

# **VOLUME A**

**Invitation, Eligibility,  
Agreement, Bond, Letter of  
Credit**

**Greater Orlando  
Aviation Authority**

TO: Prospective Proposers

FROM: Raymond D. Anderson, Esq.  
Senior Director, Concessions and Properties  
Greater Orlando Aviation Authority

DATE: August 27, 2018

SUBJECT: Invitation to Submit Competitive Proposals for STC Retail Package 2 Concession at Orlando International Airport and Instructions to Proposers (the "Invitation")

The Greater Orlando Aviation Authority (the "Aviation Authority") is seeking competitive Proposals for the operation of news, gift, and coffee/bakery concession locations (the "Concession") at the South Terminal Complex of the Orlando International Airport, Orlando, Florida (the "Airport").

Although the Aviation Authority has historical sales data for its concessions in the North Terminal Complex, it does not have this data for the new South Terminal Complex that has not yet opened. The Aviation Authority anticipates that the South Terminal Complex will consist of a mix of domestic and international airlines and passengers and will be built to accommodate 16 to 24 airline gates. Although the number of traveling passengers at the South Terminal Complex is estimated and not guaranteed, the Aviation Authority anticipates that it could experience up to 8 – 10 million airline passengers in the first year of opening.

**Please note, this concession opportunity is unique in that the successful Proposer will be required to pay to the Aviation Authority an Infrastructure Contribution that will be used by the Aviation Authority to construct a portion of the Premises. The Infrastructure Contribution payment is described in more detail in Paragraph 4.c., below and Article 7 of the Concession Agreement.**

The following documents are enclosed and, together with this Invitation, constitute the Proposal documents:

**Volume A**

- I. Eligibility and Proposal Form;
- II. Concession Agreement;
- III-A. Contract Bond; and
- III-B. Letter of Credit.

**Volume B - Appendices**

- I. Airport Fact Sheet; and

II. Fiscal Year (FY) 2017 Retail Sales by Terminal

**Volume C - Tenant Design Guidelines**

I. South Airport Complex Tenant Design Criteria.

**Volume D – Airport Concession Disadvantaged Business Enterprise Documents**

I. Schedule of ACDBE Participation; and

II. Information for Determining Joint Venture Eligibility (if applicable).

**A. DESCRIPTION OF CONCESSION AND THE AVIATION AUTHORITY'S OBJECTIVES**

Part A of this Invitation is a brief summary of the principal aspects of the Concession, and the Aviation Authority's objectives with respect thereto. This discussion is provided solely for the convenience of the Proposers and is not intended to limit or modify any of the provisions of the Concession Agreement. The terms and conditions of the Concession are set forth in detail in the STC Retail Package 2 Concession Agreement (the "Concession Agreement"), which constitutes Volume A, ITEM II of the Proposal documents.

The Aviation Authority is committed to (1) creating a conscious sustainability culture that engages and inspires social and environmental responsibility, economic growth, and enhances the customer experience; and (2) improving the Aviation Authority's sustainability performance by aligning and measuring activities/progress annually throughout the organization according to the Aviation Authority's Sustainability Management Plan. In line with this, the Aviation Authority and its tenants and business partners will adhere to the requirements of the most current US Green Building Council's Leadership in Energy and Environmental Design (LEED) certification rating system(s).

The Aviation Authority continues to integrate the requirements of its Sustainability Management Plan (GOAA-SMP) and LEED Version 4 for New Construction and Existing Buildings. Complete requirements can be found in the Aviation Authority's South Airport Complex Tenant Design Criteria, which is included in this Request for Proposal Package as Volume C and in the Aviation Authority's Sustainable Facility Operations Manual, which is under development. These documents are updated periodically, and it is the tenant's responsibility to coordinate with the Aviation Authority for updates.

**1. Concession Rights to be Granted.**

**a. Rights and Premises.** The Aviation Authority shall grant the successful Proposer the non-exclusive right and privilege, and the successful Proposer shall assume the obligation, to rent, occupy, equip, furnish and maintain the facilities for the operation of two newsstands with coffee/bakery, one newsstand, and one news and gift shop concessions, in accordance with the provisions of the Concession Agreement, consisting of approximately four

thousand seven hundred fifty (4,750) square feet of sales and display space located on Level 2 in the South Terminal Complex (the "Premises") in the locations indicated on Exhibit "A" of the Concession Agreement and referenced below:

Location	Square Feet	Concept Type and Description
Unit LS-A - Pre-Security	400	<b><u>Newsstand</u></b> . Products sold should include newspapers, magazines, paperback books, sundries, health and beauty aids, travel and business accessories, travel electronics, single-serving packaged snacks and candy, and cold bottled water, juice and soft drinks.
Unit P – West	1,100	<b><u>Newsstand with Coffee</u></b> . Products sold should include newspapers, magazines, paperback books, sundries, health and beauty aids, travel and business accessories, travel electronics, and single-serving packaged snacks and candy. This unit should also have a coffee component offering national or local brand gourmet coffee beverages, baked goods, limited pre-packaged foods for take-away, fruit, yogurt, snacks, and bottled juice, soft drinks, and water.
Unit R – North	2,000	<b><u>Newsstand with Coffee/Bakery</u></b> . Products sold should include newspapers, magazines, hardcover and paperback books, sundries, health and beauty aids, limited local souvenirs, travel and business accessories, travel electronics, and single-serving packaged snacks and candy. This unit should also have a significant coffee and bakery component offering national brand gourmet coffee beverages, pastries/baked goods, breakfast sandwiches, pre-packaged foods for take-away, specialty food items, fruit, yogurt, snacks, and bottled juice, soft drinks, and water.
Unit X – South	1,250	<b><u>Newsstand and Gifts</u></b> . Products sold should include newspapers, magazines, paperback books, sundries, health and beauty aids, a selection of local souvenirs, local gifts, travel and business accessories, travel electronics, single-serving packaged snacks and candy, and cold bottled water, juice and soft drinks.
<b>Total Square Feet</b>	<b>4,750</b>	

**b.** Proposers should describe in the Eligibility and Proposal Form the concept it proposes for each location and an explanation of why the concept type will benefit the Aviation Authority and the traveling public.

**c.** The Premises does not include office or storage space for use by the successful Proposer's staff. The Aviation Authority may have office and storage space available for rent to concessionaires, varying in size and availability. The successful Proposer would be

required to pay rent to the Aviation Authority for use of office and/or storage space. The amount of rent per square foot varies depending on the size and location of the space.

**d.** The Concession is not divisible but shall be awarded to a single Proposer (if an award is made pursuant to the Proposal documents).

**e.** In support of the Aviation Authority's targeted sustainability goals and objectives, Proposers should be aware that they are asked to take all measures related to sustainability, as well as LEED v4, in the operation and management of the Concession as specified within the policies and procedural documents referenced in the Eligibility and Proposal Form Paragraph 4.c.

**2. Term.** The successful Proposer shall be required to open for business and commence paying Concession Fees on the date the Aviation Authority opens the South Terminal Complex to the public (the "Commencement Date"). The successful Proposer will be granted possession of the Premises approximately 120 days prior to the Commencement Date. The Term of the Concession shall be a period of seven (7) years, beginning on the Commencement Date as described in Article 4 of the Concession Agreement.

**3. Concession Fee, Minimum Annual Concession Fees and Percentage of Gross Receipts.**

**a. Concession Fee Payments.**

Pursuant to Article 5.A. of the Concession Agreement, the successful Proposer shall pay a Concession Fee to the Aviation Authority for each Agreement Period of the Term in an amount equal to the greater of: (a) the Minimum Annual Concession Fee, which equals the sum of an Annual Rental Fee and a Minimum Annual Privilege Fee; or (b) the Percentage of Gross Receipts.

**b. Initial Minimum Annual Concession Fee.**

The initial Minimum Annual Concession Fee is fixed by the Aviation Authority at One Million and No/100 Dollars (\$1,000,000.00). The portion of the Minimum Annual Concession Fee equals the sum of an Annual Rental Fee, which is based on the fair market value of the Premises, and a Minimum Annual Privilege Fee which fee is paid for the grant by the Aviation Authority of a franchise to engage in the business of operating the Concession within facilities operated and controlled by the Aviation Authority. The portion of the Minimum Annual Concession Fee that consists of the Annual Rental Fee will be determined by the Aviation Authority by an appraisal prior to the Commencement Date and the Minimum Annual Privilege Fee will be calculated at that time by subtracting the Annual Rental Fee from the initial Minimum Annual Concession Fee.

Commencing at the end of the Initial Period, and as of the beginning of each subsequent Agreement Period thereafter, the Minimum Annual Concession Fee shall be adjusted

to equal the greater of (i) an amount equal to eighty-five percent (85%) of the Concession Fee payable for the previous Agreement Period as described in Article 5.A. of the Concession Agreement, or (ii) the initial Minimum Annual Concession Fee.

**c. Percentage of Gross Receipts.**

For this Concession, Proposers will submit their proposal on only the Percentage of Gross Receipts, **DO NOT propose on the fixed Minimum Annual Concession Fee.** Proposers with a proposed Percentage of Gross Receipts of less than 17% will not be considered.

**4. Improvements.**

**a.** The successful Proposer will be required to expend in the build-out of improvements, fixtures, furnishings and equipment (excluding inventory) not less than Five Hundred and No/100 Dollars (\$500.00) per square foot for a total of not less than Two Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$2,375,000.00) for the Premises.

**b.** In support of the Aviation Authority's targeted sustainability goals and objectives, the successful Proposer shall take all measures related to sustainability as well as LEED v4 (including indoor space enhancements and baseline energy/water improvement thresholds) specified within the criteria, policies and procedural documents referenced in the Eligibility and Proposal Form Paragraph 6.b.

The cost per square foot may exceed the amounts listed above due to unknown electrical, mechanical and fire protection improvements and their associated costs, which historically have been higher at the Airport than what concessionaires may have experienced elsewhere. The Airport supports a large population of the public moving to and from ground transportation and airplanes which require more sophisticated controls for mechanical systems and more attention to mechanical, electrical and fire protection operation than elsewhere. The construction environment at the Airport is more controlled, with more restricted access for contractors and materials due to Airport operations and security concerns. Management of construction activity at the Airport by the concessionaire requires more time and effort than elsewhere. Such space must be constructed in the Premises in an aesthetically pleasing manner.

Each Proposer shall provide in its Proposal a preliminary floor plan and a description of the improvements it would construct, specifying the minimum amount per square foot it would expend for Improvements and the furnishings, fixtures and equipment to be constructed or installed at the Premises.

The Proposer will be required to refurbish and maintain the Premises as described in Article 6 of the Concession Agreement and as necessary and as determined by the Chief Executive Officer.

**c.** In addition to the initial investment in Improvements required under this Paragraph 4 and Article 6 of the Concession Agreement, the successful Proposer shall also be required to pay to the Aviation Authority an Infrastructure Contribution in an amount equal to

One Million Two Hundred Eighty Thousand and No/100 Dollars (\$1,280,000.00). On the Effective Date, the successful Proposer shall pay to the Aviation Authority an initial Infrastructure Contribution equal to the total sum of Six Hundred Forty Thousand and No/100 Dollars (\$640,000.00). On the Commencement Date, a second and final Infrastructure Contribution shall be paid to the Aviation Authority in an amount equal to Six Hundred Forty Thousand and No/100 Dollars (\$640,000.00). The Infrastructure Contribution payment will be used by the Aviation Authority to construct a portion of the Premises. The successful Proposer and the Aviation Authority acknowledge that the Infrastructure Contribution is fixed and shall not be altered, regardless of the actual amount expended by the Aviation Authority in constructing said portion of the Premises.

##### **5. ACDBE Participation.**

The Aviation Authority has established its Airport Concession Disadvantaged Business Enterprise ("ACDBE") program in accordance with the U.S. Department of Transportation ("DOT") regulations issued under 49 CFR Part 23 ("Part 23"). The Aviation Authority has received and expects to receive Federal financial assistance from the DOT, and as a condition precedent to receiving this assistance, the Aviation Authority has signed assurances that it will comply with Parts 23 and 26 of the Federal Regulations. In addition to the procedures and standards of Parts 23 and 26 as detailed in the Aviation Authority's ACDBE program, the Aviation Authority utilizes and participates in Florida's Unified Certification Program ("UCP") for the certification of ACDBEs for the purpose of participating in the Aviation Authority's concession program.

The Aviation Authority has established a current ACDBE participation goal for this proposal of **thirty percent (30%) of the total anticipated concession revenues**. All Proposers are required to either meet or exceed the ACDBE participation goal or demonstrate its good faith efforts to meet such goal. A Proposal will be considered non-responsive to the Invitation to Submit Competitive Proposals and rejected if the Proposer fails to demonstrate, to the reasonable satisfaction of the Aviation Authority, as required by the ACDBE program, that the Proposer has met or provided sufficient evidence of good faith efforts to meet the established ACDBE goal. The Aviation Authority must assess ACDBE participation according with the above-referenced Federal Regulations. Please refer to the Aviation Authority's ACDBE Policy and 49 CFR Part 23 for information on counting ACDBE participation.

Proposers are required to submit, with their proposals, ACDBE utilization information by completing and signing Volume D, Item-I, Schedule of ACDBE Participation, and if applicable, Item-II, Information for Determining Joint Venture Eligibility. The Aviation Authority must assess ACDBE participation according with the above-referenced Federal Regulations. Please refer to the Aviation Authority's ACDBE Policy and 49 CFR Part 23 for information on counting ACDBE participation. The Aviation Authority may request, receive, and review additional information on the good faith efforts submitted to verify the accuracy of the level of ACDBE utilization information presented by Proposers. The successful Proposer shall enter into contract(s) with the ACDBEs identified in the Schedule of ACDBE Participation, which the Aviation Authority relies upon in awarding an agreement, subject only to the Aviation Authority's right to approve all sub concessionaires, contractors or vendors.

All ACDBEs listed on the Schedule of ACDBE Participation must be certified in Florida prior to the date on which a Proposal is submitted to be counted towards the ACDBE participation goal. Proposers may visit <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/> for a list of current ACDBE vendors certified within the State of Florida to determine the eligibility of proposed ACDBEs. If a firm you are interested in utilizing is not listed, please direct them to the Small Business Development Department immediately to begin the certification process. Proposers can visit the Aviation Authority's website for more information about Aviation Authority's ACDBE Policy and the Small Business Development Department at <https://orlandoairports.net/>. If you have any questions or concerns please contact the Small Business Development Department at (407) 825-7130.

Proposals will be considered non-responsive to the Invitation to Submit Proposals and rejected if the Proposer alters, or fails to properly execute, the "Schedule of ACDBE Participation" found at Volume D.I., and if applicable, the "Information for Determining Joint Venture Eligibility," found at Volume D.II., or fails to demonstrate, to the reasonable satisfaction of the Aviation Authority, as required by the ACDBE policy, that the Proposer has met, or has made a good faith effort to meet, the established ACDBE goal.

## **B. EVALUATION OF PROPOSALS**

Proposers are evaluated based on the evaluation criteria provided below, which are listed in no particular order of value. There is no value or point-ranking system associated with each of the below listed categories.

### **Evaluation Criteria Rated as Satisfactory or Unsatisfactory**

- **Financial Capability** (Proposer's financial information must show the financial ability to meet its existing obligations and those to be undertaken if successful in being awarded the Concession. In the event the information provided is deemed insufficient, then the successful Proposer may be required to post a 100% contract bond or letter of credit for the Minimum Annual Concession Fee.)
- **Reputation** (Reputation will be considered based upon the information provided by Proposers' references, or as otherwise determined by the Aviation Authority. A poor reference or multiple non-responsive references may result in an Unsatisfactory rating.)
- **ACDBE Participation** (ACDBE participation should meet or exceed the Aviation Authority's goal, with legitimate participation in the management and operation of the Concession. If unable to reach the goal, such Proposer(s) must provide sufficient evidence of good faith efforts to reach the goal with its proposal.)



**Evaluation Criteria Rated According to Strength Demonstrated in Proposal**

- **Demonstrated Experience and Qualifications** (Ranking for this criterion will be based upon the information submitted for the experience and qualifications of the Proposer in operating a news, gifts, and coffee/bakery concession. Material litigation and investigation will be considered in this criterion.)
- **Customer Service and Marketing** (Ranking for this criterion will be based on the extent to which the customer service approach and training will further the Aviation Authority's goal of improved overall customer service and the likely success of the marketing program.)
- **Concepts and Quality, Variety and Price Range of Items** (Concepts whether national, regional or local should have a recognized public appeal. Local and unique concepts are desirable and encouraged. Proposed news, gifts, and coffee/bakery items are expected to be of high quality and a variety of items. Prices should be reasonable when considering the proposed products and brands.)
- **Concession Improvements** (Proposed Improvements should present a visually appealing Concession space intended to maximize appeal to the traveler while remaining true to The Orlando Experience®. The proposed Improvements will be considered for evaluation purposes only and will be subject to further review and approval by the Aviation Authority after award.)
- **Financial Return to the Aviation Authority** (Ranking for this criterion will be based upon a review of the proposed Percentage of Gross Receipts after consideration of the reasonableness of the information presented, and the assumptions supporting the budget and pro forma submitted by Proposers.)

**C. INSTRUCTIONS TO PROPOSERS**

Please review the following instructions carefully prior to preparing and submitting your Proposal.

**1.** Each Proposer shall submit: one (1) originally executed Eligibility and Proposal Form (Volume A, Item I) (the "Proposal"), eleven (11) complete, duplicate sets of all documents forming the Proposal (a total of twelve (12) sets), and one additional electronic copy on a USB Drive or similar device.

**a.** The Eligibility and Proposal Form is provided in a writable format and must be completed, executed and submitted as the original document constituting your Proposal.

Please type the information requested in the Eligibility and Proposal Form except signatures. Please respond to each item individually, and do not skip answering any item on the Eligibility and Proposal Form. If an item is not applicable, please indicate "Not Applicable" or "N/A" on the blank provided. If information in response to one item is included in a response to another item, you should either repeat the information or specifically cross reference the other response. Use additional pages as necessary and index your responses to correspond to the section designation used in the completed Eligibility and Proposal Form. The number of additional pages shall be limited to 25, excluding the Eligibility and Proposal Form, design renderings, financial information, and ACDBE joint venture information. Proposers must submit a copy of the *pro forma* statement attached as Exhibit "A" to the Eligibility and Proposal Form as an Excel document (not a PDF) on the electronic copy of the Proposal.

**b.** The Eligibility and Proposal form should be placed with all attachments in a sealed container along with eleven (11) complete, duplicate sets of all documents forming the Proposal (a total of twelve (12) sets), plus one additional electronic copy on a USB Drive or similar device with the words "Proposal for STC Retail Package 2 Concession," and the Proposer's name and address clearly indicated on the front of the container. Proposer's financial information must be saved as a separate file from the Eligibility and Proposal form on the electronic copy of the Proposal submitted.

**2.** Proposals and modifications may be delivered by hand, by overnight delivery or by certified mail. Proposals and modifications may not be delivered in any other manner (including via facsimile).

**a.** If a Proposal or modification is delivered by hand it must be delivered to Raymond D. Anderson, Esq., Senior Director, Concessions and Properties c/o the Aviation Authority's Annex Building reception desk located at 5855 Cargo Road, Orlando, Florida 32827-4399.

**b.** If a Proposal is delivered by overnight delivery or by certified mail, it must be sent to the attention of Raymond D. Anderson, Esq., Senior Director, Concessions and Properties c/o the Aviation Authority's Annex Building reception desk located at 5855 Cargo Road, Orlando, Florida 32827-4399.

**3. Proposals will be accepted beginning on October 8, 2018 and must be received by the Aviation Authority prior to 2:00 P.M., Eastern Time on October 10, 2018.** All Proposals timely received will be publicly opened at the time and date stated above in the Aviation Authority Annex Building, 1<sup>st</sup> Floor, Conference Room Gemini, located at 5855 Cargo Road, Orlando, Florida 32827-4399. Any Proposal received after the time and date specified above will not be considered and will be returned unopened. The Aviation Authority has designated the U.S. Naval Observatory time as the official time for the receipt of Proposals. The U.S. Naval Observatory time can be accessed by telephone at (202) 762-1401.

No Proposal may be withdrawn after it is submitted unless the Proposer makes a written request for withdrawal, and such request is received by the Aviation Authority prior to the deadline for receipt of Proposals. Once the deadline for receipt of Proposals has occurred, no

Proposal may be altered or withdrawn for a period of one hundred twenty (120) days after such deadline.

**4.** From the information provided in the Eligibility and Proposal Form (Volume A, Item I), it will be determined whether the Proposer has met the minimum eligibility requirements. It is important that each Proposer carefully and thoroughly complete the Eligibility and Proposal Form. If the Eligibility and Proposal Form is not timely submitted by the Proposer, or if, in the sole discretion of the Aviation Authority, the information contained therein is incomplete, materially defective or not responsive, the Proposal may be rejected by the Aviation Authority.

**5.** Any of the following causes may be considered sufficient for the disqualification of a Proposer and the rejection of its Proposal:

**a.** Submission of more than one (1) Proposal for the Concession by an individual, firm, partnership, corporation, or limited liability company under the same name or a different name. For purposes of this subparagraph, firms, partnerships or corporations under common control may be considered to be the same entity;

**b.** Evidence of collusion between or among Proposers;

**c.** If the Proposer was not represented by an employee or lobbyist registered with the Aviation Authority at the Mandatory Pre-Proposal Conference, or if, in the Aviation Authority's sole discretion, it is determined that the person alleged to have signed-in on behalf of the proposing entity was not physically present at the Mandatory Pre-Proposal Conference; or

**d.** Being in arrears on any reports, fees, rent or other monies owed to the Aviation Authority, past or present litigation with the Aviation Authority, past or present default under any contract with the Aviation Authority, or the failure to execute an agreement after the award of a concession or procurement contract with the Aviation Authority.

**6.** The Aviation Authority reserves the right, in its sole discretion, to waive any informalities or irregularities of a Proposal, except that (i) the Aviation Authority will not waive the requirement that a Proposal, complete in all material respects, be received by the Aviation Authority by the time and date specified for the receipt thereof, and (ii) the Aviation Authority will not consider any Proposal which does not conform in all material respects to the terms of this Invitation including a commitment to execute the Concession Agreement by the Proposer and a commitment by the Guarantor to execute the Agreement of Guaranty, if applicable, in the form attached to the Eligibility and Proposal Form.

**7.** The Aviation Authority reserves the right to request clarification of information submitted in any Proposal, to require additional information from any Proposer, or, in the Aviation Authority's sole discretion, to reject any or all Proposals for any reason and to re-advertise or not to re-advertise for Proposals.

**8.** The Aviation Authority also reserves the right to extend the date and time period during which it will accept Proposals and to extend the date or time scheduled for the opening of

Proposals. The Aviation Authority may, but is not required to, conduct interviews with the Proposers.

**9.** Each Proposal which has not been rejected will be evaluated and ranked by the Concessions/Procurement Committee of the Aviation Authority (the "Concessions Committee"). The Concessions Committee will rank the responsive Proposals. The findings and recommendations of the Concessions Committee will be forwarded to the Aviation Authority's Board, which may make the award.

**10. A Mandatory Pre-Proposal Conference will be held on September 6, 2018 at 1:30 P.M., Eastern Time, in the Carl T. Langford Board Room, Level 3 of the Main Terminal Complex, at Orlando International Airport, One Jeff Fuqua Boulevard, Orlando, Florida 32827-4399.**

**a.** A representative of each prospective proposing entity is required to attend the Mandatory Pre-Proposal Conference and to sign the Authority's attendance roster on behalf of the proposing entity prior to the Mandatory Pre-Proposal Conference adjourning in order for a Proposal to be considered by the Authority. A representative must either be an employee of the proposing entity, or a lobbyist registered with the Aviation Authority on behalf of the proposing entity. Items of importance will be discussed at the Mandatory Pre-Proposal Conference that will impact the Concession.

**b.** Requests for changes to the terms and conditions of the Concession Agreement should be made at the Mandatory Pre-Proposal Conference, since submission of a Proposal constitutes the Proposer's commitment to execute the Concession Agreement (Volume A, Item II) in the form attached hereto, if the Proposer is awarded the Concession.

**c.** Due to time constraints, the Aviation Authority will not respond to any comments or questions regarding the Proposal documents submitted after 4:00 PM EST on September 20, 2018.

**11.** Other than during the Mandatory Pre-Proposal Conference, the Aviation Authority shall not be required to provide to any prospective Proposer oral interpretations as to the meaning or consequence of any material portion of the Proposal documents. Requests for interpretation, clarification or correction of Proposal documents, forms or other material in the Proposal documents should be made at the Mandatory Pre-Proposal Conference or in writing during the subsequent question and answer period. Any responses will be provided by the Aviation Authority in writing. Questions or issues raised at the Mandatory Pre-Proposal Conference or during the question and answer period, which, in the Aviation Authority's discretion, necessitate changes to the Proposal documents, will be the subject of an addendum to these Proposal documents at the conclusion of the question and answer period. Such addendum will be made available through the electronic media that the Proposal documents were initially made available and will be sent to all parties to whom Proposal documents have been issued directly by the Aviation Authority. It is the responsibility of each Proposer to ensure that it has received and reviewed any and all such response(s) or addendum. Except at the Mandatory Pre-Proposal Conference, each request for

clarification or revision to the Proposal documents shall be made electronically, via e-mail to STC-Retail-2@goaa.org.

**12.** For individuals who conduct lobbying activities with Aviation Authority employees or board members, registration with the Aviation Authority is required each year prior to conducting any lobbying activities. Lobbying any Aviation Authority staff who are members of any committee responsible for ranking proposals, letters of interest, statements of qualifications or bids and thereafter forwarding those recommendations to the board and/or board members is prohibited from the time that a request for proposals, request for letters of interests, request for qualifications or request for bids is released to the time that the board makes an award. The Aviation Authority's policy on lobbying activities, forms, and instructions are available in the Aviation Authority's offices and the web site. Please contact the Director Of Board Services with questions at (407) 825-2032.

**13.** All Proposals and supplemental documents, where required, must be signed by an individual proprietor, a general partner of a partnership, a managing member of a limited liability company, or an authorized officer of the Proposer, and must be properly witnessed or attested. If any officer or agent other than the owner of a sole proprietorship, a general partner of a partnership, a managing member of a limited liability company, or the president or vice president of a corporation, shall execute any contract document on behalf of the Proposer, the Aviation Authority shall be furnished satisfactory evidence of such officer's or agent's authority to bind the Proposer with respect to the contents of the Proposal documents signed by him or her.

**14.** The successful Proposer shall provide to the Aviation Authority, upon taking possession of the Premises, and shall thereafter maintain in effect throughout the Term thereof, a Contract Bond or Letter of Credit in the form attached to the Concession Agreement, in accordance with Article 10 thereof. The amount shall be equal to fifty percent (50%) of the Initial Minimum Annual Concession Fee during the Initial Period, unless, in the sole discretion of the Aviation Authority, the financial statements submitted by the otherwise successful Proposer are insufficient for the Aviation Authority to determine the Proposer's financial capability, in which event, the Aviation Authority may require the successful Proposer to submit a Contract Bond or Letter of Credit in the amount of one hundred percent (100%). On the first day of each Agreement Period following the Initial Period, the Contract Bond or Letter of Credit shall be adjusted to an amount equal to fifty percent (50%) of the established Minimum Annual Concession Fee for the previous Agreement Period, unless the financial statements submitted with the Proposal were deemed insufficient by the Aviation Authority, in which event, the amount of the Contract Bond or Letter of Credit shall equal one hundred percent (100%) of the Minimum Annual Concession Fee for the previous Agreement Period.

**15.** The successful Proposer shall, within thirty (30) days after the receipt of the Concession Agreement from the Aviation Authority, together with the Aviation Authority's written request that it be executed by the successful Proposer, deliver to the Aviation Authority, three (3) fully executed copies of the Concession Agreement (provided by the Aviation Authority), along with the Contract Bond or Letter of Credit in the form provided with the Concession Agreement, as well as copies of any affidavits, certificates, or other documents required to be provided to the Aviation Authority upon execution of the Concession Agreement. Failure on the part of the

Proposer to whom a Concession has been awarded to execute and deliver to the Aviation Authority the Concession Agreement and other documents required by the Aviation Authority, within the time herein permitted, shall be just cause for cancellation of the award by the Aviation Authority, unless such period is extended by the Chief Executive Officer in his sole discretion. In such event, or in the event of the Proposer's attempt to withdraw the Proposal within the one hundred twenty (120) days following the deadline for the receipt of the Proposals, the Proposer shall be liable to the Aviation Authority for all of the Aviation Authority's damages arising out of the Proposer's breach of its obligations set forth herein, including, but not limited to, the Aviation Authority's cost of resoliciting Invitations to Submit Competitive Proposals, if new Proposals are solicited, any difference between the guaranteed financial return to the Aviation Authority presented by the breaching Proposer's Proposal and the guaranteed financial return to the Aviation Authority presented by the Proposal submitted by the Proposer that receives the re-awarded Concession Agreement, regardless of whether the Aviation Authority awards the Concession Agreement to the next ranked Proposer or elects to solicit new Invitations to Submit Competitive Proposals, and the Aviation Authority's costs, expenses and Attorney's Fees, as defined in the Concession Agreement.

**16.** The Aviation Authority may, but is not required to, negotiate the balance of the terms of any condition or provision of the Concession Agreement with the successful Proposer after award of the Concession. The Aviation Authority further reserves the right to cancel its award of the Concession to any Proposer without the Aviation Authority having any liability to such Proposer at any time before the Concession Agreement with such Proposer has been fully executed and delivered to such Proposer.

**17.** No Concession Agreement shall be deemed to be in effect until the Aviation Authority has executed the same and a fully executed copy has been returned to the Proposer.

**18.** Please be advised that all meetings of the Concessions Procurement Committee to evaluate and rank Proposals and all meetings of the Aviation Authority's governing Board to consider awards of the Concessions are duly noticed public meetings and that all documents submitted to the Aviation Authority as a part of a Proposal constitute public records under Florida laws. Proposers are invited to attend all of these public meetings.

**19. Public Entity Crimes.** The Proposer represents that it is familiar with the terms and conditions of Section 287.133, Florida Statutes, and further represents and warrants to the Aviation Authority that, to the best of its knowledge and good faith belief, neither Proposer nor any affiliate of Proposer has ever been convicted of a public entity crime. Proposer acknowledges receipt of the following notice that Section 287.133(2)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any

public entity; and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

**20.** The Aviation Authority has adopted a "Code of Ethics and Business Conduct" policy which addresses, among other things, the obligations of the Aviation Authority's employees with respect to interests in business entities, unauthorized compensation and acceptance of gifts. Please be aware that any act by a Proposer that could lead an Aviation Authority employee to violate the policy is sufficient cause for the denial of the right of the Proposer to submit a Proposal or propose on any contract or sell any materials, supplies, equipment, or services to the Aviation Authority for a period of time that is determined by the Chief Executive Officer. A copy of the policy is available upon request from the Director of Board Services by calling (407) 825-2032.

The Greater Orlando Aviation Authority appreciates your interest in the STC Retail Package 2 Concession Agreement and in the Orlando International Airport.

**GREATER ORLANDO AVIATION AUTHORITY**

By: \_\_\_\_\_  
Raymond D. Anderson, Esq.  
Senior Director, Concessions and Properties  
Greater Orlando Aviation Authority

**STC RETAIL PACKAGE 2  
CONCESSION AGREEMENT**

**Orlando International Airport**

**Orlando, Florida**

---

Effective Date

---

**[Company Name]**



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**STC RETAIL PACKAGE 2  
CONCESSION AGREEMENT  
ORLANDO INTERNATIONAL AIRPORT**

**THIS STC RETAIL PACKAGE 2 CONCESSION AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the GREATER ORLANDO AVIATION AUTHORITY, a public and governmental body, existing under and by virtue of the laws of the State of Florida, whose address is One Jeff Fuqua Boulevard, Orlando, Florida 32827-4399 (the "Aviation Authority"), and [Company Name], a [Type of Company] whose address is [Company Address] (the "Company").

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Amended and Restated Operation and Use Agreement dated August 31, 2015 with the City of Orlando (hereinafter referred to as "City"), the Aviation Authority controls, operates, and maintains an airport in Orange County, State of Florida, known as Orlando International Airport (hereinafter referred to as the "Airport"); and

**WHEREAS**, the Aviation Authority operates and maintains a South Terminal Complex at the Airport, including satellite airside buildings, which contains facilities for basic passenger processing and related services and amenities (hereinafter referred to as the "South Terminal Complex"); and

**WHEREAS**, the Aviation Authority has designated certain areas within the South Terminal Complex from which merchandise may be offered for sale and provided for the benefit and convenience of airline passengers and other visitors; and

**WHEREAS**, in accordance with the Aviation Authority's "Policy for Awarding Concession and Consumer Service Privileges in the South Terminal Complex at Orlando International Airport, Orlando, Florida," as amended (the "Concession Policy"), the Aviation Authority has awarded a concession to Company for the non-exclusive right to operate the Premises for the Term and on the terms and conditions hereinafter set forth; and

**WHEREAS**, Company warrants to the Aviation Authority that it meets the eligibility criteria, and it is qualified to conduct the business and meet the obligations hereinafter stated;

**NOW, THEREFORE**, for and in consideration of the Premises and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

**ARTICLE 1 - DEFINITIONS**

Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

A. **"Affiliate"** of any person shall mean any other person directly or indirectly controlling or controlled by, or under direct or indirect common control with such specified person. For the purpose of this definition, "control", when used with respect to any specified person

means the power to direct the management and policies of such person directly or indirectly, whether through the ownership of voting securities, by control or otherwise.

B. **"Agreement"** means this STC Retail Package 2 Concession Agreement by and between the Aviation Authority and Company.

C. **"Agreement Period"** means the Initial Period and each subsequent twelve-month period beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup> during the Term of this Agreement; provided, however, that with respect to any year in which the Term of this Agreement expires or is terminated in accordance with the provisions of this Agreement, Agreement Period shall mean the period from the first day of the Initial Period or other Agreement Period to the date of expiration or termination of the Term.

D. **"Airport Concession Disadvantaged Business Enterprise or ACDBE"** means that as set forth in the Aviation Authority's ACDBE Program. An ACDBE is an entity that is a for-profit, small business concern: a) which is at least fifty-one percent (51%) owned by one or more minorities or other disadvantaged individual, or in the case of a publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more disadvantaged individuals; and b) whose management and daily business operations are controlled by one or more disadvantaged individuals who own it.

E. **"Annual Rental Fee"** shall mean the fee paid to the Aviation Authority for the use and occupancy of Premises provided pursuant to this Agreement, separate and apart from the Privilege Fee component of the Annual Concession Fee. The Annual Rental Fee shall be determined by the fair market value of the premises, as determined by a certified, licensed Florida real property appraiser employed by the Aviation Authority. The Aviation Authority reserves the right to conduct appraisals of the premises from time to time during the Term of the Concession Agreement, at its discretion, and to alter the Annual Rental Fee as a result of any such appraisal. Any change in the Annual Rental Fee resulting from an appraisal shall only be effective on the provision of thirty (30) days prior written notice by the Aviation Authority to Company.

F. **"Attorneys' Fees"** means attorneys' fees and costs, including, without limitation, fees and charges for the services of paralegals or other personnel who operate for and under the supervision of the attorneys and whose time is customarily charged to clients.

G. **"Chief Executive Officer"** means the Chief Executive Officer of the Aviation Authority, or his or her designee.

H. **"Commencement Date"** means the date the Aviation Authority opens the South Terminal Complex to the public.

I. **"Concession"** means Company's operation of two (2) newsstands with coffee/bakery, one (1) newsstand, and one (1) news and gift shop concession on the Premises in accordance with the terms and conditions of this STC Retail Package 2 Concession Agreement.

J. **"Concessions Committee"** means the Concessions/Procurement Committee of the Aviation Authority.

K. **"Expendable"** means any item with a useful life of less than one (1) year.

L. **"Gross Receipts"** means all receipts derived or earned by Company or any affiliates of Company, or any of its subtenants, licensees or concessionaires (excluding any rent required to be paid by any subtenant, licensee or concessionaire to Company that is calculated and payable on the basis of a percentage of such subtenant's, licensee's or concessionaire's gross receipts, which gross receipts would be included in Company's Gross Receipts) from operations on the Premises including, but not limited to, the sale of all goods and services authorized to be sold pursuant to the terms and conditions of the Agreement made on or about, or otherwise originating from the Premises, from any source whatsoever, adjusted by the deduction of the following, provided that separate records are maintained for such deductions:

1. The proceeds from the sale of capital assets or expendables;
2. Credits and refunds to customers for items purchased on the Premises;
3. Amounts of any separately stated federal, state and local sales or use taxes imposed upon Company's customers and collected by Company; or
4. Charges paid to Company by its customers for the mailing of purchased items, but only to the extent of the actual mailing cost thereof.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained, bad checks, or financing discount that may be applicable by reason of the acceptance or use of credit cards or by reason of any other credit arrangements. If any charge customarily made by Company for products authorized to be sold pursuant to the terms and conditions of the Agreement or other operations or businesses is not assessed, charged or collected, for any reason other than pursuant to a bona fide written marketing plan approved by the Chief Executive Officer (e.g., reasonable airport or airline employee discounts), then the amount of Company's customary charge therefore shall nevertheless be included in determining Gross Receipts.

Company's Gross Receipts shall be computed and audited in accordance with the provisions of the Agreement. In the event of any conflict between the provisions of the Agreement and generally accepted accounting principles or generally accepted auditing standards, the provisions of the Agreement shall control, and the provisions of the Agreement shall not be limited by such accounting principles or audit standards per the provisions of this Agreement.

M. **"Improvement" or "improvement"** means any item which is affixed to the Premises or affixed to any Improvement thereto and which cannot be removed without material damage to the Premises or another Improvement.

N. **"Infrastructure Contribution"** means the payments to be made by Company to the Aviation Authority pursuant to Article 7.

O. **"Initial Period"** means the period which begins on the Commencement Date and ends on September 30<sup>th</sup> of the year in which the South Terminal opens to the public.

P. **"Liquidated Damages"** means the amounts set forth in Article 15.A. to be

recovered by the Aviation Authority from Company in the event Company violates any of the conditions as set forth therein.

Q. **"Minimum Annual Concession Fee"** means the minimum sum to be paid by Company to the Aviation Authority as further defined in Article 5.

R. **"North Concourse Portion of the Premises in the STC"** means the Two Thousand (2,000) square feet constructed by the Aviation Authority pursuant to Article 7.

S. **"Premises"** means the areas of the South Terminal Complex, described in Article 2, below, in which Company is granted the right to operate the Concession in accordance with the terms and conditions of this Agreement, together with any additional areas in the South Terminal Complex in which Company may be granted such rights.

T. **"Privilege Fee"** shall mean the fee paid to the Aviation Authority for the granting by the Aviation Authority of a franchise to engage in the business of operating the Concession within facilities operated and controlled by the Aviation Authority, which right is an intrinsically valuable intangible personal property interest, and is separate and distinct from any right or interest in the real property owned by the Aviation Authority.

U. **"South Terminal Complex" or "STC"** means the gates and buildings located at the South portion of the Airport and all accompanying adjacent roadways.

## **ARTICLE 2 - RIGHTS AND PRIVILEGES GRANTED TO COMPANY**

### **A. Rights and Premises.**

1. The Aviation Authority hereby grants Company the non-exclusive right and privilege, and Company hereby assumes the obligation, to rent, occupy, equip, furnish and maintain the facilities for the operation of a Retail Concession, in accordance with the provisions of this Agreement, consisting of approximately Four Thousand Seven Hundred and Fifty (4,750) square feet of sales and display space located on Level 2 in the South Terminal Complex (the "Premises") in the locations indicated on Exhibit "A" of the Concession Agreement and referenced below:

<b>Location</b>	<b>Square Feet</b>	<b>Concept Type and Description</b>
Unit LS-A - Pre-Security	400	Newsstand
Unit P – West	1,100	Newsstand with Coffee
Unit R – North	2,000	Newsstand with Coffee/Bakery
Unit X – South	1,250	Newsstand and Gifts
<b>Total Square Feet</b>	<b>4,750</b>	

2. The Aviation Authority hereby grants to Company the non-exclusive right to display and sell the items specifically listed on the List of Merchandise Items, which is attached hereto as Exhibit "B," at the prices specified thereon.

3. Company shall not use or permit the Premises to be used for any purposes



other than as described in this Article 2.A. without the prior written approval of the Aviation Authority nor for any use in violation of any applicable building codes, zoning regulations, municipal, county, state or federal laws, ordinances or regulations.

Company's right, privilege and obligation hereunder, in addition to any other requirements and limitations contained herein, shall be to sell and display only merchandise which Company is specifically authorized to provide in Article 3.

B. **Occupancy of Premises and Commencement of Business.** Company shall be granted occupancy of the Premises approximately 120 days prior to the Commencement Date and shall be required to open for business and commence paying Concession Fees on the Commencement Date.

C. **Non-exclusivity.** It is expressly provided that the rights and privileges granted hereunder are non-exclusive, and nothing contained herein shall preclude the Aviation Authority from entering into an agreement with any other parties during the term of this Agreement for the sale of merchandise in any part of the South Terminal Complex or elsewhere on the Airport of the same or similar items which Company is permitted to sell hereunder, whether such agreements are awarded competitively or through negotiations and whether or not the terms of such agreements are more or less favorable than the terms of this Agreement.

D. **Relocation/Surrender of Premises.**

1. Notwithstanding any other provision of this Agreement, the Aviation Authority shall have the right at any time during the Term of this Agreement to require Company to surrender any portion of the Premises in order to accommodate a change in the design or use of the South Terminal Complex. In such event, the Aviation Authority shall, in its sole discretion, either:

a. provide Company with a substitute area which the Chief Executive Officer determines to be reasonably equivalent, though not necessarily identical in size or otherwise, to the portion of the Premises surrendered; or,

b. grant Company an equitable reduction in the Annual Rental Fee Portion of the Minimum Annual Concession Fee payable by Company to the Aviation Authority hereunder; provided, however, that the Aviation Authority shall not be required to grant Company a reduction in the Annual Rental Fee Portion of the Minimum Annual Concession Fee or provide it with a substitute area where the of the Premises required to be surrendered is less than ten percent (10%) of the total square feet originally included in the Premises; or,

c. provide Company with a substitute area in lieu of a portion of the Premises surrendered and grant it an equitable reduction in the Annual Rental Fee Portion of the Minimum Annual Concession Fee (subject to the ten percent (10%) limitation described above) payable by Company to the Aviation Authority hereunder as compensation for the remainder of the Premises surrendered.

2. The Aviation Authority shall in no event be liable to the Company for any inconvenience or loss of business as a result of the Company being required to move or surrender any portion of the Premises. If the portion of the Premises required to be surrendered by Company

is more than ten percent (10%) of the approximate square feet of space originally included in the Premises, and the Company is required, under the terms of this Article 2.D. to move or surrender a portion of its operation, all costs of the physical move shall be borne by the Aviation Authority and, at the option of the Chief Executive Officer, either:

a. the substitute area that is provided to the Company in lieu of the portion of the Premises surrendered will be built out by the Aviation Authority at its own expense (or, at the option of the Chief Executive Officer, by the Company at the Aviation Authority's expense) so that such substitute area will be reasonably equivalent in quality to the portion of the Premises surrendered, provided that, in such event, title to any improvements to such substitute area shall remain with the Aviation Authority and shall not pass to the Company; or

b. the Aviation Authority shall make a payment to Company ("Buy-Out Payment") in the amount of the "Net Book Value" of the Original Improvements contained in the portion of the Premises Company is required to surrender (to the extent the Chief Executive Officer determines that such Original Improvements cannot reasonably be moved to the substitute area). (The terms "Net Book Value" and "Original Improvements" shall be defined as indicated below).

c. "Net Book Value" shall mean the original cost to Company of an Original Improvement less amortization accumulated to the date on which Company is required to surrender such portion of the Premises. "Original Improvement" means an Improvement installed by Company within six (6) months of the date it opens for business at the Premises. Company's cost for such Original Improvements shall include reasonable and direct costs paid by Company for work performed and materials furnished; provided, however, that Company's cost shall not include (1) payments for architectural, engineering, professional and consulting services in excess of fifteen percent (15%) of the total cost of such Original Improvements, (2) interest charges or other finance costs, (3) Company's own overhead expenses (except that Company may include the reasonable cost of paying its own employees to perform architectural, engineering, professional or consulting services in which event such cost shall be counted toward the fifteen percent (15%) limitation on such costs set forth above), or (4) any portion of the costs of such Original Improvements which is greater than the "approved" cost as determined in accordance with the terms of Article 6.C.1., below. For purposes of computing Net Book Value, Company's cost for Original Improvements (excluding refurbishment) at the Premises shall be amortized over a period from the Commencement Date until the expiration date of the Concession, on a straight-line basis, with no salvage value.

d. any Buy-Out Payment made by the Aviation Authority under the terms of this Article 2 shall be paid to Company by the end of the thirtieth (30th) day following the date the Company was required to surrender such portion of the Premises. Within a reasonable time prior to the date such Buy-Out Payment is due (and subject to update immediately prior to the time the Buy-Out Payment is made), the Chief Executive Officer shall be entitled to inventory and inspect all Original Improvements with respect to which such Buy-Out Payments have been or are to be made, and, if any such inventory and inspection indicates that such an Improvement is either missing or substantially damaged, the amount of the Buy-Out Payment allocated to such Improvement shall be either subtracted from the Buy-Out Payment (in the event such Improvement is missing) or reduced by the amount required to repair the damage as reasonably determined by the Chief Executive Officer (in the event such Improvement is

substantially damaged). Simultaneously with its receipt of the Buy-Out Payment, Company shall deliver to the Aviation Authority a Bill of Sale containing full warranties of title, conveying title to the Original Improvements contained in the portion of the Premises surrendered, free of all liens and encumbrances. In the event any of such Original Improvements are subject to any liens or encumbrances, the amount of the Buy-Out Payment shall be reduced in the amount necessary to satisfy such liens or encumbrances.

### **ARTICLE 3 - USE OF PREMISES**

#### **A. Permitted Uses.**

1. The Premises shall be used by Company during the Term hereof only for the display and sale of merchandise in accordance with the terms of this Agreement.

2. Company shall not permit the active display or operation on the Premises or elsewhere in the South Terminal Complex of any item which flies, moves, rotates, makes noise or flashes unless the active display or operation of such item is specifically approved in advance in writing by the Chief Executive Officer.

3. Company shall not at any time during the term hereof vacate the Premises once Company is required to be open for business in the Premises, without the prior written consent of Chief Executive Officer.

#### **B. Discontinuance, Addition, Deletion of Items.**

1. In the event the Chief Executive Officer determines that any item displayed, offered for sale or sold by Company on the Premises is objectionable for display or sale at the Airport, Company shall, upon written notice from the Chief Executive Officer, immediately remove such item from display and from its inventory and Company agrees that it shall not thereafter display, offer for sale or sell such item.

2. Upon the written approval of the Chief Executive Officer, Company may cease the sale of any item listed on Exhibit "B" in the event that the lack of demand for such item no longer warrants its continued sale on the Premises.

3. Company may request authorization to sell additional items not included in Exhibit "B", provided such additional items are consistent with the general items or categories authorized under this Agreement and do not conflict with privileges authorized to others or reserved by Aviation Authority for future authorization to others. Company may sell such additional items only with the prior written approval of the Chief Executive Officer.

4. Company agrees that it will not sell or dispense or permit the sale or dispensing of, chewing gum or popcorn in any form in or upon the Premises.

#### **C. Relation to Other Concessions.**

1. Notwithstanding any other provisions hereof, it is specifically understood and agreed that, in the event of a conflict between Company and any other lessee or

concessionaire in the South Terminal Complex as to specific items to be sold by respective concessionaires or lessees, the Chief Executive Officer shall decide which items of merchandise may be sold or provided by each concessionaire or lessee and Company agrees to be bound by such decision. The Chief Executive Officer may consider the various locations within the South Terminal Complex where Company and other concessionaire or lessee operates in arriving at the determination.

2. This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between Company and the Aviation Authority (subject to the provisions of Article 14.A.15.) and from any other, similar agreement between the Aviation Authority and any other person operating a concession at the Airport, and the fact that any such other agreement may contain provisions which differ from those contained herein shall have no bearing on the construction of this Agreement.

D. **Violation of Permitted Uses.** If Company fails to comply with the Permitted Uses in Article 3 herein, Company shall be subject to the payment of fines for such violation(s) of certain provisions, as set forth in Article 15.

**ARTICLE 4 - TERM**

This Agreement shall become effective upon execution by the parties hereto. The term of this Agreement shall commence on the Commencement Date and end seven (7) years thereafter, hereinafter referenced to as the "Term", unless sooner terminated in accordance with the terms and provisions hereof.

**ARTICLE 5 - CONCESSION FEES AND ACCOUNTING RECORDS**

A. **Concession Fee.** Company shall pay to the Aviation Authority, for each Agreement Period of the term of this Agreement, a Concession Fee, in an amount equal to the greater of (1) the Minimum Annual Concession Fee consisting of the sum of an Annual Rental Fee and a Minimum Annual Privilege Fee; or (2) the total of the percentages of Gross Receipts as follows:

<u>GROSS RECEIPTS</u>	<u>PERCENT OF GROSS RECEIPTS DUE TO AVIATION AUTHORITY</u>
All Sales	_____ %

1. **Minimum Annual Concession Fee.**

a. The Minimum Annual Concession Fee shall equal the sum of the Annual Rental Fee, which is based on the fair market value of the Premises, plus the Minimum Annual Privilege Fee, which fee is paid for the grant by the Aviation Authority of a franchise to engage in the business of operating the Concession within facilities operated and controlled by the Aviation Authority. The portion of the Minimum Annual Concession Fee that consists of the Annual Rental Fee will be determined by the Aviation Authority by an appraisal prior to the

Commencement Date and the Minimum Annual Privilege Fee will be calculated at that time by subtracting the Annual Rental Fee from the initial Minimum Annual Concession Fee.

For the period beginning on the Commencement Date and ending on September 30<sup>th</sup> after the South Terminal Complex opens to the public (the "Initial Period"), the Minimum Annual Concession Fee shall be One Million and No/100 Dollars (\$1,000,000.00), provided, however, that if such Initial Period is longer or shorter than twelve (12) months, the Minimum Annual Concession Fee payable by Company to the Aviation Authority for such period shall be an amount determined by dividing the Minimum Annual Concession Fee by 365, and multiplying such quotient by the number of days in the Initial Period.

b. Within ninety (90) calendar days of the end of the Initial Period, and each subsequent Agreement Period, effective October 1<sup>st</sup> thereof, the Minimum Annual Concession Fee shall be adjusted to equal the greater of:

(1) an amount calculated by multiplying .85 times the total Concession Fees due for the prior Agreement Period, or

(2) the Initial Period's Minimum Annual Concession Fee. Any adjustment in the Minimum Annual Concession Fee associated with the provisions of Article 5.A.1.b.(1) shall result in an identical adjustment to the Minimum Annual Privilege Fee, and shall not affect the Annual Rental Fee, subject to the provision of Article 5.A.1.c., herein. Notwithstanding the foregoing, in the event Company is not open for business for the entire prior Agreement Period, or in the event the prior Agreement Period is longer or shorter than twelve (12) months, the total Concession Fees due for purposes of the calculation described in Article 5.A.1.b.(1) above, shall be an amount determined by dividing the total Concession Fees for such prior Agreement Period by the number of days Company was open for business at the Premises in such prior Agreement Period, and multiplying such number by 365.

c. In the event the Annual Rental Fee is decreased or increased during the Term of this Agreement as the result of an appraisal of the fair market value of the premises conducted by the Aviation Authority, the Minimum Annual Privilege Fee shall be appropriately adjusted up or down so that the Minimum Annual Concession Fee due to the Aviation Authority remains unchanged for the Agreement Period then in effect. Any changes in applicable taxes associated with an increase or decrease in the Annual Rental Fee shall remain the responsibility of Company, and no change in the Minimum Annual Concession Fee shall take place as a result of any increase or decrease in Company's tax obligation.

## 2. **Monthly Payments of Fees.**

a. From and after the Commencement Date, Company shall pay to the Aviation Authority, in advance and without demand, on the first (1st) day of each calendar month of the Term hereof (and on the Commencement Date, if the Commencement Date is not the first day of a calendar month), an amount equal to one-twelfth (1/12th) of the Minimum Annual Concession Fee then applicable (except as otherwise provided below), prorated for any partial month at the commencement of the Term or the end of the Term, based on the number of days in such partial month, plus any sales or other taxes due thereon, in lawful money of the United States, without deduction or set-off, at the office of the Aviation Authority's Chief Financial Officer

(the "CFO") or at such other place as the Chief Executive Officer may designate in writing from time to time.

b. Company shall further pay to the Aviation Authority, without demand, at the office of the CFO, on the fifth (5th) day of the month following each calendar month of the Term hereof, a sum of money equal to the amount, if any, by which the total of the percentage fees applicable to Company's Gross Receipts (as set forth in Article 5.A., above) for the previous calendar month exceeds the amount of the installment of the Minimum Annual Concession Fee payable for such month and shall provide the CFO, with a copy to the Director of Concessions, with a statement, in the form of the "Monthly Revenue Report" attached hereto as Exhibit "C" which form the Chief Executive Officer may amend from time to time in his discretion, which sets forth Company's Gross Receipts for the prior calendar month and is signed by an officer (if Company is a corporation), partner (if a partnership), or owner (if a sole proprietorship) of Company, and which sets forth Company's Gross Receipts during such preceding calendar month and identifies all receipts derived by Company during such calendar month which have been excluded from the computation of Gross Receipts. (If Company operates more than one location, each location's monthly Gross Receipts shall be stated separately on Line (A), Exhibit "C," "Monthly Revenue Report," attached hereto).

B. **Sales, Use, Ad Valorem and Other Taxes.** Company shall be solely responsible for the payment of all sales, use, ad valorem and other taxes levied upon the Premises and also upon the fees and other charges payable by Company to the Aviation Authority hereunder, whether or not the same shall have been billed or collected by the Aviation Authority, together with any and all interest and penalties levied thereon, and Company hereby agrees to indemnify the Aviation Authority and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from Company and remitted to the taxing authority by the Aviation Authority, or the amounts, if any, paid directly by Company to such taxing authority, were less than the total amount of taxes due, and for any sums including interest and penalties payable by the Aviation Authority as a result thereof. The provisions of this paragraph shall survive the expiration or prior termination of this Agreement.

C. **Annual Certification of Fees.** Within ninety (90) days after the close of each Agreement Period of the Term hereof, Company at its own cost and expense shall provide to the CFO, and a copy to the Director of Concessions, schedules of Gross Receipts and Concession Fees, payments and other sums for the Agreement Period accompanied by an independent auditors' report expressing an unqualified opinion on the examination of such schedules prepared by Company's independent Certified Public Accountant, licensed in the state of Florida, who is not an employee of Company, or a Certified Public Accountant who holds a valid temporary permit to practice in the state of Florida at the time the certification is issued and who is not an employee of Company, or an out of state licensed Certified Public Accountant who at the time the certification is issued, the NASBA National Qualification Appraisal Service has verified to be in compliance with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act and who is not an employee of Company, certifying that such schedules have been audited in accordance with Generally Accepted Auditing Standards and the terms and provisions of this Agreement; including, without limitation, the definition of Gross Receipts set forth in Article 1.L. herein. If such schedules indicate the Concession Fees for such period have been overpaid, then the amount of overpayment shall be credited to the Concession Fees next due and owing from Company, unless the Term hereof has expired, in which event such amount shall be promptly

refunded by the Aviation Authority to Company. If such schedules indicate that the Concession Fees for such Agreement Period have been underpaid, then Company shall submit payment therefore to the Aviation Authority at the Office of the CFO at the same time it submits to the CFO and the Director of Concessions the statements required under this Article 5, together with interest on any underpaid Concession Fees at the rate set forth in Article 18.F., below, from the date such fees or charges should have been paid.

D. **Books and Records/The Aviation Authority's Right to Audit.** Company shall, at all times during the Term hereof, maintain at the Premises or at an office in Orange County, Florida, complete and accurate books and records of all receipts and disbursements from its operations on the Premises, in a form consistent with generally accepted accounting principles, and cause to be installed for use at all times in the Premises such cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms as are reasonably necessary to record properly, accurately and completely all sales of Company's merchandise items from the Premises. Company's books and records shall be maintained in sufficient detail to allow the Aviation Authority or its representatives to audit, in accordance with generally accepted auditing standards, Company's Gross Receipts as defined in Article 1.L. above. Company shall account for all receipts of any nature related to transactions in connection with this Agreement in a manner which segregates in detail those transactions from other transactions of Company and which supports the amounts reported to the Aviation Authority in Company's "Monthly Revenue Report" schedules prepared in accordance with Article 5.A.2.b. At a minimum, Company's accounting for such receipts shall include the following:

1. Daily dated cash register tapes, including tapes from temporary registers;
2. Serially numbered sales slips, using a numbering system for transactions under this Agreement which is separate from any numbering system used by Company for other transactions;
3. Company's bank account statements (separate bank accounts shall be maintained for all receipts from operations on the Premises and no receipts from any other source shall be deposited in such accounts);
4. A compiled report of transactions from the Premises showing all Gross Receipts and all exclusions from Gross Receipts by category (as set forth in Article 1.L.), which report shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Aviation Authority on Company's "Monthly Revenue Reports" under Article 5.A.2.b. If requested, Company shall provide the Aviation Authority a computer text file that details monthly Gross receipts information by transaction;
5. The monthly reports required under this Article 5.D., which reports shall be subtotaled by day and totaled by month. The monthly total shall correspond with the amounts reported to the Aviation Authority in the "Monthly Revenue Reports" and the annual total shall correspond with the amount reported to Company the Aviation Authority on the Annual Certification required in Article 5.C.; and
6. Such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of Company's Gross

Receipts in accordance with generally accepted auditing standards and the provisions of this Agreement.

Such records may be in the form of (a) electronic media compatible with the computers available to the Aviation Authority, or (b) a computer run hard copy. The Chief Executive Officer may require other records necessary in his determination to enable the accurate audit of Company's Gross Receipts hereunder. Upon five (5) days written notice from the Chief Executive Officer, all such books and records, including the general ledger and bank statements and all federal, state and local sales tax returns relating thereto, shall, be made available at the offices of the Aviation Authority for inspection by the Aviation Authority through its duly authorized representatives at any time for up to four (4) years after the end of the Agreement Period to which such books and records relate (and Company shall not be obligated to retain such books and records subsequent to the termination of such four (4) year period). The Aviation Authority shall further have the right, upon reasonable written notice to Company from the Chief Executive Officer and at the sole cost of the Aviation Authority except as specified below, to examine or designate a representative to audit or examine the books and records and computerized accounting systems of Company which relate to its operations on the Premises to determine the correctness of the Gross Receipts and Concession Fees reported to or paid by Company to the Aviation Authority for any or all Agreement Periods immediately preceding such audit or examination. Such shall include, but is not limited to, a review of the general input, processing and output controls, information systems, using read only access, for all computer applications used to record financial transactions and information. If, as a result of such audit or examination, it is established that the Gross Receipts and/or Concession Fees for any Agreement Period have been under-reported to the Aviation Authority, Company shall forthwith, upon written demand from the Chief Executive Officer, pay any resulting amount due to the Aviation Authority, together with interest thereon at the rate set forth in Article 18.F., below, from the date such amount or amounts should have been paid. Further, if such audit or examination establishes that Company has under-reported Gross Receipts and/or Concession Fees for any Agreement Period by two percent (2%) or more, then the entire expense of such audit or examination shall be borne by Company. The Aviation Authority's rights under this Article 5.D. shall survive the expiration or earlier termination of the Term of this Agreement.

In the event of any conflict between any provision of this Agreement and Generally Accepted Accounting Principles or Generally Accepted Auditing Standards, the provisions of this Agreement shall control even where this Agreement references such principles or standards. In particular, without limitation, Company shall maintain all records required under this Agreement to the full extent required hereunder, even if some or all of such records would not be required under such generally accepted accounting principles or generally accepted auditing standards.

E. **Cash Handling Procedures.** Company shall at all times observe prudent cash handling procedures, and it shall immediately implement any new procedures, or revise any existing procedures in such a manner as the Chief Executive Officer may require from time to time, provided that the Chief Executive Officer gives written notice thereof to Company. Before beginning operations under this Agreement, Company shall submit its proposed cash handling procedures to the Chief Executive Officer for review and approval.

F. **Additional Sums Due the Aviation Authority.** If the Aviation Authority has paid any sum or has incurred any obligation or expense for which Company agreed to pay or



reimburse the Aviation Authority, or if the Aviation Authority is required or elects to pay any sum or incur any obligation or expense because of the failure, neglect or refusal of Company to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed additional fees due hereunder, and Company shall, immediately upon demand by the Chief Executive Officer, reimburse the Aviation Authority therefor.

G. **Communications Concerning Disputed Debts.** All (a) communications concerning disputes about debts that are owed or may be owed pursuant to this Agreement, and (b) instruments in less than the full amount claimed by the Aviation Authority and tendered as full satisfaction of a disputed debt or other amount owed, shall be sent by certified mail, return receipt requested to the following:

Original to: Chief Financial Officer  
Greater Orlando Aviation Authority  
Orlando International Airport  
5855 Cargo Road  
Orlando, Florida 32827-4399

Copy to: Director of Concessions  
Greater Orlando Aviation Authority  
Orlando International Airport  
5855 Cargo Road  
Orlando, Florida 32827-4399

## **ARTICLE 6 - IMPROVEMENTS TO PREMISES**

### **A. Improvements to be Provided by the Aviation Authority.**

1. Except as otherwise provided in this paragraph, Aviation Authority shall provide, and Company shall accept Premises in their "as is" condition. Aviation Authority shall make available the following:

a. Heating and air conditioning stubbed to the Premises or chilled water from the nearest existing chilled water piping;

b. An electrical panel located within five hundred (500) feet of the Premises. (Company shall provide conduit and wire to the designated electrical panel and provide electrical distribution via a separate panel within the Premises). The maximum design load for the Premises shall comply with the then current edition of the Energy Efficiency Code of the State of Florida without waiver or variance. Kilowatt-hour usage shall be monitored by the Aviation Authority;

c. A telephone backboard, in a communication room located within five hundred (500) feet of the Premises. (Company shall provide conduit and arrange for telephone service);

d. Sprinklers throughout the Premises. (Company shall adjust heads and/or increase the number of heads or line sizes as required by local building codes based on Company's specific layout and occupancy classification); and

e. Fire alarm, heat detection and smoke detection ("fire alarm system") is provided within the Premises or at a connection point located within one hundred (100) feet of the Premises. (Company shall modify or provide for additional fire alarm systems from a fire alarm panel located in close proximity and installed throughout the Premises as required by local building codes based on Company's specific layout and occupancy classification).

f. To the extent Company requires lighting, natural gas or additional electrical power, telephone outlets, or adjustments to the heating and air conditioning system or any other improvements, such additional Improvements or services shall be subject to the prior written approval of the Aviation Authority, and any such approved Improvements or services shall be made at Company's expense. Company understands and agrees that, other than the Improvements specified as being provided by the Aviation Authority in this Article 6.A.1., Aviation Authority shall not be obligated to provide any additional Improvements or services of any type, character, or nature (including electrical or telephone outlets) on the Premises during the term of this Agreement.

2. Company shall have the right, at its own expense, to receive telephone service provided by the Aviation Authority and to receive or install in the Premises private communication or audio systems (other than a public paging system) compatible with the Aviation Authority's telephone and communication systems, provided that any such telephone service and communication systems shall be approved by the Chief Executive Officer prior to installation.

**B. Improvements to be Constructed by Company.**

1. Notwithstanding any other provisions herein, Company shall be responsible for undertaking at its own cost and expense the demolition of existing improvements and the installation of all Improvements in the Premises together with, fixtures, furnishings, signage, trade fixtures and equipment necessary to conduct its operations at the Premises, including, but not limited to, all interior and exterior finishes, counter shelving, cabinets, display cases, air conditioning and heating ductwork and controls for air distribution within the Premises, lighting, communication and power fixtures, all wiring, accessories and panels required to bring power from the main electrical panel to the Premises, and any water piping, control and drainage facilities (if the same are required for its operations on the Premises). Additionally, Company shall provide air handlers, variable volume controllers, fan coil, distribution ductwork, chilled water piping, etc., for heating and air conditioning throughout the Premises. Air handlers, and/or fan coils shall be controlled by space temperature sensors and microzone controllers (HVAC suppliers utilize microflow controllers) provided by Company tied to the building automation system. Company shall at its expense provide the necessary hardware and installation to connect its electrical services to the Aviation Authority's automation system. (Terminal units shall be controlled by Company-provided thermostats that are interlocked to close when the associated air handler is shut down). Company shall also abide by the South Airport Complex Tenant Design Criteria, dated December 15, 2017, including the Appendix, LEED Tenant Guidelines. These documents are updated periodically and it is Company's responsibility to coordinate with the Aviation Authority for updates.

2. To ensure construction of a first class concession, Company agrees to expend not less than Five Hundred and No/100 Dollars (\$500.00) per square foot of the Premises

for a total of not less than Two Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$2,375,000.00) in the Original Improvements of the Premises.

3. Company shall abide by the South Airport Complex Tenant Design Criteria as shown on Exhibit "D", which were delivered by Aviation Authority to Company prior to the execution of this Agreement, and to the other provisions of this Agreement. The Chief Executive Officer shall have the right at any time during the term of this Agreement to enter the Premises to ensure that Company's operations conform to the South Airport Complex Tenant Design Criteria. Immediately upon its receipt of written notice from the Chief Executive Officer that it has been determined that Company's display, design, or operations are not in compliance with the South Airport Complex Tenant Design Criteria or the other provisions of the Agreement, Company shall make modifications necessary to achieve compliance.

4. Company shall construct, the Premises and install new (acceptable to the Chief Executive Officer in his sole discretion) fixtures and furnishings in accordance with the provisions of this Article 6.

5. Any clocks exposed to public view shall be compatible with and be connected to the Aviation Authority's master clock system, at Company's expense and with the prior written approval of the Chief Executive Officer.

6. No televisions may be located in any portion of the Premises that is visible to the public.

7. The Improvements required hereunder are not required to enhance the value of the Premises or to provide monetary benefit to the Aviation Authority. The improvements are closely associated with Company's brand concept, and will be demolished and rebuilt to meet the requirements for a successive concessionaire for a subsequent concession at the end of Company's Term. Therefore, such improvements required under this Article 6.B. should not be considered rental payments subject to the Florida commercial rental sales tax.

C. **Requirements and Procedures.**

1. **Approval Required.**

a. All Improvements to the Premises, including both the Original Improvements and any Improvements constructed, installed or altered thereafter by Company, and all furnishings, fixtures, signage, trade fixtures and equipment to be installed by Company on or in the Premises, and the plans and specifications therefor, must be in accordance with the South Airport Complex Tenant Design Criteria and must have been submitted to and approved in writing by the Chief Executive Officer prior to construction, alteration or installation. In the case of signage, the size, location, text, material, and appearance thereof shall also be subject to such approval. Following approval by the Chief Executive Officer, such Improvements shall be made or altered, and such furnishings, fixtures, signage, trade fixtures and equipment shall be installed in strict accordance with such plans and specifications, and in accordance with all applicable statutes, ordinances, building and health codes, rules and regulations, the South Airport Complex Tenant Design Criteria and the Airport Development Standards, as the same may be amended from time to time.

b. In addition to complying with the requirements of Article 6.C.1.a., Company shall, prior to entering into any contract for the purchase, construction or installation of any Original Improvement, submit such contract to the Chief Executive Officer for approval of the cost of such purchase, construction or installation. If the Chief Executive Officer reasonably determines that the cost of any one or more of such Original Improvements is excessive, or that the cost of any such Original Improvement cannot be justified economically, the Chief Executive Officer shall advise Company of the portion of such cost which the Chief Executive Officer will allow as the "approved cost" for purposes of the buy-out provisions of Article 2.D., above, and its obligations to make expenditures for Improvements, fixtures and furnishings in accordance with the provisions of Article 6.B., above. The Chief Executive Officer shall not be required to assign an approved cost to any such Original Improvement which is not reasonably necessary to the operation by Company on the Premises hereunder, or to assign an approved cost to any such Improvement in excess of the cost then generally prevailing therefore in Orange County, Florida. Company may pay costs with respect to an Original Improvement in excess of the approved cost thereof if it so elects, but no portion of such cost in excess of the approved cost shall be taken into account for purposes of the Buy-Out Payment described in Article 2.D., above, or for purposes of Company's obligations to make expenditures for Improvements, fixtures and furnishings in accordance with the provisions of Article 6.B., above.

2. **No Liens.** Company shall obtain all necessary licenses and permits to accomplish such work and Company hereby warrants to Aviation Authority that all such Improvements shall be free and clear of any claims, liens, and encumbrances and agrees to indemnify and save Aviation Authority and the City harmless from and against any and all losses, damages and costs, including Attorneys' Fees, with respect thereto. If any such claim or lien shall be filed against the Premises, or any Improvements thereto or Company's rights under this Agreement, the Company shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

3. **Performance and Payment Bond.** Prior to construction of any Improvements in the Premises, as they currently exist, Company shall record and post a Notice of Commencement. No work hereunder shall be commenced by or at the direction of Company until Company, or Company's contractor has, at no cost or expense to the Aviation Authority provided to Aviation Authority from a company reasonably acceptable to the Chief Executive Officer (i) a surety Payment Bond for the benefit of Aviation Authority, in the form attached as Exhibit "E", in an amount equal to the total estimated cost of the work, which bond shall guarantee the payment of all contractors' and subcontractors' charges and charges of all other persons and firms supplying services, labor, materials or supplies in connection with the work, and (ii) a surety Performance Bond for the benefit of Aviation Authority, in the form attached as Exhibit "F", in an amount equal to the full value of the construction contract which shall guarantee the prompt completion of the work by Company in accordance with the approved plans and specifications. Company, or Company's contractor as applicable, shall maintain the Performance Bond in effect for at least five (5) years after the completion of Improvement. In the event Payment and Performance Bonds are posted by Company's contractor, Company shall continue to be responsible to Aviation Authority for completion of all Improvements in accordance with the approved plans, and payment of all sums to ensure no claims against the Improvements by contractor, subcontractor or any other person supplying services, labor, materials or supplies in connection with the work.

4. **Actions After Completion of Improvements.** Company shall, within ninety (90) days following the completion of construction, installation or alteration of any Improvements, fixtures, furnishings, signage, trade fixtures and equipment at the Premises, provide to the Chief Executive Officer a written statement setting forth the actual costs thereof, in such detail with respect to the cost of the various elements thereof as the Chief Executive Officer may require, and such statement shall be certified by an officer (if Company is a corporation), a partner (if a partnership), or the owner (if a sole proprietorship), of Company. Company shall make available to the Chief Executive Officer, upon the Chief Executive Officer's request, receipted invoices for labor and materials covering all Improvements, including architectural and engineering fees, fixtures, furnishings, signage, trade fixtures and equipment. In addition, within ninety (90) days after completion of construction, Company shall, at its expense, provide the Chief Executive Officer with record drawings showing the "as built" condition of all Improvements constructed by Company on the Premises in both hard copy and electronic format acceptable to the Aviation Authority as outlined in the South Airport Complex Tenant Design Criteria. Company shall further provide the Chief Executive Officer with such information and supporting documents pertaining to the cost and replacement value of the improvements to the Premises as the Chief Executive Officer may from time to time request.

D. **Time Schedule Preparation and Approval of Plans and Specifications.**

1. If they have not already been submitted to the Aviation Authority, preliminary plans and specifications for all Original Improvements to be made to the Premises by Company shall be submitted to the Aviation Authority promptly after the date of this Agreement. Preliminary plans for all other Improvements shall be submitted to Aviation Authority promptly after the completion of such preliminary plans. Final plans and specifications for all Original Improvements and/or all other Improvements shall be submitted to the Chief Executive Officer within thirty (30) days after the Company receives written notice from the Chief Executive Officer that the Chief Executive Officer has approved the preliminary plans and specifications therefore. The Chief Executive Officer shall, within thirty (30) days after his receipt of preliminary or final plans and specifications, either approve or disapprove such plans and specifications so submitted. The Chief Executive Officer's right to approve or reject such plans and specifications shall extend to all matters relating thereto, including, without limitation, space layouts and architectural, engineering, and aesthetic matters, and the Chief Executive Officer shall specifically have the right to reject any designs submitted and to require Company to resubmit designs and layout proposals until they meet his approval.

2. In the event the Chief Executive Officer disapproves any portion of the preliminary or final plans and specifications, Company shall promptly submit necessary modifications and revisions thereof. No changes or alterations shall be made in said plans or specifications after approval by the Chief Executive Officer without the approval of such changes or alterations by the Chief Executive Officer. One copy of plans and specifications for all Original Improvements and for all other Improvements or subsequent alterations thereof shall, within fifteen (15) days after their approval by the Chief Executive Officer, be signed by Company and deposited with the Chief Executive Officer as an official record thereof.

3. The Chief Executive Officer's approval of any plans and specifications submitted by Company shall not constitute the assumption of any liability by the Chief Executive

Officer or Aviation Authority for the compliance or conformity of such plans and specifications with applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances and regulations, including, without limitation, the Americans with Disabilities Act or any accessibility guidelines promulgated thereunder, or for their accuracy or suitability for Company's intended purpose, and Company shall be solely responsible for such plans and specifications. The Chief Executive Officer's approval of such plans and specifications shall not constitute a waiver of the Chief Executive Officer's right thereafter to require Company, at Company's expense, to amend the same so that they comply with applicable building codes, zoning regulations and municipal, county, state and federal laws, ordinances and regulations, and to make such construction changes as are necessary so that the completed work is in conformity with such amended plans and specifications.

**E. Completion of Improvements.**

1. Upon the Chief Executive Officer's approval of Company's plans and specifications and when authorized to occupy the Premises and proceed with construction of improvements in accordance with the provisions of Article 2.B. and Article 6.C. and 6.D., above, and applicable law, Company shall immediately begin construction and installation of the approved Improvements, furnishings, fixtures, signage and trade fixtures at the Premises and prosecute the same diligently to completion; provided, however, that any delay in construction due to fire, earthquake, wars, or other calamity beyond the reasonable control of Company, or acts of Aviation Authority or one of its contractors, shall extend the time within which such construction and installation shall be completed. Company agrees (i) that its Improvements, fixtures, furnishings, trade fixtures and equipment to be constructed or installed in the Premises shall be completed no later than one hundred twenty (120) days after Aviation Authority notifies Company that the Premises are ready for Company to begin build out of Company's Improvements, and (ii) that a delay in completion of any Improvements beyond such date will not postpone Company's obligation to open for business and begin paying Concession Fees to the Aviation Authority pursuant to Article 5, above, unless such delay results from causes described in the proviso to the first sentence of this Article 6.E.1., or Company has failed to complete construction of its Improvements to the Premises because it has not been afforded access by the Aviation Authority to the Premises for purposes of such construction for a period of less than one hundred twenty (120) days (in which event Company's obligation to open for business and commence paying Concession Fees with respect to the Premises shall be delayed by, as applicable, the number of days that the causes described in such proviso delayed Company's construction of its Improvements to the Premises or the number of days necessary to afford Company one hundred twenty (120) days to complete construction of its Improvements to the Premises).

2. Once Company has begun construction of any other Improvements which the Chief Executive Officer has approved the final plans and specifications thereof pursuant to Article 6.D., above, Company shall prosecute the same diligently to completion. Company shall require the designer of record and Company's mechanical, electrical and plumbing contractors or subcontractors: to (a) provide construction administration and inspection services throughout construction on the Premises, one (1) inspection weekly at a minimum, and (b) to attend weekly construction meeting with the Aviation Authority's representatives.

3. Company's improvements to the Premises are required to be substantially completed as determined by Company's architect and engineer and the Chief Executive Officer prior to opening of the Premises for business. All punch list work shall be completed within thirty (30) days of substantial completion. Company agrees that, should the Aviation Authority allow Company to open for business prior to completion of all punch list work, Company will issue a cashier's or certified check to the Aviation Authority to be held in escrow until completion of the work. The amount of the check will be five (5) times the estimated value to complete the work or Ten Thousand and No/100 Dollars (\$10,000.00), whichever is greater. In the event the punch list work has not been completed within thirty (30) days of substantial completion, the Aviation Authority shall have the right, but not the obligation, to use these funds to complete the Improvements, or if the escrow funds are insufficient to complete the Improvements, Company shall be obligated to reimburse the Aviation Authority any remaining balance due within ten (10) days of written notice by the Aviation Authority.

4. At all times during the construction and installation of all Original Improvements and all other Improvements, fixtures, trade fixtures, furnishings and equipment by the Company, Company shall coordinate the activities of its contractors and installers on the Premises with Aviation Authority.

F. **Removal of Property.** Provided it is not then in default hereunder, Company shall, within four (4) calendar days after the expiration or sooner termination of this Agreement, remove from the Premises its furnishings, interior signage, trade fixtures, equipment, and other personal property, provided that such removal can be accomplished without material injury to the Premises or any Improvements thereto and provided that any damage caused to the Premises or Improvements thereto as a result of such removal is repaired by Company at its own cost and expense to the satisfaction of the Chief Executive Officer. Any property not so removed within such time period shall become the sole property of Aviation Authority, or, alternatively, Aviation Authority may remove and dispose of such property at Company's expense.

G. **Periodic Refurbishment of Premises.** After the commencement of the fourth (4<sup>th</sup>) Agreement Period and prior to the commencement of the sixth (6<sup>th</sup>) Agreement Period, Company shall expend to refurbish, replace or supplement such Improvements, furnishings, trade fixtures and equipment no less than One Hundred and Fifty No/100 Dollars (\$150.00) per square foot of the Premises for an estimated total of Seven Hundred Twelve Thousand Five Hundred and No/100 Dollars (\$712,500.00) and shall additionally expend such sums as may be required by the Chief Executive Officer with respect to the portions of the Premises dedicated for commissary and support space, subject to the right of the Aviation Authority, in the Aviation Authority's sole discretion, to direct Company to make all or any portion of such expenditure at such earlier time prior the commencement of such fourth (4<sup>th</sup>) Agreement Period as it deems appropriate. Provided, however, under this Article 6.G. an expenditure for Improvements, furnishings, trade fixtures or equipment shall not include interest charges, Company's own overhead expenses or any portion of Company's expenditures which exceed the fair market price for any such Improvement, furnishing, trade fixture or equipment. In no event, shall the closing of the Premises or any portion thereof for the purpose of completing the Company's Periodic Refurbishment Improvements result in any reduction or other abatement in Company's obligations to pay the Aviation Authority the Concession Fees pursuant to Article 5 of this Agreement.

In order to ensure that funding is available for such periodic refurbishment, Company and Aviation Authority will enter into a Concession Improvement Trust, hereafter known as the "Trust". The sole purpose of the Trust is to fund the Company's obligations as provided above in this Article 6.G. All costs necessary to plan, design, and construct the remodeling, refurbishment or replacement of Improvements, furnishings, trade fixtures or equipment shall be paid from the accumulated funds held in the Trust. Company shall deposit monthly into the Trust a total of Sixteen Thousand One Hundred Ninety-Three and 19/100 (\$16,193.19) an amount which equates to One Hundred and Fifty No/100 Dollars (\$150.00) per square foot for refurbishment of the portion of the Premises. Payment shall commence on first (1<sup>st</sup>) day of the fifth (5<sup>th</sup>) month after the Commencement Date and continue for Forty-Three (43) consecutive months thereafter. Disbursements from the Trust shall be requested by Company or may be directed by the Aviation Authority. The Aviation Authority will determine the need for such disbursement in consultation with Company, but such disbursement shall be at the sole discretion of the Aviation Authority. Aviation Authority shall deliver monies from the Trust, after execution of a payment certificate, to a designated payee, outright and free of Trust. A payment certificate shall be executed by an authorized representative of Company and the Chief Executive Officer.

In the event that Company has expended its own funds and those of the Trust in excess of One Hundred Dollars and Fifty No/100 Dollars (\$150.00) per square feet of the Premises prior to the commencement of the fourth (4<sup>th</sup>) Agreement Period for refurbishment as described in this Article 6.G., the Trust will be discontinued and any remaining balance in the Trust will be refunded to Company. In the event that Company has not expended in excess of the minimum sums set forth above in Improvements, furnishings, trade fixtures or equipment prior the commencement of the fourth (4<sup>th</sup>) Agreement Period, Aviation Authority may, at the Aviation Authority's sole option, grant Company additional time to make such expenditures or take possession of the remaining balance in the Trust without recourse from Company.

## **ARTICLE 7 – INFRASTRUCTURE CONTRIBUTION**

A. **Payment of Infrastructure Contribution.** Company shall pay to the Aviation Authority an Infrastructure Contribution in an amount equal to One Million Two Hundred Eighty Thousand and No/100 Dollars (\$1,280,000.00) for the North Concourse portion of the Premises in the STC constructed by the Aviation Authority. On the Effective Date, Company shall pay to the Aviation Authority an initial Infrastructure Contribution equal to the total sum of Six Hundred Forty Thousand and No/100 Dollars (\$640,000.00). On the Commencement Date, Company shall pay to the Aviation Authority a second and final Infrastructure Contribution equal to the total sum of Six Hundred Forty Thousand and No/100 Dollars (\$640,000.00). Company and the Aviation Authority acknowledge that the Aviation Authority would not have built said portion of the Premises if Company did not agree to pay the Infrastructure Contribution. Company and the Aviation Authority acknowledge that the Infrastructure Contribution is fixed and shall not be altered, regardless of the actual amount expended by the Aviation Authority in constructing said portion of the Premises.

B. **Proration Upon Surrender of Premises.** In the event the Aviation Authority exercises its right pursuant to Article 2.D.1.b. with respect to the North Concourse portion of the Premises in the STC, Aviation Authority shall reimburse Company a portion of the Infrastructure Contribution paid calculated based upon the following formula:



$$\begin{array}{l}
 \text{Infrastructure} \\
 \text{Contribution} \\
 \text{Reimbursement} =
 \end{array}
 \begin{array}{l}
 \text{Amount Paid by} \\
 \text{Company as} \\
 \text{Infrastructure} \\
 \text{Contribution}
 \end{array}
 \times
 \left[ \begin{array}{c}
 \text{Years remaining in} \\
 \text{Term} \\
 \hline
 7
 \end{array} \right]
 \times
 \left[ \begin{array}{c}
 \text{Square Feet of Area of the} \\
 \text{North Concourse Portion of the} \\
 \text{Premises in the STC} \\
 \text{Surrendered} \\
 \hline
 \text{Square Feet of the North} \\
 \text{Concourse Portion of the} \\
 \text{Premises in the STC Utilized} \\
 \text{for Retail Purposes as of the} \\
 \text{Commencement Date.}
 \end{array} \right]$$

**ARTICLE 8 – OBLIGATIONS OF COMPANY**

A. **Standards for Operating Concession.** Company shall, at all times, comply with the Standards for Operating Concessions attached hereto as Appendix 1 and are incorporated herein by reference.

B. **Maintenance of Premises.**

1. Except for such maintenance which is the responsibility of the Aviation Authority in accordance with the terms of Article 8.A., below, Company shall, at its own cost and expense, at all times during the term hereof, maintain the Premises, all Improvements, furnishings, fixtures, trade fixtures, equipment, inventory, displays and other property on the Premises in a safe, clean, orderly, and attractive condition and in good working order. Company shall be solely responsible for all janitorial services, waste removal, pest control and interior repairs in connection therewith.

2. Company shall refurbish and maintain the interior of the Premises as necessary and as determined by the Chief Executive Officer. All such maintenance, repairs and replacements shall be performed by Company in compliance with the requirements of Article 6.C. through E., above and shall be of quality equal to the Original Improvements in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of the Chief Executive Officer.

3. The Chief Executive Officer shall be the sole judge of the quality of the maintenance performed by Company. The Chief Executive Officer or his authorized agents may, at any time, without notice, enter upon the Premises to determine if maintenance is being performed satisfactorily. If it is determined that said maintenance is not satisfactory, the Chief Executive Officer shall so notify Company in writing. If Company does not commence the cure within fourteen (14) days of receipt of such written notice, diligently pursue such cure and complete such cure to the satisfaction of the Chief Executive Officer within a reasonable time of receipt of such written notice, the Aviation Authority or its agents shall have the right (in addition

to any other remedy hereunder) to enter upon the Premises and perform such maintenance, and Company agrees to promptly reimburse The Aviation Authority for the cost therefore, plus ten percent (10%) thereof for administrative overhead.

4. Company shall correct any hazardous or potentially hazardous condition in the Premises, or in the areas surrounding the Premises whose maintenance is the Company's responsibility, immediately upon receipt of either written or oral notice from the Chief Executive Officer. At the direction of the Chief Executive Officer, Company shall close the Premises until such hazardous or potentially hazardous condition is removed.

5. In transporting merchandise, products, trash, and refuse associated with its operation on the Premises to and from the Premises, Company shall use only carts, vehicles or conveyances that are sealed and leakproof and that are equipped with wheels suitable for operating on carpets and tiles without damage. Company shall not use the Automated Guideway Transit System for the purpose of transporting merchandise or trash between the Landside and Airside buildings.

6. The cost of all utilities used or consumed on the Premises provided to Company hereunder, and the responsibility for and cost of relamping all electrical fixtures (including any within the Premises which were installed by the Aviation Authority) shall be borne by the Company. The Aviation Authority shall charge Company throughout the term of this Agreement Forty-Four Cents (\$0.44) per square foot per month for its use of such utilities on the Premises (subject to reasonable adjustment by the Aviation Authority from time to time), and Company hereby agrees to pay the same within ten (10) days from the date of the Aviation Authority's invoice therefor; provided, however, that in the event the use of any such utilities at the Premises is separately metered, Company shall pay the cost of usage shown on the meter as well as any additional monthly charge per square foot of the Premises as determined by the Chief Executive Officer to compensate the Aviation Authority for the cost of any such utilities used at the Premises which are not separately metered. Notwithstanding the foregoing, the Aviation Authority may, at its option, either increase such amount to account for stormwater utility charges allocated to the Premises, or bill such stormwater utility charges to Company directly, and such charges shall be promptly paid by the Company. Company shall pay to the Aviation Authority any and all amounts charged to Company for providing telephone services.

C. **Correction of Violations.**

Notwithstanding any other provision of this Agreement, if the Chief Executive Officer, in his sole discretion, determines that a condition on the Premises is hazardous or potentially hazardous to persons or property, he may direct Company to correct such condition, either in writing or orally, and Company shall, at its expense immediately comply with such directive. If the Chief Executive Officer directs it to do so, Company shall close the Premises, or any portion thereof, until such hazardous or potentially hazardous condition is corrected. The Aviation Authority may declare Company in default of this Agreement for failure to promptly comply with a directive of the Chief Executive Officer without reference to the thirty (30) day notice period set forth in Article 14.A.4.

D. **Cooperation with Successor Concessionaire.** Upon the expiration or earlier

termination of this Agreement, Company agrees to cooperate fully with the Aviation Authority and with all successor concessionaires to ensure a smooth transition from Company to such successor concessionaires and to provide continuity of first-class services to the traveling public.

**E. Airport Concession Disadvantaged Business Enterprise Participation Requirements.**

**1. Airport Concession Disadvantaged Business Enterprise Program.**

Pursuant to regulations promulgated by the U.S. Department of Transportation ("DOT"), under 49 C.F.R. Part 23 ("Part 23"), the Aviation Authority has established its Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program. The Aviation Authority has received, and expects to receive, Federal financial assistance from the DOT, and as a condition precedent to receiving this assistance, the Aviation Authority has signed assurances that it will comply with Part 23 of the Federal Regulations. It is the policy of the Aviation Authority that ACDBEs shall have an optimal opportunity to participate in all concession agreements. The Aviation Authority has established the ACDBE Program to implement this policy.

**2. ACDBE Program Compliance.** Company shall comply with all requirements of Part 23, in reference to its ACDBE participation obligations. Company shall enter into contract(s) with the certified ACDBEs identified in Schedule A, ACDBE Participation form, submitted with Company's Proposal, and if applicable, Schedule B, Information for Determining Joint Venture Eligibility, attached hereto, said ACDBE participation being a total of \_\_\_\_\_%, which the Aviation Authority relied upon in awarding this Agreement, subject only to the Aviation Authority's right to approve all contractors, or vendors, and which becomes a part of this Agreement.

Company shall not breach any of its obligations with the ACDBEs. In the event Company desires to terminate or replace an ACDBE, Company shall promptly notify the Aviation Authority of the impending termination, in writing, and the reason for such. In accordance with Part 23, the Aviation Authority must approve the proposed termination, and if approved, provide written notification to Company of such termination approval. Company shall replace the terminated ACDBE with another ACDBE. If Company is unable to secure another ACDBE for performance of that part of the contract for which such ACDBE was utilized, Company shall provide the Aviation Authority with documentation in a form satisfactory to demonstrate good faith efforts of its attempts to secure a replacement of the terminated ACDBE with another ACDBE.

**3. Reporting.** Company shall provide and submit, true and accurate monthly ACDBE Revenue Reports utilizing the attached Exhibit "H," reports to the Aviation Authority, setting forth the items and the amounts paid to each ACDBE for the preceding month under this Agreement. Each report must include documentation of the revenues generated by each ACDBE through its own efforts. The ACDBE Revenue Report must be signed, dated and emailed to the Office of Small Business Programs at ACDBEREPORTS@goaa.org, and received by the Aviation Authority no later than the tenth (10<sup>th</sup>) day of each month during the Term of this Agreement.

**4. ACDBE Certification Update.** Company shall be required to notify the

Aviation Authority of any updates to participating ACDBE(s) certification(s) and shall resubmit an updated ACDBE Participation Form to the Aviation Authority every six (6) months during the Term of this Agreement (if applicable, an updated Joint Venture Eligibility Form). Such document(s) shall also be submitted promptly if there is any change in ownership or control of Company.

## **ARTICLE 9 - OBLIGATIONS OF THE AVIATION AUTHORITY**

A. **The Aviation Authority's Maintenance Obligation.** The Aviation Authority agrees to make all necessary structural repairs to the Premises at its own expense; provided, however, that for purposes of this Agreement such structural repairs shall not include any repairs to doors or windows in or adjoining the Premises or repairs to any Improvements to the Premises constructed or installed by Company, and further provided that Company shall reimburse the Aviation Authority, within ten (10) days of receipt of written demand for such reimbursement, for the cost and expense of all structural repairs required as the result of the negligent or intentional acts of Company, its owners, officers, partners, employees, agents, contractors, subcontractors, licensees or invitees, subject to the provisions of Article 13.C.4., below. Company shall give the Aviation Authority written notice describing any repair that is the responsibility of the Aviation Authority and the repair process shall be commenced by the Aviation Authority promptly after its receipt of such written notice if the Aviation Authority agrees that such repair is required and is the Aviation Authority's responsibility hereunder.

B. **No Other Obligation of the Aviation Authority.**

1. Company acknowledges that the Aviation Authority has made no representations or warranties concerning the suitability of the Premises for Company's use or for any other use, and that except as expressly provided in this Agreement, the Aviation Authority shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any Improvements, furnishings, fixtures, trade fixtures or equipment constructed, installed or used on or in the Premises.

2. Company hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the costs of constructing Improvements to the Premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory and equipment needed to operate from the Premises hereunder; that it has done its own projections of the volume of business it expects to generate in operating from the Premises hereunder; that it is relying on its own business judgment concerning its prospects for operating on the Premises under this Agreement on a profitable basis; and that the Aviation Authority has not made any representations or warranties with respect to any such matters.

3. The Aviation Authority does not warrant the accuracy of any statistics provided by the Aviation Authority or anyone on its behalf. Additionally, the Aviation Authority does not warrant the accuracy of any projections relating to the Airport and its operations. Company agrees that the Aviation Authority shall not be responsible for any inaccuracies in such statistics, projections or their interpretation.

4. All statements contained in this Agreement or otherwise made by the Aviation Authority or anyone on its behalf concerning any measurement relating to the Premises

or any other area of the Airport are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by Company under or in connection with this Agreement.

5. The Aviation Authority shall not be liable to Company for any loss of business or damages sustained by Company as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the South Terminal Complex or the Airport, including, but not limited to, any restriction of access to the Airside portions of the South Terminal Complex to ticketed passengers.

## **ARTICLE 10 - CONTRACT BOND OR LETTER OF CREDIT**

Company shall provide to the Aviation Authority, upon taking possession of the Premises, a Contract Bond or, at the option of Company (and subject to certain additional requirements as described below), an irrevocable standby Letter of Credit ("Letter of Credit") in the form attached hereto as Item III-A and Item III-B. Such Contract Bond or Letter of Credit shall be effective as of the Commencement Date hereof and shall be maintained by Company throughout the Term of this Agreement in an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the initial Minimum Annual Concession Fee during the Initial Period, \_\_\_\_\_ percent (\_\_\_\_%) of the initial Minimum Annual Concession Fee during the next Agreement Period, and during each subsequent Agreement Period, \_\_\_\_\_ percent (\_\_\_\_%) of the Minimum Annual Concession Fee of the immediately preceding Agreement Period (in each event the amount of the Contract Bond or Letter of Credit shall be rounded to the nearest One Thousand Dollars (\$1,000.00)). Such Contract Bond or Letter of Credit shall guarantee the faithful performance by Company of all its obligations under this Agreement, including, without limitation, the payment by Company of all Concession Fees due hereunder. Any Contract Bond shall be on a form to be provided by the Aviation Authority and shall be written by a company that meets at least one of the following criteria: (A) has at least one investment grade long-term debt rating from Moody's Investors Service ("Moody's"), Standard & Poor's Financial Services ("S&P") or Fitch Ratings ("Fitch"); or (B) has a Financial Strength rating of A- or better from A.M. Best Company ("A.M. Best"). Any Letter of Credit provided hereunder shall be on a form provided by the Aviation Authority and shall be issued by an FDIC-insured bank that meets a minimum of one of the following criteria: (A) has at least one investment grade long-term debt rating from Moody's, S&P or Fitch; or (B) has a Financial Strength rating of A- or better from A.M. Best; or (C) has at least \$100 million in total assets, has maintained this asset level for the past three years, and has maintained a Tier 1 (core) risk based capital ratio of at least 6.0% for the past three years. In addition, no bank that is subject to enforcement by any regulatory agency may provide a Contract Bond or Letter of Credit. Finally, Contract Bonds and Letter of Credit agreements must be governed by Florida law, and the federal law of the United States, and must be provided by institutions physically located within the United States. In the event that any Contract Bond or Letter of Credit provided under this Article 10 shall be for a period of less than the full Term of this Agreement, or in the event the amount of the Contract Bond or Letter of Credit is to be increased or decreased, Company shall provide a renewal or replacement Contract Bond or Letter of Credit which complies with the requirements of this Article 10 at least one hundred eighty (180) days prior to the date on which the previous Contract Bond or Letter of Credit expires. Failure to timely provide a renewal or replacement bond shall be a default hereunder. The Letter of Credit must contain a condition that it shall be deemed automatically extended without amendment for one (1) year from the expiration date herein, or

any future expiration date, unless ninety (90) days prior to any expiration date the Bank on which the Letter of Credit is drawn, shall notify the Aviation Authority by Registered Mail that such Bank elects not to consider the Letter of Credit renewed for any such additional period. Company's failure to timely provide a replacement Contract Bond or Letter of Credit hereunder shall constitute a default under this Agreement and the Aviation Authority shall be entitled to any remedies provided hereunder, and may, without limitation, proceed to recover under Company's existing Contract Bond or draw on the full amount of its existing Letter of Credit. If Company provides the Aviation Authority with a Letter of Credit or Contract Bond, Company shall maintain such Letter of Credit or Contract Bond in effect for at least one (1) year after the expiration or earlier termination of the Term hereof in the amount required for the last Agreement Period. However, the Aviation Authority shall release any existing Letter of Credit or Contract Bond provided by Company upon the Aviation Authority's receipt of a replacement Letter of Credit or Contract Bond that complies with the requirements of this Article 10.

#### **ARTICLE 11 – THE AVIATION AUTHORITY'S RIGHT TO REPAIR OR ALTER FACILITIES**

Notwithstanding any other provisions herein contained, the Aviation Authority shall have the absolute right to make any repairs, alterations, and additions to the South Terminal Complex, as well as the right to enter the Premises for the purpose of so doing, free from any and all liability to Company for any loss of business or damages sustained by Company for whatever reason as a result of the making of any such repairs, alterations or additions. If the Aviation Authority does any work on the Premises which does not result in a direct benefit to the Premises and as a result makes the Premises wholly untenable, then all monetary obligations shall abate for such period of untenability.

#### **ARTICLE 12 - INDEMNIFICATION AND INSURANCE**

A. **Indemnification.** Company shall indemnify, defend and hold completely harmless the Aviation Authority, the City and the members (including, without limitation, all members of the governing board of the Aviation Authority, the Orlando City Council and the advisory committees of each), officers, agents and employees of each, (the "Indemnified Parties") from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under Workers' Compensation Laws), and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees and Attorneys' Fees) which may be incurred by, charged to or recovered from any of the foregoing (a) arising directly or indirectly out of the use, occupancy or maintenance of the Premises, including any Improvement thereto, or Company's operations at the Airport or in connection with any of Company's rights and obligations contained in this Agreement, including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises as a result of any act or omission on the part of Company or its officers, directors, partners, employees, agents, contractors, subcontractors, or licensees, regardless of where the damage, injury or death occurred, unless such claim, suit, demand, judgment, loss, cost, fine, penalty, damage, liability or expense was proximately caused solely by Indemnified Parties' negligence or by the joint negligence of the Aviation Authority the Indemnified Parties and any person other than Company or Company's officers, directors, partners, employees, agents, contractors, subcontractors,

licensees or invitees or (b) arising out of the failure of Company to keep, observe or perform any of its obligations under this Agreement. The Aviation Authority shall give Company reasonable notice of any suit or claim for which indemnification will be sought under this Article 12.A., allow Company or its insurer to compromise and defend the same to the extent of its interests (subject to the Aviation Authority's right to approve any proposed settlement, which approval shall not be unreasonably withheld) and reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this Article 12.A., Company shall use counsel reasonably acceptable to the Aviation Authority.

**B. Liability Insurance.**

1. Company shall, without expense to the Aviation Authority, obtain and maintain throughout the Term of this Agreement, for the protection of Company, the Aviation Authority and the City and the members (including, without limitation, all members of the governing board of the Aviation Authority, the Orlando City Council and the citizens advisory committees of each), officers, agents and employees of each from and against any and all liabilities arising out of or relating to Company's use or occupancy of, or the conduct of its operations on, the Premises and the Improvements; (i) commercial general liability insurance including, but not limited to, premises/completed operations, contractual liability and fire legal liability insurance with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit, per occurrence, if unescorted AOA access is not required and Five Million and No/100 Dollars (\$5,000,000.00) combined single limit, per occurrence, if unescorted AOA access is required. Self-insured retentions or deductibles shall not exceed Ten Thousand and No/100 Dollars (\$10,000.00) unless the insurer is required to pay claims from first dollar without a requirement that Company pay its deductible prior to that time; and (ii) automobile liability insurance (any auto including owned autos, non-owned autos and hired autos) in the amount of not less than One Hundred Thousand and No/100 Dollars (\$100,000.00) per occurrence and Three Hundred Thousand and No/100 Dollars (\$300,000.00) aggregate for bodily injury and Fifty Thousand and No/100 Dollars (\$50,000.00) for property damage, if occasional access for non-AOA pickup and deliveries is required. Otherwise, the limits of liability, deductibles and self-insured retentions for automobile liability are the same as indicated above for commercial general liability. The insurance required hereunder shall also provide that it is primary insurance as respects any other valid and collectible insurance the Aviation Authority or any of the other additional insureds may possess, including any self-insured retention or deductible amount any of them may have, and that any other insurance carried by any of them shall be considered excess insurance only.

2. If the nature of Company's operations under this Agreement are such as to place any or all of its employees under the coverage of workers' compensation or similar statutes, Company shall also purchase workers' compensation and employer's liability or similar insurance with a company or companies acceptable to the Aviation Authority affording the required statutory coverage and containing the requisite statutory limits to be effective at least twenty (20) days prior to the Commencement Date or to the commencement of any installation of any Improvements by Company at the Airport, whichever first occurs, and to be maintained by Company through the end of the Term of this Agreement.

3. The declarations page(s) or certificate(s) of insurance in an ACORD form or its equivalent, from all insurance policies obtained by Company in accordance with the provisions of this Article 12.B. shall be furnished to the Chief Executive Officer at least fifteen (15) days prior to the Commencement Date or to the commencement of any installation of any Improvements by Company at the Airport, whichever first occurs. The Aviation Authority also requires a minimum of thirty (30) days prior written notice of any adverse material change in Company's required insurance coverage, except that a minimum ten (10) days prior written notice of cancellation for nonpayment must be provided. Notification of any adverse material change may be provided by Company, insurer, or broker, but Company shall have the ultimate responsibility to ensure that the Aviation Authority is promptly notified. Such declarations page(s) or certificate(s) of insurance shall indicate that the Aviation Authority and City and the members (including, without limitation, all members of the governing board of the Aviation Authority, the Orlando City Council, and the advisory committees of each), officers, employees and agents of each are named as additional insureds. The Chief Executive Officer shall have the right to increase the monetary limits or alter the coverages herein specified from time to time during the Term of this Agreement, and Company shall comply with all reasonable requests of the Chief Executive Officer with respect thereto.

4. Notwithstanding the foregoing provisions of this Article 12.B. and the provisions of Article 12.C below, the Aviation Authority agrees that Company may elect to be "self-insured" (subject to the provisions of Article 12.B.2. above, and Article 12.B.5. below) provided that (a) Company agrees to pay with its own funds any obligation which would be covered by policies of insurance complying with the requirements of this Article 12.B. and Article 12.C. below, and (b) Company maintains a net worth in excess of \$10,000,000.00 determined in accordance with generally accepted accounting principles and the Chief Financial Officer of Company certifies to the Aviation Authority annually that Company maintains such net worth.

5. "Self-insure" shall mean that Company is itself acting as though it were the third-party insurer providing the insurance required under the provisions of this Agreement, and Company shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Agreement.

To the extent Company chooses to provide any insurance required by this Agreement by "self-insurance," then Company shall have all of the obligations and liabilities of an insurer, and the protection afforded the Aviation Authority shall be the same as if provided by a third-party insurer under the coverage required under this Agreement.

In the event that Company elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from a third-party insurer, Company shall undertake the defense of any such claim, including a defense of the Aviation Authority, at Company's sole cost and expense, and use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Company to self-insure. Any such self-insurance shall be required to provide "first dollar" coverage.



C. **Property Insurance.**

1. The Aviation Authority may, at its option, maintain property insurance on the South Terminal Complex and other property at the Airport, but it is expressly understood that such insurance shall not cover the Improvements, equipment or other contents, including property of Company.

2. Company shall, without expense to the Aviation Authority, obtain and maintain in effect through the end of the Term of this Agreement, for the benefit of Company, the Aviation Authority and the trustee of certain of the Aviation Authority's outstanding Airport revenue bonds, as their interests may appear, property insurance in the amount of the replacement cost of all Improvements, equipment or other property hereafter installed or located on the Airport by Company, in such form and with such company or companies as the Chief Executive Officer shall approve. Such insurance shall be effective at least twenty (20) days prior to the Commencement Date or the commencement of any installation of any Improvements by Company at the Airport, whichever first occurs, and shall be maintained by Company through the end of the Term of this Agreement.

3. At least fifteen (15) days prior to the Commencement Date or the commencement of any installation of any Improvements by Company at the Airport, whichever first occurs, and at least thirty (30) days prior to the expiration of any policy or policies theretofore provided by Company under this Article 12.C., Company shall furnish to the Chief Executive Officer the declarations page(s) from the insurance policy or policies evidencing such coverage, or certificate(s) of insurance in and ACORD, or equivalent form and such declarations page(s) or certificate(s) of insurance shall indicate that the Aviation Authority, Company and the trustee of certain of the Aviation Authority's outstanding Airport revenue bonds are named as loss payees as their interests may appear, and that the policy or policies will not be cancelled or reduced without thirty (30) days' prior written notice thereof to the Aviation Authority. The Aviation Authority also requires a minimum of thirty (30) days prior written notice of any adverse material change in Company's required insurance coverage, except that a minimum ten (10) days prior written notice of cancellation for nonpayment must be provided. Notification of any adverse material change may be provided by Company, insurer, or broker, but Company shall have the ultimate responsibility to ensure that the Aviation Authority is promptly notified.

4. Company, on behalf of itself and its insurance carrier(s), hereby waives any and all rights of recovery which it may have against the Aviation Authority or the City or any of the other Indemnified Parties for any loss of or damage to property it may suffer as a result of any fire or other peril normally insured against under a policy of property insurance.

D. **The Aviation Authority's Right to Purchase.** If Company does not comply with its covenants made in paragraphs B or C of this Article 12, the Chief Executive Officer shall have the right, but not the obligation, to cause insurance as aforesaid to be issued, and in such event Company shall pay the premium for such insurance upon the Chief Executive Officer's demand.

E. **Member Protection.** No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreements or documents pertaining to the

operations of Company under this Agreement, as this Agreement may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against the Aviation Authority, or by enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any past, present or future member, officer, employee or agent, of the Aviation Authority, as such, either directly or through the Aviation Authority or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by the Aviation Authority. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Aviation Authority member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment of or to the Aviation Authority, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by the Aviation Authority, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

F. **Survival of Provisions.** The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement.

### **ARTICLE 13 - DAMAGE OR DESTRUCTION**

A. **Minor Damage.** If all or a portion of the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by the Aviation Authority at its own cost and expense subject to the limitations of Article 13.D., below; provided, however, that if the damage is caused by the negligent act or omission of Company, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Company shall be responsible for reimbursing the Aviation Authority for the cost and expense incurred in such repair, subject to the provisions of Article 12.C.4., above. In the event of such minor damage in which no portion of the Premises is untenable, there will be no abatement of the Concession Fees payable by Company to the Aviation Authority hereunder.

B. **Substantial Damage.** If all or a portion of the Premises shall be damaged by fire, explosion, the elements, public enemy, or other casualty, to such an extent as to render the Premises or such portion thereof untenable, but which can reasonably be repaired within thirty (30) days, the same shall be repaired with due diligence by the Aviation Authority at its own cost and expense, subject to the limitations of Article 13.D., below, and there shall be an equitable abatement of the Minimum Annual Concession Fees and utility fees payable by Company to the Aviation Authority from the time of such damage until such time as the Premises are fully restored and certified by the Aviation Authority's engineers as ready for occupancy; provided, however, that if said damage is caused by the negligent act or omission of Company, its officers, agents, employees, contractors, subcontractors, licensees or invitees, the Minimum Annual Concession Fees payable by Company to the Aviation Authority hereunder will not abate and Company shall be responsible for reimbursing the Aviation Authority for the cost and expenses incurred by it in such repair, subject to the provisions of Article 12.C.4., above.

C. **Extensive Damage.**

1. In the event that all or a portion of the Premises are destroyed by fire, explosion, the elements, the public enemy or other casualty, or so damaged that they are untenable and cannot reasonably be repaired within thirty (30) days, the Aviation Authority shall be under no obligation to repair, replace or reconstruct the Premises. This Minimum Annual Concession Fees and utilities charges payable by Company to the Aviation Authority hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as said Premises are restored so as to render the Premises tenable or the Aviation Authority elects to terminate this Agreement by written notice to Company. If within twelve (12) months after the time of such damage or destruction the Aviation Authority has neither elected to terminate this Agreement, nor repaired, nor replaced, nor or reconstructed the Premises to the extent required by this Article 13, Company may terminate this Agreement by written notice to the Aviation Authority.

2. Notwithstanding the foregoing, if said Premises are destroyed or so damaged and rendered untenable so that they cannot reasonably be repaired within thirty (30) days as a result of the negligent act or omission of Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, invitees, the Concession Fees payable hereunder shall not abate and the Aviation Authority may, in its discretion, subject to the provisions of Article 12.C.4., above, require Company to complete repair and reconstruction of said Premises promptly and pay the costs therefor, or the Aviation Authority may repair and reconstruct said Premises, and Company shall be responsible for reimbursing the Aviation Authority for the costs and expenses incurred in such repair and reconstruction.

D. **Limits of the Aviation Authority's Obligations Defined.** In the application of the provisions of paragraphs A through C of this Article 13, the Aviation Authority shall in no event be obligated to repair, replace or reconstruct the Premises in any manner other than as set forth as the obligation of the Aviation Authority in Article 6.A.1., above.

E. **Damage or Destruction of Improvements.** Should the Company's Improvements to the Premises or its furnishings, fixtures, signage, trade fixtures, and equipment, or any part of them, be destroyed or damaged, whether or not said damage or destruction is covered by insurance, Company shall, at its sole cost and expense, and in compliance with Article 6C. through 6.E., above, reconstruct all Improvements to the Premises and replace all furnishings, fixtures, signage, trade fixtures and equipment with all such replacements being of equal quality to those originally installed by Company in the Premises, except in the event that the Premises are so damaged that they are untenable and cannot reasonably be repaired within thirty (30) days and the Aviation Authority has elected to terminate this Agreement as provided in Article 13.C., above. If Company fails to repair or replace such improvements in accordance with a schedule approved by the Aviation Authority, the Aviation Authority shall have the right (but not the obligation) to make such repairs and/or replacement and recover from Company the cost and expense thereof.

## **ARTICLE 14 - DEFAULT BY COMPANY**

A. **Events of Default.** Any one of the following events shall constitute an Event of

Default by Company hereunder:

1. The failure of Company to make any payment required to be made by Company hereunder when due as herein provided, which failure is not remedied within ten (10) days after receipt by Company of the Chief Executive Officer 's written demand;

2. The failure of Company to provide any financial report, independent auditors' report, schedule, or statement required to be submitted to the Aviation Authority or any officer or employee thereof when due as herein provided, which failure is not remedied within five (5) days after receipt by Company of the Chief Executive Officer 's written demand;

3. The failure of Company to provide any Contract Bond (or Letter of Credit) or renewal of a Contract Bond (or Letter of Credit) on or before the date on which the same is required hereunder;

4. The failure of Company to keep, observe or perform any of the other covenants or agreements herein required to be kept, observed or performed by Company, and continued failure to observe or perform any such covenant or agreement after a period of thirty (30) days after receipt by Company of the Chief Executive Officer 's written demand. In the event a non-monetary default occurs which cannot be cured within thirty (30) days after written notice, then this Agreement shall not be terminated as long as Company has commenced to cure the default and is proceeding diligently;

5. The repeated failure (defined for this purpose as at least three (3) such failures within any consecutive twelve-month period) to make any payment required to be made by Company hereunder when due as herein provided (provided that notice of such failure shall have been given to Company, but whether or not Company shall have remedied any such failure within the time provided for in such notice);

6. The repeated failure (defined for this purpose as at least three (3) such failures within any consecutive twelve-month period) to keep, observe or perform any of the other covenants or agreements herein contained to be kept, observed or performed by Company (provided that notice of such failure shall have been given to Company, but whether or not Company shall have remedied any such failure within the time provided for in such notice);

7. The discovery by the Chief Executive Officer that any material statement of fact furnished by Company in connection with its proposal for this Concession is false or materially misleading;

8. Abandonment of the Premises at any time prior to the expiration of this Agreement without the prior written consent of the Aviation Authority;

9. Commencement by Company or by any guarantor or surety of this Agreement, in any court pursuant to any statute of the United States or of any State, territory or government, of an insolvency or bankruptcy proceeding, including, without limitation, a proceeding for liquidation, reorganization or for the adjustment of its indebtedness;

10. Commencement of any insolvency or bankruptcy proceeding (including, without limitation, a proceeding for liquidation, reorganization or for adjustment of indebtedness) against Company or any guarantor or surety of this Agreement, if an order for relief is entered against such party and the same is not stayed or vacated within thirty (30) days after entry thereof, or if such party fails to secure a discharge of the proceedings within sixty (60) days after the filing thereof;

11. Insolvency of Company or any guarantor or surety of this Agreement, or if Company or any guarantor or surety of this Agreement is generally unable to pay its debts as they become due;

12. The making by Company or by any guarantor or surety of this Agreement of an assignment for the benefit of its creditors or the filing of a petition for or the entering into of an arrangement with its creditors;

13. The appointment or sufferance of a receiver, trustee or custodian to take possession of all or substantially all of the property of Company or of any guarantor or surety of this Agreement, whether or not judicial proceedings are instituted in connection with such appointment or sufferance;

14. The placement of any lien upon the Premises or any improvements thereto which is not discharged of record within thirty (30) days, or any levy under any such lien; or

15. The occurrence of an event of default under any other agreement, concession or otherwise, between Company and the Aviation Authority. In addition, Company hereby agrees that the occurrence of an Event of Default under this Agreement shall constitute an event of default under any agreement, concession or otherwise, between Company and the Aviation Authority.

**B. Remedies Upon Company's Default.** Upon the occurrence of any Event of Default, as defined in Article 14.A. above, the Aviation Authority may pursue any of the following remedies, or such other remedies as may be available to the Aviation Authority at law or in equity:

1. The Aviation Authority may terminate this Agreement by giving notice thereof to Company. In such event, the Term of this Agreement shall cease as of the date of such notice of termination and any and all rights, title and interest of Company hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Term of this Agreement had elapsed; or

2. Without terminating this Agreement, terminate Company's right to possession of the Premises, retake possession of the Premises, and recover immediately from Company damages calculated as follows:

a. all unpaid Concession Fees that had been earned at the time of termination of Company's right to possession, together with,

b. the amount by which the unpaid Concession Fees earned after the

date of termination of Company's right to possession of the Premises until the time of award of a new agreement for the Premises exceeds the amount of the loss of Concession Fees that Company proves has been or could have reasonably been avoided, together with,

c. the worth, at the time of such award, of the amount by which the unpaid Concession Fees for the balance of the Term after the time of award of a new agreement for the Premises exceeds the amount of the loss of Concession Fees that Company proves could reasonably be avoided. (For purposes of this subparagraph c., the worth, at the time of award, of such amount shall be determined by discounting such amount in accordance with accepted financial practice at the rate of four percent (4%) per annum to its present worth.)

Upon entry of judgment for such damages, as described above, this Agreement shall be deemed to be terminated; or

3. The Aviation Authority may, without terminating this Agreement, terminate Company's right to possession of the Premises, retake possession of the Premises and relet the Premises (including any Improvements), or any part thereof, for a Term at the Aviation Authority's option, that may be less than or exceed the period which would otherwise have constituted the balance of the Term of this Agreement. In such event, Company shall pay to the Aviation Authority any deficiency between the rent herein reserved and the net amount of the rents due on account of any other agreement for the Premises for each month of the period which would otherwise have constituted the balance of the Term of this Agreement, provided that the Aviation Authority has made a good faith effort to re-let the Premises at a rental rate which it determines to be reasonable under the circumstances. The Aviation Authority may recover such deficiency from Company at the time each payment becomes due under the Agreement, or, at the Aviation Authority's option, upon the expiration of the Term of this Agreement.

C. **Further Provisions Regarding Default.**

1. In any event and irrespective of any option exercised, Company shall pay to the Aviation Authority upon demand all of the unpaid Concession Fees and other sums due from Company hereunder prior to the date that the Aviation Authority terminates the Agreement or Company's right to possession of the Premises, and all of the Aviation Authority's costs, charges and expenses, including reasonable Attorney's Fees, and fees of agents and others retained by the Aviation Authority, incurred in connection with the recovery of sums due under this Agreement, or because of the breach of any covenant or agreement of Company contained in this Agreement or for any other relief against Company, and including, with respect to the options set forth in Article 14.B.2. and Article 14.B.3. above, all costs and expenses of the Aviation Authority in connection with the reletting of the Premises and collection of Concession Fees due and owing from any new concessionaire, and the cost of all repairs or renovations reasonably necessary in connection with the reletting, including, provided however, Company shall not pay for the refixturing of the Premises in connection with the reletting, without limitation, brokerage and reasonable Attorneys' Fees. Even if Company has previously elected to proceed under Article 14.B.2. or Article 14.B.3. above, the Aviation Authority may, at any time thereafter, elect to terminate this Agreement; provided, however, that no action taken by the Aviation Authority pursuant to this Article 14 shall be deemed to terminate this Agreement unless written notice of termination is given by the Aviation Authority to Company. Company hereby waives any notices

of default not specifically provided for in this Article 14, above, including, without limitation, the three-day notice provided for in Section 83.20, Florida Statutes.

2. No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition or to justify or authorize the non-observance on any other occasion of the same or of any other covenant or condition hereof. The acceptance by the Aviation Authority of any sums from Company at any time when Company is in default under any covenant or condition hereof shall not be construed as a waiver of such default or of the Aviation Authority's right to exercise any remedy arising out of such default, nor shall any waiver or indulgence granted by the Aviation Authority to Company be taken as an estoppel against the Aviation Authority, it being expressly understood that the Aviation Authority may, at any time thereafter, if such default continues, exercise any such remedy in the manner hereinbefore provided or as otherwise provided by law or in equity.

3. The rights and remedies given to the Aviation Authority by this Agreement shall not be exclusive, and in addition thereto, the Aviation Authority shall have such other rights and may pursue such other remedies as are provided by law or in equity. All such rights and remedies shall be deemed to be cumulative, and the exercise of one such right or remedy by the Aviation Authority shall not impair its standing to exercise any other right or remedy.

4. It is expressly agreed that in the event of default by Company hereunder, the Aviation Authority shall have a lien upon all goods, chattels, personal property and equipment of any description belonging to Company which are located on, or become a part of the Premises or any improvements thereto, as security for any fees or other charges which are then due or which become due for the remainder of the Term of this Agreement, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, and Company shall not remove or permit the removal of any of such property until all defaults under this Agreement have been cured.

5. Company hereby waives trial by jury in any action, suit or proceeding related to, arising out of or in connection with the terms, conditions, and covenants of this Agreement.

## **ARTICLE 15 – LIQUIDATED DAMAGES**

A. **The Aviation Authority's Right to Liquidated Damages.** If Company or its sub-tenants fail to keep, observe, or perform any of the covenants or terms and conditions required herein, the Aviation Authority shall impose the financial Liquidated Damages as set forth below, as a result of such violation(s), accrued on a daily basis, in addition to any other Liquidated Damages permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

<b>Violation</b>	<b>Fee</b>
Violation of Permitted Use of a Location	\$250.00 per day/per location

Failure to Maintain Required Hours of Operation	\$100.00 per hour/per location
Failure to Submit Required Documents and Reports	\$100.00 per day/per location
Unauthorized Advertising	\$100.00 per day/per location
Failure to Maintain Clean Location(s)	\$100.00 per day/per location
Failure to Maintain Reasonable Pricing	\$100.00 per day/per location
Installation of unapproved Fixtures in Location(s)	\$100.00 per day/per location
Violations of Other Non-Monetary Terms and Conditions	\$100.00 per day/per location

The foregoing are due and payable from Company until said violations are remedied, and the Chief Executive Officer has issued a written notice to Company that they are in compliance. Company shall pay to the Aviation Authority said fines herein in full, in lawful money of the United States, at the office of the CFO, Greater Orlando Aviation Authority, 5855 Cargo Road, Orlando, Florida 32827-4399, within five (5) days of receipt of such written notice of compliance, or at such other place as the Chief Executive Officer may designate in writing from time to time. The Aviation Authority shall be entitled to assess and collect any such Liquidated Damages from Company imposed under this Agreement. Any such liquidated damages due by Company shall not be considered Gross Receipts under this Agreement.

If Company's violation continues after the thirty (30) day prior written notification to Company from the Aviation Authority given in accordance with Article 14.A.4., the Chief Executive Officer, in his or her sole discretion, may terminate the Agreement. If Company continues to be in violation under this Article 15 for a period of five (5) days, and following the thirty (30) day prior notice provided above to Company, Company shall be required to substantiate to the Aviation Authority that it is taking all reasonable efforts to ensure compliance by Company of such violations, including, if necessary, termination of the Agreement. If Company cannot substantiate to the Aviation Authority that it took all reasonable efforts to ensure compliance within such thirty (30) day period, the Chief Executive Officer, in his or her sole discretion, may elect to terminate this Agreement, notwithstanding other provisions of default in this Agreement contained herein.

## **ARTICLE 16 -- ASSIGNMENT AND SUBCONTRACTS**

A. **The Aviation Authority's Right to Approve Assignments and Subcontracts.** Company shall not sell, assign, sublease or transfer this Agreement or any of its rights and privileges hereunder or permit any such sale, assignment, sublease or transfer to occur by operation of law, or contract for the performance of any of the services to be provided by it hereunder without the Aviation Authority's prior written approval, which approval may be granted or withheld by the Aviation Authority in the exercise of its sole discretion. The Aviation Authority may condition its approval of any such sale, assignment, sublease or transfer upon the payment to the Aviation Authority by Company of all or any portion of any fees Company receives from such purchaser, assignee, sublessee or transferee in excess of the fees (or a pro rata portion of the fees attributable to the space that is the subject of such sale, assignment, sub-lease or



transfer) payable to the Aviation Authority by Company under this Agreement. Any cost of considering or approving such a request for assignment or subcontract shall be borne by Company.

B. **Transfer of Substantial Interest in Company.** The sale, transfer or other disposition of more than twenty-five (25%) percent of the ownership interest in Company shall be deemed an assignment of this Agreement for purposes of this Article 16.

#### **ARTICLE 17 - WAIVER OF CLAIMS**

Company hereby waives any and all claims it now has or may hereafter have against the City and the Aviation Authority, and against any member (including, without limitation, all members of the governing board of the Aviation Authority, the Orlando City Council, and the advisory committees of each), officer, agent or employee of each, for any loss of anticipated profits caused by any suit or proceeding attacking directly or indirectly the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null and void or voidable, or delaying the same or any part thereof from being carried out. Company further hereby waives any and all claims for compensation for any and all loss or damage sustained by reason of any delay in making the Premises available to Company or by reason of any defects or deficiencies in the Premises or in the South Terminal Complex or because of any interruption in any of the services thereto, including, but not limited to, power, gas, telephone, heating, air-conditioning or water supply systems, drainage or sewage systems, and Company hereby expressly releases the City and the Aviation Authority from any and all demands, claims, actions, and causes of action arising from any of such causes.

#### **ARTICLE 18 - REQUIRED, GENERAL AND MISCELLANEOUS PROVISIONS**

A. **Required Covenants.** The provisions set forth in the Required Covenants, attached hereto as Appendix 2, are incorporated herein as if set forth in this Agreement verbatim. The Aviation Authority shall have the right to enforce the Required Covenants.

B. **Remedies; Attorneys' Fees and Costs.** All remedies provided to the Aviation Authority in this Agreement shall be deemed cumulative and additional, and not in lieu of or exclusive of each other or of any other remedy available at law or in equity arising hereunder. In the event that any proceedings at law or in equity arise hereunder or in connection herewith (including any appellate proceedings or bankruptcy proceedings), the prevailing party shall be awarded costs, reasonable Attorneys' Fees, reasonable expert witness fees, and any other expenses incurred in connection with such proceedings.

C. **Warranty of Company as to Conflicts of Interest.** Company represents and warrants to the Aviation Authority that, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of the Aviation Authority has any interest, direct or indirect, in the business of Company to be conducted hereunder, and that no such persons shall have any such interest at any time during the Term hereof.

D. **Notices.** All notices required or permitted to be given by the Aviation Authority to Company hereunder shall be in writing and delivered to it by courier service providing a written

record of the date of delivery or United States certified mail, postage prepaid, return receipt requested, addressed to Company at the address shown below. All notices required or permitted to be given to the Aviation Authority hereunder shall also be in writing and delivered to it by courier service providing a written record of the date of delivery or United States certified mail, postage prepaid, return receipt requested addressed to:

To Aviation Authority:

Chief Executive Officer  
Greater Orlando Aviation Authority  
Orlando International Airport  
One Jeff Fuqua Boulevard  
Orlando, FL 32827-4399

Copy to:

Concessions Department  
Greater Orlando Aviation Authority  
Orlando International Airport  
5855 Cargo Road, Third Floor  
Orlando, FL 32827-4399

To Company:

Title  
Company Name  
Company Address  
Company Address  
Company Address

Either party may change its address for purposes of this paragraph by written notice similarly given.

E. **Regulations of the Aviation Authority.** The rights and privileges granted to Company hereunder and the occupancy and use by Company of the Premises shall at all times be subject to the reasonable rules and regulations of the Aviation Authority as the same are now or may hereafter be prescribed through the lawful exercise of its power, including, but not limited to, all applicable provisions of the Aviation Authority's Policy and Procedures Manual as the same may be amended from time to time.

F. **Interest.** Any sums payable to the Aviation Authority by Company under any provisions of this Agreement which are not paid when due shall bear interest at the rate of eighteen percent (18%) per annum (or, if less, the maximum rate of interest allowed by law) from the due date thereof until paid.

G. **Miscellaneous Provisions.**

1. Company and its employees shall promptly observe and comply with applicable provisions of all municipal, county, state or federal laws, ordinances, regulations or rules which govern or apply to Company or to its operations hereunder.

2. Company shall, at its own cost and expense, procure and keep in force during the Term of this Agreement, all necessary licenses, registrations, certificates, bonds, permits, employee security clearances and badges, and other authorizations as are required by law in order for Company to conduct its operations the Premises granted hereunder, and shall pay all taxes (including sales and use taxes), assessments (including, without limitation, stormwater utility fees), excises, license, certification, permit and examination fees and impact fees which may be assessed, levied, exacted or imposed by all governmental authorities having jurisdiction, on the Premises, on its operations, on its Gross Receipts, on its income, on this Agreement and the fees payable to the Aviation Authority hereunder, on the rights and privileges granted to Company herein, on the Premises and on any and all Improvements on the Premises, and Company shall make and file all applications, reports, and returns required in connection therewith.

3. Company agrees to repair promptly, at its sole cost and expense and in a manner acceptable to Aviation Authority, any damage caused by Company or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees to the Airport or any Improvements or property located thereon, subject to the provisions of Article .12, above.

4. Company is not authorized to act as the Aviation Authority's agent hereunder and shall have no authority, express or implied, to act for or bind the Aviation Authority hereunder and nothing contained in this Agreement shall be deemed or construed by the Aviation Authority or Company or by any third party to create the relationship of partnership or of joint venture. No provision of this Agreement shall be deemed to make the Aviation Authority the joint employer of any employee of Company.

5. The Aviation Authority, through its designated agents, shall have the right during Company's normal business hours (and at any time during an emergency) to inspect the Premises and the property of Company located thereon, in order to enforce this Agreement, to enforce applicable laws and regulations, and to protect persons and property. The Aviation Authority will use its best efforts not to interfere with Company's operating during any inspection.

6. The Article and paragraph headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

7. Time is expressed to be the essence of this Agreement.

8. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

9. If any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of any other covenant, condition or provision contained herein.

10. Except as otherwise provided herein, if certain action may be taken only with the consent or approval of the Chief Executive Officer or the Aviation Authority, or if a determination or judgment is to be made by the Chief Executive Officer or the Aviation Authority, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the Chief Executive Officer or the Aviation Authority.

11. Aviation Authority reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, South Terminal Complex (including entering the Premises), landing areas and taxiways as it may reasonably see fit, free from any and all liability to Company for the loss of business or damages of any nature whatsoever to Company occasioned during the making of such improvements, repairs, alterations and additions including, but not limited to, any damages resulting from negligence of the Aviation Authority or its employees, agents or contractors.

12. As required by Florida law, the Aviation Authority hereby includes the following notification as part of this Agreement:

Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

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

Security Identification - Company shall abide by rules and regulations adopted by the Aviation Authority in carrying out the Aviation Authority's obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as Aviation Authority deems necessary from time to time. Company shall obtain Orlando International Airport identification badges for all personnel working in restricted areas, which will require each worker to complete the Airport ID Card Application Form, available from the Aviation Authority's Airport Badging Office. The applicant must submit his/her fingerprints for a criminal history check. The cost shall be the sole

responsibility of the applicant. Lost badges and security violations shall incur fees as set from time to time by the Aviation Authority. The Company agrees to require all employees to wear Security Identification badges at all times while working. The badge must be worn above the waist and be visible at all times. Any change in personnel shall be reported to the Aviation Authority and the Airport Badging Office. The Company shall be responsible for the prompt recovery of Airport keys and security identification badges. The Company shall obtain permits for all vehicles that need airside access, at its sole cost and expense.

Pursuant to applicable federal regulations, Company shall conduct an annual self-audit of Airport and airfield access media, such as keys and access cards, used by Company, its employees, agents, suppliers, invitees, sublessees, or guests. Company shall provide the Aviation 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 five (5) percent of the access media issued for the affected lock or device.

H. **Applicable Law.** This Agreement has been entered into and shall be governed by, and shall be construed and interpreted in accordance with the laws of, the State of Florida. Any proceedings whether local, state or Federal brought by any party to this Agreement, arising out of any covenant, provision or condition of this Agreement shall be filed in, and the parties expressly consent to the personal jurisdiction of, a court of competent jurisdiction in Orange County, Florida.

I. **Public Entity Crimes Act.** Company represents that it is familiar with the terms and conditions of Section 287.133, Florida Statutes, and Company further represents and warrants unto Authority that, to the best of its knowledge and good faith belief, neither Company nor any affiliate of Company has ever been convicted of a public entity crime. Company acknowledges receipt of the following notice:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

J. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Company hereby affirms the completeness and accuracy of the information provided by Company to the Aviation Authority in the Eligibility and Proposal Form and in all attachments thereto and enclosures therewith, submitted by Company to the Aviation Authority

in connection with the award of the Concession.

**[SIGNATURE PAGE FOLLOWING]**

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed the day and year first above written.

ATTEST:

\_\_\_\_\_  
Dayci S. Burnette-Snyder,  
Assistant Secretary

*Seal*

**GREATER ORLANDO  
AVIATION AUTHORITY**

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Chief Executive Officer

Date: \_\_\_\_\_, 201\_\_

APPROVED AS TO FORM AND LEGALITY  
On the \_\_\_\_ day of \_\_\_\_\_, 201\_\_  
for the use and reliance of the Greater  
Orlando Aviation Authority, only.  
Marchena and Graham, P.A.,  
General Counsel

By: \_\_\_\_\_  
Marchena and Graham, P.A.

**[COMPANY]**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 201\_\_

ATTEST: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

*[Corporate Seal]*

**OR**  
TWO WITNESSES:

(1) \_\_\_\_\_

Printed Name: \_\_\_\_\_

2) \_\_\_\_\_

Printed Name: \_\_\_\_\_

[If applicable]

### **AGREEMENT OF GUARANTY**

In order to induce the GREATER ORLANDO AVIATION AUTHORITY (the "Aviation Authority") to enter into the attached STC RETAIL PACKAGE 2 CONCESSION AGREEMENT (the "Agreement") with \_\_\_\_\_ (the "Company") (which the Aviation Authority would be unwilling to do without this Agreement of Guaranty), the undersigned unconditionally guarantees to the Aviation Authority that Company will fully and timely make payment, prior to the expiration of any portion applicable provided in this Agreement, of all Concession Fees and other payments which Company is required to pay to the Aviation Authority under this Agreement, and that Company will comply with all of the other terms and conditions of this Agreement.

The obligations of the undersigned hereunder shall be direct and immediate and not conditional or contingent upon the Aviation Authority's pursuit of its remedies against Company, and shall remain in full force and effect notwithstanding (i) amendments or modifications to this Agreement entered into by the Aviation Authority and Company without the knowledge or consent of the undersigned, (ii) waivers of compliance with or any default under this Agreement granted by the Aviation Authority to Company without the knowledge or consent of the undersigned, (iii) the discharge of Company from its obligations under this Agreement as a result of any proceeding initiated under the Bankruptcy Code of 1978, as the same has been or may be amended (the "Bankruptcy Code"), or any similar State or Federal law, or any limitation or reduction of the liability of Company or its estate as a result of any such proceeding, none of which shall be construed as affecting the obligations and liabilities of Company under this Agreement for purposes of this Guaranty, or (iv) any other action taken by the Aviation Authority or Company that would, in the absence of this clause, result in the release or discharge by operation of law of the undersigned from its obligations hereunder.

The obligations of the undersigned under this Guaranty shall include the obligation to reimburse the Aviation Authority for any preferential payments received by the Aviation Authority from Company under or pursuant to this Agreement in the event that Company becomes a debtor under the Bankruptcy Code, or any similar State or Federal law. If a bankruptcy petition has been filed by or against Company during any preferential period (as established by the Bankruptcy Code or other applicable law) and Company has made payments to the Aviation Authority under this Agreement during said preferential period, this Guaranty shall not terminate unless and until a final, non-appealable decision by a court of competent jurisdiction or other agreement has been entered or reached pursuant to which the Aviation Authority shall be entitled to retain all such monies paid during such preferential period.

The undersigned shall be obligated to pay all costs and expenses (including reasonable attorney's fees) paid or incurred by the Aviation Authority for the enforcement of the obligations of the undersigned hereunder, including, but not limited to, costs, expenses and reasonable attorney's fees in connection with any bankruptcy proceeding or any appeals. This Guaranty shall inure to the benefit of the Aviation Authority, its successors and assigns, and shall be binding upon the undersigned and their successors and assigns. This Guaranty may not be amended or modified except by written agreement executed by both the Aviation Authority and the undersigned. This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida.



**IN WITNESS WHEREOF**, the undersigned has executed this Agreement of Guaranty  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
**GUARANTOR**

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

*[Corporate Seal]*

Date: \_\_\_\_\_

**OR**  
**TWO WITNESSES:**

(1) \_\_\_\_\_

Printed Name: \_\_\_\_\_

(2) \_\_\_\_\_

Printed Name: \_\_\_\_\_

## APPENDIX 1

### Standards for Operating Concession

A. **Operating Hours.** Company shall operate the Concession on the Premises in accordance with the provisions of this Agreement, beginning 2 hours prior to the first daily departure and continuing until the last daily departure, which is typically from 5:00 a.m. to 10:00 p.m., seven (7) days per week or such other hours as the Chief Executive Officer may require from time to time (which may be twenty four (24) hours per day, seven (7) days per week) throughout the term hereof, to provide a high level of service to the traveling public.

B. **Type of Operation.** Company shall at all times during the term hereof occupy, equip, furnish, operate and maintain a first-class facility on the Premises for the display and sale of merchandise and shall keep the Premises in a safe, clean, orderly, and attractive condition satisfactory to the Chief Executive Officer and conforming to the South Airport Complex Tenant Design Criteria. Company shall maintain a sufficient number of trained personnel to ensure that customers of Company will receive prompt and courteous service at all times. Company shall offer for sale only items of the highest quality. Any item or service which the Chief Executive Officer deems offensive to the general public shall be promptly and permanently removed by Company from the Premises upon notice from the Chief Executive Officer. Company shall not permit any nuisance, waste or injury to be committed on the Premises.

C. **Quality of Merchandise.**

1. Company acknowledges that the primary goal of the Aviation Authority, with regard to the concession operations hereunder is to provide to the public and the air traveler high quality merchandise and first-class service at reasonable prices. Company further acknowledges the special characteristics of the Orlando air traffic market, which has a very high proportion of tourist travelers, many with small children, who spend considerable time in the South Terminal Complex before departing for their destinations and frequently avail themselves of Company' services. To ensure that these visitors depart Orlando with the best impression possible of the Airport and the community, the Aviation Authority is unequivocally committed to maintain high quality items, products and services at reasonable prices at all times throughout the term of this Agreement. The Company shall sell only high-quality items which shall be comparable in quality to comparable items sold in first class facilities of similar type in the Greater Orlando area.

2. Upon written notice to Company by the Chief Executive Officer of any violation of this Appendix 1.C. with respect to the failure to comply with any applicable municipal county, state and federal laws, ordinances and regulations with respect to the services at the Premises (which notice shall specify the item constituting the violation), Company shall correct such violation within twenty four (24) hours of the time of receipt of such written notice (or such greater period of time that the Chief Executive Officer may allow) and promptly advise the Chief Executive Officer in writing of the corrective measures Company has taken.

3. At any time during the Term of this Agreement, the Chief Executive Officer may hire an independent consultant to undertake a survey of the overall quality of the items at

the Concession (or the quality of one or more particular items thereof) served by Company in the South Terminal Complex and the quality of the merchandise sold in a first class facility of similar type in the Greater Orlando area. If the survey indicates that the quality of any items sold by Company is below that of a store of similar type in the greater Orlando area, the Chief Executive Officer may send a written notice to Company specifying the deficiencies in the quality of its merchandise noted in the survey and directing Company to make the required improvements within fifteen (15) days from the date of receipt of such written notice (or such greater period of time that the Chief Executive Officer may allow) and promptly to advise the Chief Executive Officer in writing of the corrective measures Company has taken.

4. Company shall be in default under this Agreement if it: (i) fails within the specified time to make the improvements in the quality of its merchandise as required under Appendix 1.C.3.; (ii) fails within the specified time to make the improvements in the quality of Company's merchandise under Appendix 1.C.2, above, a total of three (3) times (aggregating violations of Appendix 1.C.2) during any consecutive twelve (12) month period; or (iii) fails to make the improvements in the quality of Company's merchandise required under Appendix 1.C.2 within twenty four (24) hours (or such greater period as the Chief Executive Officer may allow) or Appendix 1.C.3. within forty-seven (47) hours after notice from the Executive on any single occasion.

5. The Aviation Authority may declare Company in default of this Agreement for violation of the requirements of this Appendix 1.C. without reference to the thirty (30) day notice period set forth in Article 14.A.4.

D. **PCI Compliance.** Company shall not connect to or utilize any computer network or systems of the Aviation Authority, including, without limitation, for transmission of credit card payments. Company shall be solely responsible for providing and maintaining its own computer networks and systems and shall ensure its system ensure its system used to collect, process, store or transmit credit card or customer credit card and/or personal information is compliant with all applicable Payment Card Industry ("PCI") Data Security Standard ("DSS").

1. Company shall, within five (5) days, notify the Aviation Authority of any security malfunction or breach, intrusion or unauthorized access to cardholder or other customer data, and shall comply with all then applicable PCI requirements.

2. Company, in addition to notifying the Aviation Authority and satisfying the PCI requirements, will immediately take the remedial actions available under the circumstances and provide the Aviation Authority with an explanation of the cause of the breach or intrusion and the proposed remediation plan. Company will notify the Aviation Authority promptly if it learns that it is no longer PCI DSS compliant and will immediately provide the Aviation Authority with a report on steps being taken to remediate the non-compliance status and provide evidence of compliance once PCI DSS compliance is achieved.

3. Company, its successor's and assigns, will continue to comply with all provisions of this Agreement relating to accidents, incidents, damages and remedial requirements after the termination of this Agreement.

4. Company shall ensure strict compliance with PCI DSS for each credit card transaction and acknowledges responsibility for the security of cardholder data. Company will create and maintain reasonable detailed, complete and accurate documentation describing the systems, processes, network segments, security controls and dataflow used to receive, process transmit store and secure Customer's cardholder data. Such documentation shall conform to the most current version of PCI DSS.

5. Company must maintain PCI Certification as a bankcard merchant at the Airport. Company is responsible, at Company's own expense, to contract and pay for all quarterly, annual or other required assessments, remediation activities related to processes within Concessionaire's control, analysis or certification processes necessary to maintain PCI certification as a bankcard merchant.

6. PCI DSS - Company shall make available on the Premises, within twenty four (24) hours upon request by the Aviation Authority, such documentation, policies, procedures, reports, logs, configuration standards and settings and all other documentation necessary for the Aviation Authority to validate Company's compliance with PCI DSS as well as make available to the individuals responsible for implementing, maintaining and monitoring those system components and processes. Requested logs must be made available to the Aviation Authority in electronic format compatible with computers used by the Aviation Authority.

7. Evidence of PCI DSS Compliance – Company agrees to supply their PCI DSS compliance status and evidence of its most recent validation of compliance upon execution of the Contract. Company must supply to the Aviation Authority evidence of validation of compliance at least annually to be delivered along with the Annual Certification of Fees in accordance with Article 5.C. of this Agreement.

**E. Standards of Service.**

1. Company shall at all times during the term hereof maintain a sufficient number of properly trained personnel to ensure that all customers of Company receive prompt and courteous service at all times, and all such personnel, while on or about the Premises, shall be polite, clean, appropriately attired and neat in appearance. Employees of Company shall wear appropriate identification badges, subject to the approval of the Chief Executive Officer, and employees performing similar jobs shall wear similar uniforms, which shall be clean and pressed.

2. Company shall continuously monitor the supply of the merchandise to ensure that there is a sufficient supply of such items on hand at all times to meet the foreseeable demand therefor.

3. Except as the Chief Executive Officer may otherwise agree in writing, Company shall operate this Concession at the Premises only through its own employees. Company shall comply with the requirements of all statutes, regulations and rules applicable to its employment practices in connection with the operation of this Concession, including, without limitation, the Fair Labor Standards Act, shall pay all appropriate federal and state employment and withholding taxes, and shall maintain records demonstrating compliance with the foregoing. All such records shall, upon reasonable notice from the Chief Executive Officer, be made available, either at the Premises, or, at the Chief Executive Officer 's option, at the offices of the Aviation

Authority, for inspection by the Aviation Authority, through its duly authorized representatives as often as the Chief Executive Officer shall request for a period of up to three (3) years after the end of the Agreement Period to which such records pertain.

F. **Sanitary Condition of Premises and Equipment.**

1. The Premises and all equipment and materials used by Company shall at all times be clean and sanitary and free from rubbish, refuse, garbage, dust, dirt and other offensive or unclean materials.

2. Company shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Premises or annoy, disturb or be offensive to others in the South Terminal Complex.

3. In the event Company fails to perform any sanitation procedures which the Chief Executive Officer determines are necessary to maintain the Premise and any improvements, furnishings, fixtures, trade fixtures, signs and equipment therein in properly sanitary condition, the Chief Executive Officer may, by written notice, direct Company to perform such procedures promptly, and, if Company fails to do so, Aviation Authority may, without waiving any of its other rights under this Agreement, enter upon the Premises to perform such procedures and require Company to pay the costs thereof.

G. **Deliveries.** All deliveries to and from the Premises shall be during such hours and at such locations as the Chief Executive Officer may specify. In addition, Company shall not use the Automated Guideway Transit System at the Airport for the purpose of transporting merchandise, supplies, equipment or refuse between the Landside and Airside Buildings.

H. **Reasonable Prices.**

1. Price charged for all items offered for sale on the Premises shall be fair and reasonable. "Reasonable prices" for merchandise sold by Company on the Premises shall be defined as prices comparable to the prices charged for comparable items sold at facilities of comparable quality in the Orlando area.

2. In addition to the requirements of Appendix 1.H.1. above, where a retail sales price is printed on any item, the price charged by Company for said items shall not exceed the printed price.

3. Company's initial schedule of merchandise items is set forth in Exhibit "B". The initial price of merchandise may not be greater than the prices that Company submitted as part of its proposal to the Aviation Authority.

4. Notwithstanding any other provision hereof, if the Chief Executive Officer makes a preliminary determination that any particular price or charge of Company on the Premises is excessive in relation to prices or charges for comparable items at the comparable facilities mentioned above, the Chief Executive Officer may notify Company in writing that it must reduce such price or charge, and Company shall have ten (10) days from the date of receipt of such notice to implement an appropriate reduction in accordance with such notice. Such price or

charge may thereafter be reinstated with the Chief Executive Officer's written approval if Company is able to produce evidence demonstrating to the Chief Executive Officer that such price or charge is reasonable in relation to prices and charges for comparable items in such relevant facilities mentioned above. In the event the Chief Executive Officer declines to approve the reinstatement of such price or charge, Company may appeal the Chief Executive Officer's decision to the Aviation Authority's Concession/Procurement Committee, by written notice served upon the Aviation Authority within the three (3) business days following action by the Chief Executive Officer. In the event of such an appeal, the Concession/Procurement Committee shall evaluate the evidence presented and make a determination, subject to appeal to the Aviation Authority's governing board by written notice served upon the Aviation Authority within three (3) days after such determination by the Concession/Procurement Committee. The decision of the Aviation Authority's governing board shall be final and may be reviewed by certiorari by the Circuit Court for Orange County, Florida. In no event shall Aviation Authority, its Chief Executive Officer, or any member, officer, employee or agent thereof, be liable in damages or otherwise to Company or to any third party for any action taken under this paragraph or for any failure of the Company to enforce its right hereunder.

5. The cash registers used by Company must display prices for each item so that they can be easily seen by patrons while a transaction is being made and shall provide for each patron a detailed receipt of items sold.

I. **Signs and Graphics.** In entering this Agreement, Company acknowledges the Aviation Authority's desire to maintain a high level of aesthetic quality in all concession facilities throughout the South Terminal Complex. The Chief Executive Officer shall have the right at any time during the term of this Agreement to enter the Premises to ensure that Company's operations conform to the Aviation Authority's South Airport Complex Tenant Design Criteria. Upon receipt of a written notice from the Chief Executive Officer that he has determined that Company's display or operations do not conform to the South Airport Complex Tenant Design Criteria, Company shall immediately make the modification to achieve conformance. All signage and graphics on the Premises must be in accordance with the South Airport Complex Tenant Design Criteria and approved by the Chief Executive Officer prior to the installation.

J. **Change Making Services.** Company shall provide without charge, change making service at each cashier's location in the Premises.

K. **Paging System.** Company shall not install any paging system within the Premises.

L. **Manager.** The management, maintenance, and operation of the Premises and the concession conducted thereon 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 subject to the direction and control of Company. Company will cause such manager to be available at the Airport during normal business hours, and Company 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.

Company shall provide Manager(s) of sufficient training and experience acceptable to the Chief Executive Officer who shall be on site during all operating hours.

M. **Personnel.**

1. Company shall, in its operation of the Premises under this Agreement, employ or permit the employment of only such personnel that will assure a high standard of service to the public. All such personnel, while on or about the Premises shall be clean, neat in appearance, uniformly attired (with appropriate identification badge displaying no less than Company's and employee name), and be courteous at all times.

2. No personnel employed by Company, while on or about the Airport, shall use improper language, act in a loud, boisterous, or otherwise improper manner, or be permitted to solicit business in an inappropriate manner within the Premises. Company shall maintain a sufficient number of trained personnel to ensure that customers of Company will receive prompt and courteous service at all time.

N. **Automobile Parking.** The Aviation Authority shall provide one parking space for Company's resident manager. Employee parking will be provided by the Aviation Authority at a parking lot that is not adjacent to the South Terminal Complex, but the Aviation Authority will provide shuttle bus service between such parking lot and the South Terminal Complex. Use of the manager's space and the employee parking lot shall be subject to the Aviation Authority's rules and regulations, including payment of fees and any taxes for the manager's space, the employee parking lot and shuttle bus service set by the Aviation Authority and subject to change from time to time at the Aviation Authority's discretion.

O. **Shopping Service.** The Chief Executive Officer shall have the right (without limitation) to monitor and test the quality of Company's service and the effectiveness of its cash handling procedures through the use of a professional shopping service employed by the Aviation Authority. In the event that the Aviation Authority determines through the use of such shopping service that the level of Company's service is below that required under the terms of this Agreement or that Company's sales are not being properly recorded, then Company shall immediately undertake the correction of the problem.

P. **Customer Complaints.** In the event that any written customer complaint with respect to Company's operations on the Premises is delivered to Company at the Premises (or to the Aviation Authority and forwarded to Company), Company agrees that it shall promptly respond in writing to such complaint and make a good faith attempt to explain, resolve or rectify the cause of the complaint. Additionally, Company shall provide to the Aviation Authority, without further demand, a copy of each such complaint and Company's written response thereto.

Q. **No Smoking Policy.** Except for areas otherwise designated by Aviation Authority, the Airport is a non-smoking facility and Company expressly agrees to abide by the Aviation Authority's no smoking policy throughout the Premises.

R. **Sustainability.** In support of the Aviation Authority's Sustainability Management Plan, Company agrees to adhere to the following Aviation Authority Policies and Procedures, as they are updated, and to be responsible to coordinate with the Aviation Authority for updates:

1. Green Cleaning Procedure
2. Integrated Pest Management Procedure
3. Waste Management Policy
4. Indoor Air Quality Procedures.

In addition, Company agrees to:

1. ban all petroleum-based plastic disposable consumer containers, and bags;
2. to the greatest extent possible, source separate all solid waste refuse into recyclables, compostables (where applicable), and refuse;
3. procure and use only green cleaning chemicals certified under the Green Seal or equivalent;
4. procure recycled content paper for printing uses that has a minimum recycled content of 100%;
5. where applicable, donate surplus food to the greatest extent allowable by food safety regulations;
6. if possible, use recyclable bags;
7. utilize high efficiency lighting that meets or exceeds Florida Building Code, Energy Conservation standards; and
8. utilize water conservation efforts that meet or exceed Florida Building Code, Energy Conservation standards.



## **APPENDIX 2 Required Covenants**

A. **Agreements with the United States, State of Florida, County of Orange and City of Orlando.** This Agreement shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws, and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the Aviation Authority and the City of Orlando, and those between the Aviation Authority or the City of Orlando and the United States of America, the State of Florida, or the County of Orange, or their boards, agencies or commissions, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or city funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

B. **Right to Amend.** In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, Company hereby consents to any and all such modifications and changes as may be reasonably required.

C. **Covenants Against Discrimination.**

1. Company on behalf of itself, its successors in interest and its 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 benefits of, or be otherwise subjected to discrimination in the use of the Premises or the Airport; (2) that in the construction of any Improvements at the Airport and the furnishing of services in connection therewith, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Company shall operate at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and Part 27, Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting From Federal Financial Assistance (1991), as said Regulations may be amended. Likewise, Company shall comply with laws of the State of Florida, prohibiting discrimination because of race, color, religion, sex, national origin, age, disability or marital status. Should Company authorize another person or entity, with the Aviation Authority's prior written consent, to provide services or benefits in or in connection with its rights or obligations under this Agreement, Company shall obtain from such person or entity a written agreement pursuant to which such person or entity shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Company shall furnish the original or a true copy of such agreement to the Aviation Authority.

2. Company will provide all information and reports required by said Regulations, or by directives issued pursuant thereto, and shall permit access to its books,

records, accounts, other sources of information, and its facilities as may be determined by the Aviation Authority or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of Company is in the exclusive possession of another who fails or refuses to furnish this information, Company shall so certify to the Aviation Authority or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

3. In the event of a breach of any of the above nondiscrimination covenants, the Aviation Authority shall have the right to impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate. Such rights shall include the right to terminate this Agreement and to re-enter and repossess the Premises and the improvements thereto, and hold the same as if this Agreement had never been made. The rights granted to the Aviation Authority by the foregoing sentence shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 and Part 27 are followed and completed, including exercise or expiration of appeal rights.

4. Company assures Aviation Authority that no person shall be excluded on the grounds of race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended from time to time. Company also assures the Aviation Authority that it will require its covered suborganizations to provide assurances to the same effect and provide copies thereof to the Chief Executive Officer.

5. Company further assures Aviation Authority that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure 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 at or in connection with its operations at the Premises. Company also assures the Aviation Authority that it will require its contractors and sublessees to provide assurances to the same effect and ensure that such assurances are included in contracts and subleases at all tiers, which are entered into in connection with Company's operations at the Premises.

6. a. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, subpart F. Company 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 covered by 49 CFR Part 23, subpart F.

b. Company agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

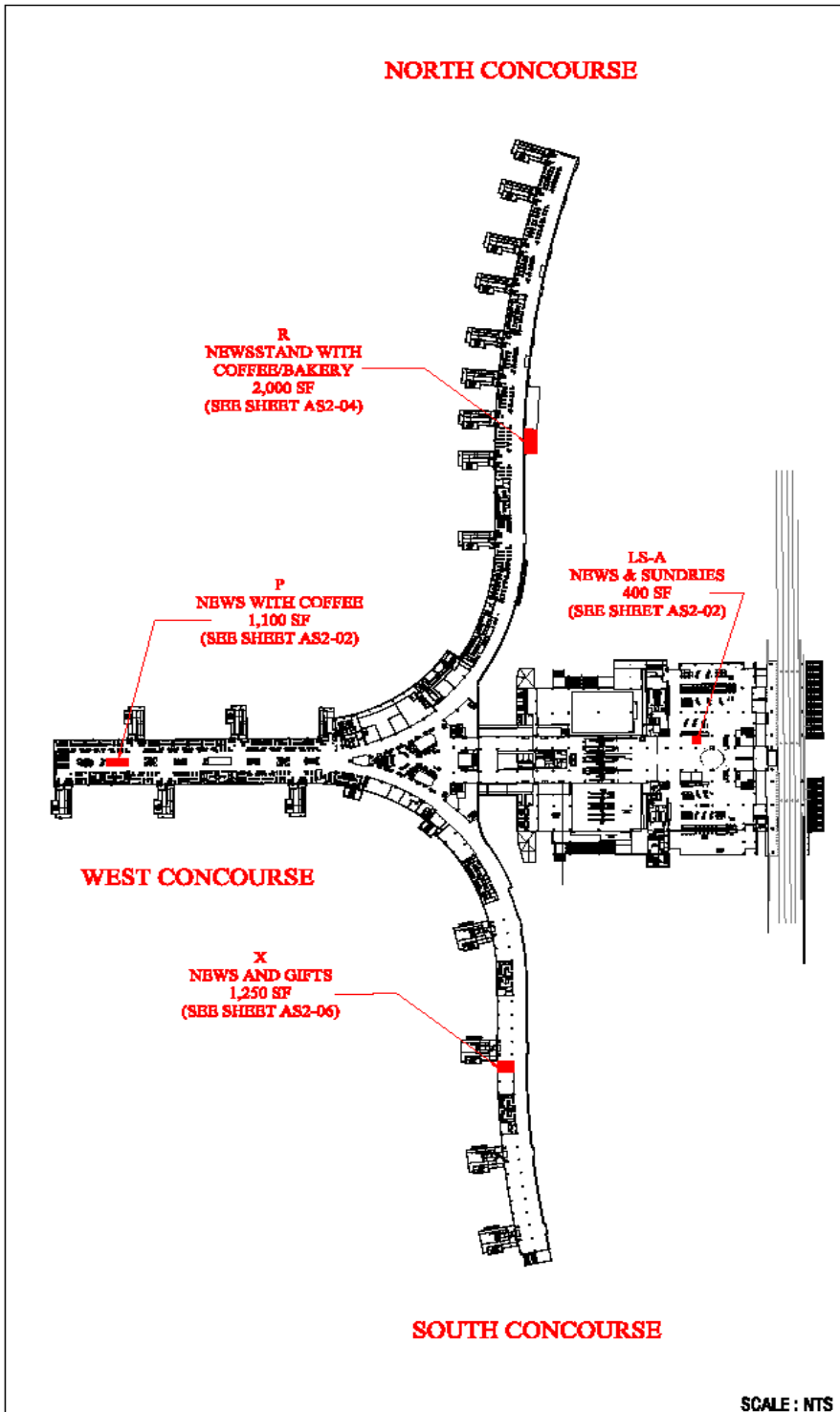
7. The Aviation Authority may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions

including nondiscrimination provisions concerning the use and operation of the Airport, and Company agrees that it will adopt such requirements as part of this Agreement.

D. **Right to Modify.** The parties hereto covenant and agree that, during the Term hereof, the Aviation Authority, may unilaterally modify this Agreement upon advice of its legal counsel, in order to conform to judicial or Federal Trade Commission rulings or opinions. This Appendix 2 shall not preclude Company from contesting said rulings or opinions, but Company shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

E. **Tax Exempt Status of the Aviation Authority's Revenue Bonds.** Company agrees to comply promptly with any applicable provisions of any federal tax statute, and all regulations or other binding authority promulgated or decided thereunder, as required to permit the Aviation Authority's capital expansion projects to be planned and constructed by the Aviation Authority with revenue bonds the interest on which is generally exempt from federal income taxation, other than any applicable individual or corporate alternative minimum taxes (and other than during any period while such revenue bonds are held by a "substantial user" of the projects financed by such revenue bonds or a "related person" to a "substantial user"), including, without limitation, the execution by Company and delivery to the Aviation Authority on the date of execution of this Agreement of an election not to claim depreciation or any investment credit with respect to any portion of such capital expansion projects or any other portion of the Airport System in the Tax Election Form, attached hereto as Exhibit "G." Such exhibit shall be deemed to be a part of this Agreement and shall be binding upon Company, its successors and assigns.

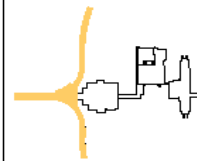
**EXHIBIT "A"  
Premises**



GREATER ORLANDO AVIATION AUTHORITY  
ORLANDO  
INTERNATIONAL  
AIRPORT

**STC - P1  
CONCESSIONS**

**AIRSIDE  
SOUTH  
CONCOURSE  
LEVEL 2**



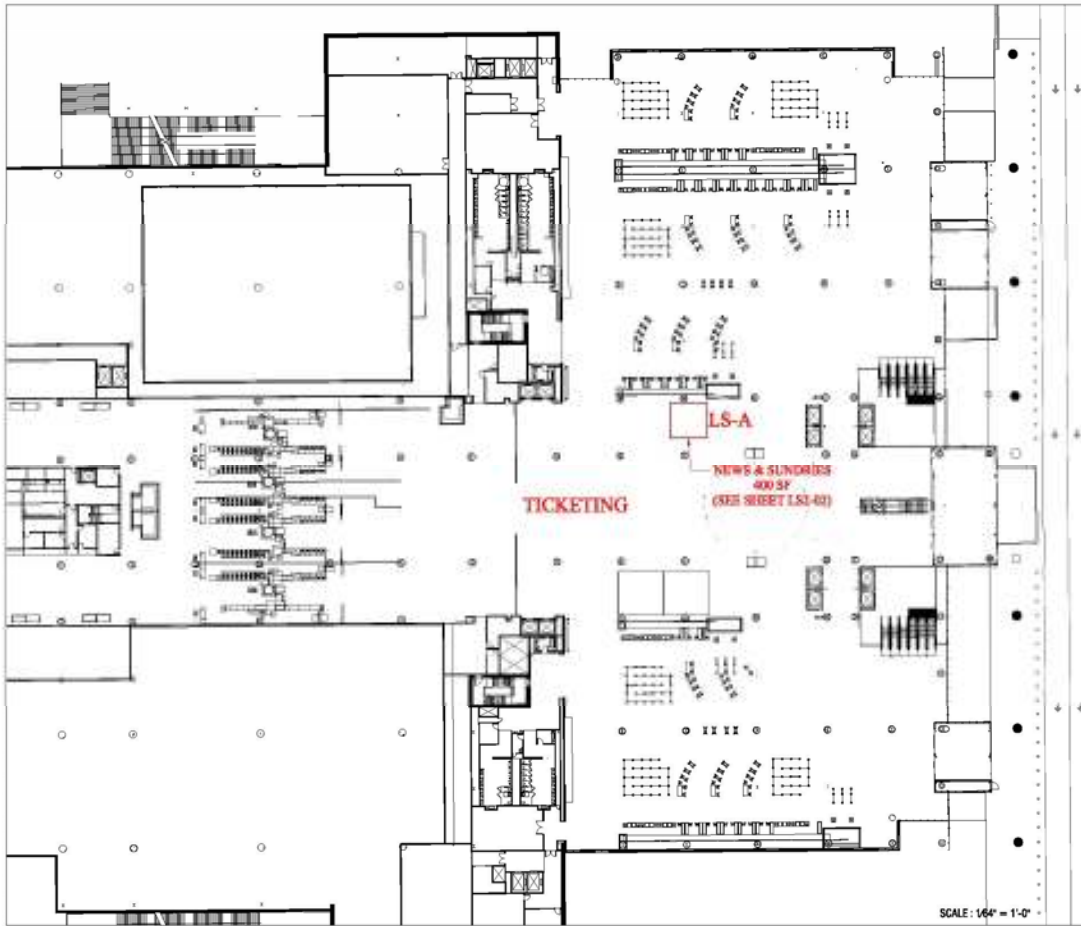
**RETAIL  
PACKAGE 2**

**SCHENKELSHULTZ**  
ARCHITECTURE

drawn: SL  
checked: AR  
date: 08-17-18  
comm. no.: 1820712

**EXHIBIT A**

**AS2-00**



ORLANDO  
INTERNATIONAL  
AIRPORT

STC - P1  
CONCESSIONS

LANDSIDE  
TICKETING  
LEVEL 2

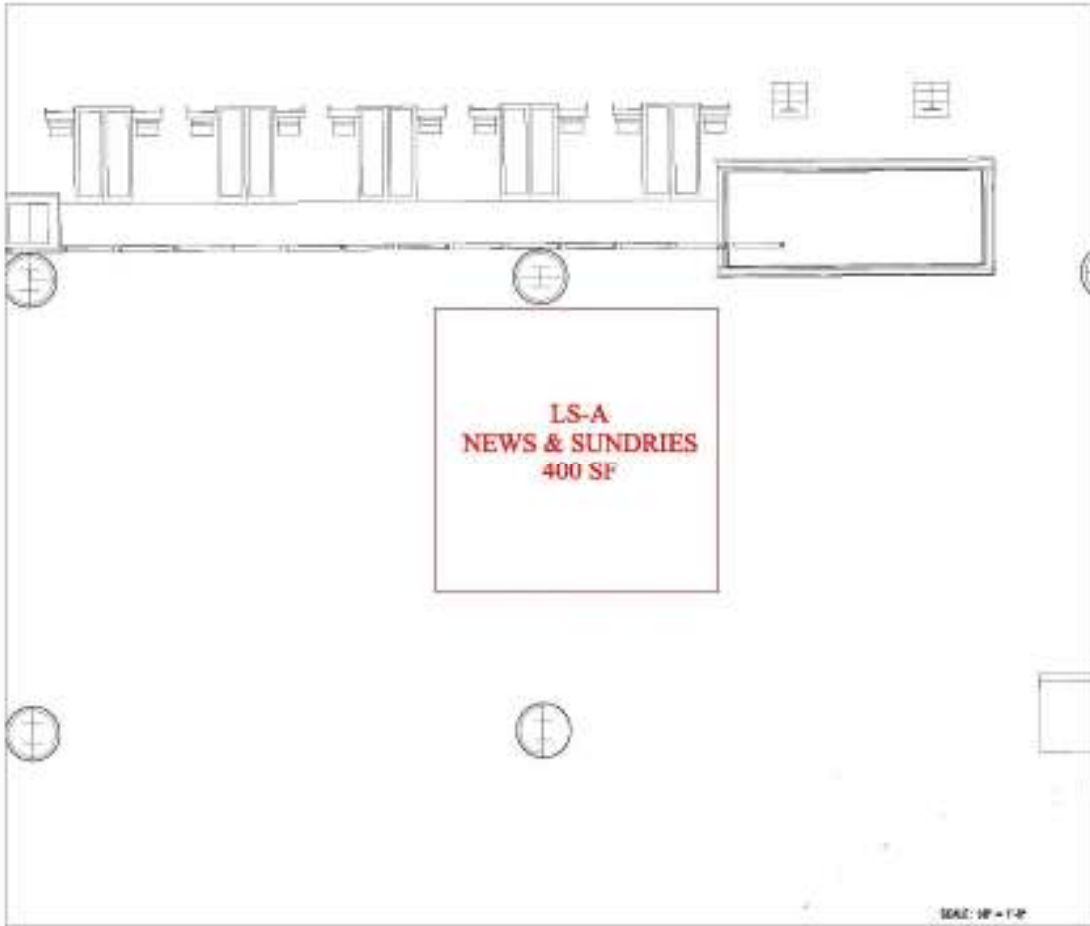


RETAIL  
PACKAGE 2

**SCHENKELSHULTZ**  
ARCHITECTS PLLC

Drawn: SL  
checked: ES  
date: 08-07-18  
comm. no.: 1820712

EXHIBIT A  
**LS4-01**



ORLANDO INTERNATIONAL AIRPORT

STD - P1 CONCESSIONS

LANESIDE TICKETING LEVEL 2



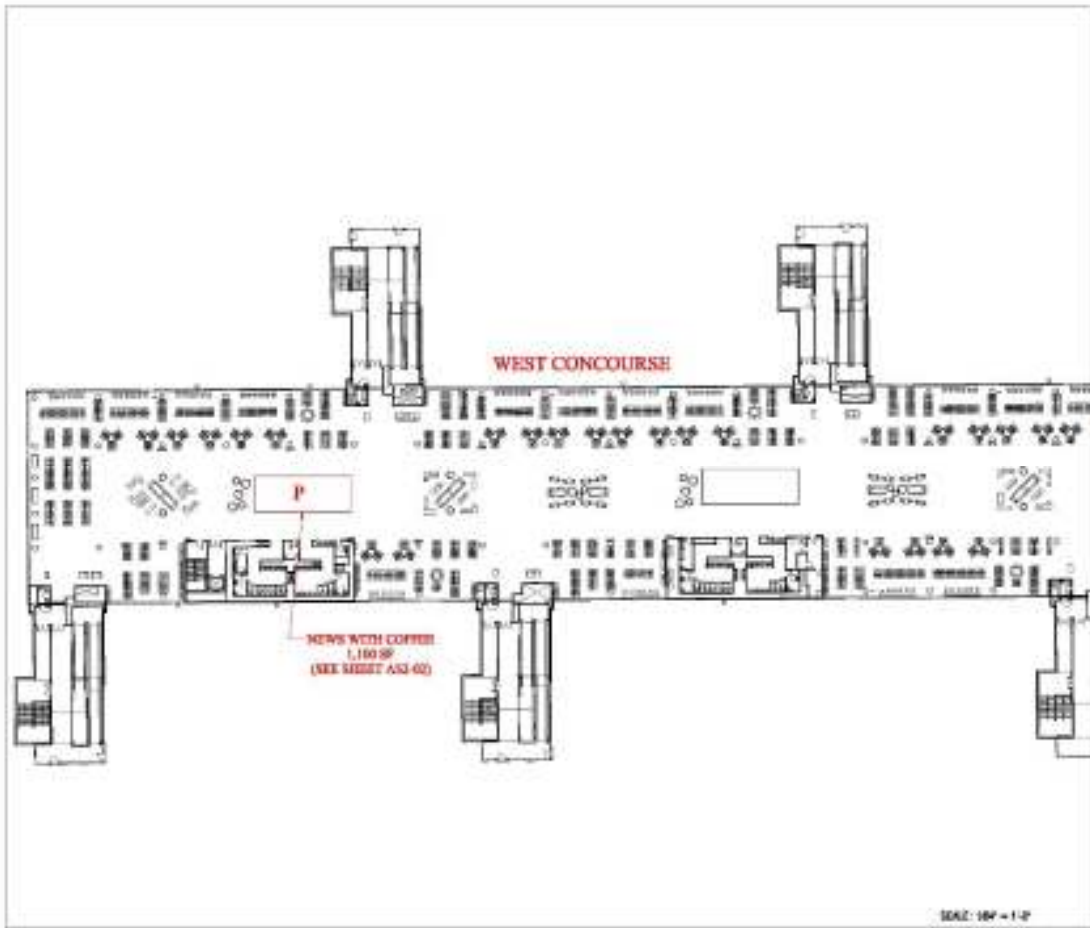
RETAIL PACKAGE 2

**SCHENKEL-SHULTZ**  
 PROPERTY MANAGEMENT

Project: LS  
 Client: OIA  
 Date: 04-27-18  
 Drawing No.: 100713

EXHIBIT A  
**LS2-02**

SCALE: 1/4" = 1'-0"



  
 ORLANDO INTERNATIONAL AIRPORT  


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 STD - P1  
 CONCESSIONS  


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 AIRSIDE  
 WEST CONCOURSE  
 LEVEL 2  


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 RETAIL  
 PACKAGE 2  


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 SCHENKEL-SHULTZ  
 ARCHITECTS  

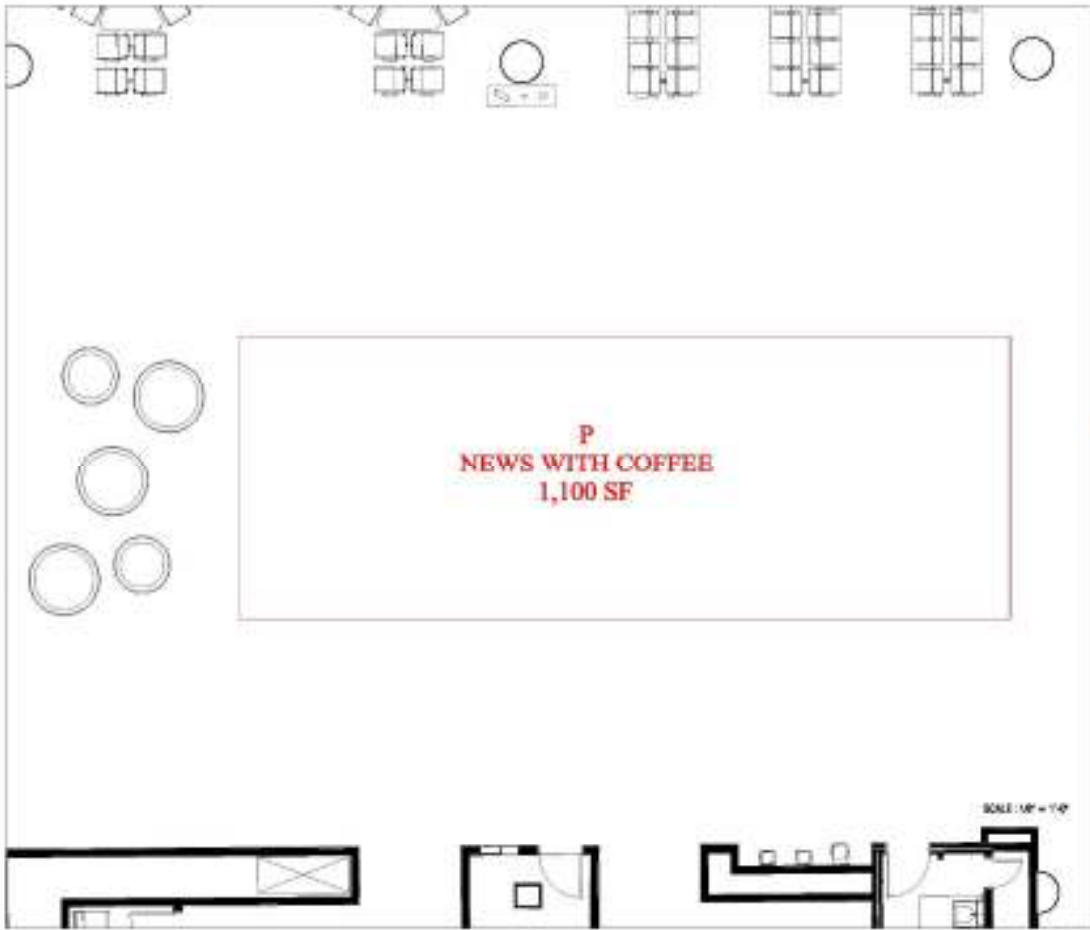

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 Date: 06-27-18  
 Drawing No.: 100713  


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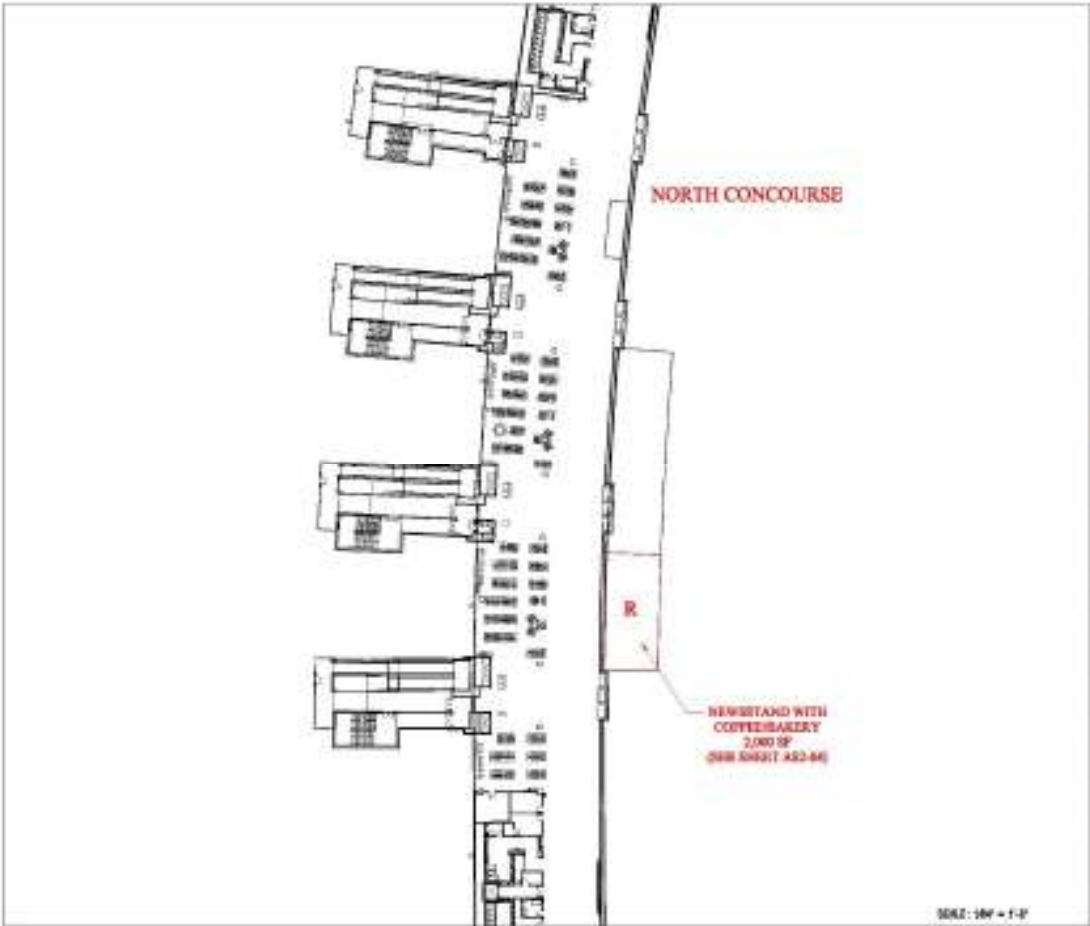
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**AS2-01**

EXHIBIT A



  
 ORLANDO INTERNATIONAL AIRPORT  
**STD - P1 CONCESSIONS**  
 AIRSIDE WEST CONCOURSE LEVEL 2  
  
 RETAIL PACKAGE 2  
**SCHENKEL-SHULTZ**  
 ARCHITECTS  
 Project: 01  
 Client: LG  
 Date: 04-27-18  
 Drawing No.: 100712  
**EXHIBIT A**  
**AS2-02**





ORLANDO  
INTERNATIONAL  
AIRPORT

SIC - P1  
CONCESSIONS

AFSIDE  
NORTH CONCOURSE  
LEVEL 2



NETA  
PACKAGE 2

**SCHENKEL SHULTZ**  
ARCHITECTS

Drawn:	SL
Checked:	LS
Date:	06-07-18
Sheet No.:	180713

EXHIBIT A  
**AS2-03**

EXHIBIT A



ORLANDO  
INTERNATIONAL  
AIRPORT

SIC - P1  
CONCESSIONS

AFSIDE  
NORTH CONDOURSE  
LEVEL 2

NETA  
PACKAGE 2

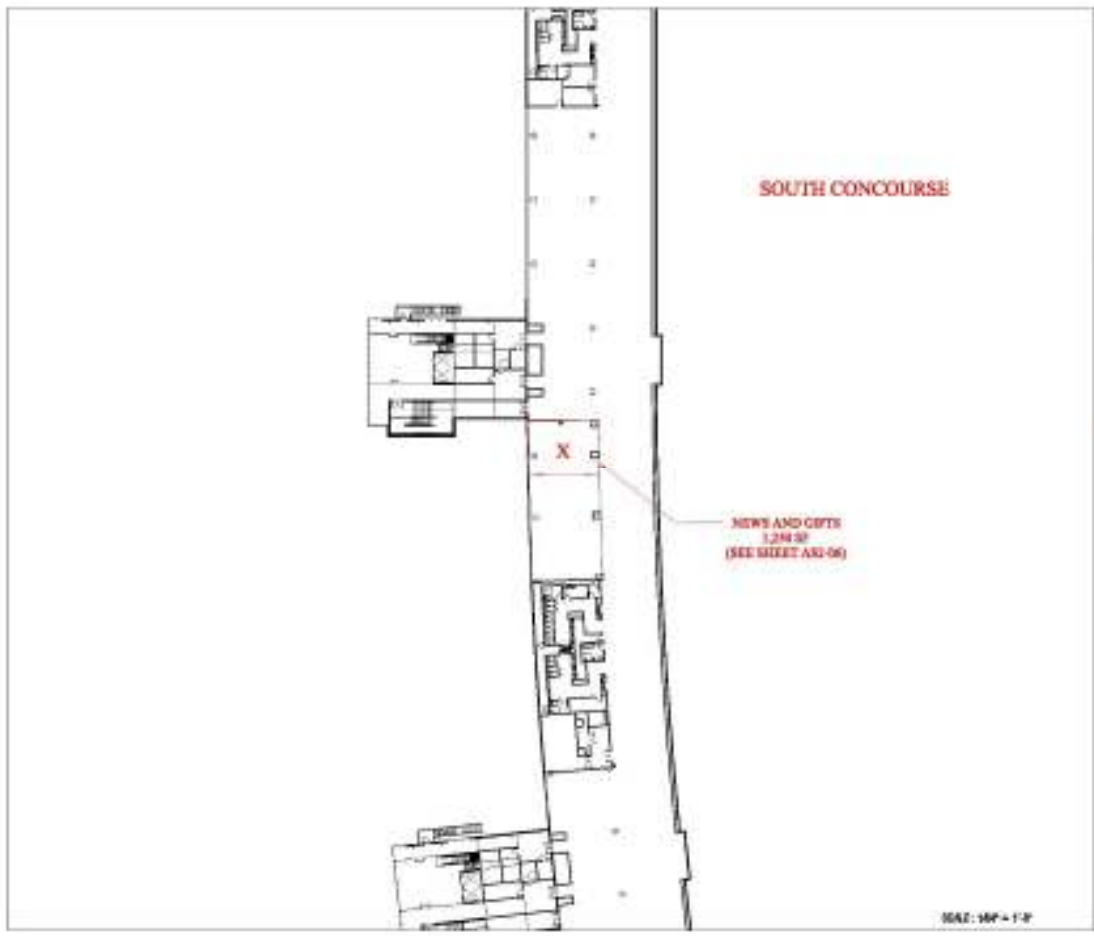
SCHENKEL SULLITZ  
ARCHITECTURAL FIRM, INC.

Drawn:	SL
Checked:	LS
Date:	06-07-18
Drawn No.:	180713

EXHIBIT A

**AS2-04**

SCALE: 1/8" = 1'-0"



DUBLIN INTERNATIONAL AIRPORT

SIC - P1 CONCESSIONS

APSIDE SOUTH CONCOURSE LEVEL 2



SCHENKEL-SHULTZ ARCHITECTS

Drawn: SL  
 Checked: GS  
 Date: 06-21-18  
 Sheet No.: AS2-05

EXHIBIT A  
**AS2-05**

SCALE: 1/8" = 1'-0"

EXHIBIT A



O'HARE  
INTERNATIONAL AIRPORT

SEC - P1  
CONCESSIONS

APSIDE  
SOUTH CONCOURSE  
LEVEL 2

RETAIL  
PACKAGE 2

SCHENKEL SHULTZ  
ARCHITECTS

Drawn:	SL
Checked:	LS
Date:	06-27-18
Drawn No.:	1002712

EXHIBIT A

**AS2-06**

SCALE: 1/8" = 1'-0"

EXHIBIT A

**EXHIBIT "B"**  
**List of Merchandise**

**EXHIBIT "C"**  
**Monthly Revenue Report**  
**Greater Orlando Aviation Authority**  
**STC RETAIL PACKAGE 2 CONCESSION AGREEMENT**

Report for (Month, Year): \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_

**MONTHLY GROSS RECEIPTS:**

Sales:

Unit LS-A	_____	_____	(A1)
Unit P	_____	_____	(A2)
Unit R	_____	_____	(A3)
Unit X	_____	_____	(A4)

Sales Total: \_\_\_\_\_ (A1-4)

Percentage Fee: \_\_\_\_\_ x \_\_\_\_\_% (B)

Percentage Fee Payment: \_\_\_\_\_ (AxB)

(Less) Minimum Monthly Concession Fee: < \_\_\_\_\_ >

**AMOUNT DUE TO AVIATION AUTHORITY:** \_\_\_\_\_

\_\_\_\_\_  
 Name of Person(s) Submitting Report

\_\_\_\_\_  
 Title

(\_\_\_\_\_) \_\_\_\_\_  
 Phone Number

\_\_\_\_\_  
 Date

**EXHIBIT "D"**

**South Airport Complex Tenant Design Criteria (December 2017)**

**EXHIBIT "E"**

Bond No. \_\_\_\_\_

**PAYMENT BOND FORM**

**GREATER ORLANDO AVIATION AUTHORITY**

**KNOW ALL MEN BY THESE PRESENTS** that \_\_\_\_\_, a [INSERT CORPORATE INFORMATION] authorized to do business in the state of Florida, hereinafter referred to as "Principal," and [INSERT NAME OF BANK OR OTHER SURETY], a corporation organized under the laws of the State of [INSERT CORPORATE INFORMATION OF SURETY] and licensed to do business in the State of Florida, hereinafter referred to as "Surety," are held and firmly bound unto the Greater Orlando Aviation Authority, as Obligee, hereinafter referred to as the "Aviation Authority," and [INSERT NAME OF CONTRACTOR PERFORMING THE WORK], a [INSERT CORPORATE INFORMATION OF CONTRACTOR] authorized to do business in the state of Florida, as Contractor and Co-Obligee, hereinafter referred to as the "Company," in the Penal Sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_), for the payment of which sum well and truly made, Principal and Surety bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has leased from the Aviation Authority real property at Orlando International Airport, in accordance with the terms of an Orlando International Airport STC Retail Package 2 Concession Agreement, which is incorporated herein by reference, made a part hereof, and is hereinafter referred to as the Agreement; and

**WHEREAS**, Principal has by written agreement dated \_\_\_\_\_, 20\_\_, entered into a contract, hereinafter referred to as the Contract, hereinafter referred to as Contractor for the installation of equipment and/or the construction of improvements to the above-described real property; and

**WHEREAS**, under the terms of the Agreement, Principal is required to indemnify and hold harmless the Aviation Authority from and against any and all claims of claimants, as defined in Sections 255.05(1) and 713.01(16), Florida Statutes, for installation of equipment and/or construction of improvements to the above-described real property, and is also required to provide a bond protecting the rights of such claimants to payment for services, labor, materials or supplies used directly or indirectly in the installation of equipment and/or the construction of improvements to the above-described real property; and

**WHEREAS**, Surety is authorized to do business in the State of Florida;

**NOW, THEREFORE**, the condition of this obligation is such that if Principal shall promptly make payments to all claimants as defined in Sections 255.05(1) and 713.01(16), Florida Statutes, supplying Principal and/or Contractor with services, labor, materials, or supplies, used directly or indirectly by Principal and/or Contractor in the installation of equipment and/or construction of improvements to the above-described real property as provided for in Section 5.2 of the Agreement and in the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:



1. This bond is furnished for the purpose of complying with the requirements of Section 255.05, Florida Statutes, to the extent applicable; and for the purpose of exempting any legal or equitable interest in real property owned by the Aviation Authority or the Principal from liens, and complying with the requirements of Section 713.23, Florida Statutes, to the extent applicable.

2. It is a specific condition of this bond that a claimant's right of action on the bond is limited to the provisions of Sections 255.05 and 713.23, Florida Statutes, including, but not limited to, the one-year time limitation within which suits may be brought.

Therefore, a claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his services, labor, materials or supplies shall, within forty-five (45) days after beginning to furnish services, labor, materials or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection. Any claimant who has not received payment for his services, labor, materials or supplies shall, within ninety (90) days after performance of the services or labor or completion of delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the services or labor or delivery of the materials or supplies and of the nonpayment. No action for the services, labor, materials or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year from the performance of the services or labor or completion of the delivery of the materials or supplies.

3. The Surety's obligations hereunder shall remain in full force and effect notwithstanding (i) amendments or modifications to the Agreement or Contract entered into by the Aviation Authority, Principal and/or Contractor without the Surety's knowledge or consent, (ii) waivers of compliance with or any default under the Agreement or Contract granted by the Aviation Authority to Principal or by Principal to Contractor without the Surety's knowledge or consent, (iii) the discharge of Principal from its obligations under the Agreement or Contract as a result of any proceeding initiated under the Bankruptcy Code of 1978, as the same may be amended, or any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceeding, or (iv) any other action taken by the Aviation Authority, Principal or Contractor that would, in the absence of this clause, result in the release or discharge by operation of law of the Surety from its obligations hereunder.

4. Any changes in or under the Agreement or Contract and compliance or noncompliance with any formalities connected with the Agreement or Contract or the changes therein shall not affect Surety's obligations under this bond, and Surety hereby waives notice of any such changes. Further, Principal and Surety acknowledge that the Penal Sum of this bond shall increase or decrease in accordance with approved changes or other modifications to the Agreement and/or the Contract.

**[SIGNATURE PAGE FOLLOWING]**

**IN WITNESS WHEREOF**, the Principal and Surety have executed this instrument under their several seals on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents fully signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered  
in the presence of:

"Principal"  
[NAME OF CONCESSIONAIRE]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

(SEAL)

Signed, sealed and delivered  
in the presence of:

"Surety"  
[NAME OF BANK OR OTHER SURETY]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Countersigned by Florida Registered Agent

Printed Name: \_\_\_\_\_

NOTE: If Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Surety shall execute and attach a certified copy of Power-of-Authority appointing individual Attorney-in-Fact for execution of Payment Bond on behalf of Surety.

**EXHIBIT "F"**

Bond No. \_\_\_\_\_

**PERFORMANCE BOND FORM**

**GREATER ORLANDO AVIATION AUTHORITY**

**KNOW ALL MEN BY THESE PRESENTS** that [INSERT CONCESSIONAIRE'S NAME], a [INSERT CONCESSIONAIRE'S CORPORATE INFORMATION] authorized to do business in the state of Florida, hereinafter referred to as "Principal," and [INSERT NAME OF BANK OR OTHER SURETY], a corporation organized under the laws of the State of [INSERT CORPORATE INFORMATION OF SURETY] and licensed to do business in the State of Florida, hereinafter referred to as "Surety," are held and firmly bound unto the Greater Orlando Aviation Authority, as Obligee, hereinafter referred to as the "Aviation Authority," and [INSERT NAME OF CONTRACTOR PERFORMING THE WORK], a [INSERT CORPORATE INFORMATION OF CONTRACTOR] authorized to do business in the state of Florida, as Contractor and Co-Obligee, hereinafter referred to as the "Company," in the Penal Sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_), for the payment of which sum well and truly made, Principal and Surety bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** Principal has leased from the Aviation Authority real property at the Orlando International Airport, in accordance with the terms of an Orlando International Airport STC Retail Package 2 Concession Agreement, which is incorporated herein by reference, made a part hereof, and is hereinafter referred to as the Agreement; and

**WHEREAS,** Principal has entered into a contract with Company dated \_\_\_\_\_, 20\_\_, (the "Contract") for the installation of equipment and/or the construction of improvements to the above-described real property in accordance with the plans and specifications prepared by \_\_\_\_\_, dated \_\_\_\_\_, which were approved by the Aviation Authority, and which are incorporated herein by reference and made a part hereof, and which are hereinafter referred to as the Plans and Specifications; and

**WHEREAS,** under the terms of the Agreement, Principal is permitted or required to complete the installation of equipment and/or construction of improvements to the above-described property in accordance with the Plans and Specifications and the requirements of the Agreement, and is also required to provide a bond guaranteeing the faithful performance of such installation of equipment and/or construction of improvements by the Principal and the Contractor or such replacement contractors as Principal may employ; and

**WHEREAS,** Surety is authorized to do business in the State of Florida;

**NOW, THEREFORE,** the condition of this obligation is such that if Principal, by and through Contractor or such replacement contractors as Principal may employ:

1. Promptly and faithfully completes and performs such installation of equipment and/or construction of improvements in accordance with the Plans and Specifications, the Contract, and the provisions of the Agreement in the time and manner prescribed therein;

2. Pays the Aviation Authority all losses, damages (liquidated or actual), including, but not limited to, damages caused by delays in performance of the Principal or the Contractor, expenses, costs and attorneys' fees, including those incurred in appellate proceedings, that the Aviation Authority sustains resulting directly or indirectly from failure of the Principal or the Contractor to complete the installation of equipment and/or construction of improvements in accordance with the Plans and Specifications or the terms of the Contract, or from any breach or default by Principal or the Contractor under the provisions of the Agreement in connection therewith; and

3. Pays the Aviation Authority all losses, damages, expenses, costs, attorneys' fees and other legal costs (including, but not limited to, those for investigative and legal support services), including those incurred in appellate proceedings, that the Aviation Authority sustains resulting directly or indirectly from conduct of the Principal or Contractor, including, but not limited to, want of care or skill, negligence, patent infringement, or intentionally wrongful conduct on the part of the Principal or the Contractor, their officers, agents, employees or any other person or entity for whom the Principal or the Contractor are responsible, then this bond is void; otherwise it shall remain in full force and effect.

In the event that the Principal, individually or by and through the Contractor or such replacement contractors as Principal may employ, shall fail to complete the installation of equipment and/or construction of improvements in accordance with the Plans and Specifications or the terms of the Contract, or to perform any of the terms, covenants and conditions of the Agreement during the period in which this Performance Bond is in effect, the Surety shall remain liable to the Aviation Authority for all such loss or damage, including reasonable attorneys' fees and other legal costs resulting from any failure to perform up to the amount of the Penal Sum.

In the event that the Surety fails to fulfill its obligations under this Performance Bond, then the Surety shall also indemnify and save the Aviation Authority harmless from any and all loss, damage, cost and expense, including reasonable attorneys' fees and other legal costs for all trial and appellate proceedings, resulting directly or indirectly from the Surety's failure to fulfill its obligations hereunder. This paragraph shall survive the termination or cancellation of this Performance Bond. The obligations set forth in this paragraph shall not be limited by the Penal Sum of this Bond.

The Surety's obligations hereunder shall be direct and immediate and not conditional or contingent upon the Aviation Authority's pursuit of its remedies against Principal, and shall remain in full force and effect notwithstanding (i) amendments or modifications to the Agreement or the Contract entered into by the Aviation Authority, Principal without the Surety's knowledge or consent, (ii) waivers of compliance with or any default under the Agreement or the Contract granted by the Aviation Authority to Principal or by Principal to Contractor without the Surety's knowledge or consent, (iii) the discharge of Principal from its obligations under the Agreement or the Contract as a result of any proceeding initiated under the Bankruptcy Code of 1978, as the same may be amended, or any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceedings, or (iv) any other action taken by the Aviation Authority or Principal or Contractor that would, in the absence of this clause, result in

the release or discharge by operation of law of the Surety from its obligations hereunder.

The institution of suit upon this Bond is subject to a statute of limitations of four (4) years for claims arising out of the actual installation of equipment and/or construction of improvements and five (5) years for all other claims arising out of this written contract, as set forth in Section 95.11, Florida Statutes.

Any changes in or under the Agreement or the Contract and compliance or noncompliance with any formalities connected with the Agreement or the Contract or the changes therein shall not affect Surety's obligations under this bond, and Surety hereby waives notice of any such changes. Further, Principal and Surety acknowledge that the Penal Sum of this bond shall increase or decrease in accordance with approved changes or other modifications to the Agreement and/or the Contract.

**[SIGNATURE PAGE TO FOLLOW]**  
**[SPACE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, the Principal and Surety have executed this instrument under their several seals on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents fully signed by its undersigned representative, pursuant to the authority of its governing body.

Signed, sealed and delivered  
in the presence of:

"Principal"  
[NAME OF CONCESSIONAIRE]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

(SEAL)

Signed, sealed and delivered  
in the presence of:

"Surety"  
[NAME OF BANK OR OTHER SURETY]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Countersigned by Florida Registered Agent

Printed Name: \_\_\_\_\_

NOTE: If Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Surety shall execute and attach a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Payment Bond on behalf of Surety.

**EXHIBIT "G"**

**Tax Election Form**

ELECTION BY LESSEE, SERVICE CONTRACTOR, MANAGEMENT CONTRACTOR OR OTHER CONTRACTING PARTY (THE "CONTRACTING PARTY") DESCRIBED IN I.R.C. §142 (b)(1)(B) NOT TO CLAIM DEPRECIATION OR AN INVESTMENT CREDIT WITH RESPECT TO SUCH PROPERTY

1. Description of Property:

New and expanded Airline Terminal Facilities at Orlando International Airport, excluding only the equipment, trade fixtures and leasehold improvements which Contracting Party represents and warrants will be paid for with its own funds and not reimbursed by the Aviation Authority, such equipment, trade fixtures and leasehold improvements to be described on Schedule "A", executed by Contracting Party and the Aviation Authority and attached to this election promptly following completion of the Contracting Party's work.

2. Name, Address and Taxpayer Identification Number of the Contracting Party:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

3. Name, Address and Taxpayer Identification Number of the Issuing Aviation Authority

Greater Orlando Aviation Authority  
Orlando International Airport  
One Jeff Fuqua Boulevard  
Orlando, Florida 32827-4399

Taxpayer Identification Number: 59-1696799

4. Date and Face Amount of the Issue, the proceeds of which are to be used to provide the Property:

Not to exceed: (i) \$430,500,000 Greater Orlando Aviation Authority Airport Facilities Revenue Bonds, Series 1988 of the City of Orlando, Florida; (ii) \$176,320,000 Greater Orlando Aviation Authority Facilities Revenue Bonds, Series 1992 A of the City of Orlando, Florida; and (iii) \$100,000,000 Airport Facilities Subordinated Commercial Paper Notes.

The undersigned, a duly authorized official of the Contracting Party, hereby elects (pursuant to Section 142 (b) (1) (B) (i) of the Internal Revenue Code) not to claim depreciation or an investment credit with respect to the Property described above. This Election is being made as in connection with the execution of a lease, service contract, management contract or other

contract (the "Contract") pertaining to the Property.

Contracting Party understands that this Election is irrevocable, and that this Election is binding on all successors in interest under the Contract regardless of whether the obligations issued to provide the Property remain outstanding. Furthermore, the Contract, and any publicly recorded document recorded in lieu of such Contract, states that neither the Contracting Party nor any successor in interest under the Contract may claim depreciation or an investment credit with respect to the Property.

In addition, Contracting Party agrees that it shall not use any portion of the Premises for office space or alternatively (and subject to the terms of its Contract with the Greater Orlando Aviation Authority), shall limit its use of any portion of such Property for such office space so that no more than a de minimis amount (not more than five percent (5%), if any, of the functions to be performed in such office space will not be directly related to the day-to-day operations either at the Property or more generally at Orlando International Airport. Contracting Party agrees that this provision shall be binding upon any assignees, sublessees or other successors in interest.

The Issuing Aviation Authority is being provided with a copy of this Election concurrent with its execution. In addition, the Issuing Aviation Authority and the Contracting Party will retain copies of this Election in their respective records for the entire term of the Contract.

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_



<b>EXHIBIT "H"</b>					
<b>GREATER ORLANDO AVIATION AUTHORITY</b>					
<b>ACDBE REVENUE REPORT</b>					
(To Be Submitted Monthly via Email to the Office of Small Business Programs at ACDBEreports@goaa.org)					
<b>COMPANY</b>					
<b>AGREEMENT</b> <b>STC RETAIL PACKAGE 2 CONCESSION AGREEMENT</b>					
<b>COMMENCEMENT DATE:</b> _____, 20__					
<b>REPORTING MONTH:</b> _____, 20__					
					Contract Cumulative
		(A)	(B)	(C)	(D)
		Reporting Month Revenue	Previously Reported Revenue	YTD Revenue (A+B)	Total Contract Revenue to Date
<b>TOTAL CONCESSION REVENUES</b>					
					Contract Cumulative
		(E)	(F)	(G)	(H)
		Reporting Month Revenue	Previously Reported Revenue	Cumulative YTD Revenue (E+F)	Total Contract Revenue to Date
<b>ACDBE PARTICIPANT</b>					
% Participation Proposed					
<b>TOTAL ACDBE REVENUE</b>					
<b>Summary</b>					
Current Month Achieved:					
(Total ACDBE "E"/Total Concession "A")					
YTD Achieved:					
(Total ACDBE "G"/Total Concession "C")					
Cumulative :					
(Total ACDBE "H"/Total Concession "D")					
<b>Remarks:</b>					
Signature: _____			Date: _____		

**ITEM III-A**

**CONTRACT BOND  
STC RETAIL PACKAGE 2 CONCESSION AGREEMENT  
ORLANDO INTERNATIONAL AIRPORT**

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ and authorized to do business in the State of Florida (hereinafter called the "Principal"), and \_\_\_\_\_ a corporation of the State of \_\_\_\_\_ which is licensed to do business in the State of Florida (hereinafter referred to as the "Surety"), are held and firmly bound unto the Greater Orlando Aviation Authority (hereinafter called the "Aviation Authority") in the full and just sum of \_\_\_\_\_ (the "Sum") covering the period \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, inclusive, to the payment of which Sum and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, under the terms of that STC Retail Package 2 Concession Agreement (hereinafter referred to as the "Agreement"), by and between the Principal and the Aviation Authority, the Principal shall manage and operate the Concession at Orlando International Airport pursuant to the Agreement, and such Agreement is hereby incorporated herein by reference and made a part hereof;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall well and truly keep, do and perform, each and every, all and singular, the matters and things in said Agreement set forth and specified to be by the Principal kept, done and performed at the time and in the manner specified in said Agreement, and the Principal shall pay over, make good, and reimburse to the Aviation Authority, all sums required by it to be paid, and all loss and damage (including reasonable attorneys' fees) which the Aviation Authority may sustain by reason of any failure or default on the part of the Principal, then this obligation shall be void; otherwise it shall remain in full force and effect.

In the event that the Principal shall default in any of the terms, covenants and conditions of the Agreement during the period in which this Contract Bond is in effect, the Surety shall remain liable to the Aviation Authority beyond the date of the expiration hereof for all sums provided for in the Agreement remaining unpaid as of the date of expiration of this Contract Bond and for all loss or damage (including reasonable attorney's fees) resulting from such default up to the amount of the Sum.

In the event that Principal becomes a debtor under any chapter of the Federal bankruptcy laws, or becomes subject to any other statute providing for the recovery of transfers of payments or property, the obligations of the Surety hereunder shall include the obligation to reimburse the Aviation Authority for any transfers or payments under the Agreement made by Principal to the Aviation Authority prior to the commencement of such proceedings to the extent that such transfers or payments are voided and recovered from the Aviation Authority by Principal, or by a creditor of Principal, or by a trustee, receiver, custodian or similar official appointed for Principal or for substantially all of Principal's assets. Provided, however, that the obligations set forth in the preceding sentence shall be reduced pro tanto upon: (1) the entry of a final, non-appealable

order of a court of competent jurisdiction permitting the Aviation Authority to retain all or any portion of such transfers or payments; (2) the execution of an agreement and approval thereof (if in the reasonable exercise of the Aviation Authority's judgment such approval is necessary) by a final non-appealable order of a court of competent jurisdiction permitting the Aviation Authority to retain all or any portion of such transfers or payments; or (3) the expiration of the applicable statute of limitations with respect to the avoidance and recovery of such transfers or payments without any claim therefore having been made against the Aviation Authority.

In the event the Surety fails to fulfill its obligations under this Contract Bond, then the Surety shall also indemnify and save the Aviation Authority harmless from any and all loss, damage, cost, and expense (including reasonable attorneys' fees) arising from or in connection with the enforcing of the Surety's obligations hereunder. This paragraph shall survive the expiration of this Contract Bond.

The Surety's obligations hereunder shall remain in full force and effect notwithstanding (i) amendments or modifications to the Agreement entered into by the Aviation Authority and Principal without the Surety's knowledge or consent, (ii) waivers of compliance with, or of any default under, the Agreement granted by the Aviation Authority to the Principal without the Surety's knowledge or consent, or (iii) the rejection of the Agreement and the discharge of Principal from its obligations under the Agreement as a result of any proceeding initiated under the Federal bankruptcy laws, and as the same may hereafter be amended, or under any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceeding, or the assumption by Principal of the Concession as a result of any such proceeding, notwithstanding the finding by a court of competent jurisdiction that Principal has provided the Aviation Authority with adequate assurance of future performance under the Agreement.

This Bond has been negotiated and executed in and shall be governed by and construed in accordance with the laws of the State of Florida. The execution of this Contract Bond by Surety shall constitute Surety's consent in the event of any litigation arising under this Contract Bond to the personal jurisdiction of, venue in and, convenience of the forum of the Circuit Court for Orange County, Florida and the U.S. District Court for the Middle District of Florida for such purposes.

**[THIS SPACE LEFT INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, the Principal and the Surety have caused these presents to be executed and their seals affixed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, sealed and delivered  
in the presence of:

"Principal"

\_\_\_\_\_

\_\_\_\_\_

Printed Name \_\_\_\_\_

\_\_\_\_\_

Printed Name \_\_\_\_\_

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

"Surety"

\_\_\_\_\_

\_\_\_\_\_

Printed Name \_\_\_\_\_

\_\_\_\_\_

Printed Name \_\_\_\_\_

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

Countersigned by Florida Registered Agent

Printed Name \_\_\_\_\_

NOTE: If Principal and Surety are corporations, the respective corporate seals shall be affixed and attached.

Surety shall execute and attach a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Payment Bond on behalf of Surety.

**ITEM III-B**

**IRREVOCABLE STAND-BY LETTER OF CREDIT FOR  
STC RETAIL PACKAGE 2 CONCESSION AGREEMENT  
GREATER ORLANDO AVIATION AUTHORITY**

\_\_\_\_\_ [Date]

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

EXPIRY DATE: \_\_\_\_\_

AGGREGATE AMOUNT: \_\_\_\_\_ and \_\_\_\_/100 Dollars

BENEFICIARY: Greater Orlando Aviation Authority  
One Jeff Fuqua Boulevard  
Orlando, FL 32827-4399

Dear Sir or Madam:

On behalf of \_\_\_\_\_ (the "Company"), we hereby issue this irrevocable stand-by letter of credit in your favor up to the aggregate amount stated above, available by one or more sight drafts drawn by you on us.

Each draft hereunder must state "Drawn on \_\_\_\_\_ **[Bank Name]** Irrevocable Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_", and must be accompanied by a Statement of Certification in the form attached hereto as Attachment A (which is incorporated in this letter of credit by this reference). Such Statement of Certification must be signed by the Chief Financial Officer or the Chief Accountant of Revenue Control of the Greater Orlando Aviation Authority (the "Aviation Authority"), or by his or her designee, and must provide the certification required in A and either B or C, or both:

- A. Certification that Company has failed to faithfully perform one or more of its obligations to the Aviation Authority under that certain STC Retail Package 2 Concession Agreement, dated \_\_\_\_\_, 20\_\_\_\_, as may be amended from time to time (the "Agreement"), by and between Company and the Aviation Authority; and,
- B. Certification of (i) the amount of damages and expenses which, in his determination, the Aviation Authority has suffered or incurred as a result of such failure by Company, and/or (ii) the amount of any fees, charges and other sums past due and remaining unpaid from Company to the Aviation Authority under such Agreement, together with the amount of any interest thereon to the extent required or allowed under such Agreement; and/or
- C. Certification (1) that Company has failed to provide to the Aviation Authority a contract bond or stand-by letter of credit to replace this letter on or before the date such replacement was due under such Agreement or in the form required or otherwise in accordance with the requirements of the Agreement, and (2) certification of the amount of the required replacement contract bond or letter of credit.

Each draft drawn hereunder shall be in an amount which does not exceed, as applicable, such total amount of damages and expenses and fees, charges and other sums past due

and remaining unpaid, together with any interest thereon, and/or the amount of the required replacement contract bond or letter of credit, as certified in the Statement of Certification submitted with such draft.

Additionally, each draft drawn hereunder shall be paid from the funds of \_\_\_\_\_ **[Bank Name]**. If a drawing is made hereunder at or prior to 11 a.m., local time, on a business day, payment shall be made to the Aviation Authority or to its designee of the amount specified at our branch where such drawing is made, in immediately available funds, not later than 3 p.m., such local time, on the same business day or such later time and business day as you may specify. If a drawing is made by you after 11 a.m., such local time, on a business day, payment shall be made to the Aviation Authority or to its designee of the amount specified, in immediately available funds, not later than 3 p.m., such local time, on the next business day thereafter, or such later time and business day as you may specify.

This Letter of Credit is deemed to be automatically extended without amendment for one (1) year from the expiration date of the Agreement, or any future expiration date, unless the Aviation Authority is notified by the Bank ninety (90) days prior to any expiration date of the Agreement by the \_\_\_\_\_ **[Bank Name]** by Registered Mail that \_\_\_\_\_ **[Bank Name]** elects not to renew the Letter of Credit for any such additional period.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Rev.), International Chamber of Commerce Publication No. 600, except that, notwithstanding the provisions of Article 17 thereof to the contrary, if this letter of credit would have otherwise expired by its terms during a period when our business has been interrupted by Acts of God or other causes beyond our control, our obligations hereunder shall continue for ninety (90) days following the date of our resumption of normal business operations. Any conflicts or disputes regarding this Letter of Credit shall be governed by and construed in accordance with the laws of the State of Florida, and in the forum of the State of Florida.

We hereby engage with you that all drafts drawn hereunder in compliance with the terms of this credit will be duly honored upon presentation to us as provided herein.

\_\_\_\_\_ **[Bank Name]**

By: \_\_\_\_\_

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

**ATTACHMENT A  
STATEMENT OF CERTIFICATION FORM  
STC RETAIL PACKAGE 2 CONCESSION AGREEMENT  
GREATER ORLANDO AVIATION AUTHORITY**

TO: \_\_\_\_\_ **[Bank Name]**

DATE: \_\_\_\_\_

RE: \_\_\_\_\_ **[Bank Name]**  
Irrevocable Letter of Credit Number \_\_\_\_\_

The undersigned, who is either the Chief Financial Officer or the Chief Accountant of Revenue Control of the Greater Orlando Aviation Authority (the "Aviation Authority"), or is his or her duly authorized designee, hereby certifies to \_\_\_\_\_ **[Bank Name]** that [A and either B or C, or both, are required]:

A. \_\_\_\_\_ (the "Company") has failed to faithfully perform one or more of its obligations to the Aviation Authority under that certain STC Retail Package 2 Concession Agreement, dated \_\_\_\_\_, 20\_\_\_\_, by and between Company and the Aviation Authority, as amended from time to time (the "Agreement"); and that

B. In the determination of the undersigned, the amount of damages or expenses which the Aviation Authority has suffered or incurred as a result of such failure by Company, and/or the amount of any fees, charges or other sums past due and remaining unpaid from Company to the Aviation Authority under such Agreement, together with the amount of any interest thereon to the extent required or allowed under such Agreement, totals \$\_\_\_\_\_; and/or

C. Company has failed to provide to the Aviation Authority a replacement contract bond or stand-by letter of credit on or before the date required in the Agreement, or has failed to provide the same in the form required or otherwise in accordance with the requirements of the Agreement, and that the amount of the required replacement bond or letter of credit is \$\_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GREATER ORLANDO AVIATION AUTHORITY

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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