

**SECOND AMENDMENT TO THE
NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT**

THIS SECOND AMENDMENT TO THE NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT ("Amendment"), is made and entered into as of the date indicated on the signature pages and is by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation formed under the laws of the State of Colorado ("City"), **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company ("Tenant") and **WOODY CREEK COFFEE COMPANY**, a Colorado corporation ("Subtenant") dba **Caribou Coffee**.

RECITALS:

WHEREAS, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015, (collectively, the "Tenant's Lease"), which, subject to all of the terms, conditions, covenants and provisions of Tenant's Lease, governs Tenant's rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the "Lease Premises"), for retail, services and food and beverage purposes to meet the needs and requirements of the Airport and which, pursuant to the Ninth Amendment, expires May 31, 2019; and

WHEREAS, Tenant and Subtenant entered into a Standard Mezzanine Sublease, dated May 8, 2008, and an Amendment Number One to the Standard Mezzanine Sublease dated on or about September 2016 (collectively, the "Sublease") (attached hereto), under which, subject to Tenant's Lease, Subtenant subleased from Tenant certain premises identified as BM-5A, 1 ("Subtenant's Concession Space"), and has the right to occupy Subtenant's Concession Space until Tenant's Lease expires and thereafter pursuant to the Attornment Agreement; and

WHEREAS, the City, Tenant and Subtenant entered into a Non-Disturbance, Attornment and Concession Agreement dated October 21, 2008, through which the City granted Subtenant permission to continue operating its sub concession after Tenant's Lease expires, and a PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement) dated October 31, 2011, which enrolled Subtenant in the DEN Premium Value Program pursuant to Rule 45 of the Airport Rules and Regulations, (collectively, the "Attornment Agreement"), and

WHEREAS, at the time Subtenant enrolled in DEN's Premium Value Program, Subtenant's Minor Merchandise Category for PVC purposes was: **Food Court**; and

WHEREAS, on or about October 1, 2015 PVC Rule 45 was amended, which has necessitated a change to certain Minor Merchandise Categories.

WHEREAS, having modified the term in Amendment Number One to the Standard Mezzanine Sublease so that Subtenant's Sublease will expire December 31, 2018, the parties now desire to further amend the Attornment Agreement to revoke the concession and extended term granted by the City;

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties have agreed to amend the Attornment Agreement, as follows:

1. **Grant of Concession Revoked.** For the reasons recited above, the parties agree that circumstances have changed and the need no longer exists for the City to grant a concession and extended term beyond the expiration of the Tenant's Lease through the Attornment Agreement. Accordingly, Section 4 (Grant of Concession) of the Attornment Agreement is hereby deleted.

2. **Minor Merchandise Category.** Effective as of the date this Second Amendment is executed, Concessionaire's Minor Merchandise Category for PVC purposes is hereby changed to: **Specialty Coffee.**

3. **DEN's Concession Promotions Program.** The Promotions Program may include, but is not limited to, the costs of Premium Value Concessions Programs, as described below, and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program and Premium Value Concessions Program.

4. **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to fund DEN's Concession Promotions Program. Subtenant shall pay, or cause to be paid, the Joint Marketing Fee, as reflected on the Summary Page, for the Joint Marketing Fund for every month during the Term. City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

5. **Joint Marketing Fund Payment.** In addition to other rents, fees, and charges due Tenant under this Sub Concession Agreement, commencing on the date that Subtenant elected to participate in the PVC Program, Subtenant agrees to pay to Tenant for transfer to the City, within ten (10) days of the first day of each month during the Term, a Joint Marketing Fee of 1% of Subtenant's Gross Revenues for DEN's Concessions Promotions Program.

6. **Chief Executive Officer.** All references in the Sublease and Attornment Agreement to "Manager" or Manager of Aviation" are hereby deleted and replaced with "Chief Executive Officer" or "CEO" as the context may require. "Chief Executive Officer" or "CEO" means the Chief Executive Officer of the City's Department of Aviation having jurisdiction over the management, operation, and control of the Airport. Whenever reference is made to the "CEO or the CEO's authorized representative," or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO's delegated authorized representative.


7. **Effect of Amendment.** The provisions contained in this Amendment are intended to amend the provisions of the Attornment Agreement. To the extent the provisions of this Amendment

modify, amend or supplement the terms and conditions of the Attornment Agreement, the terms and conditions contained herein shall prevail and control. All other terms and conditions of the Attornment Agreement are hereby ratified and confirmed.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AR85013-02

Contractor Name: Skyport Development Company LLC and Woody
Creek Coffee Company
Skyport Development Company LLC

By: 

Name: Diid Masteller
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: N/A

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number: PLANE-AR85013-02

Contractor Name: Skyport Development Company LLC and Woody
Creek Coffee Company
Woody Creek Coffee Company

By:  _____

Name: David Masteller
(please print)

Title: Member/President
(please print)

ATTEST: [if required]

By: N/A _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



STANDARD MEZZANINE SUBLEASE

BETWEEN

SKYPORT DEVELOPMENT COMPANY, LLC

AND

WOODY CREEK COFFEE COMPANY

**FOR MEZZANINE CONCESSION SPACE AT
DENVER INTERNATIONAL AIRPORT**

STANDARD MEZZANINE SUBLEASE – DENVER INTERNATIONAL AIRPORT

SUMMARY PAGE

WOODY CREEK COFFEE COMPANY

This Summary Page, consisting of two pages, is attached to and made a part of that certain Sublease dated May 8, 2008 between the Skyport Development Company, LLC and the Subtenant listed below.

SUBTENANT: Name	Woody Creek Coffee Company
Address	8231 East Prentice Avenue
City, State and Zip	Greenwood Village, CO 80111
Contact	David S. Mosteller
Trade Name	Caribou Coffee
State of Incorporation	Colorado

CONCESSION SPACE LOCATION and COMPENSATION (Initial)						
Lo ca. Nu m.	Concourse /Terminal	Address	Appro x.Squ are Feet	Minimum Annual Guarantee (or as provided in Section 5.01)	Minimum Monthly Guarantee (or as provided in Section 5.03A)	
BM -5A	Concourse B	Mezzanine Level	770 Sq. Ft.	\$53,900	\$4,491.67	

PERCENTAGE COMPENSATION % 13%

SECURITY DEPOSIT: \$4,491.67

COMMONS AREA MAINTENANCE EXPENSE \$5.75/Sq.Ft.

PROMOTIONS EXPENSE (yearly cap) _____

PERMITTED USES: Operation of a high-quality food and beverage concession at DIA, offering for sale the following:
Coffee, drinks, pastries and branded items

BRAND(S) AUTHORIZED FOR USE: Caribou Coffee

CONCESSION OPENING DATE: November 30, 2008

HOURS OF OPERATION: 6:00 am to 9:00 pm, seven days per week., or as provided pursuant to Section 6.16(c).

TERM:
Effective Date: May 8, 2008

Expiration Date: September 1, 2013



 Initialed by Concessionaire

Renewal Option	<u>One option to renew for five years (through December 31, 2018) as described in Section 4.01.</u>
REQUIRED MINIMUM INVESTMENT:	<u>\$250,000 (to be provided by Tenant)</u>
RENOVATION MINIMUM INVESTMENT:	<u>Pursuant to Sec. 6.18 Renovation Minimum Investment to be mutually agreed upon by the parties and to include all necessary life/safety and health code upgrades. If no agreement is reached, the Renovation Minimum Investment shall be 20% of the Required Minimum Investment (including equipment) or \$50,000.00</u>
RENOVATION COMPLETION DATE:	<u>365 days after date Subtenant exercises its Renewal Option pursuant to Section 4.01.</u>
INSURANCE POLICY AMOUNTS:	
Comprehensive General Liability:	<u>\$1,000,000</u>
Automobile/Delivery Vehicle Liability:	<u>\$1,000,000 non-airside; \$10,000,000 airside</u>
Workers Compensation:	<u>Statutory requirements</u>
Alcohol Liability:	<u>N/A</u>
ACDBE GOAL:	
Tenant's ACDBE Goal	<u>27%</u>
Subtenant's Ownership Participation	<u>0% (if not zero, Subtenant agrees to achieve and maintain the specified percentage of participation pursuant to §§ 6.22.</u>
Subtenant's Purchasing Participation	<u>0% (if not zero, Subtenant agrees to achieve and maintain the specified percentage of participation pursuant to §§ 6.22.</u>
DESCRIPTION OF EXHIBITS AND ADDENDA:	
Exhibit A	Subtenant Concession Space Plan
Exhibit B	Disadvantaged Business Enterprise Participation
Exhibit C	Insurance Certificate
Exhibit D	Form of Attornment and Nondisturbance Agreement
Exhibit G	Design Standards, Construction Procedures and DIA Performance Specifications
Exhibit N	DIA Environmental Requirements
Exhibit X	Provisions for Design and Construction of Improvements
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination
Appendix 3	Nondiscrimination in Airport Employment Opportunities
Appendix 10	Disadvantaged Business Enterprises – Required Statements

**STANDARD MEZZANINE SUBLEASE
DENVER INTERNATIONAL AIRPORT**

CONSTRUCTION SUMMARY PAGE

WOODY CREEK COFFEE COMPANY

This Construction Summary Page, consisting of one page, is attached to and made a part of that certain Sublease dated May 8, 1008 between the Skyport Development Company, LLC and the Subtenant named below.

SUBTENANT:

Name: Woody Creek Coffee Company

Trade Name: _____

Address: 8231 East Prentice Avenue
Greenwood Village, CO 80111

Contact: David S. Mosteller

DESIGN AND CONSTRUCTION DEADLINE: November 30, 2008

**CONSTRUCTION PERFORMANCE AND
PAYMENT BOND AMOUNTS:** 100% of construction contract price

**CONSTRUCTION INSURANCE
POLICY AMOUNTS:**

Builder's Risk: 100% of construction contract price

Minimum Commercial General Liability:

Combined Single Limit: \$1,000,000

General Aggregate: \$2,000,000

Business Auto Liability:

Combined Single Limit: \$1,000,000

Workers Compensation: Statutory requirements

SBE DESIGN AND CONSTRUCTION GOALS: \$ 0 < \$30,000 = 0%
\$30,000 - \$90,000 = 3%
\$90,000 < \$150,000 = 5%
\$150,000 + = TBD by Goals
Committee



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STANDARD MEZZANINE SUBLEASE

THIS STANDARD MEZZANINE SUBLEASE, ("Sublease" hereinafter) is made and entered into this 8th day of May, 2008 by and between the **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company, ("Tenant"), Party of the First Part, and **WOODY CREEK COFFEE COMPANY**, a Colorado corporation ("Subtenant") dba **CARIBOU COFFEE**, Party of the Second Part.

RECITALS

WHEREAS, pursuant to the terms of the Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement) (referred to herein as the "Lease") between the Tenant and the City and County of Denver ("City"), Tenant has the right to develop; sublease, use and permit Subtenants to enter into subleases or sublicenses with Tenant to use portions of the Mezzanine on Concourse B as well as the Mezzanine Commons Area for retail, services and food and beverage sales described in the Permitted Uses, using the Brand(s) Authorized for Use and subject to all of the terms, conditions, covenants and provisions of this Sublease.

WHEREAS, Subtenant has agreed to sublease from Tenant the Subtenant Concession Space on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 – GENERAL

1.01 CONSIDERATION

The Tenant enters into this Sublease for and in consideration of the payment of compensation by Subtenant as herein provided, the construction of all improvements by Subtenant as herein provided, the operation of a business using the Brand(s) listed on the Summary Page that Subtenant is authorized to use at Denver International Airport, and the performance and observance by Subtenant of the covenants and agreements herein.

1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA

The Summary Pages attached to this Sublease and the Exhibits and Addenda attached to this Sublease as described on the Summary Pages are incorporated in this Sublease.

SECTION 2 – DEFINITIONS

2.01 AIRPORT

"Airport" or "DIA" shall mean Denver International Airport.

2.02 AIRPORT MASTER PLAN

"Airport Master Plan" or "Master Plan" shall mean the approved master plan for development of Denver International Airport.

2.03 AUDITOR

"Auditor" shall mean the City's Auditor and his or her authorized representative.

2.04 BRANDS

"Brands" shall mean a word, mark, symbol, design, term or a combination of these, both visual and oral, used for the purpose of identification of some nationally, regionally or locally recognized food and beverage enterprise or product line, retail store or merchandise line, or service operated in "street" locations serving the general public, and unless approved by the Manager shall exclude brands found exclusively at DIA, other airports, or gated venues such as stadiums, arenas, and convention centers. In his or her reasonable discretion, the Manager may amend or modify the Brands or Permitted Uses of the Subtenant's Concession Space described on the Summary Page.

2.05 CITY

"City" shall mean the City and County of Denver, a municipal corporation of the State of Colorado, acting for and on behalf of the Department of Aviation.

2.06 COMMONS AREA

"Commons Area" or "Mezzanine Commons Area" shall mean all areas, improvements, space, and equipment devoted to or provided for the general usage of all Subtenants occupying a part of the Lease Premises, together with their employees, customers, and other invitees, located on the Mezzanine level of the B concourse at DIA in the space licensed to Tenant by the City pursuant to Tenant's Lease, including but not limited to all seating areas, improvements, ornamental plantings, and signage.

2.07 COMMONS AREA MAINTENANCE EXPENSE

"Commons Area Maintenance Expense" shall mean 110% of the total costs incurred by the Tenant including wages, fringe benefits or other labor payments, which are paid or incurred by Tenant in operating, repairing, maintaining and managing the B Mezzanine Commons Area and the Lease Premises. Such costs and fees shall include, but not be limited to: (a) utilities for the Commons Area (if any are separately metered or properly allocated to the Commons Area) and costs of providing music and public address services; (b) trash, garbage disposal, janitorial and cleaning of and for the Commons Area; (c) general maintenance, repairs, painting, replacements and cleaning of the Commons Area, including furniture, fixtures, seasonal decorations, and plantings (including re-plantings and replacements); (d) any assessments and fees (or similar charges) levied by the City against the Commons Area by the City for commons use services or otherwise (unless otherwise passed on to one or more concessionaires); (e) all taxes or assessments payable by Tenant pursuant to Tenant's Lease levied with respect to the Commons Area or any part of the Lease Premises as well as any personal property thereon; (f) casualty, liability and all other insurance maintained by Tenant concerning the Lease Premises and the Commons Area; (g) licenses, fees and permits related to the Lease Premises and the Commons Area (excluding the initial development thereof); (h) supplies related to the foregoing and reasonable depreciation for any equipment and tools needed to provide any of the foregoing services; and (i) a management fee (which may be paid to Tenant or an affiliate of Tenant not to exceed

the amount that would be paid to an independent Tenant). Commons Area Maintenance Expenses shall not include leasing commissions, attorney's fees, costs and disbursements related to negotiations or disputes with tenants or leasing, renovating or improving space for tenants or principal and interest costs associated with Tenant's investment. The following costs and fees shall be excluded from Commons Area Maintenance Expense: (i) expenses for repairs or other work occasioned by fire, windstorm or other casualty to the extent of insurance proceeds actually received; (ii) legal expenses incurred in enforcing the terms of any sub concession agreement or promotional space agreement or arising out of Tenant's Lease; (iii) rental payments under Tenant's Lease; (iv) any cost associated with asbestos containing materials in the B Mezzanine Commons Area (unless caused by Subtenant); (v) the cost of correcting structural defects in the Commons Area; (vi) the cost of any items for which Tenant is reimbursed by insurance, any tenant or otherwise; (vii) salaries of officers and executives of Tenant above the level of Manager; (viii) any late fees penalties, interest charges or similar fees; (iv) income or corporate taxes, capital gains taxes, inheritance taxes, taxes on rents or gross receipts, franchise taxes and taxes owed by Tenant; and (x) costs of Tenant's compliance with the American with Disabilities Act of 1990.

2.08 CONCOURSES

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excepts the Terminal as herein defined.

2.09 DIA DESIGN STANDARDS

"DIA Design Standards" shall mean the design standards and criteria established for Denver International Airport, and as hereafter amended.

2.10 DIA ENVIRONMENTAL GUIDELINES

"DIA Environmental Guidelines" shall mean those portions of the environmental standards and criteria established for non-aviation tenant development and operations at the Airport, and as hereafter amended.

2.11 DIA TENANT DEVELOPMENT GUIDELINES

"DIA Tenant Development Guidelines" shall mean the criteria established at DIA for tenants and concessionaires for design, construction, installation, signage and related matters, and as hereafter amended.

2.12 FACILITIES

"Facilities" shall mean the restaurant or other food and beverage enterprise, retail store or services establishment described on the Summary Page that Subtenant is authorized to operate at Denver International Airport.

2.13 IMPROVEMENTS

"Improvements," which may also be called "Subtenant Improvements" shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Subtenant, as well as modifications or alterations to existing construction,

equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager.

2.14 INDEX

"Index" means the Consumer Price Index, Denver, Colorado Metropolitan Area, All Urban Consumers (CPI-U) for Denver-Boulder-Greeley, Colorado Metropolitan Area as maintained by the U.S. Bureau of Labor Statistics (1982-84 = 100) for the six-month average for months July through December of each year, issued in February of the following year. If the United States Bureau of Labor Statistics shall discontinue the issuance of the Index, then Index changes shall be calculated on the basis of changes in the most comparable and recognized cost-of-living index then issued and available which is published by the United States Government.

2.15 LEASE PREMISES

"Lease Premises" shall mean all areas, improvements, space, and equipment located on the Mezzanine level of the B concourse at DIA in the space leased to Tenant by the City pursuant to Tenant's Lease.

2.16 MANAGER

"Manager" shall mean the City's Manager of Aviation or his or her successor in function.

2.17 MANAGER'S AUTHORIZED REPRESENTATIVE

Whenever reference is made herein to the "Manager or his or her authorized representative," or words of similar import are used, the City's Deputy Manager of Aviation/Business and Technologies shall be such authorized representative of the Manager, unless notice otherwise is given to the Tenant and Subtenant by the Manager. The Deputy Manager's authorized representative is the Airport's Property Officer who designates the Airport's Concessions Manager for day-to-day administration of the Lease. When required by this Sublease, Subtenant shall forward its submittals to the Concessions Manager. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of authority upon notice to the Tenant and the Subtenant.

2.18 NON DISTURBANCE AND ATTORNMENT AGREEMENT

"Non Disturbance and Attornment Agreement" shall mean that certain agreement among the Tenant, the City and Subtenant concerning nondisturbance of and attornment by the Subtenant in the event of a termination of Tenant's Lease.

2.19 PAST DUE INTEREST RATE

"Past Due Interest Rate" shall mean interest accruing at 18% per annum commencing on the fifth business day after the date such amount is due and owing until paid to Tenant.

2.20 PRICING PLAN

"Pricing Plan" shall mean the menu, services or merchandise plan proposed by Subtenant and accepted by the Tenant and the Manager or his authorized representative, as modified from time to time, indicating the approved prices to be charged for each item of food, beverages, merchandise, or services described on the Summary Page that Subtenant is authorized to sell at Denver International Airport.

2.21 PROMOTION EXPENSES

"Promotion Expenses" shall mean the actual costs incurred by Tenant solely in advertising at DIA for the benefit of the Lease Premises, Commons Area and the sub concessionaires, including but not limited to advertising (including the cost of copy, production, and artwork), public relations and administrative expenses related thereto. Promotion Expenses shall be limited to the amount set forth on the Summary Page per year, subject to increases in an amount not to exceed the increases in the Index, unless approved by a majority of the Subtenants (determined on the basis of square footage of Lease Premises occupied by each Subtenant).

2.22 PRODUCTS

"Products" shall mean the specific food, beverages, merchandise, services or that Subtenant is authorized to sell at Denver International Airport.

2.23 SUBLEASE

"Subtenant's Sublease" shall mean this Agreement.

2.24 SUBTENANT'S CONCESSION SPACE

"Subtenant's Concession Space" shall mean the sub concession space as generally depicted on the Subtenant's Concession Space Plan attached hereto as **Exhibit A**, sublet from Tenant and located within the Concourse B Mezzanine and containing the number of square feet set forth on the Summary Page. The Tenant and Subtenant acknowledge and agree that the dimensions of the Subtenant's Concession Space as set forth in **Exhibit A** are approximate and that, following the completion of construction, the precise dimensions and square footage shall be determined by the Tenant and a revision to the Summary Page and **Exhibit A** will be made, if necessary, depicting the dimensions and square footage of the Subtenant's Concession Space as actually constructed, each of these actions to be taken without the requirements of a formal amendment to this Sublease. The Tenant may add or subtract square footage of up to 10% of the Subtenant's Concession Space (with a corresponding adjustment to the Minimum Annual Guarantee) with the prior written consent of the Subtenant without a formal amendment to this Sublease.

2.25 SUBTENANT'S PROPOSAL

"Subtenant's Proposal" shall mean any proposal as formally submitted by Subtenant, and accepted by Tenant and approved by the Manager or his authorized representative and consisting of Subtenant's plans for its design, the specific food, beverages, merchandise, or services, menus or pricing plans and Brands proposed by Subtenant,

and Subtenant's entire plan of operation. In the absence of a separate proposal, Subtenant's Proposal shall mean the Permitted Uses and Brands Authorized for Use set forth on the Summary Page, including any data reasonably requested by the Concessions Manager for the Manager's approval, as amended from time to time.

2.26 TENANT

"Tenant" shall mean Skyport Development Company, LLC, a Colorado limited liability company.

2.27 TENANT'S LEASE

"Tenant's Lease" or "Lease" shall mean the Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement) by and between the City and Tenant as hereafter amended from time to time. The initial version of the Lease was dated June 17, 1997.

2.28 TERMINAL

"Terminal" shall mean the Jeppesen Terminal Building located at the Airport.

SECTION 3 – GRANT OF CONCESSION RIGHTS

3.01 CONCESSION RIGHTS GRANTED

It is the City's purpose to create and maintain a vibrant first-class concession program at Denver International Airport offering a range of quality food and beverage, retail and services in a branded environment, with particular emphasis on established local and national brands. Accordingly, Subject to the Manager's written consent, Tenant grants to Subtenant the right to occupy, improve and use the Subtenant's Concession Space consistent with the City's purpose, Subtenant's Proposal and subject to all of the terms, conditions, covenants and provisions of this Sublease. Subtenant accepts such grant for the entire term of this Sublease.

3.02 USE OF SUBTENANT CONCESSION SPACE

Subtenant may use the Subtenant's Concession Space only for the operation of the Facility and the sale of the Products set forth on the Summary Page and for no other purposes unless permitted by this Sublease or otherwise authorized in writing by the Tenant and the Manager. Subtenant shall not sell or offer for sale any food, beverage, service or merchandise or use or offer any Brand that has not been previously authorized in writing by the Tenant and the Manager, nor shall Subtenant place, maintain, or use in its operations hereunder, fixtures or furnishings in any areas located outside the Subtenant's Concession Space, regardless of whether such areas are adjacent to the Subtenant's Concession Space.

Subtenant understands and agrees that the use of the Subtenant Concession Space is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

Tenant and Subtenant agree that the use of nationally and/or locally recognized Brands is of critical importance in meeting the City's purpose for the concessions program and Denver International Airport and therefore any Brand identified on the Summary Page that Subtenant is authorized to use in the operation of Subtenant's business at Denver International Airport is a material part of the consideration to the City and to the Tenant under this Sublease and may not be discontinued or changed without the Tenant's and Manager's prior written consent. Any proposed new brand, concept or change in use shall be submitted to Tenant and Manager for approval prior to implementing such new brand concept or change of use.

3.03 RIGHTS NOT EXCLUSIVE

Tenant reserves the right hereunder, and the City has reserved the right under Tenant's Lease, to grant to other concessionaires the right to operate facilities and sell products or services in other locations at the Airport that are the same as or similar to those described on the Summary Page. Subtenant understands and agrees that its right to sell the Products set forth on the Summary Page is not exclusive.

3.04 MEANS OF ACCESS

Subtenant, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Subtenant's Concession Space by a means of access located outside the boundaries of such space as has been granted by the City to Tenant in Tenant's Lease and within the Subtenant's Concession Space as specified by Tenant. The Lease provides that such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose.

In the Tenant's Lease, the City grants a license to Tenant to use the Mezzanine Commons Area (identified on page 3 of *Exhibit A*) for certain stated purposes or as otherwise approved by the Manager: The Tenant and the City agreed that this license is for the purpose of promoting and benefiting the Lease Premises so as to increase the revenues and the enjoyment thereof.

For that reason, the Lease provides that the license shall remain in effect throughout the Term of the Lease unless terminated by the Manager for the following specified reasons: 1) expiration or earlier termination of the Lease, 2) use of the Mezzanine Commons Area is inconsistent with the provisions of this Lease or that unreasonably impedes access by the public and other tenants to adjacent premises and amenities in the Airport, or 3) the Manager determines that the license must be terminated for reasons of Airport security, flight operations, or safety. Prior to any termination, Tenant shall receive notice and an opportunity to cure and the license shall be modified rather than terminated if the offending use is severable from the remaining uses.

The Lease further provides that to the extent that the City needs the Mezzanine Commons Area for a short term use necessary for the operation of the Airport (such as for security, flight operations, airport efficiency or safety), then the license will only be temporarily revoked not terminated, with such space to be restored a reasonable time after the City no longer needs any such space. The Lease provides that the Tenant

shall not be entitled to any compensation or abatement of rent if the City's use of Mezzanine Commons Area does not interfere substantially with the Tenant's operations or Tenant's use of the Mezzanine Commons Area. Likewise, the Subtenant shall not be entitled to any compensation or abatement of rent if the City's use of Mezzanine Commons Area does not interfere substantially with the Subtenant's operations. Prior to any such temporary revocation Subtenant shall receive notice from the Tenant and an opportunity for comment.

This right of access is subject to the security requirements of the section herein entitled "Security." Moreover, without exception, nothing in this Sublease shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Subtenant.

3.05 RIGHT OF INSPECTION

Tenant and the City under Tenant's Lease, retain the full right of entry in and to the Subtenant's Concession Space for any purpose necessary, incidental to or in connection with their obligations hereunder, or for the purpose of making any inspection it deems necessary, or in the case of the City in the exercise of its governmental functions, with or without advance notice, provided, however, that except in emergencies, the City and Tenant will attempt to provide reasonable advance notice to Subtenant.

SECTION 4 – TERM

4.01 TERM

"Term" shall mean the period commencing at noon on the Effective Date and expiring at noon on the Expiration Date both of which are specified on the Summary Page provided however; in no event shall the Term continue beyond the expiration or earlier termination of Tenant's Lease except as may be provided in a Non Disturbance and Attornment Agreement.

Tenant hereby grants Subtenant, one (1) option to extend the Term of the Sublease for an additional period stated on the Summary Page ("Renewal Option") on the same terms and conditions provided for in this Sublease. The Initial Term may be extended by Subtenant's timely exercise of the option to extend the Term as follows: Subtenant may exercise the Renewal Option only upon written notice by Subtenant to Tenant before 180 days prior to the expiration of the Initial Term. The Renewal Option may only be exercised if Subtenant is not in default under this Sublease (unless timely cured), both at the time the option is exercised and at the time the extension period begins.

4.02 SURRENDER OF SUBTENANT'S CONCESSION SPACE

Upon the expiration or earlier termination of this Sublease or on the date specified in any demand for possession by Tenant after any default by Subtenant, Subtenant covenants and agrees to surrender possession of the Subtenant's Concession Space to Tenant in

the same condition as when first occupied, ordinary wear and tear excepted. Subtenant covenants and agrees to cooperate with the Tenant's closeout procedures.

However, if the Tenant determines in his commercially reasonable judgment upon such expiration or termination, that Subtenant's Concession Space was not surrendered in accordance with the preceding standard, then Subtenant, at its sole cost, shall have the option of either of the following actions: (i) bringing such specified Improvements up to the above referenced standard or (ii) removing the entire Improvements or such portion thereof as is specified by the Tenant. Either option shall be completed by Subtenant within 10 days of such expiration or termination or within such additional time as is granted by the Tenant. During this 10-day period Subtenant will be deemed to be holding over and shall pay 150% of the Minimum Monthly Guaranty (prorated on a daily basis) until the Subtenant's Concession Space is returned in the condition required.

If all or any portion of the Improvements are removed by Subtenant either at any time during the Term or in accordance with this Section, Subtenant shall at its expense restore any City and/or Tenant property affected to conditions existing prior to the installation of such Improvements or applicable portions thereof, and upon Subtenant's failure to do so the Tenant or the City may cause such removal and restoration to be done at Subtenant's expense.

4.03 HOLDING OVER

If Subtenant holds over after expiration of the Term or any extension thereof, thereafter Subtenant's occupancy shall be at sufferance at a monthly rental, payable in advance, equal to 150% of the monthly compensation provided in Section 5 herein, but otherwise Subtenant shall be bound by all terms and conditions as herein provided in the absence of a written agreement to the contrary. Tenant, in its sole discretion, may waive the additional rent and allow Subtenant to holdover at the rates stated in Section 5. Nothing herein shall be construed to give Subtenant the right to hold over at any time, and Tenant or the City (after expiration or termination of Tenant's Lease), as the case may be, may exercise any and all remedies at law or in equity to recover possession of the Subtenant's Concession Space, as well as any damages incurred on account of such holding over.

4.04 REMOVAL OF SUBTENANT'S EQUIPMENT

Subtenant shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Sublease, all of Subtenant's Equipment, as hereinafter defined. "Subtenant's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property installed by Subtenant and used in the operation of the business of Subtenant (as distinguished from the use and operation of the Subtenant's Concession Space) which is listed on an annual inventory list submitted by Subtenant and approved by Tenant, which in turn Tenant may transfer to the City to be maintained by the City's Airport Property Management Section. If such removal shall injure or damage the Subtenant's Concession Space, Subtenant agrees, at its sole cost, at or prior to the expiration or termination of this Sublease, to repair such injury or damage in good and workmanlike fashion and to place the Subtenant's Concession Space in the same condition as the Subtenant's Concession Space would have been if such Subtenant's Equipment had not been installed. If Subtenant fails to remove any of Subtenant's Equipment by the expiration or termination of this Sublease, Tenant may, at

its option, keep and retain any such Subtenant's Equipment or dispose of the same and retain any proceeds therefrom, and Tenant shall be entitled to recover from Subtenant any costs of Tenant's in removing the same and in restoring the Subtenant's Concession Space in excess of the actual proceeds, if any, received by Tenant from disposition thereof. In addition, if Tenant removes any such Equipment, the Subtenant agrees in its Sublease) to indemnify and hold Tenant harmless from all costs, losses, expenses or damages incurred in relation to the removal of such Equipment, including without limitation all costs of associated remedial actions, fines or penalties, reasonable attorney fees, engineering fees and other professional expert fees.

SECTION 5 – COMPENSATION

5.01 COMPENSATION

- A. Subtenant covenants and agrees, without offset, deduction or abatement, to pay Tenant as compensation for the rights and privileges herein granted by Tenant (a) the excess of the percentages shown on the Summary Page of the annual Gross Revenues, as herein defined, derived by the Subtenant from its operations under this Sublease over the Minimum Annual Guaranty, plus (b) the Minimum Annual Guarantee, and in addition thereto, Additional Rent pursuant to Section 5.03. Said obligation to pay compensation shall commence upon the Rent Commencement Date set forth in Section 5.03 herein and continue through the Term hereof.
- B. As used in this Section 5.01, the term "Minimum Annual Guarantee" shall mean the Minimum Annual Guarantee on the Summary Page as re-established hereunder from time to time.

5.02 GROSS REVENUES

As used herein, the term "Gross Revenues" shall mean all billings and receipts at the point of sale from sales or services or doing business from the Subtenant's Concession Space, whether from sales or services rendered by Subtenant, whether for cash or credit, regardless of collection in the case of the latter, and whether for retail or wholesale, and regardless of whether any party other than Subtenant is: (i) providing or operating equipment or services involved in the transaction or (ii) billing or receiving revenue from such transaction. It shall include all transactions, whether placed by telephone, via the Internet, in person or by mail (including e-mail or sales through the internet), and regardless of place or time of actual payment. When properly recorded and accounted for, a reduction from Gross Revenues shall be allowed for bona fide returns for credit, sales taxes collected for remittance to the State or City, tips, and federal excise taxes collected that must be separately stated, collected from the customer and remitted to the federal government by the Subtenant. There shall not be allowed from Gross Revenues any reduction for bad debts, loss from theft or any deduction except as outlined above.

5.03 PAYMENT OF COMPENSATION

- A. **Minimum Monthly Guarantee; Management Fee; Advertising Fee.** The Minimum Monthly Guarantee, an amount equal to one-twelfth of the Minimum Annual Guarantee as adjusted pursuant to Section 5.01, Commons Area

Maintenance Expenses and Promotion Expenses shall be payable by Subtenant to Tenant in advance and without demand on the date (referred to herein as the "Rent Commencement Date") which is the earlier of (i) the "Concession Opening Date" set out on the Summary Page or (ii) the first day of the month following the date when Subtenant opens for business, and on the first day of each calendar month thereafter.

The Minimum Monthly Guarantee, Commons Area Maintenance Expenses and Promotion Expenses for a partial month during the Term of this Sublease shall be prorated on a per diem basis.

- B. **Percentage Compensation Fee.** By the 10th day of the month following the Rent Commencement Date and monthly thereafter, Subtenant shall furnish to the Tenant or his authorized representative in a form acceptable to Manager and Tenant and provide copies to the Airport's Finance and Property Management Sections, a true and accurate verified statement signed by an officer of Subtenant of Subtenant's Gross Revenues for the preceding month, and in the event that the Percentage Compensation percentage multiplied times Subtenant's Gross Revenues for the preceding month exceeds the Minimum Monthly Guarantee for such month, Subtenant shall pay to the Tenant an amount equal to such excess. Such excess is referred to herein as Subtenant's Percentage Compensation Fee.
- C. **Commons Area Maintenance Expenses; Promotions Expense.** In addition to the Minimum Monthly Guarantee, Subtenant's estimated Pro Rata Share of the Commons Area Maintenance Expenses and Promotions Expense shall be payable by Subtenant to Tenant in advance in monthly installments and without demand commencing on the Rent Commencement Date and on the first day of each calendar month thereafter. The Commons Area Maintenance Expenses and the Promotions Expense for a partial month during the Term of this Sublease shall be prorated on a per diem basis.
- D. **First Month's Monthly Guarantee; Security Deposit.** Upon execution of this Sublease by Subtenant, it will pay Tenant the first month's Monthly Guarantee and deliver to Tenant the Security Deposit shown on the summary page, which amounts will be promptly refunded if the Sublease is not approved by the Manager.
- E. **Additional Rent.** In addition to the Minimum Annual Guarantee and Percentage Compensation Fee payable hereunder, Subtenant shall pay, as "Additional Rent" (whether or not so designated herein), in a manner and at the place provided in this Sublease, all sums of money required to be paid by Subtenant under this Sublease, including but not limited to the Commons Area Maintenance Expenses and Promotions Expense. If such amounts or charges are not paid at the time and in the manner as provided in this Sublease, they shall nevertheless be collectible as Additional Rent with the next installment of compensation thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the Tenant or the City. All amounts of Minimum Annual Guarantee, Percentage Compensation Fee and Additional Rent (also collectively referred to in this Sublease as "Rental") payable

in a given month shall be deemed to comprise a single rental obligation of Subtenant to Tenant. For purposes of this Section 5.04 all such monies received or collected by any agent or subcontractor of Subtenant, and any such monies in possession of any such agent or subcontractors, shall be deemed to be in the Subtenant's possession and control.

- F. **Liquidated Damages.** It is expressly understood and agreed that Tenant does not consider the Minimum Annual Guarantee in itself a fair and adequate rental for the Subtenant's Concession Space, and would not have entered into this Sublease unless Subtenant had obligated itself to pay the Percentage Compensation Fee, which the Tenant expects to supplement the Minimum Annual Guarantee to provide a fair and adequate rental return. Therefore, if Subtenant fails to continuously operate its business in accordance with the terms of this Sublease, or vacates the Subtenant's Concession Space prior to the expiration of the Term hereof, the Tenant will suffer damages in an amount which is not readily ascertainable and thus Tenant, in any such event, shall have the right, at its option, to collect as liquidated damages, and not as a penalty, in addition to all other charges and the Minimum Annual Guarantee due hereunder, one-thirtieth (1/30th) of an amount equal to the greater of (a) the amount of the Minimum Annual Guarantee due for the month in which Subtenant failed to operate as required by this Sublease, or (b) the average monthly amount of the Minimum Annual Guarantee and Percentage Compensation Fee payable for the immediately preceding twelve months, calculated on a daily basis, for each day or portion thereof during which Subtenant fails to operate as required by this Sublease including, without limitation, Subtenant's failure to maintain the required operating hours, and, in addition, Tenant shall have the right to treat any of such events as a material default and breach of this Sublease.
- G. **Subtenant's Payment Obligations.** Subtenant covenants to pay all compensation and charges under this Sublease independent of any obligation of the Tenant. No breach of this Sublease by the Tenant shall relieve Subtenant of its obligation and duty to pay all such compensation and charges when due under the terms of this Section 5.

5.04 TITLE TO TENANT'S COMPENSATION

Immediately upon Subtenant's receipt of monies from the sales of food, beverages, merchandise or services that it is authorized to sell under the terms of this Sublease, the percentages of said monies belonging to Tenant shall immediately vest in and become the property of the Tenant. Subtenant shall be responsible as trustee for said monies until the same are delivered to Tenant.

5.05 INTEREST ON PAST DUE AMOUNTS

Any payments not made to Tenant when due shall accrue interest at the Past Due Interest Rate, as herein defined.

5.06 PLACE AND MANNER OF PAYMENTS

All sums payable to Tenant hereunder shall be made payable to "Skyport Development Company, LLC" and paid without notice at the following:

Skyport Development Company, LLC
c/o Mr. David Mosteller
8231 East Prentice Avenue
Greenwood Village, CO 80111

or at such other place as the Tenant or his authorized representative may hereafter designate by notice in writing to Subtenant. All sums shall be made in legal tender of the United States. Any check given to the Tenant shall be received by it subject to collection, and Subtenant agrees to pay any charges, fees or costs incurred by the Tenant for such collection, including reasonable attorney's fees, costs and expenses.

5.07 APPLICATION OF PAYMENTS

The Tenant, at its option and its sole discretion, may apply any payments received from Subtenant to any rental, compensation or other charges that are then due and payable. If the Tenant shall not make any specific application of a payment received from Subtenant, then any payment received from Subtenant shall be applied first to compensation which has been overdue for the longest period of time, then to the other charge(s). No designation of any payment by Subtenant for application to a specific portion of Subtenant's financial obligations hereunder shall be binding upon the Tenant. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction, and the Tenant shall accept such check or payment without prejudice to the Tenant's right to recover the balance of any and all compensation or other charges due from Subtenant to the Tenant or to pursue any other remedy provided in this Sublease or in law or equity. In the event of a default by a Subtenant, the Security Deposit may be applied to past due obligations in the order incurred, and any excess may be used to reduce damages to the Tenant from loss of that Subtenant's Rent.

5.08 BOOKS OF ACCOUNT AND AUDITING

The Tenant and the City shall have the right to audit, copy, and examine within the Denver metropolitan area all books and records of Subtenant.

Subtenant shall keep or make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Not later than February 28 of each and every year during the Term hereof, Subtenant shall furnish to Tenant, with a copy to the City, a true and accurate statement of the total of all revenues and business transacted during the preceding calendar year (listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and business transactions and including a breakdown of Gross Revenues on a month-by-month basis). Such statement shall be certified by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting principles for special reports, except that if Subtenant is a participant in the Airport's daily revenue reporting program and complies with the conditions of the program as set forth below, such statement may be signed by an officer of Subtenant. Such statement shall be furnished for every calendar year in which business was transacted under this Sublease during the whole or any part of the year. The above requirements for the annual statement may be modified only with the prior written

permission of the Manager, in his sole discretion, if such modification is in the best interest of the City.

Subtenant agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor. Such system shall be kept in a manner as to allow each location of the Subtenant's operations hereunder to be distinguished from all other locations or operations of Subtenant. Subtenant shall keep and preserve for at least three years, or until sooner audited by the City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period. The Tenant, the City's Auditor, the Manager and their respective authorized representatives shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of Subtenant relating to the Gross Revenues and business transacted.

Subtenant, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a representative the Tenant or the City to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Subtenant as appropriate. Such documents shall be available to such representative within 14 calendar days of the date of the written request. The parties agree that, after execution of this Sublease, any delay in furnishing such records to Tenant or the City will cause damages to the Tenant or the City which the parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond the date established as the audit request notice date.

The Tenant may require Subtenant to install point of sale cash register equipment as part of the Subtenant Improvements for any operation of Subtenant. The cost of such requirement shall be reasonable in relation to the size of the operation and volume of business.

If the Tenant or the City determines after an audit for any year that the Gross Revenues and business transacted shown by Subtenant's statement for such year were understated, Subtenant shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If the Gross Revenues were understated by more than 1%, Subtenant shall pay the cost of the audit, in addition to the deficiency and interest, within 30 days after notice of the amounts due and payable for such costs, deficiency and interest. The right of the Tenant and the City to perform such an audit shall expire three years after Subtenant's statement for that year has been delivered to the Tenant and the City.

Subtenant agrees that the Tenant and the Manager, the Auditor, and their authorized representatives, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Subtenant with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Subtenant by the City's Department of Revenue. Subtenant authorizes and permits the inspection of such documents, data, returns, reports and information by Tenant, the Manager, the Auditor and their authorized representatives, and, further, waives any claim of confidentiality that

it may have in connection with such inspection of documents, returns, data, reports and information.

5.09 DAILY REVENUE PROGRAM PARTICIPATION

Subtenant may elect to participate in the Airport's daily revenue reporting program, in which case, in lieu of submitting required annual statements of Gross Revenues and business transacted during a calendar year that are certified by an independent certified public accountant, such annual statements may be signed by an officer of Subtenant. However, in order to participate in such program, Subtenant must submit such officer-signed statements no later than the deadline for submitting annual statements required by this Sublease, and satisfy the conditions enumerated below:

- A. Subtenant shall report its Gross Revenues for the day by 2:00 p.m. local time on the following day. Subtenant may report Gross Revenues for Friday, Saturday and Sunday by 2:00 p.m. on the following Monday. If Subtenant fails to report its daily Gross Revenues for 30 consecutive days or without justification for 30 days in a calendar year, Subtenant shall no longer be deemed a participant in the Airport's daily revenue reporting program and shall submit an annual statement certified by an independent certified public accountant for that year.
- B. No later than the 10th day of each month, Subtenant shall provide the Airport Property Management Section with a copy of the Monthly Revenue Report Subtenant submits to the Airport Finance Section for the previous month's Gross Revenues. If Subtenant operates on a fiscal year, Subtenant shall supply the Airport Property Management Section with a copy of Subtenant's Annual Revenue report.
- C. At the end of each month, the Airport Property Management Section will provide Subtenant with reports of Subtenant's reported daily Gross Revenues to enable Subtenant to reconcile Gross Revenues reported for the previous month. Subtenant is required to make any corrections to such reports within 10 days of receipt.
- D. If the City determines after performing an audit that the daily Gross Revenues reported by Subtenant during the audited period were understated by more than 1% in any two months of any six months of the audited period, Subtenant shall submit an annual statement certified by an independent certified public accountant for the most current year in which daily Gross Revenues were understated and perform all other obligations required by the audit provisions of this Sublease for understated revenue; provided that Subtenant was an active participant in the Airport's daily revenue reporting program at the time the audit was performed and "audited period" shall mean a period of no more than twelve months prior to the date of the audit.
- E. Any annual statement Subtenant submits to the Tenant or the City after the deadline for submitting such annual statement required by this Sublease shall be certified by an independent certified public accountant.

5.10 FAILURE TO FILE MONTHLY OR ANNUAL REPORTS

If Subtenant fails to furnish to the Tenant or the City any monthly or annual statement or report of Gross Revenues within the time required by Sections 5.03 or 5.08, then Subtenant shall pay within 10 days of demand therefor by the Tenant or by the City through the Tenant, as Additional Rent, a special handling fee of \$100.00 per statement or report per day until such statement or report is delivered to the Tenant or the City. This remedy shall be in addition to any and all other of the Tenant's (and the City) remedies under this Sublease or at law. In addition, if Subtenant fails to furnish any two (2) consecutive monthly statements or reports of Gross Revenues within the time required by Sections 5.03 or 5.08, then, without limiting any of the Tenant's other rights under this Sublease, Tenant shall have the right or the City shall have the right, to conduct an audit as set forth in Section 5.08, and any and all charges occasioned by reason thereof shall be the sole obligation of Subtenant and payable on demand.

5.11 REESTABLISHMENT OF RENTALS, FEES AND CHARGES

The City, through the Manager, may from time to time, at intervals of not more than five (5) years, at the Manager's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges to Tenant provided for in Tenant's Lease. The City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system. Tenant shall have the right to pass through the amount of any increase in the rents, fees and charges, allocating the same equitably among the subtenants' Concession Spaces within the Lease Premises.

If the Manager proposes any change in the schedule of rentals, fees and charges payable by Tenant under Tenant's Lease, the City will give notice thereof to Tenant not less than 90 days before the same is to become effective. Tenant shall have the right to pass the proposed change on to the Subtenant by giving notice thereof to Subtenant not less than 75 days before the same is to become effective. Should the proposed rentals, fees and charges result in an increase of more than 5% in the dollar amount of compensation paid by Subtenant for the prior calendar year, then Subtenant may decline to pay compensation at the new rate(s). Subtenant shall promptly advise the Tenant (but in no event less than 60 days prior to the proposed effective date of such schedule of rentals, fees and charges) of its intention to cancel and terminate this Sublease. Upon such notice of intent to cancel and terminate, Subtenant shall surrender the Subtenant's Concession Space upon a date specified by the Tenant but in no event less than 120 days. Should Subtenant fail to give such notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation described in the notice from Tenant.

If Subtenant surrenders its Subtenant concession space under this paragraph, the Tenant will (i) return the space to the City, or (ii) to make good faith efforts to relet the space. Any replacement or successor subtenant or concessionaire for the same space, as a condition of doing business at DIA, shall be required to reimburse the Subtenant for either the unamortized book value or actual value of the Subtenant's remaining capital improvements in place, whichever is less. The book value will be audited at Subtenant's expense upon Tenant's or the City's request.

No failure by the City to reestablish the rentals, fees and charges at a five (5) year interval date shall constitute a waiver of the City's right to reestablish the rentals, fees and charges at any time thereafter, as provided in Tenant's Lease.

5.12 COMMONS AREA AND PROMOTION EXPENSES

Beginning on the Rent Commencement Date, Subtenant shall pay Tenant, in advance, on the first day of each month during the Term an amount equal to one-twelfth (1/12) of Subtenant's estimated Pro Rata Share of the (i) Commons Area Maintenance Expense (presently estimated to be the amount set forth on the Summary Page) and (ii) Promotion Expense. For the purposes of this Section, Subtenant's Pro Rata Share shall be computed by multiplying the entire amount of the expense for all Lease Premises (including the Commons Area) times a fraction, the numerator of which is the number of square feet of the Subtenant's Concession Space (shown on the Summary Page) and the denominator of which is the total number of square feet of the Lease Premises (excluding the Commons Area [except any portion thereof which has been sublicensed by Tenant with the consent of Manager], but including any additional space that is contiguous to the Lease Premises and included as part of the Lease Premises or subject to Tenant's Leases with subtenants). Tenant shall have the right to adjust Subtenant's monthly payment of the Commons Area Maintenance Expense and the Promotion Expense from time to time, but no more than twice annually, upon no less than thirty (30) days' written notice, to reflect Tenant's reasonable estimate of such expense.

5.13 EXPENSE ACCOUNTING

Within ninety (90) days following the end of each calendar year, Tenant shall provide Subtenant with a final statement of the Commons Area Maintenance Expense and Promotion Expense for the prior calendar year. If Subtenant's Pro Rate Share for such period exceeds the aggregate of the payments made, Subtenant shall remit such additional amount to Tenant within thirty (30) days following receipt of such statement. If Subtenant's Pro Rate Share for such period is less than the aggregate of the payments made, such excess shall be credited to the installments of such expenses next coming due from Subtenant (except in the final year of the Term, in which case the balance of such amount shall be refunded within thirty (30) days after termination of the Sublease). Such statement shall be final and binding upon Tenant and Subtenant unless objected to it in writing within ninety (90) days after it was provided. Subtenant shall have the right to inspect Tenant's books and records related to the expenses, at Tenant's principal place of business, not more frequently than once each calendar year upon not less than twenty (20) days' prior written notice to Tenant. Tenant agrees to maintain such books and records for each year for at least a three year period. Any audit or dispute hereunder shall not relieve Subtenant of any obligations to timely pay any amounts to Tenant pursuant to this Sublease.

SECTION 6 – CONSTRUCTION OF AND OPERATION OF SUBTENANT SPACE

6.01 CONSTRUCTION OF IMPROVEMENTS

Subtenant, at its own cost and expense, shall complete its design, obtain building permits and complete construction or installation of the initial Improvements no later than the date stated on the Summary Page. Such period may be extended by the Tenant, in writing, if completion of initial Improvements was delayed through no fault of Subtenant;

however, in no event shall such extension affect the date upon which compensation is due.

Subtenant shall construct and install the initial Improvements in accordance with (i) DIA Tenant Development Guidelines, the requirements of **Exhibit G, Design Standards, Construction Procedures and DIA Performance Specifications**, and **Exhibit X, Provisions for Design and Construction of Improvements**, (ii) the applicable construction provisions of this Section 6, applicable statutes, FAA approval requirements, City ordinances, the Building Code, applicable governmental regulations and (iii) pursuant to the City's building permit process and the customary terms and conditions thereof. The initial Improvements are subject to and may not be constructed or installed without the consent of the Tenant and the prior written approval of the Manager and the parties agree that time is of the essence in the performance of these obligations.

6.02 REQUIRED MINIMUM INVESTMENT

Subtenant shall construct the initial Improvements and furnish and equip the Subtenant's Concession Space at a minimum investment set forth on the Summary Page ("Required Minimum Investment"). The Required Minimum Investment shall not include financial costs, interest, inventory, pre-opening expenses or intra-company charges, and may include architectural and engineering fees not exceeding 15% of the total.

The Required Minimum Investment is a material part of the consideration to the Tenant under this Sublease. Within 90 days after completion of construction Subtenant shall file with the Tenant and the City a statement certified by its architect setting forth the total construction costs with appropriate detail itemizing the elements of design, decorations, furnishings, fixtures, and equipment. At Tenant's or the City's request, Subtenant shall also submit copies of invoices supporting such costs. If the total amount of the Subtenant's construction costs is less than the Required Minimum Investment, the difference between such total cost and the Required Minimum Investment for renovating the Subtenant's Concession Space, shall be paid to Tenant within 30 days after written notice from Tenant to Subtenant.

6.03 PLANS AND SPECIFICATIONS

All design drawings submitted by the Subtenant to the City shall be provided in the latest release of AutoCAD format in accordance with the City's Design Standards Manuals and further described in **Exhibit G**.

First-class standards of design and construction shall be required in connection with all such work, facilities, and Improvements. All Improvements shall conform to applicable statutes, FAA approval requirements, City ordinances, the Building Code, applicable governmental regulations and the DIA Environmental Guidelines, as they may be amended. The consent of the Tenant or the approval given by the City shall not constitute a representation or warranty as to such conformity; responsibility for compliance shall at all times remain with Subtenant.

Approval of the City and consent of the Tenant shall extend to and include consideration of architectural and aesthetic matters and the City and the Tenant reserve the right to reject any designs submitted and to require Subtenant to resubmit designs and layout

proposals until the Tenant consents and they meet with the City's approval. If any portion of the plans and specifications fails to gain the Tenant's consent or is disapproved by the City, the Subtenant shall promptly submit necessary modifications and revisions thereof.

No substantial changes or alterations shall be made in said plans or specifications after approval by the City, and no material or substantial alterations or Improvements shall be made to or upon the Subtenant's Concession Space or to Airport property without the prior written approval of the Manager. The Improvements are subject to and may not be constructed or installed without the prior written approval of the Manager.

Subtenant shall be required to design, provide, and install all tenant finish requirements, including but not limited to lighting, power, plumbing, HVAC distribution from main air supply, HVAC controls for the tie in to the base building system, life safety systems, interior finishes, all furnishings, fixtures, trade fixtures, equipment, and signage necessary to operate a first-class concession. Special attention must be given to the design of the HVAC and electrical systems. For a concept that creates odors, provisions must be made to prevent the transmission of said odors from the Facility, via the mechanical system, to other portions of the Concourses or the Terminal. All plans and specifications, materials and color selections are subject to review and approval by the Airport's Maintenance/Engineering Division. Subtenant shall, at its expense, furnish, install and maintain any wiring, conduit, and other connections within and leading to the Subtenant's Concession Space that is required to connect and operate the Subtenant's Equipment.

Without limiting the foregoing, Subtenant shall determine and assess the requirements to design, construct, operate and maintain the Subtenant's Concession Space in accordance with the requirements of the Americans with Disabilities Act, 42 USC §12,000 et seq. ("ADA"), including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance can not be achieved, Subtenant shall proceed formally to the federal agency having jurisdiction for a waiver of compliance under applicable federal regulations.

6.04 CONSTRUCTION PROCEDURES

- A. **Compliance with standards:** All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the improvements are constructed and installed in compliance with the Plans and Specifications.
- B. **Submissions required:** To assist the City in monitoring and inspecting such construction, the Subtenant's contractor(s) or subcontractor(s) shall submit, or cause to be submitted to the City, for information and record purposes, copies of all the following:
- (i) field test reports;
 - (ii) material certificates;

- (iii) approved shop drawings to be reviewed for compliance with the Airport design and construction standards;
 - (iv) requests for payment to contractors or subcontractors;
 - (v) progress reports;
 - (vi) notification of substantial completion of the leased facilities and all site improvements and final acceptance thereof;
 - (vii) two copies of maintenance and operation manuals in connection with building systems and all updates thereof;
 - (viii) as-constructed drawings; and
 - (ix) any other documents related to the construction of the improvements which may be reasonably required by the City.
- C. **SOW Changes:** No change order which materially changes the scope of the work shall be made by the Subtenant without the approval of the Tenant and the City, whose approval shall not be unreasonably withheld. The Tenant and the City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.
- D. **City Inspection:** All construction work, materials, and installations involved in or incidental to the construction of the Improvements undertaken by the Subtenant throughout the term hereof shall be subject at all times to inspection and approval by the City.
- E. **Advance Notice of Modification:** The Subtenant shall give or cause to be given to the Tenant and the City advance notice before performing any material modification to the Improvements.
- F. **Compliance with Plans:** The Subtenant shall cause all construction work, workmanship, materials, and installations to be in full compliance with plans and specifications. The Tenant and the City shall have the right to halt construction of the Improvements at any time if such construction is at material variance from the Plans and Specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.
- G. **Utilities:** The Subtenant shall perform utility location identification prior to any excavation activities. In addition, Subtenant shall obtain such utility connections or hook-ups as shall be necessary and shall have the right to receive all necessary utilities and services, and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up and all other user

charges of whatever nature occasioned thereby, except tap and developer fees. The Subtenant further agrees to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurement of such usage and consumption.

- H. **Wages:** The Subtenant shall include in its agreements with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics, and laborers prevailing wages as determined under the provisions of Denver Revised Municipal Code Section 20-76. The Subtenant further agrees, if requested by the City, to fully comply with the procedural requirements of Denver Revised Municipal Code Section 20-76 by requiring its general contractors and their subcontractors of any tier to submit to the City true and correct copies of the payroll records of all workers, laborers, and mechanics employed.
- I. **Expense of Alterations.** Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Sublease shall be done at the Subtenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.
- J. **Documents on Completion:** Upon completion of such work, the Subtenant shall deliver to the Tenant and the City evidence of payment, contractor's affidavits, and full and final waivers of any liens for labor, services, or materials. The Subtenant shall include in its agreement with its contractors provisions whereby such contractors shall defend and hold the Tenant and the City harmless from all costs, damages, liens, and expenses related to such work.
- K. **Standard of Performance:** All work done by the Subtenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between state or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this Sublease shall control.

6.05 COORDINATION OF CONSTRUCTION

- A. Subtenant shall cooperate with the Tenant and the City and their planners, designers, architects, and engineers in the construction and installation of the Improvements on the Concession Space, and shall comply with all approved plans and the Building Code. Subtenant agrees to meet with the City on a periodic basis, as requested by the Airport Concessions Manager. The Airport Concessions Manager shall be copied on all design and construction meeting minutes.
- B. Subtenant recognizes that during the Term construction may also occur in adjacent areas surrounding its Subtenant's Concession Space, and Subtenant agrees to monitor construction in adjacent areas and coordinate the work of its

contractors with the construction, scheduling and construction staging occurring in adjacent areas.

- C. All construction or installation at the Airport shall be accomplished without interfering with travelers, other businesses or Airport operations, and may be required to be accomplished during off hours, in whole or in part, requiring overtime payments to workers.
- D. Subtenant shall be responsible for all utilities needed during construction.
- E. Subtenant or its contractor shall at all times keep the construction site and surrounding area in a clean, orderly and safe condition free of accumulated construction debris and waste materials, and shall be responsible for removal of all construction debris and waste materials to a suitable licensed landfill off DIA property.
- F. To the extent that space is available, the City shall make available to Subtenant, at no cost to Subtenant, a construction staging area adjacent to the Subtenant's Concession Space with sufficient space for Subtenant's construction activities for the construction of the Improvements for the period of such construction. After construction activities are complete, Subtenant shall restore the construction staging area to the condition that existed immediately prior to the Subtenant's use of the area.
- G. All construction work, materials, and installations involved in or incidental to the construction on the Subtenant's Concession Space shall be subject at all times to inspection and regulatory control by the City. The Department of Aviation shall at all times have the right of access to the Subtenant's Concession Space to monitor and inspect the construction, work, materials, and installation of the Improvements to ensure that such improvements are constructed and installed in compliance with the approved plans and specifications.

6.06 ENVIRONMENTAL REQUIREMENTS FOR CONSTRUCTION

In the performance of construction activities for the Improvements, Subtenant is responsible for compliance and shall require its contractors to comply with all federal, state, and local environmental requirements including, without limitation the Environmental Requirements set forth on *Exhibit N, DIA Environmental Requirements*.

6.07 AS-BUILT DRAWINGS

Within the earlier of (a) 10 days after completion of construction of the Improvements or (b) 10 days after Subtenant opens for business, Subtenant shall deliver to the City a copy of the original of the Certificate of Occupancy for the Subtenant's Concession Space issued by the City Building Department, original executed copies of all mechanics' lien releases or other lien releases notarized and unconditional, in such form as the City shall have approved, copies of all building permits indicating inspection and approval by the issuer of said permits, and an architect's certification that the Improvements have been constructed in strict accordance with the approved Final

Drawings and Specifications and are fully complete in accordance with **Exhibits G and X**.

Within 60 days of the completion of construction, Subtenant shall deliver to the City (with a copy to the Tenant) a final and complete set of Mylar record drawings, with specifications, shop drawings and other documents defined in **Exhibits G and X** and Computer Aided Drafting and Design ("CADD") drawings, duly certified by a registered architect or registered engineer licensed in the State of Colorado. If Subtenant fails to provide the same within such 60-day period, Subtenant shall pay to the City, upon demand therefor by the City through the Tenant, \$100.00 per day for each day that such certified drawings and documents have not been delivered to the City within such period of time. Subtenant agrees that, upon the request of the City, Subtenant will inspect the Subtenant's Concession Space jointly with the City to verify the as-built drawings. All improvements made by Subtenant shall be subject to inspection by the City and approval by Manager, and shall be removed and replaced at Subtenant's sole cost immediately if disapproved.

6.08 BUILDING PERMITS

Subtenant or its contractor are solely responsible for applying for, obtaining, and paying for all required building permits, licenses and other approvals, and is responsible for submitting plans and specifications to the City's Building Inspection Division for the necessary building permits.

6.09 CONSTRUCTION BONDS

Prior to the commencement of any construction, Subtenant shall deliver to the Manager a copy of the payment bond in favor of the Tenant and the City in a sum not less than 100% of the construction contract price. Said bond shall guarantee prompt and faithful payment of the construction contract by the Subtenant directly to the contractor.

Prior to the commencement of construction, Subtenant's contractor shall deliver to the Manager, and maintain in effect throughout the construction, a construction performance and payment bond in favor of the Tenant and the City in a sum not less than 100% of the construction contract price. Said bond shall guarantee prompt and faithful performance of the contract and prompt payment by Subtenant's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, supplies, rental machinery, tools and equipment used directly or indirectly by the contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect the Tenant and the City from any liability, losses or damages arising therefrom.

All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City, and shall be in form and with conditions as provided by the City. In lieu of a construction bond, the Subtenant may provide only such alternate forms of security as are permitted by the Manager, in such form and with conditions as the Manager requires.

6.10 CONSTRUCTION INSURANCE

Subtenant agrees to secure or require each contractor to secure and to keep in full force and effect during and until completion of the Improvements the following insurance:

- A. ***Builder's Risk Insurance.*** A builder's risk insurance policy in the amount set forth on the Summary Pages.
- B. ***Commercial General Liability Insurance.*** A commercial general liability insurance policy on a comprehensive form, written on an occurrence basis and including coverage for premise/operations, products/completed operations, contractual, independent contractors, broad form property damage, personal injury, and fire legal liability. This commercial general liability insurance policy shall be in the amounts set forth on the Summary Pages.

This policy shall be written with an insurance provider acceptable to and approved by the City. It shall further cover the obligations assumed by Subtenant hereunder and shall name and endorse the Tenant and the City as an additional named insureds. This policy shall contain a waiver of subrogation in favor of the City and Tenant. This insurance policy shall not contain any care, custody or control exclusions, and shall not contain any exclusion for bodily injury to or sickness, disease or death of any employee of Subtenant or any of its contractors which would conflict with or any way impair coverage under the contractual liability endorsement.

- C. **Business Auto Liability Insurance.** A business auto liability insurance policy which includes coverage for owned, non-owned and hired vehicles in the amount set forth on the Summary Pages for damage or bodily injury, including wrongful death, as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned or non-owned vehicles, including rented vehicles, and including their use on or off City property or by City personnel. This policy shall name and endorse the City and Tenant as an additional named insureds and shall contain a waiver of subrogation in favor of the City and Tenant.
- D. ***Worker's Compensation Insurance.*** Worker's compensation insurance which shall comply with the requirements of the Worker's Compensation Act of Colorado and shall provide coverage set forth on the Summary Pages to protect Subtenant from any and all claims arising from performance of work under this Sublease.

The above amounts may be increased or modified by the Manager at any time during the Term, so long as such amounts are consistent with those required for other construction projects at that time.

6.11 LIMITATION ON LIABILITY

Subtenant agrees that no liability shall attach to the Tenant or the City for any damages or losses incurred or claimed by Subtenant or any other person or party on account of the construction or installation of the Improvements or other improvements to or upon Airport property made by Subtenant. Subtenant agrees that no liability shall attach to the Tenant or the City for any interference or delay caused by construction in adjacent areas, other businesses, or Airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Subtenant agrees to indemnify, defend, and hold harmless the Tenant and the City from any loss, cost, damage, or expense incurred, claimed, asserted, or arising in connection

with Subtenant's, or its contractors or agents, construction or installation of the Improvements or other improvements to or upon the Airport made by Subtenant; provided, however, Subtenant shall not be required to indemnify the City for any loss, cost, or damage arising solely from the negligence of the City nor shall Subtenant be required to indemnify the Tenant for any loss, cost, or damage arising solely from the negligence of Tenant.

6.12 RESTRICTION ON CHANGES AND ALTERATIONS

After construction and installation of the initial Improvements, Subtenant agrees not to materially improve, change, alter, add to, remove, or demolish all or any part of the Improvements without the prior written consent of the Tenant and the Manager, which consent shall not be unreasonably withheld. If such changes are approved, Subtenant must comply with the applicable construction provisions of this Section 6. Full and complete specifications for all work and improvements, along with a statement of the time required to complete such work, shall be submitted to and approved in writing by the Manager or his authorized representative before construction work commences. Copies of plans for all changes or alterations shall be given to the Director of Airport Engineering for review and written approval prior to commencement of construction. After the City's final approval, the City shall return to Subtenant one approved copy for its records and shall retain one approved copy as an official record thereof.

6.13 OPENING FOR BUSINESS

Subtenant shall complete its design, obtain building permits, complete construction and open for business to the traveling public no later than the Concession Opening Date set out on the Summary Page. Such period may be extended by the Tenant, in writing, if completion of Improvements was delayed through no fault of Subtenant; however, in no event shall such extension affect the date upon which compensation is due.

Subtenant shall submit to the City for review, at least 30 days prior to the Concession Opening Date, written operating and security procedures for its operations hereunder. Subtenant shall revise such operating and security procedures as necessary to obtain the City approval of them.

At least 21 days prior to the Concession Opening Date, Subtenant shall submit to the City the Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the concession, including for cleaning and maintenance.

The Tenant and Subtenant agree that time is of the essence in the performance of the obligations herein, and that both parties will suffer financial losses due to failure to implement Subtenant's Proposal on schedule. Accordingly, if Subtenant fails to open for business in Subtenant's Concession Space within the time specified in this Section 6.13 and any extension granted by the Tenant in writing, the parties agree that it is and will be impracticable and extremely difficult to determine the actual damages suffered by the Tenant. Therefore, the parties have agreed that in order to compensate the Tenant for its loss, Subtenant shall pay to the Tenant as Additional Rent, upon demand, the sum of \$500.00 per day for each day Subtenant delays its initial opening beyond the time specified herein plus any extension granted by the Tenant in writing. In this context, failure to open shall mean Subtenant's failure to (i) deliver notification of substantial completion of Subtenant's Concession Space (in the form of a Temporary Certificate of

Occupancy for Subtenant's entire Concession Space) to the Tenant on or before the Concession Opening Date, and (ii) generate Gross Revenues from Subtenant's Concession Space. This remedy shall be in addition to any other remedies provided in this Sublease or in law or in equity to the Tenant in the event of default by Subtenant. Such Additional Rent shall be deemed to be in lieu of the Percentage Compensation Fee only (as that term is defined in Section 5.01) that might have been earned during the period of Subtenant's failure to open. The amount has been determined based upon numerous considerations including the fact that the Tenant has foregone other proposed revenue-producing uses of the Subtenant Concession Space and expended money in reliance upon and based upon Subtenant opening for business on the intended opening date.

6.14 OPERATIONS

Purpose. The operation of Subtenant's concession is undertaken in part to further the City's goals of creating and maintaining a vibrant first-class concession program on the Concourse B Mezzanine area (targeting primarily business travelers) and offering a range of quality food and beverage, retail and services in a branded environment, with particular emphasis on established local and national brands. In that spirit, Subtenant agrees to conduct its business to accommodate the public using the Airport and to operate the concession in the following manner:

- A. Subtenant shall operate the concession in a first-class manner satisfactory to Tenant and the Manager or his authorized representative. Customer service shall be prompt, clean, courteous and efficient.
- B. Subtenant shall supply sufficient Products to fully stock its Subtenant's Concession Space. All Product must be must be new, fresh and of top quality.
- C. Subtenant shall charge only fair and reasonable prices for its Products, subject to the following:
 1. Subtenant's initial Pricing Plan submitted pursuant to the terms of Section 6.05 herein shall strictly conform to Subtenant's Proposal, unless otherwise authorized by Tenant and the Manager or his authorized representative.
 2. Without exception, prices charged by Subtenant shall not exceed "market pricing," which means prices no higher than 110% of "street prices" charged in comparable non-airport Facilities offering similar Products in the Denver metropolitan area, and shall be subject to the approval of the Tenant and the Manager or his authorized representative. Such comparable Facilities shall be those set forth in Subtenant's Proposal or similar Facilities approved by the City.
 3. Each Pricing Plan utilized shall conform to all applicable laws and regulations respecting truth-in-advertising.
 4. Subtenant shall not in any manner misrepresent to its customers the quality, grade, point of origin, or the size, weight or portion of Products sold, or utilize false or deceptive merchandising terms or advertising.

5. Where an item has a pre-marked or suggested retail price established by the manufacturer or distributor, Subtenant shall not charge a price to the public higher than such pre-marked or suggested retail price.
 6. Subtenant shall post its Pricing Plan in a manner that is clearly visible and legible to patrons prior to their making a purchase, listing prices for all items or services it offers for sale in the Subtenant's Concession Space. With the prior approval of the City, some prepackaged items may be individually price marked rather than listed on the posted Pricing Plan, if such marking is readily visible and legible to patrons prior to the purchase.
- D. Subtenant agrees that it will accept at least three (3) nationally recognized credit cards for payment of purchases made at the Subtenant's Concession Space.
 - E. Subtenant shall at all times retain at the Subtenant's Concession Space an experienced manager of comparable high quality facilities fully authorized to represent and act for it in the operation of the concession and to accept service of all notices provided for herein. At times when this manager is not present at the Airport, Subtenant shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Facilities and to be available at the Subtenant's Concession Space to act for such manager.
 - F. During the required hours of operation, Subtenant shall employ sufficient personnel to staff and meet the reasonable needs or demands of patrons during all hours of operation including, but not limited to, maintenance of the Subtenant's Concession Space as needed. Such personnel shall be qualified, trained, courteous, informative and helpful to the public, and in the case of a restaurant or food and beverage enterprise, Subtenant shall upon request issue one guest check per person. Subtenant shall provide proper training of all employees and for the certification and/or licensing of employees in all areas of service as their duties might practically and legally require. Subtenant shall ensure that all personnel refrain from any loud, boisterous, offensive or inappropriate conduct, and that they treat all patrons professionally, equally and courteously, including but not limited to forms of address, without regard to race, creed, color, national origin, ethnicity, age, disability, gender or sexual orientation. Subtenant shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may warrant.
 - G. Subtenant's employees and agents shall not engage in "high pressure" sales tactics or unfair or deceptive trade practices in the operation of the concession. Additionally, Subtenant's employees and agents shall not engage in solicitation for or in connection with any services offered on or about the Airport by Subtenant or any other party.
 - H. The attire of Subtenant's personnel shall be neat, clean, of the highest character and in keeping with that worn by personnel in similar first-class businesses in the Denver metropolitan area. Personnel shall be attired in identifiable dress and at all times display proper Airport identification as well as visible identification of their name and employer.

- I. Subtenant shall receive and make all deliveries of money, coin, supplies, goods and products in such manner and at such times and locations as the Manager or his authorized representative may reasonably approve or require. Emergency deliveries may be made at other times subject to prior arrangements with the Manager or his authorized representative.
- J. Subtenant shall comply with all applicable federal, state and local laws and regulations, obtain and maintain at all times at its own expense, all licenses, certificates and any other such documents necessary for the operation of its business at the Airport including where applicable those documents governing restaurants, food and beverage enterprises, retail stores or service establishments, and the sale of alcoholic beverages. Subtenant shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning the same. Subtenant shall allow duly authorized representatives of governmental entities access to the Subtenant's Concession Space for inspection purposes.
- K. When operating a restaurant or food and beverage enterprise, Subtenant shall keep its exhaust hoods and grease lines clean and in good working condition and shall provide to the Manager or his designee a monthly report to that effect.
- L. Within thirty days from the date of the Manager's consent to this Sublease, the Tenant, City, and Subtenant shall enter into a Non Disturbance and Attornment Agreement, in a form acceptable to the City, which shall govern the rights and obligations of the City and Subtenant in the event of a termination of Tenant's Lease.
- M. The Tenant and the Manager or their authorized representatives shall have the right to make reasonable objections to the quality of Products sold, the character of the service rendered the public, and the appearance and condition of the Subtenant's Concession Space. Subtenant agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice from Tenant or the Manager or his authorized representative. If Subtenant fails to comply with said notice, Subtenant shall pay within 10 days of demand therefor by the Tenant or by the City through the Tenant, as Additional Rent, in addition to all other charges or compensation payable hereunder, \$100.00 per day for each day in which Subtenant failed to comply with this Section in order for Tenant to reimburse the City for the additional administrative expenses resulting therefrom. This remedy shall be in addition to any and all other remedies provided in this Sublease or in law or in equity to the Tenant (and the City).

6.15 PRICING PLAN

Subtenant shall prepare a Pricing Plan indicating the Products to be offered for sale and prices to be charged for each item. This Pricing Plan shall be subject to approval by Tenant and the Manager or his authorized representative. Subtenant shall display and sell Products only in accordance with Subtenant's Proposal and the terms of this Sublease. Subtenant shall only sell Products with pricing clearly visible and legible to patrons prior to their making a purchase. Subtenant may provide such additional Products as the Tenant and the Manager or his authorized representative may authorize in writing. The Tenant and the Manager or his authorized representative, from time to

time, and at their sole discretion, may require Subtenant to offer for sale, at a fair profit, other Products that Tenant and the Manager or his authorized representative determine are necessary to serve the traveling public that are reasonably consistent with Subtenant's operations. If Subtenant adds items to its Pricing Plan, Subtenant shall submit the new Pricing Plan and prices for Tenant's and the Manager's prior written approval. Subtenant shall not offer for sale any food, beverage, merchandise, services, or engage in any activity not specifically provided for under the terms of this Sublease, unless otherwise authorized in writing by Tenant and the Manager or his authorized representative.

6.16 HOURS OF OPERATION

- A. Continuous Operation. Except as may be otherwise authorized or stated on the Summary Page, Subtenant agrees to keep its Facilities open for business to the public every day, including weekends and holidays, for not less than 16 hours per day. Subtenant shall be deemed to have abandoned the Subtenant's Concession Space if Subtenant closes such space to retail trade for two (2) or more consecutive days, unless such closing is permitted by any other provision of this Sublease. Such abandonment is an event of default under Section 9.01.
- B. Daily Operating Hours. Without limiting its obligations hereunder to remain open for not less than 16 hours per day (or the hours otherwise authorized or specified on the Summary Page), Subtenant shall open for business at least one hour before scheduled departure of the first flight of the day leaving from any gate listed on the Summary Page, and remain open until one-half hour or less before the scheduled departure of the last flight of the day from any gate listed on the Summary Page. Subtenant shall use its best efforts to respond to any and all weather emergency and/or flight diversion situations which might require certain locations to open or remain open before or beyond these minimum hours.
- C. Exceptions. Exceptions to Subtenant's obligations under this Section may be authorized in advance in writing by the Tenant.
- D. Noncompliance. If Subtenant fails to comply with any of the provisions of this Section, the Tenant will suffer damages in an amount which is not readily ascertainable and Tenant, in any such event, shall have the right at its option, and at the City's request, the obligation to collect as liquidated damages, and not as a penalty, in addition to all other charges or compensation payable hereunder, \$150.00 per day for each day in which Subtenant failed to comply with this Section 6.17. This remedy shall be in addition to any and all other remedies provided in this Sublease or in law or in equity to the Tenant.

6.17 SIGNS, WINDOW DISPLAYS, AND ADVERTISING

- A. Except as permitted under this Section and the DIA Tenant Development Guidelines, Subtenant shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Subtenant's Concession Space, or on the interior or exterior surface of the glass of any window or door of the Subtenant's Concession Space, or on any common area, walkway or other location outside the Subtenant's Concession Space, or on or within any display window space in the Subtenant's Concession Space, whether

or not there is display window space in the Subtenant's Concession Space, or within any entrance to the Subtenant's Concession Space, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description. However, subject to the prior written approval of Tenant and the Manager or his authorized representative with respect to size, design and placement, Subtenant may place decals relating to credit or charge cards accepted on glass storefronts where warranted. No illuminated sign located in the interior of the Subtenant's Concession Space shall be permitted without the prior written approval of Tenant and the City. All signs located in the interior of the Subtenant's Concession Space shall be in good taste so as not to detract from the general appearance of the Subtenant's Concession Space or the Airport.

- B. No symbol, design, name, mark or insignia adopted by the City for the Airport shall be used without the prior written consent of the City.
- C. Under no circumstances shall any handwritten or temporary signs or displays be posted or used by Subtenant, including but not limited to any menu boards, price lists or employment opportunity signs.
- D. Subtenant shall affix a sign to the exterior surface of the storefront of the Subtenant's Concession Space identifying the operation, subject to the advance approval of Tenant and the Manager or his authorized representative. Subtenant shall pay all costs of fabricating, constructing, operating and maintaining such sign including, without limitation, all charges for electricity if not supplied by the City. Subtenant shall keep said sign well lighted during such hours as the Tenant shall designate, and shall maintain said sign in good condition and repair during the entire Term of this Sublease.
- E. Permission will not be granted for any advertising inconsistent with the advertising rights held by any advertising company which has contracted with the City to sell advertising at the Airport or which fails to comply with DIA Design Standards or DIA Tenant Development Guidelines, or any advertising material, sign, fixture or equipment which extends beyond the Subtenant's Concession Space. No advertising shall be sold without the specific written consent of the Tenant and the Manager.
- F. In the event Subtenant shall be in default of this Section, Subtenant shall pay Tenant as Additional Rent \$100.00 for each day of default in order for Tenant to reimburse the City for the additional administrative expenses resulting therefrom.

6.18 MODIFYING SUBTENANT'S OPERATION

- A. Subtenant may propose modifications to Subtenant's Proposal, Subtenant may propose new brands, and new commercial concepts; Subtenant may propose changes in the use of any part of Subtenant's Concession Space or changes to pricing, menus, signage, or other such items identified in this Sublease that require the Tenant's and the Manager's consent or approval, and the Tenant and Manager, using commercially reasonable judgment, may approve or reject such

proposals. Subtenant agrees that the Tenant's decision and the Manager's decision in this regard shall be final.

- B. To initiate such a proposal, Subtenant shall prepare a Pricing Plan, or for other changes, a Business Plan indicating applicable design and construction strategies, build-out, marketing, items to be offered for sale and prices to be charged for each item. This Business Plan shall be subject to approval first by the Tenant and if approved by the Tenant then by the Manager. Once approved, Subtenant shall develop the Subtenant Concession Space and display and sell merchandise only in accordance with Tenant's Proposal as modified by the Business Plan and the terms of this Sublease. Subtenant may provide such additional items as the Tenant and the Manager or his authorized representative may authorize in writing. Subtenant shall not offer for sale any food, beverage, merchandise, service or Brand or engage in any activity not specifically provided for under the terms of this Sublease, unless otherwise authorized in writing first by the Tenant and the Manager or his authorized representative.
- C. Business Plans will be submitted to the Tenant and if approved Tenant will submit said Business Plans to the Airport's Concessions Manager for approval by the Manager using a form provided by the Airport's Deputy Manager of Business and Technologies (hereinafter "Deputy Manager"), or otherwise approved in writing by the Deputy Manager. The form shall include Subtenant's plans for development, new concepts, brands or changes, an explanation of any time-sensitive issues, marketing and promotion plans, current projections of future passenger traffic, anticipated additional Gross Revenues, revenue to the City, and revenue to Subtenant, which projections shall be based on reasonable and conservative assumptions, and which addresses such issues as what if any, additional capital investment will be required, prospective brands, key project milestones, percentage fees, a signature block for approval by the Manager and such other items as may be required by the Airport's Concessions Manager. The City agrees that its Manager will, in writing and within thirty days of having received a **completed** Business Plan from the Subtenant, approve or disapprove such plan, using his commercially reasonable judgment, and Tenant and Subtenant agree that the Manager's decision be final.
- D. If Subtenant fails to obtain the Manager's approval of and authorization to proceed with any new proposal or proposed change before proceeding with the same, then the Subtenant shall pay to the City through the Tenant within ten days of demand therefor by the City through the Tenant, as Additional Rent by the City, in addition to all other compensation required to be paid by the Subtenant under this Sublease, a special handling fee of One Hundred Dollars (\$100.00) per day from the date Subtenant implements the new proposal or change, until Subtenant has provided to the City all documentation required in order to obtain such approval, provided that the Manager shall not have failed to approve such proposal within thirty days of the City having received from Subtenant a complete written proposal. This remedy shall be in addition to any other remedies the Tenant (and the City) may have under this Sublease, at law or in equity.

6.19 RENOVATION OF SUBTENANT'S CONCESSION SPACE

At a time commencing no earlier than 180 days before and no later than the Renovation Completion Date specified on the Summary Page Subtenant shall, at its sole cost and expense, have completed all repairs/refurbishments necessary to comply with applicable life safety and health code requirements as well as have completed renovating and refurbishing the Concession Improvements in the Subtenant Concession Space required by the Tenant at a minimum investment specified in the Summary Page, in April 2007 dollars, subject to reasonable escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area ("Renovation Minimum Investment"). The Renovation Minimum Investment shall not include financial costs, interest, inventory, pre-opening expenses or intra-company charges related to construction, but may include architectural and engineering charges not exceeding 15% of the total Renovation Minimum Investment.

Within 90 days of completion of the renovations, Subtenant shall file with the Tenant (with a copy to the City) a statement certified by Subtenant's architect setting forth the total renovation costs, with appropriate detail itemizing the elements of decorations, furnishings, fixtures, and equipment. At Tenant's or the City's request, Subtenant shall also submit copies of invoices supporting such costs. If the total cost of the Subtenant's renovation investment is less than the Minimum Renovation Investment, the difference between such total cost and the Minimum Renovation Investment for renovating the Subtenant Concession Space, shall be paid to Tenant within 30 days after written notice from Tenant to Subtenant.

Subtenant shall provide design plans and specifications of the proposed renovations of the Improvements for the approval of the Tenant and the Manager or his authorized representative no later than one (1) year prior to the Renovation Completion Date, or such lesser time as is agreed to in writing by the Tenant or his authorized representative. The renovations shall be constructed in accordance with DIA Subtenant Development Guidelines and the requirements of *Exhibits G, N and X*.

6.20 CARE OF AREA

Subtenant agrees that in accordance with Section 7.06 it will keep the Subtenant's Concession Space in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Subtenant, at its own expense, shall collect and deposit all trash and refuse at frequent intervals at collection station locations specified by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted within the Subtenant's Concession Space or in any public area in the Airport.

6.21 VENDING MACHINES

No amusement or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Subtenant's Concession Space except with the written permission of Tenant and the Manager or his authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; dispensation of cash, money orders and

checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

6.22 COMPLIANCE WITH ALL LAWS AND REGULATIONS

Subtenant agrees not to use or permit the Subtenant's Concession Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Subtenant's Concession Space in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Subtenant further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Subtenant or which the Manager may request relating to Subtenant's operations.

- A. **Americans with Disabilities Act.** Without limiting the foregoing, Subtenant shall comply at all times with the Americans with Disabilities Act, 42 USC §12,000 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Subtenant's Concession Space and in Subtenant's operations.
- B. **Small Business Opportunity Division.** Subtenant agrees to comply with the Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, in the design and construction of Improvements throughout the term of this Lease. Subtenant agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The DSBO Director will set goals for each design and construction phase of the Project in accordance with the MBE/WBE Ordinance. Subtenant shall meet, or make a good faith effort to meet, such goals. Subtenant shall submit to DSBO monthly reports in a form satisfactory to DSBO identifying all MBE and WBE firms and the amounts spent with such firms during the preceding month for the purpose of demonstrating compliance by Subtenant with this section.
- C. **DBE Obligation.** This Sublease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Subtenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

Subtenant agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and causes those businesses to similarly include the statements in further agreements.

The Director of Denver's Division of Small Business Opportunity ("DSBO") has establish ACDBE concession specific goals as a percent of annual gross receipts for each of the concession operations to be undertaken by the Tenant under the Tenant's Lease. Tenant's goals are stated on the Summary Page.

Subtenant identified ACDBEs that Subtenant would retain as subtenants, joint venture partners, suppliers or service providers (ACDBE firms) to participate in the operations to be carried out under this Sublease. After this Sublease is executed, the Subtenant agrees that it shall make good faith efforts, and cause its subtenants and concessionaires to make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the concession specific goals stated on the Summary Page for ACDBE participation in the performance of this Sublease. Subtenant has achieved the ACDBE participation stated on the Summary Page and covenants to maintain such ACDBE participation throughout the term of this Sublease.

The Subtenant and its subtenants and concessionaires will be required to submit to DSBO the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) the dollar amount of the participation of each ACDBE firm participating; (4) written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal; (5) written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

Subtenant agrees to enter into agreements, and to cause its subtenants and concessionaires to enter into agreements, with the ACDBE firms it identifies to DSBO as ACDBE participants in its activities under this Sublease. Throughout the term of this Sublease, Subtenant agrees that it shall continue to utilize qualified and available ACDBE firms which have been and continue to be certified by the City to the fullest extent which is reasonably possible to achieve and to an extent necessary to comply with the requirements of 49 CFR Part 23.

If an ACDBE subtenant, joint venturer, supplier or service provider must be replaced for any reason during the Sublease Term, Subtenant agrees to replace the subtenant, joint venturer, supplier or service provider with another ACDBE, or if it cannot, then Subtenant shall demonstrate that it made good faith efforts to do so.

Subtenant agrees that it shall include the provisions of this section in every contract entered into in connection with the operation of the Project, so that such provisions will be binding upon each subcontractor, supplier or service provider.

Subtenant further agrees that it shall comply with all disadvantaged business enterprise regulations of the U.S. Department of Transportation as they may be adopted or amended from time to time prior to or during the Sublease Term.

Subtenant shall submit to DSBO monthly reports in a form satisfactory to DSBO identifying all DBE firms and the amounts spent with such firms during the

preceding month for the purpose of demonstrating compliance by Subtenant with this section. Subtenant shall also submit an annual report describing the same information as required by the monthly reports as a part of Subtenant's certified audit submitted to the City.

- D. This Section applies to all actions governed by this Sublease throughout its Term, and Subtenant understands that it must continue to meet the requirements of all laws, including the M/W/SBE and DBE requirements, as they may apply to Subtenant's activities under this Sublease.

6.23 COMPLIANCE WITH ENVIRONMENTAL REGULATIONS

Subtenant, in conducting any activity on any Airport property shall comply with all applicable airport, local, state and federal rules, regulations, statutes, laws or orders, and DIA Environmental Requirements set forth in *Exhibit N*.

Subtenant hereby specifically agrees to indemnify and hold Tenant and the City harmless from and against any and all claims, losses, liability, remedial action requirements, enforcement actions of any kind, or costs and expenses, including attorney fees, incurred in connection with or arising from the presence of any hazardous materials or release of any hazardous materials on, under or emanating from Subtenant's Concession Space relating to Subtenant's use or occupation of the Concession Space, or any activity undertaken by Subtenant on or off of Subtenant's Concession Space in connection with cleanup, handling, treatment, transport or disposal of any hazardous materials on or emanating from the Subtenant's Concession Space relating to Subtenant's use or occupation of Subtenant's Concession Space.

6.24 WASTE OR IMPAIRMENT OF VALUE

Subtenant agrees that nothing shall be done or kept in the Subtenant's Concession Space which might impair the value of the Tenant's or the City's property or which would constitute waste.

6.25 HAZARDOUS USE

Subtenant agrees that nothing shall be done or kept in the Subtenant's Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Subtenant's Concession Space which might be unsafe or hazardous to any person or property. Further, Subtenant shall not do or permit to be done any act or thing upon the Subtenant's Concession Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Sublease, or carried by the Tenant or the City, covering the Subtenant's Concession Space or the buildings in which the Subtenant's Concession Space is located or which, in the opinion of the Tenant or the Manager or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Sublease. If, by reason of any failure by Subtenant to comply with the provisions of this section, after receipt of notice in writing from the Tenant or the City, any fire insurance rate on the Subtenant's Concession Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Subtenant shall pay the City or the Tenant, as appropriate, on demand, that part of all fire insurance premiums paid by the City or the Tenant which have been charged

because of such violation or failure of Subtenant; provided, that nothing herein shall preclude Subtenant from bringing, keeping or using on or about the Subtenant's Concession Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

6.26 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING

Subtenant agrees that nothing shall be done or kept on the Subtenant's Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Subtenant's Concession Space which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Subtenant agrees immediately to remedy the violation at Subtenant's expense.

6.27 NOISE, ODORS, VIBRATIONS AND ANNOYANCES

Subtenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Subtenant's Concession Space or annoy, disturb or be offensive to others in the Terminal or Concourses and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

6.28 ACCESS TO FACILITY AND SYSTEMS

Subtenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Subtenant's Concession Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Subtenant's Concession Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Subtenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Subtenant's Concession Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

Subtenant shall not place any additional lock of any kind upon any window or interior or exterior door in the Subtenant's Concession Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Subtenant's Concession Space, nor refuse, upon the expiration or sooner termination of this Sublease, to surrender to Tenant any and all keys to the interior or exterior doors on the Subtenant's Concession Space, whether said keys were furnished to or otherwise procured by Subtenant. If any keys furnished to Subtenant by Tenant are lost, Subtenant shall pay the Tenant, on demand therefor, as Additional Rent, the cost for replacement thereof.

6.29 NO AUCTION

Subtenant agrees not to allow or permit any sale by auction or hawking on the Subtenant's Concession Space or elsewhere on the Airport.

6.30 TITLE TO IMPROVEMENTS

Subtenant agrees that all improvements to the Subtenant's Concession Space, including approved changes and renovations, which are affixed to the realty, shall become the property of the City upon their completion and acceptance by the City.

SECTION 7 – UTILITIES AND SERVICES

7.01 UTILITIES

Most Tenant areas in the Terminal and Concourses have services of adequate capacity to supply reasonable amounts of hot or chilled water, gas, electricity, potable water, fire protection, sanitary waste, grease waste and storm sewer capacity to serve the Tenant areas. The Subtenant shall verify capacity of all systems in the Subtenant's Concession Space and shall be responsible for all utility system upgrades that are necessary for a concession space build out. Subtenant shall be responsible for the payment of all utilities required for operations in the Subtenant's Concession Space.

7.02 HEATING AND AIR CONDITIONING (HVAC)

Tenant shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into its Subtenant's Concession Space required to connect and complete the HVAC from the Airport's central system for the Subtenant's Concession Space.

In Tenant's Lease, the City has agreed, at its expense, to furnish normal and reasonable quantities of central air from the central HVAC system to the Subtenant's Concession Space and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the City is obligated to Tenant to maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; and Tenant shall in turn provide such utilities to Subtenant to the extent the City performs its obligations to Tenant; provided, that Subtenant properly maintains the ductwork and other connections within or leading into its Subtenant's Concession Space and complies with the recommendations of the City's engineer regarding reasonable occupancy and use of the Subtenant's Concession Space.

7.03 WATER SERVICE

If water service is required in Subtenant's Concession Space, Subtenant shall, at its expense, furnish, install and maintain a water meter at a location and of a type specified by the City and shall pay all costs for water used within the Subtenant's Concession Space. Subtenant shall be responsible for all water hook-up of its equipment.

In Tenant's Lease, the City has agreed to furnish water from the central water source in reasonable quantities; and Tenant shall in turn provide and water to Subtenant; provided that Subtenant complies with all water conservation programs in effect or as adopted.

7.04 ELECTRICITY AND NATURAL GAS

Subtenant shall, at its expense, furnish, install and maintain an electric meter and a gas meter if required, at a location and of a type specified by the City, and shall pay all costs for electricity and gas used within the Subtenant's Concession Space. Subtenant shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Subtenant's Concession Space. Any bills by the City for such costs shall be due within 30 days and shall accrue interest at the Past Due Interest Rate if not paid when due.

In Tenant's Lease, the City has agreed to provide Tenant with a premises wiring system to the Subtenant's Concession Space which will handle electronic information such as telephone and telecommunications equipment and to the extent so provided Tenant will in turn provide such system to Subtenant. Subtenant shall be responsible for any extension of the wiring and connection of any terminals and devices in accordance with City requirements, and shall pay for telephone service to the Subtenant's Concession Space.

7.05 LIGHTING

Subtenant shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Subtenant's Concession Space. Levels of illumination and wattage requirements shall be subject to approval by the City.

7.06 JANITORIAL SERVICES AND MAINTENANCE

- A. Subtenant shall, at its expense, be responsible for janitorial services for the Subtenant's Concession Space. Subtenant shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Lease Premises or to be disposed of improperly.
- B. The cost of maintenance, care, and any necessary replacement of the Improvements in Subtenant's Concession Space shall be born by the Subtenant. Subtenant agrees, at its expense and without cost or expense to the Tenant, during the Term hereof, that:
 - 1. Subtenant shall, at its expense, maintain the premises in a first-class condition, ordinary wear and tear excepted as conditions and the Tenant and the Manager or his authorized representative may require, including but not limited to redecoration, painting and repair and replacement of damaged or worn furnishings and equipment, and maintenance, repair and replacement of life safety, fire detection, fire suppression and fire monitoring systems.
 - 2. Subtenant will make all necessary and appropriate repairs and replacements thereof promptly and in a good and workmanlike fashion without diminishing the original quality of such Improvements;
 - 3. Subtenant covenants and agrees that all maintenance, repair and replacement shall be completed with due diligence and in a good and

workmanlike fashion and in compliance with all conditions imposed by the City and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and that the costs and expenses with respect to such maintenance, repair and replacement shall be paid promptly when due and that the maintenance, repair and replacement shall be accomplished free of liens of mechanics and materialmen. Subtenant further covenants and agrees that the costs and expenses incurred by the City or the Tenant for any maintenance, repair and replacement to the Subtenant's Concession Space required as a result of a failure of Subtenant to perform such maintenance, repair or replacement plus 20% of such costs and expenses for overhead expenses shall be reimbursed by Subtenant to Tenant or to the City as the case may be upon Tenant's or the City's written demand.

- C. The Tenant and the Manager or his authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Subtenant's Concession Space. Subtenant agrees to promptly discontinue or commence to remedy any objectionable condition within its control within five (5) business days after written notice by the Tenant or the Manager or his authorized representative.

7.07 WINDOW WASHING AND STRUCTURAL MAINTENANCE

The City has agreed with the Tenant that the City shall, at its expense, provide exterior window washing and maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof but specifically excluding any other Concession Improvements made by Subtenant.

7.08 COMMON USE SERVICES

The Manager may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling and security guards. The Manager reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer, recycling and deliveries will be common use services which Subtenant may be required to use and pay its prorata actual share; however, other common use services may be utilized at Subtenant's option. Subtenant agrees to timely pay the charges for those common use services which are utilized by Subtenant.

7.09 INTERRUPTION OF SERVICES

Subtenant agrees that neither Tenant nor the City shall be liable for failure to supply any utility services. In Tenant's Lease with Tenant, the City reserves, and Tenant hereby reserves for itself, the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of Tenant or the City. Neither Tenant nor the City shall be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Subtenant from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

SECTION 8 – INDEMNITY, INSURANCE AND GUARANTEES

8.01 INDEMNITY

Subtenant hereby agrees to release and indemnify and save harmless Tenant and the City, their officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of Tenant and the City, and shall defend, indemnify and save harmless Tenant and the City, their officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Subtenant; provided, that the Subtenant need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees and Subtenant need not release, indemnify or save harmless the Tenant, its officers, agents and employees from damages resulting from the sole negligence of the Tenant's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Subtenant hereunder.

8.02 INSURANCE

Subtenant further agrees to secure at its own expense and to keep in force at all times during the Term hereof, the following insurance:

- A. Comprehensive General Liability Insurance. A comprehensive general liability insurance policy written on an occurrence basis and including coverage for premises/operations, products, contractual, independent contractors, broad form property damage, personal liability, and fire legal liability, in the amount specified in the Summary Page, and in **Exhibit C**, which amount may be adjusted in the Manager's sole discretion at any time during the Term of this Sublease. This policy shall cover the obligations assumed by Subtenant hereunder and shall name and endorse Tenant and the City as additional named insureds. This policy shall be at least as broad as ISO CG 0001 (10/93) and shall include defense costs for additional insureds outside the limits of insurance. This policy shall not contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease, or death of any employee of Subtenant or any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement.
- B. Business Auto Liability Insurance. A business auto and delivery vehicle liability insurance policy which includes coverage for owned, non-owned and hired vehicles in the amount specified in the Summary Page and in **Exhibit C**, which amount may be adjusted in Manager's sole discretion, in a combined single limit for damage or bodily injury, including wrongful death, as well as claims for property damage, which may arise from the ownership, use, or maintenance of owned or non-owned vehicles, including rented vehicles, and including their use on or off City property or by City personnel.

- C. Workers Compensation Insurance. Subtenant shall maintain at all times adequate worker's compensation insurance (including occupational disease hazards) with an authorized insurance company, or through the Colorado State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Colorado, insuring the payment of compensation to all its employees.

Certificates evidencing the existence of the policies, in such form as the Manager and the Tenant may require, shall be delivered to Tenant and the Airport Property Management Section prior to the Rent Commencement Date as defined in Section 5.03. The current form required is attached hereto as **Exhibit C**. Upon request by Tenant or the Manager, Subtenant agrees to furnish to the Tenant and/or the Airport Property Management Section at any time thereafter during the Term of this Sublease the original or a certified copy of said policy or policies.

Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled, or materially changed or altered, without first giving 45 days prior written notice, or 10 days notice for nonpayment of premium, to (i) the City's Manager of Aviation, Denver International Airport, 8500 Peña Boulevard, Denver, Colorado 80249-6340, and (ii) Skyport Development Company, LLC, 4100 East Mississippi Avenue, Suite 1400, Denver, Colorado 80246. Such notices shall be sent by certified mail, return receipt requested."

Each such policy or certificate shall further provide that any coverage afforded Tenant and the City as additional insured shall apply as primary insurance and other insurance issued to the City and/or Tenant shall apply as excess and non-contributing insurance.

A renewal certificate shall be delivered to Tenant and the Airport Property Management Section at least 10 days prior to a policy's expiration date, except for any policy expiring after the Expiration Date of this Sublease or any extension thereof.

If at any time any of the insurance policies shall be or become unsatisfactory to the Tenant or the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Tenant or the City, Subtenant shall promptly obtain a new and satisfactory replacement policy.

8.03 SECURITY DEPOSIT

Upon execution of this Sublease, Subtenant shall deliver to Tenant, and maintain in effect at all times throughout the Term a Security Deposit, in an amount set forth on the Summary Page. Such Security Deposit shall guarantee to the Tenant full and faithful performance by Subtenant of (i) all of the terms and provisions of this Sublease to be performed by Subtenant, as this Sublease may be amended, substituted, supplemented or extended, and (ii) all obligations and duties of Subtenant under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented.

Notwithstanding the foregoing, if at any time during the term hereof, Tenant deems the amount of the Security Deposit insufficient to properly protect Tenant from loss hereunder because Subtenant is or has been in arrears with respect to such obligations or because Subtenant has, in the opinion of Tenant, violated other terms of this

Sublease, Subtenant agrees that it will, after receipt of notice, increase the Security Deposit to an amount required by Tenant; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Subtenant's Minimum Annual Guarantee in effect under this Sublease.

8.04 NO PERSONAL LIABILITY

Except as may be provided in a separate guaranty, no director, officer, manager, member, or employee of either party hereto shall be held personally liable under this Sublease or because of its execution or attempted execution.

8.05 TAXES, LICENSES, LIENS AND FEES

Subtenant agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Subtenant's Concession Space and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Subtenant also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Subtenant's Concession Space or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Subtenant agrees to furnish to Tenant or the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Subtenant further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Subtenant's Concession Space or improvements thereon which will in any way impair the rights of the Tenant or the City under this Sublease.

SECTION 9 – DEFAULT AND REMEDIES

9.01 DEFAULT

Subtenant shall be in default under this Sublease (each such event is referred to herein as an "Event of Default") if Subtenant:

- A. Fails to timely pay when due to Tenant the compensation or any other payment required hereunder; or
- B. Is in default under any other Agreement with Tenant or the City for concession space at the Airport; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

- D. Transfers its interest under this Sublease, without the prior written approval of the Tenant and the Manager, whether by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or
- E. Fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin or timely complete construction of improvements, fails to open for business to the public when construction is completed, or fails to occupy and use Subtenant's Concession Space after construction is completed; or
- F. Abandons, deserts or vacates the Subtenant's Concession Space, or fails to operate the concession; or
- G. Suffers any mechanic's or materialman's lien or attachment adverse to the City or the Tenant to be filed against Subtenant's Concession Space, or any lien or attachment, including but not limited to mechanic's or materialman's liens, to be filed against the Tenant's property, the Airport or the City's property because of any act or omission of Subtenant, and such lien or attachment is not discharged or contested by Subtenant in good faith by proper legal proceedings within 20 days after receipt of notice thereof by Subtenant; or
- H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Sublease and such failure continues for a period of more than 30 days after delivery by Tenant of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Subtenant within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- I. Uses, or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Subtenant for its use under this Sublease.

9.02 REMEDIES

Upon Subtenant's failure to cure an Event of Default within the notice and cure provision of this Sublease, Tenant may exercise any one or more of the following remedies:

- A. Tenant may elect to allow this Sublease to continue in full force and effect and to enforce all of Tenant's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest.
- B. Tenant may (or at the written request of the Manager, Tenant shall) cancel and terminate this Sublease and repossess the Subtenant's Concession Space, with or without process of law, and without liability for so doing, upon giving 30 days written notice to Subtenant of its intention to terminate, at the end of which time all the rights hereunder of the Subtenant shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within such 30 days. Notwithstanding the foregoing, Subtenant

shall be allowed only two notices of curable default hereunder which it may cure within the time specified in this section. At the option of the Tenant, the third notice shall be final and Tenant may, at its option, (1) cancel and terminate all of the rights hereunder of the Subtenant, reenter the Subtenant's Concession Space, remove therefrom all property of the Subtenant and store the same at the expense of the Subtenant, or (2) elect to proceed under subparagraph C below. If Tenant elects to terminate, Subtenant shall be liable to Tenant for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate Tenant for all loss of compensation, damages, and costs, including attorney's fees, caused by Subtenant's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom. Nothing in this Section 9.02 shall be construed to grant a right to Subtenant to cure a default which by its nature is not capable of being cured.

- C. The Tenant may elect to reenter and take possession of the Subtenant's Concession Space and expel Subtenant or any person claiming under Subtenant, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Sublease unless a written notice from Tenant specifically so states; however, Tenant reserves the right to terminate the Sublease at any time after reentry. Following reentry, Tenant may relet the Subtenant's Concession Space, or any portion thereof, for the account of Subtenant, on such terms and conditions as Tenant may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The Tenant shall not be responsible for any failure to relet or any failure to collect compensation due for such reletting. Subtenant shall be liable to Tenant for all costs of reletting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by Tenant, Subtenant shall continue to be liable for all amounts due as compensation under this Sublease, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Sublease by the Tenant, having credited to the account of Subtenant any amounts recovered through reletting, shall refund, without interest, any amount which exceeds the compensation, damages and costs payable by Subtenant under this Sublease.

9.03 REMEDIES CUMULATIVE

The remedies provided in this Sublease shall be cumulative and shall in no way affect any other remedy available to the Tenant or under law or equity.

9.04 WAIVERS

No failure of Tenant to insist upon the strict performance of a term, covenant or agreement contained in this Sublease, no failure by Tenant to exercise any right or remedy under this Sublease, and no acceptance of full or partial payment during the continuance of any default by Subtenant shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Subtenant.

SECTION 10 – DAMAGE, DESTRUCTION OR LOSS

10.01 DAMAGE TO OR DESTRUCTION OF SUBTENANT CONCESSION SPACE

If Subtenant's Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or otherwise, the Subtenant shall promptly remove all debris resulting from such damage to the Improvements and shall at its sole cost and expense repair and/or reconstruct the Improvements with due diligence in accordance with the plans and specifications for the Subtenant's Concession Space as they existed prior to such damage or according to the current needs of the Subtenant as approved by the Tenant and the City.

If the Subtenant's Concession Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, the City and/or the Tenant may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Subtenant, the obligation of Subtenant to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage, which Tenant will promptly provide to Subtenant. Subtenant may then, at its option, cancel and terminate this Sublease.

10.02 COOPERATION IN THE EVENT OF LOSS

If the City elects to rebuild, Subtenant must replace all Improvements at its sole cost and in accordance with the Required Minimum Investment in April 2007 dollars, subject to escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and performance standards as set forth in the Exhibit entitled Provisions for Design and Construction of Improvements. Tenant, and Subtenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

10.03 LOSS OR DAMAGE TO PROPERTY

Neither Tenant nor the City shall be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Subtenant agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this section.

10.04 MUTUAL WAIVER; INSURANCE COVERAGE

Tenant and Subtenant each waive any and every claim for recovery from the other for any and all loss of or damage to the Subtenant's Concession Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person,

Subtenant agrees to give to each insurance company which has issued, or may issue, to the Subtenant policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

10.05 RELEASE

Subtenant agrees that neither Tenant nor the City shall be liable to Subtenant for any injury to or death of any of the Subtenant's agents, representatives or employees or of any other person or for any damage to any of Subtenant's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.

SECTION 11 – RESERVED

SECTION 12 – MISCELLANEOUS PROVISIONS

12.01 AGREEMENT BINDING UPON SUCCESSORS

This Sublease, subject to the provisions of the section entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

12.02 AGREEMENT MADE IN COLORADO

This Sublease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

12.03 AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES AND THE CITY

This Sublease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system.

Subtenant covenants and agrees, for the benefit of Tenant and City, that it shall not, by its use and occupancy of the Subtenant's Concession Space, violate any of the provisions of Tenant's Lease as such Lease has been and/or may from time to time be amended or cause Tenant to be in default thereof. Subtenant further covenants that this Sublease shall be, in all respects, subject and subordinate to Tenant's Lease and any mortgages or other lien instruments that may effect Subtenant's Concession Space or Tenant's interest therein, and shall not be deemed to confer upon Subtenant any rights which are not granted by or are in conflict with Tenant's Lease. Notwithstanding anything contained herein, (a) this Sublease shall not be deemed to grant to Subtenant any rights or privileges which Tenant does not have under Tenant's Lease, and (b) any

act or omission of Tenant required by Tenant's Lease shall in no event be deemed a violation of this Sublease.

This Sublease is subject and subordinate to the security interest of any lender ("Lender") in Tenant's Lease and/or Tenant's interest in Subtenant's Concession Space and Subtenant shall execute and deliver upon demand of Tenant or Lender any and all instruments subordinating this Sublease, in the manner requested by Tenant, to any new or existing security interest in Tenant's Lease or Tenant's interest in this Sublease. Lender shall agree that it shall not disturb Subtenant's possession of the Subtenant's Concession Space, provided that Subtenant is not in default under the terms and conditions of this Sublease. If a Lender has agreed not to disturb Subtenant's possession of the Subtenant's Concession Space, Subtenant shall attorn to any party succeeding to Tenant's interest in this Sublease, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, acceptance of any conditional assignment of this Sublease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

If Lender shall succeed to the interest of Tenant under this Sublease, Lender shall not be: (1) liable for any act or omission of Tenant; (2) bound by any rent or additional rent or advance rent which Subtenant might have paid for more than one (1) month in advance to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Lender and with respect to which Subtenant shall look solely to Tenant for refund or reimbursement of amounts paid to it; (4) bound by any termination, amendment or modification of this Sublease made without Lender's consent and written approval; (5) subject to the defenses which Subtenant might have against Tenant; and (6) subject to the offsets which Subtenant might have against Tenant.

Further, Subtenant shall at any time and from time to time, upon not less than ten (10) days prior written notice from Tenant, Lender or a successor thereto, execute, acknowledge, and deliver to Tenant, and/or Landlord as applicable, a statement in writing certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified, is in full force and effect) and the dates to which rent and other charges are paid in advance, if any, and acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of the Tenant hereunder, or specifying such defaults, if any are claimed, or acknowledging to Lender that Subtenant will not modify or amend this Sublease without consent of such Lender as to such other matters Tenant may reasonably request. In the event that Tenant or its principal with the City's consent, sells, assigns, conveys, transfers or grants the Tenant's Lease to any person, firm, corporation, company, or entity during the term hereby demised, Subtenant agrees to attorn to such new owner, and Tenant and its principals, agents and owners shall be released from performance hereunder.

12.04 ASSIGNMENT

Except as may be provided in a Non Disturbance and Attornment Agreement by and between the City and Subtenant, this Sublease is subject to and subordinate to Tenant's Lease. Subtenant covenants and agrees not to assign, pledge, transfer or sublet its rights in this Sublease, in whole or in part, nor grant any license or concession

hereunder, without the prior written consent of Tenant and the Manager. Any attempt by the Subtenant to assign or in any way transfer its interest in this Sublease, in whole or in part, directly or indirectly (including any attempt to transfer the ownership of the equity or control of Subtenant or Subtenant's operations), without the prior written consent of Tenant and the Manager shall, at the option of Tenant and the Manager, automatically terminate this Sublease and all rights of the Subtenant hereunder. Such consent may be granted or denied in the sole and absolute discretion of the Tenant and the Manager.

12.05 BOND ORDINANCES

This Sublease is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Sublease acknowledge and agree that all property subject to this Sublease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Subtenant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Subtenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Sublease) not to claim depreciation or an investment credit with respect to any property subject to this Sublease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

12.06 FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Sublease due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Subtenant to reduce, delay or abate its obligation to pay the Minimum Annual Guarantee or Percentage Compensation Fee herein, or any other compensation due hereunder.

12.07 INCONVENIENCES DURING CONSTRUCTION

Subtenant recognizes that from time to time during the Term of this Sublease, it may be necessary for the City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Subtenant in its operation at the Airport. Subtenant agrees that no liability shall attach to Tenant, the City, or their officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Subtenant waives any right to claim damages or other consideration therefrom.

12.08 MASTER PLAN

Subtenant agrees that no liability shall attach Tenant, the City, or their officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

12.09 NONDISCRIMINATION

In connection with the performance of work under this Sublease, Subtenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Subtenant further agrees to insert the foregoing provision in all subcontracts hereunder.

12.10 NOT PARTNERSHIP

Notwithstanding the provisions herein for payment by Subtenant to Tenant of sums based upon a percentage of Gross Revenues, it is expressly understood and agreed that the Tenant shall not be construed or held to be a partner, associate or joint venturer of Subtenant in the conduct of its business. Subtenant shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon Tenant or the City.

12.11 NOTICES

All notices required to be given to Tenant, the City or Subtenant hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to Tenant:	Skyport Development Company, LLC 8231 East Prentice Avenue Greenwood Village, CO 80111
to City:	Manager of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
with a copy to:	Airport Property Management Section Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
to Subtenant:	At the address and to the attention of the person so designated on the Summary Page.

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the intended party.

12.12 PARAGRAPH HEADINGS

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Sublease.

12.13 PATENTS AND TRADEMARKS

Subtenant represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Sublease. Subtenant will not utilize any protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by Tenant or the City, in its operations under this Sublease unless it has obtained proper permission and all releases and other necessary documents. Subtenant agrees to save and hold harmless Tenant and the City, their officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Subtenant under this Sublease.

12.14 SECURITY

Subtenant shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time.

12.15 SEVERABILITY

If any provision in this Sublease is held by a court of competent jurisdiction to be invalid, the validity of other provisions herein which are severable shall be unaffected.

12.16 THIRD PARTIES

This Sublease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties except any permitted successor or assignee, any right to claim damages or to bring any suit, action or other proceeding against Tenant, the City or the Subtenant because of any breach hereof or because of any failure to comply with any of the terms, covenants, agreements and conditions herein.

12.17 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

Subtenant, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Except as otherwise may be provided herein, Subtenant shall also prohibit consumption of alcohol within the Subtenant's Concession Space. Violation of these

provisions or refusal to cooperate with implementation of the policy can result in the City's barring Subtenant from City facilities or participating in City operations.

12.18 CITY SMOKING POLICY

Subtenant agrees that it will prohibit smoking by its employees and the public in the Subtenant's Concession Space and will not sell or advertise tobacco products. Subtenant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Subtenant and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

12.19 ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Tenant herein, shall be valid unless executed by an instrument in writing by all the parties and approved by the Manager with the same formality as this Sublease.

12.20 FINAL APPROVAL

This Sublease is expressly subject to, and shall not be or become effective or binding until approved by the Manager and a Non Disturbance and Attornment Agreement is approved by the City Council and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and year first above written.

SKYPORT DEVELOPMENT COMPANY, LLC

WOODY CREEK COFFEE COMPANY

By [Signature]
Title Member

By [Signature]
Title Member

"TENANT"

"SUBTENANT"

PARTY OF THE FIRST PART

PARTY OF THE SECOND PART

ATTEST:

By [Signature]
Title N/A

Pursuant to Tenant's Lease between the Tenant and the City and subject to the condition that the parties enter into and submit a Non Disturbance and Attornment Agreement for approval by City Council, the Manager of Aviation, hereby gives his consent to this Sublease.

Dated this 15th day of August, 2008

APPROVED AS TO FORM:

CITY AND COUNTY OF DENVER

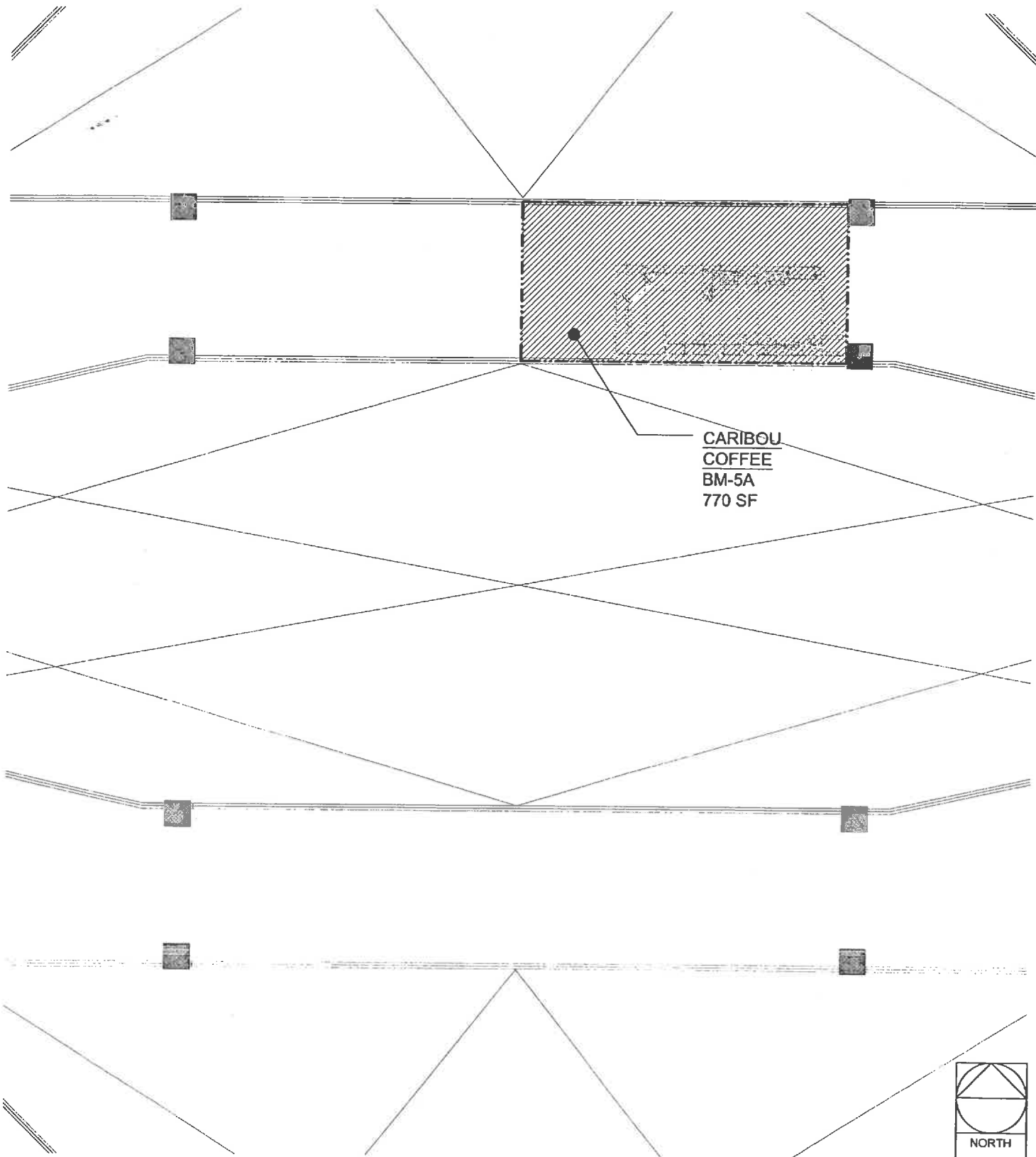
DAVID R. FINE, City Attorney
for the City and County of Denver

By [Signature]
Assistant City Attorney

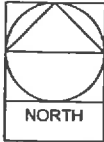
By [Signature]
Manager of Aviation

Attornment and Non Disturbance Agreement
Contract Control No. _____

"CITY"



CARIBOU
COFFEE
BM-5A
770 SF



CARIBOU COFFEE

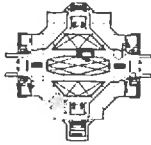
DENVER INTERNATIONAL AIRPORT CONCOURSE B
MEZZANINE LEVEL

8900 PENA BLVD.
DENVER, CO
80249

EXHIBIT A

05.09.2008

SCALE = NOT TO SCALE



KEY PLAN CONCOURSE B MEZZ.

EXHIBIT B

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

WOODY CREEK COFFEE COMPANY

SECTION 1 – GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or in any exhibit thereto.

SECTION 2 – ACDBE OBLIGATION. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, or other agreement covered by 49 CFR part 23.

SECTION 3 – OTHER AGREEMENTS. The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

PLEASE GIVE THIS FORM TO YOUR INSURANCE AGENT FOR COMPLETION. THIS IS THE ONLY CERTIFICATE FORM THAT WILL BE ACCEPTED BY THE CITY AND COUNTY OF DENVER.

CITY AND COUNTY OF DENVER
 CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION (02/07/01)

Original COI

Advice of Renewal

Change

Parties to Whom this Certificate is Issued:

Name and Address of Insured:

Skyport Development Companies, Inc.
 8231 East Prentice Avenue
 Greenwood Village, CO 80111

Woody Creek Coffee Company
 2601 South Quebec St., Unit 6
 Denver, CO 80231

CITY AND COUNTY OF DENVER
 Manager of Aviation
 Denver International Airport
 8500 Pena Boulevard, Room 8810
 Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: **Sublease of Space BM-5A; Mezzanine Level; B Concourse**

I. MANDATORY COVERAGE

WC-1 Colorado Workers' Compensation and Employer Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
COLORADO Workers' Compensation Employer's Liability	WC Statutory Limits \$100, \$500, \$100 Limits		

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City") and Skyport Development Company, LLC ("Skyport"), their officers, officials and employees.

CGL-1 Commercial General Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)	Each Occurrence: \$1,000 General Aggregate Limit: \$2,000 Products-Completed Operations Aggregate Limit: \$1,000 Personal & Advertising Injury: \$1,000 Fire Damage Legal - Any one fire \$50 (\$300 if a City facility is leased)		

Any Policy issued under this section must contain, include or provide for the following:

1. City and Skyport, their officers, officials and employees as additional insureds, per ISO form CG2026.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Contractual Liability.
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. If event involves racing or demolition derby/rodeo, then Exclusion H must be deleted.
7. If liquor is to be sold or distributed, then Liquor Legal Liability, with City and Skyport as an additional insured is required.

BAL-1. Business Automobile Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Business Automobile Liability (coverage at least as broad as ISO)	Combined Single Limit \$1,000		

form CA 0001)			
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Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.
3. City and Skyport, their officers, officials and employees as additional insureds, per ISO form CG2026 or its equivalent.

II. ADDITIONAL COVERAGE

(Coverage is required only when the box to the left of a coverage section is checked)

UL-1 Umbrella Liability

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Umbrella Liability <input checked="" type="checkbox"/> Non-restricted area access	Each occurrence and aggregate \$1,000		
<input type="checkbox"/> Unescorted airside access	Each occurrence and aggregate \$9,000		

Any Policy issued under this section must contain, include or provide for the following:

1. City and Skyport, their officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City and Skyport, that the following additional conditions shall apply to all coverage specified herein:

1. All coverage provided herein shall be primary and any insurance maintained by the City and Skyport shall be considered excess.
2. With the exception of professional liability, and auto coverage, a Waiver of Subrogation and Rights of Recovery against the City and Skyport, their officers, officials and employees is required for each coverage period.
3. The City and Skyport shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City or Skyport may elect to undertake.
4. Advice of renewal is required
5. All insurance companies issuing policies hereunder must carry at least an A-VIII rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
6. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
7. No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

IV. NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized Agent shall mail to the address shown above, by mail, return receipt requested, forty-five (45) days prior written notice ten (10) days for non-payment of premium, referencing the contract/project number set forth herein.

V. CERTIFICATE VERIFICATION BY AUTHORIZED INSURANCE AGENT

STATE OF _____)
) SS:
COUNTY OF _____)

I, _____, being first duly sworn, state and aver, under penalty of law, that I am familiar with the insurance coverage maintained by the Insured, _____; that I have reviewed the coverage requirements set forth in the foregoing Certificate of Insurance; that I have completed the foregoing Certificate and that the information contained in the Certificate is true and correct to the best of my knowledge and the referenced policies are in full force and effect. I further state and aver, under penalty of law, that I am authorized by the identified companies to place the coverage specified in the Certificate and I understand that the City and Skyport will rely on the representations I have provided.

This information is provided for City and County of Denver and Skyport Development Company concerning a Sublease between the Insured and Skyport dated _____ and

Contract Number _____.

By: _____
(Signature)

Agency: _____

(Printed name)

Address: _____

Title: _____

Producer License Number: _____

State of Licensing: _____

Telephone number with Area Code: _____

Subscribed and sworn to before me by _____, on the _____ day of _____, 200____.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: _____.

Notary Public

EXHIBIT G

DESIGN STANDARDS, CONSTRUCTION PROCEDURES and DIA PERFORMANCE SPECIFICATIONS

Section 1. Design Standards. The Concessionaire agrees to use and comply with the Denver International Airport Design Standards Manuals for design of any improvements to the facility. The Concessionaire further agrees to design and construct such improvements in accordance with the Denver International Airport Concessionaire Development Guidelines (TDGs), as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

All design drawings submitted by the Concessionaire to the City shall be provided in the latest release of AutoCAD format in accordance with the City's Design Standards Manual.

Approval of the City's Designated Representative (City) shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Concessionaire to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Concessionaire shall promptly submit necessary modifications and revisions thereof.

Section 2. Construction Procedures.

A. Compliance with standards: All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the improvements are constructed and installed in compliance with the Plans and Specifications.

B. Submissions required: To assist the City in monitoring and inspecting such construction, the Concessionaire's contractor(s) or subcontractor(s) shall submit, or cause to be submitted to the City, for information and record purposes, copies of all the following:

- (x) field test reports;
- (xi) material certificates;
- (xii) approved shop drawings to be reviewed for compliance with the Airport design and construction standards;
- (xiii) requests for payment to contractors or subcontractors;
- (xiv) progress reports;
- (xv) notification of substantial completion of the leased facilities and all site improvements and final acceptance thereof;
- (xvi) two copies of maintenance and operation manuals in connection with building systems and all updates thereof;
- (xvii) as-constructed drawings; and

(xviii) any other documents related to the construction of the improvements which may be reasonably requested by the City.

C. SOW Changes: No change order which materially changes the scope of the work shall be effected by the Concessionaire without the approval of the City, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

D. City Inspection: All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Concessionaire throughout the term hereof shall be subject at all times to inspection and approval by the City.

E. Advance Notice of Modification: The Concessionaire shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

F. Compliance with Plans: The Concessionaire shall cause all construction work, workmanship, materials, and installations to be in full compliance with plans and specifications. The City shall have the right to halt construction of the improvements at any time if such construction is at material variance from the Plans and Specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

G. Utilities: The Concessionaire shall perform utility location identification prior to any excavation activities. In addition, Concessionaire shall obtain such utility connections or hook-ups as shall be necessary and shall have the right to receive all necessary utilities and services, and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up and all other user charges of whatever nature occasioned thereby, except tap and developer fees. The Concessionaire further agrees to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurement of such usage and consumption.

H. Wages: The Concessionaire shall include in its agreements with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics, and laborers prevailing wages as determined under the provisions of Denver Revised Municipal Code Section 20-76. The Concessionaire further agrees, if requested by the City, to

fully comply with the procedural requirements of Denver Revised Municipal Code Section 20-76 by requiring its general contractors and their subcontractors of any tier to submit to the City true and correct copies of the payroll records of all workers, laborers, and mechanics employed.

I. Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Concessionaire's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

J. Documents on Completion: Upon completion of such work, the Concessionaire shall deliver to the City revised as-constructed drawings, evidence of payment, contractor's affidavits, and full and final waivers of any liens for labor, services, or materials. The Concessionaire shall include in its agreement with its contractors provisions whereby such contractors shall defend and hold the City harmless from all costs, damages, liens, and expenses related to such work.

L. As-Builts: Within 60 days after completion of construction of the improvements, the Concessionaire shall furnish to the City two sets of as-constructed drawings, in the latest release of AutoCAD, showing in detail all construction, including the locations of all underground and above ground utility lines.

K. Standard of Performance: All work done by the Concessionaire or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

EXHIBIT N
DIA ENVIRONMENTAL REQUIREMENTS

Section 1. General Requirements. Concessionaire, in conducting any activity on DIA property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders (Environmental Requirements). In addition, these Environmental Requirements include applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA's Environmental Guidelines, Environmental Policy, and all Rules and Regulations are available at www.flydenver.com/biz/index.asp. These Environmental Requirements address, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, solid and hazardous waste, or petroleum products; the National Environmental Policy Act (NEPA); and other federal, state, and local water, wastewater, and air quality regulations.

A. EMS: DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA's significant environmental aspects, and the specific environmental aspects and associated impacts for the products, goods, and/or services that will be provided by the Concessionaire,

B. Permits: Concessionaire shall acquire all necessary federal, state, local, and airport permits/approvals and comply with all permit/approval requirements. Concessionaire shall prepare and update all plans and provide all information required by the City for regulatory compliance purposes.

C. Hazardous Materials Limited: Any hazardous materials not normally used in Concessionaire's operations are barred from DIA premises. Concessionaire shall identify all hazardous materials to be used at DIA along with a description of how these materials and any associated hazardous or other waste materials generated by Concessionaire will be managed while on airport property. This information is required prior to the Concessionaire conducting activities on DIA property.

D. MSDSs: Prior to operation, Concessionaire shall provide to the City copies of Material Safety Data Sheets (MSDSs) for all chemicals to be used in their activities, including those used for cleaning and maintenance. This obligation is continuing for the term of this Agreement, and Concessionaire shall provide updated MSDSs and MSDSs for new chemicals, as such information is updated and as new chemicals are placed into use, as applicable.

E. Pollution Prevention: Concessionaire is encouraged to utilize the concepts of pollution prevention, energy efficiency, and waste minimization with regard to its activities at DIA.

Section 2. Review of Environmental Documents. Concessionaire, at the request of the City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Concessionaire has prepared pursuant to any Environmental Requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under, or about the work conducted on DIA property, Concessionaire shall provide a copy of such report or notice to the City.

Section 3. Access for Environmental Inspection. The City shall have an unimpeded right of access to the occupancy or work areas without prior notice to Concessionaire to inspect the same in order to confirm that Concessionaire is conducting its activities in accordance with this Agreement. At the City's request, Concessionaire shall conduct any testing and analysis at its cost as is necessary to ascertain whether the Concessionaire is in compliance with this Agreement.

Section 4. Correction of Environmental Non-Compliance. If the Concessionaire fails to comply with any applicable Environmental Requirement, the City, in addition to its rights and remedies described elsewhere in this Agreement, at its election, may enter the facility and/or work area and take such measures as may be necessary to ensure compliance with the Environmental Requirements, all at the Concessionaire's expense.

Section 5. Duty to Notify City. In the event of a release or threatened release of a substance relating to or arising out of the Concessionaire's use or activities on DIA, or in the event any claim, demand, cause of action, or notice is made against the Concessionaire with regard to the Concessionaire's failure or alleged failure to comply with any requirement hereunder, the Concessionaire, immediately shall notify the City verbally by contacting the Airport Communications Center (303-342-4200) and the appropriate regulatory agency. Concessionaire shall immediately control and remediate the contaminated media and, as provided below, follow-up Concessionaire's verbal notice with a written report within three days of such incident. In addition, the Concessionaire shall provide the City, at Concessionaire's expense, with copies of any written claims, demands, notices or actions so made.

Section 6. Environmental Remediation. Concessionaire shall undertake all actions necessary to remedy or remove any released or spilled materials and any other contamination discovered on or under DIA property introduced by or affected by Concessionaire and shall restore the Access Premises to either its condition immediately prior to the initiation of this Agreement or to a condition in compliance with all applicable local, state, federal, or airport laws, rules, regulations, or orders, at the City's sole discretion. This work shall be performed at Concessionaire's expense and the City shall have the right to review the project plan and review and inspect all such

work at any time using consultants and representatives of the City's choice. Concessionaire shall further conduct surface and subsurface monitoring pertaining to Concessionaire's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits or as determined by the Manager of Aviation.

Section 7. Environmental Requirements for Construction. Concessionaire agrees to ensure that its premises are designed, constructed, operated, and maintained in a manner that minimizes environmental impacts through application of appropriate preventive measures and complies with all federal, state, and local environmental requirements. Concessionaire shall comply with the DIA Concessionaire Development Guidelines, as amended, for any alterations to existing facilities or the construction of any new facilities. In addition, the Concessionaire shall comply with Exhibit G of this agreement.

EXHIBIT X

PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS

GENERAL PROVISIONS

SECTION 1: GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit X to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or Manager of Aviation shall mean that entity specifically, or that division or individual authorized to represent that entity. Reference to Tenant shall include "Concessionaire" as the context requires.

SECTION 2: IMPROVEMENTS. "Improvements," which may also be known as "Concession Improvements" or "Tenant Improvements," shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager of Aviation. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS. Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

The Denver Municipal Airport System Rules and Regulations

DIA Design Standards

DIA Tenant Development Guidelines

SECTION 4: PAYMENT OF PREVAILING WAGE RATES. Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or his authorized representative, each week during which work

is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

SECTION 5: SBE PARTICIPATION.

Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction which Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

SECTION 6: INSURANCE REQUIREMENTS. Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

SECTION 7: EVIDENCE OF INSURANCE. Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30 days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the Manager of Aviation, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the Manager of Aviation at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the Manager of Aviation as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Manager of Aviation, Tenant shall promptly obtain a new and satisfactory replacement policy.

SECTION 8: LIMITATION ON LIABILITY. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents', construction or installation of the Improvements or other Improvements to the site made by the Tenant.

DESIGN PROVISIONS

SECTION 9: DESIGN PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the Manager of Aviation extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the Manager of Aviation. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Manager of Aviation, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

Tenant CADD Submittal Requirements: All issue for construction and project record drawings shall be provided by the tenant to DIA in AutoCAD Rel. 14 or 2000 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1. All design drawings submitted by the Tenant to the DIA shall be provided in the latest release of AutoCAD format in accordance with the DIA's Design Standards Manual.

Concession CADD Submittal Requirements: AutoCAD Rel. 14 or 2000 .dwg format CADD files that match the tenant's hardcopy drawings must be submitted via: CD-ROM, 3.5" disk, IOMEGA Zip/JAZZ (1 GB) disk in MS-Windows format. All drawings must represent precision input and follow industry standard CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA project manager must approve submittal and may require adherence to the requirements set forth in DIA design

standards.

In addition to the above, Tenant is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the Manager of Aviation, the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

SECTION 10: DESIGN STANDARDS. First-class standards of design and construction are required, and all Improvements shall conform to applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines, as they may be amended from time to time, and any other applicable design, construction, and maintenance standards.

Approval of the Manager of Aviation shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof. The approval given by the Manager of Aviation shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

CONSTRUCTION PROVISIONS

SECTION 11: CONSTRUCTION PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

Compliance with standards: All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the Improvements are constructed and installed in full compliance with the plans and specifications.

Standard of Performance: All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this agreement shall control.

City Inspection: All construction work, materials, and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City. DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in compliance with

approved drawings and specifications.

DIA shall have the right to halt construction of the Improvements or deny access to the site at any time if construction is at material variance from the approved drawings and specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, two copies of maintenance and operation manuals in connection with building systems and all updates thereof, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification which materially changes the scope of the Improvements shall be executed without prior approval of the Manager of Aviation, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve, or disapprove submissions of change orders which materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

SECTION 12: CONSTRUCTION BONDS AND PERMITS. Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the Manager of Aviation performance and payment bonds and copies of all required permits, licenses and all other documents as required by Manual 1 of the DIA Tenant Development Guidelines.

SECTION 13: MODIFICATIONS AND ALTERATIONS. Modifications and alterations to existing

tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this Exhibit X and the Lease Agreement.

Advance Notice of Modification: The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

SECTION 14: AS-BUILT DOCUMENTS. Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City."

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or 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 sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX NO. 2

STANDARD FEDERAL ASSURANCES

NOTE: As used below, the term "DOT" means the United States Department of Transportation.

1. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Party of the Second Part shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Party of the Second Part shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

APPENDIX NO. 3

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

APPENDIX NO. 10

DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the ACDBE requirements of 49 CFR Part 23 apply to this agreement.

ACDBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 23.5 defines a DOT-assisted contract as "any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee." "Contractor" means ... "and includes lessees." The City is the "recipient."

AMENDMENT NUMBER ONE

TO THE

STANDARD MEZZANINE SUBLEASE

THIS AMENDMENT NUMBER ONE TO THE STANDARD MEZZANINE SUBLEASE, ("Sublease Amendment") is made and entered into this ____ day of October, 2016 to be effective as of April 13, 2015, and is by and between **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company, ("**Tenant**") and **WOODY CREEK COFFEE COMPANY**, a Colorado corporation ("**Subtenant**") dba "**Caribou Coffee**".

RECITALS

WHEREAS, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015, (collectively, the "**Tenant's Lease**"), which, subject to all of the terms, conditions, covenants and provisions of Tenant's Lease, governs Tenant's rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the "**Lease Premises**"), for retail, services and food and beverage purposes to meet the needs and requirements of the Airport and which, pursuant to the Ninth Amendment, expires May 31, 2019; and

WHEREAS, Tenant and Subtenant entered into a Standard Mezzanine Sublease, dated May 8, 2008, ("**Sublease**") under which, subject to Tenant's Lease, Subtenant subleased from Tenant certain premises identified as BM-5A, ("**Subtenant's Concession Space**"), and has the right to occupy Subtenant's Concession Space until Tenant's Lease expires and thereafter pursuant to the Attornment Agreement; and

WHEREAS, the City established a Promotions Program to promote and monitor DEN concessions and a Joint Marketing Fund to fund the Premium Value Concessions Program and these additional promotional activities; and

WHEREAS, upon entering the Premium Value Concessions Program, Subtenant agreed to pay the required Joint Marketing Fund fee; and

WHEREAS, the City, Tenant and Subtenant entered into a Non-Disturbance, Attornment and Concession Agreement dated October 21, 2008 and a PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement) dated October 31, 2011 (collectively, the "**Attornment Agreement**"), through which the City granted Subtenant permission to operate its sub concession after the Tenant's Lease expired; and

WHEREAS, Tenant and Subtenant desire to modify the term of the Sublease so that it expires December 31, 2018 and to reflect the modified term, Tenant, Subtenant and the City will amend the Attornment Agreement to revoke the concession and extended term granted to Subtenant by the City; and

WHEREAS, Tenant and Subtenant have agreed to amend the Sublease and to memorialize those changes in this Sublease Amendment.

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties have agreed to amend the Sublease, as follows:

1. **Amendments to Sublease.** The Sublease is amended as provided below:
 - a. **Summary Pages.**
 - i. The Sublease Term Expiration Date shall be December 31, 2018.
 - b. **City Consent.** The City's Consent is amended to substitute the words "Non-Disturbance, Attornment and Concession Agreement" for the words "Non-Disturbance and Attornment Agreement" in two places.
 - c. **Chief Executive Officer.** All references in the Sublease and Attornment Agreement to "Manager" or "Manager of Aviation" are hereby deleted and replaced with "Chief Executive Officer" or "CEO" as the context may require. "Chief Executive Officer" or "CEO" means the Chief Executive Officer of the City's Department of Aviation having jurisdiction over the management, operation, and control of the Airport. Whenever reference is made to the "CEO or the CEO's authorized representative," or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO's delegated authorized representative.
 - d. **Airport.** Section 2.01 of the Sublease is amended to provide that "Airport" or "DEN" shall mean Denver International Airport. Unless the context otherwise clearly indicates to the contrary, all references in the Sublease and Attornment Agreement referencing DIA are hereby deleted and replaced by DEN.
 - e. **DEN's Concession Promotions Program.** The Promotions Program may include, but is not limited to, the costs of Premium Value Concessions Programs, as described below, and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program and Premium Value Concessions Program.
 - f. **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to fund DEN's Concession Promotions Program. Subtenant shall pay, or cause to be paid, the Joint Marketing Fund Payment set forth below from the commencement date set forth therein through the end of Subtenant's right to occupy Subtenant's Concession Space. City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

g. Joint Marketing Fund Payment. In addition to other rents, fees, and charges due Tenant under this Sub Concession Agreement, commencing on October 31, 2011 (the date Subtenant and Tenant executed the PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement)), Concessionaire agrees to pay to Tenant for transfer to the City, within ten (10) days of the first day of each month during the Term, a Joint Marketing Fee of 1% of Subtenant's Gross Revenues for DEN's Concessions Promotions Program.

2. Effect of Amendment. To the extent that the provisions contained in this Sublease Amendment conflict with or add to the terms of the Sublease, the terms contained herein shall prevail and control. In all other respects the terms of the Sublease are hereby ratified and confirmed.

[Signatures on following page.]


IN WITNESS WHEREOF, the parties hereto have executed this Sublease Amendment as of the day and year first above written.

"TENANT"

SKYPORT DEVELOPMENT COMPANY, LLC

"SUBTENANT"

WOODY CREEK COFFEE COMPANY

By 
Title Member

By 
Title Member

Pursuant to Tenant's Lease between the Tenant and the City, the Chief Executive Officer, Denver International Airport, hereby gives her consent to this Sublease.

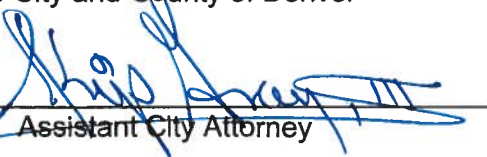
Dated this 27 day of February, 2017,

APPROVED AS TO FORM:

"CITY"

CITY AND COUNTY OF DENVER

Attorney
for the City and County of Denver

By 
Assistant City Attorney

By 
Chief Executive Officer, Denver
International Airport

Non Disturbance, Attornment and Concession
Agreement

Contract Control No. AR 85013