



Concession Agreement 201952037

Parties and Addresses:

City and County of Denver:

City and County of Denver, Department of Aviation
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Boulevard
Denver, CO 80249-6340

Concessionaire:

HFF DEN TWO, LLC
123 Second Street
Sausalito, CA 94965

CONCESSION AGREEMENT

This Concession Agreement for the Denver International Airport (“**DEN**”)’s Concessions Program (“**Agreement**”) is entered into as of the date stated on City’s signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (hereinafter “**City**”), Party of the First Part, and **HFF DEN TWO, LLC**, a limited liability company authorized to do business in Colorado (“**Concessionaire**”), Party of the Second Part (collectively, “**Parties**”).

For and in consideration of the mutual covenants hereof, the Parties do hereby agree as follows:

ARTICLE I. SUMMARY OF CONTRACT PROVISIONS

SECTION 1.01 SUMMARY OF CONTRACT PROVISIONS

City Address for Notices			ATTN: Chief Executive Officer City and County of Denver Department of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340	
Concessionaire Address for Notices			HFF DEN TWO, LLC Glenn Meyers 123 Second Street Sausalito, CA 94965	
Guarantor Name and Notice Address			HFF DEN TWO, LLC 123 Second Street Sausalito, CA 94965 Hyde Park Hospitality LLC 17 North Loomis St Chicago, IL 60607 Procurement Concepts, Inc. 21115 Devonshire Street, Suite 393 Chatsworth, CA 91311 ZANN & Associates, Inc. 2645 E. Cedar Ave Denver, CO 80209	
Premises: See Exhibit A				
Location	Space	Sq. Ft.	Min. Invest. per Sq. Ft.	Trade Name
C East Subcore	R19-1-2-W5-NS-1	1,270.2	\$953.00	Santo
Premises Total			1,270.2 sq. ft.	
Term			7 years	
Effective Date			Date of City Execution	
Required Opening Date			February 1, 2025	
Mid-Term Refurbishment Completion Date			February 1, 2029	

Expiration Date	February 1, 2032	
Minimum Annual Guarantee ("MAG")	Initial MAG: \$404,600.00	
Percentage Fee	14% Gross Sales \$0 to \$3,000,000.00 15% Gross Sales \$3,000,000.01 to \$4,000,000.00 16% Gross Sales \$4,000,000.01 to \$5,000,000.00 17% Gross Sales \$5,000,000.01 and above	
Common Maintenance Services	\$0	
Common Maintenance Services Fee	\$0	
Total Minimum Capital Investment	\$1,210,500.60 (\$953.00 per sq. ft. x 1,270.2 sq. ft.)	
Joint Marketing Fee Rate	1%	
Common Area Capital Improvement and Maintenance Share [Food Court]	N/A	
Surety	\$202,300.00	
Major Merchandise Category	Food and Beverage	
Minor Merchandise Category	Quick Serve with Alcohol	
Concessionaire's Brand(s)	Santo – Northern New Mexican Soul Food	
ACDBE Goal	Percent	33%
	Ownership Participation	Hyde Park Hospitality LLC 16% Procurement Concepts, Inc. 10% ZANN & Associates, Inc. 7%
	Purchasing Participation	
MWBE Goal	Percent	25%
Support Space	Is there support space associated with this contract? _ Yes	If yes: See Support Space, Contract -

SECTION 1.02 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

The Parties acknowledge and agree certain provisions stated in the Summary of Contract Provisions are estimates as of the Effective Date.

The Parties further acknowledge and agree that the provisions stated in the Summary of Contract Provisions, excepting for the length of the Term, are subject to change in accordance with the provisions of this Agreement, and the Parties agree to modify the Summary of Contract Provisions as needed by letter executed by the CEO or its designee without formal amendment.

ARTICLE II. DEFINITIONS, CONTRACT CONSTRUCTION, AND DISPUTE RESOLUTION

SECTION 2.01 DEFINITIONS

The following terms have the stated meanings when used in this Agreement:

- A. **Actual Opening Date:** The first date the Premises under this Agreement is Open for Business.
- B. **Advertisement or Advertise:** Includes without limitation any sponsorship or displays of materials, signs, fixtures, or equipment for drawing attention to the goods and services offered by the Concessionaire or to a related event.
- C. **Agreement:** This agreement between the parties as described in the preamble to this Agreement, including all exhibits, appendices, schedules, attachments, any letter modifications allowed by this Agreement, and subsequent amendments thereto.
- D. **Approved Project:** Concessionaire's construction, furnishing, fixturing, refurbishing, and remodeling of any portion of the Premises as reviewed and approved by City in accordance with the Concessions Handbook.
- E. **Capital Investment:** Those dollars spent by Concessionaire in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Premises, including reasonable architectural and engineering fees relating thereto, in connection with an Approved Project for such portion of the Premises. Capital Investment includes:
 - 1. **Premises Improvements:** All improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the Premises including, but not limited to, mechanical, electrical and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.
 - 2. **Trade Fixtures:** All furniture, fixtures, and major equipment installed by Concessionaire, for use in its performance of the Concession, removable from the Premises without causing material damage to the Premises.
- F. **Chief Executive Officer or CEO:** The Chief Executive Officer of Denver International Airport, formerly referred to as the Manager of Aviation, and/or any successor in function and/or title, as amended by Executive Order 140, is the officer appointed by the Mayor to be in full charge and control of DEN including the management, operation, and control of Denver International Airport, the Denver municipal airport system, and all other facilities relating to or otherwise used in connection with the foregoing.
- G. **City:** The City and County of Denver, a municipal corporation of the State of Colorado, acting for and on behalf of its Department of Aviation, and the owner of the Denver International Airport and party of the first part to this Agreement.
- H. **City's Fiscal Year:** The twelve-month period beginning January 1st of a calendar year through December 31st of the calendar year.

- I. **Claim:** Any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement, or compromise relating thereto which may give rise to a right to indemnification and defense under Article XIV of this Agreement.
- J. **Common Maintenance Services:** Certain maintenance and repair services performed by City on behalf of and for the benefit of all concessionaires as further described in Section 12.02 and may be described elsewhere in this Agreement.
- K. **Concession:** The privileges granted to Concessionaire by City to develop and operate a business to sell related goods to and/or perform services for the public and related operations thereto, in accordance with the terms and conditions of this Agreement.
- L. **Concession Promotions Program:** Activities by City, as described in Section 7.14, to promote the concession program at DEN.
- M. **Concessions Handbook:** The compilation of DEN's standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessionaires and actions of their employees, representatives, agents, contractors, and vendors, which is incorporated herein by reference. City reserves the right to amend the Concession Handbook. Concessionaire agrees that it has no vested right to any particular version of the Concession Handbook, and upon notice to Concessionaire by DEN, and after an opportunity to comment on proposed changes, any amendment of the Concession Handbook will be binding on Concessionaire without amendment to this Agreement, *excepting that* if any amendment of the Concessions Handbook conflicts with substantive terms and conditions of this Agreement, this Agreement shall control.
- N. **Concessionaire:** The legal entity that is the party of the second party to this Agreement who is bound by this Agreement to develop and operate a Concession at DEN. Concessionaire shall include all sub-concessionaires and contract operators of Concessionaire who are operating within the Premises with City's written consent or pursuant to City pre-approved subleases with Concessionaire. In all provisions of this Agreement that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.
- O. **Concessionaire's Operating Obligation(s):** The various maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the operation of the Concession. The performance of the obligation by the Concessionaire, or payment to a third party for the performance of these obligations, are not rental payments or other considerations for the right to occupy real property, but are acknowledgements by the Concessionaire of its obligation to maintain, repair, and otherwise keep the Premises and operate the concession in a First Class manner.
- P. **Concessionaire's Proposal:** Concessionaire's response to an RFP, or Concessionaire's proposal or concept offer made to DEN, as applicable, and any subsequent information submitted by Concessionaire during the evaluation or negotiation process, as modified and accepted by City.
- Q. **Contract Year:**

1. With respect to the first Contract Year during the Term, the period commencing on earlier of the Actual Opening Date or the Required Opening Date and continuing through the end of City's Fiscal Year in which the Required Opening Date occurs.
 2. With respect to each Contract Year thereafter during the Term, each twelve-month period commencing on the first day of City's Fiscal Year and ending on the last day of City's Fiscal Year, provided that if the Term expires or is terminated on a day other than the last day of a Contract Year, the last Contract Year will then end as of the date of such expiration or termination.
- R. **Contract:** See definition of Agreement.
- S. **Covenant:** Any agreement, undertaking, commitment, guarantee, warrant, pledge, and/or promise made under this Agreement.
- T. **Damage(s):** Any compensation for loss or injury, excluding consequential, special, and punitive damages, and/or any loss, liability, claim, damage, cost and expense, including costs of investigation and defense and reasonable attorneys' fees, whether the action is for money damages, or for equitable or declaratory relief.
- U. **Date of Possession:** The date on which City makes the Premises available for occupation by the Concessionaire.
- V. **DEN:** The Denver Municipal Airport System of Denver, Colorado as defined in the Denver Revised Municipal Code, and specifically the Denver International Airport, including the passenger transportation facilities at the Denver International Airport, existing or under construction as of the Effective Date of this Agreement, known individually as the Jeppesen Terminal and its appurtenant Concourses, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas there in, and interconnecting hallways, concourses, and bridges.
- W. **D.R.M.C.** The Denver Revised Municipal Code.
- X. **DEN's Rules and Regulations:** The Denver Municipal Airport System's Rules and Regulations initially adopted January 11, 1994, for an effective date of March 9, 1994, and including as they have been or may be modified from time to time by the Chief Executive Officer, or the CEO's successor in function or title, pursuant to the authority granted in the Denver Revised Municipal Code. Concessionaire agrees it has no vested right to any particular version of DEN's Rules and Regulations, and so after the Effective Date the Concessionaire will follow the most current version of such rules or a particular rule as may be issued or amended by DEN.
- Y. **Denver-Aurora Statistical Area:** The "Denver-Aurora-Lakewood, CO Metropolitan Statistical Area", as defined by the U.S. Bureau of Labor Statistics,
- Z. **Effective Date:** The date of full execution of this Agreement by City, as set forth on City's signature page.
- AA. **Emergency:** A serious, unexpected situation requiring immediate action including, but not limited to, any emergency declared by the FAA, the TSA, the City, or the CEO.

- BB. **Encumbrance:** Any burden or impediment on property and or assets.
- CC. **Expiration Date:** The 7th anniversary of the Required Opening Date.
- DD. **Federal Aviation Administration (FAA):** The Federal Aviation Administration established by the federal government under the Federal Aviation Act of 1958, as amended, or such other governmental agency which may be successor in function thereto or be vested with the same or similar authority.
- EE. **First Class:** A manner of operation of the Concession, a standard of quality of materials and construction, a standard of quality of goods and services, and sustainability practices creating a high performing Concession contributing to a four (4) to five (5) star rating in food and beverage, retail, consumer services, and airport staff from the SKYTRAX rating service or a similar standard chosen by the City.
- FF. **General Manager:** An active, qualified, competent, and experienced employee(s) of Concessionaire that oversees and manages the performance of the Concession and represents and acts on behalf of Concessionaire.
- GG. **Goods and Services:** The wholesome food, food products, non-alcoholic beverages, alcoholic beverages, merchandise, or consumer services which Concessionaire is authorized to sell under this Agreement
- HH. **Gross Revenue:** The total amount of monies paid to or earned by Concessionaire at or from the Premises in its performance of the Concession, as further described in Section 5.01.
- II. **Independent CPA:** A Certified Public Accountant licensed in Colorado acceptable to City who is independent and without the appearance of impropriety within the meaning of the American Institute of Certified Public Accounts' Code of Professional Conduct Rule 1.200.001 – 1298.010.16 or its successor.
- JJ. **Joint Marketing Fund:** The central marketing and promotional fund which, in City's sole discretion, will serve the Concession Promotions Program for overall service, retail, and food and beverage concessions at DEN.
- KK. **Law:** Any order, writ, injunction, decree, judgment, law, ordinance, decision, ruling, statute, code, rule, or regulation of any Governmental Authority, including as these may be amended after the Effective Date of this Agreement.
- LL. **Loss:** Any expense, cost, or damage to person or property.
- MM. **Mid-Term Refurbishment:** Renovation, remodel, or significant repair of the Premises at or about the midpoint of the Term, in accordance with Section 10.10.
- NN. **Minimum Annual Guarantee or "MAG":** The minimum amount payable by Concessionaire to City each Contract Year as a portion of the Privilege Fee as further described in Section 5.02. The Minimum Annual Guarantee shall be paid in equal portions monthly throughout each Contract Year in the Term. The Minimum Annual Guarantee is hereinafter referred to as the MAG.

- OO. **Notice to Proceed:** As it applies to any portion of the Premises, the written notice from City to Concessionaire allowing Concessionaire to commence an Approved Project.
- PP. **Open For Business:** The date Concessionaire has met the requirements stated in the Concessions Handbook to be open to the public for business, including, but not limited to, the following: (1) delivered documentation satisfactory to City of Substantial Completion of the Premises; (2) obtained written permission from the CEO to remove any construction wall surrounding the Premises; and (3) commenced generating Gross Revenue from the Premises.
- QQ. **Percentage Fee:** The fee paid by Concessionaire to City, as a portion of the Privilege Fee, calculated in accordance with Section 5.02.
- RR. **Personnel:** A sufficient number of properly trained representatives, agents, and employees of Concessionaire to service customers in a timely and efficient manner and to meet Concessionaire's obligations under this Agreement.
- SS. **POS Terminal(s):** Electronic point-of-sale terminal(s) consistent with the requirements of Section 7.10.
- TT. **Premises Improvements:** See Article II, Section 2.01.E.1
- UU. **Premises:** The specific area of DEN, as described and/or depicted in **Exhibit A**, that Concessionaire is authorized to occupy and use for the purposes set forth herein.
- VV. **Price Benchmark Establishment(s):** City's approved business(s) within the Denver-Aurora Statistical Area (specifically excluding businesses located at DEN) used to determine compliance with the Pricing comparable in concept, size, ambiance, service style and quality to the Premises, and in full compliance with Section 7.03 (B).
- WW. **Price List:** A listing, as requested by City, of the goods and services to be sold from the Premises, and the prices for such goods and services.
- XX. **Pricing:** Comparable price(s) to similar or equivalent goods and services sold in comparable non-DEN locations within the Denver-Aurora-Lakewood Statistical Area, as described in Section 7.03.
- YY. **Privilege Fee:** The fee paid by Concessionaire to City, calculated in accordance with Section 5.02, as consideration for the privilege of operating a concession(s) at DEN, comprised of the MAG and the Percentage Fee for each month during the Term.
- ZZ. **Required Opening Date:** The date stated on the Summary of Contract Provisions by which the Premises under this Agreement must be open to the public for business, except as such date may be extended in accordance with the provisions herein.
- AAA. **Store Hours:** The hours of operation for the Concession, to be in accordance with the requirements of the Concessions Handbook.
- BBB. **Substantial Completion:** The stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by City, so that, (1) if the City has performed work, Concessionaire is able to take possession of the Premises, or (2) in

the case of Approved Project work, Concessionaire has received a Certificate of Occupancy and/or a Temporary Certificate of Occupancy from City and County of Denver Building Department and is able to occupy the Premises for the purpose of opening for business. It is the intent of the Parties that the application of the term Substantial Completion in the context of this Agreement shall coincide with the application of that term in Colorado Revised Statutes Section 39-1-103(17) (a) (II) (A) and (B), so that the date on which Substantial Completion occurs under this Agreement shall be the same date relative to the imposition and levy of possessory interest taxes.

- CCC. **Summary of Contract Provisions:** The statement of key provisions of this Agreement located in Article I of this Agreement.
- DDD. **Surety** An irrevocable letter of credit, bond, or other instrument as first approved in writing by City, generally in a form consistent with Section 16.01 *infra*, drawn on behalf of City.
- EEE. **Term:** The period of time beginning on the earlier of the Actual Opening Date or the Required Opening Date and ending on the Expiration Date.
- FFF. **Trade Fixtures:** See Article II, Section 2.01.E.2.
- GGG. **TSA:** The U.S. Department of Homeland Security's Transportation Security Administration, or any successor thereto.

SECTION 2.02 CONTRACT CONSTRUCTION

- A. **Exhibits and Appendices.** The following Exhibits and Appendixes are attached hereto and are hereby incorporated and made a part of this Agreement:
1. Exhibit A, Premises Description
 2. Exhibit B, Permitted Uses
 3. Exhibit C, Monthly Concession Report
 4. Exhibit D, Insurance Requirements
 5. Exhibit E, ACDBE Commitment Form
 6. Exhibit F, EcoPass Program
 7. Appendix A, General Civil Rights Provisions
 8. Appendix B, Compliance with Nondiscrimination Requirements
 9. Appendix C, Standard Federal Assurances and Nondiscrimination in Construction, Maintenance, Operation Of Facilities
 10. Appendix D, Standard Federal Assurances and Nondiscrimination in Construction, Use, Or Access To Facilities

11. Appendix E, Title VI List of Pertinent Nondiscrimination Authorities
12. Appendix 1, Disadvantaged Business Enterprises- Required Statements
13. Appendix 2, ACDBE Nondiscrimination and Assurance Requirements

The Parties acknowledge and agree that certain provisions of the above Exhibits are subject to change in accordance with the provisions of this Agreement.

B. Concessionaire's Proposal. Concessionaire and City acknowledge that Concessionaire's Proposal was valuable consideration in the award of this Agreement to Concessionaire and is an authoritative reference for understanding the intention of the Parties. The Parties agree that the financial Pro Forma, operational or performance standards, and licensed concepts included in Concessionaire's Proposal are material parts of the bargain between the Parties. Concessionaire acknowledges that City relied upon Concessionaire's Proposal in entering into this Agreement, and failure to comply with such assurances made in the Proposal and relied on by the City would be a breach of contract.

C. Interpretations.

As used herein, these terms mean as follows:

1. Day(s) shall mean calendar day(s).
2. Month(s) shall mean calendar month(s).
3. The use of any gender shall include all genders.
4. The use of any number(s) shall be construed as the singular or the plural, all as the context may require.
5. Section Headings are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
6. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.
7. If any provision in this Agreement is capable of two or more constructions, some of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

SECTION 2.03 ADMINISTRATIVE HEARING

Disputes arising under or related to this Agreement, and Concessionaire's disputes of all decisions, determinations, or other actions by City arising out of this Agreement, shall be resolved by administrative hearing initiated and conducted according to the procedures outlined in D.R.M.C. §5-17 and DEN Rule 250, **excepting that** City shall retain its right to obtain an order of eviction in accordance with applicable state law. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to any Party's right to appeal the determination under the Colorado Rules of Civil Procedure, Rule 106.

SECTION 2.04 GOVERNING LAW AND VENUE

- A. **Governing Law.** This Agreement is made under and shall be governed by the laws of Colorado. Each and every term, provision, or condition herein shall be construed, interpreted, and applied in accordance with, governed by, and enforced under the laws of the State of Colorado, as well as the Charter and Ordinances of the City and County of Denver.
- B. **Venue for Disputes.** The Parties agree that venue for any action arising from this Agreement shall be in the District Court for the City and County of Denver.
- C. **Governing Law and Venue for ACDBE and DSBO Contracts.** Concessionaire agrees that any contract upon which Concessionaire will rely to comply with ACDBE or DSBO goals or requirements stated *infra* in this Agreement, including e.g. joint venture or service agreements, will state that such contract is governed by Colorado law, and that venue for any action arising from such contract shall be in the District Court for the City and County of Denver, unless DEN approves in writing an alternate choice of law or venue.

SECTION 2.05 DELEGATION OF AUTHORITY

The CEO exercises the City's authority and discretion under the Agreement, and has the authority and discretion to further delegate any authority or discretion granted to the CEO. The CEO has designated as her representative and delegated her authority and discretion under this Agreement to DEN's Executive Vice President, Chief Commercial Officer ("EVP"). Only the CEO and/or EVP may exercise City's authority and discretion granted under the Agreement, *except that* the EVP has delegated authority for all day-to-day management responsibilities and decisions to the Department of Aviation's Director of Concessions ("**Director**"). The CEO and/or EVP may rescind or amend any designation of representative or delegation of authority and discretion under the Agreement upon written notice to Concessionaire.

ARTICLE III. PREMISES

SECTION 3.01 PREMISES DESCRIPTION

City hereby grants to Concessionaire, as of the Date of Possession under this Agreement, the privilege to occupy, improve, and use the Premises within DEN as listed and depicted in **Exhibit A ("Premises Description")**. The total area of the Premises as determined by DEN is listed in the Summary of Contract Provisions. The elevator and trash chute located within the Premises boundaries, including the footpath to and from said elevator and trash chute via the public concourse, is not part of the Premises and thus not included in the Premises' total square feet. Concessionaire is allowed non-exclusive use and access to the elevator and trash chute and will not permit any blockage or obstacle to occur at any time that would hinder the access to or use of the elevator and trash chute by third parties. Through a letter executed by the CEO, City may modify the Premises, Premises Description, and the Summary of Contract Provisions in its sole discretion to incorporate any additional as-built areas and other spaces that were not included in the original Premises Description, and may increase the compensation owed under this Agreement to account for such additional square footage without need for formal amendment to this Agreement.

SECTION 3.02 MODIFICATIONS AND CLOSING OF PREMISES

City shall have the right to close or make modifications to any portion of the Premises, at the sole discretion of City, to accommodate DEN operations, health and safety measures, security renovations, maintenance, public art, or other work to be completed at DEN.

SECTION 3.03 RECLAIMING OF PREMISES FOR AIRPORT PURPOSES

City reserves the right to reclaim the Premises or portions thereof when, in the sole and absolute discretion of City, such reclaiming is necessary for the development or operations of DEN or is in the best interest of City. City will make a reasonable effort to identify replacement premises with similar area, visibility, and exposure to passenger traffic as the reclaimed Premises.

City may exercise such right to reclaim by giving Concessionaire ninety (90) days' prior written notice specifying the effective date of the reclaiming (the "Reclaiming Effective Date") and identifying any replacement premises. If any replacement premises are identified, Concessionaire shall notify City in writing as to its acceptance or rejection of the replacement premises within thirty (30) days after the City's notice. If Concessionaire accepts the replacement premises, the following provisions will go into effect immediately:

1. All of the terms, covenants, conditions, and provisions of this Agreement shall continue in full force and effect and apply to the replacement premises; provided, however, that City may reasonably adjust the Privilege Fees owed to compensate for any extra square footage provided at the replacement premises.
2. Concessionaire shall vacate and surrender possession of the reclaimed Premises by the Reclaiming Effective Date.
3. Concessionaire shall accept possession of the replacement premises in its "as is" condition as of a date to be specified by City.
4. City will pay Concessionaire basic moving expenses limited to the moving of furniture, equipment, and other personal property from the reclaimed Premises to the replacement premises. Concessionaire shall pay all other costs to improve and fit out the replacement premises and shall perform such work in accordance with this Agreement and City directions.

Subject to the exceptions and requirements outlined below, City will pay Concessionaire an amount equal to the actual expenses incurred in the direct physical construction and equipping of the reclaimed Premises, less any amounts attributable to asset depreciation, as calculated by City, to ensure compliance with DEN's federal grant assurances. City will not pay for any costs or expenses for furniture, equipment, or other property that is relocated to any replacement premises, or for any such items that are destroyed, transferred, or repurposed, or that otherwise remain in the possession or control of Concessionaire or any third parties. City will not pay for any costs or expenses that reflect travel expenditures, shipping and delivery, internal employee wages, bid proposal costs, meals, design services, or any other expenses that are not for the direct physical construction and equipping of the reclaimed Premises. City will not pay for any reimbursable costs or expenses that cannot be directly verified via invoices and other documentation to the satisfaction of City in its sole discretion, and will not pay any amount in

excess of the Minimum Capital Investment. City further reserves the right to deny or reduce any claims for expenses for goods and services that it determines were not reasonable or that were not actually paid for, received, or used for the Premises. Concessionaire shall submit all documentation relating to claimed expenses within sixty (60) days after the City's notice, and shall promptly cooperate with all specific requests to provide information about any such expenses, including contracts and purchase orders between Concessionaire and its contractors. If Concessionaire moves to replacement premises or operates any other concessions at DEN, any final amount determined by City for reimbursement will be provided solely in the form of an account credit.

Concessionaire shall not be compensated and City shall not be liable for any inconvenience to Concessionaire or for any damages, lost profits, or interruption of Concessionaire's business relating to or arising in any way from the reclaiming of the Premises or moving to any replacement premises.

Within a reasonable time after the Reclaiming Effective Date, the Parties will modify the Summary of Contract Provisions and Exhibit A to delete the reclaimed Premises and formally incorporate the replacement premises, if any, via letter executed by the CEO without need for formal amendment to this Agreement.

Notwithstanding any other provision, if no adequate replacement premises are available, as determined solely by City in its discretion, or if Concessionaire fails to respond to City's notice within thirty (30) days after the date of such notice or otherwise rejects any replacement premises, this Agreement will terminate on the Reclaiming Effective Date and this Agreement's termination provisions shall apply.

SECTION 3.04 INGRESS AND EGRESS

Concessionaire will have the privilege of ingress to and egress from DEN and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery, and other property. Privilege of ingress and egress will be subject to FAA regulations, applicable laws, and DEN's Rules and Regulations. Moreover, without exception, nothing in this Agreement shall be construed to prevent City from charging the operators of vehicles or carrying passengers and property a fee for the privilege of entering upon DEN, using DEN's roadways, soliciting passengers upon DEN, or otherwise operating vehicles at DEN. City reserves the right to make such charges provided they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers, or property of Concessionaire.

SECTION 3.05 PREMISES ACCEPTANCE AS IS

Concessionaire understands, acknowledges, and accepts the Premises in its present condition, "**As Is**" with all faults and with absolutely no warranties as to condition or suitability for use being given by City. City shall have no obligation, liability, responsibility to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any obligation to maintain, repair, or replace utilities or telephone/data service) on or to the Premises other than as explicitly stated in this Agreement.

SECTION 3.06 NO WARRANTY FOR ECONOMIC VIABILITY

City makes no warranty, promises, or representations as to the economic viability of the Premises,

Concessionaire's business concept, or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's business operations. Concessionaire understands, acknowledges, and accepts that airline gate usage and other aspects of DEN operations are subject to change without notice and that City makes no warranty regarding passenger numbers or traffic, or airline gate usage. Except as is specifically set forth herein, City shall not, by virtue of the existence of this Agreement, be constrained in connection with its operation of DEN.

ARTICLE IV. TERM

SECTION 4.01 TERM

This Agreement shall be effective and binding upon the Parties as of the Effective Date. The Term of concession operation shall begin on the earlier of the Actual Opening Date or the Required Opening Date and continue through the Expiration Date, unless this Agreement is earlier terminated as provided herein. In no case will the Term extend beyond the Expiration Date as stated in the Summary of Contract Provisions.

SECTION 4.02 TEMPORARY OPERATIONS

After the Effective Date and continuing during the Term, City, in the sole and absolute discretion of the CEO, may grant Concessionaire the privilege of conducting temporary concession operations at DEN. Where the CEO determines it is in the best interest of the City to allow Concessionaire the privilege of conducting temporary concession operations, City shall notify Concessionaire by letter executed by the CEO or CEO's authorized representative and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Such privilege shall be on a temporary basis, upon the same terms and conditions as stated herein, unless otherwise stated in said letter. Temporary operations added in accordance with this Section shall open within ninety (90) days from the date of the CEO's letter and terminate on a date determined by City.

SECTION 4.04 HOLDOVER

Any exercise by Concessionaire of the privileges granted herein after the Expiration Date, if permitted by DEN, shall be on a month-to-month basis with all provisions of this Agreement, including compensation, fees, charges, insurance policies, Surety, and Guarantees remaining in place until such time City gives notice to Concessionaire to surrender the Premises. Notice to surrender will be provided in writing not less than thirty (30) days prior to the anticipated surrender date.

Any exercise by Concessionaire of the privileges granted herein after the Expiration Date, or after termination of this Agreement without the written approval of City constitutes a trespass, in accordance with D.R.M.C. § 38-115. No occupancy of any portion of the Premises by Concessionaire after the expiration or other termination of this Agreement, without City's written approval, extends the Term of such portion of the Premises. Nothing herein shall be construed to give Concessionaire the right to hold over. In the event of such trespass, Concessionaire shall indemnify City against all damages arising out of the Concessionaire's trespass, including but not limited to, any costs incurred by City to evict Concessionaire, regain possession of the Premises or any portion(s) thereof, and all insurance policies, Surety, and Guarantees required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

SECTION 4.05 PRIVILEGES AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

- A. Concessionaire covenants that, upon termination of this Agreement with or without cause, it will surrender the Premises to the City peaceably, quietly, and in as good order and condition as the same may be hereafter improved by Concessionaire or City, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore under this Agreement, excepted.
- B. Concessionaire also covenants to provide to City any and all keys to doors, window displays, or any area of controlled access within the footprint of the Premises.
- C. City shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing City's right of possession, regardless of whether Concessionaire is delinquent in compensation payments, including without limitation, the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect City's governmental police powers to de-activate security credentials for security or other governmental reasons.
- D. Upon expiration or termination of this Agreement, Concessionaire shall remove all its Trade Fixtures and Concessionaire or brand proprietary property, inventory and other personal property, and leave the Premises in broom clean condition. Additionally, at the option and upon the written request of City, and to the extent assignable under license agreement or otherwise, Concessionaire shall convey the rights to any permit or license applicable to the Premises to any designee of City for the designee's use on an "**AS IS**" basis without warranties. No act by City shall be deemed an acceptance of a surrender of the Premises; the City's acceptance of a surrender of the Premises shall be valid only if such acceptance is in writing and signed by City.
- E. The Parties understand and agree all terms and conditions of this Agreement (such as the indemnity agreement set forth herein) which by reasonable implication contemplate continued performance or compliance beyond termination of this Agreement (by expiration of the term or otherwise), shall survive the expiration or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

SECTION 4.06 END OF TERM TRANSITION

During the final Contract Year, City may award and transition to a new concession agreement that may include privileges to the Premises or portions thereof. If Concessionaire is not selected for the new agreement, Concessionaire acknowledges and agrees to follow the end of term transition procedures and guidelines identified in the Concessions Handbook.

ARTICLE V. COMPENSATION, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS

SECTION 5.01 GROSS REVENUE

Gross Revenue includes all monies paid or payable to Concessionaire or due or received from customers by Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Premises, regardless of when or where the customer order is placed (including outside

the Premises), and any other receipts, credits, rebates, allowances, internet sales, or revenues of any type arising out of or in connection with Concessionaire's or Concessionaire's sub-concessionaires' or agents' operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances, and any other type of ancillary advertising or product placement fees, other allowances and fees, and any amount charged by Concessionaire as a pass through to its customers of the Privilege Fee or any other fee or charge payable per this Agreement. Gross Revenue shall not include:

1. Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire.
2. Notwithstanding the foregoing, amounts and credits received from suppliers for merchandise, including those received for merchandise returned by concessionaire.
3. Cash and credit card refunds to customers for merchandise returned.
4. Amounts and credits received in settlement of claims for loss of, or damage to, merchandise.
5. Insurance proceeds received from the settlement of claims for the loss of or damages to Concessionaire's property at or on the Premises other than the proceeds from business interruption insurance.
6. Inter-company store transfers.
7. United States Postal Service stamp sales.
8. Amounts received for uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.
9. Reimbursements from Concessionaire's sub concessionaires for any taxes, fees, franchise or license fees, utilities or other services paid or provided by Concessionaire for or on behalf of its sub concessionaires; provided, however, that any reimbursement in excess of the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Revenue.
10. Compensational fees, and charges paid to Concessionaire by its sub concessionaires pursuant to the provisions of this Agreement; provided, however, that any such payment in excess of the amounts required hereunder shall be included in Gross Revenue.
11. Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Revenue.
12. Amounts for coupons and other forms of discounts including complimentary customer services, such that only the amounts actually received are ultimately included in Gross Revenue.

13. Gratuities for services performed by employees paid by Concessionaire or by its customers except to the extent Concessionaire may be entitled to receive a portion of the gratuities.

SECTION 5.02 PRIVILEGE FEE

As consideration for the privileges granted herein to operate the Concession at DEN, beginning on the earlier of the Actual Opening Date or the Required Opening Date and continuing through the Term, Concessionaire covenants to pay the Privilege Fee to City for each month, or portion thereof, during the Term.

A. MAG.

1. First Contract Year. Beginning on the earlier of the Actual Opening Date or the Required Opening Date and continuing through the Contract Year in which such Opening Date occurs, the initial MAG amount in the Summary of Contract Provisions will be pro-rated to include only the months from the Actual or Required Opening Date to the end of that Contract Year. If the Actual Opening Date or Required Opening Date is after the first of a month, the calculation will be performed based on the Partial Months provision below. Any full monthly amount will be one-twelfth (1/12th) of the initial MAG amount in the Summary of Contract Provisions.
2. Subsequent Contract Years. Beginning with the Contract Year following the First Contract Year and continuing each Contract Year thereafter, including any Holdover period, the MAG will equal the greater of the initial MAG or eighty-five percent (85%) of the total Privilege Fees payable in the prior Contract Year. The MAG applicable to the last Contract Year of this Contract will be pro-rated if such Contract Year is less than twelve (12) months.
3. Partial Months. For any payment period of less than one month, the applicable MAG shall be paid on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the MAG is payable.

B. Percentage Fee. Concessionaire covenants to pay a Percentage Fee in an amount equal to Gross Revenue for a month multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such calculated amount exceeds the MAG payable for that month.

C. Payment of Privilege Fee. Beginning on the earlier of the Actual Opening Date or the Required Opening Date, the applicable Privilege Fee shall be paid in accordance with the procedure identified in the Concessions Handbook.

SECTION 5.03 OTHER FEES AND CHARGES

A. Joint Marketing Fee. Beginning on the earlier of the Actual Opening Date or the Required Opening Date, Concessionaire agrees to pay the applicable Joint Marketing Fee in accordance with the procedure identified in the Concessions Handbook, within ten (10) days after the last day of each month, as payment for the performance by City of marketing services through the Joint Marketing Fund, a Joint Marketing Fee in an amount equal to the Joint Marketing Fee Rate as stated in the Summary of Contract Provisions multiplied by Gross Revenue for the month.

- B. **RTD EcoPass Program.** Concessionaire will participate in the EcoPass Program as described in **Exhibit F ("EcoPass Program")**.
- C. **Commons Area Maintenance.** When any Concessions Location within the Premises is located in a food court, Concessionaire agrees to be charged and pay on the first (1st) day of each month the Common Area Maintenance Fee. The Common Area Maintenance Fee is payment for City's performance of maintenance of the food court areas, and represents the Concessionaire's share of the annual Common Area Maintenance Costs in twelfths (1/12) applicable to the Premises, as stated in the Summary of Contract Provisions. The Parties agree Concessionaire's share may increase or decrease during the Term. The Parties agree to update the Summary of Contract Provisions to incorporate any increase or decrease, to be confirmed by letter executed by the CEO and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Additional guidance on the Common Area Maintenance fee is in the Concessions Handbook.
- D. **Utilities.** City will provide certain utility connections as stated in the Tenant Work Permit Handbook. Concessionaire may connect into or extend, at its cost, such utilities in accordance with Tenant Work Permit Handbook. Beginning on the Date of Possession, Concessionaire covenants to pay for all utilities necessary in the operation of the Premises. All charges, including, but not limited to, deposits, installation costs, connection charges, usage, service charges, and applicable taxes for utility services metered directly to the Premises or pro-rated by usage shall be paid by Concessionaire, regardless of whether the utility services are furnished by City or other utility service entities. Concessionaire covenants to execute and deliver any utility usage data release forms required for City to have access to Concessionaire's utility usage data.
- E. **Other Fees and Charges.** Concessionaire covenants to pay in a timely manner other damages due to City, or charges and fees as City or DEN assesses, in accordance with its procedures and requirements stated in the Concessions Handbook, and also other fees that Concessionaire incurs in the normal course of business, including but not limited to telephone, badging, fingerprinting, plus any applicable taxes.

SECTION 5.04 FAILURE TO MAKE TIMELY PAYMENTS

- A. Immediately upon Concessionaire's receipt of monies from sales, services, or doing business under this Agreement, the percentages of said monies belonging to City per this Agreement shall immediately vest in and become the property of City. Concessionaire understands, accepts, and agrees to be responsible as a trustee for said monies until the same are delivered to City. Concessionaire also covenants to pay all compensation, damages, charges, and fees under this Agreement independent of any obligation of City. No breach of this Agreement by City shall relieve Concessionaire of its obligation and duty to pay all such obligations when due.
- B. Without waiving any other right or action available to City, in the event Concessionaire is delinquent in the payment of compensation, damages, charges, or fees hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 5.07, and in the event Concessionaire is delinquent in paying to City any such compensation, damages, charges, or fees for a period of five (5) business days after the payment is due, City reserves the right to charge Concessionaire interest thereon, from the date such compensation, damages, charges, or fees became due to the date of payment, at 18% per annum, to the maximum extent permitted by law.

- C. In the event of a dispute as to the amount to be paid, City shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.
- D. The right of City to require payment of interest and the obligation of the Concessionaire to pay shall be in addition to and not in lieu of the right of City to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- E. The failure of City to take action in the event of a delinquent payment or series of payments shall in no way waive the right of City to take action at a subsequent time. City expects all compensation, fees and charges to be paid on time and Concessionaire agrees to pay on time. Further, any endorsements or statements on a check or letter accompanying such payment for compensation or other charges shall not be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever.
- F. Notwithstanding other provisions of this Agreement, and without limiting the other provisions of this Agreement concerning, among other things, events deemed to constitute a material breach by Concessionaire, City may terminate this Agreement upon written notice to Concessionaire, in accordance with Section 13.01, if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at DEN and calculation of Gross Revenue under this Agreement; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

SECTION 5.05 RECORD KEEPING, REPORTS, ANNUAL STATEMENT, AND END OF YEAR ADJUSTMENT

- A. **Bookkeeping System.** Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Such system shall be kept in a manner that distinguishes each Concession location that is operated by Concessionaire from all other Concession locations operated by Concessionaire.
- B. **Records Maintenance.** Concessionaire shall maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Agreement. Concessionaire shall retain such books and records for a period in accordance with this Agreement and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City's Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Revenue, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the "**Financial Records**").
- C. **Required Onsite Records.** Concessionaire shall keep within the Premises – or otherwise keep readily available for City review if onsite storage is impracticable – adequate and accurate accounting books and records documenting all business and transactions engaged in by Concessionaire pursuant to this Agreement. Such books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and

copies of all business tax returns filed with the State of Colorado and all federal income tax returns. Concessionaire's bookkeeping systems are subject to the City's approval, and Concessionaire agrees to comply with any modifications to such bookkeeping that the City may require from time to time.

- D. **Cash Registers and Inventory Sheets.** At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Revenue from that location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Revenue. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; and these documents are subject to audit by the City in accordance with this Agreement.
- E. **Financial Reports.** Concessionaire covenants to prepare and submit reports to City as specified in the Concessions Handbook. City reserves the right to change the form and frequency of reports and statements, including, but not limited to, the **Exhibit C Monthly Concession Report**, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Revenue hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by City and to provide any additional statistics and information City may request.
- F. **Annual Statement.** No later than February 28 of each year during the Term or any holdover period thereafter, Concessionaire shall provide to City an "**Annual Statement**" for the preceding calendar year. The Annual Statement must contain a schedule of Gross Revenue, Privilege Fees, and all other fees and charges paid under the Agreement during the previous year, together with any further information identified in the Concessions Handbook. The Annual Statement must be signed by a signatory officer of Concessionaire, certifying that said Gross Revenue, Privilege Fees, and all other fees and charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement.

At any time and for any reason, the City may request, and Concessionaire shall provide within sixty (60) days, a certified Annual Statement prepared by an Independent Certified Public Accountant ("CPA"). There may be no limitation on the scope of the engagement that would preclude the CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement must be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the CPA on whether the schedule of Gross Revenue, Privilege Fees, and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City may select the Independent CPA and may reject any CPA proposed by Concessionaire. If the certified Annual Statement provided by the Independent CPA indicates that any payment(s) made to the City were deficient, Concessionaire shall pay the amount of the deficiency plus interest at 2% per month compounded daily computed from the date originally due until the date paid. If the certified Annual Statement indicates that such payments or Concessionaire's reporting of Gross Revenue, Privilege Fees, or other fees and charges were deficient, inaccurate, or misrepresented by 1% or more, as determined by the City, Concessionaire shall be responsible for the entire cost of the certified Annual Statement in addition to the deficiency and interest. If the certified Annual Statement indicates that the City was overpaid, the Concessionaire's payments or reporting were accurate, or that deficiencies or inaccuracies in payment or reporting amount to an error of less than 1% difference, then the City will provide Concessionaire a credit against future Privilege Fees owed, equal to any overpayment and

the verifiable and reasonable cost of the certified Annual Statement as invoiced by the Independent CPA.

- G. **Findings.** City reserves the right to challenge any findings or conclusions of the Annual Statement. In such event, City may conduct its own audit under the provisions in Section 5.07 or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by City of any dispute will be final. Delivery of an Annual Statement containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- H. **End of Year Adjustment.** If Concessionaire has paid to City an amount greater than Concessionaire is required to pay as Privilege Fee for a Contract Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's MAG for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Privilege Fee for such Contract Year, then Concessionaire shall pay the difference to City in the next payment of the MAG.
- I. **Acceptance of Reporting.** Acceptance of any financial reports or payments by City does not constitute agreement by City with the amounts reported and paid. City reserves the right to reject any reports submitted by Concessionaire.

SECTION 5.06 FORM OF PAYMENT

All payments due under this Agreement shall be paid in lawful money of the United States of America. City may accept payment without prejudice to its right to recover the balance of any amount due and to pursue any other remedies in this Agreement or otherwise available. All payments of MAG, Percentage Fee, and all other damages, fees, and/or charges shall be made by the method specified in the Concession Handbook. Concessionaire assumes all risk of loss of payments.

SECTION 5.07 CITY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS

- A. Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Concessionaire (together with the Financial Records, the "**Records**"), involving transactions related to this Agreement until the later of three (3) years after the final payment under this Agreement or expiration of any applicable statute of limitations. Concessionaire shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Concessionaire may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate.

- B. Concessionaire agrees that the City, and any of the City's agents including the City's Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Concessionaire by the City's Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City's Auditor or an authorized representative of the Auditor, and in regards to such inspection waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.
- C. If City requests and Concessionaire fails to furnish any records in a timely manner, City reserves the right to, in addition to all other remedies available hereunder, at law, or in equity, have an independent forensic accounting firm attempt to reconstruct the missing records. Concessionaire covenants to reimburse City for the reasonable cost associated with reconstructing any missing records, including but not limited to, the cost of the independent forensic accounting firm, attorney's fees, and litigation expenses incurred. Engagements will be conducted in accordance with the procedures identified in the Concessions Handbook. The Parties recognize that City will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree City may collect liquidated damages, as set forth in Article VIII, for the records requested and not received.
- D. If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Concessionaire shall pay the amount of the deficiency plus interest at 2% per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than 1%, Concessionaire shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire.
- E. Concessionaire will include a provision providing City the same rights to initiate and perform audits, inspections, or attestation engagements in any sub concessionaire agreement that it enters and cause its sub concessionaires to include the statements in further sub concessionaire agreements.

ARTICLE VI. PERMITTED USES

SECTION 6.01 PERMITTED USES

- A. **Permitted Uses.** Concessionaire shall use the Premises only for the purposes of operating the Concession, as further described in this Article VI, and for such other uses as City may agree to in writing. No portion of the Premises shall be used to warehouse, stock, or store any goods, wares, or merchandise not intended to be offered for sale at or from the Premises. **Exhibit B**, Permitted Uses, which is attached hereto and made a part hereof, sets forth the trade name for the Concession and a listing, by general category, of goods and services Concessionaire is allowed to sell from the Premises. Such list of the Permitted Uses shall constitute a limitation of the goods and services, which may be sold at the Concession. City reserves the right to amend **Exhibit B**, in accordance with the procedures

outlined in the Concession Handbook, without need for formal amendment of this Agreement.

- B. **Price List.** No later than sixty (60) days prior to the Required Opening Date of the Premises, Concessionaire must submit to City a Price List in accordance with the procedures outlined in the Concessions Handbook.
- C. City may, at its discretion, require Concessionaire to add or delete goods or services that are in public demand to the Price List, in accordance with the procedures outlined in the Concessions Handbook.

SECTION 6.02 NON-EXCLUSIVE RIGHTS

The privileges granted herein for the performance of the Concession shall be non-exclusive. City may, at any time, award space (existing or newly created) to other parties who may have privileges or may sell goods or services similar to those non-exclusively granted herein. City may, in its sole discretion, grant exclusive privileges to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

In the event of a dispute between Concessionaire and any other party operating at DEN as to the privileges of the parties under their respective Concessions, City shall determine the privileges of each party and Concessionaire agrees to be bound by City's decision.

SECTION 6.03 RESTRICTIONS

Nothing in this Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Agreement or in areas of DEN other than its Premises. All privileges not specifically granted to Concessionaire for its use of and operations at DEN pursuant to this Agreement are hereby reserved for and to City.

SECTION 6.04 PERMITS AND LICENSES

Concessionaire will obtain and maintain all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession, including licenses for specific concepts that are part of the Concessionaire's Proposal. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Premises and forwarded to City upon issuance and each renewal.

ARTICLE VII. PERFORMANCE AND OPERATING STANDARDS

SECTION 7.01 CITY'S RIGHT TO MONITOR PERFORMANCE

- A. **First Class Requirement.** It is City's intention Concessionaire's business be conducted in a manner so as to meet the needs of DEN patrons and employees and in a manner that will reflect positively upon the Concessionaire and City. The Concessionaire shall equip, organize, and efficiently manage the Concession to provide First Class goods and services in a clean, attractive, sustainable, and pleasant atmosphere.
- B. **Objections.** City in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of goods and services, the character of the service, the hours of operation, the sustainability practices of Concessionaire, and/or

the appearance and performance of service personnel, and to require any such conditions or practices objectionable to City to be remedied by Concessionaire.

- C. **Performance Audits.** City reserves the right to conduct periodic performance audits of the Premises to assure Concessionaire consistently performs all of the operational, safety, sustainability, and compliance standards of this Agreement. Concessionaire acknowledges performance audits will be conducted by City, or its representative, and hereby covenants to cooperate with all performance audits. Repeated violations and deficiencies in performance by Concessionaire may be cause, at City's sole discretion, to terminate this Agreement.
- D. **Annual Review.** No later than ninety (90) days after the end of each Contract Year, Concessionaire and City will meet to review and evaluate the financial, customer service, and operational performance of the Concession; ownership; the physical condition of the Premises; and Concessionaire's compliance with any applicable ACDBE requirements. Before the review meeting, Concessionaire shall provide the information required in the Concessions Handbook. During the course of the review, City may determine, in its sole discretion, that the performance of the Concession is unsatisfactory in one or more categories listed in the Concessions Handbook.
- E. **Remediation Plan.** If City determines, based on the performance criteria specified for the Annual Review in the Concession Handbook, a Concession performed unsatisfactorily during the prior Contract Year, City will provide written notice to Concessionaire. Within thirty (30) days of receipt of such written notice, Concessionaire shall prepare and submit to City, for its approval, a Remediation Plan, as described in the Concession Handbook.

If after six (6) months of implementation of a Remediation Plan, the City determines that the Concession is still performing in an unsatisfactory manner, City reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan, at Concessionaire's expense. Within ninety (90) days of receipt of written notice from City requiring a replacement, Concessionaire shall submit to City a proposal for a brand or concept replacement plan, as described in the Concession Handbook. City, in its sole discretion, reserves the right to approve or deny the proposed replacement plan and require Concessionaire to submit another replacement plan.

SECTION 7.02 QUALITY OF GOODS AND SERVICES

- A. Concessionaire shall ensure that all customers are provided First Class goods and services, and Concessionaire shall keep in stock and have ready for sale, at all times of operation, a sufficient supply and variety of goods and services offered for sale at the Premises, consistent with the Price List, to meet the demand of customers at DEN.
- B. If City identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by City and shall correct, or cause to be corrected, such problem or problems within the cure period stated in the Concessions Handbook. If Concessionaire fails to correct within the allowed cure period, City may collect liquidated damages as described in Article VIII.
- C. If Concession is a franchise concept, then every Contract Year during the Term, Concessionaire shall certify all franchise standards applicable to the Concession are met or exceeded.

- D. If the City approves and accepts a Concessionaire's Proposal that includes a local, regional, or national brand, branded item, or branded concept that Concessionaire is authorized to use at DEN, such brand, branded item, or concept shall be listed or described in the Summary of Contract Provisions and referred to in this Agreement as "Concessionaire's Brand(s)." Concessionaire acknowledges and agrees that the use of Concessionaire's Brands stated in the Concessionaire's Proposal is of critical importance in meeting City's purpose for the concessions program at DEN. Therefore, Concessionaire's Brand(s) is(are) a material part of the consideration for this Agreement and may not be unilaterally discontinued or changed by Concessionaire. Any proposed new brand, branded item, concept, or change in use shall be submitted to City for written approval prior to implementing such change.

SECTION 7.03 PRICING

- A. **Pricing.** Concessionaire acknowledges City's objective to provide DEN patrons and employees high quality goods and services at reasonable prices. Accordingly, Concessionaire covenants that all goods and services sold by Concessionaire shall meet City's Pricing policy as described in the Concessions Handbook.
- B. **Price Benchmark Establishment(s).** No less than sixty (60) days prior to the Required Opening Date of the Premises, and prior to the end of each Contract Year, Concessionaire must submit to City for its approval Price Benchmarking Establishments in accordance with the procedures outlined in the Concessions Handbook. Once approved by City, the Price Benchmark Establishment(s) will be used as the basis for price comparisons.
- C. **Price Surveys.** No later than sixty (60) days prior to the Required Opening Date of the Premises, and prior to the beginning of each Contract Year, Concessionaire shall, at its own expense, submit a pricing survey in accordance with the procedures described in the Concession Handbook.
- D. **DEN Employee Discount.** Concessionaire shall offer a minimum ten percent (10%) discount on all food and non-alcoholic beverages purchased by DEN employees who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Concessionaire's normal non-sale or non-promotional prices. No discount shall be given on food and non-alcoholic beverages with a manufacturer pre-printed price.
- E. **Price Conformance.** At any time during the Term, City may survey or cause to be surveyed, prices being charged for goods or services offered by Concessionaire. City shall have the right to monitor and test all of Concessionaire's goods and services prices by a shopping service or City personnel. If City concludes, based on the results of the survey, any prices being charged by Concessionaire do not comply with the Pricing policy; City will require Concessionaire to adjust prices to the amounts permitted. Upon written notice from the City, Concessionaire will, within the cure period stated in the Concessions Handbook, adjust any prices that City determines, in its sole discretion, to be inconsistent with the Pricing policy. Failure to rectify any pricing discrepancies within the cure period shall constitute a material breach by Concessionaire of this Agreement and City may collect liquidated damages as set forth in Article VIII, invoke any other remedies available to City by law, or City may, in its sole discretion, terminate this Agreement.

SECTION 7.04 HOURS OF OPERATION

- A. **Store Hours.** Concessionaire shall ensure the Concession is open to the public, without interruption, during the Store Hours as described in the Concessions Handbook. City may, in its sole discretion and upon notice to the Concessionaire, require Store Hours to change during the Term. Concessionaire hereby acknowledges and agrees to operate the Concession Locations as required which, if requested by City, may be up to twenty- four (24) hours per day seven (7) days per week, including all holidays.
- B. **Extension of Store Hours.** Concessionaire agrees to remain open beyond Store Hours for certain events as described in the Concessions Handbook.
- C. **Failure to Open.** Unless previously authorized by the City in writing, failing to open for business by the required opening time, or closing early, shall constitute a violation of this Section for which City may collect liquidated damages as set forth in Article VIII.

SECTION 7.05 DELIVERY OF GOODS

- A. **Procedures.** Concessionaire shall make all deliveries of money, coin, supplies, goods, products, and food and beverage items in such manner as specified in the Concessions Handbook.
- B. **Central Receiving and Distribution.** City may implement a Central Receiving and Distribution Center (hereinafter referred to as “**CRDC**”) and may contract, at its discretion, with a third party to operate the CRDC and provide distribution and delivery services to DEN (hereinafter referred to as “**Logistics Manager**”). If a CRDC is established, Concessionaire agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by City. Concessionaire agrees to pay Concessionaire’s share of the costs of the operation of the CRDC and said distribution and delivery services, as determined by City. Concessionaire agrees to comply with the rules and procedures for implementation and utilization of the CRDC as described in the Concessions Handbook.

SECTION 7.06 PERSONNEL

- A. **Staffing.** Concessionaire shall hire, train, supervise, and deploy a sufficient number of Personnel to service customers in a timely and efficient manner and to meet Concessionaire’s obligations herein and as specified in the Concessions Handbook.
- B. **General Manager.** Concessionaire shall appoint at least one General Manager to oversee and manage the performance of the Concession, and represent and act on behalf of Concessionaire, as further described in the Concessions Handbook. The General Manager shall be full time and work onsite.
- C. **Customer Service Training.** Concessionaires are expected to abide by DEN’s Service Values, Service Standards, and Image Standards set forth in the Concessions Handbook amended. If City establishes a customer service-training program for the employees of all concessionaires at DEN, City, after first giving reasonable notice to Concessionaire, will require all of Concessionaire’s employees to complete the training program, in accordance with the procedures outlined in the Concessions Handbook.

- D. **City's Right to Object.** City reserves the right to object to unprofessional behavior, conduct, or appearance of any Personnel of Concessionaire or those doing business with it, in accordance with the procedures outlined in the Concessions Handbook.

SECTION 7.07 PAYMENT OF CITY MINIMUM WAGE

Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. Sections 20-82 through 20-84, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Concessionaire expressly acknowledges that Concessionaire is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

SECTION 7.08 SECURITY REQUIREMENTS

Concessionaire shall be responsible for ensuring Personnel, vendor, and Contractor compliance with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, and City. The rules, regulations, and procedures of the FAA, TSA, and City regarding security matters may be modified at any time and Concessionaire covenants to comply with all changes and/or modifications. Additionally, Concessionaire shall adhere to the procedures and security requirements listed in the Concessions Handbook. At least sixty (60) days prior to the Required Opening Date, Concessionaire shall submit to City a Security Plan, in accordance with the Concessions Handbook. Concession may not Open for Business without an approved Security Plan.

SECTION 7.09 EMPLOYEE PARKING

Nothing in this Agreement shall be deemed to require City to provide parking to Concessionaire's Personnel. City may provide parking accommodations to Concessionaire's Personnel in common with employees of other concessionaires and users of DEN, subject to the payment of reasonable charges therefor as may be established from time to time by City. In such event, Concessionaire's Personnel shall be required to park within the designated areas.

SECTION 7.10 POINT OF SALE TERMINALS

Concessionaire must install a POS Terminal(s) to accurately record all business transactions occurring for accounting, reporting, and auditing purposes as set forth in the Concessions Handbook. City reserves the right to implement and/or modify a universal point-of-sale system or other technology to work in tandem with Concessionaire's POS Terminals for continual access to point of sale data. Concessionaire agrees to cooperate in the implementation of such a universal point-of-sale system or other technology. If City instructs Concessionaire to install any technology, equipment, software, and systems as part of such implementation, City shall not be obligated to pay the cost of or furnish Concessionaire with the technology, equipment, software, or systems necessary to do so, or to pay any related costs.

SECTION 7.11 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Concessionaire must accept cash payments and all other payment mechanisms required by the

Concessions Handbook. The Concessionaire also may request that the City approve other payment mechanisms. Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to City. City may at any time request a copy of these procedures. Additionally, Concessionaires Cash Handling and Credit Card requirements must meet the standards described in the Concessions Handbook. City shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures. Concessionaire must yearly provide certification that Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. City reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

SECTION 7.12 ADVERTISED SALES OR PROMOTIONS

Concessionaire shall adhere to the advertising promotions guidelines stated in the Concessions Handbook. Concessionaire may not advertise in DEN, except with City's advertising contractors who sell advertising at DEN. Permission will not be granted to Concessionaire for any other advertising at DEN. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit.

SECTION 7.13 COMPLAINTS

Concessionaire must respond to all customer complaints, written or oral, in accordance with the procedures outlined in the Concession Handbook.

SECTION 7.14 CONCESSION PROMOTIONS PROGRAM

In addition to other compensation, fees, and charges due City under this Agreement, Concessionaire agrees to pay to City a Joint Marketing Fee for DEN's Concession Promotions Program, in accordance with the procedures stated in the Concession Handbook.

- A. **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to underlying DEN's Concession Promotions Program. Concessionaire shall pay, or cause to be paid, the Joint Marketing Fee, as reflected in the Summary of Contract Provisions, 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.
- B. **DEN's Concession Promotions Program.** The Concessions Promotions Program may include, but is not limited to, the costs of any incentive programs 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.

- C. **Prohibition.** City may prohibit Concessionaire from participating in any promotional activities including, but not limited to Grand Opening events, if Concessionaire is in breach of this Agreement.

SECTION 7.15 OPERATING PROCEDURES AND STANDARDS

- A. **City Requirements.** The occupancy and use by Concessionaire of the Premises and the privileges herein conferred upon Concessionaire shall be conditioned upon and subject to DEN's Rules and Regulations, and Operational Directives as are now or may hereafter be prescribed by City through the lawful exercise of its powers. Concessionaire covenants to operate the Concession in accordance with the Concessions Handbook.
- B. **Health and Safety Standards.** Concessionaire shall comply with all health and sanitary regulations adopted by City, State of Colorado, and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide City with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. **Sustainability.** City is committed to incorporating sustainable practices into all aspects of DEN operations. Concessionaire shall operate in a manner consistent with DEN's Sustainability Policy and participate in the sustainability programs outlined in the Concessions Handbook, at its own cost and expense, including but not limited to energy programs and waste reduction programs such as composting and recycling.
- D. **Additional Compliance.** Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes, and permits in the conduct of its operations under this Agreement including, but not limited to, TSA regulations regarding products or procedures.
- E. **Concessionaire's Standards.** Subject to licensor or franchisor agreements, Concessionaire shall submit to City a copy of its standards, plans, and manuals for customer service and operation, according to the procedures stated in the Concessions Handbook. Concessionaire shall ensure continuous adherence to Concessionaire's own standards, in addition to other standards as set forth herein.

SECTION 7.16 CLEANING AND ROUTINE MAINTENANCE

- A. **General Obligations.** Concessionaire shall ensure that the Concession is maintained and operated in a First Class manner and that the Premises are kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to City. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises, its operations at DEN, and the maintenance obligations in the Concessions Handbook.
- B. **Preventive and Routine Cleaning and Maintenance Obligation.** Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all assets within the Premises, whether built by Concessionaire or City, from the Date of Possession through the expiration of the Term and any Holdover period. Consistent with the schedule stated in the Concessions Handbook, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises including, but not limited to, all the items identified in the Concessions Handbook. The provisions of the program shall be subject to

the initial written approval of and periodic review by City. Upon request by City, Concessionaire shall provide City a written schedule of Concessionaire's cleaning and maintenance program.

- C. **Pest Control.** Concessionaire is responsible for pest control on and within the Premises.
- D. **Routine Refurbishment.** Each Contract Year representatives of City and Concessionaires shall follow the procedures outlined in the Concessions Handbook for Routine Refurbishment. If Concessionaire and City cannot jointly agree upon the type and extent of routine refurbishment, City may determine, in its sole discretion, the routine refurbishment required for that Contract Year. For purposes of this Section 7.15 only, "Routine Refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.
- E. **Maintenance Personnel and Program.** Concessionaire covenants to employ or contract with sufficient personnel to provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Agreement.
- F. **City Sole Judge of Maintenance.** City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, and so notify the City within the time frame stated in the Concessions Handbook, or else the City or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or DEN's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to reimburse City for the cost thereof, plus an administrative fee, the amount of which will be in accordance with the Concessions Handbook.
- G. **Emergency Repairs.** In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and perform the emergency repair. Concessionaire covenants to pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any DEN system or utility require prior written approval of City. If any emergency repair affects other tenants at DEN, City may, at its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

SECTION 7.17 PAGING, AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION

If Concessionaire installs, in accordance with applicable Concessions Handbook procedures and only after City's approval, any type of radio transceiver, beacon technology, or other wireless equipment, Concessionaire will provide frequency protection in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating near Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, City reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense. Concessionaire acknowledges and accepts that any paging, audio, or communications systems installed by Concessionaire maybe used by City to announce any notification or emergency at DEN. City shall not be liable to Concessionaire for any such use of the paging or audio systems installed by Concessionaire.

SECTION 7.18 SUBMITTALS

City shall have the right at any time to require that reports, plans, and any other submittals required under this Article VII be delivered electronically using technology and procedures designated by City in the Concessions Handbook. If City instructs Concessionaire to deliver any submittals required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

SECTION 7.19 PROHIBITED ACTS

Concessionaire is prohibited from perform any prohibited acts listed in the Concessions Handbook. Additionally, Concessionaire will not engage in any activity prohibited by DEN's Rules and Regulations and Operating Directives, including as they may be modified. In the event Concessionaire fails to adhere to DEN's Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this Section, City may collect liquidated damages as set forth in Article VIII until such prohibited act is ended. Within the time frame stated in the Concessions Handbook. Moreover, if the prohibited act is not corrected as directed by City, City or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse City for any related costs, and an administrative fee equal calculated as a percent of the corrective action costs, calculated as stated in the Concessions Handbook.

SECTION 7.20 DELIVERY TECHNOLOGY

City reserves the right to implement universal food, beverage, and merchandise delivery technology and services at DEN. Additionally, City reserves the right to contract, at its discretion, with a third party to develop, service, and operate any delivery services and/or technology at DEN. If established, City will place procedures for deployment and usage in the Concessions Handbook. Concessionaire agrees to use, at its own cost and expense, the delivery services and/or technology for the Concession, except where delivery by a third party is prohibited by law or as otherwise approved in writing by City, in accordance with any procedures described in the Concessions Handbook.

ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

SECTION 8.01 LIQUIDATED DAMAGES

- A. Violations. Concessionaire acknowledges City's objective to provide the public and air travelers with the level and quality of service as described herein, and that Concessionaire's failure to meet these standards will result in financial loss to City. Concessionaire also acknowledges it can be difficult to measure the harm suffered by the City when these standards are not met or when Concessionaire violates certain provisions of this Agreement, the Concessions Handbook and/or DEN's Rules and Regulations. Accordingly, the Parties have agreed upon a series of liquidated damages, as set forth in the table below, that the City may assess for certain breaches or violations. Concessionaire and City agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm to the City, and Concessionaire further agrees to pay to City such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation, upon written demand by City. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies, and City may therefore pursue other remedies as allowed for in this Agreement and/or as may be available at law, in City's sole discretion and option. City's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation. Further, City's assessment of liquidated damages for past violations does not preclude City from opting for and pursuing other available remedies for future violations.
- B. Payment. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.
- C. Table. The following table lists the liquidated damages assessable under this Contract. References to Sections are for convenience only. Any discrepancy in such reference does not affect the validity or enforceability of said damages.

Liquidated Damages*		
TYPES OF INFRACTIONS	SECTION	LIQUIDATED DAMAGES
Deficient Goods or Services	Contract § 7.02; Handbook § 13.10	If not cured within seven day cure period, then \$100 per day dating back to the date of Notice, for each day until corrected.
Pricing Policy	Contract § 7.03; Handbook § 14.01	\$100 per day until corrected.
Late Open or Early Close	Contract § 7.04; Handbook § 14.05	\$100 per hour or fraction thereof.
Prohibited Acts	Contract § 7.19; Handbook § 14.43	\$100 per day until corrected.
Security Infraction	Contract § 7.08; Handbook § 14.29	\$500 per occurrence for violations not otherwise addressed in TSA or DEN's Rules and Regulations.
Late Daily Gross Revenue	Handbook § 12.03	\$100 per day until corrected.

Late Monthly Concession Report	Handbook § 12.03	\$100 per day until corrected.
Late Annual Report	Handbook § 12.03	\$350 per day until corrected.
Offering Goods or Services Not Permitted	Handbook § 13.02	\$100 per day until ceased.
Failure to Remove or Modify Merchandise Display	Handbook § 13.11	\$100 per day until compliant.
Failure to Address City Objections for Unprofessional Personnel	Handbook § 13.14	\$100 per day until cured
Failure to Provide Records for Financial Audit	Handbook § 15.01	\$100 per day until provided.
Failure of Performance Audit	Handbook § 15.02	\$100 per day after cure time until corrected.
Violation of Handbook Not Otherwise Specified	Handbook § 15.08	First Violation: \$100 per day; if a cure period applies but violation is not cured within allowed time, then LDs will be calculated from date of violation, and continue until corrected. Second Violation: \$150 per day until corrected. Third Violation: \$200 per day until corrected.
Closure Due to Operational Deficiency or Failure to Maintain	Contract § 7.15; § 7.16	\$1000 per day for each full or partial day Concession is closed
Failure to Meet Required Opening Date	Contract § 10.06(D)	\$1,000 per day until Actual Opening Date
Improper Transport, Disposal, or Cleanup of Fry Oil	Handbook § 13.04	\$300 per event
Violation of Sustainability program requirements	Handbook § 13.06	\$100 per day until cured

*LDs are subject to escalation of damages for continued violations. Such liquidated damages may increase by a multiple of two (x2) after ten (10) days of uncured violations, and thereafter increase by an additional multiple every ten (10) days until corrected (e.g. x3 after 20 days, etc.). However, in no event will liquidated damages escalate higher than a multiple of five (x5).

If any or all of the provisions of this Article VIII are found to be unenforceable, any affected violation shall then be immediately covered by Article XIII, and City shall have a right to all remedies available at law, including but not limited to the remedies provided in Article XIII.

ARTICLE IX. NON-DISCRIMINATION, SMALL BUSINESS, AND FEDERAL AID REQUIREMENTS

SECTION 9.01 NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the Agreement, the Concessionaire may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity,

citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Concessionaire shall insert the foregoing provision in all subcontracts.

SECTION 9.02 CITY'S ACDBE POLICY

As a condition of eligibility for financial assistance from the FAA, City through its Division of Small Business Opportunity ("**DSBO**") developed and implemented an ACDBE Policy and Program for DEN. The ACDBE Program was developed and implemented in accordance with DOT's Final Rule 49 CFR Part 23. DEN's Director of the Airport Commerce Hub ("**Director**," as used in this Article IX only) has been delegated as the ACDBE Liaison Officer for DEN. In that capacity, the Director is responsible for compliance with all aspects of the ACDBE program. The Director has established ACDBE goals for DEN and may also establish ACDBE concession specific goals as a percentage of annual Gross Revenue for this Agreement. The applicable concession specific ACDBE goal, if any, is stated in the Summary of Contract Provisions of this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended to operate in the Premises. During that process, Concessionaire submitted its required **Exhibit E** to meet the ACDBE goal. The Director found the required **Exhibit E** to be responsive and thus, required **Exhibit E** is attached to this Agreement. If its actions or failure to act violates its ACDBE responsibilities under its Agreement or the ACDBE regulations of the DOT as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of its Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 9.03 ACDBE PARTICIPATION AND COMPLIANCE

- A. **ACDBE Goal.** Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than the percent of the total annual Gross Revenue stated on the Summary of Contract Provisions, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will contract with the ACDBEs identified in **Exhibit E** presented with Concessionaire's Proposal and approved by City, or such other ACDBEs certified with City's DSBO as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable.
- B. **ACDBE Termination and Substitution.** Concessionaire will not terminate an ACDBE for convenience without City's prior written consent. If an ACDBE is terminated by Concessionaire with City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts to replace such ACDBE in accordance with the procedures described in the Concessions Handbook.
- C. **Reporting Requirements.** Concessionaire shall submit to the Director or to DSBO regular ACDBE Utilization Reports, in accordance with the procedures described in the Concessions Handbook. Concessionaire further agrees to submit any other report(s) or information that City is required by law or regulation to obtain from Concessionaire, or which the Director may request relating to Concessionaire's operations.
- D. **Monitoring.** The Director or DSBO will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant the Director or DSBO access to the necessary records to examine such information as may

be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant the Director and DSBO access to the Premises under this agreement for purposes of such monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.

- E. **Prompt Payment.** Concessionaire agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both MWBE/SBE and non-MWBE/SBE subcontractors.
- F. **Other Requirements.** Concessionaire agrees to comply with Federal, State, and Local Disadvantage Business Programs as fully set forth in **Exhibit E**. Concessionaire's failure to comply with Federal, State, and Local Disadvantage Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- G. **Non-Compliance.** In the event of Concessionaire's non-compliance with the ACDBE Program or failure to either meet the ACDBE goal set forth in Section 9.02 or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.

SECTION 9.04 FAIR LABOR STANDARDS ACT

This Agreement incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act ("**FLSA**"), with the same force and effect as if given in full text. The FLSA sets federal minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire agrees to incorporate by reference the provisions of FLSA in all contracts and subcontracts resulting from this Agreement. Concessionaire has full responsibility to monitor compliance to the referenced regulation. Concessionaire must address any claims or disputes arising from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

SECTION 9.05 OCCUPATIONAL SAFETY AND HEALTH ACT

This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and any subcontractor's

compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

ARTICLE X. CONSTRUCTION AND CAPITAL INVESTMENT

SECTION 10.01 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work on the Premises, or alter, modify, or make additions, improvements, replacements or repairs, except emergency repairs, to any structure now existing or built without prior written approval of City. Concessionaire shall not install any fixtures, other than Trade Fixtures, without the prior written approval of City. In the event any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without City approval, or done in a manner other than as approved, City may, at its discretion, (i) terminate this Agreement in accordance with the provisions herein; or (ii) require Concessionaire to remove the same; or (iii) require Concessionaire to change the same to the satisfaction of City. In case of any failure on the part of Concessionaire to comply, City may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to City plus an administrative charge, to be calculated as a percentage of the City's costs, as stated in the Concession's Handbook.

SECTION 10.02 DESIGN AND CONSTRUCTION STANDARDS

In its design and construction work on the Premises, Concessionaire will fully comply with the standards and development guidelines identified in the Concessions Handbook. Concessionaire covenants to comply with the version of the Concessions Handbook in effect as of the date of any construction it undertakes.

SECTION 10.03 INITIAL CAPITAL INVESTMENT

As a valuable consideration for City entering into this Agreement, but not as a payment of compensation or a form of consideration for the privilege to occupy space at DEN, but rather to relieve City from making expenditures for Premises occupied by Concessionaire, Concessionaire's Capital Investment expended in the initial construction, furnishing, and equipping of the Premises shall not be less than the Minimum Capital Investment set forth in the Summary of Contract Provisions. Concessionaire agrees to follow the process for certification and approval of the Minimum Capital Investment described in the Concessions Handbook. Any amounts paid to City because of this provision or the procedure described in the Concessions Handbook shall not be deemed a Capital Investment for any purpose under this Agreement nor shall it be deemed payment of any compensation or other fees due under this Agreement.

SECTION 10.04 DEVELOPMENT SCHEDULE

The development schedule for the initial construction of the concession on the Premises will be coordinated with the City. The Required Opening Date or any other portions of the development schedule may only be changed by DEN in its sole discretion based on delays caused by DEN or other factors clearly outside either Party's fault or control. In no event will delays attributable to Concessionaire's actions or failure to act be a cause for City to modify the development schedule.

Any failure by the City to deliver Notice of Possession or actual possession of the Premises to Concessionaire on any date previously agreed to will not give rise to any claim for damages by Concessionaire against City or against City's Contractor; nor shall such failure affect the validity of this Agreement or Concessionaire's obligations and related deadlines hereunder.

SECTION 10.05 SUBMITTAL AND APPROVAL OF PLANS

- A. **Submittal of Plans.** Prior to Concessionaire's commencement of any construction activities on the Premises, Concessionaire shall submit plans and specifications that conform to all of the requirements of Concessions Handbook, to City for review and approval. No construction work shall commence until City has approved the plans and specifications and has issued a Notice to Proceed. Concessionaire shall submit plans and specifications, in the form and number identified in Tenant Work Permit Handbook, for the Premises. In the event of disapproval by City of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by City.
- B. **Disclaimer of Compliance with Laws or Codes.** The approval by City of any plans and specifications refers to the conformity of such plans and specifications to City standards. Approval of any plans and specifications by City does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits and responsibility therefore always remains with Concessionaire.
- C. **Approvals Extend to Architectural and Aesthetic Matters.** City approval will be required for all construction work and systems, including architectural and aesthetic matters. City reserves the right to reject any designs submitted by Concessionaire and to require Concessionaire, at Concessionaire's expense, to make modifications and revisions, and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by City.
- D. **Design and Permitting.** Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to City, City shall reasonably cooperate with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities in order for Concessionaire to apply for and obtain such permits and approvals.

SECTION 10.06 CONSTRUCTION

- A. **Procedures.** Concessionaire shall, at its own cost and expense, commence construction of an Approved Project in accordance with the procedures described in the Concessions Handbook. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of First Class quality and in accordance with the Approved Project. All construction shall be performed in accordance with the requirements of this Agreement, the Concessions Handbook, and applicable laws, regulations, ordinances, codes and permits including, but not limited to, worker's compensation requirements, **City's Prevailing Wage Ordinance (D.R.M.C. §20-76), City's MBE/WBE participation requirements (D.R.M.C. Articles III and VII), the City's Living wage Ordinance**, and the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and DEN regulations. City and its designees shall have the right from time to time to inspect each Approved Project.

- B. **Bonding During Construction.** Concessionaire will obtain performance and/or payment bonds before beginning any construction work, in the form and the amount required by the Concessions Handbook.
- C. **Timing.** Concessionaire must complete any initial Approved Project and Open for Business no later than the Required Opening Date, and by any required completion date for all later Approved Projects, subject to any extensions that may be approved by City.
- D. **Liquidated Damages for Failure to Meet Date.** Concessionaire acknowledges that if it fails to Open for Business by the Required Opening Date, or a required completion date for later Approved Projects, the delay may cause the City to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to open the Premises for business by a required date, Concessionaire's failure shall be subject to the procedures described in the Concessions Handbook, and the City will have the right to exercise any and all remedies available at law or in equity including but not limited to the option to terminate this Agreement.

SECTION 10.07 COMPLETION OF CONSTRUCTION

For each Approved Project, Concessionaire shall conform to Project Closeout Activities set forth in the Concessions Handbook.

SECTION 10.08 TITLE TO IMPROVEMENTS

All Premises Improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, including approved changes and renovations affixed to the realty, shall become the property of City upon their completion and acceptance by City.

SECTION 10.09 SIGNAGE

Subject to the terms and conditions of Section 10.05, Concessionaire shall have the privilege to install and maintain signs on or within the Premises, if the design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the Concessions Handbook. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of City.

SECTION 10.10 REFURBISHMENT

- A. In addition to the ongoing, routine maintenance described in Section 7.15, Concessionaire shall, at its sole cost and expense, construct and install all approved Mid-Term Refurbishment improvements no later than the Mid-Term Refurbishment Completion Date. The Mid-Term Refurbishment shall exclude improvements or maintenance performed as routine maintenance in accordance with the Agreement. City and Concessionaire shall jointly determine the scope and extent of the Mid-Term Refurbishment for the Premises. If Concessionaire and City cannot jointly agree upon the necessary scope and extent of the Mid-Term Refurbishment, City may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by City's determination.
- B. Concessionaire's plans, specifications, and timeline for work needed for the Mid-Term Refurbishment must be in accordance with the Concessions Handbook. Concessionaire shall

submit its plan specifications for refurbishment to City for review and approval in accordance with the procedures stated in the Concessions Handbook.

ARTICLE XI. DISCLAIMER OF LIENS

SECTION 11.01 LIENS

- A. The interest of City in the Premises will not be subject to liens for any work, labor, materials, or improvements made by or for Concessionaire to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will City or the interest of City in the Premises be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at DEN or any interest in this Agreement without prior, written approval by City. Concessionaire is specifically prohibited from subjecting City's interest in the Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify, defend, and hold City harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Premises or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of liens to all Contractors or subcontractors providing any materials or making any improvements to the Premises.
- B. In the event any construction, mechanic's, laborer's, materialmen's or other lien, or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to City, security satisfactory to City to secure payment of such lien, if requested by City, while Concessionaire contests to conclusion the claim giving rise to such lien.

ARTICLE XII. MAINTENANCE UTILITES AND REPAIRS

SECTION 12.01 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS

- A. Except for such maintenance of the Premises as is to be provided by City hereunder, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures personal property, in good appearance and repair, in a safe First Class condition, and in accordance with Sections 7.15 and 7.16. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Premises Improvements on the Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by City. All of the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of City.
- B. If it is determined the maintenance does not comply with this Agreement, City will follow the procedures identified in the Concessions Handbook.

- C. Concessionaire covenants and agrees that nothing shall be done or kept in the Premises that might impair the value of City's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from City. At the sole discretion of City, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.
- D. Concessionaire covenants to comply with all present and future laws, orders, and regulations, including any rules, regulations, and procedures promulgated by City regarding City provided maintenance within DEN. If any system for City provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost, Concessionaire must pay its proportional share of the actual costs for City provided maintenance, in accordance with amounts in Section 1.01.

SECTION 12.02 COMMON MAINTENANCE SERVICES AND UTILITY OBLIGATIONS

- A. City shall provide structural maintenance of DEN and, except as provided below, maintain and repair the exterior windows and walls of the Premises in DEN. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.
- B. Further, City has established Common Maintenance Services at DEN. Concessionaire consents to pay its proportionate share of the Common Maintenance Services provided by City, in amounts stated in Section 1.01.
- C. City provides utility mains and lines throughout DEN. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by City. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire in excess of what is customarily available in DEN will be, if approved by City, at the expense of Concessionaire.
- D. City may, at City's sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises at all times to make any repairs, replacements and alterations when and as may, in the opinion of City, be deemed necessary. Furthermore, Concessionaire will permit City or its representatives access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that City shall exercise such right in a manner that minimizes interference with Concessionaire's operations. Moreover, during an emergency, City, or its agents, may enter the Premises forcibly, if necessary.
- E. City agrees that it will at all times maintain and keep utility mains and lines in good repair in DEN and all appurtenances, facilities and services now or hereafter connected therewith. Concessionaire understands, accepts, and agrees that City shall not be liable for Concessionaire's loss for failure to supply any utility services. City reserves 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 City and causes City to be unable to furnish such utility services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder.

- F. City owns and maintains DEN's cabling infrastructure supporting telephone and data transmission generated within, to and from the Premises (hereinafter referred to as "Data Network Distribution System"). Concessionaire may use City's Data Network Distribution System for voice and data connectivity. Concessionaire is required to pay City, or pay a competitive local exchange carrier, for dial tone or internet access for its telephone services and communication systems. City will provide annual maintenance and any needed repairs for the fiber optic cable within the Data Network Distribution System. Relocation of the fiber cable or additional strands of fiber cable will be at Concessionaire's expense. If Concessionaire installs Electronic Visual Information Display systems ("EVIDS"), Concessionaire will be required to use City's Data Network Distribution System. Installation and ongoing maintenance of EVIDS will be at Concessionaire's expense and, at Concessionaire's discretion, may be performed by City or an outside vendor approved by City, subject to a Tenant Work Permit.

SECTION 12.03 CITY'S PERFORMANCE OF COMMON MAINTENANCE SERVICES

Concessionaire agrees that City shall not be liable for Concessionaire's loss for failure to supply any Common Maintenance Services. City reserves the right to temporarily discontinue any Common Maintenance 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 City and causes City to be unable to furnish such services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder, except as otherwise provided in Article XVII. The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Common Maintenance Services. As noted in Section 1.02, any such modification will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

ARTICLE XIII. TERMINATION RIGHTS

SECTION 13.01 TERMINATION FOR CAUSE

Subject to any cure period(s) set forth in this Agreement, City may terminate this Agreement for cause due to the actions or inactions of the Concessionaire upon fifteen (15) business days written notice to Concessionaire. In doing so, City will not be deemed to have thereby accepted a surrender of the Premises, and Concessionaire will remain liable for all payments or other sums due under this Agreement up to and including the date of termination, and for all damages suffered by City because of Concessionaire's breach of any of the covenants of this Agreement including, but not limited to, all cost of relicensing, reasonable attorney's fees, repairs, and improvements. Cause for termination includes, but are not limited to the following:

1. The failure or omission by Concessionaire to perform any material obligations under this Agreement or the material breach of any terms, conditions, and covenants required herein.
2. The failure to pay, in full, to City within five (5) days of when due any fees, costs, expenses damages, or other charges applicable hereunder except where such failure is cured within (10) days after written notice by City of Concessionaire's failure to pay.

3. Concessionaire's material breach under any other agreement with City at DEN that is not cured within any applicable cure period set forth therein.
4. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
5. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
6. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
7. Concessionaire's cancellation or other expiration of the Surety without City's prior written consent, and not reestablished promptly after written notice by City.
8. An assignment, sublicense, or transfer of Concessionaire's interest under this Agreement by reason of death, operation of law, assignment, sublease, sale in bulk of any of its assets, or otherwise to any other person or business entity other than in compliance with the provisions of this Agreement.
9. If Concessionaire abandons, deserts, vacates, or ceases operations under this Agreement for five (5) consecutive business days, unless undergoing repairs or renovations first approved by City.
10. Concessionaire's failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Concessionaire has failed to remedy such failure within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire).
11. Any lien or attachment to be filed against the Premises, DEN, or other City property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Concessionaire.
12. Concessionaire use, permission to use, or failure to prevent use of any portion of DEN made available to Concessionaire for its use under this Agreement for any illegal purpose.
13. Concessionaire's license or franchise agreement related to the Concession it is authorized to operate at DEN is terminated, expires, or is amended so that compliance with the amended provisions will cause Concessionaire to be in breach of its obligations under this Agreement.

14. Concessionaire's failure to pay any fees or charges required hereunder after the expiration of the (10) day cure period as proscribed hereunder.
15. The conduct of any business or performance of any acts at DEN not specifically authorized in this Agreement or by any other agreement between City and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within thirty (30) days of receipt by Concessionaire of City's written notice to cease said business or acts.
16. Any other breach of this Agreement by Concessionaire that is not cured within thirty days of receipt by Concessionaire of City's written notice.

Nothing in this Section shall be construed to grant a right to Concessionaire to cure a material breach, which by its nature is not capable of being cured. City reserves the right, in its sole discretion, to treat each Concessions Location individually for the purpose of declaring a material breach and terminating this Agreement for Cause.

SECTION 13.02 CITY'S REMEDIES IN LIEU OF TERMINATION

In the event of any of the foregoing events listed in Section 13.01, and following fifteen (15) days' notice by City and Concessionaire's failure to remedy, City, at its election, may in lieu of termination for cause exercise any one or more of the following remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law. Unless the cause for termination, as stated in such notice, is by its nature curable and shall have been cured within such fifteen (15) days. City Remedies are as follows:

1. Allow this Agreement to continue in full force and effect and enforce City's right to collect Compensation as it becomes due together with past due interest and draw upon the Surety in any amount necessary to satisfy the damages sustained or reasonably expected from Concessionaire's material breach; and/or
2. Treat this Agreement as remaining in existence, and reenter and take possession of the Premises and expel Concessionaire and those claiming through or under Concessionaire and remove the effects of as may be necessary with or without process of law, without liability for trespass, using such force as may be necessary, and without prejudice to any remedies for damages or breach. No such reentry shall be construed as an election on City's part to terminate this Agreement. City reserves the right to terminate the Agreement at any time after reentry. Following reentry, City may relicense the Premises, and make alterations, repairs or improvements as City deems appropriate for relicensing. City shall not be responsible for any failure to relicense the Premises or any failure to collect compensation due for such relicensing. City shall not be liable to Concessionaire for any claim for damages resulting from remedial action by City. Concessionaire shall continue to be liable for all amounts due as under this Agreement on the dates specified plus interest thereon at the Past Due Interest Rate together with such amounts as would be payable, including costs, attorney's fees, repairs, and improvements.

No delay, failure, or omission of City to re-enter the Premises or to exercise any right, power, privilege, or option arising from any material breach nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be

construed to be a waiver of any such breach or relinquishment, or acquiescence of the Premises. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and that the exercise of one right, power, option, or remedy by City will not impair its rights to any other right, power, option, or remedy available under this Agreement or provided by law. In the event City terminates this Agreement or reclaims the Premises under this Section 13.04, City has no liability to Concessionaire for any Unamortized Investment or any other costs or expenses incurred by Concessionaire.

ARTICLE XIV. INDEMNIFICATION

SECTION 14.01 DEFENSE AND INDEMNIFICATION

- A. Concessionaire hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Concessionaire or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- B. Concessionaire's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Concessionaire's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- C. Concessionaire will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Concessionaire under the terms of this indemnification obligation. The Concessionaire shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

ARTICLE XV. INSURANCE

SECTION 15.01 INSURANCE REQUIREMENTS

- A. Concessionaire shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in **Exhibit D** (“**Insurance Requirements**”) during the entire Term of this Agreement, including any holdover periods, extensions of the Agreement, or other extended period stipulations stated in **Exhibit D**. All certificates of insurance must be received and accepted by the City before any airport access or work commences.
- B. Concessionaire shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.
- C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Concessionaire from liabilities arising out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, employees, or subcontractors. Concessionaire shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Concessionaire is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.
- D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.
- E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, , or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.
- F. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify **Exhibit D** by written notice executed by DEN to reflect any such modifications, without need for formal amendment to this Agreement.

ARTICLE XVI.SURETY FOR PERFORMANCE

SECTION 16.01 FORM OF SURETY

- A. To secure payment for compensation, fees, charges and other payments required hereunder, Concessionaire will post with City a Surety in the form specified in and the amount calculated in accordance with the Concessions Handbook. The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by City in accordance with Section 16.03. The Surety will be issued by a bank or surety provider acceptable to City and authorized to do business in the State of Colorado. The Surety may be issued for a one (1) year period, provided however, Concessionaire covenants and agrees that evidence of

renewal or replacement of the Surety must be submitted annually by Concessionaire to City, without prompt, at least sixty (60) days prior to the expiration date of the instrument. The Surety shall contain language that the issuing financial institution shall notify City in writing within forty-five (45) days of a determination that the Surety is to be terminated and or is not going to be renewed.

- B. Notwithstanding any provision herein to the contrary, if at any time City deems the amount of Surety insufficient to properly protect City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of City, violated other terms of this Agreement, Concessionaire covenants that after receiving notice, it will increase the Surety to the amount required by City, provided however, the percentage increase shall not exceed five (5%) of the annual percentage increase that has occurred with respect to Concessionaire's compensation, fees, and charges.
- C. Concessionaire shall furnish the Surety at least thirty (30) days prior to the Required Opening Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be a material breach of this Agreement.

SECTION 16.02 APPLICATION OF SURETY

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, City, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Surety or any part thereof toward the payment of Concessionaire's obligations under this Agreement. In such an event, within thirty (30) days after notice, Concessionaire will restore the Surety to its original amount. City will not be required to pay Concessionaire any interest on the Surety. Concessionaire understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

SECTION 16.03 RELEASE OF SURETY

The release of the Surety will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein. Concessionaire acknowledges and agrees release of the Surety shall be in accordance with the procedures identified in the Concessions Handbook. In the event of a dispute between the Parties, only the amount in dispute will be retained for remedy.

ARTICLE XVII. PROPERTY DAMAGE

SECTION 17.01 COMPLETE DESTRUCTION

- A. If Premises, the Concourse in which the Premises is located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.

- B. If City elects to rebuild, Concessionaire must replace all Premises Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

SECTION 17.02 DAMAGE TO CONCESSION

Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing. Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of, paid for by Concessionaire, and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

SECTION 17.03 ALTERNATE SPACE

City will use its best efforts to provide Concessionaire with alternate areas acceptable to Concessionaire to continue its operation while City makes repairs to the Premises, in accordance with the terms of this Article, except for damages caused by Concessionaire's acts, omissions, or negligence.

SECTION 17.04 WAIVER OF SUBROGATION

To the extent insurance permits, and then only to the extent collected or collectable by Concessionaire under its property insurance coverage, Concessionaire waives any and all claims against City and its directors, officers, agents, servants and employees for loss or damage to property.

ARTICLE XVIII. DAMAGING ACTIVITIES

SECTION 18.01 PROHIBITED STORAGE OR USE OF CERTAIN GOODS, MATERIALS, MACHINERY, OR HAZARDOUS SUBSTANCES.

- A. No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous, or that may be offensive or cause harm to the general public or cause damage to the Premises.
- B. Concessionaire is responsible for compliance and shall require its Contractors to comply with all federal, state, and local environmental rules, regulations, and requirements, including as they may be amended after the Effective Date. This includes compliance with DEN's Rule and Regulation, Rule 180 incorporated hereto by reference.
- C. Concessionaire shall obtain all necessary federal, state, local, and DEN permits and comply with all permit requirements.

- D. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City.
- E. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement.
- F. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.
- G. Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement will be kept in compliance with Occupational Safety and Health Administration (OSHA).

SECTION 18.02 PROTECTION OF INFRASTRUCTURE

Concessionaire agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that 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 DEN. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense.

SECTION 18.03 DAMAGE CAUSED BY OPERATIONS

Concessionaire shall be responsible for any damage caused by Concessionaire to the Premises, other DEN property or operations, other City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or because of the operations of Concessionaire. In the event of such damage, Concessionaire will give City immediate notice thereof, and Concessionaire will immediately make the necessary repairs at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article X with respect to all work required to be performed in accordance with this Section. City reserves the right, if in the best interest of City, to perform the necessary repairs immediately itself. Concessionaire covenants to reimburse City, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If Concessionaire causes the same type of damage, such as a water leakage, electrical service interruption, or other damage, more than once in a twelve (12) month period, then Concessionaire shall submit a Remediation Plan, as set forth in Section 7.01.

ARTICLE XIX. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, AND RULES

SECTION 19.01 COMPLIANCE

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with all applicable existing and future federal, state, and local laws and regulations, DEN's Rules and Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by City, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted

activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of DEN, including as these authorities may be amended after the Effective Date. Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessions at DEN as identified in the Concessions Handbook. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and Handbook shall constitute a material breach of the terms of this Agreement in the same manner as if these were stated directly in this Agreement.

ARTICLE XX. AIRPORT SECURITY

SECTION 20.01 FAA AND TSA REQUIREMENTS

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or City by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Concessionaire covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Concessionaire within fifteen (15) days from the date of the invoice or written notice.

SECTION 20.02 CHANGES IN REQUIREMENTS

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of DEN changes, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent Contractors, invitees, successors, and assigns in complying with security modifications that occur as a result of the changed status. At any time, Concessionaire may obtain current information from DEN's Security Office regarding DEN's security status in relation to Concessionaire's operations at the DEN.

ARTICLE XXI. GENERAL PROVISIONS

SECTION 21.01 AMERICANS WITH DISABILITIES ACT

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act of 1990 ("ADA") 42 USC § 12101 *et seq.*, and any similar or successor laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with City concerning the same subject matter. In the event that compliance cannot be achieved, Concessionaire shall proceed formally to the federal, state, or local agency having jurisdiction for a waiver of compliance.

SECTION 21.02 FAA APPROVAL

This Agreement may be subject to approval of the FAA. If the FAA disapproves this Agreement, it will become invalid, and both Parties will bear their own expenses relative to this Agreement, up to the date of disapproval.

SECTION 21.03 RIGHT OF FLIGHT

Concessionaire's privilege to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by DEN operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

SECTION 21.04 FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of DEN or the portion thereof wherein the Premises are located, for public purposes, for a period in excess of ninety (90) consecutive days, then this Agreement will terminate and City will be released and fully discharged from any and all liability hereunder. In the event of such termination, Concessionaire's obligation to pay compensation will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

SECTION 21.05 PROPERTY RIGHTS RESERVED

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and the United States, when the execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion, or development of DEN. The provisions of the attached **Appendices 1 and 2** are incorporated herein by reference and in the event that the FAA or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of DEN, or otherwise. Concessionaire understands, accepts, and agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements.

SECTION 21.06 ASSIGNMENT AND SUBCONTRACT

- A. Concessionaire may not assign, subcontract, and/or sublease its privileges, interests, or obligations in whole or in part under this Agreement without the prior written consent of City in City's sole and absolute discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City in City's sole and absolute discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written

consent of City shall, at the option of the CEO, automatically terminate this Agreement and all privileges of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.

- B. Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All compensation, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-contractors must independently operate any subcontracted premises, adhere to, and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

SECTION 21.07 CORPORATE TENANCY

If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to City that Concessionaire is a corporation in good standing, is authorized to do business in the State of Colorado, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

Further, If Concessionaire is a partnership or other business organization, each member shall be deemed to be jointly and severally liable if such members are subject to personal liability.

No director, officer, or employee of City shall be held personally liable under this Agreement because of its good faith execution or attempted execution.

SECTION 21.08 NON-EXCLUSIVE RIGHTS

This Agreement will not be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC 40103(e) or 49 USC 47107(a), as may be amended from time to time, and related regulations.

SECTION 21.09 RIGHT TO DEVELOP AIRPORT

- A. Concessionaire recognizes that from time to time, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair in order for DEN and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Concessionaire acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Concessionaire in its operation at DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, Contractors, subcontractors, and

representatives by way of such inconveniences. Concessionaire agrees to waive any right to claim damages or other consideration therefrom.

- B. It is covenanted and agreed that City reserves the right to further develop or improve DEN and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.
- C. Further, Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Master Layout Plan for DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Concessions Master Plan for DEN. Concessionaire waives any right to claim damages or other consideration arising therefrom.

SECTION 21.10 ATTORNEY'S FEES AND COSTS

In the event legal action is required by City to enforce this Agreement, City will be entitled to recover costs and attorneys' fees, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

SECTION 21.11 RIGHT TO AMEND

In the event that the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in this Agreement as a condition precedent to the granting of funds for the improvement of DEN, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Agreement as may be required to obtain such funds.

SECTION 21.12 NOTICES AND COMMUNICATIONS

All notices or communication, whether to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the party by three (3) days after depositing such notice or communication in a postal receptacle, return receipt requested, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

TO CITY (MAIL DELIVERY):	TO CONCESSIONAIRE (MAIL DELIVERY):
Attn: Chief Executive Officer Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340 CC: Senior Vice President Concessions Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340	HFF DEN TWO, LLC Glenn Meyers 123 Second Street Sausalito, CA 94965

or to such other address or parties within the State of Colorado as either party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged.

SECTION 21.13 BOND ORDINANCES

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

At City's sole discretion, through its CEO, City may from time to time reestablish the compensation, fees, and charges provided for herein at intervals of not more than five (5) years and are subject to the requirements of any outstanding bond ordinance pertaining to DEN. City agrees that such reestablished schedule of compensation, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of DEN. If City proposes any changes in the schedule of compensation, fees, and charges, City will give notice thereof to Concessionaire no less than ninety (90) days before the same is to become effective. Concessionaire may decline to pay Compensation at the new rate(s) if such proposed compensation, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Compensation paid by Concessionaire under Article V of this Agreement for the previous calendar year. In such a case, Concessionaire shall promptly advise the CEO of its intention to cancel and terminate this Agreement at least sixty (60) days prior to the proposed effective date of such schedule of compensation, fees, and charges. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Premises upon a date specified by City within at least one hundred twenty (120) days after Concessionaire advised City. Should Concessionaire fail to give such notice of cancellation and termination, then Concessionaire shall be deemed to have accepted the new rate(s) of compensation as promulgated by City. Failure by City to reestablish the compensation, fees, and charges at a five (5) year interval date shall not waive City's right to reestablish the compensation, fees, and charges at any time thereafter.

SECTION 21.14 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, understandings, or conditions of this Agreement 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. A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

SECTION 21.15 RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed an independent Contractor and operator responsible to all parties for its respective acts or omissions, and City will in no way be responsible therefore. It is further expressly understood and agreed that City shall not be construed by a third party or held by Concessionaire to be a partner, associate, or joint venture partner of Concessionaire in the conduct of its business.

SECTION 21.16 CITY APPROVALS

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by City, it is understood that the CEO, or a designee of the CEO, is hereby empowered to act on behalf of City. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the CEO, it is understood that the CEO may further delegate such authority through the Concession Handbook and/or Tenant Work Permit Handbook.

SECTION 21.17 INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by law.

SECTION 21.18 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

SECTION 21.19 TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or City. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from City within thirty (30) days after Concessionaire's receipt of that notice or within the period prescribed in the tax bill. City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to City of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of City. Concessionaire shall pay to City, with each payment of Premises Compensation, Support Space Compensation, Privilege Fee, and Concession Services Fees to City, all sales or other taxes which may be due with respect to such payments, and upon receipt, City shall remit such taxes to the applicable taxing authorities.

SECTION 21.20 PATENTS AND TRADEMARKS

Concessionaire covenants, warrants, and represents that it is the owner of or fully authorized to use any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by City, in its operations under this Agreement, unless it has obtained prior proper permission, all releases, and other necessary documents. Concessionaire agrees to indemnify, defend, and hold harmless City, its 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 Concessionaire under this Agreement.

SECTION 21.21 AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Colorado, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate an agent for the service of process with the Secretary of State, State of Colorado, in any court action between it and City arising out of or based upon this Agreement, service will be made as provided by the laws of the State of Colorado for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a duly noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Agreement. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

SECTION 21.22 COMPLIANCE WITH PUBLIC RECORDS LAW

- A. **Agreement Subject to Colorado Open Records Act.** Concessionaire acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.* Concessionaire agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Concessionaire asserts is confidential or otherwise exempt from disclosure. Concessionaire acknowledges all documents prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the Colorado Open Records Act. Any other provision of this Agreement notwithstanding, including Exhibits, Attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Concessionaire to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Concessionaire agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City. Concessionaire agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Concessionaire asserts is confidential and exempt from disclosure.

- B. Indemnification in Event of Objection.** In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any material Concessionaire may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Concessionaire objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Concessionaire agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Concessionaire does not wish disclosed. Concessionaire agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Concessionaire's objection to disclosure including prompt reimbursement to City of all reasonable attorney fees, costs, and damages that City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

SECTION 21.23 USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Concessionaire, 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 may be otherwise authorized by this Agreement, Concessionaire shall also prohibit consumption of alcohol within the Concession Space. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in City barring Concessionaire from City facilities or participating in City operations.

SECTION 21.24 CITY'S SMOKING POLICY

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Premises. Concessionaire further agrees to not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in DEN buildings and facilities except for designated areas. Concessionaire and its officers, agents, and employees shall cooperate and comply with the provisions of City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of D.R.M.C., §§ 24-301 to 317 et seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et seq. and DEN's Rules and Regulations Rules 30 and 40.

SECTION 21.25 WAIVERS

No waiver by City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of City to exercise any right, power, privilege or option arising from any breach, material breach, nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege or option, or be construed to be a waiver of any such breach or material breach, or relinquishment thereof or acquiescence therein. No notice by City will be required to restore or revive time as being of the essence hereof after waiver by City or breach in one or more instances.

No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by City will not impair its rights to any other right, power, option or remedy.

SECTION 21.26 COMPLETE CONTRACT

This Agreement, together with the Concession Handbook and the Tenant Work Permit Handbook, including as they may be amended, represents the complete understanding between the Parties, and any prior Contracts or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Agreement. In the event of any conflict between this Agreement and any other document incorporated herein, this Agreement will control.

SECTION 21.27 BROKER'S COMMISSION

Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement. Concessionaire shall defend, indemnify, and hold City harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any Third Party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to City) any right to claim damages or to bring any suit, action or other proceeding against either City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

SECTION 21.28 NO LIMIT ON CITY'S POWERS

Nothing in this Agreement shall limit in any way the power and right of City to exercise its governmental rights and powers, including its powers of eminent domain.

SECTION 21.29 SIGNATURES

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed one instrument. This Agreement is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if so required by City's Charter, and fully executed by all signatories of City and County of Denver. The Parties, in the manner specified by City, may sign this Agreement electronically.

[SIGNATURE PAGES, EXHIBITS, AND APPENDIXES FOLLOW]

CONCESSIONS HANDBOOK

[Incorporated by Reference]

ACKNOWLEDGMENT AND AGREEMENT

As the Owner/Operator/Regional Manager/General Manager or other designee, I hereby acknowledge and agree to abide by all the terms stated in the Concessions Handbook, including as it may be amended from time to time, per Article XIX of the Agreement.

It is the responsibility of each Concessionaire to communicate the information contained in the Concessions Handbook to all personnel, contractors, and third party vendors. Violations will be handled via Article VIII and/or other applicable provisions of the Agreement.

The City reserves the right to amend the Concessions Handbook at any time. Concessionaires will be informed of such updates via letter sent to the email provided.

Acknowledged and Agreed:

HFF DEN TWO, LLC

CONCESSIONAIRE: _____

Glenn Meyers

Name

DocuSigned by:

Glenn Meyers

Signature

CEO

Title

Date

Contract Control Number: PLANE-201952037-00
Contractor Name: HFF DEN TWO, LLC

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:**
Attorney for the City and County of Denver
By: _____ By: _____

By: _____

Contract Control Number:
Contractor Name:

PLANE-201952037- 00
HFF DEN TWO, LLC

By:  72C816C76545433...

Name: Glenn Meyers
(please print)
Title: CEO
(please print)

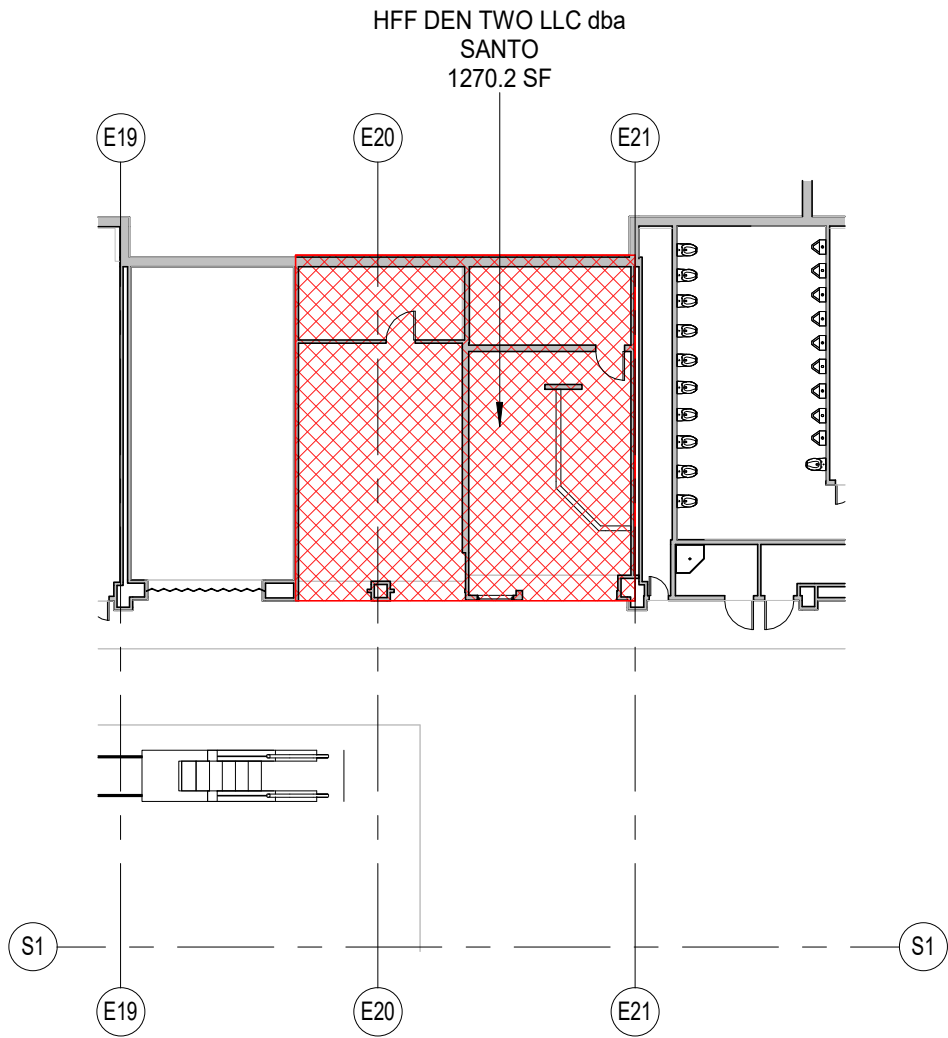
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A (PREMISES DESCRIPTION)

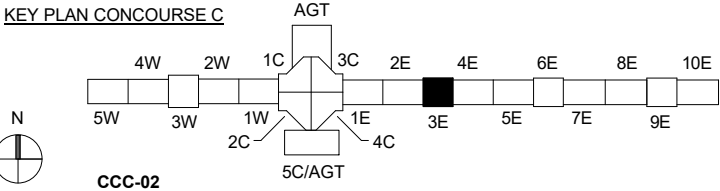


SCALE: 1" = 20'-0"

NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.


DEN Planning and Design

KEY PLAN CONOURSE C



DENVER INTERNATIONAL AIRPORT

EXHIBIT A
R19-1-2-W5-NS-1
HFF DEN TWO LLC dba SANTO

CC#:

DATE: 4/5/2023

EXHIBIT B (PERMITTED USES)

EXHIBIT B (PERMITTED USES)

Santo

- The Quick Serve Restaurant with Alcohol concept is intended for the development and service of products that will feature a menu that covers all three meals of the day, consistent with the concept brand geared towards food that may be taken away from the premises. The concept is not intended to have table service and should generally have limited items at a higher price point, though price range may be depending on quality of product.
- All menu items must be represented on and relevant to the restaurant's menu and must be packaged in high-quality, easy-to-carry packaging that meets or exceeds the City's sustainability requirements found in the Concessions Agreement and Handbook.
- Menu offerings must be of high quality and offer good value to the customers. Vegetarian, Kosher, Halal, gluten-free and other dietary considerations should be included in menu. There should be at least two vegetarian options available other than a salad offering.
- Beverages will include full bar service, including local, domestic, and international beers and other non – alcoholic beverages, juices, bottled water, coffee, tea, and soft drinks
- For no other purpose whatsoever, unless approved in advance by the City, examples of which are list in the initial menu and approved pricing list may be sold at location.

EXHIBIT C (MONTHLY CONCESSION REPORT)

Denver International Airport

MONTHLY CERTIFIED STATEMENT OF GROSS RECEIPTS AND MONTHLY INSTALLMENTS OF RENTS DUE

Month:

TENANT NAME:

DBA NAME:

AGREEMENT YEAR:

AGREEMENT TYPE:

SPACE NUMBER:

MONTHLY SUBMISSIONS														
GROSS RECIEPTS							PERCENTAGE RENT RATE(S) AND BREAKPOINT(S).				Monthly Minimum Guarantee Rent	Monthly Percent Rent Due	Marketing Fund = 1% times Total Reportable Receipts (If Applicable)	
Months in Period						Total	Total Percent Rent							Total Due
	Number of Transactions	GRS	Reportable F&B	Reportable ALC	Reportable MERC/SVC		%	%	%					
January														
February														
March														
April														
May														
June														
July														
August														
September														
October														
November														
December														
TOTALS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

I hereby certify to the City and County of Denver that this is a true and accurate statement of Gross Receipts, Rents Due, and all payments made, and that each of the following is in accordance with the provisions of the Concession Agreement and all statements were prepared in accordance with GAAP.

SignatureTitle

Date

EXHIBIT D
(INSURANCE CERTIFICATE)

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
CONCESSIONS
EXHIBIT D**

A. Certificate Holder

The certificate shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8700 Peña Boulevard, ACON Room 4385
Denver CO 80249
Attn: Concessions Management

B. Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) certificate is required.
- SUBMIT via emailed in pdf format to: DEN-Concessions@flydenver.com
- ELECTRONIC CERTIFICATES are required, hard copy documents will not be accepted.
- THIRD PARTY SOFTWARE may be implemented during the term of this Agreement to manage insurance compliance and documents with required use by Vendor of such system.
- REFERENCE on the certificate must include the DEN assigned Contract Number.

C. Coverages and Limits

1. Commercial General Liability:

Concessionaire shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, host liquor liability, independent contractors' liability, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations annual aggregate and \$2,000,000 per location annual aggregate. Such insurance shall:

- a. include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. include Fire Damage Legal Liability in a minimum limit of \$100,000 any one fire.
- c. include Mobile Equipment Liability, if Concessionaire uses mobile equipment in its operations.
- d. include Liquor Liability in minimum limits of \$2,000,000 each occurrence, \$2,000,000 annual aggregate, if Concessionaire serves or sells alcoholic beverages in its operations.

2. Business Automobile Liability:

Concessionaire shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Concessionaire does not have blanket coverage on all owned and operated vehicles and unescorted airside driving privileges are required, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises
- d. If transporting waste, hazardous material, or regulated substances, Concessionaire shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

- e. If Concessionaire is an individual or represents that Concessionaire does not own any motor vehicles and Concessionaire's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
3. **Workers' Compensation and Employer's Liability Insurance:**
Concessionaire shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
 - a. If Concessionaire is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act.
4. **Property, Crime and Business Interruption Insurance:**
Concessionaire shall provide coverage for:
 - a. Personal Property, Tools, Contents, Fixtures, Storage, Tenant Improvements and Betterments Coverage including:
 - i. 100% Replacement Cost coverage
 - ii. Special Covered Cause of Loss Form extended to include coverage for glass, signs, earthquake and flood
 - iii. City (as Landlord) or its designee shall be included as first loss payee as their interests may appear
 - b. Commercial Crime Coverage insurance with limits of \$1,000,000 per occurrence covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositor's forgery; computer fraud, on premises and in transit.
 - c. Business Interruption Coverage in such amounts as will reimburse Concessionaire for direct or indirect loss of earnings attributable to the perils commonly covered by the Concessionaire's business interruption coverage, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.
5. **Builder's Risk Insurance or Installation Floater:**
During the duration of any tenant buildout activity, Concessionaire shall provide, Builders' Risk Insurance on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:
 - a. apply from the time any covered property becomes the responsibility of the Concessionaire, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
 - b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
 - c. include interests of the DEN and if applicable, affiliated or associate entities, the General Contractor, subcontractors and sub-tier contractors in the project;
 - d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;

- e. include a Beneficial Occupancy Clause and shall specifically permit occupancy of the building during construction. City and County of Denver Concessionaire shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;
- f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

6. Excess/Umbrella Liability:

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess policy(es) must follow form of the primary policies with which they are related to provide the minimum limits.

D. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), Concessionaire's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers as Additional Insureds by policy endorsement.

E. Waiver of Subrogation

For all coverages required under this Agreement, Concessionaire's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers by policy endorsement.

F. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

- 1. Such notice shall reference the DEN assigned contract number related to this Agreement.
- 2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
- 3. If such written notice is unavailable from the insurer or afforded as outlined above, Concessionaire shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification.

G. Additional Provisions

- 1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Concessionaire.
- 2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
- 3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies that require the Additional Insured provision.
- 4. Provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City shall be provided on policies which the City requires Additional Insured status.
- 5. Coverage limits purchased by Concessionaire greater than the minimum amounts required under this Agreement must be referenced on any provided certificate of insurance and extended to the benefit of the City.
- 6. All policies shall be written on an occurrence form. If an occurrence form is unavailable, claims-made coverage may be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.

7. Concessionaire shall advise DEN in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Concessionaire will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf and must be submitted to the City at the time the Concessionaire signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance or approval of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Concessionaire's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management or its designee. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Concessionaire is solely responsible for ensuring they are in compliance with all insurance requirements and that all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its insurance providers shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes that negatively impact DEN or reductions in the coverage required herein shall be allowed without the review and written approval of DEN Risk Management.
13. Concessionaire shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Concessionaire's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.

EXHIBIT E
(ACDBE Commitment Forms)

Attachment 1, Part 4 ACDBE and M/WBE Forms

ACDBE and M/WBE FORMS

The ACDBE and M/WBE forms which apply to this agreement are contained in the pages immediately following this page.

These pages are not included in the page numbering of this RFP document.

DENVER INTERNATIONAL AIRPORT
DEN COMMERCE HUB
ACDBE COMMITMENT FORM



Proposal for: Food and Beverage 1-22 C East Sub Core 1 Quick Serve Restaurant (201952037-00)
Concession Type Name of Concession Opportunity

SECTION A – PROPOSER INFORMATION

Name of Firm: HFF DEN TWO, LLC

Address: 123 Second Street

City: Sausalito **State:** CA **Zip:** 94965

Contact Person: Glenn Meyers **Telephone:** (415) 243-8908

Email: glenn.meyers@highflyingfoods.com

Is your firm ACDBE Certified: ☐ Yes, If Certified, Attach Certification Letter ☒ No

SECTION B – ACDBE COMMITMENT

The ACDBE goal on this concession is 33 %.

NOTE: DEN will only credit ACDBE participation that is certified as such by the DEN Commerce Hub or the Colorado Department of Transportation.

- The undersigned proposer/concessionaire has satisfied the ACDBE concession requirements in the following manner (please check the appropriate space).

The proposer is committed to a minimum of 33 % ACDBE goal utilization on this concession contract which meets or exceeds the ACDBE goal on this concession opportunity. The amount and type of participation proposed will become a firm commitment in the Lease Agreement.

The proposer, unable to meet the ACDBE goal, is committed to a minimum of N/A % ACDBE utilization on this concession contract and submits its documentation demonstrating good faith efforts.

The proposer is unable to meet the ACDBE goal and submits documentation demonstrating good faith efforts.

- Identify ACDBE sub-concessionaire, ACDBE joint venture partner, ACDBE equity partnership or other legal ACDBE business arrangement that meets ACDBE goal and eligibility standards in 49 CFR Part 23.



Name & Address of ACDBE Firm	Role of ACDBE	% Level of Participation
Hyde Park Hospitality LLC	Various BOH duties, see following page	16%
Procurement Concepts, Inc.	Various FOH duties, see following page	10%
ZANN & Associates, Inc.	Various HR/Legal duties, see following page	7%
N/A	N/A	N/A

(Use Additional Sheets if Necessary)

ACDBE UTILIZATION – VENDOR/SUPPLIERS OPPORTUNITIES

NOTE: An ACDBE Letter of Intent must be submitted for all ACDBE suppliers listed below. Attach copy of the ACDBE Certification Letter for all ACDBEs, regardless of participation type. Complete only if suppliers will be used to meet any portion of the ACDBE goal

List all actual and anticipated major vendors/suppliers; include both ACDBE and non-ACDBE, to be utilized on the concession (use additional sheets if necessary). Examples: Janitorial services, accounting services, HR services, etc.

NOTE: DEN will only credit ACDBE participation that is certified as such by the DEN Commerce Hub or the Colorado Department of Transportation.

Name and Address of Company	Business Area	Work to be Performed or Goods/Services to be provided	Estimated Amount (\$)	ACDBE		LOI & Cert Letter Attached
				Y	N	
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A

(Use Additional Sheets if Necessary)

Role of ACDBE

Responsibilities of Hyde Park Hospitality LLC (“HPH”)

Subject to the consent and approval of the Management Board on material decisions, HPH shall be responsible for:

- Negotiate with all food and packaging vendors
- Review of vendor invoices and ensuring vendor pricing is consistent
- Pricing and market basket analysis
- Submitting market basket to Airport for approval
- Costing food recipes, beverages, and impulse buy items
- Developing product standards, prep lists, and order sheets
- Ongoing quality control of kitchen operations
- Sales mix evaluation
- Food cost analysis
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Responsibilities of Procurement Concepts, Inc. (“PCI”)

Subject to the consent and approval of the Management Board on material decisions, PCI shall be responsible for:

- Review and cost employee schedules
- Ordering and inventory management of small wares and utensils, cutlery and china, linens, chemicals and cleaning supplies;
- Evaluate bar sales mix and make product recommendations for spirits, beer, wine, and non-alcoholic beverages
- Manage all design and product placement initiatives to increase retail merchandising transactions and optimize sales
- Research impulse buy items and manage consumer package good products, vendors, and displays
- Managing and coordinating all scheduled maintenance
- Manage cleaning program and janitorial company and ensuring consistent store cleanliness
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Responsibilities of ZANN & Associates, Inc. (“ZANN”)

Subject to the consent and approval of the Management Board on material decisions, ZANN shall be responsible for:

- Serve as local representative at DEN Concessionaire and Marketing meetings
- Manage Recruitment Events
- Ensuring Operational legal compliance
- Develop and implement Mentor Protégé program
- Provide MWBE and ACDBE Contract Compliance and Reporting to DEN/DSBO.
- Lead Quarterly Partner Meetings Including Agendas and Minutes
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

SECTION C – GOOD FAITH EFFORTS

NOTE: Complete only if the ACDBE goal was not achieved.

The following items are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the concession specific ACDBE goal. Proposers are not limited to these particular areas and may include other efforts deemed appropriate. Please feel free to elaborate on any question below.

GOOD FAITH EFFORT QUESTIONS	Y	N
1. If applicable, did you attend pre-proposal conference?	<input type="checkbox"/>	<input type="checkbox"/>
2. Did your firm request and obtain a copy of the certified ACDBE firms?	<input type="checkbox"/>	<input type="checkbox"/>
3. Were ACDBE firms contacted or solicited for concession participation?	<input type="checkbox"/>	<input type="checkbox"/>
4. Provide listing of solicited ACDBE firms with whom contact was made? Please identify name of company, contact person, date, phone number and briefly describe nature of solicitation. (Include as an Attachment)	<input type="checkbox"/>	<input type="checkbox"/>
5. Was direct contact made with the DEN Commerce Hub office? If yes, please identify date/person contacted and assistance sought. (Include as an Attachment)	<input type="checkbox"/>	<input type="checkbox"/>
6. Identify all ACDBE support agencies/associations contacted for ACDBE assistance or solicitation (Minority Chambers of Commerce, purchasing councils, contractor groups, etc.). (Please attach copies of solicitation letters of assistance and/or describe, as an Attachment to this section, the personal contact made)	<input type="checkbox"/>	<input type="checkbox"/>
7. Were concession-related opportunities to this project advertised in minority/women newspapers and trade journals? (If yes, please include a copy of the advertisement or detail the name of the publication(s), date of advertisement and describe the solicitation)	<input type="checkbox"/>	<input type="checkbox"/>
8. Were copies of concession RFP furnished to any ACDBEs?	<input type="checkbox"/>	<input type="checkbox"/>
9. Identify efforts made to assist interested ACDBEs in obtaining bonding, insurance, or line of credit. (Please detail any assistance that was provided or if they were referred, to whom)	<input type="checkbox"/>	<input type="checkbox"/>
10. Discuss efforts made to define additional elements of the work proposed to be performed by ACDBEs in order to increase the likelihood of achieving the ACDBE goal.	<input type="checkbox"/>	<input type="checkbox"/>
11. List, as an Attachment, all ACDBE negotiations and/or bids received but rejected. Identify company name, contact person, telephone number, date, trade area and the reason for rejecting the proposal or bid.	<input type="checkbox"/>	<input type="checkbox"/>
12. Discuss any other effort(s) aimed at involving ACDBEs (Include as an Attachment) : (a) Identify any specific efforts to divide work, in accordance with normal industry practices, to allow maximum ACBE participation. (b) Discuss joint ventures initiatives, requesting second-tier ACDBE subcontracting, etc., if any. (c) List all other good faith efforts employed, please elaborate. (d) Discuss types of participation considered. If any methods were not pursued, please provide the rationale behind this decision.	<input type="checkbox"/>	<input type="checkbox"/>

SECTION D - AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERTO AND BECOME A BINDING PART OF THE CONCESSION CONTRACT.

NAME AND TITLE OF AUTHORIZED OFFICIAL: Glenn Meyers, Manager

SIGNATURE:



DATE: February 21, 2020

For Questions or to Return Documents:

Denver International Airport
ATTN: Mark White
DEN Commerce Hub
Airport Office Building | 9th Floor
8500 Peña Boulevard | Denver, CO 80249-6340

303-342-2185 | mark.white@flydenver.com

ACDBE Letter of Intent




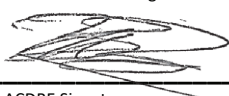
Name of Concession/vendor firm: HFF DEN TWO, LLC
 Address: 123 Second Street
 City: Sausalito State: CA Zip: 94965
 Telephone: (415) 243-8908 E-mail address: glenn.meyers@highflyingfoods.com
 Name of ACDBE Firm: Hyde Park Hospitality LLC
 Address: 17 N. Loomis Street, Suite 1A
 City: Chicago State: IL Zip: 60607
 Telephone: (312) 433-0300 E-mail address: marc@hydeparkhospitality.com

Description of Goods and Services or work to be performed by ACDBE firm: Various Back-of-House duties, see Operating Agreement - Exhibit B for full list.

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ 544,000.00 which equals 16% of projected JV Year 1 Sales for this opportunity.

AFFIRMATION:

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: 	Manager	February 21, 2020
Concessionaire Signature	Title	Date
By: 	President & CEO	February 21, 2020
ACDBE Signature	Title	Date

For Questions or to Return Documents:

Denver International Airport
 ATTN: Mark White
 DEN Commerce Hub
 Airport Office Building | 9th Floor
 8500 Peña Boulevard | Denver, CO 80249-6340
 303-342-2185 | mark.white@flydenver.com





December 9, 2019

Marc Brooks
HYDE PARK HOSPITALITY, LLC
17 N. Loomis, Suite 1A
Chicago, IL 60607

Dear Marc Brooks:

SUBJECT: Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification, Pursuant to 49 CFR Part 23 of the U.S. Department of Transportation's Regulations.

The Division of Small Business Opportunity is pleased to inform you that HYDE PARK HOSPITALITY, LLC is certified as a **Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)** pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

November 15, 2017 to December 9, 2020

HYDE PARK HOSPITALITY, LLC is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

CO UCP NAICS 451212: NEWSSTANDS (I.E., PERMANENT)
CO UCP NAICS 453220: COLLECTIBLE GIFT SHOOTS (E.G., CRYSTAL, PEWTER, PORCELAIN)
CO UCP NAICS 453220: GIFT SHOPS
CO UCP NAICS 541611: ADMINISTRATIVE AND GENERAL MANAGEMENT CONSULTING SERVICES
CO UCP NAICS 722320: CATERERS
CO UCP NAICS 722410: DRINKING PLACES (I.E., BARS, LOUNGES, TAVERNS), ALCOHOLIC
CO UCP NAICS 722511: FULL SERVICE RESTAURANTS
CO UCP NAICS 722513: LIMITED-SERVICE RESTAURANTS

Your business enterprise is required to maintain an accurate mailing address, email address and telephone number information with DSBO. If any changes occur in the firm's legal structure, ownership, management, control, or work performed, you must notify DSBO immediately. Failure to report any of these changes may result in removal of your business enterprise from the Certification Directory and possible revocation of certification of your business enterprise as an ACDBE.

The anniversary date of your firm's ACDBE certification is December 8, 2020. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents required within the renewal application in order for your renewal to be processed. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

You may visit <http://business/flydenver.com/bizops/smallBus.asp> to view upcoming concession bidding opportunities. This letter must be attached to your Letter of Intent (LOI) for bidding opportunities in which you may be utilized for goal participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Seneca Holmes".

SENECA HOLMES
DIRECTOR
Denver International Airport
Executive Office
DEN Commerce Hub
Airport Office Building | 10th Floor
8500 Peña Boulevard | Denver, CO 80249-6340
(303) 342-2242 | SENECA.HOLMES@FLYDENVER.COM | WWW.FLYDENVER.COM

ACDBE Letter of Intent



Name of Concession/vendor firm: HFF DEN TWO, LLC

Address: 123 Second Street

City: Sausalito State: CA Zip: 94965

Telephone: (415) 243-8908 E-mail address: glenn.meyers@highflyingfoods.com

Name of ACDBE Firm: Procurement Concepts, Inc.

Address: 2643 Ariane Drive

City: San Diego State: CA Zip: 92117

Telephone: (858) 581-3566 E-mail address: gil@sandiegogifts.com

Description of Goods and Services or work to be performed by ACDBE firm: Various Front-of-House duties, see Operating Agreement - Exhibit B for full list.

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ 340,000.00 which equals 10% of projected JV Year 1 Sales for this opportunity.

AFFIRMATION:

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: <u>[Signature]</u>	Manager	February 21, 2020
Concessionaire Signature	Title	Date
By: <u>[Signature]</u>	President & CEO	February 21, 2020
ACDBE Signature	Title	Date

For Questions or to Return Documents:

Denver International Airport

ATTN: Mark White

DEN Commerce Hub

Airport Office Building | 9th Floor

8500 Peña Boulevard | Denver, CO 80249-6340

303-342-2185 | mark.white@flydenver.com





January 6, 2020

Harold Johnson
PROCUREMENT CONCEPTS, INC. DBA Gifts Etc.
2643 Ariane Drive
SAN DIEGO, CA 92117

Dear Harold Johnson:

SUBJECT: Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification, Pursuant to 49 CFR Part 23 of the U.S. Department of Transportation's Regulations.

The Division of Small Business Opportunity is pleased to inform you that PROCUREMENT CONCEPTS, INC. DBA Gifts Etc. is certified as a **Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)** pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

January 6, 2020 to January 6, 2023

PROCUREMENT CONCEPTS, INC. DBA Gifts Etc. is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

NAICS 445120: CONVENIENCE STORES
NAICS 448120: WOMEN'S CLOTHING STORES
NAICS 448150: CLOTHING ACCESSORIES STORES
NAICS 451120: HOBBY, TOY, AND GAME STORES
NAICS 451211: BOOK STORES
NAICS 453220: GIFT, NOVELTY, AND SOUVENIR STORES
NAICS 541618: OTHER MANAGEMENT CONSULTING SERVICES
NAICS 722410: DRINKING PLACES (ALCOHOLIC BEVERAGES)
NAICS 722511: FULL-SERVICE RESTAURANTS
NAICS 722513: LIMITED-SERVICE RESTAURANTS
NAICS 722515: SNACK AND NONALCOHOLIC BEVERAGE BARS

Your business enterprise is required to maintain an accurate mailing address, email address and telephone number information with DSBO. If any changes occur in the firm's legal structure, ownership, management, control, or work performed, you must notify DSBO immediately. Failure to report any of these changes may result in removal of your business enterprise from the Certification Directory and possible revocation of certification of your business enterprise as an ACDBE.

The anniversary date of your firm's ACDBE certification is January 5, 2021. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents required within the renewal application in order for your renewal to be processed. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

You may visit <http://business/flydenver.com/bizops/smallBus.asp> to view upcoming concession bidding opportunities. This letter must be attached to your Letter of Intent (LOI) for bidding opportunities in which you may be utilized for goal participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Seneca Holmes", is written over a light blue horizontal line.

SENECA HOLMES
DIRECTOR
Denver International Airport
Executive Office
DEN Commerce Hub
Airport Office Building | 10th Floor
8500 Peña Boulevard | Denver, CO 80249-6340
(303) 342-2242 | SENECA.HOLMES@FLYDENVER.COM | WWW.FLYDENVER.COM

ACDBE Letter of Intent



Name of Concession/vendor firm: HFF DEN TWO, LLC
 Address: 123 Second Street
 City: Sausalito State: CA Zip: 94965
 Telephone: (415) 243-8908 E-mail address: glenn.meyers@highflyingfoods.com
 Name of ACDBE Firm: ZANN & Associates, Inc.
 Address: 7752 E. 4th Avenue
 City: Denver State: CO Zip: 80230
 Telephone: (720) 324-8580 E-mail address: suzanne@zanninc.com

Description of Goods and Services or work to be performed by ACDBE firm: Various Human Resources/Legal duties, see Operating Agreement - Exhibit B for full list.

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ 238,000.00 which equals 7% of projected JV Year 1 Sales for this opportunity.

AFFIRMATION:

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: <u></u>	Manager	February 21, 2020
Concessionaire Signature	Title	Date
By: <u></u>	President & CEO	February 21, 2020
ACDBE Signature	Title	Date

For Questions or to Return Documents:

Denver International Airport
 ATTN: Mark White
 DEN Commerce Hub
 Airport Office Building | 9th Floor
 8500 Peña Boulevard | Denver, CO 80249-6340
 303-342-2185 | mark.white@flydenver.com





May 6, 2019

Suzanne Arkle
Zann & Associates, Inc DBA Zann & Associates Inc
7752 East 4th Avenue
Unit 1C
Denver, CO 80230

Dear Suzanne Arkle:

SUBJECT: Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification, Pursuant to 49 CFR Part 23 of the U.S. Department of Transportation's Regulations.

The Division of Small Business Opportunity is pleased to inform you that Zann & Associates, Inc DBA Zann & Associates Inc is certified as a **Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)** pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

November 28, 2017 to March 15, 2020

Zann & Associates, Inc DBA Zann & Associates Inc is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

CO UCP NAICS 561499: ALL OTHER BUSINESS SUPPORT SERVICES

Consulting; Public Involvement/Hearings; Diversity & Inclusion, Marketing Research, Public Opinion Polling, Outreach

Your business enterprise is required to maintain an accurate mailing address, email address and telephone number information with DSBO. If any changes occur in the firm's legal structure, ownership, management, control, or work performed, you must notify DSBO immediately. Failure to report any of these changes may result in removal of your business enterprise from the Certification Directory and possible revocation of certification of your business enterprise as an ACDBE.

The anniversary date of your firm's ACDBE certification is March 14, 2020. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents required within the renewal application in order for your renewal to be processed. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

You may visit <http://business/flydenver.com/bizops/smallBus.asp> to view upcoming concession bidding opportunities. This letter must be attached to your Letter of Intent (LOI) for bidding opportunities in which you may be utilized for goal participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Seneca Holmes", is written over a light blue circular stamp.

SENECA HOLMES
DIRECTOR
Denver International Airport
Executive Office
DEN Commerce Hub
Airport Office Building | 10th Floor
8500 Peña Boulevard | Denver, CO 80249-6340



**ACDBE
JOINT VENTURE ELIGIBILITY FORM**

Denver International Airport Division
Commerce Hub
8500 Pena Boulevard, AOB 9th Floor
Denver, CO 80249
Phone: (303) 342-2185
Fax: (303) 342-2355

Joint Venture means an association of two (2) or more business enterprises to constitute a single business enterprise to operate a concessions contract on City property for which purpose they combine their property, capital, efforts, skills and knowledge, and in which each joint venturer is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and whose share in the capital contribution, control, management responsibilities, risks and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the joint venturers and their relationship and responsibility to the contract.

The DEN Commerce Hub requires the following information be provided from participants of a prospective joint venture, to assist DEN in evaluating the proposed joint venture. This Joint Venture Eligibility form and the Joint Venture Affidavit apply if ACDBEs participate in this joint venture.

Please return this form, the Joint Venture Affidavit, a copy of your Joint Venture Agreement and any other documentation stated as required by DEN in the RFP, mandatory pre-proposal meeting and/or other correspondence relating to the opportunity for which the Joint Venture will be submitted to: DEN Commerce Hub, 8500 Pena Blvd, AOB 9th Floor, Denver, CO 80249, by the proposal deadline stated in the RFP.

If you have questions regarding this process, please contact the DEN Commerce Hub at 303-342-2185.

Joint Venture Information

Name: HFF DEN TWO, LLC		Contact Person: Glenn Meyers	
Address: 123 Second Street	City: Sausalito	State: CA	Zip: 94965
Email Address: glenn.meyers@highflyingfoods.com		Phone: (415) 243-8908	

Joint Venture Participants

Name: High Flying Foods DEN, LLC		Contact Person: Glenn Meyers	
Address: 123 Second Street	City: Sausalito	State: CA	Zip: 94965
Email Address: glenn.meyers@highflyingfoods.com		Phone: (415) 243-8908	
% Ownership: 67%	ACDBE Certifying Entity: N/A	ACDBE Certification Date: N/A	

Type of Work for which Certification was granted: **N/A**

Name: Hyde Park Hospitality LLC		Contact Person: Marc Brooks	
Address: 17 N. Loomis Street, Suite 1A	City: Chicago	State: IL	Zip: 60607
Email Address: marc@hydeparkhospitality.com		Phone: (312) 433-0300	
% Ownership: 16%	ACDBE Certifying Entity: The Division of Small Business Opportunity	ACDBE Certification Date: November 15, 2017	

Type of Work for which Certification was granted: **Drinking Places/Alcoholic, Full Service Restaurants, Limited-Service Restaurants**

Name: Procurement Concepts, Inc.		Contact Person: Harold Johnson	
Address: 2643 Ariane Drive	City: San Diego	State: CA	Zip: 92117
Email Address: gil@sandiegogifts.com		Phone: (858) 581-3566	
% Ownership: 10%	ACDBE Certifying Entity: The Division of Small Business Opportunity	ACDBE Certification Date: January 06, 2020	

Type of Work for which Certification was granted: **Drinking Places/Alcoholic, Full Service Restaurants, Limited-Service Restaurants**



**ACDBE
JOINT VENTURE ELIGIBILITY FORM**

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Joint Venture means an association of two (2) or more business enterprises to constitute a single business enterprise to operate a concessions contract on City property for which purpose they combine their property, capital, efforts, skills and knowledge, and in which each joint venturer is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and whose share in the capital contribution, control, management responsibilities, risks and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the joint venturers and their relationship and responsibility to the contract.

The DEN Commerce Hub requires the following information be provided from participants of a prospective joint venture, to assist DEN in evaluating the proposed joint venture. This Joint Venture Eligibility form and the Joint Venture Affidavit apply if ACDBEs participate in this joint venture.

Please return this form, the Joint Venture Affidavit, a copy of your Joint Venture Agreement and any other documentation stated as required by DEN in the RFP, mandatory pre-proposal meeting and/or other correspondence relating to the opportunity for which the Joint Venture will be submitted to: DEN Commerce Hub, 8500 Pena Blvd, AOB 9th Floor, Denver, CO 80249, by the proposal deadline stated in the RFP.

If you have questions regarding this process, please contact the DEN Commerce Hub at 303-342-2185.

***CONTINUED**



Joint Venture Information

Name:		Contact Person:	
Address:	City:	State:	Zip:
Email Address:		Phone:	

Joint Venture Participants

Name: ZANN & Associates, Inc.		Contact Person: Suzanne Arkle	
Address: 7752 E. 4th Avenue	City: Denver	State: CO	Zip: 80230
Email Address: suzanne@zanninc.com		Phone: (720) 324-8580	
% Ownership: 7%	ACDBE Certifying Entity: The Division of Small Business Opportunity	ACDBE Certification Date: November 28, 2017	

Type of Work for which Certification was granted: **All other business support services**

Name:		Contact Person:	
Address:	City:	State:	Zip:
Email Address:		Phone:	
% Ownership:	ACDBE Certifying Entity:	ACDBE Certification Date:	

Type of Work for which Certification was granted:

Name:		Contact Person:	
Address:	City:	State:	Zip:
Email Address:		Phone:	
% Ownership:	ACDBE Certifying Entity:	ACDBE Certification Date:	

Type of Work for which Certification was granted:

JOINT VENTURE ELIGIBILITY FORM**General information**

ACDBE Initial Capital Contributions: \$ 114,262.50 % 33

Future capital contributions (explain requirements) (attach additional sheets if necessary):

All parties have agreed to fund the necessary capital investment required at their agreed %s.

Source of Funds for the ACDBE Capital Contributions:

Equity

Describe the portion of the work or elements of the business controlled by the ACDBE or DBE (attach additional sheets if necessary):

Please see explanation on the page following this form.

Describe the portion of the work or elements of the business controlled by non- ACDBE or DBE: (attach additional sheets if necessary)

Please see explanation on the page following this form.

Describe there roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):

a. ACDBE joint venture participant:

Serve on the Management Board.

b. Non-ACDBE joint venture participant:

Serve on the Management Board and serve as the Finance Member.

Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):

a. ACDBE joint venture participant:

Please see explanation on the page following this form.

b. Non-ACDBE joint venture participant:

Please see explanation on the page following this form.

Which firm will be responsible for accounting functions relative to the joint venture's business? High Flying Foods DEN, LLC

Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?

Please see explanation on the page following this form.

ACDBE Joint Venture Eligibility Form, continued:

Describe the portion of the work or elements of the business controlled by the ACDBE or DBE (attach additional sheets if necessary):

Management of the food and beverage program for the restaurant, including sourcing, purchasing, and inventory management, sales mix evaluations, costing for food recipes and beverages items, and COGS analysis. Develop pricing, market basket analysis, product standards, prep lists and order sheets. Manage ongoing quality control of kitchen operations. Responsible for review and cost of employee schedules. Responsible for the ordering and inventory management of small wares and utensils, cutlery and china, linens, chemicals and cleaning supplies. Monitor the bar sales mix and manage all design and product placement initiatives to optimize sales. Manage consumer package good products, vendors, and displays. Manage and coordinate all scheduled maintenance. Manage cleaning program and janitorial company and ensure consistent store cleanliness. Serve as the local representative at DEN concessionaire and marketing meetings. Oversee and direct the recruitment, hiring, training and any disciplinary action for employees. Responsible for company compliance to include operational legal compliance, as well as MWBE and ACDBE contract compliance and reporting to DEN/DSBO. Develop and implement the JV Mentor Protégé Program to grow ACDBE sustainability and capability. Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Describe the portion of the work or elements of the business controlled by non- ACDBE or DBE (attach additional sheets if necessary):

Negotiation of contracts with architects and contractors for development and construction of the restaurant, purchase of the necessary operating equipment, furniture, and furnishings, and oversight of the design and construction of the restaurant to ensure that it meets standards set for HFF. Management of any intellectual property being used by the company, and obtain all necessary licenses and permits. Retain the General Manager for the restaurant. Create and manage all marketing and branded items including signage, merchandising and packaging. Manage relationships with brand partners and coordinate seasonal menu changes. Oversee training program, as well as loss control program, injury and illness prevention, and safety compliance. Supervision of repairs and maintenance operations, and participate regularly in Management Board meetings and in the strategic marketing and planning processes of the company.

Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):

a. ACDBE joint venture participants:

HPH

Provide sales mix evaluations and food cost analysis. Provide costing for food recipes, beverages, and impulse buy items. Will negotiate with all food and packaging vendors and review vendor invoices to ensure consistent pricing. Develop pricing, market basket analysis and submit to DEN for approval. Develop product standards, prep lists and order sheets. Manage ongoing quality control of kitchen operations. Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the company.

PCI

Responsible for review and cost of employee schedules. Responsible for the ordering and inventory management of small wares and utensils, cutlery and china, linens, chemicals and cleaning supplies. Will evaluate the bar sales mix and make product recommendations for spirits, beer, wine, and non-alcoholic beverages. Manage all design and product placement initiatives to increase retail merchandising transactions and optimize sales. Research impulse buy items and manage consumer package good products, vendors, and displays. Manage and coordinate all scheduled maintenance. Manage cleaning program and janitorial company and ensure consistent store cleanliness. Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the company.

ZANN

Responsibilities include serving as the local representative at DEN concessionaire and marketing meetings. Oversee and direct the recruitment, hiring, training and any disciplinary action for wait staff and other restaurant employees. Responsible for company compliance to include operational legal compliance, and MWBE and ACDBE contract compliance and reporting to DEN/DSBO. Develop and implement the JV Mentor Protégé Program to grow ACDBE sustainability and capability. As a Management Board Member, will lead quarterly partner meetings and participate regularly in Management Board Meetings and in other strategic meeting and planning processes of the company.

b. Non-ACDBE joint venture participant:**HFF**

Negotiation of contracts with architects and contractors for development and construction of the restaurant, purchase of the necessary operating equipment, furniture, and furnishings, and oversight of the design and construction of the restaurant to ensure that it meets standards set for HFF. Management of any intellectual property being used by the company, and obtain all necessary licenses and permits. Retain the General Manager for the restaurant. Create and manage all marketing and branded items including signage, merchandising and packaging. Manage relationships with brand partners and coordinate seasonal menu changes. Oversee training program, as well as loss control program, injury and illness prevention, and safety compliance. Supervision of repairs and maintenance operations, and participate regularly in Management Board meetings and in the strategic marketing and planning processes of the company.

Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?

No party will have the right to obligate the other with respect to third party obligations. However, each party shall have the right to obligate the other to certain obligations. For example, HFF is responsible for risk management and will be charged with obtaining insurance and bonding, and in that context HFF will be contracting for insurance and bonding on behalf of the others. HPH is responsible for negotiating with all food vendors, and in that context will be contracting with those personnel on behalf of the others. PCI will be responsible for executing contracts for the purchase of small wares and utensils, cutlery and china, linens, chemicals and cleaning supplies, and in that context will be contracting with those personnel on behalf of the others. ZANN will provide MWBE and ACDBE contract compliance and reporting to DEN/DSBO, and in that context will be monitoring and representing these personnel on behalf of the others.

JOINT VENTURE ELIGIBILITY FORM

General Information

Please provide information relating to the approximate **number** of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the ACDBE, non-ACDBE or joint venture:

	Non-ACDBE/DBE	ACDBE	Joint Venture
Management	3	3	4
Administrative	2	3	
Support			6
Hourly Employees			13

Please provide the name of the person who will be responsible for hiring employees for the **Joint Venture**. Suzanne Arkle

Who will they be employed by? HFF DEN TWO, LLC

Are any of the proposed joint venture employees currently employees of any of the joint venture partners?

X

Yes
(✓)No
(✓)

If yes, please list the number and positions and indicate which firm currently employs the individual(s), (use additional sheets if necessary)

Number of employees	Position	Employed By
11	Corporate Management (6)	3 employed by High Flying Foods DEN, 1 employed by HPH, 1 employed by PCI, 1 employed by ZANN
	Corporate Administration (5)	2 employed by High Flying Foods DEN, 1 employed by HPH, 1 employed by PCI, 1 employed by ZANN

Attached a copy of the proposed joint venture agreement, promissory note and/or loan agreement (if applicable), and any and all written agreements between the joint venture partners.

List all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved.

An affiliate of High Flying Foods has a JV Agreement with HPH at DFW entitled HFF-HPH-DFW, LLC.

An affiliate of High Flying Foods has a JV Agreement with HPH at DEN entitled HFF-LEI-HPH DEN, LLC.

An affiliate of High Flying Foods has a JV Agreement with PCI at SAN entitled High Flying Foods San Diego Partnership.

There are no current business relationships with ZANN.

****If there are any significant changes in or pertaining to this submittal, the joint venture members must immediately notify the DEN Commerce Hub.****



JOINT VENTURE AFFIDAVIT

Denver International Airport
Commerce Hub
8500 Pena Blvd, AOB 9th Floor
Denver, CO 80249
Phone: (303) 342-2185
Fax: (303) 342-2355

"The Undersigned swears that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the Undersigned covenant and agree to provide the City current, complete, and accurate information regarding actual joint venture work and the payment thereof and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the City or Federal funding agency, if applicable. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initialing action under Federal or State laws concerning false statements".

Name of Firm: HFF DEN TWO, LLC

Print Name: Glenn Meyers

Title Manager

Signature: 

Date: 1/20/20

Notary Public

County of Marin

State of California

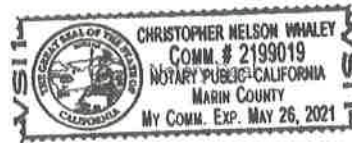
My Commission Expires: May 26, 2021

Subscribed and sworn before me this

20th day of January, 20 20

Notary Signature: Christopher N. Whaley

Address: 123 Second St., Sausalito, CA 94965



Name of Firm: High Flying Foods DEN, LLC

Print Name: Glenn Meyers

Title Manager

Signature: 

Date: 1/23/20

Notary Public

County of Marin

State of California

My Commission Expires: May 26, 2021

Subscribed and sworn before me this

23rd day of January, 20 20

Notary Signature: Christopher N. Whaley

Address: 123 Second St., Sausalito, CA 94965



Name of Firm: Hyde Park Hospitality LLC

Print Name: Marc Brooks

Title President & CEO

Signature: 

Date: 1-20-20

Notary Public

County of Cook

State of IL

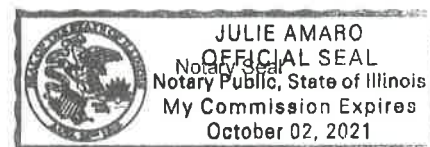
My Commission Expires: Oct 02, 2021

Subscribed and sworn before me this

22nd day of January, 20 20

Notary Signature: 

Address: 3824 Cleveland Brookfield IL 60513





JOINT VENTURE AFFIDAVIT

*CONTINUED

Denver International Airport
Commerce Hub
8500 Pena Blvd, AOB 9th Floor
Denver, CO 80249
Phone: (303) 342-2185
Fax: (303) 342-2355

"The Undersigned swears that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the Undersigned covenant and agree to provide the City current, complete, and accurate information regarding actual joint venture work and the payment thereof and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the City or Federal funding agency, if applicable. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements".

Name of Firm: Procurement Concepts, Inc.

Print Name: Harold Johnson

Title President & CEO

Signature:

Date: 1/24/20

Notary Public

County of SAN DIEGO

State of CA

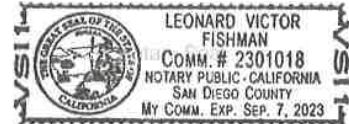
My Commission Expires: 09 07.2023

Subscribed and sworn before me this

24th day of JANUARY, 2020

Notary Signature:

Address: 3815 2 CLAREMONT MESA BLVD SAN DIEGO CA 92127



Name of Firm: ZANN & Associates, Inc.

Print Name: Suzanne Arkle

Title President & CEO

Signature:

Date: 1-21-2020

Notary Public

County of Denver

State of Colorado

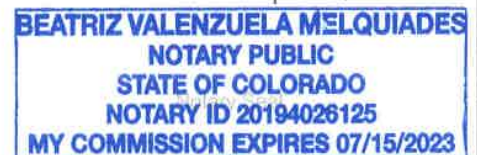
My Commission Expires: 07/15/2023

Subscribed and sworn before me this

21st day of January, 2020

Notary Signature:

Address: 2850 Quebec St Denver, CO 80207



Name of Firm:

Print Name:

Title

Signature:

Date:

Notary Public

County of

State of

My Commission Expires:

Subscribed and sworn before me this

____ day of _____, 20____

Notary Signature: _____

Address: _____

Notary Seal

COMP-FRM-016

JV NAME: HFF DEN TWO, LLC

REVIEWER: Mark White

JOINT VENTURE PRE-SUBMITTAL ELIGIBILITY CHECKLIST

JOINT VENTURE: "association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest."

Please indicate in which section of your Operating or Joint Venture agreement that we can find the following information:

GENERAL CHECKLIST OF REQUIREMENTS		
Question(s)	(Y/N/NA)	Referencing section or document
• Comprised of two or more firms? (DEN automatically considers 2 or more firms with at least 1 ACDBE a JV)	Y	4 firms -- First paragraph
• Is at least one firm certified as ACDBE in related NAICS codes?	Y	3 firms -- First paragraph
• Are the roles of each JV member clearly defined?	Y	Exhibit B
• Is the ACDBE firm certified in the state of Colorado?	Y	Yes -- two are, one in process/to be by the time of submission, certified in CO
• Identification of the participants and ACDBE?	Y	First paragraph / 1.7
TERM OF THE JOINT VENTURE AGREEMENT		
Question(s)	(Y/N/NA)	Referencing section or document
• How often can the terms be changed? (sections, clauses, etc)	N/A	Article III Decisions Req Consent 4 Memb Mgmt Bd or Unanim Consent Memb
• Events/condition joint venture can be dissolved/terminated	Y	Section 11.1
• Distribution of assets of joint venture after termination	Y	Section 11.2
Transfer of Interests		
• Are the terms of transfer of interest specified in JV?	Y	Article 10
Capital contributed by each party (cash, financing, etc)		
• Contributions from all owners	Y	Exhibit A
• Loan terms and Conditions	Y	Have terms from bank/not in Agrmt/Sect 2.4 outlines generalities
• Are the capital contributions by each participant specified?	Y	Exhibit A
Control: Execution/governance of work/decisions		
• Voting Rights	Y	Management Board Definition
• Voting process on major decisions	Y	Section 4.6 and Article III
Assets		
• Distribution of assets	Y	7.2 / 11.2
Risks/Loss		
• Distribution of risks and profits	Y	8.1.3 / 8.3 / 8.6

LIMITED LIABILITY COMPANY AGREEMENT

HFF DEN TWO, LLC

(a Colorado limited liability company)

LIMITED LIABILITY COMPANY AGREEMENT

HFF DEN TWO, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) of HFF DEN TWO, LLC (the “**Company**”) is made and entered into effective as of January 24, 2020, (the “**Effective Date**”), by and among High Flying Foods DEN, LLC, a Colorado limited liability company (“**HFF**”), Hyde Park Hospitality LLC, a Delaware limited liability company (“**HPH**” or “**ACDBE Member**”), Procurement Concepts, Inc., a California Corporation (“**PCI**” or “**ACDBE MEMBER**”), and ZANN & Associates, Inc., a Colorado corporation (“**ZANN**” or “**ACDBE Member**”). The Members are collectively referred to hereinafter as the “**parties**”.

WHEREAS, HFF (through its Affiliate, High Flying Foods, a California corporation (“High Flying Foods”)) is submitting a “**Proposal**” on behalf of the Company in response to a Request for Proposals issued by the City and County of Denver, Department of Aviation (the “**City**”) to construct and operate a restaurant at the Denver International Airport (the “**Airport**”);

WHEREAS, if the Proposal is accepted and the Company is awarded a lease to operate at the Airport, the parties will abide by the terms of this agreement and terms of any forthcoming lease which shall be attached as Exhibit D (the “**Lease**”);

NOW, THEREFORE, the Members, in consideration of the premises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, mutually covenant and agree as follows:

ARTICLE I

FORMATION, NAME, PURPOSES, DEFINITIONS

1.1 FORMATION & AUTHORITY. The Company was formed upon the execution of the Certificate of Formation by an authorized representative of the Company and the filing of such with the Secretary of State of the State of Colorado on November 21, 2019.

1.2 TAX STATUS. The Members intend that the Company is, and shall continue to be, an entity taxable as a partnership for federal, state and local income tax purposes, rather than as an association taxable as a corporation. The Members will do all things requisite to the maintenance of the Company as a partnership for federal, state and local income tax purposes. Nothing contained in this Section affects, or is intended to affect, the status of the Company as a limited liability company under the Act.

1.3 NAME. The name of the Company shall be “**HFF DEN TWO, LLC**”.

1.4 REGISTERED OFFICE. The Company’s registered office shall be located at 123 Second Street, Sausalito, CA 94965 for the purpose of maintaining the records required to be maintained under the Act, or at such other location as the “**Management Board**” (defined later) shall determine in its sole discretion.

1.5 PURPOSE AND POWERS. The general purpose of the Company shall be to engage in the ownership and operation of, and investment in, one or more restaurant concessions to be operated at the Airport, pursuant to the Lease for Concession Location(s) as outlined in Exhibit D (the “**Restaurant**”) under licensing or other brand agreements as may be determined by the Management Board. The Company may exercise all powers reasonable or necessary to pursue the same. In addition, subject to the terms and conditions of this Agreement, the Company may engage in and do any act concerning all lawful businesses for which limited liability companies may be organized under Colorado law. The Company shall have all the powers permitted by law.

1.6 TERM. The term of the Company shall continue until terminated under the provisions of Article XI hereof or in accordance with the Act.

1.7 MEMBERS. The name and address of each of the Members are as follows:

<u>NAME</u>	<u>ADDRESS</u>
High Flying Foods DEN, LLC	123 Second Street Sausalito, CA 94965 Attn: Glenn Meyers, Manager
Hyde Park Hospitality LLC	17 N. Loomis Street, Suite 1A Chicago, IL 60607 Attn: Marc Brooks, President & CEO
Procurement Concepts, Inc.	2643 Ariane Drive San Diego, CA 92117 Attn: Harold (Gil) Johnson, President & CEO
ZANN & Associates, Inc.	7752 E. 4th Avenue, Suite 1C Denver, Colorado 80230 Attn: Suzanne Arkle, President & CEO

1.8 AGENT FOR SERVICE OF PROCESS. The name and business address of the Company's agent for service of process is Paracorp Incorporated, 95 Emerson Street #601, Denver, CO 80218. The Management Board may remove and replace the Company's agent for service of process at any time.

1.9 DEFINITIONS. Section 8.1 hereof sets forth the definitions of certain terms relating to the maintenance of Capital Accounts and accounting rules. In addition, the following terms, which are used generally throughout this Agreement, shall have the following meanings:

- (a) **"Act"** means the **Colorado** Limited Liability Company Act (Colo. Rev. Stat. §7-80-101 et. seq.)
- (b) **"ACBDE Members"** means HPH, PCI, and ZANN.
- (c) **"ACBDE"** means airport concessionaire disadvantage business enterprise, as that term is defined under federal law, duly registered and approved to do business as an ACDBE at the Airport.
- (d) **"Affiliate"** means (i) any Person which, directly or indirectly, is in control of, is controlled by or is under common control with another party; or (ii) any Person who is a director or officer (or comparable position) of any Person, described in clause (i) above. For purposes hereof, control of a Person means the power, direct or indirect, to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person; or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and either alone or in conjunction with others.
- (e) **"Aggregate Development Costs"** shall have the meaning set forth in Section 2.2.

(f) **“Bankruptcy”** means, with respect to any Person: (i) the commencement against such Person of proceedings for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension of debts, provided such proceedings have not been dismissed, nullified, stayed, or otherwise rendered ineffective (but only so long as such stay will continue in force) within ninety (90) days after the commencement of such proceedings; (ii) the commencement by such Person of proceedings for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension of debts; (iii) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator or trustee or assignee in bankruptcy or insolvency of such Person or of a substantial part of such Person's property, or for the winding up or liquidation of its affairs, which decree or order remains in force undischarged and unstayed for a period of ninety (90) days; or (iv) a general assignment by such Person for the benefit of creditors or the admission by such Person in writing of its inability to pay its debts generally as they become due.

(g) **“Capital Contribution”** shall mean any contribution to the capital of the Company in cash, property, or services by a Member whenever made. **“Additional Capital Contributions”** shall mean the contributions made pursuant to Section 2.2 hereof.

(h) **“City”** means the City and County of Denver, Department of Aviation, or its successor-in-interest.

(i) **“Code”** shall mean the Internal Revenue Code of 1986, as amended from time to time.

(j) **“Distribution”** means a transfer of Company property to a Member on account of the Member's ownership of an Economic Interest in the Company, regardless of whether the transfer occurs on the liquidation of the Company, in exchange for a Membership Interest, or otherwise.

(k) **“EBITDA”** means earnings before interest, taxes, depreciation or amortization charges, as computed under GAAP, except with respect to depreciation and amortization which shall be computed in accordance with the Code.

(l) **“Economic Interest in the Company”** shall mean economic rights of a Member and its permitted assigns and successors to share in the Distributions of cash and other property from the Company pursuant to the Act and this Agreement, together with its allocable share of the Company's Profits or Losses for federal and state income taxes. For each Member, such Member's Economic Interest in the Company shall be determined by dividing the then current balance of such Member's Capital Account by the aggregate amount of all Capital Accounts of all of the Members of the Company.

(m) **“Economic Interest Holder”** shall mean someone who owns an Economic Interest in the Company, but is not a Member thereof.

(n) **“Effective Date”** shall have the meaning set forth in the introduction.

(o) **“Finance Member”** shall mean HFF.

(p) **“Fiscal Year”** shall mean each fiscal year of the Company (or portion thereof), which shall end on December 31; provided, however, that upon termination of the Company, **“Fiscal Year”** shall mean the period from the January 1 immediately preceding such termination to the date of such termination.

(q) **“GAAP”** shall mean the United States Generally Accepted Accounting Principles, consistently applied.

(r) **“General Manager(s)”** shall have the meaning ascribed to it in Section 3.4 hereof.

(s) **“Involuntary Transfer”** shall mean any transfer or attempt to acquire a Member’s Membership Interests or Economic Interests in the Company without such Member’s consent, including through Bankruptcy, lien foreclosure, court order or similar proceedings.

(t) **“Involuntary Transferee”** shall have the meaning set forth in Section 10.2(b) hereof.

(u) **“Lease”** means the Concession Lease between the Company and the City to be attached hereto as **Exhibit “D”**.

(v) **“Management Board”** shall mean those persons elected by the Members to govern the business affairs of the Company. The Management Board shall consist of no less than seven representatives, four appointed by HFF, one appointed by HPH, one appointed by PCI, and one appointment by ZANN. Each member of the Management Board shall be entitled to exercise one (1) vote with respect to each matter brought before the Management Board. Representatives on the Management Board may be removed, vacancies filled, and substitutions made, only by the Member who originally appoints the representative(s). Each Member shall cause its representative(s) to actively and regularly participate in the Management Board. Unless otherwise stated in this Agreement, any action by the Management Board shall require the approval of at least four members of the Management Board.

(w) **“Material Breach”** shall mean a failure to make required Capital Contributions or any failure to provide guarantees required by any third-party lending money to the Company, misuse of Company funds or assets, theft or fraud involving Company assets, misuse of intellectual property belonging to any other Member (as more particularly described in Article XII hereof), an unapproved change in ownership of an ACDBE Member or breach of a Member’s obligations under Article X hereof.

(x) **“Member”** shall mean each Person who acquires a Membership Interest in the Company and executes a counterpart of this Agreement as a Member or joinder thereto.

(y) **“Membership Interest”** means a Member's entire limited liability company interest in the Company, as represented by the Units registered in such Member's name, including the Member's Economic Interest, the right to participate in the management and affairs of the Company, including, without limitation, the right to vote on, consent to and otherwise participate in the decisions and actions of the Members or through the Management Board, and the percentage to which a Member is required to make Additional Capital Contributions, pursuant to this Agreement and the Act. Each Member's voting rights shall be based on the Member's Percentage Holding in the Company

(z) **“Net Asset Value”** means, with respect to any asset (other than money) contributed by a Member to the Company’s capital or distributed by the Company to any Member, the amount by which the gross fair market value of such asset, determined by the Management Board as provided in Section 3.1(a) hereof at the time of such contribution or Distribution, exceeds the total monetary obligations then secured by such asset or otherwise assumed by the transferee at the time of such contribution or Distribution. In the case of contributed services, if any, the Net Asset Value shall be equal to the value thereof determined as provided in Section 3.1(a) hereof at the time of the contribution.

(aa) **“Net Available Cash Flow”** means, for any period, the lesser of: (i) cash on hand (including any cash of the Company being held by the Finance Member in its accounts); or (ii) the Company’s gross cash receipts derived during such period (including, receipts from gross receipts of the business, the sale of property, or the release of funds previously set aside as a reserve), in either case, less the portion thereof used to pay or establish reasonable reserves (as determined by the Management Board) for all Company expenses, debt payments (including payments of Member loans), asset acquisitions, capital improvements, expansions, repairs, replacements, contingencies, the Reserve Amount, and any other proper cash expenditure of the Company determined by the Management Board as provided in Section 3.1 hereof, (including, but not limited to, outstanding principal and accrued

interest then due under any Development Note or other obligations for borrowed moneys). **“Net Available Cash Flow”** shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances.

(bb) **“Operating Plan”** means the operating plan for the Company’s business operations as created and modified from time to time by the Management Board as provided herein.

(cc) **“Percentage Holding”** shall mean the ratio of the Units owned by such Member to the total outstanding Units of the Company.

(dd) **“Person”** shall mean any individual and any legal entity.

(ee) **“Prime Rate”** shall mean the prime rate of interest in effect from time to time at Bank of America Corporation, or if such bank should cease to exist or to announce a prime rate, then at such other banking institution as shall be designated by the Finance Member.

(ff) **“Reserve Amount”** shall be set at a number determined by the Finance Member from time to time in order to create a reserve to pay for mid-term capital expenditures.

(gg) **“Restaurant”** shall have the meaning set forth in Section 1.5.

(hh) **“Treasury Regulations”** shall mean the Income Tax Treasury Regulations promulgated under the Code as such Treasury Regulations may be amended and in effect from time to time (including corresponding provisions of succeeding Treasury Regulations).

(ii) **“Unit”** shall mean shall mean a unit of Membership Interest in the Company issued pursuant to this Agreement.

ARTICLE II

CAPITAL CONTRIBUTIONS

2.1 **INITIAL CAPITAL CONTRIBUTIONS.** Each of the Members shall make the initial contributions to capital of the Company in the amounts and on the dates shown on **Exhibit “A”** attached hereto and updated upon award.

2.2 **ADDITIONAL CAPITAL CONTRIBUTIONS.** Each Member shall be required to contribute to the Company its pro-rata share of the “Aggregate Development Costs” related to the Restaurant, including all of the following expenditures: (a) all costs related to the proposal, interview, design, development and construction of the Restaurant; (b) all licensing costs, stocking, pre-opening and training costs; and (c) all security deposits and “construction charge-backs” required by the City and utility companies. Such pro-rata share shall be equal to each Member’s Percentage Holding in the Company. Such contributions shall be due within thirty (30) days after receipt of written **“Notice of Request for Additional Capital”**. HFF shall be responsible for issuance of such notices. The anticipated timing of such contributions is shown on Exhibit A.

2.3 **WITHDRAWAL OF CONTRIBUTIONS.** No Member shall have the right to withdraw or demand the return of all or any part of its Capital Contributions except as agreed in writing by all of the Members.

2.4 **LOANS.** The Members shall use reasonable commercial efforts to cause a third-party provider (the “Lender”) to provide the Company with a loan for some portion of the Aggregate Development Costs (the “Development Loan”). Each of the Members agrees to provide its unconditional guarantee of repayment of a portion of such Development Loan equal to such Member’s Percentage Holding in the Company. Such loan shall be repaid, together with interest, as provided in the loan documents (the **“Development Note”**). The loan shall also be secured by the assets of the Company. The parties agree to make any reasonable changes to this Operating Agreement as may be required by the Lender selected by the Management Board as a pre-condition to approving the request for the loan. Thereafter any Member may make loans to the Company, as may be required for the operational needs of the

Company. Interest will accrue on funds advanced from the date of advance at the rate of ten percent (10.00%) per annum. Interest will be payable monthly. Such loan shall be repaid, together with interest, prior to the time any Distributions are made to the Members unless provided otherwise in the applicable loan documents.

ARTICLE III

DECISIONS REQUIRING CONSENT OF THE MANAGEMENT BOARD OR MEMBERS; RIGHTS AND DUTIES OF

RESTAURANT GENERAL MANAGER(S)

3.1 DECISIONS REQUIRING CONSENT OF FOUR MEMBERS OF MANAGEMENT BOARD OR UNANIMOUS CONSENT OF MEMBERS. The following decisions shall require the consent of at least four members of the Management Board or the unanimous consent of the Members:

- (a) Admit a Person as a new Member, except as provided in Articles IX, X, and XI of this Agreement.
- (b) Modify, compromise or release the amount and character of the capital contributions which a Member is to make or promises to make hereunder.
- (c) Assign the Company's property in trust for creditors or on the assignee's promise to pay the Debts of the Company.
- (d) Confess a judgment against the Company.
- (e) Do any act materially in contravention of this Agreement.
- (f) Amend or rescind any provision of this Agreement.
- (g) Except as provided in Article II hereof, borrow funds or grant a security interest in any assets of the Company as security for any loan or borrowed funds.
- (h) Except as authorized hereunder, enter into any agreement with any Member or Affiliate of any Member.

3.2 3.2 EXPENSES; REIMBURSEMENT. The members of the Management Board shall not receive a salary or be reimbursed expenses for attendance at meetings unless otherwise authorized by the Management Board. In lieu of the foregoing, the Management Board may institute a fee, calculated as a percentage of gross receipts on a monthly basis, for the purposes of covering reimbursements for reasonable out of pocket pre-approved travel expenses and for participating in the management of the Company through their representatives on the Management Board, which fee will be set by the Management Board and divided amongst the Members based on their respective Percentage Holding in the ownership of the Company.

3.3 Payment of such fees shall be made *pari passu* to the extent of Net Available Cash Flow, after payment of the Finance Member Fee, but before any Distributions are paid. Such fees are not guaranteed and is at the discretion of the Management Board.

3.4 ACCESS TO COMPANY RECORDS. Upon the request of any member of the Management Board, the Finance Member shall allow such member of the Management Board to inspect and copy, at the Company's expense, the Company records required to be maintained by Section 3.8 hereof.

3.5 GENERAL MANAGER(S). The day to day business and affairs of the Company arising in the ordinary course of business shall be managed by its designated Restaurant general managers (the "**General Manager(s)**"). The General Manager(s) shall be selected by the Management Board and shall be an employee of the Company working full-time at the Restaurant(s) for a salary and bonus plan determined by the Management Board from time to time. The General Manager(s) shall act in good faith and in a manner that the General Manager(s) reasonably believes to be in the best interests of the Company and its Members. Any three board members shall have the right to require the removal of the General Manager(s), subject to any contractual arrangement with the General Manager.

3.6 OPERATIONAL RESPONSIBILITIES OF THE GENERAL MANAGER(S). The General Manager(s) shall be responsible for the following actions:

(a) Hiring, supervising, disciplining and firing of all other employees of the restaurant(s) supervised by the General Manager(s).

(b) Preparation of annual staffing plan for submission to the Management Board for approval which will include proposed positions and their wage rates and applicable hours of operation.

(c) Enforcement of employee manual and implementation of employee best practices to include benefits, training procedures, legal compliance and other policies based on input from the Members with the final product subject to the review and approval of the Management Board.

(d) Quality review conducted on a regular basis to include maintenance of food inventory standards, cleanliness of front and back of house, overall appearance, repairs & maintenance, with the issuance of regular reports to the Management Board.

(e) Operating the Restaurant(s) on a day to day basis to maintain superior service levels and customer satisfaction and achieve Profits set by the Management Board.

3.7 RESPONSIBILITIES OF THE MEMBERS. Notwithstanding any other provision of this Agreement, each of the Members shall have the responsibilities and overall authorities described under **Exhibit "B"** attached hereto. Each Member is jointly and severally liable to DEN for completing all of the work and to third parties for all duties, obligations and liabilities which arise out of Company's performance of the work.

3.8 AUTHORITY TO BIND THE COMPANY. Unless authorized in writing to do so by this Agreement, no Member (including the Finance Member), agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

3.9 FINANCE MEMBER GENERAL RESPONSIBILITIES; ACCOUNTING MATTERS, STATEMENTS AND RECORDS.

(a) Except as otherwise provided herein, HFF shall act as the Finance Member of the company.

(b) The Finance Member shall perform the functions and have the responsibilities described in **Exhibit "C"** attached hereto, as modified from time to time by the Management Board.

(c) The Finance Member shall prepare on behalf of the Company all financial statements in accordance with GAAP, except (i) depreciation and amortization which shall be calculated in accordance with applicable Treasury Regulations, (ii) for matters which will not have a material impact on the applicable financial statement or schedule, or (iii) as may otherwise be specified in this Agreement.

(d) The Finance Member shall provide all Management Board representatives on an annual basis with a balance sheet, income statement, and statement of changes in Members' Capital Accounts, all in such form as the Management Board deems necessary and appropriate.

(e) At the expense of the Company, the Finance Member shall maintain at the Company's registered office the records required to be maintained pursuant to the Act. Each Management Board Member or its designated representative, upon reasonable notice to the Finance Member, shall have real-time access to the Company's financial books, records, and documents during reasonable business hours and may inspect and make copies of any of them.

(f) The Finance Member may be removed and replaced by the vote of at least four (4) members of the Management Board.

3.10 FEES/REIMBURSEMENT FOR SERVICES

(a) The Finance Member will receive a Fee equal to six percent (6%) of Gross Company Receipts (the "Finance Member Fee"). The Finance Member Fee will be calculated monthly and paid no later than fifteen (15) days after the end of the month for which that month's Finance Member Fee was calculated. The Members agree that the Finance Member Fee represents a fair and reasonable estimate of the costs likely to be incurred by the Finance Member in performing the services required. The parties further agree that, for such period as HFF is the Finance Member and that the Management Services Agreement remains in effect, the Company will pay the Finance Member fee to High Flying Foods.

(b) The parties acknowledge and agree that High Flying Foods may, in the course of performing its services, incur and/or directly pay expenses related to the operation of the food and beverage concessions as a matter of convenience to the Company. These expenses include but are not limited to salaries and benefits for dedicated staff (such as directors and dedicated human resources ("HR") personnel), employee benefits, liability and worker's compensation insurance coverage, restaurant operations software, menus and signage, banking services, or professional services related to HR compliance and credit cards. The parties acknowledge and agree that the Company will reimburse High Flying Foods for these expenses.

3.11 TAX RETURNS AND OTHER ELECTIONS; TAX MATTERS PARTNER; FINANCIAL STATEMENTS. The Finance Member shall at the expense of the Company cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. Except to the extent specifically provided otherwise in this Agreement, all elections permitted to be made by the Company under federal or state laws shall be made by the Members. The Finance Member shall be designated as the **"Tax Matters Partner"** of the Company for purposes of Section 6231 of the Code and shall be authorized and required to represent the Company in connection with all examinations of the Company's affairs by tax authorities (federal, state and local), including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. To the extent permitted by the Code, the Tax Matters Partner may be removed by unanimous vote of the Members. In addition the Finance Member shall cause the preparation necessary for audit reports and other information required from time to time under the Lease.

(a) Tax Matters for the Company Handled by Tax Matters Partner. The Finance Member shall from time to time cause the Company to make such tax elections as they deem to be in the best interests of the Company and the Members. For periods not governed by the Centralized Partnership Audit Rules ("Partnership Audit Rules") discussed below, the Finance Member shall act as the Tax Matters Partner of the Company pursuant to section 6231(a)(7) of the Code. The Tax Matters Partner shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including all disputes, controversies or proceedings with the Internal Revenue Service and resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Partner shall oversee the Company tax affairs in the overall best interests of the Company. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Member or Manager, as the case may be, Members holding a Majority of Percentage Holdings may designate another to be Tax Matters Partner. Notwithstanding anything to the contrary

set forth herein, the Tax Matters Partner shall have the right to delegate any or all of its authority, rights and/or obligations, whether arising hereunder, under the Act, the Code or otherwise, to any one or more officers, agents or duly authorized representatives.

(b) **Periods Governed by Partnership Audit Rules.** The Finance Member shall designate the “partnership representative” as defined in Section 6223 of the Code, as amended by the Bi-partisan Budget Act of 2015 (the “**Partnership Representative**”). Until such designation, the Finance Member shall be the Partnership Representative. The Partnership Representative is authorized and required to represent the Company (at the Company’s expense) in all disputes, controversies or proceedings with the Internal Revenue Service, and, in its sole discretion, is authorized to make any available election with respect to the Partnership Audit Rules and take any action it deems necessary or appropriate to comply with the requirements of the Code and to conduct the Company’s affairs with respect to the Partnership Audit Rules. Each Member and former Member will cooperate fully with the Partnership Representative with respect to any such disputes, controversies or proceedings with the Internal Revenue Service, including providing the Partnership Representative with any information reasonably requested to comply with and make elections under the Partnership Audit Rules.

(c) The Partnership Representative shall promptly notify the Members of the receipt of a notice of final partnership adjustment and shall take such actions as the Partnership Representative determines, including whether to (i) file a petition for readjustment in the Tax Court, federal district court, or the Court of Federal Claims, (ii) cause the Company to pay the imputed underpayment under Code Section 6225, or (iii) make the election under Code Section 6226. If the Partnership Representative causes the Company to pay the imputed underpayment under Code Section 6225 (i) the Members shall take such actions as requested by the Partnership Representative, including filing amended tax returns and paying any tax due under Code Section 6225(c)(2)(A) or paying any tax due and providing applicable information to the Internal Revenue Service under Code Section 6225(c)(2)(B) and (ii) the Company shall use commercially reasonable efforts to make any modifications available under Code Section 6225(c)(3), (4), and (5). The Partnership Representative shall equitably apportion any imputed underpayment among the Members (including former Members) based on their interests in the Company for the year giving rise to the imputed underpayment. In determining each Member’s share of an imputed underpayment, the Partnership Representative shall take into account (by reducing the amount of an underpayment apportioned to a Member) any modifications to the imputed underpayment attributable to a Member under Code Section 6225(c)(2), (3), (4), or (5). The Partnership Representative shall seek payment from the Members (and former Members) for the amount of the imputed underpayment attributable to that Member or former Member, and each such Member agrees to pay such amount to the Company. Any such payment made by a Member shall not be treated as a capital contribution. Any amount not paid by a Member or former Member within thirty (30) days of a request by the Partnership Representative shall accrue interest at ten percent (10%). Any imputed underpayment amount paid by the Company on behalf of a Member and not reimbursed by that Member shall be treated as a distribution to such Member in accordance with Section 7.1 hereof.]

(d) The Partnership Representative shall use its reasonable best efforts to minimize the financial burden of any partnership adjustment to each Member and former Member holding Membership Interests during the reviewed fiscal year, through the application of the procedures established pursuant to Section 6225(c) of the Code, or through an election and the furnishing of statements pursuant to Section 6226 of the Code.

The provisions of this Section shall survive the termination of the Company or the termination of any Member’s Membership Interest in the Company and shall remain binding on the Members for as long a period of time as is necessary to resolve with any taxing authority any and all matters regarding the U.S. federal, state or local income taxation of the Company or the Members.

3.12 **BANK ACCOUNTS.** The Finance Member may from time to time open bank accounts in the name of the Company, and the Finance Member shall designate and remove from time to time, at its discretion, all signatories on such bank accounts. All gross receipts of the Company shall be deposited into such account and used solely to pay the expenses and expenditures of the Company and issue authorized Distributions to the Members.

3.13 **AUDIT.** Any Member may, at its option and expense, cause an audit to be performed of the Company. However, if the accounting reveals a material discrepancy in the books and records of the Company, the Member causing such discrepancy shall pay all costs and fees relating to such accounting.

ARTICLE IV

MEETINGS OF MANAGEMENT BOARD

4.1 MANAGEMENT BOARD MEETINGS. An annual meeting of the Management Board shall be held on the 1st Thursday in May of each year (unless that day is a legal holiday, in which event the annual meeting will be held on the next succeeding business day), at a time and place as determined by a majority of the members of the Management Board, as set forth in the notice given, or waiver signed, with respect to such meeting pursuant to Section 4.4 hereof. At such meetings, the Management Board shall transact such business as may come before the meeting

4.2 SPECIAL MEETINGS. Special meetings of the Management Board, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Member.

4.3 PLACE OF MEETINGS. Meetings of the Management Board may be held within or outside the State of Colorado and shall be held at the place designated by the party calling the meeting as is designated in the notice of the meeting. If no designation is made, the place of meeting shall be Sausalito, California.

4.4 NOTICE OF MEETING. Except as provided in Section 4.2 hereof, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the meeting is called. Such notice shall be deemed to have been given only if such notice is reduced to writing and is (i) delivered personally, (ii) sent by United States mail with postage prepaid and return receipt requested, or (iii) transmitted by email or telecopier (“fax”) to the party in question. Any notice given by mail shall be deemed delivered two (2) days following the date upon which it is deposited in the United States mail, with postage prepaid and return receipt requested. Any notice given by email or fax shall be deemed delivered upon the date it is actually transmitted by email or fax to the party in question at the email address or fax number set forth herein.

4.5 MEETING OF ALL MEMBERS OF THE MANAGEMENT BOARD. If all of the members of the Management Board meet at any time and place, either within or outside of the State of Colorado, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and lawful action may be taken at such meeting.

4.6 QUORUM. Four members of the Management Board, represented in person or by proxy, shall constitute a quorum at any duly called meeting of the Management Board, provided that one of such members is the representative of an ACDBE Member, unless either of the following applies: a) such representative has failed to attend without notifying the other members of the Management Board of his inability to attend at least 24 hours prior to such meeting, unless such failure is due to a medical or other emergency or Force Majeure (in which case the meeting shall be rescheduled); or b) such representative has failed or refused to attend at least 2 prior (consecutively scheduled) meetings, and in the event of the occurrence of either of such events the attending members of the Management Board may conduct such business as the Management Board is authorized to conduct hereunder. In the absence of a quorum at any meeting, the members of the Management Board in attendance may adjourn the meeting from time to time for a period not to exceed ten (10) days without further notice. However, if the adjournment is for more than five (5) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of the Management Board entitled to vote at the meeting.

4.7 TELEPHONE CONFERENCE CALL. The members of the Management Board may participate in a meeting of the Management Board by means of telephone or video conference or similar communications equipment by which all persons participating in the meeting can hear and communicate with each other. Participation in such a meeting shall constitute presence in person at such meeting.

4.8 MANNER OF ACTING. Each member of the Management Board shall be entitled to one (1) vote with respect to each matter brought before the Management Board. The affirmative vote of four (4) members of the Management Board shall be the act of the Management Board, unless the vote of a greater or lesser proportion or number is expressly required by this Agreement. Voting will be by ballot on any question as to which a ballot vote is demanded prior to the time voting begins on a particular issue by any person entitled to vote on such issue; otherwise, a voice vote will suffice.

4.9 PROXIES. At all meetings of the Management Board, and any adjournments thereof, a member

of the Management Board may vote in person or by proxy executed in writing by such member of the Management Board or by its duly authorized attorney-in-fact. Such proxy shall be filed with the records of the Management Board before or at the time of the meeting. No proxy shall be valid after thirty (30) days from the date of its execution, unless otherwise provided in the proxy. The burden of proving the validity of any undated, irrevocable, or otherwise contested proxy will rest with the person seeking to exercise the same.

4.10 ACTION WITHOUT A MEETING. Action required or permitted to be taken at a meeting of the Management Board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by at least four members of the Management Board and delivered to the Finance Member for inclusion in the minutes or for filing with the Company records.

4.11 WAIVER OF NOTICE. When any notice is required to be given to any member of the Management Board, a waiver thereof in writing signed by such person or a duly authorized representative thereof entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE V

RIGHTS AND OBLIGATIONS OF MEMBERS; NONCOMPETITION; EXCLUSIVE DUTY; CONFIDENTIAL INFORMATION; OPERATING RESPONSIBILITIES

5.1 LIMITATION OF LIABILITY; INDEMNIFICATION. Each Member's liability for the debts and obligations of the Company shall be limited as set forth in the Act and other applicable law. The Company shall indemnify each Member (including the Finance Member) to the fullest extent permitted under the Act, except for theft, or fraudulent or illegal acts or omissions.

5.2 ACCESS TO COMPANY RECORDS. Upon the written request of any Member, the Finance Member shall allow such Member to inspect and copy, at the Member's expense, the Company records required to be maintained by Section 3.8 hereof.

5.3 NO EXCLUSIVE DUTY. The Members may participate in other business activities separate from those of the Company (including in the case of HFF operating other concessions at the Airport and elsewhere), other activities which compete with those of the Company, without requiring the consent of the other Members. The Members agree that a Member's participation in a competitive business described in the previous sentence shall not constitute a violation of the duty of loyalty to the Company or to the other Members. However, the foregoing shall not be construed as authorizing any Member to use the Company's Confidential Information or the Confidential Information of the other Members for any purposes other than the promotion of the Company's business endeavors. Nothing in this Agreement shall be construed to grant any right, privilege or option to any Member to participate in any other business or investment in which any other Member may participate.

5.4 CONFIDENTIALITY. Confidential Information means: trade secrets, confidential financial and product sourcing/pricing information, customer demographics and information, marketing and sales data and other operational information, product/service information, financial information, marketing information and business plans, strategies, analyses, abstracts, compilations, forecasts, projections, studies, construction estimates and drawings, diagrams, existing systems, software, firmware, hardware, and products and services in development." Except in furthering the business of the Company, or upon the mutual agreement of the Members, no Member shall disclose any Confidential Information of the Company or of another Member to any Person for any reason or purpose whatsoever, nor shall any Member make use of any such Confidential Information for his or its own benefit or for the benefit of any Person other than the Company. Upon the transfer of the Membership Interest owned by any Member, such transferring Member, as the case may be, shall promptly return to the Company all originals and copies of all Confidential Information of the Company or another Member which are in his or its possession, custody or control. Any unauthorized use of any of the foregoing Confidential Information shall be, *inter alia*, a Material Breach hereunder permitting the non-breaching Member(s) by majority vote of Units held by such Members to terminate this Agreement and cause the dissolution of the Company. Notwithstanding the foregoing, a party shall not have any liability to the Company for disclosing Confidential Information to the extent that it proves that the Confidential Information was in the public domain at the time of disclosure, was known to the party to whom it was disclosed, without restriction, at

the time of disclosure, or such disclosure is required by order of court or government agency.

5.5 PRIORITY AND RETURN OF CAPITAL. Except as otherwise set forth in this Agreement, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses, or Distributions; provided that this Section 5.5 shall not apply to loans (as distinguished from Capital Contributions) that a Member has made to the Company.

ARTICLE VI

MEETINGS OF MEMBERS

6.1 ANNUAL MEETING. An annual meeting of the Members shall be held on the 1st Thursday in May of each year (unless that day is a legal holiday, in which event the annual meeting will be held on the next succeeding business day), at a time and place as determined by the Finance Member or, in the absence of action by the Management Board, as set forth in the notice given, or waiver signed, with respect to such meeting pursuant to Section 6.4 hereof. At the annual meeting, Members shall transact such business as may come before the meeting.

6.2 SPECIAL MEETINGS. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Member.

6.3 PLACE OF MEETINGS. Meetings of Members may be held within or outside the State of Colorado and shall be held at the place designated by the Member calling the meeting, in such place as is designated in the notice of the meeting. If no designation is made, the place of meeting shall be Sausalito, California.

6.4 NOTICE OF MEETINGS. Except as provided in Section 6.5 hereof, written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the meeting is called. Such notice shall be deemed to have been given only if such notice is reduced to writing and is (i) delivered personally, (ii) sent by United States mail with postage prepaid and return receipt requested, or (iii) transmitted by e-mail or fax to the party in question. Any notice given by mail shall be deemed delivered two (2) days following the date upon which it is deposited in the United States mail, with postage prepaid and return receipt requested. Any notice given by e-mail or fax shall be deemed delivered upon the date it is actually transmitted by fax to the party in question at the e-mail address or fax number set forth herein.

6.5 MEETING OF ALL MEMBERS. If the Members meet at any time and place, either within or outside of the State of Colorado, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and lawful action may be taken at such meeting.

6.6 RECORD DATE. For the purpose of determining Members entitled to notice of and to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members, unless the Finance Member shall have fixed in advance a record date that shall not be less than one (1) nor more than twenty (20) days prior to the date of such meeting or other action. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 6.6, such determination shall apply to any adjournment thereof; provided, however, that the Finance Member may fix a new record date for any adjourned meeting and further provided that the adjournment or adjournments of any such meeting shall not exceed ten (10) days in the aggregate or a new record date shall be fixed.

6.7 QUORUM. Members holding at least a majority of the Percentage Holding, represented in person or by proxy, shall constitute a quorum at any duly called meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Holding so represented may adjourn the meeting from time to time for a period not to exceed ten (10) days without further notice. However, if the adjournment is for more than five (5) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

6.8 MANNER OF ACTING. Except as provided in Section 3.1 hereof, all voting shall be by Percentage Holding (and not on a one-vote by Member basis) and the affirmative vote of at least a majority of the

Percentage Holding shall be the act of the Members, unless the vote of a greater or lesser proportion or number is expressly required by the Act, or by this Agreement. Voting will be by ballot on any question as to which a ballot vote is demanded prior to the time voting begins on a particular issue by any Person entitled to vote on such issue; otherwise, a voice vote will suffice.

6.9 PROXIES. At all meetings of Members, and any adjournments thereof, a Member may vote in person or by proxy executed in writing by the Member or by his or its duly authorized attorney-in-fact. Such proxy shall be filed with the Finance Member before or at the time of the meeting. No proxy shall be valid after thirty (30) days from the date of its execution, unless otherwise provided in the proxy. The burden of proving the validity of any undated, irrevocable, or otherwise contested proxy will rest with the Person seeking to exercise the same.

6.10 ACTION BY MEMBERS BY TELEPHONE CALL OR WITHOUT A MEETING. Members may participate in a meeting of the Members by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear and communicate with each other. Participation in such a meeting shall constitute presence in person at such meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, with counterparts signed by Members holding fifty-one percent (51.00%) of the Units in the Company and delivered to the Finance Member for inclusion in the minutes or for filing with the Company records. Actions taken pursuant to this Section 6.10 is effective when the Members with the requisite Percentage Holding have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

6.11 WAIVER OF NOTICE. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member or a duly authorized representative thereof entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VII

DISTRIBUTIONS PRIOR TO LIQUIDATION

7.1 DISTRIBUTIONS OF NET AVAILABLE CASH FLOW. Subject to the terms of this Agreement and at all times prior to the dissolution of the Company and the commencement of the liquidation of its assets and winding up of its affairs (in which case the provisions of Section 11.2 shall control), the Finance Member, promptly following the end of each Fiscal Year and at such other times as the Finance Member may deem appropriate, shall determine and may, in its sole discretion, distribute the Company's Net Available Cash Flow (after payment of management fees) for such Fiscal Year (or Fiscal Year to date) in accordance with the following priorities:

(a) First, to the repayment of any accrued interest on outstanding Member loans, which is then due and payable, in proportion to the amount due and owing to each Member;

(b) Second, to the repayment of the outstanding principal on Member loans in proportion to the amount due and owing to each Member;

(c) Third, except when and to the extent limited by the terms of loan documents and applicable law limiting the Company's right to make distributions to Members and subject, of course, to the availability of funds, the Finance Member shall make minimum Distributions of the Company's Net Available Cash Flow in the amount of forty percent (40.00%) of estimated Profits arising by virtue of their ownership of the Membership Interest ("**Tax Distributions**") with such Tax Distributions payable pari passu, so that each Member shall receive a share of funds paid-out equal to the then value of its Capital Account divided by the sum of all Capital Accounts held by Members of the Company; and

(d) Fourth, to the Members pari passu, so that each Member shall receive a share of funds paid-out equal to the then value of its Capital Account divided by the sum of all Capital Accounts held by Members of the Company.

7.2 DISTRIBUTIONS IN LIQUIDATION. Following the dissolution of the Company and the commencement of winding up and the liquidation of its assets, all Distributions to the Members shall be governed by Article XI hereof.

7.3 AMOUNTS WITHHELD. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or Distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

ARTICLE VIII

ALLOCATION OF PROFITS AND LOSSES

8.1 ACCOUNTING DEFINITIONS. The following terms, which are used predominantly in this Article VIII, shall have the meanings set forth below for all purposes under this Agreement:

8.2 8.1.1 “Adjusted Capital Account Balance” means, with respect to any Member, the balance of such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to this Agreement or as determined pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c), or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in clauses (4), (5) and (6) of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account Balance is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

8.1.2 “Book Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value for any asset (other than money) contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Finance Member at the time of such contribution;

(b) The Book Value of all Company assets shall be adjusted to equal their respective gross fair market values (which gross fair market value, in the case of an adjustment at the time of the grant of a Membership Interest, shall be determined by multiplying the EBITDA, as determined by the Finance Member in the Finance Member’s sole discretion, for the Fiscal Year immediately prior to the year on which the applicable Membership Interest were issued by the multiple of EBITDA paid to the Company and/or its Members in connection with the sale of the Company), as determined by the Finance Member in the Finance Member’s sole discretion, as of the following times: (i) the acquisition of a Membership Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution or contribution of services, or the Distribution by the Company to a Member of more than a de minimis amount of property as consideration for a Membership Interest in the Company, if (in any such event) such adjustment is necessary or appropriate, in the reasonable judgment of the Finance Member, to reflect the relative economic interests of the Members in the Company; and (ii) the liquidation of the Company for federal income tax purposes pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(g);

(c) The Book Value of any Company asset distributed to any Member shall be adjusted to equal its gross fair market value on the date of Distribution;

(d) The Book Value of the Company’s assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and Section 8.3(g) hereof; provided, however, that Book Value shall not be

adjusted pursuant to this subsection (d) to the extent that an adjustment pursuant to subsection (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

(e) If the Book Value of an asset has been determined or adjusted pursuant to subsection (a), (b) or (d) above, such Book Value shall thereafter be adjusted by the Depreciation taken into account from time to time with respect to such asset for purposes of computing Profits and Losses.

8.1.3 “**Capital Account**” means, with respect to any Member, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To each such Person’s Capital Account there shall be credited such Person’s Capital Contributions, such Person’s distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Sections 8.3 and 8.4 hereof, and the amount of any Company liabilities assumed by such Person (excluding assumed liabilities that have been taken into account in computing the Net Asset Value of any Company property distributed to such Person);

(b) To each such Person’s Capital Account there shall be debited the amount of cash and the Net Asset Value of any Company property distributed to such Person pursuant to any provision of this Agreement, such Person’s distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Sections 8.3 and 8.4 hereof, and the amount of any liabilities of such Person assumed by the Company (excluding assumed liabilities that were taken into account in computing the Net Asset Value of any property contributed by such Person to the Company);

(c) In the event any Membership Interest in the Company are transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest;

(d) Section 752(c) of the Code shall be applied in determining the amount of any liabilities taken into account for purposes of this definition of “**Capital Account**”; and

(e) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

8.1.4 “**Company Minimum Gain**” has the same meaning as the term “partnership minimum gain” under Treasury Regulations Section 1.704-2(d).

8.1.5 “**Depreciation**” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if such depreciation, amortization or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any Fiscal Year, Depreciation shall be determined with reference to the asset’s Book Value at the beginning of such year using any reasonable method selected by the Finance Member.

8.1.6 “**Member Nonrecourse Debt**” has the same meaning as the term “partner nonrecourse debt” under Section 1.704-2(b)(4) of the Treasury Regulations.

8.1.7 “**Member Nonrecourse Debt Minimum Gain**” has the same meaning as the term “partner nonrecourse debt minimum gain” under Section 1.704-2(i)(2) of the Treasury Regulations and shall be determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.

8.1.8 “**Member Nonrecourse Deductions**” has the same meaning as the term “partner nonrecourse deductions” under Treasury Regulations Section 1.704-2(i)(1). The amount of Member Nonrecourse Deductions with

respect to a Member Nonrecourse Debt for each Fiscal Year of the Company equals the excess (if any) of the net increase (if any) in the amount of Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year over the aggregate amount of any Distributions during such Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent that such Distributions are from the proceeds of such Member Nonrecourse Debt which are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(2) of the Treasury Regulations.

8.1.9 “**Nonrecourse Debt**” or “**Nonrecourse Liability**” has the same meaning as the term “nonrecourse liability” under Section 1.704-2(b)(3) of the Treasury Regulations.

8.1.10 “**Nonrecourse Deductions**” has the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations. The amount of Nonrecourse Deductions for a Company Fiscal Year equals the excess (if any) of the net increase (if any) in the amount of Company Minimum Gain during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Section 1.704-2(c) of the Treasury Regulations.

8.1.11 “**Profits**” or “**Losses**” means, for each Fiscal Year or other period, the taxable income or taxable loss of the Company as determined under Code Section, 703(a) (including in such taxable income or taxable loss all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code) with the following adjustments:

(a) All items of gain or loss resulting from any disposition of the Company’s property shall be determined upon the basis of the Book Value of such property rather than the adjusted tax basis thereof;

(b) Any income of the Company that is exempt from federal income tax shall be included in determining profit or loss;

(c) Any expenditures of the Company that are described in Code Section 7050(2)(13), or treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and that are not otherwise taken into account in the computation of taxable income or loss of the Company, shall be deducted in the determination of Profits or Losses;

(d) If the Book Value of any Company asset is adjusted pursuant to subsection (b) or (c) of the definition of “**Book Value**” set forth in this Article VIII, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses unless such gain or loss is specially allocated pursuant to Section 7.3 hereof;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in determining such taxable income or loss, there shall be deducted Depreciation, computed in accordance with the definition of such term in this Article VIII; and

(f) Notwithstanding any of the foregoing provisions, any items that are specially allocated pursuant to Section 8.3 or 8.4 hereof shall not be taken into account in computing Profits or Losses.

8.3 PROFITS AND LOSSES.

(a) Profits Allocations. After making any special allocations required under Section 8.3 hereof, Profits for each Fiscal Year (and each item of income and gain entering into the computation thereof) shall be allocated among the Members (and credited to their respective Capital Accounts) in the following order and priority:

(i) First, to the Members until the cumulative Profits allocated pursuant to this Section 8.2(a)(i) are equal to the cumulative Losses, if any, previously allocated to the Members pursuant to Section 8.2(b)(iii) and Section 8.2(b)(iv), such Profits being allocated under this Section 8.2(a)(i) on a last-in first-out basis with respect to the Losses allocated under Section 8.2(b)(iii) and Section 8.2(b)(iv), for all prior periods in proportion to the Members’ respective shares of the Losses being offset;

(ii) Next, to the Members pro rata based on the amounts previously distributed to the Members pursuant to Section 7.1(c), until the Profits allocated to each Member pursuant to this Section 8.2(a)(ii) are equal to the amount previously distributed to such Member pursuant to Section 7.1(c); and

(iii) Thereafter, to the Members pari passu, so that each Member shall be allocated a share of such Profits equal to the then value of its Capital Account divided by the sum of all Capital Accounts held by all of the Members of the Company.

(b) Loss Allocations. After making any special allocations required under Section 8.3 hereof, Losses for each Fiscal Year (and each item of loss and deduction entering into the computation thereof) shall be allocated among the Members (and charged to their respective Capital Accounts) in the following order and priority:

(i) First, to the extent that Profits have previously been allocated to the Members for prior periods pursuant to Section 8.2(a)(iii) hereof, Losses shall be allocated to the Members to offset such Profits in proportion to the Members' respective shares of the Profits being offset.

(ii) Next, to the extent that Profits have previously been allocated to the Members for prior periods pursuant to Section 8.2(a)(ii) hereof, Losses shall be allocated to the Members to offset such Profits in proportion to the Members' respective shares of the Profits being offset.

(iii) The balance, if any, to the Members pari passu, so that each Member shall be allocated a share of such Losses equal to the then value of its Capital Account divided by the sum of all Capital Accounts held by all of the Members of the Company.

(iv) Losses allocated to any Member's Capital Account in accordance with this Section 8.2(b) shall not exceed the maximum amount of Losses that can be so allocated without creating an Adjusted Capital Account Balance deficit with respect to such Capital Account. This limitation shall be applied individually with respect to each Member in order to permit the allocation pursuant to this Section 8.2(b)(iv) of the maximum amount of Losses permissible under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). All Losses in excess of the limitations set forth in this Section 8.2(b)(iv) shall be allocated solely to those Members that bear the economic risk for such additional Losses within the meaning of Code Section 704(b) and the Treasury Regulations thereunder. If it is necessary to allocate Losses under the preceding sentence, the Members shall, in accordance with the Treasury Regulations promulgated under Code Section 704(b), determine those Members that bear the economic risk for such additional Losses.

8.4 SPECIAL ALLOCATIONS. The allocation of Profits and Losses for each Fiscal Year shall be subject to the following special allocations in the order set forth below:

(a) Deferred Reimbursements. There shall be a special allocation to a Member for unreimbursed Company expenses paid by such Member ("**Deferred Reimbursements**"). When reimbursement is made to such Member there shall be a special allocation of Profits equal to such reimbursement. In the event payment of interest payments to Members on loans or advances are deferred for any reason, such expenses shall also be treated as Deferred Reimbursements.

(b) Member Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for any Fiscal Year, each Member shall be specially allocated items of income and gain for such year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts required to be allocated to each of them pursuant to such Treasury Regulation. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6). Any special allocation of items of Company income and gain pursuant to this Section 8.3(b) shall be made before any other allocation of items under this Article VIII. This Section 8.3(b) is intended to comply with the "minimum gain chargeback" requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(c) Member Nonrecourse Debt Minimum Gain Chargeback. If there is a net decrease during a Fiscal Year in the Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then each Member with a share of the Member Nonrecourse Debt Minimum Gain attributable to such debt, determined in

accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) an amount equal to such Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts to be allocated to each of them pursuant to such Treasury Regulation. Any special allocation of items of income and gain pursuant to this Section 8.3(c) for a Fiscal Year shall be made before any other allocations under this Article VIII, except only for special allocations required under Section 8.3(a) hereof. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 8.3(c) is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(d) Qualified Income Offset. If any Member unexpectedly receives any adjustments, allocations, or Distributions described in clauses (4), (5) or (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), items of income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate as quickly as possible, to the extent required by such Treasury Regulation, any deficit in such Member's Adjusted Capital Account Balance, such balance to be determined after all other allocations provided for under this Article VIII have been tentatively made as if this Section 8.3(d) were not in this Agreement.

(e) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 704-2(i)(5) of the Treasury Regulations, each such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 8.3(e) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 8.3 have been made as if Section 8.3(d) hereof and this Section 8.3(e) were not in this Agreement.

(f) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Holding.

(g) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated, in accordance with Treasury Regulations Section 1.704-2(i)(1) to the Member or Members who bear the economic risk of loss for the Member Nonrecourse Debt to which such deductions are attributable.

(h) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset under Code Section 734(b) or 743(b) is required to be taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations.

8.5 CURATIVE ALLOCATIONS. The allocations set forth in subsections (a) through (h) of Section 8.3 hereof ("**Regulatory Allocations**") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article VIII (other than the Regulatory Allocations and the next two following sentences), the Regulatory Allocations shall be taken into account in allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses and other items, including gross income and deductions, and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. For purposes of applying the preceding sentence, Regulatory Allocations of Nonrecourse Deductions and Member Nonrecourse Deductions shall be offset by subsequent allocations of items of income and gain pursuant to this Section 8.4 only if (and to the extent) that: (a) the Finance Member reasonably determines that such Regulatory Allocations are not likely to be offset by subsequent allocations under Section 8.3(b) or Section 8.3(c) hereof, and (b) there has been a net decrease in Company Minimum Gain (in the case of allocations to offset prior Nonrecourse Deductions) or a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt (in the case of allocations to offset prior Member Nonrecourse Deductions). The Finance Member shall apply the provisions of this Section 8.4, and shall divide the allocations hereunder among the Members, in such manner as he reasonably deems appropriate

to minimize the economic distortions upon the Distributions to the Members that might otherwise result from the Regulatory Allocations.

8.6 GENERAL ALLOCATION RULES.

(a) Generally, all Profits and Losses allocated to the Members shall be allocated among them in proportion to their Percentage Holding, except as otherwise specifically provided under the terms of this Agreement. In the event Members are admitted to the Company pursuant to Article IX hereof on different dates during any Fiscal Year, the Profits (or Losses) allocated to the Members for each such Fiscal Year shall be allocated among the Members in proportion to the Percentage Holding that each Member holds from time to time during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the Finance Member. In such event, subsequent allocations of Profits or Losses pursuant to Section 8.2 hereof shall be allocated (i) first, so as to offset the Profits (or Losses) allocated for such Fiscal Year or years and (ii) the balance, if any, to the Members in proportion to their Percentage Holding.

(b) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, using any method permissible under Code Section 706 and the Treasury Regulations thereunder.

(c) For purposes of determining the Members' proportionate shares of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), their respective interests in Member profits shall be in the same proportions as their Percentage Holding.

(d) The Members are aware of the income tax consequences of the allocations made by this Article VIII and hereby agree to be bound by the provisions of this Article VIII in reporting their distributive shares of the Company's taxable income and loss for income tax purposes.

8.7 TAX ALLOCATIONS UNDER CODE SECTION 704(C). In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value. The parties hereto intend that Code Section 704(c)(1)(A) and the Treasury Regulations thereunder be applied to allocate items of deduction and loss to the Company under the method of allocation permitted by the Treasury Regulations which results in the allocation of items of deduction and loss to the Company over the shortest period of time. In the event the Book Value of any Company asset is adjusted pursuant to subsection (b) of the definition of "**Book Value**" in Section 8.1 hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder, provided, however, that unless otherwise determined by the Members, the Company shall not adopt the Traditional Method with Curative Allocations as defined under Treasury Regulations Section 1.704-3(c) or the Remedial Allocation Method as defined under Treasury Regulations Section 1.704-3(d) that would require any Member to report any item of income or gain for Treasury Regulations Section 704(c) purposes that differs in amount or timing from the taxable income that the Company allocates to such Member under Treasury Regulations Section 704(b). Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 8.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses or other items or Distributions pursuant to any provision of this Agreement.

8.8 INTEREST ON AND RETURN OF CAPITAL CONTRIBUTIONS. No Member shall be entitled to interest on the Member's Capital Contribution or to the return of the Member's Capital Contribution, except as otherwise specifically provided for herein.

ARTICLE IX

ADMISSIONS AND EXPULSIONS

9.1 ADMISSION OF MEMBER. No Person shall be admitted as a Member of the Company after the date of formation of the Company without the written consent or approval of at least four Members at the time of such admission, regardless of whether such Person has acquired any Membership Interest in the Company from another Member or from the Company as an original issuance. Upon admission, the Member shall execute a counterpart of this Agreement or joinder thereof.

9.2 EXPULSION OF MEMBER. Upon any Material Breach by any Member under the terms of this Agreement which remains uncured for a period of fifteen (15) days after written notice thereof from the Finance Member, or upon a Member's failure to maintain ACDBE certification (if applicable) as set forth below and such failure remains uncured for the period set forth below after written notice thereof from the Finance Member, the Member shall be expelled and thereafter shall cease to be a Member. A Member expelled for Material Breach shall retain only its Economic Interest in the Company equal only to the then remaining balance of its Capital Account as of the date of the Material Breach, minus Distributions made to the Member subsequent to such date. A Member expelled for failure to maintain ACDBE certification shall transfer its Units to the Company as set forth below.

(a) In the event that HPH fails to maintain its ACDBE certification and the City ceases to credit fully the Company for sixteen (16.00%) ACDBE participation, HFF shall notify HPH of the default and HPH shall be given ten (10) days to cure the default (provided that the City has given the Company at least thirty (30) days to cure the default). If the default has not been cured within such ten (10) day period, the Units held by HPH shall automatically revert to the Company under Section 11.2(a) of this Agreement. Upon the transfer of such Units, representing its entire Membership Interest hereunder, HPH shall have no further rights, interests or claims relating in any way to the business or the Company, all of which shall automatically vest in the name of, and inure to the benefit of HFF, except for its right to receive the payment of its positive Capital Account as provided in subparagraph (d) below.

(b) In the event that PCI fails to maintain its ACDBE certification and the City ceases to credit fully the Company for ten (10.00%) ACDBE participation, HFF shall notify PCI of the default and PCI shall be given ten (10) days to cure the default (provided that the City has given the Company at least thirty (30) days to cure the default). If the default has not been cured within such ten (10) day period, the Units held by PCI shall automatically revert to the Company under Section 11.2(a) of this Agreement. Upon the transfer of such Units, representing its entire Membership Interest hereunder, PCI shall have no further rights, interests or claims relating in any way to the business or the Company, all of which shall automatically vest in the name of, and inure to the benefit of HFF, except for its right to receive the payment of its positive Capital Account as provided in subparagraph (d) below.

(c) In the event that ZANN fails to maintain its ACDBE certification and the City ceases to credit fully the Company for seven percent (7.00%) ACDBE participation, HFF shall notify ZANN of the default and ZANN shall be given ten (10) days to cure the default (provided that the City has given the Company at least thirty (30) days to cure the default). If the default has not been cured within such ten (10) day period, the Units held by ZANN shall automatically revert to the Company under Section 11.2(a) of this Agreement. Upon the transfer of such Units, representing its entire Membership Interest hereunder, ZANN shall have no further rights, interests or claims relating in any way to the business or the Company, all of which shall automatically vest in the name of, and inure to the benefit of HFF, except for its right to receive the payment of its positive Capital Account as provided in subparagraph (d) below.

(d) The Units held by the defaulting Member in subparagraphs (a)-(c) above shall be transferred to the Company for a sum equal to the then balance of defaulting Member's Capital Account. Upon closing of the transfer, the defaulting Member will receive a promissory note from the Company for the then adjusted balance of its Capital Account. The promissory note shall bear interest at six percent (6.00%) per annum and shall be payable in equal monthly payments over shorter of five (5) years or the then remaining balance of the term of the Lease. Notwithstanding the foregoing, the Company shall have the right to reduce the amount payable to the defaulting Member by the amount of damages sustained and costs incurred as a result of the default. If the defaulting Member is an ACDBE Member, the Company shall re-sell the Units so acquired to a qualified ACDBE party as soon as practical, unless and to the extent City approves otherwise.

ARTICLE X

RESTRICTIONS ON TRANSFERABILITY

10.1 RIGHT TO WITHDRAW. A Member may withdraw from the Company at any time by mailing or delivering a written notice of withdrawal to the other Member at its last known address set forth in the list maintained by the Company. In the event of such withdrawal such Member will be treated as an Economic Interest Holder hereunder and shall be entitled to its pro-rata share of Distributions otherwise payable to it under this Agreement and its allocation of Profits or Losses. However, if a Member withdraws prior to the expiration of the term of the Lease, such Member's withdrawal shall be considered a Material Breach of this Agreement and the remaining Members shall have the right to dissolve the Company under Article XI hereof and in such case Section 11.2(a) or Section 11.2(b), as applicable, shall govern. The Company may recover damages for such withdrawal and may offset the damages against any amount otherwise distributable to the withdrawn Member.

10.2 RESTRICTIONS ON TRANSFERABILITY

(a) No Transfer Or Hypothecation. No Member (or Economic Interest Holder) may mortgage, hypothecate or otherwise encumber, or permit or suffer any encumbrance of all or any part of such Member's Membership Interest or Economic Interest in the Company (as applicable), except to a bank or financial institution as collateral for providing funds invested in the Company as part of the Capital Contributions required hereunder. No Member or Economic Interest Holder may transfer (except as specifically provided in this Article X and as permitted under the Securities Act and applicable state securities laws, pursuant to registration or exemption therefrom), all or any part of such Member's Membership Interest or Economic Interest in the Company. Any of the foregoing actions shall constitute and be treated as an Involuntary Transfer under Section 10.2(b) below and shall be a Material Breach hereunder.

(b) Involuntary Transfers. If an Involuntary Transfer of any Member Interest (the "Transferred Interests") owned by any Member shall purportedly occur, then the voting rights associated with such Transferred Interest shall terminate automatically in all respects. In addition, the Company shall have the right to purchase such Transferred Interests. The purchase price per unit of Transferred Interest shall be agreed upon by the transferee of such Transferred Interests (the "Involuntary Transferee") rather than to the Member who suffered or will suffer the involuntary transfer and the Company; provided, however, that if such parties fail to agree as to such purchase price, the purchase price for the Transferred Interests shall be the value of the Capital Account of the transferring Member, as determined under the rules of the Internal Revenue Service, less any sums due the remaining Member by the exiting Member by promissory note or otherwise. The Company may assign the foregoing right to any Person. If the Company, or its assignee, does not exercise the foregoing right, the Involuntary Transferee shall only be entitled to the transferring Member's Economic Interest in the Company; the Involuntary Transferee shall not be entitled to exercise the transferring Member's voting rights, which shall terminate.

(c) Ownership of ACDBE Members. Each Member, including the ACDBE Members, is owned by the Persons specified in the attached Exhibit "E", who are the sole legal and beneficial owners of such Member. Any change in ownership of the ACDBE Members must be approved in advance at the sole discretion of HFF. Any change in ownership of the ACDBE Members that violates this provision without advance approval of HFF is a Material Breach and HFF may dissolve this Company pursuant to Article XI below.

(d) Approved Transfers by an ACDBE Member. If an ACDBE Member (or any permitted successor or assignee of an ACDBE Member) wishes to sell its Membership Interest, it may only do so to a Qualified Assignee (as defined below) and in accordance with the procedures set forth in this Section.

(i) A "Qualified Assignee" means a Person who satisfies all of the following requirements: (1) that Person is certified as an ACDBE; (2) that Person or an Affiliate in control of that Person has owned or operated a retail establishment serving food to the public; and (3) neither that Person nor any director, officer or owner of ten percent (10.00%) or more of the ownership interests of that Person: (a) has been convicted of a misdemeanor involving dishonesty or a felony; (b) has been found liable in a civil proceeding for securities, bank, insurance or wire fraud, (c) has had any liquor or food service license or permit revoked or suspended for more than seven days for violations of applicable alcohol or health and safety laws; or (d) has not

been barred by any federal or state regulatory authority from entering into contracts with any government entity due to violation of applicable laws. Furthermore, if the consent of the City is required by law or agreement in order to admit that Person as a Member, a prospective purchaser shall not be deemed a Qualified Assignee unless and until such approval has been obtained.

(ii) The ACDBE Member wishing to sell its Units (the “**Selling Member**”), must first give thirty (30) days’ written notice (“**Notice of Intention**”) to HFF of its proposed sale of its Membership Interest to a Qualified Assignee. The Notice of Intention shall describe the details of the bona fide third party offer and information concerning the purchaser to permit HFF to determine whether the Qualified Assignee satisfies the requirements set forth in Subsection (i) above. HFF shall have the right within thirty (30) days after receipt of the Notice of Intention to give the Selling Member a notice of election (“**Notice of Election**”) to purchase its Membership Interest in accordance with the terms contained in the Notice of Intention. If HFF gives such Selling Member a Notice of Election, the Selling Member must sell its Membership Interest to HFF pursuant to the terms described in its Notice of Intention. If HFF does not provide the Selling Member with a Notice of Intention within the thirty (30) day period, the Selling Member may sell its Membership Interest to the Qualified Assignee identified in the Notice of Intention within one hundred twenty (120) days after the period for submitting the Notice of Election Notice expired. If the Selling Member fails to complete the sale of its Membership Interest within that one hundred twenty (120) day period to the Qualified Assignee, it must reoffer that Membership Interest for sale to HFF pursuant to this Section.

(iii) Any sale of a Membership Interest to a Qualified Assignee shall be subject to the condition that the Qualified Assignee execute a written agreement to be bound by all of the terms of this Agreement, including the obligation to perform the duties of the ACDBE Member specified in this Agreement. The Qualified Assignee shall not be admitted as a Member unless and until that Qualified Assignee executes such agreement.

(e) Sale or Assignment by HFF. HFF may sell assign or otherwise transfer its Membership Interests without requiring the approval of the ACDBE Members, provided that HFF obtains the approval of such sale, transfer or assignment by the City if HFF is required by law or agreement with the City to do so.

(f) Security Interest in Distributions – Approved Loan. Notwithstanding anything in Section 10.2 to the contrary, a Member may direct the Financial Member by written notice to such effect to make all Distributions otherwise payable to it hereunder to a bank or other financial institution solely for the following purposes: (i) to secure payment of a loan to the Company obtained from that financial institution; or (ii) to secure payment of a loan obtained by the Member to finance capital contributed by that Member to the Company. Nothing in this Section shall permit any Member to grant a security interest in, pledge, have a lien placed on or otherwise hypothecate that Member’s Membership Interest or Economic Interest in the Company.

(g) Securities Law Compliance. All sales, assignments, hypothecations and other transfers of any Membership Interest or any rights therein must be conducted in accordance with the registration and qualification requirements under federal and applicable state securities laws or exemptions therefrom.

10.3 CHANGE IN MEMBERSHIP INTEREST. Upon any change in the relative Membership Interests of the Members, whether by reason of the admission of a Member or otherwise, the Member’s allocated share of all Company Profits and entitlement to Distributions shall be determined, except as otherwise required by law or as otherwise provided in this Agreement, by an interim closing of the Company’s books.

ARTICLE XI

DISSOLUTION AND TERMINATION

11.1 DISSOLUTION. The Company may be dissolved by the Finance Member upon the first to occur of any of the following events, which (if applicable) remains unresolved after the time period set forth below:

(jj) Upon the termination and winding up of all services required under the Lease and the completion of the Company’s Purpose, unless the Members, by unanimous consent, determine to continue the Company in effect for another purpose; or

(kk) Upon the written consent of a majority of the Members, provided that such dissolution does not result in a breach of any of the Company's obligations under the Lease; or

(ll) If there is a Material Breach of this Agreement by one of the other Members that is not cured within thirty (30) days following written notice of the breach, which notice provides a reasonably detailed description of the breach, and which is followed by a notice of termination by a non-breaching Member; or

(mm) If the Company or any Member shall be adjudicated a bankrupt or insolvent and if such adjudication be involuntary, same is not vacated within sixty (60) days; or

(nn) By four Members if another Member or a shareholder, director, officer, manager, Member or principal of such other Member pleads guilty or no contest to or is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that would prevent the Company from obtaining or retaining licenses or permits required for its business operations or would adversely affect the reputation or interests of the Company; or

(oo) As otherwise provided in this Agreement; or

(pp) Upon the occurrence of an event causing the dissolution of the Company by operation of law.

11.2 LIQUIDATION, WINDING UP AND DISTRIBUTION OF ASSETS. If the Company is dissolved by the Finance Member, the Company and its Members shall fully comply with all legal requirements governing the winding up of its affairs and the final Distribution of its assets, as follows:

If the Lease has expired or been terminated, all assets which become the property of the City upon termination of the Lease shall be transferred to it as provided in the Lease. All other assets shall be sold. The proceeds shall be used first to pay all debts and obligations of the Company to third parties; second (to the extent of funds available, if any) for debts and obligations due Members (or any affiliate thereof), including all sums then due under any Note(s) described in Section 2.4 hereof (pari passu based upon the amount due each Member) and third, to the extent of funds available, if any, to the Members in accordance with their then positive capital account balances as provided in Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2) and finally to the Members based on their respective Percentage Holding in the Company.

11.3 DEFICIT CAPITAL ACCOUNTS. No Member shall have any obligation to contribute or advance any funds or other property to the Company by reason of any negative or deficit balance in such Member's Capital Account during or upon completion of winding up or at any other time.

11.4 RETURN OF CONTRIBUTION NON-RECOURSE TO OTHER MEMBERS. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his or its Capital Contributions. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash or other property contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE XII

INTELLECTUAL PROPERTY

12.1 USE OF HFF MARKS AND SYSTEM. HFF hereby grants the Company a royalty free license to use the HFF financial reporting and ordering systems, training and operating manuals, food preparation and menu development plans, its menus, and training and service plans (the "**HFF System**") and HFF's trade names on its signage menus and advertising), trade and service marks, trade dress, logos, slogans, and other commercial symbols, patents and copyrights ("**HFF-IP**"), at no cost to the Company or to the Members. Such license shall remain in effect only as long as HFF is a Member of the Company and shall automatically terminate if HFF is no longer a Member or if the Company is dissolved. The Company and the ACDBE Members understand and agrees that HFF will retain total ownership and control over the HFF System and the HFF-IP throughout the term of this Agreement. This Agreement does not confer upon the Company or the ACDBE Members any goodwill or other interest in the HFF System or HFF-IP and any goodwill established through the performance of the parties hereunder inures solely to the

benefit of HFF, as the owner of the HFF System and HFF-IP. All provisions herein applicable to the HFF-IP will apply to any and any of such assets, now existing or hereafter created. Any improvements or changes developed by the Company or the Members in the HFF System or its components or in the HFF-IP shall be deemed to be work for hire and shall belong solely to HFF in all respects.

12.2 MISUSE OF INTELLECTUAL PROPERTY. The ACDBE Members and the Company confirm and acknowledge that its privilege to use HFF's System and HFF-IP is derived solely from this Agreement and is limited to the fulfillment of its obligations hereunder in compliance with all of the terms of this Agreement. Any unauthorized use of any of the foregoing by the ACDBE Members shall be, inter alia, a Material Breach of this Agreement permitting HFF to terminate this Agreement and cause the dissolution of the Company. In the event of such termination, all rights and privileges of the Company to use the HFF System or the HFF-IP shall immediately terminate. The ACDBE Members also acknowledge that money damages are an inadequate remedy for the foregoing Material Breach because of the difficulty of ascertaining the amount of damage that will be suffered in the event of such Material Breach. Therefore, HFF will be entitled to equitable relief, including injunction and specific performance without the need to post bond, in the event of any breach of such provisions of this agreement by the breaching ACDBE Member(s) in addition to all other remedies available to it at law or in equity.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 APPLICATION OF COLORADO LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without giving effect to choice of law principles. All Parties hereto; (a) waive trial by jury, and (b) submit to the jurisdiction of federal and state courts located in the County of Denver, Colorado and agree that such court shall be the venue and waive any claim of "forum nonconveniens" or the like with respect to such courts and venue in and for such County.

13.2 WAIVER OF ACTION FOR PARTITION. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.3 ARBITRATION. Except as provided herein or as required to protect intellectual property rights under Article XIII of this Agreement, all controversies and claims arising out of or relating to this Agreement shall be resolved by binding arbitration, conducted in accordance with the following rules.

(a) Except as specifically modified below, the arbitration shall be conducted in Denver, Colorado and administered by JAMS/Endispute ("**JAMS**") in accordance with JAMS Comprehensive Arbitration Rules and Procedures (the "**Rules**"). The arbitration shall be heard by one arbitrator to be selected by the scratch-off method.

(b) Within seven (7) calendar days after appointment the arbitrator shall set the hearing date, which shall be within 180 days after the filing date of the demand for arbitration unless a later date is required for good cause shown and shall order a mutual exchange of what he/she determines to be relevant documents and the dates thereafter for the taking of up to a maximum of five (5) depositions by each party to last no more than two (2) days in aggregate for each party.

(c) The arbitrator shall have the authority to make determinations as to all matters submitted for resolution in the arbitration, including whether such controversy or claim is arbitrable under this Agreement or applicable law. The arbitrator shall have the authority to determine an appropriate remedy in connection with any matter brought before the arbitrator, including sanctions or interlocutory relief for violations of the arbitrator's orders concerning discovery, provided that such remedy must be of a nature which a court could award if the matter had been litigated in a court of competent jurisdiction. The arbitrator shall have the right to award attorney's fees and costs to the prevailing party.

(d) The decision of the arbitrator shall be final and binding on all parties. Judgment upon the award rendered by the arbitrator, including any interlocutory relief or sanctions granted or issued by the arbitrator with respect to matters related to discovery, may be entered in any court having jurisdiction thereof.

(e) Notwithstanding any provision to the contrary in this Section 13.3, a party may seek a temporary restraining order or preliminary injunctive relief from a court of competent jurisdiction without prior reference to arbitration in any action arising out of this Agreement if that party in good faith believes that immediate interim relief is necessary to prevent irreparable injury to that party. After the court has made a determination with respect to such interim relief the matter may be submitted to arbitration by any party under the procedures set forth above for final resolution.

13.4 ATTORNEY'S FEES. In the event any litigation, arbitration, mediation, or other proceeding (“**Proceeding**”) is initiated by any party against any other party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with this Agreement, the prevailing party in such Proceeding will be entitled to recover from the unsuccessful party all costs, expenses, actual attorneys’ and expert witness fees, relating to or arising out of: (a) such Proceeding (whether or not such Proceeding proceeds to judgment); and (b) any post-judgment or post-award proceeding, including without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award will contain a specific provision for the recovery of all such subsequently incurred costs, expenses, actual attorneys’ and expert witness fees.

13.5 EXECUTION OF ADDITIONAL INSTRUMENTS. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, and other instruments necessary to effectuate the terms of this Agreement or to comply with any laws, rules, or regulations.

13.6 HEADINGS. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

13.7 SEVERABILITY. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.8 WAIVER. The failure of any party to require the performance of any provision of this Agreement shall not in any way affect its right thereafter to enforce such provision or any other provision of this Agreement.

13.9 HEIRS, SUCCESSORS, AND ASSIGNS. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement and by applicable law, their respective heirs, legal representatives, successors, and assigns.

13.10 CREDITORS AND OTHER THIRD PARTIES. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or by other third parties.

13.11 ENTIRE AGREEMENT. This Agreement, and the documents, schedules and exhibits referred to herein constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements, negotiations, representations, warranties, and understandings existing between the parties hereto are expressly superseded and canceled.

13.12 NOTICES. All written notices required or permitted to be delivered pursuant to the provisions of this Agreement shall be deemed so delivered at the time delivered by hand, one (1) business day after transmission by e-mail or facsimile with proof of receipt, one (1) business day after being placed in the hands of a commercial courier services for overnight delivery, or three (3) business days after placement in the United States mail by registered or certified mail, return receipt requested, postage prepaid and property addressed. Notices under this Agreement shall be in writing, and shall be delivered in person and shall be addressed as follows:

If to Company: HFF DEN TWO, LLC
123 Second Street
Sausalito, CA 94965
Attn: Glenn Meyers, Manager
Email: Glenn.Meyers@highflyingfoods.com

If to HFF: High Flying Foods DEN, LLC
123 Second Street
Sausalito, CA 94965
Attn: Glenn Meyers, Manager
Email: Glenn.Meyers@highflyingfoods.com

If to HPH Hyde Park Hospitality LLC
17 N. Loomis Street, Suite 1A
Chicago, IL 60607
Attn: Marc Brooks, President & CEO
Email: Marc@hydeparkhospitality.com

If to PCI Procurement Concepts, Inc.
2643 Ariane Drive
San Diego, CA 92117
Attn: Harold (Gil) Johnson, President & CEO
Email: Gil@sandiegogifts.com

If to ZANN ZANN & Associates, Inc.
7752 E. 4th Avenue, Suite 1C
Denver, CO 80230
Attn: Suzanne Arkle, President & CEO
Email: Suzanne@zanninc.com

13.13 CONSENTS AND APPROVALS.

(a) Where consent or approval of or authorization (the “**Consent**”) from HFF is required hereunder, such Consent shall mean the Consent by HFF’s Manager. Where Consent of HPH is required hereunder such Consent shall mean the Consent of HPH’s President & CEO. Where Consent of PCI is required hereunder such Consent shall mean the Consent of PCI’s President & CEO. Where Consent of ZANN is required hereunder such Consent shall mean the Consent of ZANN’s President & CEO.

(b) To the extent that any Consent of a proposed action is required to be reasonable hereunder, the party whose Consent is sought shall reasonably consider the views and financial needs of the other party and shall act in a timely and non-capricious manner. The requesting party shall be entitled to construe silence as approval, if it does not receive a reply to any written request made, within ten (10) business days following delivery of such written request.

13.14 REPRESENTATION AND JOINT PREPARATION. The Members have each been represented by separate counsel in the negotiation of the terms of this Agreement. Each Member acknowledges that counsel for the other party is not representing it or the Company with respect to all matters related to the Company, this Agreement, and the transactions contemplated hereunder. The Members have participated jointly in the negotiation and drafting of this Agreement. In the event that any ambiguity or question of intent or interpretation arises in respect of this Agreement, no presumption favoring or disfavoring any Member shall arise by virtue of the authorship of any provision hereof.

13.15 MEMBER DILIGENCE.

(a) The Members represent each to the other that they and their owners have sufficient knowledge and expertise to evaluate the potential risks associated with entering into this Agreement and each can bear the potential economic risks. No Member, nor any agent, employee or representative of the Members, has made representations or assurances concerning the projected profitability of the Company or suitability of the Membership Interest or of the suitability of the premises that the Company will occupy and use or lease under the Lease.

(b) Each Member has made its own investigation of all costs of doing business under this Agreement, including the costs of constructing improvements in the demised premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory, and equipment needed to operate from the premises; that it has done its own projections of the volume of business it expects the Company to generate; that it is relying on its own business judgment concerning the prospects of the Company to operate on a profitable basis, and that none of them have made any representations or assurances to the other Members with respect to such matters. No Member has entered into this Agreement in reliance on any such representations, warranties or financial projections prepared for or furnished to it.

(c) No Member has relied upon the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to it or anyone on their behalf. No Member shall hold the other responsible for any inaccuracies in such statistics or their interpretation.

(d) No Member shall be liable to the other for any loss of business or damages sustained by the Company as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Airport by any airline and/or governmental agency.

13.16 COUNTERPARTS. This Agreement may be executed in counterparts, or by facsimile or telecommunicated counterparts, each of which shall constitute an original and all of which together shall constitute a single agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO HFF DEN TWO, LLC LIMITED LIABILITY COMPANY AGREEMENT

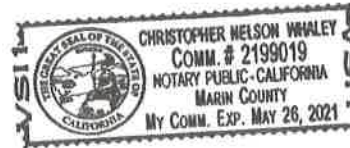
Executed as of January 24, 2020

MEMBERS

High Flying Foods DEN, LLC

By: [Signature]
Glenn Meyers, Its ManagerDate: 1/23/20

NOTARY PUBLIC

County of Marin State of California
My Commission Expires: May 26, 2021
Subscribed & sworn before me this 23 day of January, 2020
Notary Signature: Christopher N. Whaley
Address: 123 Second St., Sausalito, CA 94965

Hyde Park Hospitality LLC

By: [Signature]
Marc Brooks, Its President & CEODate: 1-22-20County of Cook State of IL
My Commission Expires: October 02, 2021
Subscribed & sworn before me this 22 day of January, 2020
Notary Signature: [Signature]
Address: 3824 Cleveland Brookfield, IL 60513

Procurement Concepts, Inc.

By: [Signature]
Harold Johnson, Its President & CEODate: 1/24/20County of SAN DIEGO State of CALIFORNIA
My Commission Expires: 09 07 2023
Subscribed & sworn before me this 24 day of January, 2020
Notary Signature: [Signature]
Address: 2952 CAIREMONT MESAS BLVD SAN DIEGO, CA 92117

ZANN & Associates, Inc.

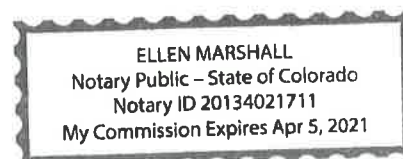
By: [Signature]
Suzanne Arkle, Its President & CEODate: 1-21-20County of DENVER State of Colorado
My Commission Expires: 4/5/21
Subscribed & sworn before me this 21 day of January, 2020
Notary Signature: [Signature]
Address: 4356 S. Sublet Ave. Centennial, CO 80015

EXHIBIT A**SCHEDULE OF MEMBERS, UNITS AND PERCENTAGE HOLDINGS**

Date: January 24, 2020

<u>Members</u>	<u>Units Purchased</u>	<u>Percentage Holding*</u>
High Flying Foods DEN, LLC ("HFF")	670	67.00%
Hyde Park Hospitality LLC ("HPH")	160	16.00%
Procurement Concepts, Inc. ("PCI")	100	10.00%
ZANN, Inc. ("ZANN")	70	7.00%
Total	100	100.00%

* However, for each Member, such Member's Economic Interest in the Company shall be determined by dividing the then current balance of such Member's Capital Account by the aggregate amount of all Capital Accounts of all of the Members of the Company.

INITIAL AND ADDITIONAL CAPITAL CONTRIBUTIONS

* The below equity amounts are based on securing 75% debt financing for at least two Restaurant opportunities. Rounds 4, 5, and 6 shall be adjusted by Finance Member based on updated store opening budget(s) and loan amount(s) secured for the awarded opportunity(ies), the latter of which shall offset Member Capital Contributions.

	<u>Round 1</u> <u>Due upon</u> <u>Execution</u> <u>of</u> <u>Operating</u> <u>Agreement</u>	<u>Round 2</u> <u>Due Upon</u> <u>Submission</u> <u>of the RFP</u>	<u>Round 3</u> <u>Due 45</u> <u>Days</u> <u>Following</u> <u>Execution</u>	<u>Round 4</u> <u>Due Upon</u> <u>Delivery of</u> <u>Schematics to</u> <u>Airport</u>	<u>Round 5</u> <u>Due Upon Taking</u> <u>Control of the</u> <u>Leased Premises</u> <u>for Demolition</u> <u>and Construction</u>	<u>Round 6</u> <u>Due 60 days</u> <u>following Round 5</u>
HFF	\$53,600.00	\$67,000.00	\$107,200.00	\$103,347.50	\$155,021.25	\$258,368.75
HPH	\$12,800.00	\$16,000.00	\$25,600.00	\$24,680.00	\$37,020.00	\$61,700.00
PCI	\$8,000.00	\$10,000.00	\$16,000.00	\$15,425.00	\$23,137.50	\$38,562.50
ZANN	\$5,600.00	\$7,000.00	\$11,200.00	\$10,797.50	\$16,196.25	\$26,933.75
Total	\$80,000.00	\$100,000.00	\$160,000.00	\$154,250.00	\$231,375.00	\$385,625.00

Total Capital
Contributions \$1,111,250.00

Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the cover page of this response to the Request for Proposal.

EXHIBIT B**RESPONSIBILITIES AND AUTHORITY OF EACH MEMBER**

The Members shall have joint responsibility in providing certain services to the Company. Responsibilities may be re-allocated or division of services may be reviewed from time to time as necessary based upon contribution or disproportionate share of resources expended.

Responsibilities of HFF

Subject to the consent and approval of the Management Board on material decisions, HFF shall be responsible for:

- Negotiation of contracts with architects and contractors for development and construction of the Restaurant(s) and the purchase of the necessary operating equipment, furniture, and furnishings (to be approved by the Management Board) and oversight of the design and construction of the Restaurant(s) to ensure that it meets standards set for HFF;
- Obtaining all necessary licenses and permits;
- Retention of the General Manager(s) for the Restaurant(s), subject to approval of the Management Board;
- Management of any intellectual property being used by the Company;
- Creation and management of all marketing and branded items including signage, merchandising, and packaging
- Manage relationship with Brands and coordinate seasonal menu changes
- Oversee loss control program, injury and illness prevention, and safety compliance
- Oversee training program
- Supervision of unscheduled repairs and maintenance
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Responsibilities of HPH

Subject to the consent and approval of the Management Board on material decisions, HPH shall be responsible for:

- Negotiate with all food and packaging vendors
- Review of vendor invoices and ensuring vendor pricing is consistent
- Pricing and market basket analysis
- Submitting market basket to Airport for approval
- Costing food recipes, beverages, and impulse buy items
- Developing product standards, prep lists, and order sheets
- Ongoing quality control of kitchen operations
- Sales mix evaluation
- Food cost analysis
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Responsibilities of PCI

Subject to the consent and approval of the Management Board on material decisions, PCI shall be responsible for:

- Review and cost employee schedules
- Ordering and inventory management of small wares and utensils, cutlery and china, linens, chemicals and cleaning supplies;
- Evaluate bar sales mix and make product recommendations for spirits, beer, wine, and non-alcoholic beverages
- Manage all design and product placement initiatives to increase retail merchandising transactions and optimize sales
- Research impulse buy items and manage consumer package good products, vendors, and displays
- Managing and coordinating all scheduled maintenance

- Manage cleaning program and janitorial company and ensuring consistent store cleanliness
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

Responsibilities of ZANN

Subject to the consent and approval of the Management Board on material decisions, ZANN shall be responsible for:

- Serve as local representative at DEN Concessionaire and Marketing meetings
- Manage Recruitment Events
- Ensuring Operational legal compliance
- Develop and implement Mentor Protégé program
- Provide MWBE and ACDBE Contract Compliance and Reporting to DEN/DSBO.
- Lead Quarterly Partner Meetings Including Agendas and Minutes
- Participate regularly in Management Board meetings and in the strategic marketing and planning processes of the Company.

EXHIBIT C**FINANCE MEMBER RESPONSIBILITIES**

- Create and maintain employee files
- Manage documentation of all employee functions including, but not limited to, recruiting, hiring, documentation, E-verify, I-9, disciplinary actions and terminations, unemployment issues, workers comp claims
- Negotiate with providers for health and dental insurance and administer plan including open enrollment, claims
- Negotiate with providers for liability & casualty insurance
- Negotiate with providers for Worker's Compensation
- Maintain the books & records of the Company, including A/P, A/R, credit card accounts
- Manage bank account(s)
- Manage payments related to Loans
- Provide Members a weekly report of sales
- Manage payroll & pay employees
- Manage bonus program
- Process and collect airline vouchers
- File employer tax returns
- Produce balance sheets, income statements and other financial reports quarterly.
- Produce all reports required by the Lease when due
- Produce budgets of upcoming year for Member review
- Produce or coordinate federal and state income tax returns annually and provide Schedule K-1 to Members
- Prepare and file state sales tax returns monthly
- Coordinate annual audit and provide audit report to Members
- Respond to and manage audits by governmental agencies including the Airport
- Act as Tax Matters Partner for the Company
- Make application for and maintain renewal of all licenses
- Retain & manage legal counsel
- Manage License Agreements
- Produce filings and manage payments related to possessory and unsecured property taxes
- Manage adherence to local labor legislation
- Conduct Annual Review Process
- Manage the IIPP (Injury and Illness Prevention Program)
- Ensure compliance with loan covenants
- Licensing Agreements

EXHIBIT D

CONCESSION LEASE

(To be attached upon execution)

EXHIBIT E**Names and Address of Owners of
High Flying Foods DEN, LLC**

<u>Name and Address of Owners</u>	<u>Percent Owned</u>
High Flying Foods 123 Second Street Sausalito, CA 94965	90%
Other Investors	10%

**Names and Address of Owners of
Hyde Park Hospitality LLC**

<u>Name and Address of Owners</u>	<u>Percent Owned</u>
Marc Brooks 17 N. Loomis Street, Suite 1A Chicago, IL 60607	100%
Other Investors	0%

**Names and Address of Owners of
Procurement Concepts, Inc.**

<u>Name and Address of Owners</u>	<u>Percent Owned</u>
Harold (Gil) Johnson 2643 Ariane Drive San Diego, CA 92117	49%
Other Investors (Gale Johnson, spouse)	51%

**Names and Address of Owners of
ZANN & Associates, Inc.**

<u>Name and Address of Owners</u>	<u>Percent Owned</u>
Suzanne Arkle 7752 E. 4th Avenue, Suite 1C Denver, Colorado 80230	100%
Other Investors	0%

**MWBE COMMITMENT FORM****DENVER INTERNATIONAL AIRPORT
CITY AND COUNTY OF DENVER
DIVISION OF SMALL BUSINESS OPPORTUNITY**

SECTION A – PROPOSER INFORMATION

Name of Firm: HFF DEN TWO, LLC
Address: 123 Second Street
City: Sausalito State: CA Zip: 94965
Contact Person: Glenn Meyers Telephone: (415) 243-8908
Email: glenn.meyers@highflyingfoods.com

SECTION B – MWBE COMMITMENT

The MWBE goal on the build out for this concession is 25 %.

****NOTE: DSBO will only credit MWBE participation that is certified as such by the City and County of Denver, Division of Small Business Opportunity (DSBO).****

The undersigned proposer/concessionaire confirms awareness of the MWBE goal for the build out of this concession(s) and commits to the utilization of appropriately certified firms to meet the goal.


By:  Manager
Proposer Signature Title
HFF DEN TWO, LLC
Proposing Entity

EXHIBIT F
(EcoPass Program)

Exhibit F

EcoPass Program

1. The City may, in its discretion, annually execute a contract (the “**RTD Master Contract**”) with the Regional Transportation District (“**RTD**”) to allow Concessionaire and other eligible DEN concessionaires to enroll their Eligible Employees in RTD’s EcoPass Program (as the terms “**Eligible Employee**” and “**EcoPass Program**” are defined in the applicable RTD Master Contract). The City will execute these contracts for the benefit of the concessionaires who the City and RTD determine are eligible to participate in the EcoPass Program, on the condition that each eligible concessionaire participates in the EcoPass Program and compensates the City for its proportional number of Eligible Employees. The City is under no obligation to execute an RTD Master Contract and may at its sole discretion elect not to.

2. Every RTD Master Contract that the City executes for the above purpose will by its existence obligate the Concessionaire to participate in the EcoPass Program under the terms of this Exhibit. Concessionaire will enroll all Eligible Employees at DEN in the EcoPass Program. Concessionaire agrees that this obligation extends to all Eligible Employees that are employed by Concessionaire at DEN, including Eligible Employees that work at concession locations that are not under this Agreement, regardless of whether these obligations are found in the respective contracts for such other concession locations.

3. Any terms or conditions from an RTD Master Contract that by their nature implicate Concessionaire and require certain performance by Concessionaire for the City to fulfill its obligations under the RTD Master Contract are by reference incorporated in this Exhibit. Any dispute or ambiguity regarding Concessionaire’s obligations in connection with any RTD Master Contract will be resolved by the City in the City’s reasonable discretion.

4. Within 30 days after notice from the City, Concessionaire will provide the City with the total number of Eligible Employees to be enrolled in the following year’s EcoPass Program.

5. Concessionaire will pay in full the amount billed for its Eligible Employees within 30 days from the date of the City’s invoice. Late payments are subject to accrued interest according to the Agreement’s terms for late payment. Payments that are over 10 days late may be treated as a default, permitting the City to draw from the applicable Surety, Performance Bond, or Letter of Credit, or exercise any other right or remedy available for default under the Agreement.

6. Concessionaire will promptly provide any relevant documentation requested by the City or RTD in connection with Concessionaire’s Eligible Employees’ participation in the EcoPass Program.

7. Concessionaire is solely responsible for administering the EcoPass Program for its Eligible Employees in accordance with RTD’s guidance and requirements.

8. The City makes no guarantee or warranty regarding Concessionaire’s satisfaction with or use of the EcoPass Program. Concessionaire will hold the City harmless for any loss, damage, injury, or claim that may arise from Concessionaire’s participation in the EcoPass Program, including but not limited to early termination by the City or RTD of the EcoPass Program.

9. Because the form and substance of a given RTD Master Contract and the EcoPass Program may change over time, if any ambiguity arises in this Exhibit due to changes in party names, program titles, definitions, or other terms in an RTD Master Contract, the ambiguity will be resolved by the City in its reasonable discretion.

10. The Parties agree that unforeseen changes to the EcoPass Program or the terms and conditions of the RTD Master Contract may require the Parties to modify their obligations under this Exhibit to give effect to its intent. Therefore, the Parties agree that the City may amend this Exhibit by letter executed by the CEO or the CEO's Authorized Representative, without the need for formal amendment.

APPENDIX A

GENERAL CIVIL RIGHTS PROVISIONS

The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

This provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

APPENDIX B

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below, the term "sponsor" shall mean the "City."

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

1. **Compliance with Regulations.** The Concessionaire will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Concessionaire, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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

4. **Information and Reports.** The Concessionaire will provide all information and reports required by the Acts, Regulations, or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, the Concessionaire shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Concessionaire's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will 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 Concessionaire under this Agreement until the Concessionaire complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Concessionaire will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Concessionaire will take 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, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into such litigation to protect the

interests of the sponsor. In addition, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, MAINTENANCE, OPERATION OF FACILITIES

As used below, the term “sponsor” will mean City.

Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, as may be amended from time to time, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, sponsor will have the right to terminate this Agreement, and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX D

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, USE, OR ACCESS TO FACILITIES

As used below, the term “sponsor” will mean City.

- A. Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.
- B. With respect this Agreement, in the event of breach of any of the above nondiscrimination covenants, sponsor will have the right to terminate this Agreement and to enter, re-enter, and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "sponsor" will mean City.

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Concessionaires, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

APPENDIX 1

DISADVANTAGED BUSINESS ENTERPRISES- REQUIRED STATEMENTS

49 CFR Part 26

As used below, the term "recipient" will mean City.

Contract Assurance (§ 26.13) – The Concessionaire and any subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Concessionaire will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Concessionaire from future bidding as non-responsible.

APPENDIX 2

ACDBE NONDISCRIMINATION AND ASSURANCE REQUIREMENTS

(1) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR part 23. Concessionaire and any subcontractor agree that they 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.

(2) The Concessionaire or Contractor 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 business to similarly include the statements in further agreements.