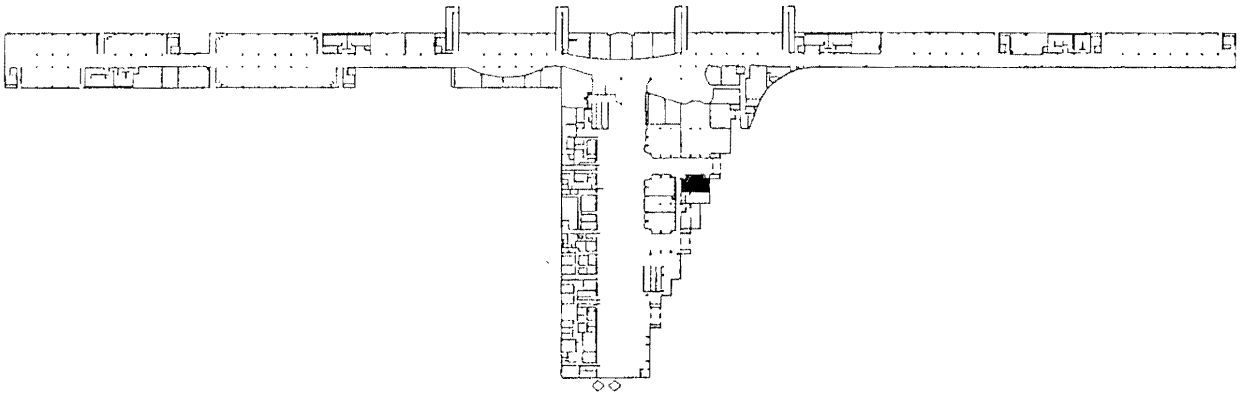

TERMINAL II
AIRPORT BLVD.
N
1"=400'
EXISTING
PARKING GARAGE
TERMINAL I
W. TERMINAL DR.
NEW
PARKING GARAGE
AIRPORT BLVD.
SAN ANTONIO INTERNATIONAL AIRPORT

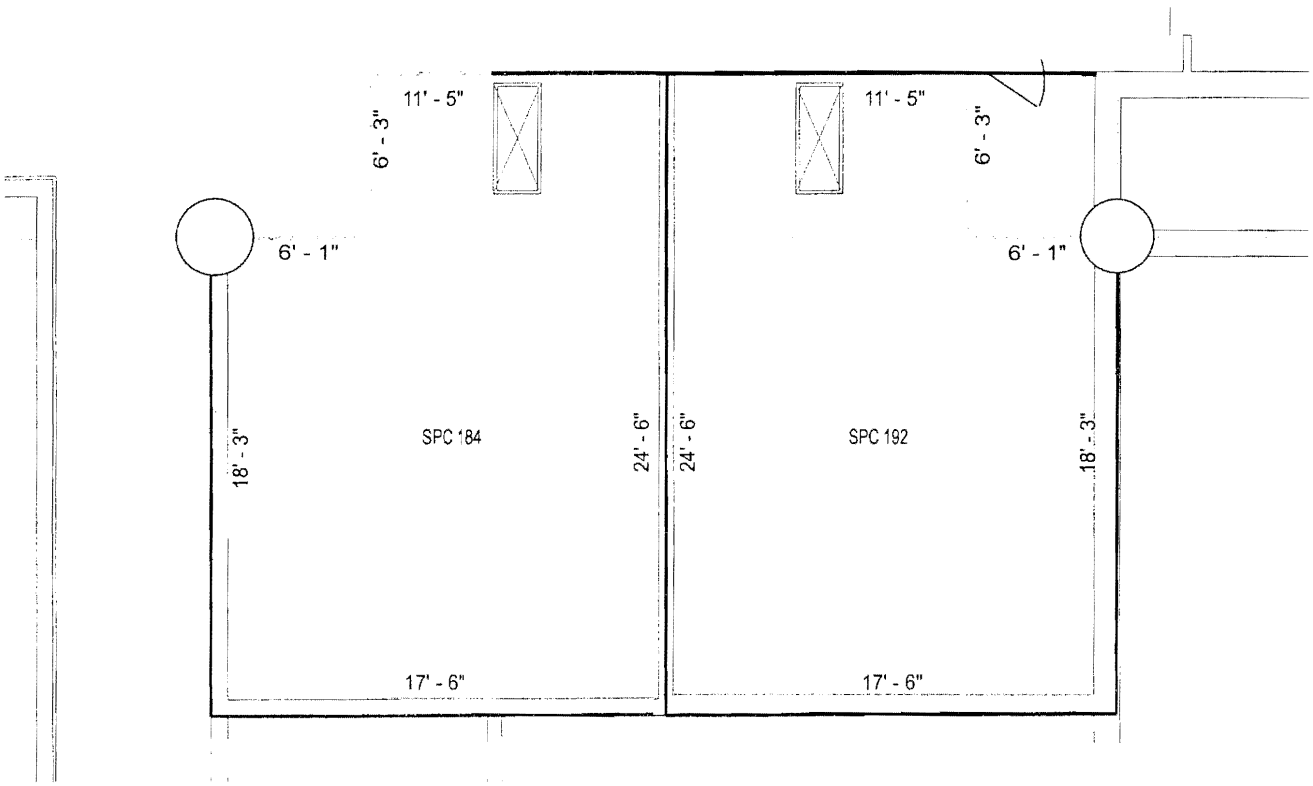
EXHIBIT A2

[TERMINAL PLAN AND PREMISES FLOOR PLAN]



N

The document is diagrammatic and is intended only to show the demised premises of the project (hatched area). It does not purport to show exact dimensions nor the final location of any mechanical, electrical, structural or architectural element. Further, the landlord reserves the right to add, eliminate or modify any such element as may be required from time to time. Tenant space dimensions, unless otherwise noted are to the centerlines of tenant partitions and column grids, face of exterior walls and to the outside face of service area partitions adjacents to the tenant space (viz. corridors, closets, and stairs.)



SAN ANTONIO INTERNATIONAL AIRPORT

0' 2' 4'

Terminal 1			
3/15/08	184 / 192	Generations Federal Credit Union	784 S.F.

EXHIBIT A2

EXHIBIT B
DESIGN AND CONSTRUCTION REQUIREMENTS

I. INTRODUCTION AND DEFINITIONS.

A. The City constructed all of the existing improvements for the Terminal as generally shown on Exhibit A-1, including the base building structure and the base building utility systems. The City shall have the right to perform the safe removal, encapsulation, enclosure or other disposition of asbestos, polychlorinated biphenyls or other hazardous or toxic materials (collectively, "Hazardous Materials") that exist within the Premises as of the date Concessionaire is delivered possession of the Premises. The City shall remediate or remove any such pre-existing Hazardous Materials that the City determines, in its discretion, is necessary for Concessionaire to perform Concessionaire's Work. If Concessionaire encounters any such pre-existing Hazardous Materials during the performance of Concessionaire's Work for the initial construction of the Premises, Concessionaire shall immediately notify the City in writing and provide all details related thereto. In no event shall Concessionaire perform any of Concessionaire's Work that will in any way disturb any such Hazardous Materials so encountered until the City has determined whether it is necessary to remediate or remove the same.

B. "City's Work" shall mean the City's total responsibility for construction of improvements within the Terminal as set forth in this Exhibit B. The cost of City's Work shall be borne as set forth in this Exhibit B. City's Work shall be of a design, type, size, location, quality and nature as may be selected by the City from time to time. Any item of work necessary to complete the Premises, which is not hereinafter specifically included as part of City's Work under this Exhibit B, shall be considered as part of Concessionaire's Work.

C. "Concessionaire's Work" shall mean Concessionaire's total responsibility (or any portion thereof) for the construction and improvement of the Premises. Concessionaire's Work shall be performed at Concessionaire's sole cost and expense. Concessionaire's Work shall include, but not be limited to, all work necessary or required to complete the Premises, except those items of work that are specifically included under this Exhibit B as part of City's Work.

II. GENERAL REQUIREMENTS AND PROVISIONS.

A. Concessionaire's Work shall be subject to the Aviation Department's and Building and Inspection Department's prior approval, such approval to be determined in their sole discretion, and shall be designed, fabricated, constructed and installed to comply with all of the requirements set forth in the City's Design Handbook and with all of the requirements set forth in the most current edition of the City's BPA and other various documents and requirements of the City pertaining to Concessionaire's construction within the Terminal. All details and information contained in either the Design Handbook or the BPA, whether appearing on Concessionaire's Conceptual Plans and Final Drawings or not, shall be considered a part of Concessionaire's Conceptual Plans and Final Drawings and design and construction requirements. By this reference the Design Handbook, the BPA and its process requirements are incorporated herein and made a part of this Exhibit B and the Agreement. This Exhibit B, the Design Handbook, the BPA and its process requirements may, when the context requires, hereinafter be collectively referred to as "Concessionaire's Construction Requirements".

B. The design, fabrication, construction and installation of Concessionaire's Work must comply with each of the following requirements:

1. This Exhibit B.

2. The Design Handbook.

3. The BPA and its process requirements.

4. Concessionaire's Final Drawings, as approved by the City.

5. All applicable laws, ordinances, codes, regulations and the requirements of all federal, state or local permitting, building and inspection agencies.

6. All applicable standards of the American Insurance Association, The National Electric Code (latest edition), the American Society of Heating, Refrigeration and Air Conditioning Engineer's Guide (latest edition), the City's insurance carriers, the local building codes and regulations and all other agencies having jurisdiction.

In the event of a conflict between any of the above-referenced items, the most stringent requirement shall govern each increment of Concessionaire's Work.

C. All aspects of Concessionaire's Work shall be performed in a professional, first-class and workmanlike manner and shall be in a good, first-class and usable condition as of the date of completion and maintained in such condition at all times. All materials used in Concessionaire's Work, Concessionaire's construction of the Premises and installations made as a part of Concessionaire's Work shall be of new, commercial grade and first-class quality. After Concessionaire's initial construction of the Premises, any and all elective remodeling and alterations and any and all remodeling and alterations required of Concessionaire by the City under the applicable provisions of the Agreement shall be performed in accordance with all of the requirements set forth in this Exhibit B and the most current editions of the Design Handbook and the BPA.

D. Concessionaire shall be solely responsible for the investment required for the planning, design, development, construction, fabrication and installation of all Fixed Improvements and Operating Equipment necessary to complete the Premises as required to provide the concession services as provided in the Agreement. Such investment shall be subject to the detailed review and approval by the City as provided elsewhere in the Agreement and in the Concessionaire's Construction Requirements.

E. All contracts and subcontracts for any portion of Concessionaire's Work shall require: (i) that all contractors and subcontractors provide labor that can work in harmony with other elements of labor employed or to be employed at the Airport as specified in Section 27.23 hereof; (ii) insurance coverage and suretyship reasonably satisfactory to the City for the protection of the City, its laborers, suppliers, contractors, subcontractors designated management representatives and the general public; (iii) that all contractors and subcontractors comply strictly with all of the applicable provisions of the Agreement, this Exhibit B, the Design Handbook and the BPA; and (iv) for all Fixed Improvements and other leasehold improvements to the Premises, performance bonds and payment bonds from the Concessionaire or its general contractor, in form and substance satisfactory to the City, each of which shall name the City as an additional obligee and which shall be in the penal sum equal to the amount of Concessionaire's total construction contracts and subcontracts. Further, Concessionaire shall comply and shall cause all of its contractors and subcontractors to comply with the City's non-discrimination and affirmative action provisions and shall require the inclusion of such provisions in all contracts and subcontracts relating in any way to Concessionaire's Work.

III. <u>CITY'S WORK</u>.

A. City's Work to be performed or provided at the City's sole cost and expense shall be limited to the following:

1. A basic building shell for the Premises (for in-line concession facility locations only) to the City's

specifications. The basic building shell shall only include the installation of metal studs, centered upon the lease lines of the Premises, as may be required to separate the Premises from adjacent concession facilities and/or public areas within the Terminal. The City shall also provide a rough concrete floor slab within the Premises for such in-line concession facility locations only. The City shall not provide any finished walls or wall coverings, finished ceiling or ceiling covering or finished floor covering within the Premises, all of such to be performed by Concessionaire as part of Concessionaire's Work.

2. Utility stub-ins for placement of Concessionaire's utility lines and facilities to the City's specifications shall be provided from the Terminal's base building system sources and shall be stubbed to the lease lines of the Premises or areas adjacent thereto in locations selected by the City. These shall consist of HVAC (for in-line concession facility locations), electric conduit (for all concession facility locations), cold water supply pipe, plumbing vent pipe and sanitary waste pipe, all of which shall be of commercially adequate size (for all concession facility locations requiring plumbing) and fire sprinkler systems (for in-line and wall-shop concession facility locations). Concessionaire shall be responsible for the installation of any required utility submeters as part of Concessionaire's Work. If the City so deems, fire sprinkler stubs in may be in the form of existing sprinkler coverage to be modified by Concessionaire as part of Concessionaire's Work.

3. Public use service corridors, if any, which have not been previously provided by the City, located as required by code or as selected by the City, with such corridor walls, if any, finished on the corridor side only.

B. The City may, but shall not be required, to provide additional items of basic building shell or utility conduit services for the Premises as part of City's Work. If applicable, such additional items, if any, shall be provided in accordance with the City's specifications.

IV. CONCESSIONAIRE'S WORK.

A. Concessionaire shall prepare preliminary conceptual plans ("Conceptual Plans") for the Premises in accordance with the provisions of the Design Handbook and the BPA and submit them to the City for approval, such approval to be in determined in its sole discretion. The Conceptual Plans must be submitted to the City not later than 20 days from the Commencement Date or such shorter period of time as may be required for Concessionaire to open for business by the Latest Rental Commencement Date, and shall include at a minimum the following:

Floor Plans: To include overall dimensions; interior finishes; construction components; identification of any proposed structural alterations to the Premises and location of construction barricades.

Fixture Plans: Merchandising layouts of the Premises including fixture locations (permanent and movable); and details and/or catalog cuts of the fixtures including materials with smoke developed ratings and flame spread classifications.

Elevations: Drawings of all interior and storefront elevations of the Premises visible to the public, storefront details illustrating architectural compatibility with surrounding areas, building sections or cross sections to accurately depict design details.

Material Boards: Material boards referenced to floor plans and elevations for the Premises illustrating floor base, wall, door, trim and ceiling materials and color selections; material boards shall include color photos and catalog cuts of furniture and/or fixtures where required; colors and materials for all storefront components. Include smoke developed ratings and flame spread

classifications, as applicable.

Project Schedule: A preliminary project schedule describing the actions necessary to implement the project, the sequence of actions and the schedule of actions.

Mechanical, Engineering and Plumbing: Connections to base building systems and locations of piping, ductwork, equipment and materials; catalog cuts and/or details for the make, model and capacity of all new equipment including location and electrical requirements; location or return air systems; incorporation of all applicable design criteria; floor plan and riser diagram for all new plumbing fixtures; show interface with base building smoke control system and building automation system.

Signage Drawings: The shape, size, color and location of signs, and a description of all materials and methods of fabrication, installation and construction.

Fire Suppression System: Sprinkler head layout and connection point to the base building system, if base building resources are available and locations of all smoke detectors, pull stations, alarm bells and fire extinguishers; interior fixtures, shelving, etc., that may affect sprinkler discharge; and any and all changes to the wet sprinkler supply system. If base building system resources are not available, Concessionaire shall install its own fire suppression equipment within the Premises.

Fire Alarm System: Plans showing all initiating and indication devices in accordance with the City's fire alarm design criteria; compliance with the City and State of Texas requirements and ADA; locations of addressable smoke detectors, duct smoke detectors, etc. If base building system resources are not available or if such system resources are fully utilized, the Concessionaire is required to contract with a private provider of fire alarm monitoring services, which will have the ability to monitor the Concessionaire's fire alarm system 24 hours per day, 365 days per year and provide immediate notification to the San Antonio Fire Department, the Airport communications center and any other individual or agency required by the City from time to time.

Electrical Drawings: Floor plans showing outlets; other electrical equipment; location of panelboard and switchboards; projected electrical loads; and incorporation of applicable design criteria contained in the electrical requirements.

Reflected Ceiling Plans: Showing types and electrical connections for lighting fixtures.

Special Systems: Including telephone and data transmission line systems, fire alarm system, airport access control system (if applicable); paging system (if applicable); cable access television system (if applicable); and master clock system (if applicable).

Locking System: Concessionaire shall install a lock keying system compatible with the City's system on all entrances to the Premises and mechanical room entrances located therein for police, security, fire protection and maintenance reasons.

B. The City shall have the right to require modifications to the Conceptual Plans and any approval granted by the City is subject to the Concessionaire's incorporation of the required modifications and draft set of Concessionaire specifications to ensure compliance with the Design Handbook and the BPA. In the event the City requires any such modifications to the Conceptual Plans, Concessionaire shall prepare and submit the same for the City's review and approval within 5 days after receipt of the City's modifications. Concessionaire shall follow the steps as outlined in the Design Handbook for submitting the Conceptual

Plans required for the Concessionaire.

C. Concessionaire shall prepare final drawings and specifications ("Final Drawings") which are based on the City approved Conceptual Plans for the Premises as described in the Design Handbook within 20 days from receipt of the approved Conceptual Plans, or earlier as may be required to open the Premises for business no later than the Latest Rental Commencement Date. The Final Drawings shall be prepared, and all calculations must be signed and sealed by a registered architect or a registered engineer licensed in the State of Texas, at a minimum, include the following:

Drawings: Floor Plans including location of all walls, partitions, and doors; lease lines to adjacent premises; overall dimensions of space with column locations; including room finish schedule with fire rating and door and hardware schedule and location of construction barricades.

Final Fixturing Plans: Merchandising layouts.

Reflected Ceiling Plans: To include ceiling grid, soffits, drops, recesses, coves, etc.; ceiling heights for each space; all light fixtures; HVAC supply and return grilles; type of ceiling system with fire-rating; sprinklers and smoke detectors; any items attached to or coming through the ceiling, if any, ceiling mounted signs, banners, flags, etc.; communicated system components; and details showing how the ceiling is attached to the base building.

Structural Drawings: Structural drawings and calculations of proposed structural alterations to the base building and drawings showing how the storefront is supported and attached to the base building.

Signage Drawings: Elevation of storefront showing design, location, size, color and layout of signs, including dimensions, etc., and a description of all methods of construction.

Mechanical Drawings: To include load calculations submitted as required in the Design Handbook and the BPA and proposed locations of all equipment.

Plumbing Drawings: If applicable, to include location and size of water and supply lines, drains, vents and grease traps; and water and sanitary riser diagrams.

Fire Protection and Monitoring Systems: Fire suppression and monitoring systems; and fire alarm and location of connection point to the base building systems if base building resources are available and location of addressable smoke detectors, duct/smoke detectors, combination heat/smoke detectors and addressable heat detectors all per the Design Handbook, the BPA and all applicable codes and regulations. If base building systems are not available, Concessionaire shall provide make and model numbers and specifications of intended fire suppression and monitoring systems for approval by the City. If base building system resources are not available or if such system resources are fully utilized, the Concessionaire is required to contract with a private provider of fire alarm monitoring services, which will have the ability to monitor the Concessionaire's fire alarm system 24 hours per day, 365 days per year and provide immediate notification to the San Antonio Fire Department, the Airport communications center and any other individual or agency required by the City from time to time.

Electrical Plans: To include power and lighting layout with circuits and home runs; electrical load requirements; on panel schedules; service riser diagrams; telephone conduits; and load calculations.

Sections: Showing construction materials and design details.

Special Systems: Such as telephone and data transmission line systems; airport access control system (if applicable); paging system (if applicable); cable access television system (if applicable); and master clock system (if applicable).

Locking System: Concessionaire shall install a lock keying system compatible with the City's system on all entrances to the Premises and mechanical room entrances located therein for police, security, fire protection and maintenance reasons.

Specifications: All specifications shall include the requirements contained in the Design Handbook and the BPA.

D. Concessionaire shall submit to the City as part of the Conceptual Plans and Final Drawings, drawings (in color) showing storefronts, window displays, signage and any advertising structures; plus a lighting plan.

E. When Concessionaire submits any plans and specifications to the City it shall include complete sets for each submittal as specified in the Design Handbook and the BPA.

F. Concessionaire's Work shall include the procurement of all necessary building permits, licenses, variances, and additional utility services required to facilitate Concessionaire's construction and occupancy of the Premises, and the payment of any fees associated therewith as may be required by the City, other public agencies and utility companies. Within 10 days after approval of the Final Drawings or such shorter period of time as may be required for Concessionaire to open the Premises for business no later than the Latest Rental Commencement Date, Concessionaire shall make all necessary applications, provide all necessary information, pay all required fees and take all necessary actions to obtain such items and shall endeavor to use due diligence and its best efforts to procure the same as quickly as possible. Please refer to the Design Handbook and the BPA for the required permitting process.

G. Concessionaire shall comply in all respects with the Concessionaire's Construction Requirements including, but not limited to, applicable local/state health department requirements, U.S. Department of Labor, Construction Safety and Health Regulations, Part 1926. Concessionaire shall comply and be liable for all costs associated with adherence to the Americans with Disabilities Act (ADA) codes and guidelines.

H. If the Premises are modified, renovated, or newly-constructed, the Concessionaire shall: (i) obtain the Architect's/Engineer's Texas Seal on two (2) sets of final construction drawings or as may otherwise be specified by the BPA process submitted for a building permit; (ii) obtain from the Concessionaire's contractor(s) a written warranty of all materials and workmanship for a period of one (1) year effective from the date of beneficial occupancy of the Premises. Concessionaire's contractor(s) shall be required by Concessionaire in its construction contract to repair and/or replace all defective materials, equipment and workmanship at no cost to the City or the Concessionaire occupying the Premises; (iii) obtain all required manufacturers' guarantees, maintenance manuals and other pertinent documents; and (iv) furnish to the City one (1) set of mylar "as-built" drawings (and preferably specifications) and Computer Aided Drafting and Design (CADD) drawings, duly certified by a Texas registered architect or registered engineer, no later than 90 days after opening for business in the Premises.

I. Concessionaire's Final Drawings must be submitted to the City in CADD and satisfy all other requirements for Final Drawings as set forth in this Exhibit B, the Design Handbook and the BPA.

J. Concessionaire shall not be permitted to commence any work until all requirements of the Design Handbook, the BPA and this Exhibit B have been completed.

K. Security clearance must be completed as required by the City.

L. A construction deposit of a minimum of $5,000.00 will be required from Concessionaire's general contractor and shall not be released by the City until after satisfactory completion of: (i) all requirements of this Exhibit B and the documents referenced herein; (ii) approval by the City's on-site construction supervision personnel specifying that all of Concessionaire's Work has been completed and accepted by the City; and (iii) receipt by the City of all construction related close-out project documentation required by the Agreement, this Exhibit B, the BPA process or otherwise requested by the Director.

M. During the construction periods at the Terminal, Concessionaire and its agents, servants, employees and contractors shall be permitted entry and access to the Terminal and to the Premises for the purpose of performing and completing all work necessary to make the Premises and other improvements ready for use, occupancy and rental. During the construction periods, Concessionaire and its respective agents, consultants and employees, contractors and subcontractors shall observe all applicable rules and regulations and applicable directives imposed by the City at the Airport as to the conduct of their work. Concessionaire and its agents shall be responsible for securing, keeping and maintaining all of their equipment, materials, supplies, tools, work trailers and the like within the Concessionaire's Premises, or within a defined staging area for the exclusive purpose of supporting the Concessionaire's Premises construction, subject to the City's approval. Concessionaire shall also be responsible for insuring that all construction debris is removed from the construction site daily, and that the site is neat and clean at all times. Concessionaire shall comply in all respects with procedures for project close-out and acceptance of the space as detailed in the Design Handbook and the BPA.

N. All policies of insurance and bonds addressed in this Agreement shall be issued for the protection of the City and Concessionaire, in accordance with their respective insurable interest. The terms of the policies and bonds and the insurer or surety shall be subject to the reasonable approval of the City.

O. Concessionaire shall provide, maintain and identify the City as an additional insured, with respect to the insurance protection required under the provisions outlined in the Agreement.

P. Construction Costs:

(i) As part of Concessionaire's Work and the construction requirements required in this Agreement, Concessionaire shall submit to the Director a statement of the total construction costs which it has certified as correct with all supporting documents required by the Director as specified in the applicable sections of this Agreement.

(ii) The City, or an independent professional firm retained by the City, may audit costs associated with the construction, modification or renovation of the Premises. In this regard, the City and/or its auditing firm shall have the right upon 7 days advance request by the City during the Term hereof to examine and audit books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all construction costs claimed to have been incurred or anticipated to be incurred, in performing this Agreement. The right of examination shall extend to all documents necessary to allow evaluation of both the validity and reasonableness of said construction costs, including all documents of the Concessionaire who shall make all construction records available to the City for examination, audit, or reproduction, upon 7 days advance request by the City.

Q. In its construction plans Concessionaire must insure that the Premises has strong visual appeal and is inviting to the customers; and that the Premises accommodates customers with luggage and meets all Americans With Disabilities Act (ADA) requirements relating to ingress, egress, access and other architectural matters, such as for example, large print price signs for the visually impaired and the ability to communicate with hearing impaired.

V. CONSTRUCTION CHARGEBACKS PAYABLE TO THE CITY.

A. The City may provide items of construction, work or services for the Premises as a part of City's Work at Concessionaire's sole cost and expense, including, but not limited to the following:

1. The City, at Concessionaire's expense, may install a temporary construction barricade along the storefront area leaseline in a design, material, graphics package and location approved by the City if Concessionaire fails to install such temporary construction barricade prior to the commencement of any of Concessionaire's Work in the Premises. If the City installs such a barricade, Concessionaire shall reimburse the City therefor as Additional Rent an amount which will be computed at the rate of $75.00 per linear foot of the barricade. The City, at Concessionaire's expense, shall install a graphics and signage package on the temporary construction barricade and Concessionaire shall reimburse the City for the actual cost thereof as Additional Rent. Any modifications to the temporary construction barricade shall be subject to the City's prior approval and performed at the sole cost of Concessionaire. Upon completion of Concessionaire's Work, Concessionaire shall be responsible, at Concessionaire's sole cost, to remove such barricade to an appropriate disposal site outside of the Airport.

VI. PROGRESS MEETINGS; MISCELLANEOUS.

A. Representatives of the City and Concessionaire, as designated in writing to each other, shall establish and attend on-site progress meetings with such periods of frequency during the performance of Concessionaire's Work as may be mutually agreed upon but no less frequently than monthly.

B. Concessionaire shall perform Concessionaire's Work so as not to: (i) unreasonably interfere with any other construction being performed at the Terminal or the Airport; or (ii) unreasonably impair the use, occupancy or enjoyment at the Terminal and/or the Airport by the City, airlines, other concessionaires operating concession facilities or customers of any of them.

C. Concessionaire shall (i) take all safety measures required to protect the Terminal and/or the Airport from injury or damage caused by or resulting from the performance of Concessionaire's Work and defend, protect and indemnify the City (including its agents, elected officials, designated management representatives, officers, directors and employees), airlines, other concessionaires operating concession facilities or customers of any of them from any and all claims arising from or in connection with the death of or accident, injury, loss or damage whatsoever caused to any natural person or to the property of any person or entity arising out of, in connection with, or as a result of Concessionaire's Work; (ii) repair any and all damage to the Terminal and/or the Airport as a result of Concessionaire's Work; and (iii) require all contractors and subcontractors to comply with all of the requirements and permits for the performance of Concessionaire's Work.

EXHIBIT C
DISADVANTAGED BUSINESS ENTERPRISES

To qualify as a Disadvantaged Business Enterprise ("DBE"), the firm must meet the criteria established by the U.S. Department of Transportation in 49 CFR Parts 23/26 and be certified by the City through the South Central Texas Regional Certification Agency ("SCTRCA"). Generally, to qualify as a DBE, the firm must be a small business concern whose average annual receipts for the preceding 3 fiscal years does not exceed $30,000,000.00 and it must be (a) at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. For other types of business operations, the U.S. Small Business Administration size standards are used to determine eligibility for certification. The DBE may, if other qualifications are met, be a franchisee of a franchisor. An airport concession is a for-profit business enterprise, located on an airport, which is subject to the Code of Federal Regulations 49 Part 23, subpart F, that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner or operator of a terminal, if other than the sponsor. The City, through SCTRCA, makes a rebuttable presumption that individuals in the following groups who are citizens of the United States or lawful permanent residents are "socially and economically disadvantaged":

a. **Women**;
b. **Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;
c. **Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
d. **Native Americans**, which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
e. **Asian-Pacific Americans**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
f. **Asian-Indian Americans**, which includes persons whose origins are from India, Pakistan and Bangladesh; and
g. Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. Section 637(a)).

The City, through SCTRCA, may also determine that other individuals are socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male, or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as DBE, the City, through SCTRCA as part of the certification process, will determine whether the individual is socially or economically disadvantaged under the criteria established by the Federal Government. These owners must demonstrate that their disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.

The City has compiled a list, which may be supplemented and revised from time to time by the City, to indicate the firms the City determined satisfy the criteria for DBE certification. Such list shall be made available to the proposers upon request. The City makes no representations as to the financial responsibility of such firms, their technical competence to perform, nor any other performance-related qualifications. Only listed DBEs and such firms not so listed, but certified by the City through SCTRCA as DBEs hereunder, will count towards DBE requirements.

Certification of DBEs hereunder shall be made by the SCTRCA. If a proposer wishes to utilize a firm not so listed but which the proposer believes should be certified as a DBE, that firm shall submit to the City, through SCTRCA, a written request for a determination that the firm is eligible for certification. This shall be done by completing and forwarding such forms as may be required by the City and/or the SCTRCA from time to time. All such requests shall be in writing, addressed to: South Central Texas Regional Certification Agency, 301 S. Frio Street, Suite #106, San Antonio, TX 78207; with copies provided to: City of San Antonio, Aviation Department, 9800 Airport Boulevard, San Antonio, TX 78216, Attention: Lisa Brice, DBE Liaison Officer and the Unison-Maximus, Inc., 9700 Airport Boulevard, Terminal 2, Suite 246, San Antonio, TX 78216, Attention: General Manager. Eligibility for certification shall only be made in writing over the name of the Director in charge of the SCTRCA. The determination of the City, through SCTRCA shall be final and binding on the applicant. For further information, please contact one of the following: SCTRCA at (210) 227-4722, City of San Antonio Aviation Department DBE Liaison Officer at (210) 207-3505 and/or Unison-Maximus, Inc. Local DBE Coordinator at (210) 828-0333.

EXHIBIT D

[CONCESSIONAIRE MONTHLY AND ANNUAL STATEMENT CERTIFICATE FORMS]

EXHIBIT E

ADDITIONAL INSURED ENTITIES

Each of Concessionaire's insurance policies required under Section 11.01 of the Agreement shall name the following entities as additional insureds:

The City Of San Antonio, a Texas municipal corporation
Unison-Maximus, Inc., an Illinois corporation

Certificates of Insurance, evidencing the Concessionaire's insurance coverages, shall be delivered by Concessionaire to the City upon execution of the Agreement and absolutely no later than prior to delivery of the Premises to Concessionaire at the following address:

City of San Antonio Aviation Department
c/o Unison-Maximus, Inc.
San Antonio International Airport
9700 Airport Boulevard
Terminal 2, Suite 246
San Antonio, Texas 78216
Attention: General Manager

The certificate holder on each of the Certificates of Insurance shall be as follows:

City of San Antonio
c/o Unison-Maximus Concession Management, Inc.
San Antonio International Airport
9700 Airport Boulevard
Terminal 2, Suite 246
San Antonio, Texas 78216
Attention: General Manager

EXHIBIT F
STREET PRICING POLICY AND REQUIREMENTS

A. General City Street Pricing Policy.

The City requires specific pricing criteria in all concessions agreements at the Airport. In general, the City seeks to promote fair and reasonable prices in airport concession programs. The street pricing policy is also designed to produce a greater volume of sales, thereby reflecting the City's objective to provide high customer service and optimization of financial return. The City's street pricing policy requires that prices charged at the Airport will be comparable to off-airport prices. In general, the policy requires any specialty retail, newsstand and food & beverage vendors that operate both on-airport and off-airport to price goods and/or services in the on-airport store within the average range of prices charged at their off-airport stores. For vendors without off-airport operations in the area, comparable stores in the region are identified to establish the basis for street prices (the specific methodology for this comparison is established based upon the specific type of store and merchandise and products sold and/or service rendered). For duty free concession vendors, where there are no comparable off-airport operations, the pricing policy requires that the prices of duty free merchandise and products be substantially comparable to the prices charged in duty free goods at the region's airports be comparable to the prices charged in duty free stores other airports in the southwestern U.S. Further, vendors must submit price lists for all goods and services in advance for approval. The street pricing policy also requires vendors to post signs in clearly visible locations notifying customers that the store charges fair and reasonable prices that are comparable to other stores in the region. The City requires strict adherence to the City's street pricing policy.

B. Comparable Locations In the San Antonio Metropolitan Area.

1. Specialty Retail and Food & Beverage Concession Facilities. For price comparative purposes, the City requires that the prices charged in the various types of specialty retail and food & beverage concession facilities permitted hereunder shall be compared to similar types of and comparable quality of specialty retail and food & beverage establishments located in the San Antonio metropolitan area determined from time to time by the City or its designated management representative(s).

2. Newsstand Concession Facilities. For price comparative purposes, the City requires that the prices charged in the newsstand concession facilities permitted hereunder for newspapers, magazines and sundries shall be compared to similar types and comparable quality convenience store chains and newsstand vendors located in the San Antonio metropolitan area. For price comparative purposes, the City requires that the prices charged in the newsstand concession facilities permitted hereunder for gifts, souvenirs and novelties shall be compared to both similar types of and comparable quality of local gift, souvenir novelty establishments as well as the to the local convenience store chains located in the San Antonio metropolitan area.

C. Specialty Retail and Food & Beverage Concession Facilities Pricing Requirements.

Concessionaire's prices for all specialty retail and food & beverage products permitted to be sold under the Permitted Use clause in this Agreement shall at all times be fair and reasonable and must be competitively priced such that the prices charged therefor are the same or comparable with comparable specialty retail and food & beverage establishments located in the San Antonio metropolitan area. To determine fair, reasonable and comparable prices, the City or its designated management representatives, at least once per year or more often if the City so desires, may select 5 comparable establishments. Concessionaire's prices on any specific items may not exceed the average of those 5 priced similar and/or comparable items.

D. Newsstand Premises Pricing Requirements.

Concessionaire's prices for all news and gift products permitted to be sold under the Permitted Use clause in this Agreement shall at all times be fair and reasonable and must be competitively priced such that the prices charged therefor for newspapers, magazines and sundries are the same or comparable to those charged by local convenience store chains in the San Antonio metropolitan area and for gifts, souvenirs and novelties to those charged by similar types of and comparable quality of gift, souvenir and novelty establishments located in San Antonio metropolitan area. To determine fair, reasonable and comparable prices, the City or its designated management representatives, at least once per year or more often if the City so desires, may select 5 locations operated by such local convenience store chains and comparable local gift, souvenir and novelty establishments in the San Antonio metropolitan area. Concessionaire's prices on any specific items may not exceed the average of those 5 priced similar and/or comparable items.

E. General Pricing Requirements.

In all other situations and circumstances for which no specific pricing requirement has been established, Concessionaire shall abide by the following pricing requirements:

Concessionaire shall offer for sale only goods and/or services of first-class quality. For such goods and/or services, Concessionaire shall charge fair, reasonable and competitive prices. When an item has a suggested retail price premarked and established by the manufacturer or distributor, Concessionaire shall not charge the public a price higher than the suggested retail premarked price without the prior written approval of the City, which approval shall not be unreasonably withheld. When an item has no suggested retail price or premarked price, the item shall be sold at a price as first approved by the City, which approval shall not be unreasonably withheld.

EXHIBIT G

City of San Antonio
City Hall, Second Floor
100 Military Plaza (P.O. Box 839966)
San Antonio, Texas 78283-3966
ATTN: CITY CLERK'S OFFICE

Date: _____

CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

To the Addressee:

At the request of _____A_____, we _____B_____, hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. _____C_____ in your favor up to an aggregate of $_____D_____ U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all of your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at the office of our Texas Branch, now located at _____E_____, _____E_____ on or before the expiration set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under _____B_____ Letter of Credit No. _____C_____ dated _____, 200_ ." Partial drawings under this Letter of Credit are permitted.

Drafts must be accompanied by a statement from the City Manager of the City of San Antonio, or his designee, that _____A_____ has not performed certain terms, conditions or covenants contained in Concession Agreement No. _____ by and between the City of San Antonio and _____A_____.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on _____F_____, 200_. This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable expiration date, no statement required.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

_____
Bank Officer/Representative

LEGEND:
A-INSERT APPLICANT NAME, I.E. CONCESSIONAIRE NAME.
B-INSERT NAME OF ISSUING BANK.
C-INSERT L/C IDENTIFICATION NUMBER.
D-INSERT DOLLAR VALUE OF INSTRUMENT.
E-INSERT EXACT ADDRESS OF LOCAL BANK BRANCH.
F-INSERT EXPIRATION DATE OF AGREEMENT PLUS SIXTY DAYS.

EXHIBIT H

CORPORATION

GUARANTY

THIS GUARANTY ("Guaranty") is made as of this ____ day of _____, 200_, by _____ ("Guarantor") to and for the benefit of the **CITY OF SAN ANTONIO** ("City").

RECITALS:

WHEREAS, the City and _____ ("Concessionaire") have entered into that certain Concession Agreement dated _____, 200_, ("Agreement"), for the Premises located in the Terminal at San Antonio International Airport, as more fully described in the Agreement;

WHEREAS, Guarantor will derive financial benefits from Concessionaire's use and occupancy of the Premises and it is a condition precedent to all of the obligations of the City pursuant to the Agreement, that Guarantor shall have executed and delivered this Guaranty;

NOW, THEREFORE, in consideration of and as an inducement to the execution of the Agreement by the City, and in consideration of the above recitals and other good and valuable consideration paid by the City to Guarantor and intending to be legally bound hereby, Guarantor does hereby covenant and agree as follows:

1. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the City that Guarantor is and shall be directly and jointly and severally liable to the City for the full and prompt payment of all rents, additional rents and any and all other charges payable by Concessionaire under the Agreement, when due, whether by acceleration or otherwise, and the full, faithful and prompt performance and observance of all the covenants, terms, conditions and agreements of the Agreement to be performed and observed by Concessionaire, and Guarantor does hereby become surety to the City and its successors and assigns, for and with respect to all of Concessionaire's obligations under this Guaranty.

2. Guarantor does hereby covenant and agree to and with the City, that if default shall at any time be made by Concessionaire, in the payment of any such rents or other sums or charges payable by Concessionaire under the Agreement or in the performance of any of the covenants, terms, conditions or agreements contained in the Agreement, Guarantor will forthwith pay such rent or other sums or charges to the City, and any arrears thereof (including, without limitation, any and all interest or additional charges as provided in the Agreement), and will forthwith faithfully perform and fulfill all of such covenants, terms, conditions and agreements, and will forthwith pay to the City all damages and all costs and expenses that may arise in consequence of any default by Concessionaire under the Agreement (including, without limitation, all attorneys' fees and any and all expenses incurred by the City or caused by any such default and/or by the enforcement of this Guaranty).

3. This Guaranty is an absolute and unconditional guaranty of payment and of performance and is a surety agreement. Guarantor's liability hereunder is direct and may be enforced immediately without the City being required to resort to any other right, remedy or security and this Guaranty shall be enforceable immediately against Guarantor, without the necessity for any suit or proceedings on the City's part of any kind or nature whatsoever against Concessionaire, and without the necessity of any notice of non-

payment, non-performance or non-observance or the continuance of any such default or of any notice of acceptance of this Guaranty or of the City's intention to act in reliance herein or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no manner be terminated, affected, or impaired by reason of the assertion or the failure to assert by the City against Concessionaire, or of any of the rights or remedies reserved to the City pursuant to the provisions of the Agreement.

4. This Guaranty shall be a continuing Guaranty, and (whether or not Guarantor shall have notice or knowledge of any of the following) the liability and obligation of Guarantor hereunder shall be absolute and unconditional irrespective of: (i) any amendment or modification of, or supplement to, or extension or renewal of the Agreement or any assignment or transfer thereof or Agreement of the Premises; (ii) any exercise or non-exercise of any right, power, remedy or privilege under or in respect of the Agreement or this Guaranty or any waiver, consent or approval by the City with respect to any of the covenants, terms, conditions or agreements contained in the Agreement or any indulgences, forbearances or extensions of time for performance or observance allowed to Concessionaire from time to time, at any time and for any length of time; (iii) any lack of validity or enforceability of the Agreement or any other agreement or instrument relating thereto; (iv) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition or liquidation or similar proceedings relating to Concessionaire, or its properties or creditors; (v) any impairment, modification, change, release or limitation of liability or obligation of Concessionaire under the Agreement (including, but not limited to, any disaffirmance or abandonment by a trustee of Concessionaire), resulting from the operation of any present or future provision of the United States Bankruptcy Code, as amended, or any other similar federal or state statute, or from the decisions of any court; (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Concessionaire in respect of the Agreement or the Guarantor in respect of this Guaranty. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any rents, additional rents and any and all other charges by Concessionaire, under the Agreement, or performance and observance of any and all of the covenants, terms, conditions and agreements of the Agreement to be performed and observed by Concessionaire, under the Agreement are rescinded, cancelled or otherwise must be returned by the City upon the insolvency, bankruptcy or reorganization of the Concessionaire, all as though such payment had not been made and/or performance and observance had not occurred.

5. All of the City's rights and remedies under the Agreement and under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. No termination of the Agreement or taking or recovering of the premises demised thereby shall deprive the City of any of its rights and remedies against Guarantor under this Guaranty. This Guaranty shall apply to Concessionaire's obligations thereunder during the original term thereof in accordance with the original provisions thereof.

6. Guarantor represents and warrants to the City that (a) it is duly incorporated, validly existing and in good standing under the laws of _____; (b) that the execution and delivery of this Guaranty has been duly authorized by the Board of Directors or members of Guarantor; (c) the making of this Guaranty does not require any vote or consent of shareholders of Guarantor; and (d) that the officer executing this Guaranty has been duly authorized to execute the same by its Board of Directors or members.

7. As a further inducement to the City to make and enter into the Agreement and perform its obligations thereunder, and in consideration thereof, Guarantor covenants and agrees that in any action or proceeding brought on, under or by virtue of this Guaranty, Guarantor shall and does hereby waive trial by jury. Guarantor agrees to pay the City's reasonable attorneys' fees and all costs and other expenses

incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed or in enforcing this Guaranty against the undersigned, individually, jointly and severally.

8. This Guaranty shall be legally binding upon Guarantor, its successors and assigns and shall inure to the benefit of the City, and its successors and assigns. The word "Concessionaire" is used herein to include each and every of the persons named above as Concessionaire, be the same one or more, as well as their permitted heirs, personal representatives, successors and assigns.

9. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Texas.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has caused this Guaranty to be executed and delivered by its officer thereunto duly authorized as of the date first written above.

ATTEST: **[GUARANTOR]**

_____ By_____(SEAL)

Address: _____

_____

_____

Telephone: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared _____ known to me to be the _____ and _____ known to me to be the _____, of _____, the corporation that executed the within Instrument, known to me to be persons who executed the within Instrument, on behalf of the corporation herein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its board or directors.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for
said County and State

(SEAL) My Commission Expires_____

INDIVIDUAL

GUARANTY

THIS GUARANTY ("Guaranty") is made as of this ____ day of _____, 200_, by _____ ("Guarantor") to and for the benefit of the **CITY OF SAN ANTONIO** ("City").

RECITALS:

WHEREAS, the City and _____ ("Concessionaire") have entered into that certain Concession Agreement dated _____, 200_, ("Agreement"), for the Premises located in the Terminal at San Antonio International Airport, as more fully described in the Agreement;

WHEREAS, Concessionaire and therefore Guarantor will derive financial benefits from Concessionaire's use and occupancy of the Premises and it is a condition precedent to all of the obligations of the City pursuant to the Agreement, that Guarantor shall have executed and delivered this Guaranty;

NOW, THEREFORE, in consideration of and as an inducement to the execution of the Agreement by the City, and in consideration of the above recitals and other good and valuable consideration paid by the City to Guarantor and intending to be legally bound hereby, Guarantor does hereby covenant and agree as follows:

1. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the City that Guarantor is and shall be directly and jointly and severally liable to the City for the full and prompt payment of all rents, additional rents and any and all other charges payable by Concessionaire under the Agreement, when due, whether by acceleration or otherwise, and the full, faithful and prompt performance and observance of all the covenants, terms, conditions and agreements of the Agreement to be performed and observed by Concessionaire, and Guarantor does hereby become surety to the City and its successors and assigns, for and with respect to all of Concessionaire's obligations under the Agreement.

2. Guarantor does hereby covenant and agree to and with the City, that if default shall at any time be made by Concessionaire, in the payment of any such rents or other sums or charges payable by Concessionaire under the Agreement or in the performance of any of the covenants, terms conditions or agreements contained in the Agreement, Guarantor will forthwith pay such rent or other sums or charges to the City, any arrears thereof (including, without limitation, any and all interest or additional charges as provided in the Agreement), and will forthwith faithfully perform and fulfill all of such covenants, terms, conditions and agreements, and will forthwith pay to the City all damages and all costs and expenses that may arise in consequence of any default by Concessionaire, under the Agreement (including, without limitation, all attorneys' fees and any and all expenses incurred by the City or caused by any such default and/or by the enforcement of this Guaranty).

3. This Guaranty is an absolute and unconditional guaranty of payment and of performance and is a surety agreement. Guarantor's liability hereunder is direct and may be enforced immediately without the City being required to resort to any other right, remedy or security and this Guaranty shall be enforceable immediately against Guarantor, without the necessity for any suit or proceedings on the City's part of any kind or nature whatsoever against Concessionaire, and without the necessity of any notice of non-payment, non-performance or non-observance or the continuance of any such default or of any notice of acceptance of this Guaranty or of the City's intention to act in reliance herein or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives;

and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no manner be terminated, affected, or impaired by reason of the assertion or the failure to assert by the City against Concessionaire, or of any of the rights or remedies reserved to the City pursuant to the provisions of the Agreement.

4. This Guaranty shall be a continuing Guaranty, and (whether or not Guarantor shall have notice or knowledge of any of the following) the liability and obligation of Guarantor hereunder shall be absolute and unconditional irrespective of: (i) any amendment or modification of, or supplement to, or extension or renewal of the Agreement or any assignment or transfer thereof or sublease of the Premises; (ii) any exercise or non-exercise of any right, power, remedy or privilege under or in respect of the Agreement or this Guaranty or any waiver, consent or approval by the City with respect to any of the covenants, terms, conditions or agreements contained in the Agreement or any indulgences, forbearances or extensions of time for performance or observance allowed to Concessionaire from time to time, at any time and for any length of time; (iii) any lack of validity or enforceability of the Agreement or any other agreement or instrument relating thereto; (iv) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition or liquidation or similar proceedings relating to Concessionaire, or its properties or creditors; (v) any impairment, modification, change, release or limitation of liability or obligation of Concessionaire under the Agreement (including, but not limited to, any disaffirmance or abandonment by a trustee of Concessionaire), resulting from the operation of any present or future provision of the United States Bankruptcy Code, as amended, or any other similar federal or state statute, or from the decisions of any court; (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Concessionaire in respect of the Agreement or the Guarantor in respect of this Guaranty. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any rents, additional rents and any and all other charges by Concessionaire, under the Agreement, or performance and observance of any and all of the covenants, terms, conditions and agreements of the Agreement to be performed and observed by Concessionaire, under the Agreement are rescinded, cancelled or otherwise must be returned by the City upon the insolvency, bankruptcy or reorganization of the Concessionaire, all as though such payment had not been made and/or such performance and observance had not occurred.

5. All of the City's rights and remedies under the Agreement and under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. No termination of the Agreement or taking or recovering of the premises demised thereby shall deprive the City of any of their rights and remedies against Guarantor under this Guaranty. This Guaranty shall apply to Concessionaire's obligations pursuant to any extension, renewal, amendment, modification and supplement of or to the Agreement as well as to Concessionaire's obligations thereunder during the original term thereof in accordance with the original provisions thereof.

6. As a further inducement to the City to make and enter into the Agreement and perform its obligations thereunder, and in consideration thereof, Guarantor covenants and agrees that in any action or proceeding brought on, under or by virtue of this Guaranty, Guarantor shall and does hereby waive trial by jury. Guarantor agrees to pay the City's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection or in any negotiations relative to the obligations hereby guaranteed or in enforcing this Guaranty against the undersigned, individually, jointly and severally.

7. This Guaranty shall be legally binding upon Guarantor, its successors and assigns, heirs and personal representatives and shall inure to the benefit of the City and its successors and assigns. The word "Concessionaire" is used herein to include each and every of the persons named above as Concessionaire, be the same one or more, as well as their permitted heirs, personal representatives,

successors and assigns.

8. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Texas.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has caused this Guaranty to be executed as of the date first written above.

_____
Guarantor

Address: _____

_____

_____

Telephone: _____

1. Driver's License:
   (a) State: _____
   (b) Number: _____
2. Birth Date: _____
3. Soc. Sec.: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared _____, known to me to be the person whose name is subscribed to the within Instrument and acknowledged that he/she executed the same.

WITNESS my hand and official seal the day and year in this certificate first above written.

_____
Notary Public in and for
said County and State

(SEAL)

My Commission Expires_____

CMS or Ordinance Number: OR00000200803200220

TSLGRS File Code: 1000-05

Document Title:
ORD - Credit Union Banking Services Space #188

Ordinance Date: 3/20/2008