



## **Concession Agreement 202054060**

### **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: Love From Mission JV, LLC  
10943 Meade Way  
Westminster, CO 80031  
d/b/a High Dune Market and Goods

## 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 **Love From Mission JV, LLC**, a limited liability company (“**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		Love From Mission JV, LLC 10943 Meade Way Westminster, CO 80031			
Guarantor Name and Notice Address		Mission Yogurt, Inc. 10943 Meade Way Westminster, CO 80031  Love From USA Group, Inc. 2340 West County Road C., Suite 180 Roseville, MN 55113			
Premises: See Exhibit A					
Location	Space	Sq. Ft.	PVC Sq. Ft.	Min.Invest. per Sq. Ft.	Trade Name
B East 3	S18-1-2-E63-N8-1	1,222	1,222	\$350	High Dune Market & Goods
Premises Total			1,222 sq. ft.		
Term			7 years		
Effective Date			Date of City Execution		
Required Opening Date			November 1, 2022		
Mid-Term Refurbishment Completion Date			November 1, 2026		
Expiration Date			November 1, 2029		
Minimum Annual Guarantee (“ <b>MAG</b> ”)			Initial MAG: \$319,920		
Percentage Fee			16% - \$3M, 16.5% - \$3,000,001, 17% - \$4,000,001 and 18% - \$5,000,001		

Common Maintenance Services	Maintenance and repair services performed by City, on behalf of and for the benefit of all Concessionaires to include: N/A	
Common Maintenance Services Fee	\$0	
Total Minimum Capital Investment	\$427,700	
Joint Marketing Fee Rate	1%	
Common Area Capital Improvement and Maintenance Share [Food Court]	N/A	
Surety	\$159,960	
Major Merchandise Category	Retail	
Minor Merchandise Category	Convenience Retail	
Concessionaire's Brand(s)	ColoradoCool, All Dogs CO and Spinster Sisters Mountain Time Soap, Chocolove, Rowdy Mermaid, Jerry's Nut House, Boulder Canyon Chips, Little Secrets Chocolate, Teatulia. Licensed Sports Merchandise	
ACDBE Goal	Percent	25%
	Ownership Participation	Love From USA Group, Inc. – 35%
	Purchasing Participation	
ACDBE Operator Name		
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, Form of Guaranty of Agreement
  5. Exhibit E, Insurance Requirements
  6. Exhibit F, ACDBE Commitment Form
  7. Appendix A, Compliance with Nondiscrimination Requirements
  8. Appendix C, Standard Federal Assurances And Nondiscrimination In Construction, Maintenance, Operation Of Facilities

9. Appendix D, Standard Federal Assurances And Nondiscrimination In Construction, Use, Or Access To Facilities
10. Appendix E, Title VI List Of Pertinent Nondiscrimination Authorities
11. Appendix 1, Disadvantaged Business Enterprises- Required Statements
12. Appendix 2, ACDBE Nondiscrimination And Assurance Requirements
13. Appendix 3, ACDBE/DBE Policy And Objective Statements

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. 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 concessions operations at agreed upon locations at DEN. Such privilege shall be on a temporary basis, upon the same terms and conditions as stated herein, unless otherwise agreed to by the Parties. Temporary operations added in accordance with this Section shall terminate on a date determined by City, not to exceed the remaining Term of this Agreement. 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 and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

### **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, Concessionaire covenants that at the option and upon the written request of City and to the extent permitted by applicable law, 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-

cessionaires' 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. 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.

- C. **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.
- D. **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 Concession location proper, adequate, and accurate accounting books and records prepared in accordance with a bookkeeping system approved in writing by the City documenting all business and transactions engaged in by Concessionaire pursuant to this Agreement. Such onsite 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.

- 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 5.09

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 monthly reports, quarterly income statements, and/or Annual Statements 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 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's Independent CPA must yearly certify 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 Premium Value Concessions Programs, as described below, and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program and Premium Value Concessions Program.

#### **C. Premium Value Concessions Program.**

1. City has created a Premium Value Concessions Program ("**PVC Program**") pursuant to Rule 45 and Rule 46 of DEN's Rules and Regulations ("**PVC Rules**") to reward

certain categories of Concessionaires that maintain the high performance standards as defined in the PVC Rules. The PVC Program and PVC Rules may be amended unilaterally by City, and such changes shall be deemed incorporated into this Agreement.

2. Concessionaire acknowledges and accepts that it is required by this Agreement and PVC Rules to participate in the PVC Program. Concessionaire understands and agrees that the City hereby reserves right to unilaterally amend the PVC Rules as needed, in accordance with D.R.M.C. Section 2-91, without need for formal amendment to this Agreement.
3. The major and minor categories and square footage relating to Concessionaire's participation in the PVC Program are listed on the Summary of Contract Provisions. The costs of the PVC Program are paid from the Joint Marketing Fund. Concessionaire agrees that upon written notice from the CEO, Concessionaire shall contribute Concessionaire's pro-rated share of any additional cost of PVC Program. Concessionaire's contribution shall be payable to City in advance without setoff, deduction, prior notice, or abatement.
4. City shall not be obligated to expend more for the PVC Program than is actually collected from Concessionaires. All services related to the PVC Program and all personnel engaged by City to provide services related to the PVC Program, including the services of a Third Party Administrator as defined in the PVC Rules, shall be under the exclusive control and supervision of City.
5. The CEO has the sole and absolute discretion to terminate the PVC Program. Concessionaire acknowledges and accepts that it has no vested rights under the PVC Program or to the PVC Benefit until a benefit determination has been made under the PVC Rules in effect on the date of the Benefit Determination.
6. Concessionaire agrees to waive its right to attorney fees and costs for any litigation between Concessionaire and City over the PVC Program or PVC Rules. Concessionaire covenants to pay all City's reasonable costs and fees in the event of litigation between Concessionaire and City over the PVC Program or PVC Rules.
7. In the event of a conflict between any provision of the PVC Rules and this Agreement, the provisions of this Agreement, including the Summary of Contract Provisions, Exhibits, and Appendices appended and attached hereto, shall govern.

D. **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.** 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 7.16 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.

<b>Liquidated Damages*</b>		
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 Quarterly Income Statement	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. FEDERAL AID REQUIREMENTS**

### **SECTION 9.01 NON-DISCRIMINATION**

- A. Concessionaire covenants 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 binds Concessionaire and sub tier contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- B. Concessionaire covenants it will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are attached hereto as Appendix E and herein incorporated by reference and made a part of this Agreement.
- C. Concessionaire covenants, with regard to the work performed under this Agreement, it will not discriminate on the grounds of race, color, national origin, sex, age, or disability in the

selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire covenants it will not participate directly or indirectly in the discrimination prohibited by any Federal Acts and or Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- D. In all solicitations, either by competitive bidding, or negotiation made by 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 Concessionaire of the Contractor's obligations under this Agreement and the Federal Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- E. Concessionaire covenants it will provide all information and reports required by the Federal Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- F. In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, City will impose such sanctions as it or the FAA may determine to be appropriate including, but not limited to:
  - 1. Withholding payments to Concessionaire under this Agreement until the Concessionaire complies; and/or
  - 2. Cancelling, terminating, or suspending this Agreement, in whole or in part, and re-enter the Premises as if this Agreement had never been made or issued.
- G. This provision will not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.
- H. Concessionaire covenants it will include the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Federal Acts, Regulations and directives issued pursuant thereto. Concessionaire covenants it will take action with respect to any subcontract or procurement as City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request City to enter into any litigation to protect the interests of City. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.
- I. Further, in connection with the performance of work under this Agreement, Concessionaire agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

## 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 F** to meet the ACDBE goal. The Director found the required **Exhibit F** to be responsive and thus, required **Exhibit F** 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 NON-DISCRIMINATION

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate based on race, color, national origin, or sex in performance of this Agreement. Concessionaire will carry out applicable requirements of 49 CFR Part 23 and 26 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations 49 CFR Part 23 and 26. Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23 and 26.
- C. Concessionaire agrees to include the statements in paragraphs A and B above in any subsequent concessions agreement or Contracts covered by 49 CFR Part 23 and 26 that it enters and cause those businesses to include the statements in further agreements.

## SECTION 9.04 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 F** 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 F**. 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 9.05 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 9.06 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 may only be changed by DEN in its sole discretion based on delays caused by DEN.

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 7.16, 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. Routine Refurbishment limitation all refinishing, repair, replacement, and redecorating, repainting, and re-flooring necessary to keep the Premises in First Class condition and shall comply with all other terms and conditions of this 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 time line 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.

### **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 conveys to pay its proportionate share of the Common Maintenance Services provided by City.
- 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. 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 TERMS AND CONDITIONS**

- A. **Required Insurance.** Concessionaire covenants and agrees to secure at its own expense and to keep in force at all times hereof, from the Effective Date, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of obligations under this Agreement by Concessionaire, its agents, representatives, or employees. The types and amounts of insurance coverage Concessionaire must procure are specified in the Certificate of Insurance for Aviation, attached hereto as **Exhibit E**, and the Concessions Handbook, both are incorporated herein by reference. Insurance requirements set forth on **Exhibit E** or the Concessions Handbook do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Concessionaire under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Concessionaire specifically agrees to comply with each condition, requirement, or specification set forth in **Exhibit E** during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage. Insurance canceled without City's consent or failure by Concessionaire to provide evidence of renewal within forty-eight (48) hours after written notice by City is a material breach of this Agreement. If at any time any of the insurance policies shall be or become unsatisfactory to City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to City, Concessionaire shall promptly obtain a new and satisfactory replacement policy and give City an updated certificate of insurance that complies with the new insurance requirements of City.
- B. **Mutual Waiver of Subrogation.** Concessionaire and City waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of DEN for any Loss, to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Concessionaire also waives any right of action it and/or its insurance carrier might have against City (including its respective employees, officers, commissioners, or agents) for any Loss, whether or not such Loss is insured. If any of Concessionaire's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section.

- C. **Certificates Required.** All certificates required by this Agreement shall be sent directly to City in accordance with the procedure identified in the Concessions Handbook. Upon written request, Concessionaire agrees to furnish City the original or a certified copy of said policy or policies.
- D. **Concessionaire's Risk.** City in no way warrants and/or represents that the minimum limits contained herein are sufficient to protect Concessionaire from liabilities that might arise out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, or employees. Concessionaire shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Concessionaire is not relieved of any liability or other obligations assumed or pursuant to this Agreement because of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.
- E. **Governmental Immunity.** The Parties understand and agree that City, its officers, officials, and employees are relying on and do not waive or intend to waive by any provisions of this Agreement, monetary limitations, or 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 City, its officers, officials, and employees.
- F. In the event Concessionaire has failed to remedy any lapse in coverage 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. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify the **Exhibit E**, to reflect modifications in the Insurance Requirements. Any such modification will be confirmed by letter executed by DEN, 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.

#### **SECTION 16.04 GUARANTY OF AGREEMENT**

This Agreement is contingent upon execution of a Guaranty of Agreement by the person or entity(s) designated, in the form shown in **Exhibit D**, Form of Guaranty of Agreement.

### **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 CONCESSIONION**

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:

<b>TO CITY (MAIL DELIVERY):</b>	<b>TO CONCESSIONAIRE (MAIL DELIVERY):</b>
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	Love From Mission JV, LLC 10943 Meade Way Westminster, CO 80031

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:

CONCESSIONAIRE: Mission Yogurt, Inc.

Rod Tafoya

Name DocuSigned by:

*Rod Tafoya*

9300A8FE8377440...

Signature

Member, LLC

Title

11/30/2021

Date

**Contract Control Number:** PLANE-202054060-00  
**Contractor Name:** LOVE FROM MISSION JV 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:

\_\_\_\_\_

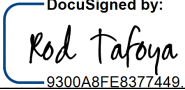
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PLANE-202054060-00  
LOVE FROM MISSION JV LLC

By:  9300A8FE8377449...

Name: Rod Tafoya  
(please print)

Title: Member, LLC  
(please print)

ATTEST: [if required]

By:  9300A8FE8377449...

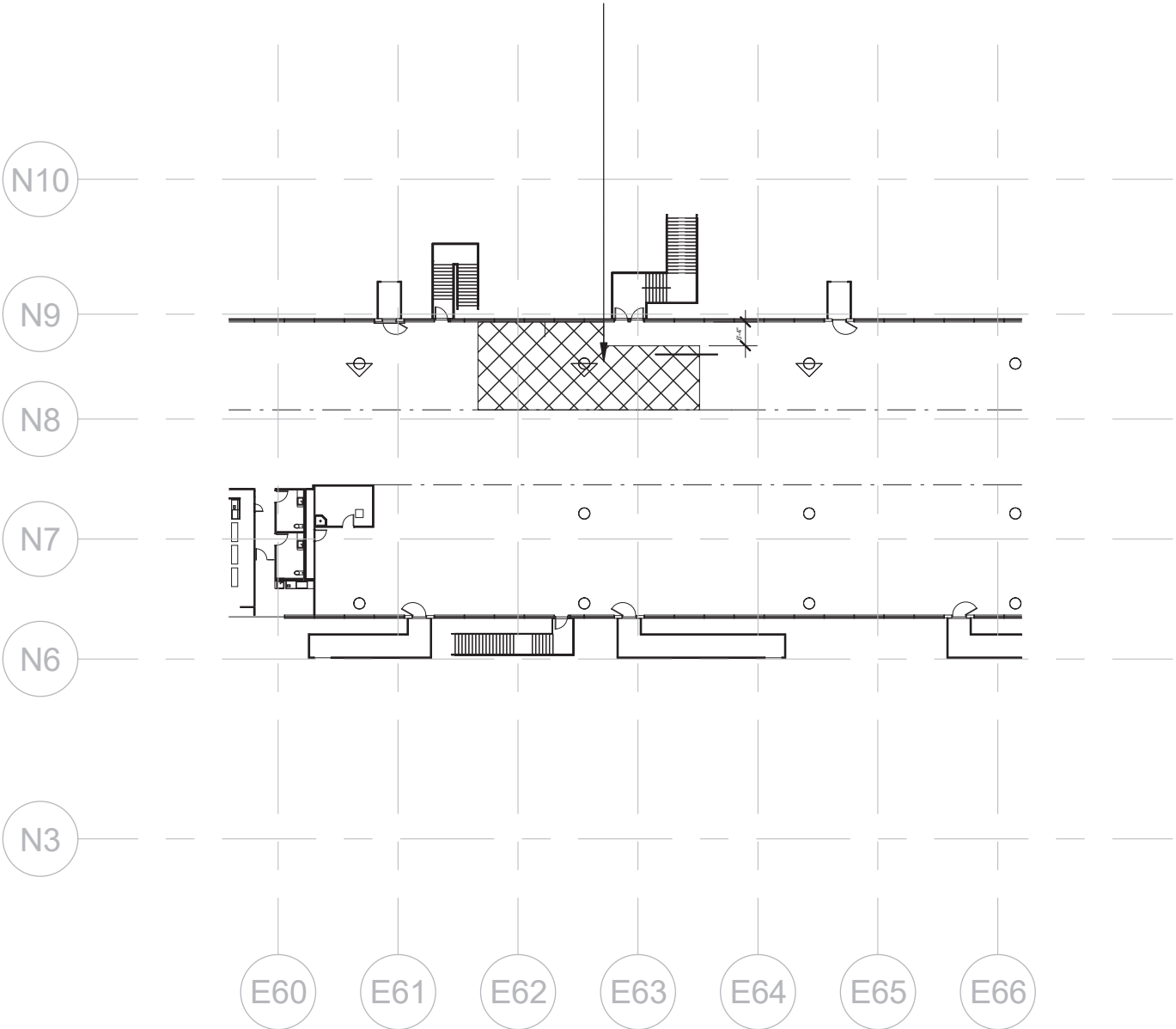
Name: Rod Tafoya  
(please print)

Title: Member, LLC  
(please print)



**EXHIBIT A (PREMISES DESCRIPTION)**

**LOVE FROM MISSION JV LLC  
1222.0 SF**



SCALE: 1" = 40'-0"



DEN Planning and Design

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.

<p><b>KEY PLAN CONCOURSE B</b></p> <p>CCB-02</p>		<p>DENVER INTERNATIONAL AIRPORT</p> <p>EXHIBIT <b>A</b></p> <p>S18-1-2-E63-N8-1</p> <p>LOVE FROM MISSION JV LLC</p> <p>CC#:</p> <p>DATE: 08/02/21</p>
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**EXHIBIT B (PERMITTED USES)**

## **EXHIBIT B (PERMITTED USES)**

### **High Dune**

#### **General Conditions for Package**

- All merchandise items must be packaged in high-quality, easy-to-carry packaging that is consistent with DEN's sustainability objectives.
- Product offerings should be of high quality and offer good value to the customers.
- Dietary needs such as vegetarian, kosher, halal, gluten-free and others should be considered in product selection.

#### **Merchandising Description**

- Locally made branded products along with other sundries, books, magazines, newspapers, small electronics and electronic accessories, travel accessories, souvenirs, collegiate and professional licensed sports merchandise.
- Fresh pre-packaged prepared foods (such as sandwiches and wraps), pre-packaged snack branded retail items (i.e. nuts, candy, candy bars, yogurt, and fruit) and an assortment of chilled bottled beverages, non-alcoholic beverages.
- Flight Information Display Screens (FIDS) should be located within the Premises.

**EXHIBIT C (MONTHLY CONCESSION REPORT)**

**Denver International Airport**  
MONTHLY CERTIFIED STATEMENT OF GROSS REVENUE AND MONTHLY INSTALLMENTS OF RENTS DUE

Month: \_\_\_\_\_  
 TENANT NAME: \_\_\_\_\_  
 DBA NAME: \_\_\_\_\_

AGREEMENT YEAR: \_\_\_\_\_  
 AGREEMENT TYPE: \_\_\_\_\_  
 SPACE NUMBER: \_\_\_\_\_

MONTHLY SUBMISSIONS														
Months in Period	GROSS REVENUE						PERCENTAGE RENT RATE(S) AND BREAKPOINT(S).			Total Percent Rent	Monthly Minimum Guarantee Rent	Monthly Percent Rent Due	Marketing Fund = 1% times Total Reportable Receipts (If Applicable)	Total Due
	Number of Transactions	GRS	Reportable F&B	Reportable ALC	Reportable MERC/SVC	Total	LESS THAN 0%	BETWEEN 0%	GREATER THAN 0%					
January						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
February						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
March						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
April						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
May						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
June						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
July						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
August						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
September						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
October						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
November						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
December						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTALS</b>	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 Revenues, 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.

\_\_\_\_\_  
 Signature Title

\_\_\_\_\_  
 Date

**EXHIBIT D (GUARANTY OF AGREEMENT)**

## ABSOLUTE UNCONDITIONAL GUARANTY

THIS GUARANTY is given by Mission Yogurt, Inc. and Love From USA Group, Inc. ("Guarantors"), to the City and County of Denver, a Colorado municipal corporation acting for and on behalf of its Department of Aviation, whose address is 8500 Pena Blvd., AOB, Room 9810, Denver, Colorado 80249 (the "City").

### RECITALS

**WHEREAS**, Love From Mission JV, LLC, a Colorado limited liability company ("Concessionaire"), has or plans to enter into a concession agreement (Contract Number 202054060) ("Concession Agreement") with the City to operate a concession located at Denver International Airport ("DEN"); and

**WHEREAS**, Guarantors wholly own the limited liability company of Concessionaire.

**NOW THEREFORE**, as inducement to City entering into said Concession Agreement, which City would not enter but for this Guaranty, and in consideration of Guarantors' interest in the Concession Agreement, which Guarantors expressly acknowledge, the undersigned Guarantors do hereby, guarantee, covenant, assent and agree as follows:

1. Guaranty of Payment and Performance. Guarantors hereby assent to all terms and conditions of the Concession Agreement heretofore or hereafter made by Concessionaire and jointly, severally and individually, and unconditionally and irrevocably guarantee to the City the payment and full performance and observance by Concessionaire of all covenants, conditions, obligations, indebtedness, liabilities, and conditions contained in the Concession Agreement.
2. Independent Obligations. Guarantors' liability under this Guaranty is unlimited and the obligations of Guarantors to City shall be continuing until all indebtedness is fully and finally paid. A separate action or actions may be brought and prosecuted against Guarantor, without regard to whether any action is brought against Concessionaire or whether Concessionaire is joined in any such action or actions. No circumstances shall operate to discharge, bar, suspend, or delay City's right to enforce any obligation of Concessionaire to City (including but not limited to the effect of any statute of limitations or the Bankruptcy Code or any similar present or future federal or state law) or have any effect upon the enforceability of Guarantors' obligations to City hereunder.
3. City's Right to Select Remedies. City may proceed against Guarantors hereunder without proceeding against Concessionaire, without proceeding against any other person, or without proceeding against or exhausting any security now or hereafter held by City for the obligations hereby guaranteed, and without pursuing any other right or remedy available to City whatsoever.
4. City's Delays and Waivers. No delay, forbearance, neglect or omission on City's part in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent by City, and



no purported amendment of this Guaranty, shall be binding upon City unless it is in writing and signed by City.

5. Waivers by Guarantors; Payment of Collections Expenses. Guarantors waive all presentments, demands for payments or performance, notices of nonpayment or nonperformance, notices of default, protests, notices of protest, notices of dishonor, notice of acceptance of this Guaranty, and all other notices whatsoever, and agrees to pay on demand all costs and expenses, including reasonable attorney fees, which may be incurred by City in connection with the enforcement of this Guaranty, together with interest at the rate stated in the Concession Agreement.
6. Liability of Guarantors. The liability of the Guarantors shall not be affected by reason of:
  - a. City's delay, waiver, forbearance or neglect in enforcing any covenant against Concessionaire or Guarantors;
  - b. City's failure to notify Guarantors of any default by Concessionaire;
  - c. Any amendment, variation, extension or renewal of the Agreement agreed to by City and Concessionaire whether with or without the notice to or knowledge of Guarantors;
  - d. Any assignment or termination of the Agreement or any subleasing or abandonment by Concessionaire of all or part of the Concession Space or its interest in the Agreement;
  - e. Any other security which City may now or hereafter possess or obtain with respect to the Agreement, or the surrender or release by City of any portion thereof; or,
  - f. Any termination of the Agreement, to the extent that Concessionaire thereafter continues to be liable to City.
7. The Guaranty shall be binding upon each of the Guarantors, their respective heirs, successors, assigns and legal representatives, and shall endure to the benefit of City, its successors, assigns and legal representatives.
8. This Guaranty shall apply to any defaults under the Agreement, whether inchoate or matured, occurring, accruing, or with the passage of time would have occurred or accrued on or before the expiration of the term or any extended term of the Concession Agreement.
9. Applicable Law. This Guaranty shall be construed and enforced in accordance with the laws of the State of Colorado. Wherever possible, each provision of this Guaranty shall be interpreted so as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

10. Consent to Jurisdiction. For purposes of any action relating to this Guaranty, Guarantors hereby consents to the personal jurisdiction of the state and federal courts of the State of Colorado.

[SIGNATURE PAGE FOLLOWS]



**EXHIBIT E**  
**(INSURANCE REQUIREMENTS)**

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

**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: [linda.nedved@flydenver.com](mailto:linda.nedved@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 F**  
**(ACDBE Commitment Forms)**

DENVER INTERNATIONAL AIRPORT  
DEN COMMERCE HUB  
ACDBE COMMITMENT FORM



**Proposal for:** \_\_\_\_\_, \_\_\_\_\_  
Concession Type, Name of Concession Opportunity  
1-6 EAST EXPANSION TRAVEL  
CONVENIENCE RFP 202054060

SECTION A – PROPOSER INFORMATION

**Name of Firm:** Love From Mission JV, LLC  
**Address:** 10943 Meade Way  
**City:** Westminster **State:** CO **Zip:** 80439  
**Contact Person:** Roderick J. Tafoya **Telephone:** (720) 346-8015  
**Email:** rod@missionyogurt.com  
**Is your firm ACDBE Certified:**  Yes, If Certified, Attach Certification Letter  No

SECTION B – ACDBE COMMITMENT

The ACDBE goal on this concession is 25 %.

*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 25 % 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 \_\_\_\_\_ % 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
Love From USA Group, Inc.	Joint Venture Partner	35%
2340 County Road C, Roseville, MN 55343		

(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				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input checked="" type="checkbox"/>	

(Use Additional Sheets if Necessary)

## 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. <b>(Include as an Attachment)</b>	<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. <b>(Include as an Attachment)</b>	<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.). <b>(Please attach copies of solicitation letters of assistance and/or describe, as an Attachment to this section, the personal contact made)</b>	<input type="checkbox"/>	<input type="checkbox"/>
7. Were concession-related opportunities to this project advertised in minority/women newspapers and trade journals? <b>(If yes, please include a copy of the advertisement or detail the name of the publication(s), date of advertisement and describe the solicitation)</b>	<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. <b>(Please detail any assistance that was provided or if they were referred, to whom)</b>	<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 <b>(Include as an Attachment)</b> : (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: Roderick J. Tafoya, President

SIGNATURE:



DATE:

2/4/2021

**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](mailto:mark.white@flydenver.com)

**From:** City and County of Denver <[denver@mwdbbe.com](mailto:denver@mwdbbe.com)>  
**Date:** March 5, 2020 at 2:23:06 PM CST  
**To:** [mngirl000@aol.com](mailto:mngirl000@aol.com)  
**Subject:** City and County of Denver: ACDBE Approval  
**Reply-To:** City and County of Denver <[denver@mwdbbe.com](mailto:denver@mwdbbe.com)>

Patricia Chinander  
Love From USA Group, Inc.  
2340 West County Road C  
Suite 180  
Roseville, MN 55113

Dear Patricia Chinander:

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 Love From USA Group, 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](http://www.coloradodbe.org). Your firm is certified with the following dates:

March 5, 2020 to March 5, 2023

Love From USA Group, 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

NAICS 445120: CONVENIENCE FOOD STORES  
NAICS 445291: BAKED GOODS STORES, RETAILING ONLY (EXCEPT IMMEDIATE CONSUMPTION)  
NAICS 445292: CONFECTIONERY STORES, PACKAGED, RETAILING ONLY  
NAICS 445299: SPECIALTY FOOD STORES  
NAICS 448150: CLOTHING ACCESSORIES STORES  
NAICS 453220: GIFT SHOPS  
NAICS 453220: NOVELTY SHOPS  
NAICS 453220: SOUVENIR SHOPS

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 4, 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,

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](mailto:SENECA.HOLMES@FLYDENVER.COM) | [WWW.FLYDENVER.COM](http://WWW.FLYDENVER.COM)

City and County of Denver

Office of Economic Development

<http://www.denvergov.org/oed>

<http://denver.mwdbe.com>



**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: **Love From Mission JV, LLC** Contact Person: **Roderick J. Tafoya**

Address: **10943 Meade Way** City: **Westminster** State: **CO** Zip: **80031**

Email Address: **rod@missionyogurt.com** Phone: **(720) 346-8015**

**Joint Venture Participants**

Name: **Love From USA Group, Inc** Contact Person: **Pat Chinander**

Address: **2340 County Road C** City: **Roseville** State: **MN** Zip: **55343**

Email Address: **pchinander@lovefromusagroup.com** Phone: **(651) 639-1413**

% Ownership: **35%** ACDBE Certifying Entity: **City and County of Denver** ACDBE Certification Date: **11/17/2016**

Type of Work for which Certification was granted: **Specialty retail, food and beverage, news and convenience**

Name: **Mission Yogurt, Inc.** Contact Person: **Roderick K. Tafoya**

Address: **10943 Meade Way** City: **Westminster** State: **CO** Zip: **80031**

Email Address: **rod@missionyogurt.com** Phone: **(720) 346-8015**

% Ownership: **65%** ACDBE Certifying Entity: **N/A** ACDBE Certification Date: **N/A**

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

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: \$ **\$373,503** % **35**

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

**Midterm refurbishment (15% of initial capital): \$56,025**

Source of Funds for the ACDBE Capital Contributions:

See attachment.

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

See attachment.

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

See attachment.

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:

See attachment

b. Non-ACDBE joint venture participant:

See attachment.

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:

See attachment.

b. Non-ACDBE joint venture participant:

See attachment

Which firm will be responsible for accounting functions relative to the joint venture's business? **Mission Yogurt, Inc.**

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?

**Vendors, financing institutions, subcontractors, and other parties will be decided on mutually by Mission Yogurt, Inc. and Love From USA Group, Inc. as needed based on service, quality and price.**

## 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	2	2	9
Administrative	3	6	
Support	10	1	
Hourly Employees			45

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

Who will they be employed by? **Love From Mission JV, LLC**

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

Yes  
(√)

**X**

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
0	N/A	

**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.

N/A	

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

## ATTACHMENT

### JOINT VENTURE ELIGIBILITY

**a. Source of Funds for the ACDBE Capital Contributions:**

Love From USA Group, Inc. will fund its portion of the capital contribution (35%) with cash on hand and debt via a bank loan if it is deemed beneficial.

**b. Describe the portion of the work or elements of the business controlled by the ACDBE or DBE:**

Love From USA Group, Inc. will control:

- Store design and layout
- Built out of brand and concept
- Produce and merchandising development
- Inventory management
- Visualization and merchandising
- Product pricing
- Promotions
- Attending shows and vendor product fairs

**c. Describe the portion of the work or elements of the business controlled by the non-ACDBE or DBE:**

Mission Yogurt, Inc. will control:

- Daily operations
- Recruiting, hiring, training
- Human resources
- Staffing and scheduling
- Payroll
- Customer service
- Inventory management
- POS operations
- Store maintenance
- Accounting
- Marketing and public relations
- Financial Reporting
- Regulatory compliance

**d. Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture:**

Mission Yogurt, Inc. and Love From USA Group, Inc. will be jointly responsible for managing the joint venture and its employees. Please see specific responsibilities in our responses below.

**e. Describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture:**

**ACDBE joint venture participant:**

Love From USA Group, Inc. will be primarily responsible for:

- Store design and layout
- Built out of brand and concept
- Produce and merchandising development
- Inventory management
- Visualization and merchandising
- Product pricing
- Promotions
- Attending shows and vendor product fairs

**Non-ACDBE joint venture participant:**

Mission Yogurt, Inc. will be primarily responsible for:

- Daily operations
- Recruiting, hiring, training
- Human resources
- Staffing and scheduling
- Payroll
- Customer service
- Inventory management
- POS operations
- Store maintenance
- Accounting
- Marketing and public relations
- Financial Reporting
- Regulatory compliance

**f. Joint Venture Agreement**

Please find attached a copy of the joint venture agreement for Love From Mission JV, LLC.

**OPERATING AGREEMENT  
OF  
LOVE FROM MISSION JV, LLC**

Dated as of 2/4, 2020

**OPERATING AGREEMENT  
OF  
LOVE FROM MISSION JV, LLC**

This OPERATING AGREEMENT (this “**Agreement**”), dated as of     February 4,    , 2020 (the “**Effective Date**”), is entered into by and between Mission Yogurt, Inc., a Colorado corporation (“**MYI**”), and Love From USA Group, Inc, an Illinois corporation (“**Love**,” and collectively with MYI, the “**Members**,” and each, a “**Member**”) and Roderick Tafoya, Reyes Tafoya and Patricia Chinander and Domenick George as the initial “Managers” (as defined in this Agreement).

**PRELIMINARY STATEMENTS**

- A. The Articles of Organization (the “**Articles of Organization**”) to form Love from Mission JV, LLC (the “**Company**”) have been filed with the Colorado Secretary of State under and pursuant to the Colorado Limited Liability Company Act (the “**Act**”).
- B. MYI has substantial experience relating to investing in, operating and managing airport concessions; and Love, a certified Airport Concessions Disadvantaged Business Enterprise (“**ACDBE**”), has substantial experience relating to suppliers, sourcing, branding, and merchandising of certain specialty retail products.
- C. The Members wish to engage in a joint venture through the Company for the establishment and operation of one or more specialty retail airport concessions (the “**Joint Venture Purpose**”), in connection with which each Member will make the contributions and have the responsibilities set forth herein, consistent with their respective skills and experience.
- D. In accordance with the Act, the Members and the Managers now desire to state the Company’s operating agreement in the form of this Agreement to fully set forth the rights, powers, and interests of the Members with respect to the Company and its limited liability company membership interest therein and to provide for the management of the business and operations of the Company.

**ARTICLE I  
GENERAL**

**1.1 Formation.** The Company has been formed pursuant to the Act. The Members agree that the Company will be governed by the terms and conditions set forth in this Agreement.

**1.2 Articles of Organization.** The Articles of Organization, which comply with the requirements of the Act, have been filed with the Colorado Secretary of State. The Managers shall execute such further documents (including amendments to the Articles of Organization) and take such further action as shall be appropriate or necessary to comply with the requirements of law for the qualification and operation of a limited liability company in all jurisdictions where the Company elects to carry on its business.

**1.3 Purpose and Power.** The purpose and business of the Company shall be the conduct of any business or activity in connection with the Joint Venture Purpose and any other business or activity that may be lawfully conducted by a limited liability company organized pursuant to the Act, and the Company shall have all of the powers of a limited liability company conferred by the Act. Any or all of the foregoing

activities may be conducted directly by the Company or indirectly through another Company, joint venture or other arrangement.

**1.4 Term.** The Company shall have perpetual existence and shall continue until it is dissolved in accordance with this Agreement. Upon the dissolution of the in accordance with this Agreement, its legal representative or successor shall become members of the Company and shall exercise all rights and powers conferred upon the Members and the Managers by this Agreement.

**1.5 LLC Agreement.** To the full extent permitted by the Act, this Agreement shall control as to any conflict between this Agreement and the Act or as to any matter provided for in this Agreement that is also provided for in the Act.

**1.6 Office; Agent.**

(a) The principal office of the Company will initially be at 1333 W. 120th Ave., Suite 207, Westminster, Colorado 80234. The principal office of the Company, which need not be in the State of Colorado, may be changed by the Managers from time to time in accordance with the applicable provisions of the Act and any other applicable law. The Managers shall promptly notify the Members of any change in such principal office.

(b) The location of the registered office of the Company in the State of Colorado will be at 10943 Meade Way, Westminster, Colorado 80031 and the registered agent for service of process on the Company at such registered office shall be The Corporation Company. The Managers or an officer of the Company may designate another person to act as registered agent in the manner provided by the Act.

**ARTICLE II  
MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS**

**2.1 Membership Interests; Initial Capital Contributions.** The limited liability company interest in the Company held by each Member (the "**Membership Interests**") is set forth on Exhibit A. Prior to or concurrently with the execution and delivery of this Agreement, each of the Members has (a) made an initial capital contribution to the Company in the amount set forth on Exhibit A and (b) committed to make additional capital contributions to the Company up to the aggregate amount set forth on Exhibit A (each, an "**Additional Capital Contribution**"), in accordance with Section 2.2.

**2.2 Additional Capital Contributions; Member Loans to other Members.** The Managers may, from time to time in their discretion, request additional capital contributions from the Members. The Members may, but are not required to, make such requested additional capital contributions, if any; provided that the Members shall be required to make such requested additional capital contributions up to an amount equal to their respective Additional Capital Contribution. Additional capital contributions, if any, shall be made in proportion to the Members' relative Membership Interests; provided that one Member may make a loan to another Member (a "**Member Loan**") should such other Member be unable to pay all or any portion of the required additional capital contributions at the time required. Any Member Loan shall be made pursuant to a commercially reasonable promissory note and bear interest at an annual rate of 8%. Any Member Loan shall not exceed 90% of the required additional capital contribution and the term of such Member Loan shall not exceed the term of the concession agreement for which such additional capital contribution is required. Any Member Loan may be secured by and repaid from distributions to be made to the borrowing Member pursuant to Section 3.1. Exhibit A shall be revised by the Manager from time to time to reflect additional capital contributions (and additional Members, if any). Subject to this Section 2.2 and Section 5.2, the Managers may, from time to time and in their discretion, request other additional capital contributions from the Members; provided that the Managers shall use commercially reasonable efforts to

cause the Company to recycle its revenues and profits in a manner such that the Company does not need other additional capital contributions from any Member.

**2.3 Member Loans and Other Debt.** The Managers may, from time to time and in their discretion, cause the Company to borrow funds from any source, including any Member. Any loan made by a Member to the Company shall be represented by a commercially reasonable promissory note and shall be payable out of the first available funds, including proceeds from the sale of all or any portion of the assets of the Company; provided that the foregoing shall not prohibit (a) distributions pursuant to Section 3.3 or (b) distributions pursuant to Section 3.1 so long as such distributions pursuant to Section 3.1 are unanimously approved by the Managers and do not cause the Company to be in breach of or default under the terms of any applicable promissory note (subject to the waiver of such breach or default in accordance with the terms of such promissory note).

**2.4 Return of Capital Contributions.** Capital contributions shall be expended in furtherance of the business of the Company. All costs and expenses of the Company shall be paid from its funds. No interest shall be paid on capital contributions. No Manager shall have any personal liability for the repayment of any capital contribution to the Members.

**2.5 Enforcement of Capital Contribution Obligations; Default.** Except as expressly agreed in writing by the Members, no person other than the Company shall have the right to enforce any obligation of a Member to contribute capital to the Company, and specifically no lender or other third party shall have any such right. If a Member fails to make all or any portion of an Additional Capital Contribution as required pursuant to Section 2.2, the Managers may, in their sole discretion, cause the Company to (a) set off from any distributions that would otherwise be made to such Member pursuant to this Agreement (including, for the avoidance of doubt, any distributions pursuant to Sections 3.1 and 3.3) an aggregate amount equal to the portion of such Additional Capital Contribution not made by such Member as required pursuant to Section 2.2 or (b) redeem for no consideration all or any portion of such Member's Membership Interest up to an aggregate amount equal to the portion of such Additional Capital Contribution not made by such Member as required pursuant to Section 2.2.

### ARTICLE III DISTRIBUTIONS

**3.1 Distributions Generally.** Subject to Section 2.3, the Managers may cause the Company to make distributions of cash or other assets of the Company to the Members as follows:

(a) First, to the members in proportion to their relative capital contributions until each has received distributions in an aggregate amount equal to their relative aggregate capital contributions (as set forth on Exhibit A, as revised from time to time in accordance with Section 2.2) made prior to the date of the relevant distribution then being made;

(b) Second, to the Members in proportion to their relative Membership Interests.

**3.2 Distributions Subject to Promissory Note.** For the avoidance of doubt, a Member's receipt of distributions pursuant to Section 3.1 shall be subject to the terms of any promissory note entered into by such Member in connection with any Member Loan pursuant to Section 2.2.

**3.3 Tax Distributions.** On or before the date upon which Members are required to make each payment of their federal estimated income taxes, prior to making any other distributions, the Company shall distribute to each Member an amount with respect to the period covered by such required payment so that



the aggregate amounts distributed to such Member during the calendar year to date under Section 3.1 and this Section 3.3 equals the product of (a) the Member's allocable share of the estimated net Profits and Losses of the Company for the calendar year through the date of the distribution *multiplied by* (b) 40% (or other such rate as determined by the Managers); provided that in no event shall the Company be required to distribute more than available cash (as determined by the Managers ("**Tax Distributions**"). Tax Distributions made with respect to estimated tax payments made in January of any year shall be deemed to have made on December 31 of the prior year. The amount of any Tax Distributions to a Member shall be treated as a nonrecourse advance against and shall be applied to reduce distributions that such Member would otherwise be entitled to receive under this Agreement and shall not be adjusted for any adjustment made as a result of any election made by the Company pursuant to Section 754 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or any allocation made pursuant to Section 704(c) of the Code.

#### ARTICLE IV ALLOCATION OF PROFIT AND LOSS

**4.1 Determination of Profit and Loss.** Profit or Loss shall be determined on an annual basis and for such other periods as may be required.

**4.2 Allocation of Profit and Loss.** Except as otherwise provided in Section 4.3, Profits and Losses shall be allocated among the Members in a manner such that, as of the end of such fiscal year and taking into account all prior allocations of Profits and Losses and all distributions made by the Company through such date, the adjusted Capital Account balance of each Member is, as nearly as possible, equal to the distributions that would be made to such Member pursuant to Section 3.1 if the Company were dissolved, its affairs wound up and assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied, and the net assets of the Company were distributed in accordance with Section 3.1 (taking into account amounts treated as advances under Section 3.3) immediately after such allocation.

**4.3 Regulatory Allocations.** Notwithstanding Section 4.2, although the Members do not anticipate that events will arise that will require application of this Section 4.3, the provisions governing the allocation of taxable income, gain, loss, deduction and credit (and items thereof) set forth in the Treasury Regulations promulgated under Section 704(b) of the Code are incorporated in this Agreement by reference as may be necessary to provide that the Company's allocation provisions contain a so-called "Qualified Income Offset" and comply with all provisions relating to the allocation of so-called "Nonrecourse Deductions" and "Member Nonrecourse Deductions" and the chargeback thereof ("**Regulatory Allocations**"); provided, that the Members intend that all Regulatory Allocations that may be required will be offset by other Regulatory Allocations or special allocations of tax items so that each Member's share of the Profits and Losses and capital of the Company will be the same as it would have been had the events requiring the Regulatory Allocations not occurred. For this purpose, the Managers, based on the advice of the Company's auditors or tax counsel, are hereby authorized to make such special allocations of tax items as may be necessary to minimize or eliminate any economic or tax distortions that may result from any required Regulatory Allocations.

**4.4 Capital Accounts.** A separate capital account (each a "**Capital Account**") for each Member shall be established on the books and records of the Company in compliance with Section 704(b) of the Code and the Treasury Regulations thereunder. The initial Capital Accounts of each Member as of the date hereof shall be set forth on Exhibit A. This Section 4.4 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Treasury Regulation.

**4.5 Tax Allocations.** Except as otherwise provided in this Section 4.5, or as otherwise required by the Code and the rules and Treasury Regulations promulgated thereunder, Company income, gain, loss,

deduction, or credit for income tax purposes shall be allocated in the same manner the corresponding book items are allocated pursuant to this Agreement. In accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder, if property is contributed to the Company, or revalued in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f), and the fair market value of such property on the date of its contribution or revaluation differs from the adjusted tax basis of such property, any income, gain, loss and deduction with respect to such property shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between the adjusted tax basis to the Company of such property for federal income tax purposes and the fair market value of such property on the date of contribution to the Company. Such allocations shall be made using a reasonable method that is consistent with the purpose of Section 704(c) of the Code pursuant to Treasury Regulation Section 1.704-3.

**4.5 Definitions.** The following terms have the following meanings for purposes of this Article IV:

“**Carrying Value**” shall mean with respect to property contributed to the Company by a Member, the fair market of such property at the time of contribution as agreed to in good faith by the Members. The initial Carrying Value of any other property shall be the adjusted basis of such property for federal income tax purposes at the time it is acquired by the Company. The initial Carrying Value of a property shall be reduced (but not below zero) by all subsequent depreciation, cost recovery, depletion and amortization deductions with respect to such property as taken into account in determining Profits and Losses. The Carrying Value of any property shall be adjusted from time to time in accordance Treasury Regulation Section 1.704-1(b)(2)(iv)(m), and to reflect changes, additions or other adjustments to the Carrying Value for dispositions, acquisitions or improvements of Company properties, as deemed appropriate by the Managers.

“**Profits and Losses**” means the Company’s net income or net losses as determined by the Company for purposes of maintaining the Members’ Capital Accounts pursuant to Section 4.4; provided that all items allocated pursuant to Sections 4.3 shall be excluded from the computation of Profits. and Losses

## ARTICLE V MANAGEMENT

**5.1 Management Authority.** Management of the Company shall be vested in the persons or entities appointed by the Members as the “**Managers**” of the Company. MYI shall be entitled to appoint two Managers (the “**MYI Managers**”). The initial MYI Managers are Roderick Tafoya and Reyes Tafoya. Love shall be entitled to appoint two Managers (the “**Love Managers**”). The initial Love Managers are Patricia Chinander and Domenick George. Subject to the specific responsibilities of each Manager set forth in Section 5.2, the Managers shall have the power and authority to conduct the business of the Company and are hereby expressly authorized on behalf of the Company to make all decisions with respect to the Company’s ordinary course of business and to take all actions necessary to carry out such decisions. The Managers or persons designated by the Managers, including officers and agents appointed by the Managers, will be the only persons authorized to execute documents that will be binding on the Company. At any time there is more than one Manager, decisions on all matters will be made by majority vote of the Managers and each Manager will have one vote; provided that if at any time of determination there is only one MYI Manager then serving, such MYI Manager shall have two votes. Subject to the terms of this Agreement, the Managers shall have responsibility for management of the business affairs of the Company and shall have the power and authority to do all things necessary to carry out the business of the Company.

## 5.2 Restrictions on Management Authority; Management Responsibilities.

(a) Except at any time when there is no Love Manager then serving and such vacancy has continued for 30 consecutive days, no Manager shall have the authority to, and each Manager covenants and agrees that it shall not take or do any of the following acts without the unanimous approval of the Managers, including the Love Manager:

(i) Amend the Articles of Organization (except for administrative amendments);

(ii) Amend this Agreement in a manner that is materially adverse to Love;

(iii) Request additional capital contributions from the Members other than in proportion to the relative Membership Interests of the Members;

(iv) Authorize the Company to incur indebtedness that would result in the aggregate indebtedness of the Company being in excess of \$500,000;

(v) Authorize the Company to bid on or enter into any additional airport concession arrangements other than any airport concession arrangements currently operated or contemplated by the Company as of the Effective Date (such as the specialty retail concession currently contemplated at Denver International Airport);

(vi) Enter into any agreement to merge or divest the Company, including the sale of substantially all of the assets of the Company;

(vii) Materially amend the duties of any Manager or Member hereunder;

(viii) Enter into any new line of business unrelated to the Joint Venture Purpose;

(ix) Admit new Members; or

(x) Acquire land.

(b) The Members' duties set forth below, through their respective Managers and designees, reflect a distinct and clearly defined portion of the work required to operate the contemplated concessions, and the responsibilities of Love equal or exceed its proportionate ownership in the Company.

(i) The MYI Managers and their designees shall be responsible for administrative operations of the Company, including accounting, legal, and tax matters, information technology, maintaining books and records of the Company, implementing such administrative systems and procedures as may be necessary or appropriate for the operations of the Company, payroll administration, and preparing financial statements and other financial information of the Company, and for managing day-to-day operations of the airport concession(s) of the Company, including selecting, managing, training, hiring, and firing concession employees (human resources), managing and purchasing inventory and supplies, marketing, maintaining airport, customer and licensor relations, and compliance with airport rules and regulations.

(ii) The Love Manager and its designees shall be responsible for product mix, merchandising, visual merchandising displays, branding, selecting suppliers and sourcing.

(iii) The Managers each shall be responsible for participating in and review of the Company's business plan, participating in meetings of the Managers, and similar high-level activities of the Company .

**5.3 Reliance by Third Parties.** No third party dealing with the Company shall be required to ascertain whether the Managers are acting in accordance with the provisions of this instrument. All third parties, other than a third party who is an affiliate of the Managers, may rely upon a document signed by the Managers as binding the Company. If the Managers act without authority, the Managers shall be liable to the Members for all damages arising out of its unauthorized actions.

**5.4 Transactions Between Company and Manager.** The Company may contract and deal with any of the Managers or the Members, or any person or entity affiliated with any of the Managers or the Members, *provided* that such contracts and dealings are either (a) entered into in the ordinary course of business of the Company, consistent with past practice, (b) on substantially arms' length terms, or (c) approved by the Managers, including the Love Manager. Notwithstanding the foregoing, due to the need for consistent compensation and benefits among the airport concessions affiliated with the Company and MYI's existing operations, the Managers shall cause the Company to utilize employees of MYI or its affiliates for necessary staffing of the Company's airport concessions pursuant to employee leasing arrangements between MYI and the Company, at the Company's expense. Further, due to the need for consistent staffing, the Managers shall cause the Company to place each such employee, to the extent reasonably practicable, at only one location of the Company's airport concessions.

**5.5 Exculpation.** The Managers shall have no liability under a judgment, decree, or order of a court, or in any other manner, for any debt, obligation, or liability of the Company. The Company shall indemnify and hold harmless the Managers, its agents, and employees against and from any personal loss, liability, or damage incurred in the conduct of the Company's business as a result of any act or omission, or any error of judgment, unless such loss, liability, or damage results from such person's fraud, willful misconduct or gross negligence. Any such indemnification shall be paid only from the assets of the Company, and no Manager, employee, or third party shall have recourse against the Members for such indemnification.

**5.6 Management Fees and Reimbursements.** The Managers shall not be entitled to any compensation for their service as Managers. The Managers and Members shall be entitled to reimbursement by the Company for reasonable out-of-pocket expenses incurred on behalf of the Company; provided that each such expense or group of related expenses over \$1,000 is approved in advance by the Managers. For the avoidance of doubt, nothing in this Agreement shall be deemed to prohibit compensation paid to any Manager in his or her capacity as an officer or employee of the Company or its affiliates.

**5.6 Removal.** The Managers shall serve at the pleasure of the Members and any Manager may be removed at any time, with or without cause, by the Member appointing such Manager. Upon removal of a Manager, the Member who appointed such Manager shall be entitled to appoint a replacement manager. Notwithstanding the foregoing, in the event of a Manager's conviction of a felony or other crime punishable by one year or more in prison, material breach of this agreement, or fraud, bad faith, or willful misconduct, as determined by a majority of the Managers, such Manager may be removed and a replacement manager appointed by a majority of the Managers.

**5.7 Resignation.** A Manager may resign at any time by giving written notice of resignation to the Members. Unless otherwise specified in the notice, the resignation shall take effect upon receipt by the Members and an acceptance of the resignation by it shall not be necessary to make it effective. In the event of a Manager's resignation, death, or disability, the Member who appointed such Manager shall be entitled to appoint a replacement manger.

**5.8 Duties.** To the fullest extent permitted by applicable law, no Manager has fiduciary duties or liabilities relating thereto to the Company or any Member other than the contractual obligation of good faith and fair dealing. To the extent that, under applicable law, a Manager has duties or obligations to the Company or to any Member, that Manager shall not be liable to the Company or to any such Member for his or her good faith reliance on this Agreement.

**5.9 Officers.** The Managers may appoint such officers as the business of the Company may require, each of whom will have such authority and perform such duties as the Managers, from time to time, may specify. Any number of offices may be held by the same person, and each such person shall serve in the appointed office until such person's death, disability, or removal from office.

**5.10 Partnership Representative.** Roderick Tafoya is hereby designated as the "partnership representative" as such term is defined in Section 6223(a) of the Code. The appointment of any successor partnership representative will require the approval of the Managers. Subject to the provisions of this Agreement, the partnership representative is authorized and required to represent the Company in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The partnership representative shall give to the Members prompt written notice upon receipt of advice that the Internal Revenue Service or any other taxing authority intends to examine any Company tax return or the books and records of the Company. The partnership representative shall use its commercially reasonable efforts to apply the rules and elections under the Budget Act in a manner that minimizes the likelihood that any Member would bear any material tax as a result of any audit or proceeding that is attributable to another Member. The partnership representative and the Company shall make or cause to be made all available elections as required by the Code and the Treasury Regulations to cause the Company to be classified as a partnership for federal income tax purposes.

## **ARTICLE VI MEMBERS**

**6.1 Members; Admission of Additional Members.** The Members are the sole members of the Company as of the Effective Date. The Membership Interests will not be governed by Article 8 of the Colorado Uniform Commercial Code and will not be certificated. A person may be admitted as an additional member of the Company only with the consent of the Managers and Members.

**6.2 Participation.** Except as set forth in this Agreement, the Members, in their capacity as members of the Company, shall take no part in the control, management, direction, or operation of the affairs of the Company. The Members, in their capacity as members of the Company, shall have no power to bind the Company.

**6.3 Liability.** The Members shall have no liability under a judgment, decree, or order of a court, or in any other manner, for any debt, obligation, or liability of the Company.

**6.4 Meetings.** The Members shall use reasonable efforts to hold quarterly meetings at which all Members are present to discuss the business, condition, and results of operations of the Company; provided that such meetings shall be held no less frequently than twice in any twelve-month period. All actions of the Members may be evidenced by a written consent describing the action taken, signed by the Members. Any action evidenced by such a written consent is effective on the date the consent is signed by the Members, unless the consent specifies a different effective date.

**6.5 Conflicts of Interest.** The Members and the Managers shall be entitled to engage in other activities and businesses, including, without limitation, activities and businesses competitive with the

activities and business of the Company. Neither the Member nor the Manager shall be required to give the Company the opportunity to participate in, or benefit from, any such activities or businesses. Neither the Member nor Manager shall be deemed to violate any duty or obligation to the Company merely because the Member's or Manager's conduct furthers the Member's or Manager's own interest. The Member or Manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company, and has the same rights and obligations with respect to any such matters as those of a person who is not a member of the Company.

## ARTICLE VII TRANSFER OF MEMBER'S INTEREST

**7.1 Transfer of Interest.** Except as expressly provided in this Article VII, no Member may transfer, or create a lien or other encumbrance on, all or any portion of its Membership Interests without the prior written consent of the Managers, and any attempt to the contrary is void *ab initio*. Notwithstanding the foregoing, a Member may transfer all or a portion of its Membership Interest (a "**Permitted Transfer**") without the prior written consent of the Managers to an entity that is beneficially owned and controlled by, or under common beneficial ownership and control with, such Member (a "**Related Party**"); provided that such Related Party shall be required to immediately transfer such Membership Interest back to the original transferor Member in the event that such Related Party is no longer beneficially owned and controlled by, or under common beneficial ownership and control with, such original transferor Member. Upon transfer of the entirety of a Member's interest in the Company in accordance with this Agreement, the transferee shall, without further documentation or action, become the member of the Company.

**7.2 Right of First Refusal.** Except in the case of any Permitted Transfer, each Member shall have a right of first refusal if any other Member (the "**Offering Member**") receives a bona fide written offer from a third party that is not a Related Party of a Member ("**Independent Third Party**") that the Offering Member desires to accept to purchase all or any portion of the Membership Interests owned by the Offering Member (the "**Offered Units**"). The Offering Member shall, within ten days of receipt of the offer from the Independent Third Party, give written notice (the "**Offer Notice**") to the other Members stating that it has received a bona fide offer from an Independent Third Party and specifying: (i) the number of Offered Units to be sold by the Offering Member; (ii) the name of the person or entity who has offered to purchase such Offered Units (the "**Proposed Purchaser**"); (iii) the price (which will be payable solely in cash) and (iv) the other terms and conditions of the proposed offer. Upon receipt of the Offer Notice, each Member shall have ten days (the "**ROFR Notice Period**") to elect to purchase all (and not less than all) of the Offered Units by delivering a written notice (a "**ROFR Offer Notice**") to the Offering Member and the Company stating that it offers to purchase such Offered Units on the terms specified in the Offer Notice. Any ROFR Offer Notice shall be binding upon delivery and irrevocable by the applicable Member.

### **7.3 Tag-Along Rights.**

(a) Subject to Section 7.2, if any Member (the "**Selling Member**") proposes to transfer any of its Membership Interests to any person other than a Related Party (the "**Proposed Transferee**"), then the Selling Member shall deliver written notice of such proposed sale to the other Members (the "**Sale Notice**"), which will include the material terms of such proposed sale and will attach the most recent drafts of any agreements or written offers from the Proposed Transferee setting forth the terms of such sale or other disposition.

(b) Each Member shall exercise its right to participate in such sale of Membership Units by the Selling Member (a "**Tag-along Sale**") by delivering to the Selling Member a written notice (a "**Tag-Along Notice**") stating its election to do so no later than ten days after receipt of the Sale Notice. Any Tag-

Along Notice shall be binding upon delivery and irrevocable by the applicable Member. If any Member receiving the Sale Notice does not so notify the Selling Member within 10 days of receipt of the Sale Notice, such Member will be deemed to have elected not to participate in the proposed sale. Each Member timely electing to participate may elect to sell the percentage of Membership Interests owned by such Member as is equal to the percentage of Membership Interests owned by the Selling Member that the Selling Member has determined to sell.

(c) Any Tag-along Sale will be consummated within 60 days following the expiration of the ten days election period described in Section 7.3(b). The participating Members will not be required to accept any terms, conditions, agreements or undertakings in connection with any such sale other than those described in the Sale Notice.

#### **7.4 Drag-Along Rights.**

(a) If the Managers and the MYI Member approve any transaction or a series of related transactions (including by way of assignment of assets or equity, licensing, merger, consolidation, recapitalization, or reorganization) involving the sale or other disposition of all or substantially all of the assets of the Company, or of a majority of the outstanding Membership Interests in the Company, to an independent third party (each, an "Approved Sale"), then each other Member will vote for, consent to, participate in and raise no objections against, and not otherwise impede or delay, such Approved Sale. In furtherance of the foregoing, (i) if the Approved Sale is structured as an asset sale, merger or consolidation, then each such Member agrees to waive any dissenters rights, appraisal rights or similar rights in connection with such asset sale, merger or consolidation, and (ii) if the Approved Sale is structured as a sale of equity, then each such Member agrees to sell and transfer its proportionate interest in the aggregate portion of the equity being sold or disposed of in such Approved Sale on the terms approved by the Managers and the MYI Member. Each other Member will take all necessary or desirable actions, and the receipt of any proceeds of such Approved Sale will be conditioned upon the taking of such actions, in connection with the consummation of the Approved Sale as reasonably requested by the Managers or the MYI Member, including agreeing to reasonable indemnification, non-competition, non-solicitation, non-disparagement, non-disclosure and similar obligations.

(b) The obligations of the other Members with respect to an Approved Sale are subject to the consideration payable upon consummation of such Approved Sale being allocated in accordance with Section 9.3.

### **ARTICLE VIII ACCOUNTING AND REPORTING**

**8.1 Books.** The Managers shall maintain complete and accurate books of account at the principal office of the Company. The Company shall provide the Members with any information reasonably requested by the Members relating to their interest in the Company as Members.

**8.2 Reports.** The books of account shall be closed promptly after the end of each calendar year. As soon as reasonably practicable thereafter, the Company shall prepare a written report which shall include a statement of receipts, expenditures, profits and losses for the year, and such additional statements with respect to the status of the Company's assets and the distribution of Company funds as are necessary to advise the Members properly about their respective investment in the Company and to allow the Members to fulfill their federal, state, local and other tax reporting obligations.

## ARTICLE IX DISSOLUTION AND TERMINATION

**9.1 Dissolution.** The Company shall be dissolved upon the occurrence of any of the following events:

- (a) The unanimous approval of the Members;
- (b) The sale of all or substantially all of the assets of the Company; or
- (c) Any other event that requires dissolution of the Company under the Act.

**9.2 Final Accounting.** In the event of the dissolution of the Company, a proper accounting shall be made as provided in Section 9.3 from the date of the last previous accounting to the date of dissolution.

**9.3 Liquidation.** Upon the dissolution of the Company, the Managers, or if such persons is unable to act, a person selected by the Members, shall act as liquidator to wind up the Company. The liquidator shall have full power and authority to sell, assign, and encumber any or all of the Company's assets and to wind up and liquidate the affairs of the Company in an orderly and businesslike manner. All proceeds from liquidation shall be distributed in the following order of priority: (i) to the payment of debts and liabilities of the Company and the expenses of liquidation (including loans made by the Members to the Company); (ii) to the setting-up of such reserves as the liquidator may reasonably deem necessary for any contingent liabilities of the Company; and (iii) to the Members in accordance with Article III.

**9.4 Distribution in Kind.** The liquidator, in its absolute discretion, may distribute one or more of the Company's assets in kind to the person or entity entitled to receive the proceeds from such asset.

**9.5 Certificate of Cancellation.** Upon the complete distribution of the Company's assets as provided in this Article IX, the Company shall be terminated and the person acting as liquidator shall file a certificate of cancellation and take such other actions as may be necessary to terminate the Company.

## ARTICLE X GENERAL PROVISIONS

**10.1 Further Assurances.** Each Member hereby agrees to execute, acknowledge, and deliver any and all further instruments and take or perform such other acts as may be necessary or expedient to fully implement and further the purposes of this Agreement and the transactions contemplated by this Agreement.

**10.2 Severability; Entire Agreement.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. This Agreement (together with the other documents contemplated by this Agreement and any annexes, attachments, exhibits and schedules hereto and thereto, which are incorporated in this Agreement by reference) constitutes the entire agreement of the parties and supersedes all prior understanding, agreements, representations, or of this Agreement, both written and oral, by or among the parties, or any of them, with respect to the subject matter of this Agreement.



**10.3 Amendments and Waivers.** No waiver by any party of any right, power, privilege, or claim under or provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant under this Agreement, whether intentional or not, will be valid unless the same is in writing and signed by the party making such waiver nor will such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation, or breach of warranty or covenant. This Agreement may not be amended except by a written instrument signed by the Members holding a majority of the outstanding Membership Interests of the Company; provided that the Managers shall have authority to make such administrative amendments as they may deem necessary or appropriate, including to reflect a change in the membership of the Company and/or the Members' capital contributions as set forth on Exhibit A, without the consent of the Members.

**10.4 Notices.** All notices and other communications under this Agreement will be in writing and will be deemed to have been duly given when delivered in person, by e-mail with confirmation of transmission or by overnight courier, or if mailed, five days after being deposited in the United States mail, certified or registered mail, first-class postage prepaid, return receipt requested, to the Parties at the addresses, or email addresses set forth on Exhibit A. Any party, from time to time, may change its physical address, or e-mail address for the purpose of receipt of notices to that party under this Agreement by giving notice specifying a new physical address, or e-mail address to the other party in accordance with the provisions of this Section 10.4, which will not constitute an amendment under Section 10.3.

**10.5 Applicable Law and Forum.** This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado without regard to conflict-of-law principles that would result in the application of any law other than the laws of the State of Colorado. Jurisdiction and venue for any action to resolve disputes arising under or based upon this Agreement shall be exclusively in the District Court for the City & County of Denver, Colorado, except where federal jurisdiction is appropriate, in which case the action shall be initiated exclusively in U.S. District Court for the District of Colorado in Denver, Colorado.

**10.6 No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Members and the Managers, and no other person is intended to be a beneficiary of this Agreement or shall have any rights hereunder.

**10.7 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original.

**10.8 Confidentiality.** Each Member hereto shall, and shall cause its Affiliates and Managers appointed by it to, keep confidential and not reveal to any other agency, organization, entity or person (other than on a "need to know" basis, to the Company or its officers and employees, to any Member (each of whom shall be subject to the confidentiality obligations set forth herein) or to any other party hereto) any confidential or proprietary documents or other confidential or proprietary information of the Company ("**Confidential Information**"), other than as may be reasonably necessary in connection with the operation of the Company and the Joint Venture Purpose, except for such Confidential Information that such person is required to disclose under any applicable law or to appropriate governmental authorities in connection with audits conducted from time to time by those governmental authorities or in response to requests from those governmental authorities (provided that in the event disclosure is required by applicable law, such party shall, to the extent reasonably possible, (a) provide the other parties hereto and the Company with prompt notice of such requirement prior to making any disclosure so that such other parties and the Company may seek an appropriate protective order, and (b) provide the minimum disclosure of such Confidential Information as is practicable under the circumstances and (c) seek to obtain confidential treatment of such disclosed information). The term "Confidential Information" does not include, and there shall be no obligations hereunder with respect to, information that (i) at the time of disclosure is generally available to the


public (other than as a result of a disclosure by such party in breach of this Agreement), or (ii) is or becomes available to such person on a non-confidential basis from a source that is not prohibited from disclosing such Confidential Information to such person.

**[Remaining Portion of Page Intentionally Left Blank]**

This Agreement has been executed by the Members and Managers be effective as of the Effective Date.

**MEMBERS:**


MISSION YOGURT, INC.

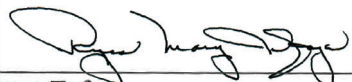
By:   
Name: Roderick Tafoya  
Title: President


LOVE FROM USA GROUP, INC

By:   
Name: Patricia Chinander  
Title: Chief Executive Officer

**MANAGERS:**

  
Roderick Tafoya

  
Reyes Tafoya

  
Patricia Chinander

  
Domenick George

**EXHIBIT A**  
**TO OPERATING AGREEMENT OF**  
**LOVE FROM MISSION JV, LLC**

**MEMBERS, ADDRESSES, AND INITIAL CONTRIBUTIONS, CAPITAL ACCOUNTS AND  
MEMBERSHIP INTERESTS**

<b>Name of Member</b>	<b>Address of Member</b>	<b>Membership Interest</b>	<b>Initial Capital Contribution/ Account</b>	<b>Additional Capital Contribution</b>
Mission Yogurt, Inc.	10943 Meade Way Westminster, CO 80031 Email: rod@missionyogurt.com	65%	\$65	\$693,6488
Love From USA Group, Inc	2340 County Road C Roseville, MN 55343 Email: pchinander@lovefromusagroup.com	35%	\$35	\$373,5023
<b>TOTAL:</b>		100%	\$100	\$1,067,150



## 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 initiating action under Federal or State laws concerning false statements".

Name of Firm: Mission Yogurt, Inc.

Print Name: Roderick J. Tafoya

Title President

Signature: Roderick J. Tafoya

Date: 01/27/2020

## Notary Public

County of AdamsState of ColoradoMy Commission Expires: 4/13/2020

Subscribed and sworn before me this

27<sup>th</sup> day of January, 2020Notary Signature: Alea KilgoreAddress: 1333 W 120<sup>th</sup> Ave., Westminster, CO

ALEA KILGORE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20184014316  
MY COMMISSION EXPIRES APRIL 13, 2020

Name of Firm: Love From Mission JV, LLC

Print Name: Roderick J. Tafoya

Title President

Signature: Roderick J. Tafoya

Date: 01/27/2020

## Notary Public

County of AdamsState of ColoradoMy Commission Expires: 4/13/2020

Subscribed and sworn before me this

27<sup>th</sup> day of January, 2020Notary Signature: Alea KilgoreAddress: 1333 W. 120<sup>th</sup> Ave, Westminster, CO

ALEA KILGORE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20184014316  
MY COMMISSION EXPIRES APRIL 13, 2020

Name of Firm: Love From USA Group, Inc.

Print Name: Patricia Chinander

Title President and CEO


Signature: Patricia ChinanderDate: 1/27/2020

## Notary Public

County of RamseyState of MinnesotaMy Commission Expires: 01/31/2025

Subscribed and sworn before me this

27 day of January, 2020Notary Signature: Lona J. StepnickAddress: 2250 IDE CT N. Maplewood, MN 55109

 LONA J. STEPNIK  
Notary Public-Minnesota  
My Commission Expires Jan 31, 2025



## DIVISION OF SMALL BUSINESS OPPORTUNITY (DSBO) COMMITMENT TO MWBE PARTICIPATION

*This page must be completed by all Bidders/Proposers to indicate their commitment towards satisfying the MWBE participation goal. The commitment will be incorporated into the contract and thereby the selected Bidder/Proposer's will be held to that commitment. (Please check the appropriate box):*

**COMPLETE IF YOU ARE A NON MWBE PRIME:**

The City and County of Denver has specified a 25 % MWBE Participation goal on this project. The Bidder/Proposer is committed to meeting 25 % MWBE Participation on the contract.

**COMPLETE IF YOU ARE A MWBE PRIME:**

The City and County of Denver has specified a \_\_\_\_\_% MWBE Participation goal on this project. The Bidder/Proposer is a certified MWBE with the City and County of Denver and is committed to meeting \_\_\_\_\_% MWBE Participation on the contract.

**COMPLETE IF YOU ARE UNABLE TO MEET PROJECT GOAL:**

The City and County of Denver has specified a \_\_\_\_\_% MWBE Participation goal on this project. The Bidder/Proposer is unable to meet this project goal but is committed to a \_\_\_\_\_% MWBE Participation on the contract. The Bidder/Proposer must make adequate good faith efforts to meet this goal in order to be deemed responsive. The Bidder/Proposer must submit a detailed statement and documentation of their good faith efforts. Award of the contract will be conditioned on meeting the requirements of this section, in accordance of Chapter 28 of the D.R.M.C. to the Division of Small Business Opportunity.

**The undersigned Bidder/Proposer hereby agrees and understands that they must comply with their MWBE commitments in this project in conformity with the Requirements, Terms, and Conditions of this MWBE Procurement/Contract Language.**

Bidder/Proposer (Name of Firm): Love From Mission JV, LLC

Firm's Representative: Roderick J. Tafoya

Title: President

Signature (Firm's Representative): *Roderick J. Tafoya* Date: 2/2/2021

Address: 10943 Meade Way

City: Westminster

State: CO

Zip: 80031

Phone: (720) 346-8015

Email: rod@missionyogurt.com

## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

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

1. **Compliance with Regulations.** The Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor of the Contractor'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 Contractor 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 Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor 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 Contractor'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 Contractor under this Agreement until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor 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 Contractor 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 Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor

may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor 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 "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") 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 Contractors, 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 "Contractor" will mean and include Concessionaire, and the term "recipient" will mean City.

**Contract Assurance (§ 26.13)** – The Contractor or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract 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 contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – Prime contractors must pay each subcontractor for satisfactory performance of their contracts no later than thirty (30) days from the receipt of each applicable payment the prime contractor receives from Contractor. The prime contractor must return retainage payments to each subcontractor within thirty (30) 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 the recipient. This clause applies to both DBE and non-DBE subcontractors.

**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 agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(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.

### **APPENDIX 3**

#### **ACDBE/DBE POLICY AND OBJECTIVE STATEMENTS:**

This part 23 seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

#### **Policy Statement**

##### **Section 26.1, 26.23 Objectives/Policy Statement**

City has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of City to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted Contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted Contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted Contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

DSBO has been delegated as the DBE Liaison Officer. In that capacity, DSBO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same

priority as compliance with all other legal obligations incurred by the sponsor in its financial assistance agreements with the Department of Transportation.

Sponsor has disseminated this policy statement to the City and County of Denver and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT -assisted Contracts.