

**OMAHA AIRPORT AUTHORITY**

**LEASE OF PREMISES**

**COMMON-USE LOUNGE CONCESSION**

**EPPLEY AIRFIELD**

**Omaha, Nebraska**



**[INSERT CONCESSIONAIRE NAME]**

**LEASE AGREEMENT NUMBER:**

## KEY LEASE AGREEMENT TERMS

Agreement Date:	
Agreement Number:	
Concessionaire:	Concessionaire Name Address Address Attn: Contact (Name, Email, and Cell Phone)
Leased Premises (§ARTICLE 3 -):	Approximately 5,977 square feet of space commonly known as Units SC-2400 and SC-3030, as identified on Exhibit A.
Occupancy Date(s) (§1.44):	
Expiration Date (§2.1):	The last day of the month in which the tenth anniversary of the Commencement Date occurs, unless terminated earlier
Initial Minimum Annual Guarantee Amount (§4.1):	\$225,000
Minimum Annual Guarantee Due Date:	In advance, on the first (1 <sup>st</sup> ) day of the month
Monthly Accounting Statement and Percentage Rent Due Date (§4.1.8):	In arrears, on the twelfth (12 <sup>th</sup> ) day of the month
Additional Charges and Fees (§4.1.10):	Late Fees (§4.4.2), Utilities (§10.1), Taxes (§23.1) and Marketing Program (§5.7). Others may be provided for in the Lease Agreement.
Remittance Address:	Omaha Airport Authority 4501 Abbott Drive Suite 2300 Omaha, NE 68110  Electronic payment instructions will be included in final lease agreement
Late Charges (§4.4.2):	Five hundred dollars (\$500) per occurrence plus interest; sanctions associated with a failure to report may also apply
Default Rate (§1.19):	Eighteen Percent (18.0%)
Annual Certified Statement Due Date (§4.4.1):	January 31, except for the Last Partial Year, for which it is ninety (90) days following the end of the Last Partial Year

Performance Guarantee (§4.3):	One hundred percent (100%) of the MAG during lease years one through five. Thereafter, the Performance Guarantee may be reduced to one-half of the MAG at the sole discretion of the Authority and based on Concessionaire being in good standing with regard to the terms of the Lease Agreement.
Use of Leased Premises (§ARTICLE 5 -):	Common-Use Lounge operated under the name of XXX, offering the following services and amenities:
Initial Minimum Investment Amount (§9.2.1):	\$500 per square foot for common-use lounge location or such larger amount as committed in Concessionaire's Proposal
Build-Out Deadline (§1.8):	150 days following the Occupancy Date or as otherwise provided pursuant to a construction plan approved by the CEO
Construction Delay Damages (§9.2):	\$1,000 per day
Midterm Refurbishment Amount (§9.2.2):	Fifteen percent (15%) of the actual amount spent on Initial Improvements, which shall not be less than [15% of \$ amount committed in Concessionaire's Proposal for Initial Improvements]
Midterm Deadline (§9.2.2):	June 30, 2032
Exhibits to Lease Agreement:	A – Lease Outline Drawings B – Concession Services, Fees, Menus, Products, and Pricing C – Concession Sustainability Requirements and Voluntary Practices D – ACDBE Participation Plan E – Pricing Policy

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**OMAHA AIRPORT AUTHORITY  
LEASE OF PREMISES  
COMMON-USE LOUNGE CONCESSION**

THIS LEASE OF PREMISES FOR A COMMON-USE LOUNGE CONCESSION ("Lease Agreement") is entered into and made effective on this \_\_\_\_ day of \_\_\_\_\_ ("Effective Date"), by and between the Airport Authority of the City of Omaha, a municipal corporation organized and existing under the laws of the State of Nebraska (the "Authority"), and [INSERT NAME OF CONCESSIONAIRE], a [insert state of incorporation] [insert type of organization], ("Concessionaire") who agree as follows:

**WITNESSETH**

WHEREAS, the Omaha Airport Authority controls and operates an airport known as Eppley Airfield, located in the City of Omaha, State of Nebraska, which airport and any additions or improvements thereto or changes therein which the Authority hereafter makes or authorizes hereinafter referred to as the "Airport," and,

WHEREAS, the Authority solicited proposals for the design, construction, operation, and management of a common-use lounge concession at the Airport; and

WHEREAS, the parties desire to enter into a lease agreement for the use of premises, together with others, for the purpose of operating a common-use lounge concession as more fully defined hereinafter.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Authority and [INSERT CONCESSIONAIRE NAME] do hereby mutually undertake, promise, and agree, each for itself, its successors, and assigns, as follows:

## ARTICLE 1 - DEFINITIONS

- 1.1 Addendum. "Addendum" shall mean the written or graphic instrument that clarifies, corrects, or changes the Lease Agreement documents.
- 1.2 Affected Concourse. "Affected Concourse" shall mean a concourse in which Concessionaire operates one or more Concession locations under this Lease Agreement.
- 1.3 Airport. "Airport" shall mean Eppley Airfield.
- 1.4 Airport Badge. "Airport Badge" shall mean a badge issued by the Omaha Airport Authority for the purpose of identification, vehicle operation, security and access of persons employed by companies operating at the Airport.
- 1.5 Airport Security Plan. "Airport Security Plan" shall mean the security plan approved by the TSA under TSR 1542.101 for the Airport.
- 1.6 ACDBE. "Airport Concessions Disadvantage Business Enterprise" and "ACDBE" shall mean a business, whether it is a corporation, limited liability company, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Nebraska, of which at least fifty-one percent (51.0%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations declared pursuant thereto at 49 CFR Part 23.
- 1.7 Applicable Laws. "Applicable Law(s)" shall mean all federal, state or local statutes, laws, ordinances, codes, rules, regulations, policies, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, decisions and judgements, permits, licenses, reporting or other governmental requirements or policies of any kind by which a party may be bound, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those Applicable Laws, including those which specifically relate to: (a) the business of the Authority; (b) business of Concessionaire of Concessionaire's sub-concessionaire(s); (c) this Lease Agreement and the Lease Agreement documents; or (d) the performance of the Services under this Lease Agreement.
- 1.8 Build-Out Deadline. "Build-Out Deadline" shall mean the date set forth in the Key Lease Agreement Terms. In the event that the Build-Out Deadline is subject to extension as provided in Section 9.2.1, the Authority shall confirm the extended Build-Out Deadline in the manner provided for notice in Section 36.1 of this Lease Agreement.
- 1.9 Central Pavilion. "Central Pavilion" shall mean the large, open and spacious area in the Terminal featuring dining and shopping opportunities immediately after the security screening checkpoint.
- 1.10 Chief Commercial Officer or CCO – The individual designated to act as coordinator and manager of this RFP and Lease Agreement to be awarded. The CCO may

from time to time designate a representative to fulfill certain tasks associated with concession leases and solicitations.

- 1.11 Chief Executive Officer. “Chief Executive Officer” or “CEO” shall mean the individual designated by the Authority to act as coordinator and manager of this Lease Agreement, and the Authority’s delegee on matters related thereto unless otherwise expressly stated herein. The Chief Executive Officer may from time to time designate a representative to fulfill certain tasks stated in this Lease Agreement as the responsibility of the Chief Executive Officer.
- 1.12 Chief Operating Officer or COO – The individual designated to act as coordinator and manager of Airport operations. The COO may from time to time designate a representative to fulfill certain tasks associated with Airport operations.
- 1.13 Commencement Date. “Commencement Date” shall mean the later of (i) the date on which the Central Pavilion opens for business to the public, which is expected to be on or about November/December 2026; or (ii) the Date of Beneficial Occupancy.
- 1.14 Common-Use Lounge. “Common-Use Lounge” shall mean the concession operating in the Leased Premises described in Exhibit A offering passenger services as described herein and in the Proposal.
- 1.15 Concession Pricing Policy. “Concession Pricing Policy” or “Pricing Policy” shall mean the pricing policy under this Lease Agreement specifying that the prices of all items, including without limitation, all food service, retail merchandise, services, and supplies, sold at the Airport shall be no more than ten percent (10%) above the prices charged in comparable facilities within the Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area (“Omaha MSA”) for items of a similar size, quantity, packaging, and quality.
- 1.16 Concessionaire. “Concessionaire” shall mean and refer to the party other than the Authority executing this Lease Agreement, as identified in the preamble of this Lease Agreement.
- 1.17 Date of Beneficial Occupancy. “Date of Beneficial Occupancy” or “DBO” shall mean the earlier of (i) the date Concessionaire commences concession operations in the Leased Premises, or (ii) the Build-Out Deadline.
- 1.18 Day. “Day” shall mean a calendar day of 24 hours measured from midnight to the next midnight.
- 1.19 Default Rate. “Default Rate” shall mean the rate set forth in the Key Lease Agreement Terms or the maximum rate provided by law for a transaction of this nature, whichever is less.
- 1.20 Eligible Improvements. “Eligible Improvements” shall have the meaning set forth in Section 19.6 of this Lease Agreement.
- 1.21 Enplanement. “Enplanement” shall mean a passenger boarding a flight at the Terminal for a scheduled or charter flight, whether domestic or international, including non-revenue passengers (but excluding airline crew), and including those



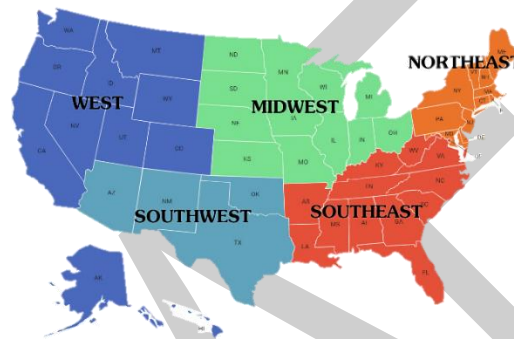
passengers connecting from arriving flights of the same or another airline. Enplanements shall generally be measured for the entire Terminal.

- 1.22 Enplanement Stabilization for Two Consecutive Months. "Enplanement Stabilization for Two Consecutive Months" means that actual Enplanements departing an Affected Concourse for a particular month equal or exceed eighty-five percent (85%) of the actual Enplanements for the same reference month in the immediately prior year, and such threshold is achieved for two consecutive months.
- 1.23 Excluded Costs. "Excluded Costs" shall have the meaning set forth in Section 19.7 of this Lease Agreement.
- 1.24 Expiration Date. "Expiration Date" shall have the meaning set forth in Section 2.1 of this Lease Agreement, which date shall be the date on which this Lease Agreement, unless earlier terminated, will expire. Without regard to the number of Occupancy Dates and/or Build-Out Deadlines for different portions of the Leased Premises, there shall be only one Expiration Date.
- 1.25 First Calendar Year. "First Calendar Year" shall have the meaning set forth in Section 4.1.1 of this Lease Agreement.
- 1.26 First Partial Year. "First Partial Year" shall have the meaning set forth in Section 4.1.1 of this Lease Agreement.
- 1.27 Franchisor. "Franchisor" shall have the meaning set forth in Section 5.3 of this Lease Agreement.
- 1.28 Gross Receipts. "Gross Receipts" shall mean the total dollar amount derived from the sale or delivery, on or off the Airport, of any admission or entry fees or charges, food, beverages, advertising, promotions, or the performance of any services from, in, upon or arising out of the Leased Premises, whether by Concessionaire, any sub-concessionaire(s), licensee or concessionaire of Concessionaire, or any other person or company on Concessionaire's behalf, whether at wholesale, retail, or discounted, and whether for cash, check, credit (including charge accounts), third-party transaction or account, exchange or in kind (specifically including the amount of credit allowed for any trade-ins), and regardless of when or where paid for or not. No deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. No deduction shall be permitted for the payment of franchise or license taxes and fees, taxes levied on concession activities, display or promotional rebates or discounts, facilities, equipment, or real or personal property of Concessionaire.
- 1.28.1 Gross Receipts shall, without limiting the generality of the foregoing, also include:
- 1.28.1.1 Admission or entry fees, reservations, and orders that originate or are accepted at the Leased Premises, even if delivery or performance is made from or at any other place. All sales made and orders and

- reservations received at the Leased Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection;
- 1.28.1.2 Admission and entry fees, reservations, and orders that result from solicitation off the Leased Premises, but which are delivered or performed from the Leased Premises or by personnel either operating from the Leased Premises or reporting to or under the control or supervision of any employee employed at the Leased Premises;
- 1.28.1.3 Mail, catalog, computer, internet, telephone, cell phone, or other similar reservation or order received at, ordered from, or billed from the Leased Premises;
- 1.28.1.4 Sales originating from whatever source, and which Concessionaire (or Concessionaire's sub-concessionaires, licensees or concessionaires) in the normal and customary course of Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) operations would credit or attribute to Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) business conducted in the Leased Premises;
- 1.28.1.5 Display or promotional allowances or fees, whether received by Concessionaire or its sub-concessionaire, licensee or concessionaire; and
- 1.28.1.6 All monies or other things of value received by Concessionaire (or Concessionaire's sub-concessionaire, licensee or concessionaire) from Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) operations at, upon or from the Leased Premises which are neither included in nor excluded from Gross Receipts by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.
- 1.28.2 Gross Receipts shall not include, and may be adjusted to exclude, the following when properly recorded and accounted for:
- 1.28.2.1 Tips and gratuities paid directly to employees;
- 1.28.2.2 Returns to shippers or manufacturers with no mark-up;
- 1.28.2.3 Allowances or refunds allowed by Concessionaire to customers because of unacceptable or unsatisfactory goods or services to the extent such allowance or refund was actually granted and adjustment actually made;
- 1.28.2.4 Complimentary meals, the amount of any employee discount on meals, and any meals provided by Concessionaire to its employees without cost as a benefit;
- 1.28.2.5 The amount of any sales tax or other excise tax imposed upon the customer and collected by Concessionaire as agent for the taxing body imposing the tax and billed to the customer as a separate item;

- 1.28.2.6 Revenue from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by said employees;
- 1.28.2.7 Any sums that represent discounts so long as the amount of the discount is shown on the face of the receipt issued to the customer; and
- 1.28.2.8 Any item, such as the cost of third-party shipping or product handling, for which the Concessionaire is reimbursed at actual cost therefor; provided, however, in the event that Concessionaire charges a customer, sub-concessionaire, licensee, or concessionaire more than the actual cost of such item (specifically including through the inclusion of a "handling," "management," or similar charge by Concessionaire), the entire amount shall be includable with Gross Receipts and shall not be subject to exclusion.
- 1.29 Initial Improvements. "Initial Improvements" shall have the meaning set forth in Section 9.2.1 of this Lease Agreement.
- 1.30 Initial Investment Amount. "Initial Investment Amount" shall be the amount invested by the Concessionaire in initial Leasehold Improvements, which shall not be less than \$500 per square foot for the common-use lounge concession and equal or exceed [ENTER TOTAL MINIMUM CAPITAL INVESTMENT AMOUNT FROM CONCESSIONAIRE'S PROPOSAL] as committed in Concessionaire's Proposal.
- 1.31 Last Calendar Year. "Last Calendar Year" shall have the meaning set forth in Section 4.1.1 of this Lease Agreement.
- 1.32 Last Partial Year. "Last Partial Year" shall have the meaning set forth in Section 4.1.1 of this Lease Agreement.
- 1.33 Lease Agreement. "Lease Agreement" shall have the meaning set forth in the preamble to this agreement, as further specified in ARTICLE 39 hereof.
- 1.34 Leased Premises. "Leased Premises" or "Premises" shall mean the premises listed in ARTICLE 3 - for use by Concessionaire in performing the services outlined in this Lease Agreement.
- 1.35 Leasehold Improvements. "Leasehold Improvements" shall mean the Initial Improvements, Midterm Refurbishment, and any Alterations made by the Concessionaire, including equipment owned, installed, and affixed to the Leased Premises by the Concessionaire. Leasehold Improvements may include, but are not limited to, all mechanical, electrical, and plumbing work; floors, ceilings, demising walls, storefronts, and signage; and décor items, lighting fixtures, and built-in shelving. Leasehold Improvements do not include personal property or improvements made to support space.
- 1.36 Local Brand. "Local Brand" shall mean a branded concept that is based in, and has at least one location operating in Nebraska or the Omaha-Council Bluffs Metropolitan Statistical Area (Omaha MSA), but little to no presence outside of Nebraska or the Omaha MSA.
- 1.37 Midterm Refurbishment Deadline. "Midterm Refurbishment Deadline" shall mean the end of the sixth (6th) anniversary of the Date of Beneficial Occupancy or such later deadline as may be approved by the Authority.

- 1.38 Midterm Refurbishments. “Midterm Refurbishments” shall have the meaning set forth in Section 9.2.2 of this Lease Agreement.
- 1.39 Minimum Annual Guarantee. “Minimum Annual Guarantee” or (“MAG”) shall have the meaning set forth in Section 4.1 of this Lease Agreement.
- 1.40 Minimum Reinvestment. “Minimum Reinvestment” shall have the meaning set forth in Section 9.2.2 of this Lease Agreement.
- 1.41 Modifications. “Modifications” shall have the meaning set forth in Section 9.1 of this Lease Agreement.
- 1.42 National Brand. “National Brand” shall mean a brand with a significant presence of units operating in at least two of the five regions (as shown in Figure 1) in the United States.



- 1.43 Net Book Value of Leasehold Improvements. “Net Book Value of Leasehold Improvements” shall have the meaning set forth in Section 19.5 of this Lease Agreement.
- 1.44 Occupancy Date. “Occupancy Date” shall mean a date set by the Authority for the delivery of access to the Concessionaire of the Leased Premises for Concessionaire to commence improvements to the Leased Premises.
- 1.45 Omaha Airport Authority Rules and Regulations. Omaha Airport Authority Rules and Regulations shall mean the rules and regulations established by the Authority and which may be updated from time to time, currently found at [www.flyoma.com/oaa-rules-and-regulations-january-2023](http://www.flyoma.com/oaa-rules-and-regulations-january-2023).
- 1.46 Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area. “Omaha-Council Bluffs, NE-IA Metropolitan Statistical Area” or “Omaha MSA” shall mean the area in and around the Airport as defined by the United States Census Bureau, including Omaha, Nebraska and Council Bluffs, Iowa.
- 1.47 Percentage Rent. “Percentage Rent” shall have the meaning set forth in Section 4.1 of this Lease Agreement.
- 1.48 Performance Guarantee. “Performance Guarantee” shall have the meaning set forth in Section 4.3 of this Lease Agreement.
- 1.49 Proposal. “Proposal” shall mean the document, including attachments and exhibits, submitted by Concessionaire on or about August 5, 2025 in response to the RFP,

which Proposal identified the specific concept for the Leased Premises, outlined Concessionaire's plan for the operation of concession, made certain promises regarding minimum capital investments in improvements for the Leased Premises, and made certain commitments to the Authority regarding ACDBE participation, management, staffing, and other operational and management functions serving as the basis for the award of this Lease Agreement.

- 1.50 Public Areas. "Public Areas" shall mean the areas in and around the Terminal designated by the Authority for non-exclusive public use, including, but not limited to, walkways, roadways, waiting rooms, hallways, restrooms and other passenger conveniences.
- 1.51 Regional Brand - A brand with a significant presence of units operating in multiple states within the Midwest region.
- 1.52 Removable Fixtures. "Removable Fixtures" shall have the meaning set forth in Section 9.2.5 of the Lease Agreement.
- 1.53 Rent. "Rent" shall mean and refer collectively to the sums denominated as either Minimum Annual Guarantee, Percentage Rent, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Lease Agreement. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Authority to pursue any or all remedies specified in this Lease Agreement or otherwise allowed by law.
- 1.54 RFP. "RFP" or "Request for Proposals" shall mean the Request for Proposals dated May 7, 2025 issued by the Authority for a Common-Use Lounge Concession at Eppley Airfield.
- 1.55 Severe Decline in Enplanements for Three Consecutive Months. "Severe Decline in Enplanements for Three Consecutive Months" means that the actual Enplanements departing in the Terminal during a one-month period are less than eighty-five percent (85%) of the actual Enplanements during the same month in the immediately prior Calendar Year, and such shortfall continues for three (3) consecutive months.
- 1.56 Services. "Services" shall have the meaning set forth in Section 5.1 of this Lease Agreement.
- 1.57 Tenant Design Guidelines. "Tenant Design Guidelines" shall mean the set of design standards and guidelines, as may be modified by the Authority from time to time, found on the Airport's website that outlines the design requirements to which all Concessionaires and other Airport tenants must comply.
- 1.58 Terminal. "Terminal" shall mean the passenger terminal building located at the Airport, including the North and South Concourses, Central Pavilion, and all related pre- and post-security locations.
- 1.59 Trade Fixtures. "Trade Fixtures" shall mean all non-affixed items, except expendables and personal property, that can be removed without damage to the Leased Premises, including cash registers, safes, display fixtures, and the like, as designated by the Concessionaire upon installation and agreed by the Authority.

## ARTICLE 2 - TERM

- 2.1 Term. The Term of this Lease Agreement shall begin on the Commencement Date and continue until the last day of the month in which the tenth anniversary of the Commencement Date occurs, unless terminated earlier (the "Expiration Date"). Notwithstanding the foregoing, this Lease Agreement shall be effective and binding on the parties as of the Effective Date and all rights and obligations of the parties under this Lease Agreement shall commence on the Effective Date; provided, however, that to the extent that Authority is unable to turn over possession of any part of the Leased Premises to Concessionaire on the Occupancy Date: (1) the Authority's obligation to deliver such portion of the Leased Premises to Concessionaire and (2) Concessionaire's obligation to improve such portion of the Leased Premises shall commence on the Occupancy Date for such portion(s) of the Leased Premises. Additionally, Concessionaire's obligation to pay rent for such portion of the Leased Premises and Concessionaire's obligation to operate such portion of the Leased Premises shall commence on the Date of Beneficial Occupancy for such portion(s) of the Leased Premises.

### ARTICLE 3 - LEASED PREMISES

- 3.1 Terminal Construction. Concessionaire hereby acknowledges and agrees that (i) the Terminal will be under construction at the Occupancy Date, and (ii) the Occupancy Date for the Leased Premises is subject to construction schedules and requirements, all as further described in the RFP and the Proposal.
- 3.2 Leased Premises. Effective on the Occupancy Date, the Authority hereby leases to Concessionaire and Concessionaire hereby leases from the Authority, the Leased Premises listed in the Key Lease Agreement Terms and Exhibit A.
- 3.3 Acceptance of Premises. Concessionaire shall promptly examine the Leased Premises following the Occupancy Date. Concessionaire shall accept the Leased Premises in the condition described in the Tenant Design Guidelines. Concessionaire agrees to make all changes and improvements necessary to conform to federal, state, and local law applicable to Concessionaire's use of the Leased Premises, and obtain necessary permits therefor, unless Concessionaire provides the Authority with written notice of any defect or problem with the Leased Premises within ten (10) business days of the Occupancy Date.
- 3.4 No Warranty. The Authority makes no warranty, promises, or representations regarding the economic viability of any concession location included in the Leased Premises. Passenger counts, passenger flows, and other customer activity at the Airport are generally the result of airline schedules, gate utilization, and seasonal activity. Further Federal rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Lease Agreement, Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flows, other customer activity, or Gross Receipts are other than Concessionaire predicted or projected.
- 3.5 No Easement. No easement for light, air, or view pertaining to the Leased Premises is granted, given, or implied in this Lease Agreement.
- 3.6 Support Space and Access. Concessionaire shall not allocate more than ten percent (10%) of the square footage in the concession location for storage, support, and/or office space use unless otherwise agreed to in writing by the Authority. Such support space that is available to Concessionaire for office, storage, or other support uses are included in Exhibit A of this Lease Agreement. Such space may be unfinished and Concessionaire may be required to develop and improve the space at its sole cost and without rental credit according to the terms and conditions contained in this Lease Agreement. Additional support space may be available for lease to the Concessionaire under a separate agreement.

## ARTICLE 4 - RENT

- 4.1 Rental Payments. As consideration for the right to occupy the Leased Premises, Concessionaire shall make monthly rental payments ("Monthly Rent") to the Authority for the full Term of this Lease Agreement.
- 4.1.1 Calendar Year Accounting. For the convenience of the Authority, this Lease Agreement will generally be administered financially on a calendar year basis. Consequently, in the event that the Commencement Date falls on any date other than January 1 or the Expiration Date falls on any date other than December 31, the Lease Agreement term will include partial calendar years at the beginning and end of the Lease Agreement term. As used in this Lease Agreement: (i) the term "First Calendar Year" will refer to the first, full calendar year of the Lease Agreement term, (ii) the term "First Partial Year" will refer to that portion of the calendar year commencing on the Commencement Date and ending on December 31 of the year in which the Commencement Date falls; (iii) the term "Last Calendar Year" will refer to the last, full calendar year of the Lease Agreement term; and (iv) the term "Last Partial Year" will refer to that portion of the calendar year commencing on January 1 following the Last Calendar Year and ending on the Expiration Date (or earlier termination date); provided, however, (a) in the event that the Commencement Date falls on January 1, there shall be no First Partial Year, and (b) in the event that the Expiration Date falls on December 31, there shall be no Last Partial Year.
- 4.1.2 First Partial Year. The rental payment for the First Partial Year, if any, of the Lease Agreement shall be Percentage Rent calculated as a percentage of Gross Receipts based on the Percentage Fees as shown in Table 4.1:

Table 4.1 Percentage Fees

Leased Premises		
Common-Use Lounge Concession	Percentage Fee in Number Format	Percentage Fee in Words <sup>1</sup>
Total Gross Receipts		

<sup>1</sup> Percentage Fee will be updated to include the proposed and approved rent structure.

- 4.1.3 First Calendar Year. In the First Calendar Year, the Concessionaire shall pay the higher of (1) the Minimum Annual Guarantee set by the Authority for the Leased Premises included in this Lease Agreement equal to Two Hundred Twenty-Five Thousand Dollars (\$225,000) ("First Calendar Year MAG"), or (2) Percentage Rent based on the Percentage Fees listed in Table 4.1.
- 4.1.4 Second Calendar Year through Last Calendar Year. For the second Calendar Year and each subsequent year during the Term of this Lease Agreement, the Minimum Annual Guarantee for the applicable year will be equal to the higher of (1) the previous Calendar Year's Minimum Annual Guarantee; or (2) Eighty-five percent (85%) of the total Percentage Rent and MAG, as applicable, due and payable by the Concessionaire during



the previous Calendar Year, which amount shall never be lower than the First Calendar Year MAG. In each year subsequent to the First Calendar Year during the Term of this Lease Agreement, the rental payment shall be the greater of Concessionaire's Minimum Annual Guarantee ("MAG") or Percentage Rent based on the Percentage Fees listed in Table 4.1.

- 4.1.5 Last Partial Year. For the Last Partial Year, the Minimum Annual Guarantee shall be calculated as provided in Section 4.1.4 using the total Percentage Rent and MAG due and payable by Concessionaire during the Last Calendar Year, but the resultant amount shall be prorated based on the number of days in the Last Partial Year. For example, if the Expiration Date falls on January 31, the Minimum Annual Guarantee for the Last Partial Year shall be equal to 8.5% (i.e., 31 days / 365 days x 100%) of the Minimum Annual Guarantee calculated as provided in Section 4.1.4.
- 4.1.6 Monthly Rent. Rent to be paid each month under this Lease Agreement will be Percentage Rent in the First Partial Year and the higher of one twelfth (1/12<sup>th</sup>) of the Minimum Annual Guarantee or Percentage Rent (Percentage Fees of Gross Receipts) as stated above in all subsequent years.
- 4.1.7 Gross Receipts. The term "Gross Receipts" shall be as defined in Section 1.28 of this Lease Agreement.
- 4.1.8 Commencing on the Commencement Date, Concessionaire shall pay the Authority Percentage Rent according to the schedule of Percentage Fees set forth in Table 4.1. Beginning on January 1 of the First Calendar Year, Concessionaire will pay one-twelfth (1/12<sup>th</sup>) of the MAG by the first day of each month without notice from the Authority and without abatement, setoff, or deduction. On or before the twelfth (12<sup>th</sup>) day of each month, Concessionaire shall submit to the Authority a true and correct accounting statement in the form prescribed by the Authority and signed by the Concessionaire or Concessionaire's responsible agent under penalty or perjury. Each such statement shall state:
- 4.1.8.1 The following amounts and calculations for the Common-Use Lounge:
- i. One twelfth of the Minimum Annual Guarantee effective during the preceding calendar month;
  - ii. The amount of Gross Receipts for the previous calendar month attributable to the Common-Use Lounge, itemized by sales category as established herein;
  - iii. The Percentage Rent due for the previous calendar month for the Common-Use Lounge by sales category, if applicable, and the sum thereof;
  - iv. The total rent previously paid by Concessionaire for the Calendar Year within which the preceding calendar month falls; and
  - v. The Monthly Rent due for the preceding calendar month.
  - vi. If the Percentage Rent is greater than the previously paid Minimum Annual Guarantee for the month, Concessionaire shall submit

payment to the Authority as a result of such Percentage Rent calculation.

4.1.8.2 In the first month after the Common-Use Lounge opens for business or the Build-Out Deadline has passed, concurrently with the rendering of each monthly statement, Concessionaire shall pay to the Authority the greater of the following two amounts:

- i. The total Percentage Rent computed for that portion of the Calendar Year ending with and including the last day of the preceding month [Item iii above] less total rents previously paid for the Calendar Year [Item iv above], or
- ii. One twelfth of the Minimum Annual Guarantee rent, multiplied by the number of months from the beginning of the Calendar Year to and including the preceding month, less total rents previously paid for the Calendar Year [Item iv above].

4.1.8.3 Annual Rent. Annual Rent for each Calendar Year will be reconciled in the first quarter of the following Calendar Year in conjunction with the annual report due from Concessionaire to the Authority under Section 4.4 of this Lease Agreement. In the event that Concessionaire has underpaid the rent, Concessionaire shall remit the entire amount of the underpayment together with the annual report. Any overpayments made to the Authority will be reimbursed during the then current Calendar Year through rent credits.

4.1.9 Rental Payments for Additional Support Space. In addition to Monthly Rent, Concessionaire shall on a monthly basis pay the per square foot per annum Finished Terminal Rate for the use of office and storage space leased at the Airport not included in Exhibit A (as referenced in Section 3.6 above). The "Finished Terminal Rate" is currently \$134.88 per square foot per annum. The "Finished Terminal Rate" is subject to annual adjustment by the Authority in its sole discretion, effective as of January of each year. The opportunity to lease additional support space at the Airport shall be subject to availability. Concessionaire shall enter into a separate agreement with the Authority for any additional support space.

4.1.10 Additional Charges and Fees. In addition to Monthly Rent, Concessionaire shall also pay to the Authority, within thirty (30) days of invoice, any late fees required by Section 4.4.2, any maintenance and repair charges required by ARTICLE 11 -, and such other amounts as may be owing by Concessionaire to the Authority pursuant to the terms of this Lease Agreement.

4.1.11 Place of Payment and Filing. Payments and statements required by this section and any other sections in this Lease Agreement pertaining to payments hereunder shall be delivered to:

Omaha Airport Authority  
1519 E. Hartman Court  
Omaha, Nebraska 68110

The designated place of payment and filing may be changed at any time by the Authority upon ten (10) days' written notice to Concessionaire.

Payments may be made by check payable to the Omaha Airport Authority or ACH per instructions from the Authority. Concessionaire assumes all risk of loss if payments are made by mail.

- 4.1.12 Form of Payment. All rent due under this Lease Agreement shall be paid in lawful money of the United States of America, without abatement, offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by the Authority of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and the Authority may accept such check or payment without prejudice to the Authority's right to recover the balance of said amount due or pursue any other remedy in this Lease Agreement.

- 4.2 Books and Records. The Authority reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Receipts hereunder, and Concessionaire agrees to change the form of its statements to that requested by the Authority and to provide any such additional information the Authority may request. Concessionaire shall keep full and accurate books and records showing all Gross Receipts hereunder, and the Authority shall have the right, through its representatives and at reasonable times, to inspect, examine, copy and audit such books and records, including State of Nebraska sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to the Authority at the Leased Premises (during the Term of the Lease Agreement) or a location to be designated by the Authority (after the expiration or termination of this Lease Agreement) for at least four (4) years following the period covered by such books and records.

- 4.3 Performance Guarantee. Concessionaire shall provide to the Authority, and continuously maintain throughout the Term of this Lease Agreement, a Performance Guarantee. The Performance Guarantee shall be delivered to the Authority with a copy of the signed Lease Agreement. Through the fifth Calendar Year, the Performance Guarantee shall be in an amount equal to the then current Minimum Annual Guarantee (the "Performance Guarantee"). For the sixth Calendar Year through the last Calendar Year or Last Partial Year, at the sole discretion of the Authority based on the Concessionaire's compliance with all terms of this Lease Agreement, the Performance Guarantee may be reduced to an amount equal to one-half of the then current Minimum Annual Guarantee. Such reduction in the Performance Guarantee may be revoked at any time at the sole discretion of the Authority. The Performance Guarantee shall be in the form of a surety bond or an irrevocable letter of credit (by a bank rated "B" or better by A. M. Best Rating Services, Fitch Ratings, Moody's Investors Service, or S&P Global Ratings) made payable to the Omaha Airport Authority. If the Performance Guarantee is in the form

of a surety bond, the bond shall be issued by a surety company authorized to do business in the State of Nebraska and rated as at least an A or A+. Monetary Performance Guarantees shall be deposited into a bank account held by the Omaha Airport Authority and any interest earned thereon shall accrue to the Authority. The Performance Guarantee shall secure Concessionaire's full and faithful performance and observance of all of Concessionaire's obligations under this Lease Agreement and under any other written agreement between Concessionaire and the Authority specifically referring to this Performance Guarantee. The Performance Guarantee shall not be considered to be held in trust by the Authority for the benefit of Concessionaire and shall not be considered an advance payment of rent or a measure of the Authority's damages in the case of an event of default by Concessionaire. The Authority may, but shall not be obligated to, draw upon and apply the Performance Guarantee to: (a) pay any rent not paid on or before the date it is due and the Authority shall not be required to give notice or opportunity to cure before drawing on the Performance Guarantee; and/or (b) remedy any other violation of this Lease Agreement, after Concessionaire has received notice and opportunity to cure as provided herein. Further the Authority may draw down the entire Performance Guarantee immediately, without notice to Concessionaire, upon receipt of a notice of non-renewal of the form of the Performance Guarantee. If the Authority applies any of the Performance Guarantee to any of the above, Concessionaire shall, immediately upon demand, replenish the Performance Guarantee to its full amount. If Concessionaire fully performs all of its obligations under this Lease Agreement, the Performance Guarantee, or any balance remaining, will be released within thirty (30) days from the Expiration Date or termination of this Lease Agreement and delivery of the Leased Premises to the Authority. However, if any question exists concerning Concessionaire's full compliance with the Lease Agreement or if there is any obligation under this Lease Agreement to be performed after the Expiration Date or earlier termination of this Lease Agreement, the Authority shall be entitled to require that the Performance Guarantee remain in place until the Authority is fully satisfied that there has been no violation of this Lease Agreement and all obligations due under this Lease Agreement have been fully performed, even if it takes the Authority longer than thirty (30) days to make such a determination to the Authority's satisfaction.

#### 4.4 Annual Certified Statement and Delinquent Rentals.

4.4.1 Annual Certified Statement. No later than January 31 of each year during the Term of this Lease Agreement, Concessionaire shall provide to the Authority a written annual certified statement certified by a senior financial officer of Concessionaire stating that in his or her opinion the Monthly Rent payments made by Concessionaire to the Authority during the preceding year pursuant to this Lease Agreement were made in accordance with the terms of this Lease Agreement. Such statement shall also contain a list of the Gross Receipts, by month, location, and concession category, as required, as shown on the books and records of Concessionaire, and which were used to compute the Monthly Rent payments made to the Authority during the period covered by said statement. Concessionaire shall have until March 31 to propose, in writing, any adjustments to the annual

certified statement. No adjustments shall be made until Concessionaire has received approval from the Authority or its designated representative.

Any year-end credit due the Concessionaire, after approval by the Authority of the annual certified statement, shall be taken by June 30 of the year during which the annual certified statement was submitted. If credit is not taken by said date, credit shall be deemed as forfeited by Concessionaire with no further obligation by the Authority.

- 4.4.2 **Delinquent Rent and Fees.** Without waiving any other right or action available to the Authority, in the event any payment due to the Authority pursuant to this Lease Agreement is not received by the Authority by the due date, Concessionaire shall pay to the Authority a late payment fee of Five Hundred Dollars (\$500.00) per occurrence plus interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such payment was due and payable until paid. Concessionaire and the Authority hereby agree that such late fees represent a fair and reasonable estimate of the costs that the Authority will incur by reason of Concessionaire's late payment. Acceptance of such late fees (or any portion of the overdue payment) by the Authority shall in no event constitute a waiver of Concessionaire's default with respect to such overdue payment or prevent the Authority from exercising any of the other rights and remedies granted hereunder.

- 4.4.3 **Audit.** Concessionaire shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's authority, and that the financial records are reliable for the purposes of preparing financial statements. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. The Authority reserves the right to audit Concessionaire's books and records at any time for the purpose of verifying the Gross Receipts and Percentage Rent calculation hereunder for any period within four (4) years prior to such audit. If, as a result of such audit, it is established that Concessionaire has understated the Gross Receipts received from all operations at the Leased Premises by one percent (1.0%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Percentage Rent due shall forthwith be paid by Concessionaire to the Authority with interest thereon at one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such additional Percentage Rent became due.

## ARTICLE 5 - USE OF LEASED PREMISES

- 5.1 Non-Exclusive Rights. Concessionaire will have the non-exclusive privilege and obligation to design, construct, operate, and manage a common-use lounge concession in the Leased Premises as described herein (the "Services") and nothing herein shall preclude the Authority from entering into an agreement with any other parties during the Term of this Lease Agreement for the sale in any part of the Airport of the same or similar service that Concessionaire is permitted to sell or offer hereunder, whether such agreement is awarded competitively or through negotiations and regardless of whether the terms of such an agreement are more or less favorable than the terms of this Lease Agreement.
- 5.2 Use of Premises. Concessionaire, including Concessionaire's sub-concessionaires, franchisors, and licensors, shall use the Leased Premises to provide the concepts and brands in accordance with its Proposal or as otherwise amended by the Authority as set forth in the Key Lease Agreement Terms and shall not use them for any other activities or in any other manner without the written approval of the Authority. Concessionaire recognizes that the specific use of the brand or brands and product mix agreed to by the Authority is a substantial and material condition precedent to entering this Lease Agreement as concession space is limited to fulfill the requirements of the Authority in providing adequate service to the public, and financial requirements, and shall not be changed, except as specifically agreed to in writing by the Authority. The Authority shall have the right, at any time, to require or authorize Concessionaire to revise or replace the concept within the Leased Premises and may prohibit the sale of any particular products or services or categories of products or services or any particular use of the Leased Premises.
- 5.2.1 Menu and Products. Concessionaire shall offer common-use lounge services for a fee, in addition to premium amenities, beverages, and retail products that are not included in the base entry fee to passengers in accordance with the terms and conditions contained herein. With respect to the concession location hereunder, Concessionaire shall offer the services, menu, and products listed in Exhibit B, which services, menu, and products shall be available at the Leased Premises at all times unless a change is approved in advance in writing by the Authority. The services, menu, beverages, retail products, and other amenities approved for sale and the minimum requirements as set forth in Exhibit B may from time to time be amended by the Authority. Any pre-packaged offerings shall be dated with the date on which they were prepared. The Gross Receipts from all services, products, and amenities offered shall be included in the calculation of Gross Receipts herein and the rent shall be calculated according to the Percentage Rent payable as stated in Table 4.1.
- 5.2.2 Signs. Concessionaire shall install and maintain appropriate signs in or upon the Leased Premises, provided that the location, design, installation, and maintenance of all signs shall be subject to the provisions of ARTICLE 15 - of this Lease Agreement, Tenant Design Guidelines, and the prior written approval of the Authority.

- 5.3 Franchise. If any portion of the Leased Premises are operated under a franchise or license, Concessionaire represents and warrants to the Authority that Concessionaire has been granted the right to use any trade name that may be used at the Leased Premises for the entire Term of this Lease Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor") and all franchise and/or license standards shall be met or exceeded. At the Authority's request, Concessionaire agrees to provide the Authority with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Copies of franchise and/or license standards and performance audit forms shall be provided to the Authority prior to the opening date for locations operated under a Franchise Agreement. Copies of inspections conducted by the franchise and/or licensing entity, or anonymous shopper service hired by the franchise or licensing entity, shall be submitted to the Authority within ten (10) days of receipt by Concessionaire or any of its franchisees, sub-concessionaires, or licensees. Concessionaire agrees that the termination of Concessionaire's right to use Concessionaire's trade name at the Leased Premises or to conduct an operation at the Leased Premises of the type then conducted by or under license from Franchisor under Concessionaire's trade name, shall constitute a material breach of Concessionaire's obligations under this Lease Agreement. Concessionaire agrees that if such Franchise Agreement is terminated, the Authority shall have the right to terminate this Lease Agreement pursuant to ARTICLE 17 - of this Lease Agreement.
- 5.4 Continuous Operation of Premises. Concessionaire must operate the Leased Premises continuously and without interruption, and provide all required Services, throughout the Term and shall not abandon any portion of the Leased Premises without the prior written consent of the Authority.
- 5.5 Customer Service. The Authority shall have the right to make reasonable objections to the quality of products sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Leased Premises and employees. Concessionaire agrees to promptly discontinue or remedy any objectionable practice.
- 5.5.1 A high quality and stable workforce is key to providing outstanding customer service. Concessionaire is expected to maintain a positive work environment that encourages the development and growth of all employees. Concessionaire shall comply with all applicable federal, state, and local laws and ordinances related to wages and benefits as well as Concessionaire's specific commitments regarding wages, benefits, incentives, and training made as part of its Proposal. Concessionaire is expected to maintain favorable turnover rates compared to like businesses

in the industry. Failure to do so may result in termination of this Lease Agreement.

- 5.5.2 Concessionaire's staff must be aware of the time sensitive activities of Airport patrons. Concessionaire's employees shall be courteous and helpful to the public.
- 5.5.3 Concessionaire shall conduct its operations in an outstanding and business-like manner, which for the purpose of this Lease Agreement shall mean the standard of products, cleanliness, and customer service that would reasonably be expected in upscale lounges and other similar high-quality airport and non-airport lounge locations. Concessionaire must carry a sufficient quantity of food and beverages to ensure that the Leased Premises will be fully stocked and available to passengers at all times. All inventories must be top quality and offered in an inviting and "opening day fresh" environment. In addition, a dress and grooming code should be strictly adhered to for all operating staff.
- 5.5.4 Any packaging provided for customer convenience must be recyclable paper bags or one-hundred percent (100%) compostable bags or containers as certified by the Biodegradable Products Institute (BPI) or equivalent certification program.

5.6 Employee Parking. Parking for Concessionaire's employees shall be offered by the Authority on a space-available basis in the employee parking area in common with employees of other concessionaires and tenants at the Airport. The Authority shall charge Concessionaire a parking fee for the use by its employees of the employee parking area. The current employee parking rate is Eighteen Dollars (\$18.00) per space per month for surface parking and Forty Dollars (\$40.00) per space per month for parking garage spaces allocated for concession management personnel. The Authority may change the parking fees from time to time during the term of this Lease Agreement. Parking fees shall be assessed on a monthly basis and shall be payable by Concessionaire by the twelfth (12<sup>th</sup>) day of the following month.

5.7 Marketing Program. The Authority may establish a marketing program ("Marketing Program") to promote the concessions at the Airport. The Marketing Program may include advertising, media placements, special events, promotional events, social media, brochures, videos, passenger surveys, food recovery, and other promotions and monitoring to support the concession program at the Airport. Once established, the Authority will hold annual meetings with interested Airport concessionaires to obtain input on the Marketing Program's annual business plan, objectives, evaluation methodology, and budget for the upcoming calendar year.

The Marketing Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport. Upon establishment of the Marketing Program, Concessionaire will contribute an amount up to one half of one percent (0.5%) of its monthly Gross Receipts per calendar year (pro-rated based on the number of months in the term for any partial year), to fund the Marketing Program. All contributions to the Marketing Program will only be expended for the promotion and support of the concessions at the Airport and marketing-related staff activities at the



Airport and for no other purposes. Concessionaire shall make its contributions to the Marketing Program monthly in arrears concurrently with its payment of Monthly Rent under this Lease Agreement.

- 5.8 Prohibition of Solicitation. Concessionaire is strictly prohibited from engaging in any activities outside the Leased Premises within the Airport for the recruitment or solicitation of business. Concessionaire may not place or install any carts, kiosks, inline store, racks, or stands, or display merchandise or trade fixtures outside the boundaries of the Leased Premises without the express prior written consent of the Authority. Subject to ARTICLE 15 - of this Lease Agreement, Concessionaire may purchase advertising space within the Airport from the Authority's designated advertising concessionaire.
- 5.9 Construction. Concessionaire shall construct improvements on the Leased Premises for use in its operations in accordance with the investment requirements outlined in ARTICLE 9 - and the plans and construction schedule approved, in writing, by the Authority. All construction must comply with the Tenant Design Guidelines.
- 5.10 Public Areas. Subject to all applicable airport, federal, state, and local laws, rules, regulations, and policies, Concessionaire shall have the right to use the Public Areas for the uses for which those Public Areas are designed. Concessionaire rights under this Section shall include the right of ingress and egress to and from the Leased Premises. The Authority reserves the right to modify or relocate the Public Areas at any time and in any way it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access points to and from the Public Areas.
- 5.11 Compliance with Laws. Concessionaire, its employees, agents or servants, shall at all times comply with the laws and regulations of the United States of America and the State of Nebraska and shall abide by all applicable laws and ordinances, codes, and regulations of the City of Omaha and the rules and regulations governing the operation of the Airport. Violations thereof by Concessionaire, its agents or employees shall be cause for termination of this Lease Agreement at the sole option of the Authority if such violations are not corrected immediately to the satisfaction of the Authority.
- 5.12 Business Licenses and Permits. Concessionaire shall maintain all federal, state, and local licenses and permits necessary or required by law for Concessionaire's operations under this Lease Agreement. Revocation of permits or licenses required in the performance of this Lease Agreement shall be cause for termination of this Lease Agreement at the sole option of the Authority.

## **ARTICLE 6 - RESTRICTIONS ON USES AND PRIVILEGES**

- 6.1 Concession Sustainability Requirements and Voluntary Practices. Concessionaire shall comply with the sustainability requirements listed on Exhibit C and as they may be updated from time to time by the Authority.

- 6.2 Other Concessionaire's Rights. The Authority shall retain the right to grant privileges under separate agreements for common-use lounge, food service, and retail concessions at the Airport. Common-use lounge, food service, and retail concessionaires at the Airport shall have the right to offer products and services in their leased units in accordance with their individual lease agreements. Tenant airlines and the Authority retain the right to operate private clubs or lounges at the Airport, including the provision of food and beverage services.
- 6.3 Conflicts with Other Concessions. Notwithstanding the provisions of Section 6.2, and without limiting the terms of Section 5.1, Concessionaire specifically understands and agrees that, in the event of a conflict between Concessionaire and any other lessee or concessionaire in the Terminal as to specific items to be sold or services to be provided, the Authority shall make the final determination in its sole and absolute discretion as to which product or service may be sold or provided by each concessionaire or lessee.
- 6.4 ACDBE Participation. Concessionaire shall provide an opportunity for participation by ACDBEs in the management, operation, and/or provision of goods and services for the Leased Premises in accordance with the Confirmation of ACDBE Participation submitted in Concessionaire's Proposal and approved by the Authority ("ACDBE Participation Plan"), which is incorporated herein by reference and made a part hereof in Exhibit D. Concessionaire understands and agrees that it shall implement and maintain said ACDBE Participation Plan throughout the term of this Lease Agreement and that failure to do so may, at the sole and absolute discretion of the Authority, be cause for immediate termination of this Lease Agreement. Concessionaire further understands and agrees that, should any ACDBE hereunder cease operation, Concessionaire shall assume the operation immediately and, without any cessation of said operation, shall, within one hundred twenty (120) days, obtain another qualified ACDBE certified by the Nebraska Unified Certification Program and acceptable to the Authority, to resume the duties of the ACDBE. In the event the federal government shall enact any law or impose regulations in conflict with this provision or Concessionaire's ACDBE Participation Plan, this Lease Agreement, including said ACDBE Participation Plan, shall be deemed amended to conform to said laws or regulations, as interpreted by the Authority.

## **ARTICLE 7 - RIGHTS AND COVENANTS OF THE OMAHA AIRPORT AUTHORITY**

- 7.1 Subject to all Applicable Laws and to the terms and conditions of this Lease Agreement, including Articles 27, 29 and 30, the Authority covenants that it has exclusive jurisdiction and control of the Leased Premises and has full right and authority to lease the same as herein set forth.
- 7.2 The Authority reserves the right to maintain and keep in repair all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire to effect the right to maintain and repair all publicly-owned facilities.
- 7.3 The Authority reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport at its discretion, regardless of the desire or views of Concessionaire, and without interference or hindrance.

- 7.4 The Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the Authority would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 7.5 During time of war or national emergency, the Authority shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If such agreement is executed, the provisions of this Lease Agreement, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.
- 7.6 The rights granted to Concessionaire by this Lease Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.
- 7.7 There is hereby reserved to the Authority, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passengers of aircraft in the airspace above the surface of the Leased Premises herein conveyed, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from, or operating on or above the Airport.
- 7.8 The Authority shall carry such insurance on the Leased Premises as it determines to be appropriate; however, the Authority shall not, by reason of such insurance, be liable for any damage to persons, Leasehold Improvements, personal property, or inventory in the Leased Premises resulting from structural failures, the elements, fire, explosion, wind, tornadoes, act of a public enemy, act of God, or other cause.
- 7.9 The Authority and its duly authorized representatives shall have at all times the full and unrestricted right to enter the Leased Premises for the purpose of inspecting and of doing any and all things with reference thereto which the Authority is obligated to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of the Airport or in the exercise of the police power of the Authority, provided said entry shall not unreasonably interfere with the operation of Concessionaire.

## **ARTICLE 8 - AIRPORT SECURITY**

- 8.1 Concessionaire shall abide by all current and future Authority, local, state, and federal security rules, regulations, policies, and procedures in place for the Airport, including 49 CFR Part 1542 (Airport Security), as issued and/or amended from time to time, so as to assure compliance with all security regulations and directives which are currently in effect or which may be promulgated by either the Federal Aviation Administration ("FAA") or the Transportation Security Administration (49 CFR Part 1542, Airport Security). Concessionaire certifies that its personnel will be familiar with directives, rules, and regulations prior to being assigned to the secure areas of the Airport and the Terminal. Concessionaire agrees to employ such measures as

are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. Concessionaire shall comply with 49 CFR Part 1542 and the Authority's directives regarding the Airport Security Plan, as may be amended from time to time.

- 8.2 Concessionaire shall abide by rules and regulations adopted by the Authority in carrying out the Authority's obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the air operations area and other security measures as the Authority deems necessary from time to time. Concessionaire shall obtain an Airport Badge for each person working in secured/sterile/SIDA areas, which will require the worker to complete the Fingerprint/ID Badge Application, available from the Badging Office, and submit his/her fingerprints for a criminal history check. The cost, which is currently \$88.00 for a new Airport Badge and \$44 for a renewed Airport Badge, shall be the responsibility of the applicant or Concessionaire and such cost may be amended by the Authority from time to time. Concessionaire shall deliver to the Badging Office in writing, the names, mailing addresses and telephone numbers of all employees performing services under the Lease Agreement. Any change in personnel shall be reported to the Authority and the Badging Office. Concessionaire shall be responsible for the prompt recovery of Airport keys and Airport Badges from all terminated or former employees.

Pursuant to applicable federal regulations, Concessionaire shall maintain an Access Media Control Plan, if required, and comply with the Authority's bi-annual badge and key audit as required by the TSA. Concessionaire shall provide the Authority with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Airport area access locks or devices whenever missing, lost, or stolen access media exceed the established maximum loss rate of the access media issued for the affected lock or device.

- 8.3 Compliance and Responsibility for Fines and Forfeitures. Concessionaire recognizes its obligations for security on the Airport as prescribed by 49 CFR Part 1542 and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. Concessionaire shall comply with 49 CFR Part 1542 (Airport Security) and Airport security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it, the Authority or the Airport through enforcement of 49 CFR Part 1542, or any other applicable federal, state or local regulation, due to the acts or omissions of Concessionaire, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the Authority as a result of any such violation.
- 8.4 Tenant Security. Concessionaire will comply with rules, practices, security restrictions, and regulations as set forth by the Authority or any agency having jurisdiction at the Airport. Any fines assessed against the Authority as a result of the Concessionaire's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of Concessionaire, its employees or agents will be paid promptly, upon demand, to the Authority by the Concessionaire.

- 8.5 Employee Clearance. The Authority shall have complete control over granting, denying, suspending, or terminating security clearance or access badges for Concessionaire employees.
- 8.6 Unauthorized Personnel. Concessionaire employees shall identify, challenge, and report all unauthorized personnel (anyone without proper Authority-issued Airport Badge) to the Communications Center during all hours.

## **ARTICLE 9 - IMPROVEMENTS**

- 9.1 Improvements by Authority. The Authority's sole responsibility with regard to improvements within the Leased Premises shall be to deliver the Leased Premises to Concessionaire in the condition described in the Tenant Design Guidelines. The Authority shall have no obligation to make any improvements to the Leased Premises. The Authority may from time to time elect to alter, improve, or remodel portions of the Airport, and Concessionaire agrees that the portion of the Leased Premises, if any, which is visible to the general public may be altered, remodeled, or improved at the Authority's expense in connection with any such work. The Authority shall have the right, at its sole discretion, to make minor modifications to the Leased Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed in or about the Airport (hereafter, "Modifications"), which Modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Leased Premises. In the event of any such Modifications, the Authority shall adjust the Leased Premises through a written notice to Concessionaire rather than a formal amendment to the Lease Agreement. Concessionaire agrees that any inconvenience resulting from any work or Modifications by the Authority or its contractors and agents shall not be grounds for reduction of rent or fees due and payable if the same shall not unreasonably interfere with Concessionaire's use of the Leased Premises.

9.2 Improvements by Concessionaire

- 9.2.1 Initial Improvements. Concessionaire shall make an initial minimum investment in Leasehold Improvements for the Leased Premises, including architectural and engineering fees; construction costs; mechanical, electrical and plumbing; signs; storefronts; furniture, fixtures and equipment; demolition necessary to accommodate the improvements; and other expenditures (the "Initial Improvements") in an amount not less than the Initial Minimum Investment Amount stated in the Key Lease Agreement Terms, which shall include a minimum of \$500 per square foot for a common-use lounge concession. Concessionaire shall complete the Initial Improvements within the Leased Premises defined by the lease outline drawings, lease lines, and/or other boundaries described in this Lease Agreement according to the procedures and standards specified in the Tenant Design Guidelines and commence operations by the Build-Out Deadline for the concession location; provided however, the Build-Out Deadline for a location may be extended to the extent of such other delays directly caused by the Authority and/or Force Majeure Events beyond the control of Concessionaire as set forth in ARTICLE 31. In the event that

Concessionaire has not completed the Initial Improvements and commenced operations prior to the Build-Out Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Authority may have (whether under this Lease Agreement or in law or in equity), begin paying the Minimum Annual Guarantee associated with such location as stated in ARTICLE 4.0 of this Lease Agreement and pay the Authority a sanction amount equal to \$1,000 per day as construction delay damages ("Construction Delay Damages") until Concessionaire has completed the Initial Improvements and commenced operations.

- 9.2.2 Midterm Refurbishments. On or before the Midterm Deadline, Concessionaire shall completely upgrade and refurbish the Leased Premises (the "Midterm Refurbishments") in a manner acceptable to the Authority to maintain an attractive and inviting appearance to customers. In order to permit the timely completion of the Midterm Refurbishments, not later than June 30, 2032 Concessionaire shall submit to the Authority Concessionaire's proposed schedule and plan of refurbishment, specifically identifying those repairs and Alterations, including but not limited to painting, re-carpeting, re-finishing, re-decorating, and replacing furniture, trade fixtures and equipment, that it intends to undertake to restore the Leased Premises to an opening day condition. The Midterm Refurbishments shall be of quality equal to or better than the Initial Improvements, and all work (including, but not limited to, any Alterations) shall be subject to the prior written approval of the Authority and performed in accordance with the Tenant Design Guidelines. Unless otherwise expressly approved by the Authority, Concessionaire's investment in the Midterm Refurbishments shall be not less than fifteen percent (15%) of the Initial Investment Amount (the "Minimum Reinvestment").

Concessionaire shall proceed with the implementation schedule as approved by the Authority to construct the Midterm Refurbishments. In the event that Concessionaire has not completed the Midterm Refurbishments by the Midterm Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Authority may have (whether under this Lease Agreement or in law or in equity), pay the Authority an amount equal to one-half (50%) of the Construction Delay Damages sanctions until Concessionaire has completed the Midterm Refurbishments. Design and engineering costs for the Midterm Refurbishments shall not exceed twelve percent (12.0%) of the total cost of the improvements and construction management costs, if any, shall not exceed five percent (5.0%) of the total cost of the improvements. Should Concessionaire fail to spend the Minimum Reinvestment required for Midterm Refurbishments, the Authority, in its sole and absolute discretion may require payment of the unspent amount as additional rent.

- 9.2.3 Other Alterations. Concessionaire, after completion of the Initial Improvements, may from time to time during the Term make such non-structural changes, alterations, additions, substitutions, or improvements (collectively referred to as "Alterations") to the Leased Premises, as

Concessionaire may reasonably consider necessary and desirable to adapt or equip the Leased Premises for Concessionaire's use and occupancy. Concessionaire shall, however, make no Alterations (including as part of the Midterm Refurbishments) that will (a) cost in excess of Fifteen Thousand Dollars (\$15,000), (b) involve structural work or changes, or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Leased Premises without the Authority's prior written consent.

9.2.4 Standards for Alterations and Improvements

9.2.4.1 Requirements. The Initial Improvements, Midterm Refurbishments, and all other Alterations shall be done at Concessionaire's sole cost and expense and at such times and in such manner as the Authority may from time to time designate. Initial Improvements, Midterm Refurbishments, and all Alterations shall: (i) be of high quality, (ii) conform to the Tenant Design Guidelines approved by the Authority, (iii) be of fireproof construction according to code and the standards of the local rating organization, (iv) be constructed in good and workmanlike manner, (v) be in full and complete accordance with all legal requirements and Authority standards, and (vi) be performed in a manner that will not unreasonably interfere with or disturb Airport operations or other tenants.

9.2.4.2 Approvals. Before commencing the Initial Improvements, Midterm Refurbishments, or any Alterations for which the Authority's consent is required, Concessionaire shall prepare plans and specifications and otherwise comply with the Airport standards and Tenant Design Guidelines and submit such plans and specifications to the Authority for approval. Concessionaire shall meet the Authority's schedule for reviewing plans and specifications and incorporate the Authority's comments. Any approval given by the Authority shall not constitute a representation or warranty as to the conformity of such plans and specification with all legal requirements and codes; responsibility therefore shall at all times remain with Concessionaire. Approval of the Authority shall extend to and include architectural and aesthetic matters and the Authority reserves the right at its sole and absolute discretion to reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet the Authority's approval. The failure to complete the Initial Improvements, Midterm Refurbishment, and any Alterations shall subject Concessionaire to such fines and penalties identified in this Lease Agreement.

9.2.4.3 Disapprovals. In the event of disapproval by the Authority of any portion of any plans or specifications, Concessionaire shall promptly submit necessary revisions thereof for approval by the Authority. The Authority agrees to act promptly upon such plans and specifications and upon

requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations, as determined by the Authority, shall be made in said plans or specifications after initial approval by the Authority, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of the Authority.

9.2.4.4 Permits. Except as otherwise specifically provided in this Lease Agreement, Concessionaire shall obtain all necessary permits, including any discretionary permits. In the event the Authority is required or has obtained any of the necessary permits, Concessionaire will reimburse the Authority for any permit fees and associated costs in obtaining said permits.

9.2.4.5 Coordination. Concessionaire understands that the Airport is undergoing extensive redevelopment and construction. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations, and any furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Authority's construction managers and other concessionaires at or near the Leased Premises and the Terminal.

9.2.5 Ownership of Alterations and Improvements. Other than those Leasehold Improvements which are installed and become such a part of the Leased Premises that they cannot be removed without causing substantial damage to the Leased Premises, which improvements shall immediately become the property of the Authority following installation, Concessionaire shall retain ownership of all furniture, Trade Fixtures, and equipment from time to time installed in the Leased Premises by Concessionaire at its expense (the "Removable Fixtures"). Concessionaire may remove any of the Removable Fixtures at any time during the Term and, unless otherwise agreed in writing by the Authority, shall remove all thereof prior to the expiration of the Term. Any Removable Fixtures or other property of Concessionaire not removed at the expiration of the term shall, at the election of the Authority, become the property of the Authority without payment to Concessionaire, or be deemed abandoned and removed by the Authority, at Concessionaire's expense. Upon any removal of such property, Concessionaire shall promptly repair any and all damage to the Leased Premises caused thereby and reimburse the Authority for its costs and expenses in removing any such property not removed by Concessionaire and repairing any such damage not repaired by Concessionaire; this covenant shall survive the expiration or earlier termination of this Lease Agreement.

9.3 Reports and As-Built Drawings. Within ninety (90) days of the completion of Initial Improvements, Midterm Refurbishments, and all Alterations for which the Authority's consent is required, Concessionaire shall provide the Authority with: (a) a certified statement (subject to verification, audit and approval by the Authority) specifying the



total cost of installing the Leasehold Improvements, including the associated architectural, engineering, construction management, and interior design fees of independent consultants and permitting costs in such detail as reasonably necessary to ascertain the costs of all Leasehold Improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Applicable Laws and the Tenant Design Guidelines; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with electronic files in a format compatible with the Authority's CAD standards, and a scaled pdf format file to enable the Authority to upgrade its existing files to reflect the as-constructed changes made by Concessionaire and which will be incorporated by reference to this Lease Agreement as a supplement to Exhibit A, without the need for the parties to formally amend this Lease Agreement. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of sanctions as provided in ARTICLE 28

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Concessionaire agrees that, upon the request of the Authority, Concessionaire will inspect the Leased Premises jointly with the Authority to verify the as-built drawings.

If said costs are less than the Initial Minimum Investment or Midterm Reinvestment required herein, the difference shall be payable to the Authority within thirty (30) days. The Initial Minimum Investment required shall not include financing costs, interest, inventory, pre-opening expenses, or intracompany charges related to design or construction. Professional fees related to the design and engineering of the facilities shall not exceed twelve percent (12.0%) of the total certified cost of the improvements and professional fees related to construction management of the facilities shall not exceed five percent (5.0%) of the total certified cost of the improvements. This certification reporting and fee restrictions shall also apply to any Midterm Refurbishments. In addition to the certified statement, Concessionaire shall submit a depreciation schedule for all Leasehold Improvements calculated in accordance with ARTICLE 19.8 of this Lease Agreement. Such depreciation schedule shall be updated upon the installation and cost certification of all Midterm Refurbishments. Failure by Concessionaire to provide such reports and schedules on time shall result in the assessment of damages in an amount equal to Two Hundred Fifty Dollars (\$250.00) per day, payable to the Authority.

#### 9.4 Airport Alterations, Demolition, and Liens.

9.4.1 Alterations and Improvements to Airport. Concessionaire acknowledges that from time to time the Authority may undertake construction, repair, or other activities related to the operation, maintenance, and repair of the Terminal that may temporarily affect Concessionaire's operations hereunder, including as described in the RFP. Concessionaire agrees to accommodate the Authority in such matters, even though Concessionaire's own activities may be inconvenienced or negatively affected, and Concessionaire agrees that no liability shall attach to the Authority, its

members, employees, contractors or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of the Authority substantially impair the operations of Concessionaire under this Lease Agreement, the Minimum Annual Guarantee pertaining to the Leased Premises shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being determined at the sole discretion of the Authority after consultation with Concessionaire.

9.4.2 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of the Authority, which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

9.4.3 No Liens. In the event any Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Authority), fully indemnify, and hold entirely free and harmless the Authority from any action, suit or proceeding brought on or for the enforcement of such Lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Leased Premises, any Alteration, fixture, improvement or appurtenance thereto, or any larger building and/or property of which the Leased Premises may be a part.

Concessionaire shall not directly or indirectly create or permit or suffer to be created and/or to remain, any mechanics' or materialman's Lien upon the Leased Premises or any Airport property, including any Initial Improvements, Midterm Refurbishments, Alterations, fixtures, improvements or appurtenances thereto, except those Liens expressly permitted in writing by the Authority, by reason of construction, labor, services, or materials performed or furnished at request of Concessionaire or any contractor or supplier employed by Concessionaire. Concessionaire may contest the same in any claim filed or noticed in good faith. Notwithstanding such contest, in the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall within fifteen (15) days after the filing thereof, cause such Lien to be released of record, by payment, bond or as otherwise allowed by law. In the event of Concessionaire's failure to clear the record of any such Lien within such time period, the Authority may (but is not required to) remove said Lien by paying the full amount thereof or by bonding or in any other manner the Authority deems appropriate, without investigating the validity thereof, and irrespective of the fact that Concessionaire may contest the propriety or the amount thereof, and Concessionaire, upon demand, shall pay the Authority the amount so paid out by the Authority in connection with the discharge of said Lien, together

with interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, and reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable to the Authority as Additional Rent on the first day of the next following month. Nothing contained in this Lease Agreement shall be construed as a consent on the part of the Authority to subject the Authority's estate in the Leased Premises to any lien or liability under the laws of the State of Nebraska. Concessionaire's obligation to observe and perform any of the provisions of this Section 9.4.3 shall survive the expiration of the Term or the earlier termination of this Lease Agreement.

## **ARTICLE 10 - UTILITIES AND ADDITIONAL SERVICES**

- 10.1 Airport Utilities. The Authority shall provide and maintain water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal. Heating, air conditioning, electrical service, and gas service (to select locations) are provided to the perimeter of the Leased Premises or as otherwise designated in the Tenant Design Guidelines, with build-out within the space the responsibility of the Concessionaire. If Concessionaire requires additional capacity for lighting, electrical power, water, gas, telephone outlets, or adjustments to the heating and air-conditioning system, beyond the capacities provided by the Authority, such additional improvements or services shall be subject to the prior written approval of the Authority, and any such approved improvements or services shall be made at Concessionaire's expense. At no time shall Concessionaire's use of the utilities supplied exceed the capacity of the systems servicing the Leased Premises. Water, sewer, gas (as applicable), and electrical service shall be provided by the Authority at no additional cost to the Concessionaire. Authority shall not be liable to Concessionaire for damages or otherwise for delay or failure to supply or furnish, or for any delay in the supplying or furnishing of, any utility service which Authority is obligated to supply or furnish, when such failure or delay is caused by necessary repairs or improvements, by any labor controversy, by an inability to secure water, sewer, gas or electricity or other utilities at the Leased Premises, by any accident or casualty, by any act or omission of Concessionaire, or by any other cause or causes beyond the control of Authority.
- 10.2 Concessionaire's Right to Additional Services. Concessionaire may, at its own expense, request and receive telephone services or communication systems and shall obtain written approval from the Authority before installation. Concessionaire shall be required to have at least one telephone number available to the public for questions and comments regarding the concession operations. Internet services desired by Concessionaire shall be obtained directly by Concessionaire and must include a back-up service.
- 10.3 Video and Audio System. Concessionaire may install video equipment in the Leased Premises in accordance with plans and specifications to be submitted to the Authority but shall not install any paging or audio system within the Leased Premises without the prior written consent of the Authority.

## ARTICLE 11 - MAINTENANCE OF LEASED PREMISES

### 11.1 Airport Maintenance Obligations

- 11.1.1 General Maintenance and Operation. Subject to the terms and conditions of this Lease Agreement, including without limitation Section 11.2.1, the Authority agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Terminal.
- 11.1.2 Structural Maintenance. The Authority shall provide, or cause to be provided, structural maintenance of the Terminal and shall provide, or cause to be provided, the washing of the exterior of all windows, if any, in the Leased Premises at periodic intervals set by the Authority.
- 11.1.3 Maintain Access. The Authority shall, throughout the Term of this Lease Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal over said roads at all times (unless security, weather, or construction conditions dictate otherwise). The Authority reserves the right to restrict access to the Terminal for deliveries during peak activity periods.

### 11.2 Concessionaire's Maintenance Obligations.

- 11.2.1 Concessionaire's General Obligations. Concessionaire shall be obligated, without cost to the Authority, to maintain the Leased Premises and every part thereof in good appearance, repair, clean, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, and furnishings. Concessionaire's responsibilities include the maintenance, repair, and replacement of all utility lines and connections, wiring, communication cables, fire alarm systems and protection devices, panels, and associated parts and equipment located within or exclusively serving the Leased Premises. All such maintenance and repairs shall be of quality at least equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of the Authority.
- 11.2.2 Preventive and Routine Maintenance Programs. Upon the execution of this Lease Agreement, Concessionaire shall establish a preventive and routine maintenance program to maintain the Leased Premises in like-new condition, the provisions of which shall be subject to the approval of and periodic review by the CEO or his designated representative. Concessionaire shall in January of each year during the Term, provide the CEO a written schedule of Concessionaire's cleaning and maintenance program. Such schedule shall include that all grease traps and grease waste containment systems are checked and cleaned, as necessary, at least monthly. Any damage caused by malfunctioning or under-maintained

grease traps, grease waste containment systems, or other equipment for which the Concessionaire is responsible for maintaining shall be the sole responsibility of the Concessionaire. Maintenance schedules shall also provide for the monthly cleaning and maintenance of any hood and ventilation systems installed in or serving the Leased Premises, including all ductwork from inside the unit through to the rooftop fan.

- 11.2.3 Authority Sole Judge of Maintenance. The Authority or its authorized agents shall be the sole judge of the quality of maintenance. The Authority or its authorized agents may, during Concessionaire's working hours and without notice, enter upon the Leased Premises to determine if maintenance satisfactory to the Authority is being performed. If it is determined that such maintenance is not satisfactory, the Authority shall notify Concessionaire in writing. If such maintenance is not performed to Authority standards by Concessionaire within seven (7) days after receipt of written notice, the Authority or its agents thereafter shall have the right to enter the Leased Premises and perform the required maintenance and Concessionaire agrees to promptly reimburse the Authority for the cost thereof, plus twenty percent (20%) for administrative overhead.
- 11.2.4 Routine Refurbishment. On or about the commencement of each Calendar Year after the Date of Beneficial Occupancy, representatives of the Authority and Concessionaire shall tour the Leased Premises and jointly agree upon any routine refurbishment required to maintain the Leased Premises in first-class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and the Authority cannot jointly agree upon the type and extent of such routine refurbishment, the Authority may in its sole discretion determine the refurbishment required. For purposes of this paragraph, "refurbishment" shall mean the routine repainting or redecoration of concession space within the Leased Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, and equipment.
- 11.2.5 Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to the COO or his or her designated representative of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately at Concessionaire's sole cost and expense upon receipt of oral notice from the COO or his or her designated representative. At the direction of the COO or his or her designated representative, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- 11.2.6 Maintenance Personnel and Program. Concessionaire agrees to employ and/or contract with sufficient personnel, and provide the necessary equipment, to keep the Leased Premises and all furnishings, fixtures, and

equipment clean, neat, safe, sanitary, and in good working order and condition at all times.

- 11.2.7 Food Handling, Health, and Sanitary Regulations. Concessionaire shall comply with all food safety, health, and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by the Authority. Concessionaire shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the CEO, COO, or their designated representatives. Concessionaire shall provide the Authority with copies of all inspection reports within 48 hours of receipt, and in the event of an infraction of the regulations, provide the Authority with a written incident report and action plan to address the particular finding/determination to avoid future incidents. Without limiting any other requirements of this Lease Agreement, and in addition to complying with all governing body standards, Concessionaire shall ensure compliance with all HACCP standards regarding the proper and safe receiving, storage, preparation, and serving of all food and beverages.
- 11.2.8 Trash and Refuse. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash, recycling, and other refuse generated as a result of the operations in the Leased Premises and shall provide for its timely removal and disposal in the locations and receptacles designated by the Authority. Piling of boxes, cartons, barrels, or other similar items in view of a Public Area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from the Airport in a clean and orderly condition so as not to attract rodents, pests, or birds, or create an offensive odor.
- 11.2.8.1 Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall use only Airport approved carts, vehicles, or conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets and tile without damage thereto. Such disposal shall take place during hours as may be approved by the Authority and using routes specified by the Authority for this purpose. Trash or debris shall not be allowed to accumulate or be stored on any portion of the Leased Premises.
- 11.2.9 Cleaning and Janitorial Services. Concessionaire shall at all times maintain the Leased Premises, including all customer seating areas, and all equipment and materials used by Concessionaire in a clean and sanitary condition, including, but not limited to, keeping them free of rubbish, dirt, insects, rodents and vermin in accordance with the policies set by the Authority as well as all laws, statutes, ordinances, and regulations set by the local and regional governmental agencies. All cooking equipment, refrigeration, freezer, storage units, and piping shall be constructed to facilitate the necessary cleaning and sterilization.

Concessionaire shall provide and maintain trash and recycling receptacles, as required, in all customer seating areas.

11.2.10 Damage Caused to Airport Property. Any damage caused to the Airport or any Airport property or operations or the property of any other tenant, person, or entity caused by Concessionaire, or as a result of the operations of Concessionaire, shall be the responsibility of Concessionaire and Concessionaire shall reimburse the Authority for any such damage paid for by the Authority within thirty (30) days of billing by the Authority. Any sums so paid by the Authority shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is greater, from the date paid by the Authority until the Authority has been fully repaid. If the same type of damage is caused by Concessionaire more than once, such as a water leak or electrical service interruption, the Authority shall review and approve Concessionaire's plan of repair or may require that Concessionaire allow the Authority to make the repair and then reimburse the Authority for the cost of such repair.

11.2.11 Damage to Leased Premises. If the Leased Premises, excluding Concessionaire's Leasehold Improvements or Trade Fixtures, are partially damaged by fire or other casualty, but not rendered untenable, the same shall be repaired or restored by the Authority to essentially the same condition as that which existed prior to such damage and the Authority shall be entitled to all insurance proceeds and recoveries relating thereto. In the event such damage is caused by any act or omission of the Concessionaire, its officials, agents, sub-concessionaires or employees, it shall be the responsibility of the Concessionaire to pay all loss, damage and costs not covered by Concessionaire's insurance proceeds. Should a portion of the Leased Premises be untenable other than due to any act or omission of the Concessionaire, its officials, agents, sub-concessionaires or employees, rent for the untenable portions of the Leased Premises shall be abated for the period from the occurrence of the damage to the completion of the repairs. The amount of the rent abatement shall be calculated as the pro rata portion of the Minimum Annual Guarantee owed for the untenable portions of the Leased Premises and such pro rata portion shall be calculated based on the square footage of the untenable Leased Premises as a percentage of the total square footage for the Leased Premises from which Gross Receipts are generated.

If the Leased Premises, excluding Concessionaire's Leasehold Improvements or Trade Fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenable for more than sixty (60) days, the Authority shall be entitled to all insurance proceeds and recoveries relating thereto but shall be under no obligation to repair or reconstruct such Leased Premises. Unless damage is due to any act or omission of the Concessionaire, its officials, agents, sub-concessionaires or employees, the Rent for the affected portions of Concessionaire's Leased Premises shall be abated for the period from the date of such

occurrence until such space is temporarily replaced with other space(s) sufficient to allow the Concessionaire to operate. The amount of the rent abatement shall be calculated as the pro rata portion of the Minimum Annual Guarantee owed for the untenable portion(s) of the Leased Premises and such pro rata portion shall be calculated based on the square footage of the untenable portion of the Leased Premises as a percentage of the total square footage of the Leased Premises from which Gross Receipts are generated.

The Authority shall notify Concessionaire within sixty (60) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Leased Premises. If the Authority elects to repair or reconstruct, and if such damage was caused by any act or omission of the Concessionaire, its officials, employees, agents, or sub-concessionaires, it shall be the responsibility of the Concessionaire to pay all loss, damage, and costs not covered by the Concessionaire's insurance proceeds. Should the Authority elect not to repair or reconstruct the Leased Premises, the Authority shall have the right to terminate this Lease Agreement for the untenable portion(s) of the Leased Premises (in addition to any and all other rights and remedies the Authority may have against Concessionaire). In such event, the Authority agrees to use commercially reasonable efforts to obtain adequate substitute space for Concessionaire.

#### 11.2.12 Reduction in Enplanements and Suspension of MAG

- 11.2.12.1 MAG Suspension. If at any time during the Term there is a Severe Decline in Enplanements for Three (3) Consecutive Months, as documented by the Authority in monthly reports received from Airlines providing flights departing from the Terminal, then the Minimum Annual Guarantee rent payments due under this Lease Agreement for the Leased Premises located in the Affected Concourse(s) will be suspended, per Authority approval (the "MAG Suspension"), in the following manner: (1) The monthly installment of the Minimum Annual Guarantee due for the following month for the Leased Premises located in the Affected Concourse(s) will be suspended, and (2) Concessionaire shall only be required to pay Percentage Rent unless and until Minimum Annual Guarantee Reinstatement occurs. The MAG Suspension shall be effective on the first day of the month immediately following Authority approval.

During such MAG Suspension period and provided the Concessionaire is and remains in compliance with all other terms and obligations of the Lease Agreement, including but not limited to ARTICLE 12 -of this Lease Agreement, Concessionaire shall be required to pay only the Percentage Rent for the Leased Premises located in the Affected Concourse(s), unless and until the Minimum Annual Guarantee is reinstated as provided below. On or before the twelfth day of each month, Concessionaire will submit to the Authority a report of Gross



Receipts together with Percentage Rent in accordance with 4.1 of this Lease Agreement.

If this Lease Agreement provides that the Percentage Rent is based on a tiered Gross Receipts structure, for purposes of determining the Percentage Rent payable, the annual Gross Receipts shall continue to accumulate as provided herein.

- 11.2.12.2 MAG Reinstatement. Once there is Enplanement Stabilization for Two Consecutive Months, then the Minimum Annual Guarantee shall be reinstated for the Leased Premises located in the Affected Concourse(s), and continue unless and until there is another Severe Decline in Enplanements for Three (3) Consecutive Months, as follows:
- a. Such Minimum Annual Guarantee reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Two Consecutive Months.
  - b. In the event the Minimum Annual Guarantee is reinstated after the commencement of a Calendar Year, the Minimum Annual Guarantee will be pro-rated accordingly.
  - c. Calculation Examples. For example, if the number of Enplanements in the Terminal for the month of July 2027 is seventy percent (70%) compared to July 2026, the number for August 2027 is seventy-five percent (75%) compared to August 2026, and the number for September 2027 is eighty-five percent (85%) compared to September 2026, then the Severe Decline in Enplanements for Three (3) Consecutive Months has not been met. However, if the number of Enplanements in the Terminal for the month of July 2027 is seventy percent (70%) compared to July 2026, the number for August 2027 is seventy-five percent (75%) compared to August 2026, and the number for September 2027 is seventy-five percent (75%) compared to September 2026, then the Severe Decline in Enplanements for Three (3) Consecutive Months has been met.
  - d. The monthly Minimum Annual Guarantee payment shall be reduced during the MAG Suspension period to reflect a pro rata reduction for the Leased Premises operated by Concessionaire located in the Affected Concourse(s). The pro-rated Minimum Annual Guarantee reduction would be calculated based on the percent of Gross Receipts generated by the Leased Premises located in the Affected Concourse(s) for the prior Calendar Year divided by the total Gross Receipts for all Leased Premises operated by Concessionaire for the prior Calendar Year. For example, if the portion of the Leased Premises located in the Affected Concourse(s) generated twenty percent (20%) of the Gross Receipts for all Leased Premises operated by Concessionaire in 2027, the monthly Minimum Annual Guarantee payment for the MAG Suspension period would be reduced by twenty percent (20%). As stated above, Concessionaire

would continue to pay Percentage Rent for all portions of the Leased Premises located in the Affected Concourse(s) during the MAG Suspension period.

- 11.2.12.3 Claim for MAG Suspension Only Available if Concessionaire is Paying Minimum Annual Guarantee. A MAG Suspension is not available if Concessionaire is paying Percentage Rent. The parties acknowledge that Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the MAG Suspension occurs as provided herein, Concessionaire shall continue to pay the Minimum Annual Guarantee as and when required hereunder. Claims for a MAG Suspension may only be submitted quarterly by the Concessionaire and may only include entire monthly periods. A reduction in Enplanements for a partial monthly period will not qualify for a MAG Suspension. If, during any month in which Enplanements are reduced, Concessionaire is required to only pay Percentage Rent, a claim for a MAG Suspension will not be available.
- 11.2.12.4 Rent Credit for Approved Claim for MAG Suspension. When a MAG Suspension occurs, the Authority shall issue a Rent credit to reflect any resulting overpayment in Rent. If and to the extent Concessionaire has any outstanding obligations to the Authority hereunder, the Authority may decline to issue such Rent credit or reduce the Rent credit by the amount outstanding. If and when the Minimum Annual Guarantee is reinstated, Concessionaire shall pay to the Authority within five (5) days after the Authority shall have given notice to Concessionaire of such reinstatement, the deficiency, if any, between the Percentage Rent paid by Concessionaire and the Minimum Annual Guarantee, for the month(s) following such reinstatement.
- 11.2.12.5 Enplanement Determinations. The Authority shall have the sole discretion as to the Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three (3) Consecutive Months.
- 11.2.12.6 Sub-Concessionaire Share of MAG Suspension. If Concessionaire subleases any portion of the Leased Premises, Concessionaire shall offer to such sub-concessionaire(s) the same types of MAG Suspension as provided herein.
- 11.2.12.7 Certification of Claim for a Reduction. If Concessionaire desires to submit a claim for a MAG Suspension, it must submit its request to the Authority on forms provided by the Authority.

## **ARTICLE 12 - OPERATION OF LEASED PREMISES**

- 12.1 Hours of Operation. Concessionaire shall actively operate in the Leased Premises in a business-like manner. Concessionaire must operate the concession in the Leased Premises in accordance with the flight schedules. The Common-Use Lounge must be open to the public three hundred sixty-five (365) days a year at the hour(s) designated by the Authority, which at a minimum shall be 4:00 a.m. until 8:00 p.m. each day. For the hours of operation for the Common-Use Lounge, the

earliest and latest flights on all gates in the Terminal shall be considered. The Common-Use Lounge shall remain open to accommodate flight delays. The Authority shall have the right to require the Concessionaire to remain open or re-open in the event of irregular operations, if necessary. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Lease Agreement shall be diminished. Except as otherwise stated herein, the hours of operation shall be determined by the Authority in light of changing public demands and airline operating schedules. No portion of the Common-Use Lounge facilities shall be blocked off or closed at any time during the designated minimum hours of operation.

12.2 Delivery of Goods. Concessionaire shall arrange and be responsible for the timely delivery of all goods, stock, fixtures, and supplies to and from the Leased Premises, at such times, at such on-airport locations(s), and by such on-airport routes as approved in writing by the Authority.

12.3 Cash and Record Handling Requirements.

12.3.1 General. Concessionaire shall at all times observe cash, digital, and record handling procedures and maintain cash, digital, and record handling systems in accordance with written procedures submitted to and approved by the Authority. The Authority and Concessionaire agree that such written procedures may be revised from time to time, as mutually agreed upon by the Concessionaire and the Authority, upon the advent of generally accepted technological changes. The agreed-upon cash, digital, and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Concessionaire that cover the accounting and handling of all sales and services transactions related to this Lease Agreement.

12.3.2 Fidelity Bonds. Concessionaire shall maintain fidelity bonds in amounts standard within the airport concession industry on its employees engaged in activities under this Lease Agreement.

12.3.3 Shopping Service and Surveys. The Authority shall have the right at its cost to monitor and test all of Concessionaire's services by a shopping service selected by the Authority and enter the Leased Premises to conduct surveys that may or may not pertain to Concessionaire's business.

12.3.4 Failure to Use Required Procedures and Systems. Where customer sales have not been recorded because of failure by Concessionaire to comply with the requirements of this Lease Agreement, or for any other reason, Concessionaire shall pay to the Authority the amount that would have been due the Authority, plus one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, for each month that sales were not recorded. The Authority shall have the right to make a reasonable estimate of the losses.

- 12.4 Sustainability. Concessionaire agrees to fully comply with and participate in the sustainability policies and practices implemented by the Authority from time to time, including the requirements listed in Exhibit C of this Lease Agreement.

## **ARTICLE 13 - AUTHORITY'S RIGHT TO USE THIRD-PARTY CONTRACTORS**

- 13.1 Third-Party Contractor for Receiving and Delivery Services. The Authority reserves the right to engage a third-party contractor to provide all receiving, handling, and transfer/delivery services for all or any portion of the concessionaires operating at the Airport in accordance with policies the Authority determines to be in the best interests of the Airport. In so doing, the Authority may also develop and manage a Centralized Receiving and Distribution Center (CRDC) to be used by Concessionaire and other parties receiving deliveries for the Airport terminals, which CRDC may be located at a location off the Airport with regular deliveries to the Airport.
- 13.2 Required Use of Third-Party Services. If the Authority engages a third-party and/or develops a CRDC, it may direct the Concessionaire to exclusively utilize some or all of the services of such third-party contractor and/or CRDC services for receiving, handling, and transfer/delivery services required by Concessionaire concerning the business it operates in the Leased Premises. Concessionaire will be required to promptly pay all invoices provided to Concessionaire for its respective costs of the services by such third-party contractor for receiving, handling and transfer/delivery services as well as the potential operation of a CRDC. Upon implementation of a CRDC, the Authority may discontinue all direct deliveries to the Terminal.
- 13.3 Charges for Third-Party Services. Charges paid by Concessionaire for these services may be developed by the Authority or the selected contractor based upon actual costs and will be subject to annual audit by the Authority. It is anticipated that Concessionaire's charges will be developed and approved by the Authority for these services according to concession category, frequency of deliveries, volume of goods delivered, amount of Gross Receipts generated, etc.

## **ARTICLE 14 - QUALITY AND CHARACTER OF SERVICE**

- 14.1 Common-Use Lounge Concept, Services, and Amenities. Concessionaire shall offer the services, amenities, and food and beverage products in the Common-Use Lounge for the prices indicated in accordance with Exhibit B. Concessionaire shall upon written demand from the Authority cease offering any service, product, or amenity that the Authority shall determine is objectionable for sale or display at the Airport and immediately remove such service, product, or amenity from its list of offerings and not thereafter offer such service, product, or amenity at the Airport. Concessionaire shall package any carry-out food and beverages in good-quality, easy to carry, one-hundred percent (100%) compostable packaging as certified by the Biodegradable Products Institute (BPI) or equivalent certification program.

Upon prior written approval from the Authority, Concessionaire may from time to time add or delete items from its menus.

- 14.2 Quality of Food and Beverages. Concessionaire shall offer only high-quality foods and beverages that are freshly, properly, and safely prepared, sanitary, accurately labeled (as appropriate), and as described on menus. The quality and quantity of the food and beverages offered shall be comparable to, or better than, that offered in airport lounges at comparably-sized airports in the United States. Upon written notice to Concessionaire by the Authority of any violation of this provision, Concessionaire shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

- 14.3 Pricing. Concessionaire shall comply with the Pricing Policy for the Common-Use Lounge concession at the Airport as described in Exhibit E of this Lease Agreement.

The prices of any food and beverages that are not included with admission to the lounge may not exceed the prices charged in comparable businesses within the Omaha MSA for like size and quality products, by more than ten percent (10.0%).

Prior to opening the Common-Use Lounge and thereafter on a semi-annual basis during the Term of this Lease Agreement, Concessionaire shall provide documentation to the Authority comparing the prices it charges at the Airport with the prices charged by the approved comparable outlets to establish Concessionaire's compliance with the Pricing Policy. This pricing comparison data shall be provided using the format provided by the Authority.

Additionally, no more than twice per year, the Authority may require Concessionaire to perform a price comparison of admission and entry fees, amenities, or services selected by the Authority. In the event it is determined by the Authority that Concessionaire is not in compliance with the Pricing Policy, the Authority shall give Concessionaire written notice thereof and proceed with the Sanctions outlined in ARTICLE 28 -hereof.

All price changes must receive prior written approval from the Authority before being implemented by Concessionaire.

- 14.4 CEO's Right to Object. The CEO or his or her designated representative, shall have the right to raise reasonable objections to the appearance or condition of the Leased Premises, the quality and quantity of food and beverage products, the quality and inventory of retail products, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said CEO or his or her designated representative to be remedied by Concessionaire.

- 14.5 Nondiscriminatory Services Requirement. Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and

nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees and other Airport employees.

- 14.6 Type of Operation. Concessionaire shall maintain and operate the Leased Premises granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of the Authority, does not annoy, disturb, or offend others at the Airport.
- 14.7 Replacements and Refunds. Concessionaire shall without any additional charge to the purchaser, exchange any food or beverage for which a purchaser has paid over and above the admission to the lounge determined by said purchaser to be unsatisfactory or of poor quality or shall provide a full refund of the purchase price. Common-Use Lounge personnel must have authorization to handle all refunds immediately upon purchaser request without having to summon a manager or alternate employee to the location.
- 14.8 Point of Sale Services. At all times during the Term of this Lease Agreement, Concessionaire shall accept at least four (4) major credit cards (Visa, MasterCard, Discover, and American Express) as payment for any debit or credit transaction for admission to the lounge, services, amenities, or food and beverages that are not included in the admission. Further, the Authority requires the implementation of expedited and contactless payment options, which may include but are not limited to MasterCard PayPass®, Apple Pay, and Google Pay to ensure prompt and efficient customer service.
- 14.9 Services to the General Public. Concessionaire shall without charge provide services such as giving directions and providing general information to the Common-Use Lounge patrons. Concessionaire shall strive to ensure that all of its employees know the layout of the Terminal and have the ability to provide passengers and visitors with information regarding the locations of Airport services. Concessionaire is encouraged to implement mystery shopper services to ensure consistent performance.
- 14.10 Additional Compliance. Concessionaire shall comply with all Applicable Laws in the conduct of its operations under this Lease Agreement.
- 14.11 Personnel.
- 14.11.1 General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service at all times. All such personnel, while on or about the Leased Premises, shall be polite, friendly, clean, appropriately attired, and neat in appearance. Employees of Concessionaire shall wear appropriate nametags and Airport Badges. The Authority shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it,

whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection.

- 14.11.2 Manager. The management, maintenance, and operation of the Leased Premises shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be assigned a duty station or office in the Leased Premises at which he or she shall be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. A local representative of the Concessionaire shall be available by telephone 24 hours per day, 7 days per week, 365 days per year in case of an emergency. The contact information for this representative shall be on record with the Authority at all times.

## **ARTICLE 15 - SIGNS AND ADVERTISING**

- 15.1 Definition of Signs. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising, promotions, stickers, photographs, art displays, and the like.
- 15.2 Right to Install. Concessionaire may install and operate upon or in the Leased Premises, and at Concessionaire's sole cost and expense, signs containing its name and representing its business in accordance with the guidelines established in the Tenant Design Guidelines. Concessionaire acknowledges the Authority's desire to maintain a high level of aesthetic quality in the Terminal and in all concession facilities throughout the Terminal. Therefore, Concessionaire, in the exercise of its privilege to install and maintain appropriate signs on the Leased Premises, will submit to the Authority the size, design, content, and intended location of each and every sign it proposes to install on or within the Leased Premises, and that no signs of any type shall be attached to or installed on or within the Leased Premises without the specific prior written approval of the Authority as to the size, design, content, and location. Handwritten or hand lettered signs are prohibited. Any permitted sign shall be professionally prepared. Notwithstanding any prior written approval, Concessionaire shall install, remove, or modify any signs as directed in writing by the CEO or his or her designated representative. The Authority's failure to require removal of any sign placed on or about the Leased Premises without written permission shall not be deemed a waiver of the CEO's authority to require removal of any unapproved sign. The Authority may, without notice and without any liability therefore, enter the Leased Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this ARTICLE 15 -.
- 15.3 Signs and Fixtures Outside Leased Premises. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays outside the

boundaries of the Leased Premises without the express prior written approval of the Authority.

- 15.4 If Concessionaire fails to comply with the requirements of this ARTICLE 15 -, the Authority shall have the right to require Concessionaire to restore the Leased Premises to the condition existing immediately prior to the unauthorized installation or modification of the sign. In the event that Concessionaire fails to restore the Leased Premises within three (3) days following notice by the Authority, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Authority may have (whether under this Lease Agreement or in law or in equity), pay the Authority the sanction amounts as provided in ARTICLE 28 -until Concessionaire has restored the Leased Premises. Concessionaire and the Authority agree that the Authority will incur damages as a result of the failure to restore the Leased Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Authority.
- 15.5 Removal of Signs. Upon the expiration or sooner termination of this Lease Agreement, Concessionaire shall, if requested by the CEO or his designated representative, remove any and all identification signs and similar devices placed by Concessionaire on or in the Leased Premises, and repair any damage caused by such removal, at its own expense. In the event of the failure on the part of Concessionaire to so remove each and every sign as requested by the CEO or his or her designated representative, and repair any damage caused by such removal, the Authority may perform such work and, upon demand, Concessionaire shall pay the cost thereof to the Authority plus a twenty percent (20%) administrative fee.

## **ARTICLE 16 - INDEMNITY AND INSURANCE REQUIREMENTS**

- 16.1 General Indemnification.
- 16.2 General Indemnity. The Concessionaire shall indemnify, hold harmless and defend the Authority, the City of Omaha, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by (i) Concessionaire's or any Sub-Concessionaire's performance or non-performance of this Lease Agreement or any breach of this Lease Agreement, or (ii) Concessionaire's or any Sub-Concessionaire's conduct of business or from any acts, omissions, negligence, activities, operations, or other things done, permitted, or suffered by Concessionaire or any Sub-Concessionaire in, or about the Leased Premises and/or Airport or other act or failure to act, (excluding only claims or actions arising out of the sole gross negligence of the Authority and solely to the



extent such claims are not covered by insurance required to be carried by Concessionaire pursuant to this Lease Agreement).

16.2.1 Damages from Airport Operations or Construction. Concessionaire hereby agrees to release and hold harmless the Authority, the City of Omaha, its elected and appointed officials, agents and employees, from any damages to the Concessionaire caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport, or from any Terminal construction activities; and the Concessionaire does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Authority, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by operations or activities at or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires, or aircraft operators.

16.2.2 Loss of Equipment. Concessionaire further agrees to hold the Authority, the City of Omaha, their agents, officials, and employees free and harmless for any claims arising out of the damage, destruction, or loss of any or all of Concessionaire's equipment (excluding any claims arising out of the sole gross negligence of the Authority and solely to the extent such claims are not covered by insurance required to be carried by Concessionaire pursuant to this Lease Agreement).

16.3 Authority's Right to Recover Damages. Subject to Section 17.1, Concessionaire agrees to reimburse the Authority for any and all damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, and expert fees), fines, and/or penalties (collectively "Costs") that may be imposed upon, incurred or suffered by the Authority and which, in whole or in part, arise from any of the following (except to the extent resulting from the sole grossly negligent acts of the Authority and solely to the extent such claims are not covered by insurance required to be carried by Concessionaire pursuant to this Lease Agreement): (a) any act or omission of Concessionaire; (b) any use, occupation, management or control of the Leased Premises by Concessionaire, whether or not due to Concessionaire's own act or omission and whether or not occurring on the Leased Premises; (c) any condition created in or about the Leased Premises by any party (other than the Authority), including any accident, injury or damage occurring on or about the Leased Premises after the date on which Concessionaire takes possession of the Leased Premises for build-out; and (d) any breach, violation or nonperformance of any of Concessionaire's obligations under this Lease Agreement. For purposes of this Section, "Concessionaire" shall be deemed to include Concessionaire and Concessionaire's partners, officers, directors, employees, agents, Sub-concessionaire(s), and contractors.

16.4 Insurance Requirements. Insurance requirements set forth below, and any applicable policy limits, exclusions and deductibles, do not in any way limit the amount or scope of liability of Concessionaire under this Lease Agreement. The

amounts listed indicate only the minimum amounts of insurance coverage that the Authority is willing to accept to help insure full performance of all terms and conditions of this Lease Agreement. All insurance required by Concessionaire under this Lease Agreement shall meet the minimum requirements described in this ARTICLE 16.

- 16.5 Certificates; 30 Day Cancellation. On or before the execution of this Lease Agreement, Concessionaire shall provide the Authority with certificates of insurance establishing the existence of all insurance policies required under this ARTICLE 16. Thereafter, the insurance policies shall not be subject to cancellation or change except after notice to the Authority by registered mail at least thirty (30) days prior to the expiration date, cancellation, or material change of any insurance policy. No insurance policy may be cancelled without at least thirty (30) days' prior written notice being given to the Authority. Where any policy(ies) has (have) normal expirations during the Term of this Lease Agreement, written evidence or renewal shall be furnished to the Authority at least thirty (30) days prior to such expiration. Upon written request by the Authority, Concessionaire shall permit the Authority to inspect the originals of all applicable policies. Insurance must be maintained without any lapse in coverage during the entire Term. Insurance canceled without Authority consent shall be deemed an immediate event of Default under this Lease Agreement. The Authority shall also be given certified copies of Concessionaire's policies of insurance, upon request. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the Authority to identify a deficiency from the evidence provided, shall not be construed as a waiver of Concessionaire's obligations to maintain the insurance required by this Lease Agreement.
- 16.6 Additional Insured; Separation of Insureds. The Authority and its agents and employees shall be named as an additional insured with respect to the Concessionaire's use of the Airport and the Leased Premises in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization. Concessionaire shall supply the Authority with certification from the insurance carrier that the Authority and its agents, and employees are so named.
- 16.7 Primary Coverage. The required policies shall provide that the coverage is primary, and will not require any contribution from any insurance or self-insurance carried by the Authority.
- 16.8 Company Ratings. Policies of insurance must be placed with companies or underwriters authorized to issue insurance in the State of Nebraska that carry an AM. Best rating of "A-" or better or equivalent.
- 16.8.1 Deductibles and Retentions. Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required policy is subject to prior written approval by the Authority.

16.9 Required Insurance. At all times during the Term of this Lease Agreement, Concessionaire shall provide and maintain in full force and effect the following types of coverage:

- 16.9.1 General Liability Insurance. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage, with aircraft exclusions deleted to cover all operations of the Concessionaire and shall include, but not by way of limitation, bodily injury, property damage, products liability, and contractual coverage, including the obligations pursuant to this ARTICLE 16 -, Indemnity and Insurance Requirements, herein. Concessionaire shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from the use of the Leased Premises (including loss of use thereof), operations, independent contractors, products-completed operations, bodily injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Leased Premises or occasioned by reason of the operations of Concessionaire. Such coverage shall be written on an ISO occurrence form CG 00 01 0196 (or a substitute form providing equivalent coverage) in an amount of not less than TEN MILLION DOLLARS (\$10,000,000.00), combined single limit or split limits equal to and not less than TEN MILLION DOLLARS (\$10,000,000.00), for bodily injury and property damage with respect to each occurrence, such limits subject to adjustment by the Authority during the Term of this Lease Agreement.
- 16.9.2 Commercial Automobile Liability Insurance. Concessionaire must procure and maintain automobile liability insurance covering owned, non-owned, leased and hired vehicles in an amount not less than TEN MILLION DOLLARS (\$10,000,000.00) for bodily injury and property damage combined single limit, such limits subject to adjustment by the Authority during the Term of this Lease Agreement.
- 16.9.3 Fire and Property Insurance. Concessionaire shall procure and maintain policies of insurance at its own expense, insuring the Leased Premises and improvements thereon, and all inventory, fixtures, furniture, and equipment thereat, against all perils of direct physical loss, excluding earthquake and flood. The insurance coverage shall be for not less than one hundred percent (100%) full replacement value of said Leased Premises, improvements, inventory, fixtures, furniture, and equipment with an agreed amount clause and a reasonable and customary deductible. Such amount is subject to final approval by the Authority. The Concessionaire shall furnish to the Authority evidence that such coverage has been procured and is being maintained in full force and effect. The Authority maintains property insurance that covers the Terminal but will not cover any improvements made by Concessionaire to the Leased Premises, or any inventory, fixtures, furniture, or equipment of Concessionaire.
- 16.9.4 Workers' Compensation Insurance. Concessionaire shall maintain in force Workers' Compensation insurance for all of Concessionaire's employees in

accordance with all requirements of Nebraska law. Concessionaire shall also maintain employers' liability coverage in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) per accident and FIVE MILLION DOLLARS (\$5,000,000) per employee for disease. In lieu of such insurance, Concessionaire may maintain a self-insurance program meeting the requirements of the State of Nebraska and a policy of excess workers' compensation and employer's liability insurance.

- 16.9.5 Builder's Risk Insurance. During any construction activity, Concessionaire shall obtain and maintain for the benefit of the parties to this Lease Agreement, as their interest may appear, "special peril" Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. In the event Concessionaire fails to maintain such insurance, the Authority may, at its option, arrange therefore, and any premium incurred shall be reimbursed by Concessionaire to the Authority upon demand.
- 16.9.6 Business Interruption. Concessionaire shall maintain gross earnings and extra expense insurance that shall include coverage for all Rent due under this Lease Agreement for a minimum of a six (6) month period. The proceeds of such insurance shall be used first to continue Rent payments to the Authority.
- 16.9.7 Construction Payment and Performance Bonds. Prior to any commencement of any construction, alteration, or repair hereunder by Concessionaire that exceeds Ten Thousand Dollars (\$10,000.00) in cost, Concessionaire shall furnish to the Authority, at Concessionaire's sole cost, a performance bond and a payment bond issued by a surety company licensed to transact business in the State of Nebraska and approved by the Authority, in a form approved by the Authority. The penal amount of each bond shall not be less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, or repair. In the event that such contract(s) involve alteration or work on or to the Authority's facilities, the performance and payment bonds shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract, and the performance bond shall guarantee the full performance of the work.
- 16.9.8 Liquor Law Liability Insurance. Concessionaire shall maintain, in full force and effect during the Term, liquor liability insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence. Such insurance shall protect against claims that may arise from the dispensing of beer, wine, and other alcoholic beverages from the Leased Premises, provided however, that Concessionaire acknowledges that commercially

available liquor liability insurance coverage contains specific exclusions, and Concessionaire agrees to indemnify and hold Authority harmless from and against any claims arising from or subject to such exclusions.

- 16.9.9 Foodborne Illness and Contamination Liability Insurance. Concessionaire shall maintain, in full force and effect during the Term, foodborne illness and contamination liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence. Such insurance shall protect against claims that may arise from the dispensing of food and beverages from the Leased Premises, provided however, that Concessionaire acknowledges that commercially available liability insurance coverage contains specific exclusions, and Concessionaire agrees to indemnify and hold Authority harmless from and against any claims arising from or subject to such exclusions.
- 16.10 Waiver of Subrogation. Notwithstanding anything to the contrary in this Lease Agreement, Concessionaire and the Authority waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Airport for any loss, cost, damage, or expense (collectively "Loss") to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Notwithstanding anything to the contrary in this Lease Agreement, Concessionaire also waives any right of action it and/or its insurance carrier might have against the Authority (including its agents and employees) for any Loss to the extent such Loss is a property loss covered under any applicable automobile liability policy or policies required by this Lease Agreement. If any of Concessionaire's property or automobile insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 16.10.
- 16.11 Concessionaire's Risk. Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the Authority be liable for any: (a) business interruption or other consequential loss sustained by Concessionaire; (b) damage to, or loss of Concessionaire's property of any kind; or (c) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the Authority.
- 16.12 Periodic Review. The Authority shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event the Authority determines that such types, limits, and/or terms should be changed, the Authority will give Concessionaire a minimum of thirty (30) days' notice of such determination and Concessionaire shall modify its coverage to comply with the new insurance requirements of the Authority. Concessionaire shall also provide the Authority with proof of such compliance by giving the Authority an updated certificate of insurance within fifteen (15) days.

- 16.13 Survival of Indemnities. The indemnity agreements set forth in this Section shall survive the expiration or earlier termination of the Lease Agreement and be fully enforceable thereafter.

## **ARTICLE 17 - CANCELLATION**

- 17.1 Cancellation by Concessionaire. In addition to all other remedies available to the Concessionaire, this Lease Agreement shall be subject to cancellation by Concessionaire should any one or more of the following occur:

- 17.1.1 The permanent abandonment of the Airport by the Authority.
- 17.1.2 The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) continuous days, the use of the Airport for scheduled air transportation.
- 17.1.3 The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the Concessionaire from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

- 17.2 Cancellation by the Authority.

- 17.2.1 In addition to any conditions as specified herein and all other remedies available to the Authority, this Lease Agreement shall be subject to cancellation by the Authority should any one or more of the following occur:
- (i) If the Concessionaire shall file a voluntary petition in bankruptcy, or a proceeding in bankruptcy shall be instituted against the Concessionaire and the Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a receiver for the Concessionaire's assets is appointed, or if the Concessionaire shall be divested of its rights, powers and privileges under this Lease Agreement by other operation of law.
  - (ii) If the Concessionaire shall fail to perform, keep, and observe any of the applicable covenants and conditions contained in this Lease Agreement, provided that the Concessionaire shall be given written notice to correct or cure such default, failure to perform, or breach (other than with respect to the payment of Rent, for which no notice and cure right shall apply). If, within fifteen (15) days from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to the Authority, then and in such event the Authority shall have the right to declare this Lease Agreement terminated. The Authority does, however, reserve the right to extend the time period to correct the default, if, in its opinion, due diligence is shown by the

Concessionaire in curing the default.

If the Authority exercises its rights under subparts (i) or (ii) immediately above, the Authority shall have the right to reenter and take possession of the Leased Premises, the Authority may enter and eject the Concessionaire and those claiming through or under it and remove its property and effects (using reasonable force, if necessary) without being guilty of any manner of trespass and without any liability therefore, without prejudice to any remedies of the Authority in the event of default by the Concessionaire, and without liability for any interruption of the conduct of the affairs of the Concessionaire or those claiming through or under it.

17.2.2 Should the Authority need to facilitate Terminal renovations, concession master planning, concession management, or other significant changes to be decided by the Authority, the Authority may, in its sole discretion, cancel this Lease Agreement upon six month's advance written notice to Concessionaire.

17.3 Termination and Reletting. Should there occur an early termination of this Lease Agreement pursuant to the terms hereof, the Authority shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the Term hereof.

17.4 Notice of Termination. If any of the events enumerated in Section 17.2 shall occur, and after due notice the Concessionaire has failed to cure or correct same, the Authority may, at any time thereafter during the continuance of said default, terminate this Lease Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice, which date shall be no less than thirty (30) days after the date of the written notice.

## **ARTICLE 18 - PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION**

18.1 Rights Upon Termination or Cancellation. Upon expiration, termination, or cancellation of this Lease Agreement for any reason, the Authority shall have the right to require removal by Concessionaire of all Trade Fixtures, personal property, and expendables owned by Concessionaire; and Concessionaire shall immediately remove such Trade Fixtures, personal property, and expendables. Concessionaire shall reimburse the Authority for the cost of any repairs required as a result of Concessionaire's removal of said Trade Fixtures, personal property, and expendables. At the request of the Authority, the Authority may, at its sole and absolute discretion, take title to any or all such Trade Fixtures, personal property, or expendables, in which event the Authority shall pay to Concessionaire the fair market value of each such Trade Fixture, personal property, or expendable as of the date of such termination.

18.2 Rights Upon Termination Because of Default by the Authority or for Convenience of the Authority. In the event this Lease Agreement is canceled by Concessionaire or the Authority for any of the reasons outlined in Sections 17.1 or 17.2, the exclusive

remedy available to Concessionaire shall be to recover the Net Book Value of Leasehold Improvements as defined in ARTICLE 19 -.

Except as provided hereinabove, Concessionaire shall remove all personal property and Trade Fixtures, and shall reimburse the Authority for the cost of any repairs required as a result of Concessionaire's removal of such property and fixtures.

## **ARTICLE 19 - RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT**

- 19.1 Performance. In the event that Concessionaire either (a) experiences a decrease in its Gross Receipts per Enplanement of more than twenty percent (20%) for the Leased Premises for two (2) quarters in any twelve (12)-month period, (b) loses the Franchise Agreement rights under which the concession for the Leased Premises was operated, or (c) experiences a decline in Gross Receipts for the Leased Premises for two (2) consecutive years without a corresponding decrease in the number of Enplanements for the same two-year period, the Authority may initiate a discussion with Concessionaire about termination of this Lease Agreement. If the parties mutually agree, then a termination agreement shall be executed under which the Authority shall agree to remarket the space and the Concessionaire shall agree to terminate the Lease Agreement and vacate the space if and when a new tenant Lease Agreement for the space is executed and the new tenant design for the space is approved by the Authority.
- 19.2 Airport Operational Needs. Notwithstanding the provisions of this Lease Agreement, if at any time the Authority determines that the Leased Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Authority may require Concessionaire to close, reduce or relocate (to a location designated by the Authority) the Leased Premises, or any discrete portion thereof. In such event, the Authority shall provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Leased Premises. If accepted, the Authority and Concessionaire shall negotiate, in good faith, for the payment of any relocation costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Authority may, at the Authority's election, terminate this Lease Agreement with respect to all or a portion of the Leased Premises. If Concessionaire is not in default under any of the provisions of this Lease Agreement on the effective date of termination, the Authority shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination and reimburse Concessionaire the Net Book Value of Leasehold Improvements applicable to the Leased Premises (or portion thereof) to be relocated or reduced. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the Leasehold Improvements or any relocation expenses or loss of business expenses.
- 19.3 Condemnation. In the event that any federal, state, or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Leased Premises or any part thereof, the Authority may, at its option, terminate this Lease Agreement as of the date of



such taking, and if Concessionaire is not in default under any of the provisions of this Lease Agreement on the effective date of termination, the Authority shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall be responsible for prosecuting its own claim, at its own expense, against the condemning authority. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the Leasehold Improvements or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.

- 19.4 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Authority of any of its obligations under this Lease Agreement, then either party hereto may terminate this Lease Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Concessionaire is not in default under any of the provisions of this Lease Agreement on the effective date of termination, the Authority shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the Leasehold Improvements or any relocation expenses.
- 19.5 Net Book Value of Leasehold Improvements. As used in this Lease Agreement, "Net Book Value of Leasehold Improvements" shall mean and refer to the dollar amount generated through application of the following rules:
- 19.6 Eligible Improvements. "Eligible Improvements" shall mean and refer to any permanently affixed alterations or improvements made to the Leased Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Leased Premises and have no practical use or value outside the Leased Premises: (a) for which the Authority's approval has been sought and obtained in writing, (b) for which any and all information required by Section 9.3 or any Authority approval has been timely submitted, and (c) consistently appearing on any Net Book Value of Leasehold Improvements report requested by the Authority pursuant to this Lease Agreement, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.
- 19.7 Cost of Eligible Improvements. The "Costs of Eligible Improvements" shall mean and refer to the direct costs expended by Concessionaire for any Eligible Improvements, specifically including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however, include any of the Excluded Costs. The Costs of Eligible Improvements shall be determined from the

information timely submitted by Concessionaire pursuant to Section 9.3 or any Authority consent, which information is subject to verification by the Authority. "Excluded Costs" shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to design or construction; (vii) professional fees and costs related to design and engineering of Eligible Improvements in excess of twelve percent (12%) of the initial minimum investment and construction management costs for the Eligible Improvements in excess of five percent (5.0%) of the initial minimum investment; and (viii) professional fees and costs related to the design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the minimum Midterm Reinvestment and construction management of Leasehold Improvements in excess of five percent (5.0%) of the minimum Midterm Reinvestment.

- 19.8 Calculation of Net Book Value of Leasehold Improvements. For each Eligible Improvement, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement, where such useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Lease Agreement, or any lesser period that may be specified in any consent, sublease, or other writing approved by the Authority, on a straight-line basis with no salvage value. The "Net Book Value of Leasehold Improvements" shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, "useful economic life" shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire's repair and maintenance of the Eligible Improvement, and Concessionaire's custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

## **ARTICLE 20 - NONWAIVER OF RIGHTS**

- 20.1 Continued performance by either party hereto pursuant to the terms of this Lease Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Lease Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

## **ARTICLE 21 - SURRENDER OF POSSESSION**

- 21.1 Concessionaire shall, upon termination of this Lease Agreement, quit and deliver up the Leased Premises and privileges to the Authority peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or the Authority, reasonable use and wear thereof excepted. In addition to any lien provided by Nebraska law, the Authority shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its Trade Fixtures and personal property installed or placed by

it at its own expense, in, on or about the Leased Premises as provided in, and subject to, Sections 9.2.5 and 18.1 above; subject however, to any valid lien that the Authority may have thereon for unpaid rent, charges or fees.

## **ARTICLE 22 - ASSIGNMENT, SUBLETTING, AND SURRENDER**

- 22.1 Right to Assign. The activities, uses, privileges and obligations authorized herein are personal to Concessionaire and Concessionaire agrees that it will not assign, subcontract, or sublet the same or any portion thereof, or assign, subcontract, or sublet the Leased Premises or any portion thereof without the express written consent of the Authority in its sole and absolute discretion, and any purported assignment or subcontract in violation hereof shall be void.
- 22.2 Control. Without limiting the foregoing, the following shall be considered an assignment for purposes hereof:
- 22.2.1 The sale, exchange, or transfer on a cumulative basis, whether in one transaction or multiple transactions, of more than fifty percent (50%) of the stock or other ownership interest of Concessionaire or any non-public entity which, either directly or indirectly, owns or controls Concessionaire (including but not limited to a merger, consolidation, or reorganization); or
- 22.2.2 The sale, exchange, or transfer of all, or substantially all, of the assets or business related to the performance of this Lease Agreement.
- 22.3 The Authority's Discretion; No Release. The Authority, in its absolute discretion, shall be the sole judge as to the reliability, capability, character, and desirability of any parties proposed as assignees of this Lease Agreement. No assignment, subcontract, or sublease shall relieve Concessionaire of its obligations under this Lease Agreement.

## **ARTICLE 23 - TAXES AND LICENSES**

- 23.1 Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the Leased Premises, Leasehold Improvements, or the activities or operations contemplated by this Lease Agreement or that may be measured in by all or part of the consideration payable by Concessionaire under this Lease Agreement ("Taxes"). Concessionaire shall pay any and all Taxes whether assessed against Concessionaire or the Authority. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder.

## **ARTICLE 24 - INSPECTION OF LEASED PREMISES**

- 24.1 The Authority or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during

the term of this Lease Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of the Authority.

## **ARTICLE 25 - HOLDING OVER**

- 25.1 Should Concessionaire remain in possession of the Leased Premises after the expiration of the Term, or any renewals, or termination of this Lease Agreement without written permission from the Authority, such holding over will not be deemed to operate as a renewal or extension of this Lease Agreement, nor will it create a tenancy at will. Such holding over will create a month-to-month tenancy and Concessionaire shall, unless otherwise mutually agreed, pay to the Authority twice the highest Rent that Concessionaire paid during any month of the Term of this Lease Agreement. During such month-to-month tenancy, all terms of this Lease Agreement and any amendments hereto will continue to govern the relationship of the parties.

## **ARTICLE 26 - QUIET ENJOYMENT**

- 26.1 Subject to (i) all Applicable Laws, (ii) to the terms and conditions of the Lease Agreement, including Articles 27, 29 and 30, and (iii) to interruptions, accommodations and adjustments in connection with construction, the Authority agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Lease Agreement, and upon observing and keeping the agreements and covenants of this Lease Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the Term of this Lease Agreement.

## **ARTICLE 27 - FEDERAL PROVISIONS**

- 27.1 Anti-Corruption. Concessionaire warrants and represents that neither Concessionaire nor an Affiliate, as defined below, appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the Authority may not do business under any applicable law, rule, regulation, order or judgment.
- 27.2 Public Use and Federal Grants.
- 27.2.1 To the best of Concessionaire's knowledge, the Leased Premises are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between the Authority and the United States of America, as amended. The Authority and Concessionaire represent that none of the provisions of this Lease Agreement violates any of the provisions of the sponsor's assurances.

- 27.2.2 The parties hereto further covenant and agree that nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
- 27.2.3 Concessionaire for itself, its sub-concessionaires, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over, or under the Leased Premises and the furnishings of services thereon, no person on the grounds of race, color, or national original shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Concessionaire shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Code of Federal Regulations for the Department of Transportation at Title 49, Subtitle A, Office of the Secretary of Transportation, Part 21, titled "Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964," and as said regulations may be amended; and (4) in the event of Concessionaire's breach of any of the above nondiscrimination covenants, the Authority shall have the right to terminate this Leased Agreement therefore, and hold the same as if this Lease Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of 49 CFR Subtitle A, Part 21, are followed and completed, including the exercise or expiration of appeal rights.
- 27.3 Required General Civil Rights Provision. Concessionaire agrees to comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire.
- 27.3.1 This provision obligates Concessionaire for the period during which the Leased Premises are owned, used or possessed by the Concessionaire and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
- 27.4 Nondiscrimination Acts and Authorities. During the performance of this Lease Agreement, Concessionaire, for itself, its assignees, personal representatives, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to (hereinafter referred to as "Nondiscrimination Acts and Authorities"):
- 27.4.1 Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 27.4.2 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 27.4.3 The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 27.4.4 Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- 27.4.5 The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 27.4.6 Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 27.4.7 The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 27.4.8 Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- 27.4.9 The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 27.4.10 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- 27.4.11 Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Concessionaire

must take reasonable steps to ensure that LEP persons have meaningful access to Concessionaire's programs [70 Fed. Reg. 74087 (2005)];

27.4.12 Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 USC § 1681, *et seq*).

27.5 Title VI Provisions for Construction, Use, Access to Real Property Acquired Under the Activity, Facility, or Program.

27.5.1 The Concessionaire for itself, heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

27.5.2 In the event of breach of any of the above Non-discrimination covenants, the Authority will have the right to terminate this Lease Agreement and to enter or re-enter and repossess the Leased Premises and the units thereon, and hold the same as if this Lease Agreement had never been made or issued.

27.6 USDOT Nondiscrimination Ordinance.

27.6.1 This Lease Agreement is subject to the requirements of the United States Department of Transportation's (USDOT) regulations, 49 CFR part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

27.6.2 Concessionaire agrees to include the statements Section 27.7 in any sub-concessionaire agreement.

27.7 Compliance and Reporting. During the performance of this Lease Agreement, the Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease Agreement.

27.7.1 Compliance with Regulations. The Concessionaire (hereinafter includes any sub-concessionaire or joint venture partner) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be

amended from time to time, which are herein incorporated by reference and made a part of this Lease Agreement.

- 27.7.2 Nondiscrimination. The Concessionaire, with regard to the work performed by it during this Lease Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of sub-concessionaires or subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Lease Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 27.7.3 Solicitations for Sub-concessionaires or Contractors, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a sublease agreement or contract, including procurements of materials, or lease agreements of equipment, each potential sub-concessionaire or contractor or supplier will be notified by the Concessionaire of the sub-concessionaire's or contractor's obligations under this Lease Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 27.7.4 Information and Reports. The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a sub-concessionaire or contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 27.7.5 Sanctions for Noncompliance. In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Lease Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- i. Withholding payments to the Concessionaire under this Lease Agreement until the Concessionaire complies; and/or
  - ii. Cancelling, terminating, or suspending this Lease Agreement, in whole or in part.
- 27.7.6 Incorporation of Provisions. Concessionaire will include the provisions of paragraphs 27.7.1 through 27.7.6 in every sublease, joint venture agreement, and contract, including procurements of materials and leases



of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Concessionaire will take action with respect to any sublease, contract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a sub-concessionaire, contractor, or supplier because of such direction, the Concessionaire may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

## **ARTICLE 28 - SANCTIONS FOR CERTAIN LEASE AGREEMENT VIOLATIONS**

28.1 Concessionaire's failure to adhere to the operating and other requirements set forth in this Lease Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall concession business of the Authority, and reduce the amount of rent to be paid to the Authority. Additionally, Authority resources will be expended in dealing with violations of this Lease Agreement by Concessionaire. The parties hereby agree that total damages sustained by the Authority for violations of the provisions of this Lease Agreement addressing the subject matters listed below could be significant but would be difficult to determine and to track. Therefore, the parties hereto agree that in lieu of, or in addition to, any other available remedy, the Authority may elect to impose the charges described below on a per diem basis per infraction, for violation of Lease Agreement terms addressing the referenced subject matter. Concessionaire, therefore, hereby agrees that imposition of the sanctions set forth below is fair and reasonable and not a penalty and Concessionaire agrees to pay immediately upon demand by the Authority the following sanction amounts upon the occurrence of breaches related to the following subject matters:

- a. Violation of use of Leased Premises
- b. Failure to maintain required hours of operation
- c. Failure to submit Rent when due and/or required documents and reports referred to in this Lease Agreement or otherwise requested by the Authority
- d. Failure to maintain competent, qualified, and trained staff of sufficient quantity to support customer service and quality standards
- e. Failure to remedy customer service, cleanliness, quality assurance, operations, and/or facility standards
- f. Failure to comply with the Pricing Policy and/or publish all prices for admission or entry, label all products with nutrition information and prices (as needed), and other commonly accepted practices or otherwise as referenced in the Pricing Policy
- g. Failure to comply with Leased Premises boundaries and lease lines
- h. Failure to comply with receiving and delivery requirements set by the Authority
- i. Failure to comply with waste disposal and recycling policies and standards set by

the Authority

- j. Failure to provide maintenance, pest control, and adequate records therefore, on a monthly basis and/or display manifest reports on file in each location
- k. Unauthorized advertising or signage
- l. Destruction of Airport public facility deemed caused by associates or associate travel in unauthorized areas
- m. Failure to comply with any and all published Authority standards and policies, basic terms of this Lease Agreement, federal, state, local laws, policies, regulations, codes, directives or standards

**Sanction Amount.** First offense of any infraction listed above may result in a charge of \$500, second offense may result in a charge of \$750, and third or further offenses may result in a charge of \$1,000. Repeated violation of the above-listed infractions will, at the Authority's discretion, result in the Concessionaire being in default of this Lease Agreement.

Except for violations regarding the minimum hours of operation, the sanctions for which shall be incurred immediately and without notice upon violation, other sanction amounts shall not be imposed unless the violation continues for more than three (3) calendar days after the Authority has given Concessionaire written notice of the violation; provided, however, after the Authority has given Concessionaire notice of the same violation more than twice during any given Calendar Year, the sanction amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction. Additionally, after two (2) Lease Agreement violations of the same type in the same Calendar Year, the Authority reserves the right, at its sole option, to continue to impose the sanction and/or also seek any other remedies available to it for an event of Default, including termination of this Lease Agreement. Sanction amounts are additive and one or more may be assessed per occurrence or per day depending on the number or nature of infractions.

## **ARTICLE 29 - GOVERNMENT RESERVATIONS AND RESTRICTIONS**

- 29.1 The Leased Premises being leased and rights granted by this Lease Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:
  - 29.1.1 It is understood and agreed to by Concessionaire that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101, et seq., and Section 308 of the Federal Aviation Act of 1958 and as amended.
  - 29.1.2 During a time of war or national emergency, the Authority shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Lease Agreement insofar as they are inconsistent with the

provisions of the agreement or lease with the Government, shall be suspended.

- 29.1.3 This Lease Agreement shall be subject to the terms of any sponsor's assurances and agreements now required or imposed in the future, between the Authority and the Federal Aviation Administration or any successor Federal agency.
- 29.1.4 This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the Authority 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, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the operation or maintenance of the Airport now or in the future; provided however, that the Authority shall, to the extent permitted by law, use commercially reasonable efforts to cause any such agreements to include provisions protecting and preserving the rights of Concessionaire in and to the Leased Premises and improvements thereon.

#### **ARTICLE 30 - CONCESSION LEASE AGREEMENT SUBORDINATE TO BOND ORDINANCE**

- 30.1 This Lease Agreement and all rights granted to Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of any pledges, transfers, hypothecation, or assignment made by the Authority or the City of Omaha in any bond ordinance executed by the Authority to issue bonds for the development or improvement of the Airport. The Authority expressly reserves the right to make such pledges and grant such liens and enter into covenants as it may deem necessary or desirable to secure and provide for the payment of bonds, including the creation of reserves therefore. Concessionaire understands that the Authority is and will be the issuer of bonds. With respect to bonds on which the interest is intended to be excludable from gross income for Federal income tax purposes under the Internal Revenue Code of 1986 as amended or superseded, Concessionaire shall:

- 30.1.1 Not use, without prior written consent of the Authority, any portion of the Leased Premises for any purpose other than as an airport facility serving aviation customers, and facilities functionally related and subordinate to such airport facility that are of a character and size commensurate with the character and size of such airport facility, including facilities that are directly related and essential to servicing aircraft or enabling aircraft to take off and land, or transferring passengers or cargo to or from aircraft, but excluding any lodging facility or any retail business or food service facilities in excess of a size necessary to serve Concessionaire and its invitees, any office building (excluding office space in the Airport facilities for use by Concessionaire), any industrial park or manufacturing facility, any health club facility, any facility primarily used for gambling, or any store the

principal business of which is the sale of alcoholic beverages for consumption off premises; and

- 30.1.2 Immediately cease and desist from any action, other than as expressly permitted in this ARTICLE 30 -, with respect to the use of the Airport, to the extent such action is described in written notice delivered to the Authority as an action that, pursuant to the written advice of bond counsel to the Authority or the Internal Revenue Service, may adversely affect the treatment of interest on any bond as excludable from gross income for federal income tax purposes.
- 30.2 In connection with the issuance of any bonds by the Authority, upon not less than twenty (20) days prior written request by the Authority, Concessionaire shall deliver to the Authority a statement in writing certifying, to the extent correct and accurate:
  - 30.2.1 That this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease Agreement as modified is in full force and effect);
  - 30.2.2 That the Authority is not in default under any provision of this Lease Agreement, or if in default, the nature thereof in detail; and
  - 30.2.3 Such further matters as may be reasonably requested by the Authority, it being intended that the parties may rely upon such statements involved in such issuance of bonds.

### **ARTICLE 31 - FORCE MAJEURE**

- 31.1 Delays. In the event that either party hereto shall be prevented from the performance of any act required hereunder by reason of strikes, boycotts, labor disputes, embargoes, failure of power, shortages of materials, governmental laws or orders, acts of God, acts of a public enemy, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control (a "Force Majeure Event"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this ARTICLE 31 shall not prevent either party from exercising its rights under ARTICLE 17 of this Lease Agreement.

- 31.1 Limitations; Applicability. Notwithstanding anything herein to the contrary, the following shall apply to the provisions of this ARTICLE 31:
- 31.1.1 The affected party shall provide the other party with prompt written notice of the Force Majeure Event, including the cause and anticipated effect of the Force Majeure Event and the period of time contemplated or necessary for the performance of the act being delayed by the Force Majeure Event.
- 31.1.2 Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party; and after the Commencement Date, the provisions of this ARTICLE 31 shall not operate to excuse Concessionaire from the prompt payment of Rent as required by this Lease Agreement and shall not extend the Term of this Lease Agreement.
- 31.1.3 Concessionaire shall not be relieved from performing its obligations under this Lease Agreement due to a strike or work slowdown of its employees, and Concessionaire shall employ only fully trained and qualified personnel during any such strike or slowdown.
- 31.1.4 Concessionaire shall use due diligence to remove any Force Majeure Event as quickly as possible, and shall not be entitled to an extension, or to be excused from performance for a period, of more than sixty (60) days due to a Force Majeure Event without the express written consent of the Authority.
- 31.2 The Authority's Right to Perform. The Authority itself may perform the contract functions of this Lease Agreement or contract with third parties to perform such functions during periods of a Force Majeure Event. Such performance shall not constitute a default or breach of this Lease Agreement by the Authority.
- 31.3 Termination Rights. If the Force Majeure Event is of such a nature that it materially affects the Services for a period in excess of ninety (90) days, the Authority may terminate this Lease Agreement by giving seven (7) days' written notice to the Concessionaire. Such a termination shall not constitute a default or breach of this Lease Agreement by the Authority, and Concessionaire hereby waives any claim it may have for financial losses or damages resulting from such a termination.

## **ARTICLE 32 - LEGAL CLAIMS AND ATTORNEY FEES**

- 32.1 Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Concessionaire's operation at the Airport. The Authority and Concessionaire shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Concessionaire is an independent contractor in every respect, and not the agent of the Authority.
- 32.2 If any legal action is instituted by the parties hereto to enforce this Lease Agreement, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. Any such legal action shall be

commenced and maintained solely in Omaha, Nebraska, regardless of Concessionaire's residence or place of business.

### **ARTICLE 33 - PUBLIC PROTECTION**

- 33.1 The Authority shall provide, or cause to be provided, during the term of this Lease Agreement, public fire and police protection similar to that afforded to other Terminal tenants or licensees at the Airport as determined by the Authority. Concessionaire shall comply with the Airport Emergency Plan and the Authority's directives regarding the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire.

### **ARTICLE 34 - CONCESSION LEASE AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES**

- 34.1 This Lease Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the Authority and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the Authority for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Airport. Should the effect of such agreement with the United States government be to take any of the property under this Lease Agreement or substantially destroy the commercial value of such improvements, the Authority may in its sole discretion terminate this Lease Agreement.

### **ARTICLE 35 - RIGHTS AND PRIVILEGES OF THE AUTHORITY**

- 35.1 The Authority shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, including the Omaha Airport Authority Rules and Regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Terminal, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and any future changes prescribed from time to time by the FAA, TSA, or any other successor Federal agency.
- 35.2 The CEO is hereby designated as the official representative for the Authority for the enforcement of all provisions in this Lease Agreement with full power to represent the Authority in dealings with Concessionaire in connection with the rights herein granted.
- 35.3 All actions relating to policy determination, modification of this Lease Agreement, termination of this Lease Agreement, and any similar matters affecting the terms of this Lease Agreement shall emanate from the Authority.
- 35.4 The CEO or his or her designated representative may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable

time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.

- 35.5 The Authority may from time to time increase or decrease the size or capacity of any such Public Aircraft Facilities or Terminal or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- 35.6 This Lease Agreement at any time may be reopened for renegotiation in good faith if Federal Aviation Administration (FAA) Airport Certification or Transportation Security Administration's Security Requirements, FAR Parts 139 and TSR 1542 respectively, result in major expenditures to the Authority due to Concessionaire's tenancy on the Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- 35.7 The Authority reserves the right to relocate the Leased Premises to similar space should that be necessary for Terminal area remodeling or expansion. The Authority will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment.

## **ARTICLE 36 - GENERAL PROVISIONS**

- 36.1 Notices. All notices provided for herein shall be in writing. Any notice permitted or required to be served upon Concessionaire under this Lease Agreement shall be served upon it at:

Concessionaire Name  
Address

Any notice permitted or required to be served upon the Authority under this Lease Agreement shall be addressed to:

Omaha Airport Authority  
Attn: Chief Executive Officer  
1519 E. Hartman Court  
Omaha, Nebraska 68110

Either party may change the address for service under this Lease Agreement by giving the other party written notice thereof. Any notice served by mail shall be by certified or registered mail, return receipt requested, or by a recognized overnight courier service that requires receipt of signature upon delivery.

- 36.2 Waivers. Election by the Authority not to enforce any of the terms, covenants, or conditions contained in this Lease Agreement shall in no event operate as a waiver or preclude the Authority from thereafter enforcing such terms, covenants, or conditions.
- 36.3 Waiver of Claims. Concessionaire hereby waives any claim against the Authority, and its officers, agents, or employees, for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease

Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Lease Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

- 36.4 Sales and Dignified Use. No public or private auction, “fire,” “going out of business,” bankruptcy or similar types of sales shall be conducted in or from the Leased Premises. The Leased Premises shall not be used except in a dignified and ethical manner consistent with the general high standards of lounge and food service operations in the Airport.
- 36.5 Authority Consent or Action. In the event this Lease Agreement is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole and unfettered discretion of the Authority, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Lease Agreement requires the Authority’s consent or approval or permits the Authority to act, such consent, approval or action may be given or performed by the CEO or his or her designated representative. If Concessionaire requests the Authority’s consent or approval pursuant to any provision of this Lease Agreement and the Authority fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.
- 36.6 Interpretation of Concession Lease Agreement. This Lease Agreement is the result of arm’s length negotiations between the Authority and Concessionaire and shall not be construed against the Authority by reason of its preparation of this Lease Agreement.
- 36.7 Entire Agreement. It is understood and agreed that this Lease Agreement (including all Exhibits and other documents incorporated by reference) contains the entire agreement between the Authority and Concessionaire as to this Lease Agreement. It is further understood and agreed by Concessionaire that the Authority and the Authority’s agents and employees have made no representations or promises with respect to this Lease Agreement or the making or entry into this Lease Agreement, except as in this Lease Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the Authority for, and the Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease Agreement. Any other written or oral agreement with the Authority is expressly waived by Concessionaire. All duties, obligations, and liabilities of the Authority and Concessionaire with respect to the Leased Premises are expressly set forth herein and this Lease Agreement can be amended only in writing and agreed to by both parties.
- 36.8 Capacity to Execute. The Authority and Concessionaire each warrant and represent to each other that this Lease Agreement constitutes their legal, valid and binding obligation. The individual executing this Lease Agreement on behalf of



Concessionaire personally warrants that she/he has full authority to execute this Lease Agreement on behalf of Concessionaire.

- 36.9 Headings. The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease Agreement.
- 36.10 Time of Essence. Time is expressed to be of the essence of this Lease Agreement and the parties hereto agree to timely and faithfully comply with the terms and conditions of this Lease Agreement.

### **ARTICLE 37 - TERMS BINDING UPON SUCCESSORS**

- 37.1 All the terms, conditions, and covenants of this Lease Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment herein before set forth

### **ARTICLE 38 - AGREEMENT MADE IN NEBRASKA**

- 38.1 This Lease Agreement has been made in and shall be construed in accordance with the laws of the State of Nebraska. This Lease Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Nebraska as the same from time to time exist, subject to the waivers and exclusions herein contained. Any litigation or suit brought relating to this Lease Agreement shall be brought solely in the state or federal court sitting in Omaha, Nebraska. The Authority and Concessionaire each waive any claim or defense that such forum is not convenient or proper. The Authority and Concessionaire each agree that any such court shall have personal jurisdiction over each party and each party hereby consents to service of process by any means authorized by Nebraska law.

### **ARTICLE 39 - CONTRACT DOCUMENTS**

- 39.1 The Request for Proposals published in connection herewith and the Concessionaire's Proposal shall all form a part of this Lease Agreement between the parties hereto. In the event of a conflict between the terms and conditions of this Lease Agreement and any of said documents, the terms and conditions of this Lease Agreement shall take precedence.

### **ARTICLE 40 - GUARANTY**

- 40.1 If required by the Authority, Concessionaire shall cause to be executed and delivered to the Authority contemporaneously with the execution and delivery of this Lease Agreement a guaranty of Concessionaire's obligations under this Lease Agreement in a form, and by a guarantor, acceptable to the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates set forth below.

ATTEST:

OMAHA AIRPORT AUTHORITY

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chair

ATTEST:

CONCESSIONAIRE

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

RECOMMENDED APPROVAL, TERMS AND  
CONDITIONS BY:

APPROVED AS TO FORM AND LEGALITY  
BY:

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Airport Authority Counsel

## **EXHIBIT C: CONCESSION SUSTAINABILITY REQUIREMENTS AND VOLUNTARY PRACTICES**

The following sustainability requirements and voluntary practices have been developed by the Omaha Airport Authority (“Authority”) for the concession program at Eppley Airfield (“Airport”). This Exhibit C may be revised by the Authority from time to time without a formal amendment to the Lease Agreement.

### **A. Sustainability Requirements**

- a.** Use of compostable food serveware and consumer-facing packaging, including but not limited to utensils, straws, to-go containers, and retail packaging/wrapping.
  - i.** Non-compostable, single-use serveware and consumer-facing packaging are prohibited. This prohibition includes plastic bags, plastic straws, polypropylene (#5) plastics, and polystyrene (#6/Styrofoam) plastics. Pre-packaged branded products, such as bottled soda and bags of chips are excluded from this prohibition.
  - ii.** Compostable is defined by the Authority as products that are approved as being compostable by the following third parties:
    - 1. The Biodegradable Products Institute (BPI); or
    - 2. Compost Manufacturing Alliance (CMA)
- b.** Use of 100 percent recyclable paper or 100 percent compostable bags. The use of plastic bags is not permitted.
- c.** Upon Request Giving, the practice of asking customers if and how much they need of disposable items, such as a bag, cutlery, napkins, and condiments. Concessionaire must not automatically include single-use items in an order without verbal confirmation from a customer.
- d.** Unbundled utensils (Concessionaire may not provide packaged cutlery, instead utensils must be provided individually upon customer request)
- e.** Participation in the Authority’s recycling program
- f.** Participation in any future composting programs that the Authority implements, including but not limited to coffee grounds composting and food waste composting
- g.** Use of Green Seal Certified (or equivalent certification) cleaning supplies
- h.** Implementation of technology to offer non-printed/paperless receipts
- i.** Implementation and use of water and energy efficient appliances
- j.** Confirmation that all employees are trained in the sustainability requirements of concession operations at the Airport

- k. Comply with and, where possible, exceed all local, state, and federal sustainability, environmental, energy and water regulations, and other relevant requirements, including sustainability requirements outlined in the Terminal Modernization Program Tenant Design Guidelines.
- l. Participation in and support of all future required Airport sustainability programs and practices implemented during the term of the Lease Agreement

## **B. Voluntary Sustainability Practices**

- a. Participation in a food recovery program and/or donation of unused and unsold retail products
- b. Bulk packaging of condiments instead of individual packets
- c. QR code menus (a small number of printed menus should be maintained for customers without access to QR codes)
- d. Food service locations may strive for certification through the Green Restaurant Association
- e. Adopt green procurement policies, including but not limited to the procurement of locally-sourced and/or organic food options where available and sustainable brands and retail products
  - i. Locally-sourced is defined as products grown, produced, or developed within the states of Nebraska and Iowa.
- f. Develop a sustainable purchasing policy for operational purchase (i.e., office supplies, lightbulbs, soap, etc.)
- g. Offer pre-packaged snacks and drinks in environmentally-friendly packaging (i.e., offering boxed water instead of plastic water bottles)
- h. Develop a sustainability plan outlining the steps Concessionaire would take to enhance the program's sustainability beyond what is required in this Exhibit C and the Terminal Modernization Program Tenant Design Guidelines.