



Concession Agreement 201951173

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:

WH Smith DEN LLC
4801 Executive Park Court, Suite 100
Jacksonville, FL 32216

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 **WH Smith DEN LLC**, a Florida limited liability company authorized to do business in Colorado (“**Concessionaire**”), Party of the Second Part (collectively, “**Parties**”).

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

ARTICLE I. SUMMARY OF CONTRACT PROVISIONS

SECTION 1.01 SUMMARY OF CONTRACT PROVISIONS

City Address for Notices			ATTN: Chief Executive Officer City and County of Denver Department of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340		
Concessionaire Address for Notices			WH Smith DEN LLC 4801 Executive Park Court, Suite 100 Jacksonville, FL 32216		
Guarantor Name and Notice Address			WH Smith USA Retail Inc. 4801 Executive Park Court, Ste. 100 Jacksonville, FL 32216		
			Innovative Retail Group, LLC 22594 East Union Circle Aurora, CO 80015		
			M2 Concepts, LLC 11429 Grapeleaf Drive Fort Worth, TX 76244		
Premises: See Exhibit A					
Location	Space	Sq. Ft.	PVC Sq. Ft.	Min.Invest. per Sq. Ft.	Trade Name
A West 2 Subcore	R17-1-2-W41-S3-1	1,468	1,468	\$650	WH Smith
Premises Total			1,468 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 (“MAG”)			Initial MAG: \$773,500.00		
Percentage Fee			26%		

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	\$954,200.00	
Joint Marketing Fee Rate	1%	
Common Area Capital Improvement and Maintenance Share [Food Court]	N/A	
Surety	\$442,000.00	
Major Merchandise Category	Retail	
Minor Merchandise Category	Convenience Retail	
Concessionaire's Brand(s)	Miette et Chocolat, Fig and Yarrow, BeeOch, Counter Couture, Red Camper, Black Lantern T-shirts, Pearl Street Lights, Mountain Time Soap, Winter Session, Of Mountains and Gems, Aspen Baking Company and City Park Food & Beverage Services	
ACDBE Goal	Percent	30%
	Ownership Participation	Innovative Retail Group, LLC - 20% M2 Concepts, LLC - 10%
	Purchasing Participation	
ACDBE Operator Name		Innovative Retail Group, LLC M2 Concepts, LLC
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.F.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.F.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-concessionaires' or agents' operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances, and any other type of ancillary advertising or product placement fees, other allowances and fees, and any amount charged by Concessionaire as a pass through to its customers of the Privilege Fee or any other fee or charge payable per this Agreement. Gross Revenue shall not include:

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

SECTION 5.02 PRIVILEGE FEE

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

A. MAG.

1. First Contract Year. Beginning on the earlier of the Actual Opening Date or the Required Opening Date and continuing through the Contract Year in which such Opening Date occurs, the initial MAG amount in the Summary of Contract Provisions will be pro-rated to include only the months from the Actual or Required Opening Date to the end of that Contract Year. If the Actual Opening Date or Required Opening Date is after the first of a month, the calculation will be performed based on the Partial Months provision below. Any full monthly amount will be one-twelfth (1/12th) of the initial MAG amount in the Summary of Contract Provisions.

After one year following the Actual Opening Date, the Parties will address a potential one-time adjustment to the initial MAG if (a) the nearby expansion gates were not operative on the Actual Opening Date or (b) the number of passenger enplanements on Concourse A during the year following the Actual Opening Date was at least 5% lower than the 9,935,959 enplanements forecasted in Concessionaire's Proposal; provided, however, that the sum of the adjusted initial MAG and the combined initial minimum annual guarantees owed under the Parties' Concession Contract No. 202055583 and Concession Contract No. 202055582 is not less than \$2,210,000 (Two Million Two Hundred and Ten Thousand Dollars).

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 at its sole expense 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 reserves the right to reject Concessionaire’s choice of CPA, if in City’s view the CPA does not have the appropriate standing, reputation, or independence from the Concessionaire.

- 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 7.15 only, "Routine Refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.
- E. **Maintenance Personnel and Program.** Concessionaire covenants to employ or contract with sufficient personnel to provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Agreement.

F. City Sole Judge of Maintenance. City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, and so notify the City within the time frame stated in the Concessions Handbook, or else the City or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or DEN's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to reimburse City for the cost thereof, plus an administrative fee, the amount of which will be in accordance with the Concessions Handbook.

G. Emergency Repairs. In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and perform the emergency repair. Concessionaire covenants to pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any DEN system or utility require prior written approval of City. If any emergency repair affects other tenants at DEN, City may, at its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

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

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

SECTION 7.18 SUBMITTALS

City shall have the right at any time to require that reports, plans, and any other submittals required under this Article VII be delivered electronically using technology and procedures designated by City in the Concessions Handbook. If City instructs Concessionaire to deliver any submittals required hereunder by computer, e-mail, internet website, or transmission, City shall

not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

SECTION 7.19 PROHIBITED ACTS

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

SECTION 7.20 DELIVERY TECHNOLOGY

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

ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

SECTION 8.01 LIQUIDATED DAMAGES

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

B. Payment. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

C. Table. The following table lists the liquidated damages assessable under this Contract. References to Sections are for convenience only. Any discrepancy in such reference does not affect the validity or enforceability of said damages.

Liquidated Damages*		
TYPES OF INFRACTIONS	SECTION	LIQUIDATED DAMAGES
Deficient Goods or Services	Contract § 7.02; Handbook § 13.10	If not cured within seven day cure period, then \$100 per day dating back to the date of Notice, for each day until corrected.
Pricing Policy	Contract § 7.03; Handbook § 14.01	\$100 per day until corrected.
Late Open or Early Close	Contract § 7.04; Handbook § 14.05	\$100 per hour or fraction thereof.
Prohibited Acts	Contract § 7.19; Handbook § 14.43	\$100 per day until corrected.
Security Infraction	Contract § 7.08; Handbook § 14.29	\$500 per occurrence for violations not otherwise addressed in TSA or DEN's Rules and Regulations.
Late Daily Gross Revenue	Handbook § 12.03	\$100 per day until corrected.
Late Monthly Concession Report	Handbook § 12.03	\$100 per day until corrected.
Late 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 7.15, Concessionaire shall, at its sole cost and expense, construct and install all approved Mid-Term Refurbishment improvements no later than the Mid-Term Refurbishment Completion Date. The Mid-Term Refurbishment shall exclude improvements or maintenance performed as routine maintenance in accordance with the Agreement. 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 consents 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 CONCESSION

Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing. Redecoration, replacement, and refurbishment of

furniture, fixtures, equipment, and supplies will be the responsibility of, paid for by Concessionaire, and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

SECTION 17.03 ALTERNATE SPACE

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

SECTION 17.04 WAIVER OF SUBROGATION

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

ARTICLE XVIII. DAMAGING ACTIVITIES

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

- A. No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous, or that may be offensive or cause harm to the general public or cause damage to the Premises.
- B. Concessionaire is responsible for compliance and shall require its Contractors to comply with all federal, state, and local environmental rules, regulations, and requirements, including as they may be amended after the Effective Date. This includes compliance with DEN's Rule and Regulation, Rule 180 incorporated hereto by reference.
- C. Concessionaire shall obtain all necessary federal, state, local, and DEN permits and comply with all permit requirements.
- D. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City.
- E. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement.
- F. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.

- G. Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement will be kept in compliance with Occupational Safety and Health Administration (OSHA).

SECTION 18.02 PROTECTION OF INFRASTRUCTURE

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

SECTION 18.03 DAMAGE CAUSED BY OPERATIONS

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

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

SECTION 19.01 COMPLIANCE

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with all applicable existing and future federal, state, and local laws and regulations, DEN's Rules and Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by City, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of DEN, including as these authorities may be amended after the Effective Date. Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessions at DEN as identified in the Concessions Handbook. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and Handbook shall constitute a material breach of the terms of this Agreement in the same manner as if these were stated directly in this Agreement.

ARTICLE XX. AIRPORT SECURITY

SECTION 20.01 FAA AND TSA REQUIREMENTS

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

SECTION 20.02 CHANGES IN REQUIREMENTS

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

ARTICLE XXI. GENERAL PROVISIONS

SECTION 21.01 AMERICANS WITH DISABILITIES ACT

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

SECTION 21.02 FAA APPROVAL

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

SECTION 21.03 RIGHT OF FLIGHT

Concessionaire's privilege to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by DEN operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN.

Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

SECTION 21.04 FEDERAL RIGHT TO RECLAIM

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

SECTION 21.05 PROPERTY RIGHTS RESERVED

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

SECTION 21.06 ASSIGNMENT AND SUBCONTRACT

- A. Concessionaire may not assign, subcontract, and/or sublease its privileges, interests, or obligations in whole or in part under this Agreement without the prior written consent of City in City's sole and absolute discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City in City's sole and absolute discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written consent of City shall, at the option of the CEO, automatically terminate this Agreement and all privileges of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.
- B. Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must

acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All compensation, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-contractors must independently operate any subcontracted premises, adhere to, and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

SECTION 21.07 CORPORATE TENANCY

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

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

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

SECTION 21.08 NON-EXCLUSIVE RIGHTS

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

SECTION 21.09 RIGHT TO DEVELOP AIRPORT

- A. Concessionaire recognizes that from time to time, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair in order for DEN and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Concessionaire acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Concessionaire in its operation at DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, Contractors, subcontractors, and representatives by way of such inconveniences. Concessionaire agrees to waive any right to claim damages or other consideration therefrom.
- B. It is covenanted and agreed that City reserves the right to further develop or improve DEN and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.
- C. Further, Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Master Layout Plan for DEN. Concessionaire agrees that no liability shall attach to City, its officers,

agents, and employees due to any efforts or action toward implementation of any present or future Concessions Master Plan for DEN. Concessionaire waives any right to claim damages or other consideration arising therefrom.

SECTION 21.10 ATTORNEY'S FEES AND COSTS

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

SECTION 21.11 RIGHT TO AMEND

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

SECTION 21.12 NOTICES AND COMMUNICATIONS

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

TO CITY (MAIL DELIVERY):	TO CONCESSIONAIRE (MAIL DELIVERY):
Attn: Chief Executive Officer Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340 CC: Senior Vice President Concessions Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340	Attn: Ziad El-Assad WH Smith DEN LLC 4801 Executive Park Court, Ste. 100 Jacksonville, FL 32216 CC: Huy Pham Innovative Retail Group, LLC 22594 East Union Circle Aurora, CO 80015

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 DATA SECURITY AND CONFIDENTIALITY

Concessionaire will establish and maintain safeguards against the destruction, loss, or alteration of City data or third party data that Concessionaire may gain access to or be in possession of in the performance of this Agreement. Concessionaire will not attempt to access, and will not allow its personnel access to, City data or third party data that is not required for the performance of the services of this Agreement by such personnel. Concessionaire shall not disclose to any third parties and shall maintain as strictly confidential any and all data and other information designated by City as confidential.

Concessionaire will adhere to and abide by the security measures and procedures established by City. In the event Concessionaire or Concessionaire's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to City data or third party data, Concessionaire will promptly: (i) notify City of such breach or potential breach; and ii) if the applicable City data or third party data was in the possession of Concessionaire at the time of such breach or potential breach, Concessionaire will investigate and cure the breach or potential breach.

SECTION 21.24 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 21.25 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 21.26 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 21.27 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 21.28 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 21.29 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 21.30 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: Marshall Retail Group

Mr. Michael C. Wilkins

Name

DocuSigned by:

Mr. Michael C. Wilkins

Signature

CEO

Title

10/29/2021

Date

Contract Control Number: PLANE-201951173-00
Contractor Name: WH SMITH DEN 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-201951173-00
WH SMITH DEN LLC

DocuSigned by:
Mr. Michael C. Wilkins
By: 2B7CFC7A63764A3...

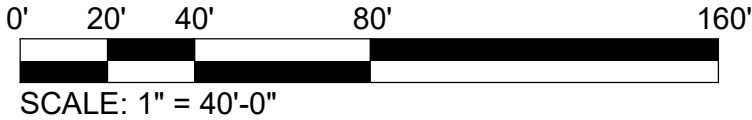
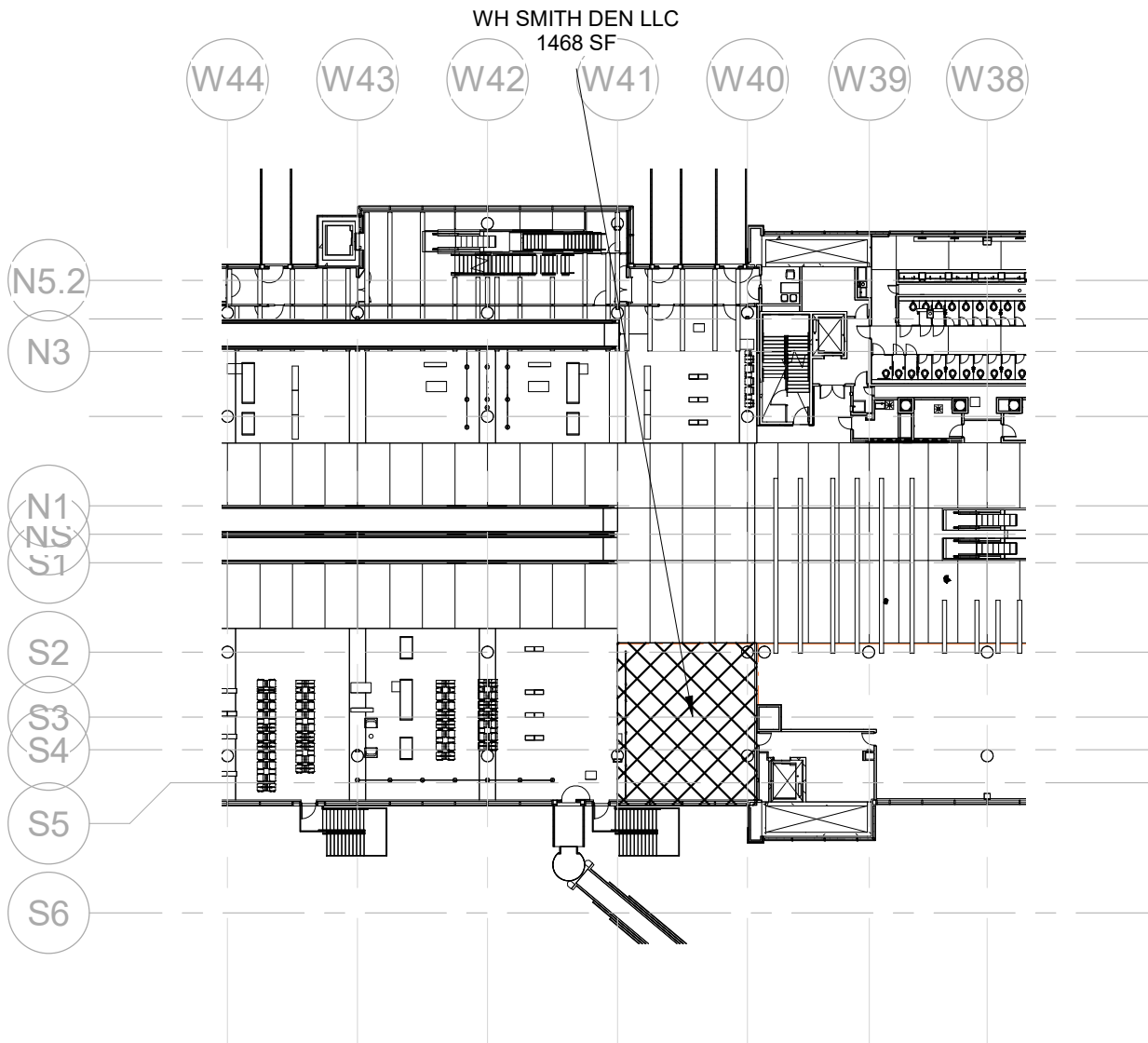
Mr. Michael C. Wilkins
Name: _____
(please print)
CEO
Title: _____
(please print)

ATTEST: [if required]

DocuSigned by:
Mr. Michael C. Wilkins
By: 2B7CFC7A63764A3...

Mr. Michael C. Wilkins
Name: _____
(please print)
CEO
Title: _____
(please print)

EXHIBIT A (PREMISES DESCRIPTION)



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>KEY PLAN CONCOURSE A</p> <p>CCA-02</p>		<p>DENVER INTERNATIONAL AIRPORT</p> <hr/> <p>EXHIBIT A</p> <p>R17-1-2-W41-S3-1</p> <p>WH SMITH DEN LLC RETAIL</p> <hr/> <table border="1"><tr><td>CC#: 201951173</td><td>DATE: 10/06/20</td></tr></table>	CC#: 201951173	DATE: 10/06/20
CC#: 201951173	DATE: 10/06/20			

EXHIBIT B (PERMITTED USES)

WH Smith

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 														

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.

SignatureTitle

Date

EXHIBIT D (GUARANTY OF AGREEMENT)

ABSOLUTE UNCONDITIONAL GUARANTY

THIS GUARANTY is given by WH Smith USA Retail Inc., Innovative Retail Group, LLC, and M2 Concepts, LLC ("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, WH Smith DEN LLC, a Florida limited liability company ("Concessionaire"), has or plans to enter into a concession agreement (Contract Number 201951173) ("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]

**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
- 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

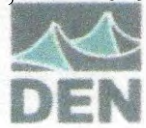
- 1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Concessionaire.
- 2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
- 3. A severability 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)

ACDBE Forms

Innovative Retail Group, LLC



Name of Concession/vendor firm: WH Smith DEN LLC

Address: 4801 Executive Park Court, Suite 100

City: Jacksonville State: FL Zip: 32216

Telephone: 305-775-4906 E-mail address: ziad.lassad@whsmith.com

Name of ACDBE Firm: Innovative Retail Group, LLC

Address: 22594 East Union Circle

City: Aurora State: CO Zip: 80015

Telephone: 305-608-4080 E-mail address: huyphamirg@gmail.com

Description of Goods and Services or work to be performed by ACDBE firm:

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ Commensurate with ownership %

AFFIRMATION:

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

By: <u>[Signature]</u>	<u>PRESIDENT</u> <u>OF PROPOSER</u>	<u>10/31/19</u>
<small>Concessionaire Signature</small>	<small>Title</small>	<small>Date</small>
By: <u>[Signature]</u>	<u>President</u>	<u>11/5/19</u>
<small>ACDBE Signature</small>	<small>Title</small>	<small>Date</small>

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





Name of Concession/vendor firm: WH Smith DEN LLC

Address: 4801 Executive Park Court, Suite 100

City: Jacksonville State: FL Zip: 32216

Telephone: 305-775-4906 E-mail address: ziad.lassad@whsmith.com

Name of ACDBE Firm: Innovative Retail Group, LLC

Address: 22594 East Union Circle

City: Aurora State: CO Zip: 80015


Telephone: 305-608-4080 E-mail address: huyphamirg@gmail.com

Description of Goods and Services or work to be performed by ACDBE firm:

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ Commensurate with ownership %

AFFIRMATION:

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

By:  PRESIDENT 10/31/19
Concessionaire Signature ZIAD EL ASSAD Title Date

By: _____
ACDBE Signature Title Date

For Questions or to Return Documents:

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





October 7, 2019

Huy Pham
Innovative Retail Group, LLC
22594 E Union Circle
Aurora, CO 80015

Dear Huy Pham:

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 Innovative Retail Group, LLC is certified as a **Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)** pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

June 27, 2018 to June 26, 2021

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

NAICS CODES

CO UCP NAICS 443142: ELECTRONIC PART AND COMPONENT STORES
CO UCP NAICS 445120: CONVENIENCE FOOD STORES
CO UCP NAICS 445291: BAKED GOODS STORES, RETAILING ONLY (EXCEPT IMMEDIATE CONSUMPTION)
CO UCP NAICS 445299: COFFEE AND TEA (I.E., PACKAGED) STORES
CO UCP NAICS 445299: ICE CREAM (I.E., PACKAGED) STORES
CO UCP NAICS 445299: SOFT DRINK STORES, BOTTLED
CO UCP NAICS 445299: TEA AND COFFEE (I.E., PACKAGED) STORES
CO UCP NAICS 445299: WATER STORES, BOTTLED
CO UCP NAICS 448120: APPAREL STORES, WOMEN'S AND GIRLS' CLOTHING
CO UCP NAICS 448140: CLOTHING STORES, FAMILY
CO UCP NAICS 448150: APPAREL ACCESSORY STORES
CO UCP NAICS 448190: T-SHIRT SHOPS
CO UCP NAICS 448320: LUGGAGE STORES
CO UCP NAICS 451211: BOOK STORES
CO UCP NAICS 451212: NEWSSTANDS (I.E., PERMANENT)
CO UCP NAICS 453220: GIFT SHOPS
CO UCP NAICS 453220: NOVELTY SHOPS
CO UCP NAICS 453220: SOUVENIR SHOPS
CO UCP NAICS 453998: BATTERIES, EXCEPT AUTOMOTIVE, DEALERS
CO UCP NAICS 561499: ALL OTHER BUSINESS SUPPORT SERVICES
CO UCP NAICS 722410: DRINKING PLACES (I.E., BARS, LOUNGES, TAVERNS), ALCOHOLIC
CO UCP NAICS 722511: FULL SERVICE RESTAURANTS
CO UCP NAICS 722515: BEVERAGE (E.G., COFFEE, JUICE, SOFT DRINK) BARS, NONALCOHOLIC, FIXED LOCATION
CO UCP NAICS 722515: SNACK AND NONALCOHOLIC BEVERAGE BARS
CO UCP NAICS 722515: SOFT DRINK BEVERAGE BARS, NONALCOHOLIC, FIXED LOCATION

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

The anniversary date of your firm's ACDBE certification is January 3, 2020. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents required within the renewal application in order for your renewal to be processed. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

You may visit <http://business/flydenver.com/bizops/smallBus.asp> to view upcoming concession bidding opportunities. This letter must be

attached to your Letter of Intent (LOI) for bidding opportunities in which you may be utilized for goal participation.

Sincerely,



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

ACDBE Forms



M2 Concepts, LLC

Name of Concession/vendor firm: WH Smith DEN LLCAddress: 4801 Executive Park Court, Suite 100City: JacksonvilleState: FLZip: 32216Telephone: 305-775-4906E-mail address: ziad.elassad@whsmith.comName of ACDBE Firm: M2 Concepts, LLCAddress: 11429 Grapeleaf DriveCity: Fort WorthState: TXZip: 76244Telephone: 214-562-2424E-mail address: ray@m2concepts.org**Description of Goods and Services or work to be performed by ACDBE firm:**

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ Commensurate with ownership %

AFFIRMATION:

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

By: 	PRESIDENT OF PROPOSER	<u>10/31/19</u>
<small>Concessionaire Signature</small>	<small>Title</small>	<small>Date</small>
By: 	VP	<u>11/4/19</u>
<small>ACDBE Signature</small>	<small>Title</small>	<small>Date</small>
RAY MICKENS		

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





Name of Concession/vendor firm: WH Smith DEN LLC

Address: 4801 Executive Park Court, Suite 100

City: Jacksonville State: FL Zip: 32216

Telephone: 305-775-4906 E-mail address: ziad.elassad@whsmith.com

Name of ACDBE Firm: M2 Concepts, LLC

Address: 11429 Grapeleaf Drive

City: Fort Worth State: TX Zip: 76244

Telephone: 214-562-2424 E-mail address: ray@m2concepts.org

Description of Goods and Services or work to be performed by ACDBE firm:

The Concessionaire is committed to utilizing the above named ACDBE for the goods and services or work described above. The estimated dollar value of this work is \$ Commensurate with ownership %

AFFIRMATION:

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

By:  PRESIDENT 10/31/19
Concessionaire Signature TITLE Date

By: _____
ACDBE Signature Title Date

For Questions or to Return Documents:

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





201 W. Colfax Avenue, #907
Denver, CO Zip 80202
p: 720.913.1995
f: 720.913.1805
www.denvergov.org/dsbo

Denver International Airport
Airport Office Building, Suite 781C
8500 Pena Boulevard
Denver, CO Zip 80249
p: 303.342.2180
f: 303.342.2190
www.flydenver.com

December 1, 2016

Leonard Mickens
M2 Concepts, LLC DBA N/A
P.O. Box 93176
Southlake, TX 76092

Dear Leonard Mickens:

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 M2 Concepts, LLC DBA N/A is certified as a **Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)** pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

December 1, 2016 to December 1, 2019

M2 Concepts, LLC DBA N/A is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

- CO UCP NAICS 722310: FOOD SERVICE CONTRACTORS, CONCESSION OPERATOR (E.G., CONVENTION FACILITIES, ENTERTAINMENT FACILITIES, SPORTING FACILITIES)
- CO UCP NAICS 722410: DRINKING PLACES (I.E., BARS, LOUNGES, TAVERNS), ALCOHOLIC
- CO UCP NAICS 992010: BOOK STORES
- CO UCP NAICS 992020: NEWSSTANDS (I.E., PERMANENT)
- CO UCP NAICS 997011: DUTY FREE LIQUOR 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 December 1, 2017. 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,

Tonya Davis

Leonard Mickens
M2 Concepts, LLC DBA N/A
P.O. Box 93176
Southlake, TX 76092

Dear Leonard Mickens:

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 M2 Concepts, LLC DBA N/A is certified as a Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

December 1, 2016 to December 1, 2019

M2 Concepts, LLC DBA N/A is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

CO UCP NAICS 722310: FOOD SERVICE CONTRACTORS, CONCESSION OPERATOR (E.G., CONVENTION FACILITIES, ENTERTAINMENT FACILITIES, SPORTING FACILITIES)

CO UCP NAICS 722410: DRINKING PLACES (I.E., BARS, LOUNGES, TAVERNS), ALCOHOLIC

CO UCP NAICS 992010: BOOK STORES

CO UCP NAICS 992020: NEWSSTANDS (I.E., PERMANENT)

CO UCP NAICS 997011: DUTY FREE LIQUOR 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 December 1, 2017. 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,

City and County of Denver
Office of Economic Development
<http://www.denvergov.org/oed>
<http://denver.mwdbe.com>

This message was sent to: m2concepts@aol.com

Sent on: 12/1/2016 3:23:11 PM

System ReferenceID:

Leonard Mickens
M2 Concepts, LLC
11429 Grapeleaf Dr
Fort Worth, TX 76244

Dear Leonard Mickens:

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 M2 Concepts, LLC is certified as a Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org. Your firm is certified with the following dates:

February 14, 2018 to March 14, 2021

M2 Concepts, LLC is eligible to participate as an ACDBE on US Department of Transportation financially-assisted projects in Colorado in the NAICS work codes appearing below.

NAICS CODES

CO UCP NAICS 445310: DUTY FREE LIQUOR SHOPS

CO UCP NAICS 451211: BOOK STORES

CO UCP NAICS 451212: NEWSSTANDS (I.E., PERMANENT)

CO UCP NAICS 722310: FOOD SERVICE CONTRACTORS, CONCESSION OPERATOR (E.G., CONVENTION FACILITIES, ENTERTAINMENT FACILITIES, SPORTING FACILITIES)

CO UCP NAICS 722410: DRINKING PLACES (I.E., BARS, LOUNGES, TAVERNS), ALCOHOLIC

Management of airport food and beverage concessions

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 13, 2020. You will be notified prior to the anniversary date that eligibility must be re-evaluated. It is your responsibility to request and submit a renewal application and all of the documents required within the renewal application in order for your renewal to be processed. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

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

Sincerely,

SENECA HOLMES

DIRECTOR

Denver International Airport

Executive Office

DEN Commerce Hub

Airport Office Building | 10th Floor

8500 Peña Boulevard | Denver, CO 80249-6340

(303) 342-2242 | SENECA.HOLMES@FLYDENVER.COM | WWW.FLYDENVER.COM

City and County of Denver

Office of Economic Development

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

<http://denver.mwdbe.com>

This message was sent to: raymick24@aol.com

Sent on: 5/6/2019 2:32:04 PM

System ReferenceID:



**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: WH Smith DEN, LLC

Contact Person:

Address:

City:

State:

Zip:

Email Address:

Phone:

Joint Venture Participants

Name: WH Smith USA Retail Inc.

Contact Person:

Address:

City:

State:

Zip:

Email Address:

Phone:

% Ownership: 70%

ACDBE Certifying Entity: N/A

ACDBE Certification Date: N/A

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

Name: Innovative Retail Group, LLC

Contact Person: Huy Pham

Address: 22594 East Union Circle

City: Aurora

State: CO

Zip: 80015

Email Address: huyphamirg@gmail.com

Phone: 305-608-4080

% Ownership: 20%

ACDBE Certifying Entity: City and County of Denver

ACDBE Certification Date: 9/27/2007

Type of Work for which Certification was granted: Food & Beverage, Retail, Consulting and Personal Care Services

Name: M2 Concepts, LLC

Contact Person: William Ray Mickens

Address: 11429 Grapeleaf Drive

City: Fort Worth

State: TX

Zip: 76244

Email Address: ray@m2concepts.org

Phone: (214) 562-2424

% Ownership: 10%

ACDBE Certifying Entity: City and County of Denver

ACDBE Certification Date: 12/1/2016

Type of Work for which Certification was granted: Food & Beverage, Retail, Concession Management

JOINT VENTURE ELIGIBILITY FORM**General information**

ACDBE Initial Capital Contributions: \$ \$200 / \$100

% 20%/10%

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

As required by the Management Committee; see Operating Agreement Section 3.6

Source of Funds for the ACDBE Capital Contributions:

ACDBE funds; see Operating Agreement Section 3.5

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

Innovative Retail Group, LLC - see Operating Agreement Section 5.1(a)

M2 Concepts, LLC - see Operating Agreement Section 5.2(a)

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

See Operating Agreement Section 5.3(a)

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 Operating Agreement Sections 4.1 through 4.4 regarding management of the joint venture

b. Non-ACDBE joint venture participant:

See Operating Agreement Sections 4.1 through 4.4 regarding management of the joint venture

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:

Innovative Retail Group, LLC - see Operating Agreement Section 5.1(a)

M2 Concepts, LLC - see Operating Agreement Section 5.2(a)

b. Non-ACDBE joint venture participant:

WH Smith USA Retail Inc. - See Operating Agreement Section 5.3(a)

Which firm will be responsible for accounting functions relative to the joint venture's business? WH Smith USA Retail 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?

Members act on behalf of the joint venture and do not commit or obligate other Members. Subject to the general oversight of the Management Committee, the Members have autonomy in the fulfillment of their roles and responsibilities.

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	0	0	1
Administrative	0	0	1
Support	*variable	*variable	0
Hourly Employees	0	0	35

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

Who will they be employed by? WH Smith DEN, LLC

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

Yes
(√)

No
(√)

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

Number of employees	Position	Employed By

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.

None.

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

COMP-FRM-015

Rev. 07/2013

***The ACDBE participants and the non-ACDBE participant each employ numerous support staff who assist with the operation of the joint venture as well as with the operation of each participant's respective business operations and their other joint venture business operations.**

Please see copy of Proposer's JV operating agreement at the end of this Attachment 1, Part 4 section.



JOINT VENTURE AFFIDAVIT

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

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

Name of Firm: WH Smith DEN, LLC

Print Name: Ziad El-Assad

Title President of Proposer

Signature: 

Date: 10/31/2019

Notary Public

County of Miami-Dade

State of Florida

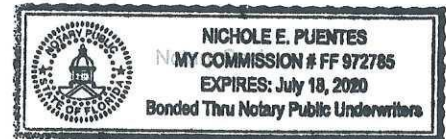
My Commission Expires: 7/18/2020

Subscribed and sworn before me this

31st day of October, 2019

Notary Signature: 

Address: 9600 SW 48th Street, Miami, FL 33165



Name of Firm: Innovative Retail Group, LLC

Print Name: Huy Pham

Title President

Signature: _____

Date: _____

Notary Public

County of _____

State of _____

My Commission Expires: _____

Subscribed and sworn before me this

_____ day of _____, 20____

Notary Signature: _____

Address: _____

Notary Seal

Name of Firm: M2 Concepts, LLC

Print Name: William Ray Mickens

Title Vice President

Signature: _____

Date: _____

Notary Public

County of _____

State of _____

My Commission Expires: _____

Subscribed and sworn before me this

_____ day of _____, 20____

Notary Signature: _____

Address: _____

Notary Seal



JOINT VENTURE AFFIDAVIT

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

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

Name of Firm: WH Smith USA Retail Inc.

Print Name: Ziad El-Assad

Title President of Proposer

Signature:

Date: 10/31/2019

Notary Public

County of Miami-Dade

State of Florida

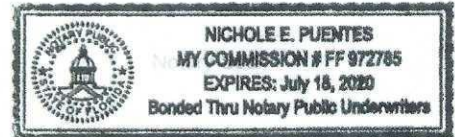
My Commission Expires: 7/18/2020

Subscribed and sworn before me this

31st day of October, 2019

Notary Signature:

Address: 9600 SW 48th Street, Miami, FL 33165



Name of Firm: Innovative Retail Group, LLC

Print Name: Huy Pham

Title President

Signature:

Date: 11/5/19

Notary Public

County of Arapahoe

State of Colorado

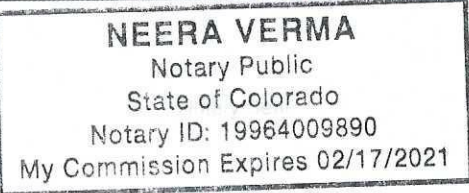
My Commission Expires: 2/17/2021

Subscribed and sworn before me this

5 day of November, 2019

Notary Signature:

Address: 20290 E Smoky Hill Rd, Centennial, CO 80015



Name of Firm: M2 Concepts, LLC

Print Name: Ray Mickens

Title Vice President

Signature:

Date:

Notary Public

County of

State of

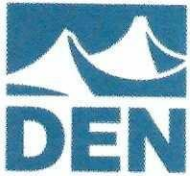
My Commission Expires:

Subscribed and sworn before me this

day of, 20

Notary Signature:

Address:



JOINT VENTURE AFFIDAVIT


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

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

Name of Firm: WH Smith USA Retail Inc.

Print Name: Ziad El-Assad

Title President of Proposer

Signature: 

Date: 10/31/2019

Notary Public

County of Miami-Dade

State of Florida

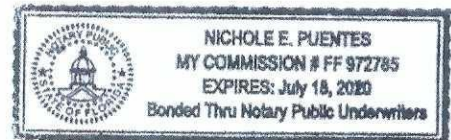
My Commission Expires: 7/18/2020

Subscribed and sworn before me this

31st day of October, 2019

Notary Signature: 

Address: 9600 SW 48th Street, Miami, FL 33165



Name of Firm: Innovative Retail Group, LLC

Print Name: Huy Pham

Title President

Signature:

Date:

Notary Public

County of

State of

My Commission Expires:

Subscribed and sworn before me this

____ day of _____, 20____

Notary Signature: _____

Address: _____

Name of Firm: M2 Concepts, LLC

Print Name: Ray Mickens

Title Vice President

Signature: 

Date: 11-5-19

Notary Public

County of Tarrant

State of TX

My Commission Expires: 10-08-2023

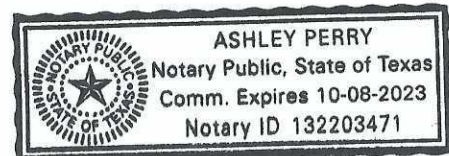
Subscribed and sworn before me this

5th day of November, 2019

Notary Signature: 

Address: 2100 E State Hwy 14 Ste 105

Southlake TX 76092




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

SECTION A – PROPOSER INFORMATIONName of Firm: WH Smith DEN, LLCAddress: 4801 Executive Park Court, Suite 100City: Jacksonville State: FL Zip: 32216Contact Person: Ziad El-Assad Telephone: 305-775-4906Email: ziad.elassad@whsmith.com**SECTION B – MWBE COMMITMENT**The MWBE goal on the build out for this concession is 25 %.


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

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

By:  President of Proposer
Proposer Signature ZIAD EL-ASSAD Title
WH Smith DEN LLC
Proposing Entity

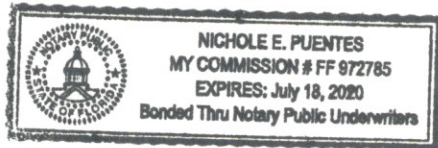
Notarized Copy of
Joint Venture
WH Smith DEN, LLC

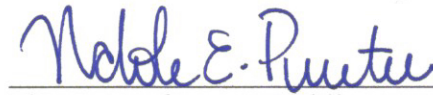
The attached is a true and correct copy of the Operating Agreement of WH Smith DEN, LLC.


Ziad El-Assad, President

STATE OF FLORIDA :
: SS
COUNTY OF MIAMI-DADE :

The foregoing was acknowledged before me this 31st day of October, 2019, by ZIAD EL-ASSAD, as President of WH Smith DEN, LLC, who is personally known to me or has produced a Florida driver's license as identification.




Signature of Notary Public
Nichole Puentes
Printed Name of Notary Public
Notary Public, State of Florida
My Commission Expires:

**OPERATING AGREEMENT
OF
WH SMITH DEN LLC**

OPERATING AGREEMENT

This **OPERATING AGREEMENT** (this “Agreement”) WH SMITH DEN LLC (the “Company”), a Florida limited liability company, is made effective as of the 13th day of September, 2019, by and among the Company, WH SMITH USA RETAIL INC., a Delaware corporation with offices at 4801 Executive Park Court, Suite 100, Jacksonville, Florida 32216 (“WH Smith”), INNOVATIVE RETAIL GROUP, LLC, a Colorado limited liability company with offices at 22594 E. Union Circle, Aurora, Colorado 80015 (“IRG”), and M2 CONCEPTS, LLC, a Texas limited liability company with offices at 11429 Grapeleaf Drive, Fort Worth, Texas 76244 (“M2”, and together with IRG and WH Smith, the “Members”, and each individually, a “Member”).

WHEREAS, WH Smith and its affiliates are experienced in the operation of airport retail concessions operating under the name “WH Smith”; and

WHEREAS, IRG and M2 have substantial experience in the operation of airport concessions at various airports throughout the United States; and

WHEREAS, each of IRG and M2 is a certified Airport Concession Disadvantaged Business Enterprise (“ACDBE”) as defined in 49 C.F.R. Part 23; and

WHEREAS, the Members desire to enter into a joint venture business relationship in which each of WH Smith, IRG and M2 will become a Member of the Company, and the Company will submit one or more proposals for the operation of WH Smith branded news and gifts concessions within the Denver International Airport in Denver, Colorado (the “Airport”), and upon being awarded a contract for any such concessions (the “Stores”), the Company shall enter into a Concession Agreement (the “Lease”) with the City and County of Denver (the “Landlord”); and

WHEREAS, the Members desire to memorialize their commitment to each other by setting forth certain of their respective rights and obligations as Members, as well as certain rules for the management of the Company’s affairs; and

WHEREAS, the Members desire that their joint venture, in the form of the Company, satisfy the applicable requirements of 49 C.F.R. Part 23 and Part 26 as interpreted in the Joint Venture Guidance published by the Department of Transportation on July 17, 2008 (collectively, the “ACDBE Requirements”) and that IRG, M2 and WH Smith shall share in the capital contribution, control, management, risks, and profits of the joint venture to a degree commensurate with their respective ownership interests. The provisions of this Agreement shall be interpreted whenever possible to be consistent with and in furtherance of the foregoing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and includes the premises set forth above, the undersigned Members and the Company agree as follows:

SECTION 1 - DEFINITIONS

1.1. Definitions. In this Agreement, the following terms shall have the meanings set forth below. Defined terms not listed hereunder shall be defined as set forth elsewhere in this Agreement.

(a) “*ACDBE*” shall have the meaning provided in the preamble to this Agreement.

(b) “*Affiliate*” shall mean, with respect to any Member, any Person (as defined herein): (i) which owns more than 10% of the voting interests in the Member; or (ii) in which the Member owns more than 10% of the voting interests; or (iii) in which more than 10% of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

(c) “*Airport*” shall mean Denver International Airport in Denver, Colorado.

(d) “*Applicable Tax Rate*” shall mean 125% of the highest marginal federal individual income tax rate for the character of income earned during the Fiscal Year. The current Applicable Tax Rate as of the date of this Agreement is 45%, but in no event shall the Applicable Tax Rate be greater than 50%.

(e) “*Articles of Organization*” shall mean the Articles of Organization of the Company filed with the Florida Department of State on September 13, 2019, as they may from time to time be amended.

(f) “*Breach Event*” shall have the meaning provided in Section 14.5.

(g) “*Capital Account*” shall mean as of any date shall mean the capital account of each Member as determined under Section 6.1.

(h) “*Capital Contribution*” shall mean any contribution pursuant to Section 3.5 by a Member to the capital of the Company in cash, property, services rendered or intangible property.

(i) “*Capital Proceeds*” shall mean (i) the proceeds of sale or condemnation of some or all of the assets of the Company, (ii) loan proceeds, (iii) Capital Contributions, and (iv) insurance proceeds (other than business interruption or similar insurance proceeds).

(j) “*Code*” shall mean the Internal Revenue Code of 1986, as amended.

(k) “*Company*” shall mean WH SMITH DEN LLC.

(l) “*Confidential Information*” shall have the meaning provided in Section 13.1.

(m) “*Distribution*” shall mean any cash and other property transferred to a

Member by the Company in accordance with Sections 8.2, 8.3 or 11.2.

(n) “*Breach Notice*” shall have the meaning provided in Section 10.3(a).

(o) “*Economic Risk of Loss*” has the meaning set forth in Treas. Reg. §1.752-2(b)(1).

(p) “*Fiscal Year*” shall mean the fiscal year of the Company established in accordance with Section 9.3.

(q) “*Intellectual Property*” shall mean any of the following (whether domestic or foreign): (a) patents and applications for patents; (b) registered and unregistered trademarks, service marks and other indicia of origin, pending trademark and service mark registration applications, and intent-to-use registrations or similar reservations of marks; (c) registered and unregistered copyrights and mask works, and applications for registration of either; (d) Internet domain names, applications and reservations therefor, uniform resource locators and the corresponding Internet sites; (e) trade secrets; (f) intellectual property and proprietary information not otherwise listed in (a) through (e) above, including, unpatented inventions, invention disclosures, moral and economic rights of authors and inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, show-how, formulae, methods (whether or not patentable), designs, processes, procedures, technology, source codes, object codes, computer software programs, databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded, or unrecorded; and (g) any goodwill associated with any of the foregoing.

(r) “*LLC Act*” shall mean the Florida Limited Liability Company Act.

(s) “*Majority Interest*” shall mean Membership Interests representing more than 50% of the total issued and outstanding Membership Interests of the Company.

(t) “*Management Committee*” shall have the meaning as set forth in Section 4.1.

(u) “*Member*” shall mean each Person listed on Exhibit A, as such may be amended from time to time.

(v) “*Membership Interest*” shall mean, with respect to each Member, the Member’s share of the Profits and Losses of, and the right to receive distributions from, the Company. Each Member’s Membership Interest is represented by the percentage interest set forth on Exhibit A.

(w) “*Net Cash Flow*” with respect to any Fiscal Year shall mean:

(i) all cash receipts of the Company during such Fiscal Year other than the receipt of Capital Contributions and Capital Proceeds;

(ii) plus the net reduction in any cash reserves that are established and

maintained by the Management Committee in an amount that the Management Committee deems in its sole discretion to be reasonably necessary or appropriate for any purpose of the Company;

(iii) less all cash disbursements paid by the Company during such period (other than distributions made to the Members funded with Capital Proceeds); and

(iv) less the net increase in any cash reserves that are established and maintained by the Management Committee in an amount that the Management Committee deems in its sole discretion to be reasonably necessary or appropriate for any purpose of the Company.

(x) “*Person*” shall mean any individual, corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity, whether domestic or foreign.

(y) “*Profits*” and “*Losses*” shall mean an amount equal to the Company’s taxable income or loss for each Fiscal Year or other period, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code §703(a)(1) shall be included in taxable income or loss) with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax shall be added to such taxable income or subtracted from such loss; and

(ii) Any expenditures of the Company described in Code §705(a)(2)(B) or treated as Code §705(a)(2)(B) expenditures pursuant to Treas. Reg. §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing taxable income or loss pursuant hereto, shall be subtracted from such taxable income or added to such loss; and

(iii) Any item that is specially allocated pursuant to Section 7.2 or 7.3 shall not be taken into account in computing Profit or Losses.

(z) “*Selling Member*” shall mean a Member that sells (or contracts to sell) a Membership Interest.

(aa) “*Taxable Income*” shall mean the excess of the cumulative taxable income over cumulative taxable losses. For this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code §703(a)(1) shall be included in taxable income or loss.

(bb) “*Treas. Reg.*” shall mean all final, temporary, and proposed regulations promulgated under the Code.

(cc) “*Transfer*” means any voluntary or involuntary act by which a Member makes, or attempts or purports to make, or suffers to occur, any gift, sale, mortgage, pledge, assignment, hypothecation, encumbrance or other disposition of any Membership Interest, or interest therein, owned by the Member. The term “Transfer” includes any transfer which takes place by operation of law or otherwise, and also includes any purported transfer, assignment, sale or other disposition: by assignment of law, as a result of the appointment of a trustee in bankruptcy for

any Member, under any judgment or order, as the result of the appointment of a receiver for any Member, or as a result of any assignment for the benefit of creditors.

SECTION 2 - ORGANIZATION

2.1 Name. The name of the Company is WH SMITH DEN LLC.

2.2 Principal Place of Business. The place of business of the Company within the State of Colorado shall be at the Airport. The principal office of the Company shall be located at 4801 Executive Park Court, Suite 100, Jacksonville, Florida 32216. The Company may establish any other places of business as the Management Committee may from time to time deem advisable.

2.3 Purposes. The purposes for which the Company is formed are: (a) to own and operate the Stores at the Airport under the Lease; (b) to carry on the business described above and any other related or unrelated business and activity in the State of Colorado, in any state, territory, district, or dependency of the United States, or in any foreign country; and (c) to do anything permitted under the LLC Act, as amended from time to time.

SECTION 3 - MEMBERS AND CAPITAL CONTRIBUTIONS

3.1 Names and Addresses. The names and addresses of the Members are as set forth in Exhibit A to this Agreement; as such Exhibit may be amended from time to time. Each of IRG and M2 represents and warrants that it has the authority to enter into this Agreement and that it is not subject to any obligation or restriction that would be violated by its entering into this Agreement. As shown on Exhibit A, as of the date hereof the Membership Interests are owned as follows:

WH Smith	70%
IRG	20%
M2	10%

3.2 Books and Records. The Company shall maintain proper and complete books and records and other documents with reference to all of the Company transactions. Each Member at all reasonable times during business hours shall have complete access thereto for inspection and copying. The books shall be kept on the accrual method of accounting or such other method of accounting that clearly reflects the income of the Company as shall be determined by the Management Committee. Any inspection of such books and records shall occur at the corporate offices of the Company and shall be at the sole expense of the Member performing such inspection.

3.3 Information. In addition to information otherwise available to a Member by law, each Member may inspect the Articles of Organization, the Operating Agreement, the minutes of any meeting of the Members, the minutes of the meetings of the Management Committee, and any tax returns of the Company for the immediately preceding three (3) Fiscal Years during ordinary business hours and at the principal place of business of the Company. In lieu of an inspection and upon a Member's request and sole expense, the Company shall provide any

Member that makes such request with copies of all financial information pertaining to the operations of the Company for the immediately preceding three (3) Fiscal Years, subject to Section 13.

3.4 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the LLC Act and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of the Member's Capital Contribution and as otherwise set forth in this Agreement, the LLC Act and any other applicable law.

3.5 Capital Contributions. Each Member shall contribute the necessary, initial and additional Capital Contributions to the Company in proportion to its Membership Interest and consistent with the ACDBE Requirements. The initial Capital Contributions of the Members are as set forth in Exhibit A to this Agreement. Upon the Company being awarded a Contract (as defined in Section 10.5 below), the Management Committee shall determine the total expense to the Company for the construction and initial operation of the applicable Stores, and each Member shall make a Capital Contribution equal to its proportionate share of 20% of such total expense. Because the Stores will be constructed at different times, such Capital Contributions shall be made in multiple tranches, the amounts and timing of which shall be determined by the Management Committee. The first tranche shall not be required prior to execution of the Lease. The Members shall make such initial Capital Contributions solely from their own funds and no portion of such contribution may be borrowed from WH Smith. All Capital Contributions to the Company shall be made in cash unless otherwise agreed by the Management Committee.

3.6 Additional Capital Contributions. The Members shall make such additional Capital Contributions, beyond the initial Capital Contributions described in Section 3.5 above as are hereafter determined to be necessary to meet the financial obligations of the Company, by Supermajority vote of the Management Committee as set forth in Sections 4.4(f) and 4.5. In such event, each Member shall contribute its proportionate share (in proportion to its then ownership of Membership Interests in the Company) of such Capital Contributions whenever circumstances so require. If any Member desires to advance capital to the Company after the failure of the Management Committee to vote by Supermajority to require additional Capital Contributions, such Member may make such advance as a loan, on those terms upon which the Management Committee and the Member agree, provided however, that such loan must be paid in full not later than the expiration of the Lease.

3.7 Priority and Return of Capital. No Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Profits, Losses or a Distribution, except that this Section 3.7 shall not apply to repayment of a loan or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company. No interest shall be paid on a Member's Capital Contribution, and no Member may withdraw such Capital Contribution.

3.8 Liability of a Member to the Company. A Member that rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent now or hereafter provided by the LLC Act. A Member receiving a Distribution in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such

Distribution) will be liable to the Company for the amount of such Distribution to the extent said Distribution is in violation of this Agreement or to the extent the Company's liabilities exceed its assets (after giving effect to such Distribution).

3.9 Financial Adjustments. No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of Profits or Losses.

3.10 Loan by WH Smith. The initial Capital Contributions described in Section 3.5 will fund 20% of the amounts necessary to finance the construction and initial operation of the Stores, as required pursuant to the ACDBE Requirements. Because each of IRG and M2 has certified to WH Smith that it is unable to fund its proportionate share of the remainder of the amounts necessary to finance the construction and initial operation of the Stores, WH Smith has agreed to loan the Company, as borrower, all amounts necessary to finance the construction and initial operation of the Stores in excess of the initial Capital Contributions described in Section 3.5 (the "Start Up Loan"), and each of IRG and M2 has agreed to guaranty the repayment by the Company of a portion of the Start Up Loan based on such Member's percentage Membership Interest as set forth on Exhibit A. Each Member hereby consents to the Start Up Loan and to any loan documents that may be entered into by the parties in connection with such Start Up Loan. The anticipated form of Promissory Note to be used to evidence the Start Up Loan is attached hereto as Exhibit 3.10A and the anticipated form of the Guaranty of each of IRG and M2 to WH Smith is attached hereto as Exhibit 3.10B. Because the Stores will be constructed at different times, it is anticipated that the Start Up Loan may be made in multiple tranches and evidenced by multiple Promissory Notes and that each Promissory Note will be guaranteed by a separate Guaranty, each in the form attached hereto. Unless otherwise agreed by the Management Committee, subject to the provisions of Section 8.3, all Net Cash Flow shall first be used to repay the principal and interest on the Start Up Loan and any other loans made to the Company by the Members.

SECTION 4 - MANAGEMENT

4.1 Overall Management and Day-to-Day Affairs. Except as otherwise provided herein or in the Articles of Organization, the affairs and property of the Company shall be managed, controlled and directed by a managing committee (the "Management Committee") consisting of four (4) members. The members of the Management Committee may hereinafter be referred to as "Manager" or "Managers." Two members of the Management Committee shall be appointed by WH Smith, one member shall be appointed by IRG and one member shall be appointed by M2. An appointee to the Management Committee need not be a resident of the state of Florida or a Member of the Company. Each Member may at any time and from time to time change its appointee by furnishing the other Member with written notice of appointment of a new appointee, but until the furnishing of such notice, the appointees hereby appointed shall serve and their actions on behalf of the Company in accordance with the terms of this Agreement shall be binding. The initial Management Committee shall consist of Huy Pham as appointee for IRG, Ray Mickens and appointee for M2 and Ziad El-Assad and P. Jeremy Smith, Jr. as appointees for WH Smith.

4.2 Store Manager. For each Store, the Management Committee shall select a manager who shall directly oversee operations at the Store and report to the Management

Committee (the “Store Manager”). The Store Manager shall have managerial authority over the Store sales associates and shall be present at the Store daily, or shall otherwise be available to the sales associates by phone. The appointment of a Store Manager shall not be deemed a “Major Decision”, as set forth below, and therefore shall be by majority vote in accordance with Section 4.5 below. For each Store, the Store Manager shall be responsible for executing the decisions of the Management Committee and for the conduct of the ordinary and usual business affairs of the Company at the Store. The Store Manager shall provide reports, verbally or in writing, to the Management Committee at such frequencies as the Management Committee may direct.

4.3 Meetings and Records of Management Committee. The Management Committee shall hold a meeting to discuss the affairs of the Company at least once per calendar quarter and shall work, as required, to act, except with respect to the Major Decisions set forth in Section 4.4, by majority vote upon matters pertaining to the ordinary and usual business affairs of the Company including operations of the Company, personnel management, budgeting, accounting, and maintenance of the Company’s physical assets and facilities. The Company shall prepare and maintain formal agendas and minutes of the meetings of the Management Committee. Each Member shall be represented at each quarterly meeting of the Management Committee. Each Management Committee member shall be given electronic or paper notice of the regular quarterly Management Committee meeting at least ten (10) days in advance, provided that a full list of quarterly (or other interval) Management Committee meetings provided annually shall be sufficient. Electronic or paper notices of special meetings of the Management Committee shall be given to each Management Committee member at least five (5) days in advance. A meeting notice shall give the time, place and purpose of the meeting. Any meeting required hereunder may, without objection, be held by telephone or other electronic means provided that each committee member can hear one another. Any action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if all members of the Management Committee necessary to approve such action consent thereto in writing and the writing or writings are filed with the minutes of the Management Committee.

4.4 Major Decisions by Management Committee. No action shall be taken, or sum be expended or obligation incurred by the Management Committee, the Store Manager, a Member or any other Person on behalf of the Company, with respect to a matter within the scope of any of the Major Decisions affecting the Company, as defined below, unless such Major Decision has been approved and authorized by Management Committee members holding not less than a combined eighty (80) votes, as described in Section 4.5, below (a “Supermajority”). The following are deemed Major Decisions:

- (a) Dissolution of the Company.
- (b) Entering into any agreement outside the scope of the purpose of the Company.
- (c) Any amendment to this Agreement including an amendment to this Section 4.4 (Major Decisions by Management Committee), except in the event of a Breach Event.
- (d) Any amendment to the Company’s Articles of Organization.

(e) The admission of any new Member to the Company, except in the event of a Breach Event.

(f) Requiring any Member to make any additional Capital Contributions other than those initial amounts described in Sections 3.5 and 3.6 above and Exhibit A.

(g) The removal of Huy Pham or Ray Mickens from their respective positions as Vice President of the Company, except in the event of a Breach Event.

(h) Making any capital expenditure or incurring any capital obligation by or on behalf of the Company involving a sum in excess of \$25,000 or involving a sum of less than \$25,000 where the same relates to a component part of work, the combined cost of which in any Fiscal Year exceeds \$25,000.

(i) Establishing or amending a schedule of regular and/or special meetings of the Management Committee, setting forth the dates, times and places thereof.

4.5 Voting by the Management Committee. Except for a Major Decision requiring Supermajority approval by the Management Committee, the Management Committee shall approve or authorize a matter by majority vote (or written consent) in accordance with this Section, subject to the limitations of the Articles of Organization of the Company and the LLC Act with respect to matters that must be approved by the Members. The Management Committee shall have a total of 100 votes, and the appointees of each Member shall collectively be entitled to vote the number of votes equal to the Percentages of the Member that appointed such Management Committee members ("Member's Collective Votes"). Each appointee of a Member shall singly be entitled to vote the Member's Collective Votes divided by the number of appointees for the Member. For example, Huy Pham, as the IRG appointee, shall have 20 votes, Ray Mickens, as the M2 appointee, shall have 10 votes and the WH Smith appointees shall collectively have 70 votes, with Ziad El-Assad and P. Jeremy Smith, Jr. having 35 votes each. At meetings of the Management Committee, the presence of Management Committee members holding at least a majority of votes shall constitute a quorum for the transaction of any business properly before the meeting, provided that with respect to any action requiring Supermajority approval, a quorum may only exist where Management Committee members holding at least eighty percent (80%) of the votes are present either in person or by written proxy. Votes of the Management Committee may be conducted in person or by telephone, fax or other form of communication. Except when emergency conditions otherwise require, votes of the Management Committee (and of the Members) shall be taken on not less than twenty-four (24) hours prior notice which shall specify, in general, the subject matter to be voted upon. In the absence of an appointee of a Member from any meeting of the Management Committee, the other appointee shall be authorized to vote all of the absent appointee's votes in addition to the appointee's votes.

4.6 Binding Authority. Unless authorized to do so by this Agreement or the Management Committee, no Person shall have any power or authority to bind the Company. Authorization by the Management Committee to act on behalf of the Company shall only be valid with regard to actions that the Management Committee has authority to take pursuant to this Agreement.

4.7 Delegation of Authority. Upon approval of any action to be taken by the Company in accordance with this Agreement, the President of the Company shall have the full power to execute, for and on behalf of the Company, any and all documents and instruments that, in the reasonable judgement of the President, may be appropriate or necessary in connection with such action and with the general business of the Company, including, without limitation, the Lease, any financing documents and any other contracts relating to the Company's business operations at the Airport. No person dealing with the Company need inquire into the validity or propriety of any document or instrument executed in the name of the Company by the President, or as to the authority of such person in executing the same.

4.8 Limitation of Liability; Indemnification.

(a) No Management Committee member, Member or officer shall be liable to the Company or the Members for any loss or damages resulting from errors in judgment or for any acts or omissions that do not constitute willful misconduct or gross negligence on the part of such Manager, Member or officer. In all transactions for or with the Company, each of the Managers, the Members and the officers shall act in good faith and in a manner believed to be in the best interests of the Company.

(b) The Company, its receiver or its trustee (but not the Members personally) shall indemnify and defend the Management Committee members, the Members and the officers against, and hold them harmless from, any and all losses, judgments, costs, damages, liabilities, fines, claims and expenses (including, but not limited to, reasonable attorneys' fees and court costs, which shall be paid by the Company as incurred) that may be made or imposed upon such persons and any amounts paid in settlement of any claims sustained by the Company by reason of any act or inaction which is determined by the Management Committee or the Members or the officers in good faith to have been in the best interests of the Company so long as such conduct shall not constitute willful misconduct or gross negligence. The obligations of the Company set forth in this Section 4.8 shall extend to the Members and the employees of the Members to the extent that the Members and such employees are acting on behalf of the Company, including without limitation, in those circumstances in which employees of the Members are acting in a managerial or supervisory capacity with respect to the employees of the Company.

(c) In the event of settlement of any action, suit or proceeding brought or threatened, such indemnification shall apply to all matters covered by the settlement except for matters as to which the Company is advised by counsel regularly retained by the Company that the Person seeking indemnification, in the opinion of counsel, did not act in good faith. The foregoing right of indemnification shall be in addition to any rights to which each of the Management Committee members, the Members and officers may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(d) The Company shall pay the expenses incurred by each of the Management Committee members, the Members or any officer in defending a civil or criminal action, suit or proceeding related to the business of the Company. Any right of indemnity granted under this Section may be satisfied only out of the assets of the Company and neither any Management

Committee member nor any Member nor any officer shall be personally liable with respect to any such claim for indemnification.

(e) Each Management Committee member may purchase and maintain insurance in commercially reasonable amounts on behalf of themselves and each of the Management Committee members, officers, employees and agents of the Company against any liability incurred by them in their capacities as such, whether or not the Company has the power to indemnify them against such liability.

4.9 No Exclusive Duty to Company. No Management Committee member shall be required to manage the Company as their sole and exclusive functions and each such member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Management Committee members shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities unless such activity is specifically prohibited by the terms of this or any other agreement.

4.10 Compensation. The Management Committee members shall not receive a salary or other compensation, unless otherwise approved by the Members.

4.11 Expenses. Each Management Committee member shall maintain complete records of and receipts evidencing all expenses incurred or paid in connection with such individual's work for the Company, which shall pay or reimburse each Management Committee member for the same, subject to approval of individual items and types of reimbursable expenses by the Management Committee.

4.12 Officers. The Management Committee may designate one (1) or more individuals as officers of the Company, who shall have such titles and powers and exercise and perform such duties as shall be assigned to them from time to time by the Management Committee. Any officer may be removed as an officer at any time, with or without cause, by affirmative vote of the Management Committee. Each officer shall hold office until his successor is elected and qualified. Any number of offices may be held by the same individual. The officers shall serve without salary or other compensation. The initial officers of the Company are as follows:

Ziad El-Assad	President
Huy Pham	Vice President
Ray Mickens	Vice President
P. Jeremy Smith, Jr.	Vice President
Robert Zelinski	Secretary/Treasurer

4.13 Members; Manner of Acting. Whenever the Members are required or permitted to take any action by vote, the consent of a majority of the Members shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the LLC Act, the Company's Articles of Organization or this Agreement. Such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members holding the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted, and shall be delivered to the office of the Company.

4.14 Meetings of Members. The annual meeting of the Members shall be held at such time as shall be determined by the vote or written consent of all Members for the purpose of the transaction of any business as may come before such meeting. Special meetings of the Members, for any purpose or purposes, may be called by any Management Committee member or Member. Meetings of the Members may be held at any place, within or outside the State of Florida, designated in any notice of such meeting. If no such designation is made, the place of any such meeting shall be the principal office of the Company. Written notice stating the place, day and hour of the meeting indicating that it is being issued by or at the direction of the person or persons calling the meeting, and stating the purpose or purposes for which the meeting is called, shall be delivered no fewer than five (5) business days nor more than sixty (60) days before the date of the meeting. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment of such meeting, or Members entitled to receive payment of any Distribution, or to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made, the determination shall apply to any adjournment of the meeting.

4.15 Quorum; Manner of Acting. Members holding a Majority Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of represented Membership Interests may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at such meeting. At an adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Membership Interests whose absence results in less than a quorum being present. If a quorum is present at any meeting, the vote or written consent of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the LLC Act, the Articles of Organization or this Agreement.

4.16 Action by Managers or Members Without a Meeting. Action required or permitted to be taken at a meeting of the Management Committee, or reserved to the Members by this Agreement or the Act, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by each Manager or Member, as applicable, holding the minimum number of votes that would be necessary to authorize or take such action, and shall be delivered to the office of the Company or the Management Committee members. Prompt notice of the taking of action without a meeting by less than a unanimous written consent shall be given to each Member who has not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

SECTION 5 - MEMBER RESPONSIBILITIES

5.1 IRG Responsibilities.

(a) In addition to participation on the Management Committee, IRG shall be responsible for the distinct, clearly defined portion of the services of the Company, as set forth in this Section 5.1(a). Such services shall be performed through IRG's principals and employees. IRG shall have such degree of autonomy as shall allow IRG to exercise control of such work, as required by the ACDBE Requirements, subject always to the overall supervision and direction of the Management Committee. IRG shall perform the services described below in its designated role as supporting the operations of the Company to ensure the optimal performance of each Store and the Company's adherence to the operational terms and conditions of the Lease. No less often than quarterly, IRG shall provide a written summary of its services as set forth in this Section 5.1(a). IRG shall coordinate with M2 to produce ACDBE reports and related materials required for submission to the Landlord in such form and at such frequency as are required pursuant to the Lease. In fulfillment of its responsibilities, IRG shall:

(i) Be responsible for the Grab and Go portion of business operations at the Stores, which responsibility shall include: (a) sourcing appropriate local providers for menu items; (b) establishing product assortment, volume and presentation; and (f) being available on an ongoing basis to address issues arising in connection with the foregoing (collectively, "G&G Management Functions"). Adjustments shall be made as reasonably determined by the Management Committee to be necessary in order to maximize profitability. The G&G Management Functions shall be performed in accordance with the budget established by the Management Committee.

(ii) Conduct a monthly Store walk-through of each Store to analyze and evaluate product sales, selection, pricing, supply, new product opportunities, merchandising, signage and facilities maintenance and utilization and to address customer issues. Produce Store Visit Report and meet with members of the Management Committee to review the evaluation and provide input on improving operations and increasing productivity.

(iii) Attend Airport concessions meetings and provide a summary report to Store Manager and a detailed report, as required, to the Management Committee and, at WH Smith's request and direction, assist in airport negotiations and relations.

(iv) Ensure that each Store is maintained in a clean, presentable and sanitary condition.

(v) In coordination with M2, conduct quarterly meetings with the Store Managers to assess and evaluate (a) compliance with operational standards, (b) Store sales data (c) trends on consumer spending, (d) strategies for improving operations and increasing revenue, (e) inventory loss, and (f) overall Store performance.

(b) In exchange for IRG's services to the Company, the Company shall pay IRG, as reimbursement for the actual costs incurred to provide IRG's services, a monthly overhead expense reimbursement (the "IRG Expense Reimbursement") based on the actual time spent by IRG's employees and principals providing the services to the Company as described in Section 5.1(a) above. The IRG Expense Reimbursement shall initially be set at 1.0% of gross receipts, reflecting a recovery to IRG of its actual costs of providing the services to the Company by IRG's employees and principals as contemplated by this Section 5.1. The IRG Expense Reimbursement shall be paid monthly. The IRG Expense Reimbursement is derived from an estimate of the total amount of the cost of IRG employee services needed to provide the Company with those services described in Section 5.1(a). The IRG Expense Reimbursement will be subject to review annually by the Management Committee, at the time that the annual budget for the Company is established. If the actual IRG Expense Reimbursement charged to the Company is greater or less than the actual cost to provide IRG's services, as the case may be, upon agreement of the Management Committee, the difference shall be credited to the Company against future payments of the IRG Expense Reimbursement due from the Company to IRG or shall be paid to IRG.

5.2 M2 Responsibilities.

(a) In addition to participation on the Management Committee, M2 shall be responsible for the distinct, clearly defined portion of the services of the Company, as set forth in this Section 5.2(a). Such services shall be performed through M2's principals and employees. M2 shall have such degree of autonomy as shall allow M2 to exercise control of such work, as required by the ACDBE Requirements, subject always to the overall supervision and direction of the Management Committee. M2 shall perform the services described below in its designated role as supporting the operations of the Company to ensure the optimal performance of each Store and the Company's adherence to the operational terms and conditions of the Lease. No less often than quarterly, M2 shall provide a written summary of its services as set forth in this Section 5.2(a). M2 shall coordinate with IRG to produce ACDBE reports and related materials required for submission to the Landlord in such form and at such frequency as are required pursuant to the Lease. In fulfillment of its responsibilities, M2 shall:

(i) In the event duty-free merchandise is sold within any Store, M2 shall be responsible for the development and operation of the specific retail area within the Store at which such merchandise is offered for sale, which responsibility shall include all product selection, sourcing, and display within such area.

(ii) Review Store sales data on a regular basis to determine trends in consumer spending and provide quarterly reports to the Store Manager, Management Committee

and other designees of the Management Committee with strategies for improving operations and increasing revenue.

(iii) Review third-party “secret shopper” inspections of Store operations, and summarize findings to the Management Committee and other designees of the Management Committee, and work to resolve issues in conjunction with the Store Manager and the Management Committee.

(iv) Conduct quarterly safety audit and present findings to Management Committee in written report, including action plan if appropriate.

(v) In coordination with IRG, conduct quarterly meetings with the Store Managers to assess and evaluate (a) compliance with operational standards, (b) Store sales data (c) trends on consumer spending, (d) strategies for improving operations and increasing revenue, (e) inventory loss, and (f) overall Store performance.

(b) In exchange for M2’s services to the Company, the Company shall pay M2, as reimbursement for the actual costs incurred to provide M2’s services, a monthly overhead expense reimbursement (the “M2 Expense Reimbursement”) based on the actual time spent by M2’s employees and principals providing the services to the Company as described in Section 5.2(a) above. The M2 Expense Reimbursement shall initially be set at 0.5% of gross receipts, reflecting a recovery to IRG of its actual costs of providing the services to the Company by M2’s employees and principals as contemplated by this Section 5.2. The M2 Expense Reimbursement shall be paid monthly. The M2 Expense Reimbursement is derived from an estimate of the total amount of the cost of M2 employee services needed to provide the Company with those services described in Section 5.2(a). The M2 Expense Reimbursement will be subject to review annually by the Management Committee, at the time that the annual budget for the Company is established. If the actual M2 Expense Reimbursement charged to the Company is greater or less than the actual cost to provide M2’s services, as the case may be, upon agreement of the Management Committee, the difference shall be credited to the Company against future payments of the M2 Expense Reimbursement due from the Company to M2 or shall be paid to M2.

5.3 WH Smith Responsibilities.

(a) In addition to participation on the Management Committee, WH Smith, through its employees and principals, shall be responsible for initial Store development and construction of each Store and shall keep the Management Committee informed of all related actions. WH Smith shall supervise and operate each Store, through its employees and principals (in addition to any employees or agents engaged by the Company directly), subject to the direction of the Management Committee. In developing, constructing and operating each Store, WH Smith shall provide various support and management services to the Company through its principals and employees as follows: loss prevention, information technology, tax compliance and planning, human resources and payroll, accounting, customer service, legal counseling, budgeting assistance and business planning, advertising/promotions, design and construction consultation.

(b) In exchange for WH Smith's services to the Company, the Company shall pay WH Smith, as reimbursement for the actual costs incurred to provide WH Smith's services, a monthly overhead expense reimbursement (the "WH Smith Expense Reimbursement") based on the actual time spent by WH Smith's employees and principals providing the services to the Company as described in Section 5.3(a) above. The WH Smith Expense Reimbursement shall initially be set at 4.0% of gross receipts, reflecting a recovery to WH Smith of its actual costs of providing the services to the Company by WH Smith corporate employees and principals as contemplated by this Section 5.3. The WH Smith Expense Reimbursement shall be paid monthly. The WH Smith Expense Reimbursement is derived from an estimate of the total amount of the cost of WH Smith corporate employee services needed to provide the Company with those services described in Section 5.3(a). The WH Smith Expense Reimbursement will be subject to review annually by the Management Committee, at the time that the annual budget for the Company is established. If the actual WH Smith Expense Reimbursement charged to the Company is greater or less than the actual cost to provide WH Smith's services, as the case may be, upon agreement of the Management Committee, the difference shall be credited to the Company against future payments of the WH Smith Expense Reimbursement due from the Company to WH Smith or shall be paid to WH Smith. All employees located at each Store and utilized in the operation of the Company will be employees of WH Smith. The Company will reimburse WH Smith for all labor costs and expenses (including, but not limited to, wages, salaries, bonuses and benefits) in an amount equal to such costs and expenses as they relate to WH Smith's employees utilized to operate, manage and support the operation of the Company.

(c) In addition to the services for which WH Smith is reimbursed in Section 5.3(b), (i) the Members acknowledge that the allocations in this Agreement reflect that WH Smith does not allocate all costs of operations directly to the store level, and thus WH Smith will charge the Company a pro rata share, on a consistent basis with other store locations owned or managed by WH Smith, of these costs, which include but are not limited to bank fees, service contracts, freight, systems and information technology, consulting/audit fees, liability insurance, etc., and (ii) the Company shall reimburse WH Smith for all direct costs not otherwise covered under this Agreement.

SECTION 6 - CAPITAL ACCOUNTS

6.1 Maintenance of Capital Accounts.

(a) The Company shall establish and maintain a separate Capital Account for each Member. Such Capital Account of a Member shall be:

(i) increased by the amount of: (A) the Member's Capital Contribution; (B) allocations of Profits to the Member pursuant to Section 7.1(a); and (C) allocations to the Member of items of income and gain pursuant to Section 7.3;

(ii) decreased by: (A) the amount of cash and the fair market value of property (net of liabilities secured by such property that such Member assumes or to which such property, is subject) distributed to such Member pursuant to Sections 8.2, 8.3 or 11.2; (B) the allocations of Losses to the Member pursuant to Section 7.1(b); and (C) allocations pursuant to

Section 7.2 to the Member of Nonrecourse Deductions, Partner Nonrecourse Deductions and Syndication Costs; and

(iii) otherwise adjusted in accordance with the accounting principles set forth in Treas. Reg. §1.704-1(b)(2)(iv).

(b) Upon a permitted sale or other transfer of a Membership Interest, the Capital Account of the transferring Member shall become the Capital Account of the Person to which or to whom such Membership Interest is sold or transferred in accordance with Treas. Reg. §1.704-1(b)(2)(iv).

(c) The foregoing provisions and the other provisions of this Agreement are intended to comply with Treas. Reg. §1.704-1(b), and shall be interpreted and applied as provided in such Treasury Regulations. If, in the opinion of the Management Committee, the manner in which Capital Accounts are to be maintained pursuant to this Agreement should be modified to comply with Code §704(b), then the method in which Capital Accounts are maintained shall be so modified, provided that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

6.2 Deficit Capital Account. Except as provided otherwise in the LLC Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in a Capital Account.

SECTION 7 - ALLOCATIONS OF PROFIT AND LOSS

7.1 Profit and Losses. Except as otherwise provided herein, the Profits and Losses of the Company for each Fiscal Year shall be allocated among the Members as follows:

(a) Profits.

(i) Profits shall be allocated first to the Members in proportion to, and to the extent of, any losses previously allocated to them and not previously offset by allocations pursuant to this Section 7.1(a);

(ii) Next, profits shall be allocated next to the Members in proportion to their respective Membership Interests, as the same may be adjusted in accordance with the provisions hereof.

(b) Losses shall be allocated to the Members in proportion to the manner in which the Member or Members bear such Economic Risk of Loss and if no Member bears the Economic Risk of Loss, in proportion to their respective Membership Interests, as the same may be adjusted in accordance with the provisions hereof.

7.2 Special Allocations of Nonrecourse Deductions and Partner Nonrecourse Deductions.

(a) Nonrecourse Deductions, if any, for any taxable year shall be allocated

among the Members in proportion to the allocation of Profits for such year pursuant to Section 7.1(a), or if there are no such Profits for the taxable year, in proportion to their respective Capital Accounts.

(b) Partner Nonrecourse Deductions, if any, for any taxable year shall be allocated to the Members bearing the Economic Risk of Loss with respect to such deductions, in proportion to the manner in which they bear such Economic Risk of Loss.

7.3 Other Special Allocations. Notwithstanding any provision to the contrary, the following special allocations shall be made to the extent necessary to comply with the requirements of Code §704(b) and the regulations thereunder:

(a) If, at the close of any taxable year, any Member unexpectedly receives any adjustment, allocation or distribution described in Treas. Reg. §1.704-1(b)(2)(ii)(d)(4), (5) or (6) (“Qualified Income Offset Adjustment”), and if such Qualified Income Offset Adjustment causes or increases a deficit balance in the Member’s Capital Account in excess of the amount such Member is obligated to contribute to the Company pursuant to Treas. Reg. §1.704-1(b)(2)(ii)(d) (an “Excess Negative Capital Account Balance”), then items of income and gain in the manner described in the Treas. Regs. under Code §704(b) shall be allocated to each Member to the extent required to eliminate such Excess Negative Capital Account Balance resulting from a Qualified Income Offset Adjustment. Thereafter, all Profits and Losses shall be allocated in accordance with the other provisions of this Section 7. This Section 7.3(a) is intended to comply with the “qualified income offset” requirement of Treas. Reg. §1.704-1 (b)(2)(ii)(d).

(b) Any special allocations of items of income and gain pursuant to this Section 7.3 or items of deduction, loss or Code §705(a)(2)(B) expenditure shall be taken into account in computing subsequent allocations pursuant to Sections 7.1 and 7.2, so that the net amount of any items so allocated and all other items allocated to each Member pursuant to Sections 7.1 and 7.2 shall, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to the provisions of Sections 7.1 and 7.2 if such special allocations had not been made.

(c) In the event there is a net decrease in Partnership minimum gain (as defined in Treas. Reg. §1.704-2(d)) during a Fiscal Year, the Members shall be allocated, before any other allocation is made of any items for such Fiscal Year, items of income and gain for such year or period (and, if necessary, subsequent Fiscal Years) in the manner and to the extent required by Treas. Reg. §1.704-2(f). The allocations contained in this Section 7.3(c) are intended to be a “minimum gain chargeback” within the meaning of Treas. Reg. §1.704-2(f) and shall be interpreted accordingly.

7.4 Shifting Interests. The allocation of Profits and Losses for any Fiscal Year during which a Person acquires a Membership Interest shall take into account the Members’ varying interests for such Fiscal Year pursuant to any method permissible under Code §706 that is selected by the Management Committee (consistent with any agreement between the assignor and assignee of such Membership Interest to the extent permitted by the Code).

7.5 Section 754 Election. In the event of the transfer of a Membership Interest by sale or exchange in accordance with this agreement, or upon the death of a Member, if the Person acquiring such Membership Interest requests the Company to adjust the basis of such Person's share of the Company's assets pursuant to an election under Code §754, the Company may do so at the discretion of the Management Committee.

7.6 Tax Allocations. For federal, state and local income tax purposes, all items of taxable income, gain, loss and deduction for each Fiscal Year shall be allocated to the Members in accordance with the manner in which corresponding items were allocated under this Section 7.

SECTION 8 - DISTRIBUTIONS

8.1 Available Cash Flows. The Management Committee shall within one hundred twenty (120) days after the end of each Fiscal Year, or more often as the Management Committee may from time to time determine, make Distributions of Net Cash Flow generated in the Fiscal Year then ended to the Members. Notwithstanding any other provision herein, no Distribution shall be declared and paid unless, after such Distribution is made, the aggregate fair market value of assets of the Company exceeds all liabilities of the Company.

8.2 Distributions. Subject only to Tax Distributions required pursuant to Section 8.3, all Distributions shall be made to the Members as follows: (a) first, all Net Cash Flow shall be used to repay the principal and interest on loans made to the Company by Members, and (b) thereafter, any remaining Cash Flow shall be made to the Members pro-rata in accordance with their respective Membership Interests.

8.3 Tax Distributions. If, as of the date that is one hundred twenty (120) days after the close of a Fiscal Year, the product of (a) the Applicable Tax Rate, and (b) the amount of Taxable Income allocated to a Member through the end of such Fiscal Year exceeds the aggregate, cumulative amount of Distributions made to such Member other than Distributions made pursuant to Section 8.2(a), then the Management Committee, subject to the restrictions contained in the second sentence of Section 8.1, shall distribute to the Members the amount of such excess by the end of such one hundred twenty (120) day period (a "Tax Distribution"). The amount of a Tax Distribution to a Member under this Section 8.3 shall take precedence over and reduce (but not below zero) the amount, if any, that a Member would otherwise be entitled to receive under Section 8.1.

8.4 Offset. The Company may offset all amounts owing to the Company by a Member against any Distribution of Net Cash Flow to be made to such Member.

SECTION 9 - TAX AND ACCOUNTING MATTERS

9.1 Accounting Period. The accounting period of the Company shall be the Fiscal Year.

9.2 Tax Returns. The Management Committee shall cause to be prepared and filed all necessary federal, state and local income tax returns for the Company. Each Member shall furnish to the Management Committee all pertinent information in its possession relating to

Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

9.3 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) To adopt the period from September 1 through August 31 as the Fiscal Year;
- (b) To adopt the cash (or other permissible) method of accounting and keep the Company's books and records on the income tax method so adopted;
- (c) If a Distribution as described in Code §734 occurs or if a transfer of a Membership Interest described in Code §743 occurs, upon the written request of any Member, to elect to adjust the basis of the property of the Company pursuant to Code §754;
- (d) To elect to amortize the organizational expenses and start up expenditures of the Company under Code §195 ratably over a period of one hundred eighty (180) months as permitted by Code §709(b); and
- (e) Any other election that the Management Committee may deem appropriate and in the best interests of the Member.

Neither the Company nor any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

9.4 Company Tax Representative. WH Smith, acting through its chief tax executive, shall be the Company's designated "partnership representative" within the meaning of Code Section 6223 (the "Tax Representative") with sole authority to act on behalf of the Company for purposes of Subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws.

(a) If any "partnership adjustment" (as defined in Code Section 6241(2)) is determined with respect to the Company, the Tax Representative shall promptly notify the Members upon the receipt of a notice of final partnership adjustment, and shall take such actions the Tax Representative deems appropriate, including whether to file a petition in Tax Court, cause the Company to pay the amount of any such adjustment under Code Section 6225, or make the election under Code Section 6226.

(b) If any "partnership adjustment" (as defined in Code Section 6241(2)) is finally determined with respect to the Company and the Tax Representative has not caused the Company to make the election under Code Section 6226, then (1) the Members shall take such actions requested by the Tax Representative, including filing amended tax returns and paying any tax due in accordance with Code Section 6225(c)(2); (2) the Tax Representative shall use commercially reasonable efforts to make any modifications available under Code Section 6225(c)(3), (4) and (5); and (3) any "imputed underpayment" (as determined in accordance with

Code Section 6225) or partnership adjustment that does not give rise to an imputed underpayment shall be apportioned among the Members of the Company for the taxable year in which the adjustment is finalized in such manner as may be necessary (as determined by the Tax Representative in good faith) so that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Members based upon their interests in the Company for the reviewed year.

(c) The Tax Representative is not liable, responsible or accountable to the Company or to the Members for any loss in connection with any actions taken in reliance upon advice obtained from a reputable and experienced certified public accountant or tax counsel. The Company (but not the Members) will indemnify and hold harmless the Tax Representative from any loss, damage or liability due to, or arising out of, any act performed in its role as Tax Representative within the scope of the authority conferred upon it by this Agreement.

(d) The obligations of each Member or former Member under this Section 9.4 shall survive the transfer or redemption by such Member of its Membership Interest and the termination of this Agreement or the dissolution of the Company.

9.5 Reports to Members; Tax Audit.

(a) Within 45 days after the end of each fiscal quarter and the close of each Fiscal Year, WH Smith shall provide an income statement and balance sheet in form and substance reasonably sufficient for all Members to analyze the financial condition of the Company. Such financial statements may be prepared internally or by the accountant for the Company, as determined by WH Smith, and may be compiled, reviewed, or audited as WH Smith deems appropriate or desirable from time to time.

(b) Within one hundred twenty (120) days of each fiscal year end, WH Smith, in its capacity as "tax representative," shall distribute to the Members income tax information on Form 1065K-1 or its then equivalent form.

(c) Any Member may, at its option, and except as provided below, at its own expense, conduct one or more annual audits of the books, records, and accounts of the Company. Such audits may be conducted by any person designated by the Member, including any employee of the Member or its Affiliate or any independent auditor. If an audit reveals a deviation in any material financial metric of greater than three percent (3%), the cost of such audit shall be paid by the Company. If an audit reveals a deviation of any amount in any financial metric that would require an adjustment to a Member's Capital Account, such adjustment shall be made promptly, and upon the next distributions to be made by the Company, such distributions shall account for the adjusted Capital Accounts.

SECTION 10 - TRANSFERABILITY

10.1 General. Except as set forth in this Agreement, no Member shall gift, sell, assign, pledge, hypothecate, exchange or otherwise Transfer to any Person any portion of a Membership Interest without the written consent of the Management Committee, which consent shall be within the sole discretion of the Management Committee. Any transfer or attempted transfer of all or any portion of a Membership Interest without the written consent of the

Management Committee shall constitute a material breach of this Agreement and the Company shall be entitled to collect damages for such breach. Notwithstanding anything herein to the contrary, but subject in all respects to Section 10.2 below, any Member shall be permitted to pledge, encumber and grant a security interest in such Member's Membership Interest in connection with third-party financing provided to such Member at any time, provided that the rights of such third-party lender with respect to such Membership Interest shall be subject to the LLC Act in all respects.

10.2 Transferee Not a Member. No Person acquiring a Membership Interest pursuant to this Section 10 shall become a Member with respect to the acquired Membership Interest unless the admission of such Person as a Member is approved by a Supermajority of the Members (as determined exclusive of the Selling Member) and such Person becomes a signatory to this Agreement thereby agreeing to all of the terms and conditions set forth herein. If such Supermajority approval of Members (as determined exclusive of the Selling Member) is not obtained, the acquired Membership Interest shall only entitle such Person to receive the Distributions and allocations of Profits and Losses to which the Member from whom or which such Person received such Membership Interest would be entitled. Any approval referenced above may be subject to any terms and conditions imposed by the Members.

10.3 Loss of ACDBE Status.

(a) Each of IRG and M2 (for purposes of this Section 10.3 and Section 14.5, each an "ACDBE Member") represents that, as of the date of this Agreement, it is certified under the Unified Certification Program of Colorado ("CUCP") as an ACDBE with the required NAICS codes reflective of the responsibilities to be performed by it hereunder, and each ACDBE Member covenants that during the term of this Agreement, it will maintain its certification as an ACDBE with such applicable NAICS codes and that it shall promptly notify WH Smith of any material change to its ACDBE certifications.

(b) Notwithstanding anything herein contained to the contrary, but subject to Section 10.3(c), if (a) an ACDBE Member loses its certification as an ACDBE or fails to maintain the required NAICS codes reflective of its responsibilities hereunder, or (b) a Breach Event as defined in Section 14.5 shall occur with respect to an ACDBE Member, whether by reason of death, disability, transfer of any ownership interests therein or otherwise, then such ACDBE Member shall be deemed a "Disapproved Member." The Disapproved Member shall have the right and obligation to promptly transfer and assign its Membership Interest to a Person reasonably acceptable to WH Smith that is an ACDBE and would not, in the reasonable opinion of counsel to WH Smith, affect the Company's status under the Lease and, if a Breach Event shall have occurred, shall cure such Breach Event. Such assignment and transfer shall not require the approval of other Members and shall not be otherwise subject to this Section 10. If the Disapproved Member shall fail, within ten (10) days of receipt of notice (the "Breach Notice") of its potential loss of ACDBE certification or of the occurrence of the Breach Event (the "Cure Period"), to assign and transfer its Membership Interest as aforesaid or otherwise cure its potential loss of ACDBE certification or the Breach Event, WH Smith shall have the right and option, to be exercised by written notice to the Disapproved Member within ninety (90) days following the date of the Breach Notice (the "Election Period"), to either: (i) cause the Company to be liquidated and dissolved pursuant to Section 11 hereof; or (ii) cause the Company to

purchase and redeem all, but not less than all, of the Disapproved Member's Membership Interest in the Company. In the event that WH Smith elects to cause the Company to purchase and redeem all of the Disapproved Member's Interest in the Company, the following shall apply:

(A) The purchase price for the Disapproved Member's Interest in the Company (the "Purchase Price") shall be the equal to fifty percent (50%) of the Disapproved Member's Capital Account as of the date of the Breach Notice; and

(B) The Purchase Price shall be paid as follows: (1) at the closing (the "Closing"), to be held within one hundred eighty (180) days of the date of the Breach Notice, 20% of the Purchase Price; and (2) the balance shall be paid in three (3) equal consecutive annual installments together with interest at the prime rate as published in the Wall Street Journal on the date of the Breach Notice so as to fully amortize the balance over such period.

(C) Such purchase shall not require the approval of the Management Committee or the other Member(s) and shall not be otherwise subject to this Section 10.

(c) Notwithstanding anything to the contrary contained in Section 10.3(b), an ACDBE Member shall not be considered a Disapproved Member in the event that it fails to maintain its status as a certified ACDBE under the CUCP during the term of this Agreement due to such ACDBE Member no longer meeting the statutory or regulatory requirements of ACDBE total gross sales or the statutory or regulatory personal net worth requirements, as long as the Landlord continues fully to count such ACDBE Member's ACDBE participation in the Lease.

10.4 Effective Date. Any transfer of a Membership Interest or admission of a Member pursuant to this Section 10 shall be deemed effective as of the last day of the calendar month in which such sale or admission occurs.

10.5 Special Provisions to Address Proposal. The Members acknowledge that this Agreement is being executed as of the date hereof in connection with one or more proposals by the Company to procure a concessions contract at the Airport (a "Contract"), and that as of the date hereof, the Company does not have any rights relating to the Stores. The Members agree that if all Contracts for which the Company proposes are awarded to parties other than the Company, WH Smith shall have the absolute right to purchase all and not less than all of IRG's and M2's Membership Interest in the Company for One Dollar (\$1.00), in which case neither IRG nor M2 shall have any rights or obligations hereunder with respect to the Company or the Stores. If the Company is awarded a Contract and the Company enters into the Lease with the Landlord, the purchase right pursuant to this Section 10.5 shall be of no force or effect. No Member shall be required to make any capital contributions hereunder nor fulfill any other obligation hereunder, and WH Smith shall not advance the Start Up Loan referenced in Section 3.10 hereof, unless and until the Company is awarded a Contract. If the Company is awarded a Contract, WH Smith shall be reimbursed by the Company for any and all expenses incurred in connection with the preparation and submission of the proposal for such Contract. Such reimbursement shall be in addition to, and not in lieu of, the reimbursements required pursuant to Sections 5.2(b) and 5.2(c) above.

SECTION 11 - DISSOLUTION

11.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) Within one hundred eighty (180) days after the expiration or termination of the Lease, unless the term is extended in accordance with a Supermajority vote or consent of the Management Committee;
- (b) The written consent of a Supermajority of the Management Committee;
- (c) As otherwise provided by the LLC Act or as provided in Section 10.3(b).

11.2 Winding Up. Upon the dissolution of the Company, the Management Committee may, in the name of and for and on behalf of the Company, prosecute and defend suits, whether civil, criminal or administrative, sell and close the Company's business, dispose of and convey the Company's property, discharge the Company's liabilities and distribute to the Members any remaining assets of the Company, all without affecting the liability, of the Members. Upon winding up of the Company, the assets shall be distributed as follows:

- (a) To creditors, including any Member who is a creditor, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Members under of the LLC Act;
- (b) To Members and former Members in satisfaction of liabilities for Distributions under the LLC Act;
- (c) To the Members to the extent of, and in proportion to, their Capital Accounts; and
- (d) The remainder, to the Members in proportion to their respective Membership Interests.

11.3 Articles of Dissolution. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time there are no Members, Articles of Dissolution shall be filed with the Florida Department of State pursuant to the LLC Act.

11.4 Deficit Capital Account. Upon a liquidation of the Company within the meaning of Treas. Reg. §1.704-1(b)(2)(ii)(g), if any member has a deficit capital account (after giving effect to all contributions, distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Member shall have no obligation to make any Capital Contribution, and the negative balance of any Capital Account shall not be considered a debt owed by the Member to the Company or to any other Person for any purpose.

11.5 Nonrecourse to Other Members. Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his, her or its Capital Contribution solely from the assets of the Company. If the assets of the

Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

11.6 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

SECTION 12 - ARBITRATION

Any controversy arising out of or in any way relating to this Agreement, including any modification or amendment thereof, shall be resolved by arbitration by one (1) arbitrator in Jacksonville, Florida pursuant to the then applicable rules of the American Arbitration Association (“AAA”). The parties agree that the arbitrator shall have no power to alter, modify or change any of the provisions of this Agreement in any respect whatsoever or to make any award of reformation, and the jurisdiction of the arbitrator is hereby expressly limited accordingly. The arbitrator shall award attorneys’ fees and other costs of the arbitration, including the fees and expenses of the arbitrator, to the prevailing party, as determined by the arbitrator. The arbitration provisions of this Agreement shall not prevent any party from obtaining injunctive relief from a court of competent jurisdiction to enforce the obligations of the other party hereunder for which such party may require provisional relief pending a decision on the merits by the arbitrator.

SECTION 13 - CONFIDENTIALITY; DEN AGREEMENTS

13.1 Confidentiality. Each Member and other applicable Person acknowledges that it is the policy of the Company to maintain as secret and confidential all Confidential Information (as defined herein). The parties hereto recognize that each Member or other applicable Person will acquire, or may have acquired, Confidential Information. Each Member or other applicable Person recognizes that all such Confidential Information is and shall remain the sole property of the Company, free of any rights of each Member or other applicable Person, and acknowledges that the Company has a vested interest in assuring that all such Confidential Information remains secret and confidential. Therefore, each Member and other applicable Person agrees that at all times from and after the date of this Agreement, he, she or it will not, directly or indirectly, disclose to any person, firm, company or other entity (other than the Company) any Confidential Information, without the Consent of the Members, except to the extent that (i) any such Confidential Information becomes generally available to the public, other than as a result of a breach by a Member or other applicable Person of this Section 13.1, or (ii) any such Confidential Information becomes available to such Member or other applicable Person on a non-confidential basis from a source other than the Company; provided, that such source is not known by such Member or other applicable Person to be bound by a confidentiality agreement with, or other obligation of secrecy to, the Company or another party; and provided further that the ability to retrieve, or the actual retrieval of, any Confidential Information by way of a Freedom of Information Act or similar inquiry shall not, of itself, render such Confidential Information excluded from the confidentiality restrictions set forth herein. In addition, it shall not be a breach of the confidentiality obligations hereof if a Member or other applicable Person is required by applicable law or process issued in connection with any judicial or administrative proceeding, to disclose any Confidential Information; provided, that in such case, such Member or other

applicable Person shall (a) give the Company the earliest notice possible that such disclosure is or may be required, (b) cooperate with the Company, at the Company's expense, in protecting to the maximum extent legally permitted, the confidential or proprietary nature of the Confidential Information which must be so disclosed, and (c) only disclose Confidential Information to the extent required by such law or process. The obligations set forth in this Section 13 shall also apply to each Member with respect to any Confidential Information of another Member. The obligations of each Member or other applicable Person under this Section 13 shall survive any termination of this Agreement. Each Member and other applicable Person agrees that the provisions of this Section 13 are reasonably necessary to protect the proprietary rights of the Company in the Confidential Information and its trade secrets, goodwill and reputation.

For purposes hereof, the term "Confidential Information" means all information developed or used by the Company, or a Member, as applicable, relating to the operations, employees, customers and agents of the Company, including, but not limited to, business plans and market strategies and arrangements, financial statements, projections, minutes, all books, records, manuals, advertising materials, catalogues, correspondence, mailing lists, sales materials and records, personnel records, and all trademarks, copyrights and patents, and applications therefor, all trade secrets, inventions, market surveys and marketing or other know-how and other technical papers. Except as otherwise expressly provided herein, the term "Confidential Information" also includes any other information heretofore or hereafter acquired by the Company or a Member, as applicable, and deemed by it to be confidential.

13.2 IRG and M2 Agreements. All labor peace agreements, collective bargaining agreements and any similar written arrangement relating to business operations at the Airport in which IRG or M2 currently holds an interest with any level of ownership are listed on Exhibit B.

SECTION 14 - GENERAL PROVISIONS

14.1 Notices. Any notice, consent, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party or to an executive officer of the party to whom such notice, demand or other communication is directed, coupled with written acceptance of delivery; or (b) sent by registered or certified mail, postage prepaid, addressed to the Member or the Company at his address set forth in this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given three (3) business days after the date on which it was postmarked, provided such notice was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as set forth in this Section.

14.2 Management Committee Members as Attorney-in-Fact for Members. Each Member, by becoming a Member, constitutes and appoints the Management Committee members (acting as part of the Management Committee) and any successor or successors of the Managers his true and lawful attorneys, in its name, place and stead, from time to time:

(a) To execute, acknowledge, file and/or record all agreements amending this Agreement, as now and hereafter amended, that may be appropriate to reflect:

(i) A change of the name or the location of the principal place of business and/or the registered agent or registered office of the Company;

(ii) The disposal by any Member of an interest in the Company, or any part thereof, in any manner permitted by this Agreement, and any return of the Capital Contribution of a Member (or any part thereof) provided for by this Agreement;

(iii) A Person becoming a substituted Member of the Company as permitted by this Agreement; or

(iv) A change in any provision of this Agreement, or the exercise by any person, of any right or rights hereunder not requiring the consent of said Member.

(b) To execute, acknowledge, file and/or record such certificates, instruments and documents as may be required by, or may be appropriate under (i) the laws of any state or other jurisdiction in which the Company is doing or intends to do business, or (ii) any rules and regulations applicable to the Company.

(c) To execute, acknowledge, file and/or record such certificates, instruments and documents as may be required of the Members by the laws of any state or other jurisdiction, or as may be appropriate for the Members to execute, acknowledge, file and/or record to reflect:

(i) A change of address of the Members;

(ii) Any changes in or amendments of this Agreement, or agreements pertaining to the Company, of any kind referred to in clause (a) of this Section 14.2; or

(iii) Any other changes in, or amendments of, this Agreement. Each of such agreements, certificates, instruments and documents shall be in such form as said attorney-in-fact and the legal counsel for the Company shall deem appropriate. The powers conferred by this Section 14.2 with respect to agreements, certificates, instruments and documents shall be deemed to include the powers to sign, execute, acknowledge, swear to, verify, deliver, file, record and publish the same. Each Member hereby authorizes the Managers to take any further action that the Managers shall consider necessary or convenient in connection with any of the foregoing, hereby giving the Managers full power and authority to do anything necessary or convenient to be done in and about the foregoing as fully as a Member might or could do if the Managers shall lawfully do or cause to be done by virtue hereof. The powers hereby conferred shall continue from the date a Member becomes a Member until the Member ceases to be a Member and, as it is coupled with an interest, shall be irrevocable.

14.3 No License. This Agreement does not, and shall not be construed to grant to the Company or its Members any license or other right to the Intellectual Property relating to the name, trademark and service mark "WH Smith" or any variation thereof (the "WH Smith

Intellectual Property”). Any such license to be granted in the future shall be granted expressly in a License Agreement (the “License Agreement”) by and between WH Smith and the Company.

(a) The Members acknowledge that the WH Smith Intellectual Property is owned by WH Smith or an Affiliate of WH Smith and that neither the Company nor any individual Member (other than WH Smith) shall have any right to the use of WH Smith Intellectual Property except to the extent specifically granted to the Company by WH Smith in the License Agreement.

(b) Each of IRG and M2 agrees that it shall not at any time, anywhere in the world, apply for any registration of any copyright, trademark or other designation which would affect the rights regarding the ownership of the WH Smith Intellectual Property, and that it shall not file any document with any governmental authority to take any action which would affect the ownership of the WH Smith Intellectual Property.

14.4 Entire Agreement. This Agreement contains the entire agreement among the Members with respect to the formation and governance of the Company, and supersedes each course of conduct previously pursued or acquiesced in, and each oral or written agreement and representation previously made, by the Members with respect thereto, whether or not relied or acted upon.

14.5 Amendments. No amendment to this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each provision of this Agreement being amended. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Members, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect any Member’s obligations pursuant to this Agreement or any rights and remedies of the Members pursuant to this Agreement. In the event the ACDBE contribution or participation by an ACDBE Member to the Company is subject to re-evaluation based upon the terms of this Agreement or a determination that the actual functions performed by the ACDBE Member are not consistent with the requirements of this Agreement, the parties agree to cooperate in good faith to either amend the terms of this Agreement, or to take such necessary actions so that the functions performed by the ACDBE Members are consistent with the requirements of this Agreement. In the event (a “Breach Event”) an ACDBE Member is in breach of its obligations required to be performed under this Agreement, including without limitation, its obligations in accordance with the immediately preceding sentence, the ACDBE Member will be deemed to be a Disapproved Member for purposes of Section 10.3 above, and WH Smith shall have all of the rights described in Section 10.3 above with respect to an ACDBE Member as a Disapproved Member upon giving the ACDBE Member a Breach Notice.

14.6 Construction. Whenever the singular is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

14.7 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

14.8 Waiver. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

14.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement is prohibited by or invalid under applicable law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

14.10 Binding. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assigns of the Members.

14.11 Counterparts and Facsimiles. To facilitate the execution of this Agreement by geographically separated parties, it may be executed in two or more counterparts, by electronic (PDF) or facsimile delivery thereof, all of which shall constitute one agreement. The execution by one party of any counterpart shall be sufficient execution by that party whether or not the same counterpart has been executed by any other party. This Agreement shall become effective when each party has signed at least one counterpart. All facsimile or electronic (PDF) executions shall be treated as originals for all purposes.

14.12 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal effective as of the date and year indicated in the first paragraph of this Agreement and by signing below do conclusively evidence their agreement to the terms and conditions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

MEMBERS:

WH SMITH USA RETAIL INC.

By: 

Phil McNally, President

INNOVATIVE RETAIL GROUP, LLC

By: 

Huy Pham, President

M2 CONCEPTS, LLC

By: _____

William Ray Mickens, Vice President

COMPANY:

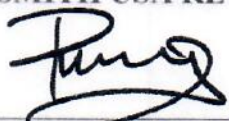
WH SMITH DEN LLC

By: 

Ziad El Assad, President

MEMBERS:

WH SMITH USA RETAIL INC.

By: 
Phil McNally, President

INNOVATIVE RETAIL GROUP, LLC

By: _____
Huy Pham, President

M2 CONCEPTS, LLC

By: 
William Ray Mickens, Vice President

COMPANY:

WH SMITH DEN LLC


By: 
Ziad El Assad, President

EXHIBIT A**Members**

<u>Name</u>	<u>Address</u>	<u>Initial Capital Contribution</u>	<u>% Interest</u>
WH Smith USA Retail Inc.	4801 Executive Park Court Suite 100 Jacksonville, Florida 32216	\$700	70%
Innovative Retail Group, LLC	22594 E. Union Circle Aurora, Colorado 80015	\$200	20%
M2 Concepts, LLC	11429 Grapeleaf Drive Fort Worth, Texas 76244	\$100	10%
		\$1,000	100%

EXHIBIT B

IRG and M2 Agreements

None.

EXHIBIT 3.10A

Promissory Note
with Amortization Schedule

[attached]

The following document is the form of Promissory Note that will be used to evidence the Start Up Loan to the Company as described in Section 3.10. Upon construction of the Stores, the initial Capital Contributions will be made by each of the Members as described in Section 3.5. At such time, the Start Up Loan will be advanced, and the appropriate principal amount and date of the Start Up Loan will be filled in upon the execution of the Promissory Note.

PROMISSORY NOTE

\$

_____, 2019
Jacksonville, Florida

FOR VALUE RECEIVED, WH SMITH DEN LLC, a Florida limited liability company (the "Borrower"), promises to pay to the order of WH SMITH USA RETAIL INC., a Delaware corporation (the "Lender"), the principal amount of up to _____ THOUSAND AND 00/100 DOLLARS (\$), or such lesser amount that has been advanced by the Lender to the Borrower (the "Principal Amount"), together with interest on the outstanding amounts of the Principal Amount from the date hereof until the maturity of this Note (whether by declaration, extension, or otherwise) at a floating and fluctuating per annum rate of interest equal at all times to the *Wall Street Journal* prime rate of interest as reported from time to time (the "Prime Rate of Interest") plus three percent (3%). Each change in the interest rate provided for hereunder with the fluctuation of the Prime Rate of Interest shall become effective on the effective date of each change in such Prime Rate of Interest.

Subject to Section 8.3 of the Operating Agreement of Borrower dated September 13, 2019 (the "Operating Agreement"), from the date the Borrower begins making sales to customers at either Store (as defined in the Operating Agreement) (the "Commencement Date") until the maturity of this Note (whether by acceleration, declaration, extension, or otherwise) on the first day of each month until the maturity of this Note (whether by acceleration, declaration, extension, or otherwise), the Borrower promises to pay to the Lender the amount of _____ and 00/100 Dollars (\$). Such payments shall be applied first to accrued and unpaid interest, and then to reduction of the Principal Amount. Notwithstanding anything to the contrary contained herein, if the Principal Amount is not paid in full on or before the last day of the sixtieth (60th) full calendar month after the Commencement Date (the "Maturity Date"), then the entire unpaid balance of the Principal Amount as of the Maturity Date shall be immediately due and payable.

Exhibit A attached hereto is an amortization schedule for illustrative purposes only. Changes in the interest rate will affect the amortization schedule as will any prepayments of the Principal Amount.

If the Borrower fails to make any payments within five (5) days after receiving written notice of any overdue payment of any principal on the Note, the Borrower shall pay to the Lender on demand a late charge equal to five percent (5%) of the amount of any such payment.

The Borrower may prepay the unpaid balance of the Principal Amount at any time or in part from time to time without premium or penalty. Partial prepayments of this Note shall be applied first to accrued and unpaid interest and then to the Principal Installments in the inverse order of their maturity.

All payments of the unpaid balance of the Principal Amount and interest thereon shall be paid in lawful money of the United States of America during regular business hours at the offices of the Lender at 4801 Executive Park Court, Suite 100, Jacksonville, Florida 32216 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to the Borrower.

The Borrower waives (a) presentment or demand for payment of this Note, (b) notice of dishonor of this Note, (c) protest of dishonor of this Note and (d) notice of non-payment of this Note.

Any one of the following events constitutes an event of default ("Event of Default") pursuant to this Note: (a) failure of the Borrower to make any payment of principal or interest within five (5) days after receiving written notice of any payment being overdue; (b) failure of the Borrower to perform, observe, or comply with any other provisions of this Note; (c) failure of the Borrower generally to pay its debts when those debts become due; (d) filing by the Borrower of any petition for relief under the Bankruptcy Code or any similar federal or state statute; (e) service upon the Borrower of any petition for relief under the Bankruptcy Code or under any federal or state bankruptcy, reorganization, arrangement, insolvency, receivership, or similar law, if that petition is not dismissed within sixty (60) days after service upon the Borrower; (f) application by the Borrower for, or consent by the Borrower to, the appointment of a receiver, trustee, liquidator or custodian of, for, or over the Borrower or any of its assets; (g) an assignment for the benefit of the creditors of the Borrower; (h) insolvency of the Borrower or attempt by the Borrower to take advantage of any insolvency law; (i) performance by the Borrower of any act of bankruptcy; or (j) dissolution of the Borrower, transfer of all or substantially all of the assets of the Borrower or merger or consolidation of the Borrower in which the Borrower is not the surviving entity.

Upon the occurrence of an Event of Default, the Lender may upon ten (10) days' written notice to the Borrower at the Lender's option declare the entire unpaid balance of the Principal Amount, together with all accrued and unpaid interest thereon to become immediately due and payable. Failure to exercise this option, however, shall not constitute any waiver of a right to exercise the same in the event of a subsequent default.

The rights and remedies of the Lender hereunder shall be cumulative and concurrent and may be pursued singularly, successively or together at the sole discretion of the Lender and may be exercised as often as occasion therefor shall occur, and the

failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same or any other right or remedy.

This Note shall be governed and construed under the laws of the State of Florida.

[signatures on the following page]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name, under its seal, and on the Borrower's behalf the day and year first written above.

WITNESS/ ATTEST:

WH SMITH DEN LLC

By: _____ (SEAL)
Ziad El-Assad, President

MEMBERS:

WH SMITH USA RETAIL INC.

By: _____
Phil McNally, President

INNOVATIVE RETAIL GROUP, LLC

By: _____
Huy Pham, President

M2 CONCEPTS, LLC

By: _____
William Ray Mickens, Vice President

EXHIBIT A
AMORTIZATION SCHEDULE FOR WH SMITH DEN LLC LOAN FROM
WH SMITH USA RETAIL INC.

To be completed and attached upon the execution of the Promissory Note.

EXHIBIT 3.10BGuaranty

[attached]

The following documents are the forms of the Guaranty that will be used to evidence guarantees of the Start Up Loan to the Company by IRG and M2 as described in Section 3.10. Upon construction of the Stores, the initial Capital Contributions will be made by each of the Members as described in Section 3.5 and, at such time, the Start Up Loan will be advanced and the appropriate principal amount and date of the Guaranty will be filled in upon the execution of the Promissory Note and accompanying Guaranty.

GUARANTY

THIS GUARANTY (this "Agreement") is made effective as of the ____ day of _____, 2019 (the "Effective Date") to WH SMITH USA RETAIL INC., a Delaware corporation (the "Lender"), by INNOVATIVE RETAIL GROUP, LLC, a Colorado limited liability company (the "Guarantor").

Recitals

A. The Lender and Guarantor are members of WH Smith DEN LLC, a Florida limited liability company (the "Company" or the "Borrower") and, in connection therewith, have entered into that certain Operating Agreement, effective as of September 13, 2019 (the "Operating Agreement"). Pursuant to the Operating Agreement, the Lender has made a Start Up Loan (as defined in the Operating Agreement) to the Company in order to finance the Company's construction and initial operation of news and gifts concessions within Denver International Airport in Denver Colorado, as further described in the Operating Agreement. The Start Up Loan (hereinafter referred to as the "Loan") is to be evidenced by, and repaid together with interest, in accordance with the provisions of a Promissory Note of even date herewith from the Borrower payable to the Lender in the principal amount of _____ and 00/100 Dollars (\$) (the "Promissory Note"). As used in this Agreement, the term "Loan Documents" means, collectively, the Promissory Note and any instrument or agreement previously, simultaneously, or hereafter executed and delivered by the Guarantor, the Borrower, or any other person as evidence of, security for, guarantee of, or in connection with the obligations of the Borrower to pay the unpaid principal amount of the Promissory Note, plus all accrued and unpaid interest thereon and all expenses, costs and fees (including reasonable attorneys' fees) of any nature whatsoever paid or incurred by or on behalf of the Lender in connection with the collection or enforcement of any of Borrower's obligations under the Promissory Note.

B. The Guarantor has requested the Lender to make the Loan to the Borrower.

C. The Lender requires, as a condition to entering into the Operating Agreement and making the Start Up Loan, the execution of this Agreement by the Guarantor.

NOW, THEREFORE, in order to induce the Lender to make the Loan to the Borrower, the Guarantor covenants and agrees with the Lender as follows:

1. **GUARANTY**. The Guarantor hereby unconditionally and irrevocably guarantees to the Lender

1.1. the due and punctual payment in full (and not merely the collectibility) of the Loan and all interest accruing thereon, in each case when due and payable, whether on any installment payment date or at the stated or accelerated maturity of any or all of the Loan, all in accordance with the provisions of the Promissory Note and the other Loan Documents; and

1.2. the due and punctual payment in full (and not merely the collectibility) of

each other sum or charge which at any time becomes due and payable in accordance with the provisions of the Promissory Note or any of the other Loan Documents; and

1.3. the due and punctual performance (and not merely the enforceability) of all of the Borrower's other obligations under the provisions of the Promissory Note and the other Loan Documents; and

1.4. the due and punctual payment in full (and not merely the collectibility) of any and all losses, damages or expenses incurred by the Lender and arising out of any default by the Borrower in performing any of its obligations under the Promissory Note or any of the other Loan Documents, regardless of whether such losses, damages or expenses are expressly provided for in the provisions thereof, or are than otherwise allowable by law.

The liabilities and obligations set forth in Sections 1.1, 1.2, 1.3 and 1.4 shall be collectively referred to as the "Guaranteed Obligations". NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE GUARANTEED OBLIGATIONS SHALL BE LIMITED TO TWENTY PERCENT (20%) OF THE BORROWER'S OBLIGATIONS UNDER THE PROMISSORY NOTE AND ANY OF THE OTHER LOAN DOCUMENTS. This is not an agreement of suretyship.

As to the Guarantor, the guarantee provided for in this section is an absolute, unconditional, continuing guarantee of payment and not of collectibility and is in no way conditioned upon or limited (except as otherwise noted in this Agreement) by: (a) any attempt to collect from, or the exercise of any rights and remedies against, any person other than the Borrower who may at any time now or hereafter be primarily or secondarily liable for any or all of the Guaranteed Obligations, including, without limitation, any other maker, endorser, surety, or guarantor of all or a portion of the Guaranteed Obligations or any person who is now or hereafter a party to any of the Loan Documents (all of the aforementioned being herein called collectively the "Obligors" and individually an "Obligor"); or (b) any resort or recourse to or against any security or collateral now or hereafter pledged, assigned, or granted to the Lender under the provisions of any instrument or agreement (including, without limitation, the Loan Documents) or otherwise assigned or conveyed to it. If the Borrower fails to perform or pay any of the Guaranteed Obligations, when and as the same are to be performed become due and payable (whether by acceleration, declaration, extension, or otherwise), the Guarantor shall, within thirty (30) days after receipt of written notice to the Guarantor of Lender's exhaustion of all remedies against the Borrower, perform the deficient Guaranteed Obligations and/or pay the same to the Lender in immediately available funds, in lawful money of the United States of America, at the Guarantor's address specified in or pursuant to Section 11 of this Agreement.

2. NATURE OF OBLIGATIONS. The obligations and liabilities of the Guarantor under this Agreement are continuing, absolute, and, except as set forth herein, unconditional, shall not be subject to any counterclaim, recoupment, set-off, reduction, or defense based upon any claim that the Guarantor may have against the Borrower, are independent of any other guaranty or guaranties at any time in effect with respect to all or any part of the Guaranteed Obligations, and may be enforced regardless of the existence of such other guaranty or guaranties. The obligations

and liabilities of the Guarantor under this Agreement shall not be affected, impaired, lessened, modified, waived, and/or released by the invalidity or unenforceability of any or all of the Loan Documents that have been approved by the Guarantor in accordance with the Operating Agreement. The Guarantor hereby consents that at any time and from time to time, the Lender may, without in any manner affecting, impairing, lessening, modifying, waiving, and/or releasing any or all of the obligations and liabilities of the Guarantor under this Agreement, do any one or more of the following, all without notice to, or further consent of, the Guarantor or with or without consideration: (a) renew, extend, and/or change the time and/or terms for payment of the principal of, and/or interest on, any of the Guaranteed Obligations or any renewals or extensions thereof, including, without limitation, the Promissory Note or any renewals or extensions thereof; (b) extend and/or change the time and/or terms for performance of any other obligations, covenants, or agreements under the Loan Documents of the Borrower and/or any other party to the Loan Documents; (c) modify, amend, change, compromise, settle, substitute, exchange, sell, assign, collect, release, terminate, waive, surrender, and/or otherwise deal with in any manner satisfactory to the Lender (i) any or all of the provisions of any or all of the Loan Documents, (ii) any or all of the Guaranteed Obligations, (iii) any or all of the obligations and liabilities of the Guarantor under this Agreement or under any and all Loan Documents to which Guarantor is a party or any or all property or other security given at any time as collateral by Guarantor without affecting, impairing, lessening, modifying, waiving, and/or releasing any or all of the obligations and liabilities of the Guarantor under this Agreement or under any and all of the Loan Documents to which Guarantor is a party, (iv) any or all other parties to any or all of the Loan Documents, and (v) any or all property or other security now or hereafter serving as collateral for any or all of the Guaranteed Obligations or under any or all of the Loan Documents; (d) receive additional property or other security as collateral for any or all of the Guaranteed Obligations or under any or all of the Loan Documents; (e) fail, omit, lack diligence, or delay to enforce, assert, or exercise any right, power, privilege, or remedy conferred upon the Lender under the provisions of any of the Loan Documents or under applicable laws; (f) grant consents or indulgences or take action or omit to take action under, or in respect of, any or all of the Loan Documents; and (g) apply any payment received by the Lender of, or on account of, any of the Guaranteed Obligations from the Borrower, from the Obligor or from any source other than the Guarantor to the Guaranteed Obligations in whatever order and manner the Lender elects, and any payment received by the Lender from the Guarantor for or on account of this Agreement may be applied by the Lender to any of the Guaranteed Obligations in whatever order and manner the Lender elects. Provided however, the Lender may not, without the written consent of the Guarantor: (i) increase the amount of the Loan; (ii) increase the rate of interest applied thereto unless such increase is due to an increase in the Prime Rate of Interest, as set forth in the Promissory Note; (iii) extend the Borrower additional credit; or (iv) otherwise increase the Guaranteed Obligations. Should Lender seek to increase any of the foregoing without Guarantor's written consent this Guarantee shall be inapplicable to said increase.

3. WAIVER BY GUARANTOR. The Guarantor unconditionally waives, to the extent permitted by applicable laws: (a) notice of the execution and delivery of the Loan Documents; (b) notice of the Lender's acceptance of and reliance on this Agreement or the making of the Loan to the Borrower or of the creation of any of the Guaranteed Obligations; (c) dishonor or protest; (d) notice of dishonor of any property or other security serving at any time as collateral under the Loan Documents; and (e) until such time as the provisions of this Agreement are no longer in effect, any

right to subrogation against the Lender and any right to subrogation, reimbursement, and indemnity against any property or other security serving at any time as collateral for any or all of the Guaranteed Obligations or under any of the Loan Documents.

4. SUBORDINATION. If the Guarantor advances or at this time has advanced any sum to the Borrower, or if the Borrower in any other manner is or becomes indebted to the Guarantor, such sum and debt shall be subordinate in all respects to any and all amounts then or thereafter due and owing to the Lender under the provisions of any of the Loan Documents.

5. REPRESENTATIONS OF GUARANTOR. The Guarantor hereby represents and warrants to the Lender that (a) such Guarantor (i) has a financial interest in the Borrower; (ii) has examined or has had an opportunity to examine the Promissory Note and each other Loan Document; and (iii) has full power, authority and legal right to execute, enseal, acknowledge and deliver this Guaranty; and (b) this Guaranty constitutes such Guarantor's valid, legally binding obligation enforceable in accordance with its terms.

6. DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default (an "Event of Default") under this Agreement: (a) the failure of the Guarantor to pay to the Lender as and when due and payable any and all amounts payable by the Guarantor to the Lender under the provisions of this Agreement; (b) the failure of the Guarantor to perform, observe, or comply with any of the provisions of this Agreement; (c) the occurrence of an event of default (as defined therein) under any of the Loan Documents; (d) if any information contained in any financial statement, application, schedule report, or any other document given by the Guarantor is not in all respects true and accurate or if the Guarantor, the Borrower, or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) if any event described in Section 9 occurs with respect to the Guarantor; or (f) if Guarantor becomes a Disapproved Member under the Operating Agreement.

Whenever there is an Event of Default under this Agreement, the Lender may, at its option, declare an amount equal to any or all of the then unpaid balance of the Guaranteed Obligations (whether then due or not) to be immediately due and payable by the Guarantor, and the Guarantor shall on demand pay the same to the Lender in immediately available funds in lawful money of the United States of America, at its address specified in or pursuant to Section 10 of this Agreement.

7. ENFORCEMENT EXPENSES. The Guarantor shall indemnify and hold harmless the Lender against any loss, liability, or expense, including reasonable attorneys' fees and disbursements and any other reasonable fees and disbursements, that may result from any failure of the Guarantor to pay and/or perform, as applicable, any of the Guaranteed Obligations when and as due and payable or that may be incurred by or on behalf of the Lender in enforcing any obligation of the Company or of any of the Obligor to pay any of the Guaranteed Obligations and any obligations and liabilities of the Guarantor hereunder.

8. DELAY AND WAIVER BY LENDER. No delay in the exercise of, or failure to exercise, any right, remedy, or power accruing upon any default or failure of the Guarantor in the

performance of any obligation under this Agreement shall impair any such right, remedy, or power or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed by the Lender expedient. In order to entitle the Lender to exercise any right, remedy, or power reserved to it in this Agreement, it shall not be necessary to give any notice to the Guarantor. If the Guarantor should default in the performance of any obligation under this Agreement, and such default should thereafter be waived by the Lender, such waiver shall be limited to the particular default so waived. No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom, or course of dealing.

9. BANKRUPTCY OR INSOLVENCY OF THE GUARANTOR. Anything contained in any of the provisions of this Guaranty or any of the other Loan Documents to the contrary notwithstanding, the Lender may, in the exercise of its sole and absolute discretion, as to the Guarantor, accelerate the debt evidenced by the Promissory Note, if

9.1. the Guarantor (a) applies for or consents to the appointment of a receiver, trustee or liquidator of Guarantor, or of all or a substantial part of its assets, (b) files a voluntary petition in bankruptcy, or admits in writing its inability to pay its debts as they come due, (c) makes an assignment for the benefit of creditors, (d) files a petition or an answer seeking a reorganization or an arrangement with creditors or seeking to take advantage of any insolvency law, (e) performs any other act of bankruptcy, or (f) files an answer admitting the material allegations of a petition filed against such Guarantor in any bankruptcy, reorganization or insolvency proceeding; or

9.2. (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating Guarantor a bankrupt or an insolvent, or approving a petition seeking such a reorganization, or appointing a receiver, trustee or liquidator of Guarantor, or of all or a substantial part of its assets, or (b) there otherwise commences, with respect to Guarantor or any of its assets, any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or like law or statute, and if in either case such order, judgment, decree or proceeding continues unstayed for any period of sixty (60) consecutive days and in effect for any period of ten (10) consecutive days after the expiration of any stay thereof.

9.3. Nothing in the provisions of this Section shall be deemed in any way to alter or impair any right which the Lender may have under the provisions of the Promissory Note or any of the other Loan Documents to accelerate such debt on the occurrence of any default or other event provided therein and entitling the Lender to accelerate such debt, whether or not relating to the Guarantor.

10. NOTICES AND COMMUNICATIONS. All notices and other communications hereunder shall be in writing and shall be effective when sent by certified mail, return receipt requested at the addresses set forth below, or at such other address as a party shall have furnished in writing to the other party:

Guarantor: Innovative Retail Group, LLC
22594 E. Union Circle
Aurora, Colorado 80015

Attn: Huy Pham, President

Lender: WH Smith USA Retail Inc.
4801 Executive Park Court, Suite 100
Jacksonville, Florida 33414
Attention: Ziad El-Assad, President

11. ASSIGNMENT. The Lender may, without notice to or consent of the Guarantor, sell, assign, or transfer to any person or persons all or any part of the Guaranteed Obligations, and each such person or persons shall have the right to enforce this Agreement, as fully as the Lender, provided that the Lender shall continue to have the unimpaired right to enforce this Agreement as to so much of the Guaranteed Obligations that it has not sold, assigned, or transferred.

12. SUCCESSORS AND ASSIGNS. All covenants and agreements of the Guarantor set forth in this Agreement shall bind the Guarantor and its legal representatives, successors and assigns and shall inure to the benefit of, and be enforceable by, the Lender and its legal representatives, successors and assigns, including, without limitation, any holder of any or all of the Loan Documents. This Guaranty may not be assigned by the Guarantor without the express written consent of the Lender.

13. MISCELLANEOUS. Neither this Agreement nor any term hereof may be terminated, amended, supplemented, waived, released, or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver, release, or modification is sought. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders. Whenever used herein, the word "person" or "persons" shall mean and include a corporation, an association, a partnership, an organization, a business, an individual, a government or political subdivision or agency thereof, or an estate or trust. This Agreement shall in all respects be deemed to be made in, and governed by, construed and enforced in accordance with the laws of, the State of Florida. The Lender shall have the right to grant participations in the Guaranteed Obligations to others at any time and from time to time, and the Lender may divulge to any such participant or potential participant all information, reports, financial statements, and documents obtained in connection with this Agreement, any of the Loan Documents, or otherwise. If any term of this Agreement or any obligation thereunder shall be held to be invalid, illegal, or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. The paragraph and section headings of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions hereof. This Agreement may be executed in duplicate originals or in several counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument, and it shall not be necessary in making proof hereof to produce or account for more than one such duplicate original or counterpart.

[signatures on the following page]

IN WITNESS WHEREOF, the Guarantor has caused this Agreement to be executed in its name, under its seal, and on the Guarantor's behalf the day and year first written above.

WITNESS/ATTEST:

INNOVATIVE RETAIL GROUP, LLC

By: _____
Huy Pham, President

GUARANTY

THIS GUARANTY (this "Agreement") is made effective as of the ___ day of _____, 2019 (the "Effective Date") to WH SMITH USA RETAIL INC., a Delaware corporation (the "Lender"), by M2 CONCEPTS, LLC, a Texas limited liability (the "Guarantor").

Recitals

A. The Lender and Guarantor are members of WH Smith DEN LLC, a Florida limited liability company (the "Company" or the "Borrower") and, in connection therewith, have entered into that certain Operating Agreement, effective as of September 13, 2019 (the "Operating Agreement"). Pursuant to the Operating Agreement, the Lender has made a Start Up Loan (as defined in the Operating Agreement) to the Company in order to finance the Company's construction and initial operation of news and gifts concessions within Denver International Airport in Denver, Colorado, as further described in the Operating Agreement. The Start Up Loan (hereinafter referred to as the "Loan") is to be evidenced by, and repaid together with interest, in accordance with the provisions of a Promissory Note of even date herewith from the Borrower payable to the Lender in the principal amount of _____ and 00/100 Dollars (\$) (the "Promissory Note"). As used in this Agreement, the term "Loan Documents" means, collectively, the Promissory Note and any instrument or agreement previously, simultaneously, or hereafter executed and delivered by the Guarantor, the Borrower, or any other person as evidence of, security for, guarantee of, or in connection with the obligations of the Borrower to pay the unpaid principal amount of the Promissory Note, plus all accrued and unpaid interest thereon and all expenses, costs and fees (including reasonable attorneys' fees) of any nature whatsoever paid or incurred by or on behalf of the Lender in connection with the collection or enforcement of any of Borrower's obligations under the Promissory Note.

B. The Guarantor has requested the Lender to make the Loan to the Borrower.

C. The Lender requires, as a condition to entering into the Operating Agreement and making the Start Up Loan, the execution of this Agreement by the Guarantor.

NOW, THEREFORE, in order to induce the Lender to make the Loan to the Borrower, the Guarantor covenants and agrees with the Lender as follows:

1. **GUARANTY.** The Guarantor hereby unconditionally and irrevocably guarantees to the Lender

1.1. the due and punctual payment in full (and not merely the collectibility) of the Loan and all interest accruing thereon, in each case when due and payable, whether on any installment payment date or at the stated or accelerated maturity of any or all of the Loan, all in accordance with the provisions of the Promissory Note and the other Loan Documents; and

1.2. the due and punctual payment in full (and not merely the collectibility) of each other sum or charge which at any time becomes due and payable in accordance with the

provisions of the Promissory Note or any of the other Loan Documents; and

1.3. the due and punctual performance (and not merely the enforceability) of all of the Borrower's other obligations under the provisions of the Promissory Note and the other Loan Documents; and

1.4. the due and punctual payment in full (and not merely the collectibility) of any and all losses, damages or expenses incurred by the Lender and arising out of any default by the Borrower in performing any of its obligations under the Promissory Note or any of the other Loan Documents, regardless of whether such losses, damages or expenses are expressly provided for in the provisions thereof, or are than otherwise allowable by law.

The liabilities and obligations set forth in Sections 1.1, 1.2, 1.3 and 1.4 shall be collectively referred to as the "Guaranteed Obligations". NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE GUARANTEED OBLIGATIONS SHALL BE LIMITED TO TEN PERCENT (10%) OF THE BORROWER'S OBLIGATIONS UNDER THE PROMISSORY NOTE AND ANY OF THE OTHER LOAN DOCUMENTS. This is not an agreement of suretyship.

As to the Guarantor, the guarantee provided for in this section is an absolute, unconditional, continuing guarantee of payment and not of collectibility and is in no way conditioned upon or limited (except as otherwise noted in this Agreement) by: (a) any attempt to collect from, or the exercise of any rights and remedies against, any person other than the Borrower who may at any time now or hereafter be primarily or secondarily liable for any or all of the Guaranteed Obligations, including, without limitation, any other maker, endorser, surety, or guarantor of all or a portion of the Guaranteed Obligations or any person who is now or hereafter a party to any of the Loan Documents (all of the aforementioned being herein called collectively the "Obligors" and individually an "Obligor"); or (b) any resort or recourse to or against any security or collateral now or hereafter pledged, assigned, or granted to the Lender under the provisions of any instrument or agreement (including, without limitation, the Loan Documents) or otherwise assigned or conveyed to it. If the Borrower fails to perform or pay any of the Guaranteed Obligations, when and as the same are to be performed become due and payable (whether by acceleration, declaration, extension, or otherwise), the Guarantor shall, within thirty (30) days after receipt of written notice to the Guarantor of Lender's exhaustion of all remedies against the Borrower, perform the deficient Guaranteed Obligations and/or pay the same to the Lender in immediately available funds, in lawful money of the United States of America, at the Guarantor's address specified in or pursuant to Section 11 of this Agreement.

2. NATURE OF OBLIGATIONS. The obligations and liabilities of the Guarantor under this Agreement are continuing, absolute, and, except as set forth herein, unconditional, shall not be subject to any counterclaim, recoupment, set-off, reduction, or defense based upon any claim that the Guarantor may have against the Borrower, are independent of any other guaranty or guaranties at any time in effect with respect to all or any part of the Guaranteed Obligations, and may be enforced regardless of the existence of such other guaranty or guaranties. The obligations and liabilities of the Guarantor under this Agreement shall not be affected, impaired, lessened,

modified, waived, and/or released by the invalidity or unenforceability of any or all of the Loan Documents that have been approved by the Guarantor in accordance with the Operating Agreement. The Guarantor hereby consents that at any time and from time to time, the Lender may, without in any manner affecting, impairing, lessening, modifying, waiving, and/or releasing any or all of the obligations and liabilities of the Guarantor under this Agreement, do any one or more of the following, all without notice to, or further consent of, the Guarantor or with or without consideration: (a) renew, extend, and/or change the time and/or terms for payment of the principal of, and/or interest on, any of the Guaranteed Obligations or any renewals or extensions thereof, including, without limitation, the Promissory Note or any renewals or extensions thereof; (b) extend and/or change the time and/or terms for performance of any other obligations, covenants, or agreements under the Loan Documents of the Borrower and/or any other party to the Loan Documents; (c) modify, amend, change, compromise, settle, substitute, exchange, sell, assign, collect, release, terminate, waive, surrender, and/or otherwise deal with in any manner satisfactory to the Lender (i) any or all of the provisions of any or all of the Loan Documents, (ii) any or all of the Guaranteed Obligations, (iii) any or all of the obligations and liabilities of the Guarantor under this Agreement or under any and all Loan Documents to which Guarantor is a party or any or all property or other security given at any time as collateral by Guarantor without affecting, impairing, lessening, modifying, waiving, and/or releasing any or all of the obligations and liabilities of the Guarantor under this Agreement or under any and all of the Loan Documents to which Guarantor is a party, (iv) any or all other parties to any or all of the Loan Documents, and (v) any or all property or other security now or hereafter serving as collateral for any or all of the Guaranteed Obligations or under any or all of the Loan Documents; (d) receive additional property or other security as collateral for any or all of the Guaranteed Obligations or under any or all of the Loan Documents; (e) fail, omit, lack diligence, or delay to enforce, assert, or exercise any right, power, privilege, or remedy conferred upon the Lender under the provisions of any of the Loan Documents or under applicable laws; (f) grant consents or indulgences or take action or omit to take action under, or in respect of, any or all of the Loan Documents; and (g) apply any payment received by the Lender of, or on account of, any of the Guaranteed Obligations from the Borrower, from the Obligor or from any source other than the Guarantor to the Guaranteed Obligations in whatever order and manner the Lender elects, and any payment received by the Lender from the Guarantor for or on account of this Agreement may be applied by the Lender to any of the Guaranteed Obligations in whatever order and manner the Lender elects. Provided however, the Lender may not, without the written consent of the Guarantor: (i) increase the amount of the Loan; (ii) increase the rate of interest applied thereto unless such increase is due to an increase in the Prime Rate of Interest, as set forth in the Promissory Note; (iii) extend the Borrower additional credit; or (iv) otherwise increase the Guaranteed Obligations. Should Lender seek to increase any of the foregoing without Guarantor's written consent this Guarantee shall be inapplicable to said increase.

3. WAIVER BY GUARANTOR. The Guarantor unconditionally waives, to the extent permitted by applicable laws: (a) notice of the execution and delivery of the Loan Documents; (b) notice of the Lender's acceptance of and reliance on this Agreement or the making of the Loan to the Borrower or of the creation of any of the Guaranteed Obligations; (c) dishonor or protest; (d) notice of dishonor of any property or other security serving at any time as collateral under the Loan Documents; and (e) until such time as the provisions of this Agreement are no longer in effect, any right to subrogation against the Lender and any right to subrogation, reimbursement, and indemnity

against any property or other security serving at any time as collateral for any or all of the Guaranteed Obligations or under any of the Loan Documents.

4. SUBORDINATION. If the Guarantor advances or at this time has advanced any sum to the Borrower, or if the Borrower in any other manner is or becomes indebted to the Guarantor, such sum and debt shall be subordinate in all respects to any and all amounts then or thereafter due and owing to the Lender under the provisions of any of the Loan Documents.

5. REPRESENTATIONS OF GUARANTOR. The Guarantor hereby represents and warrants to the Lender that (a) such Guarantor (i) has a financial interest in the Borrower; (ii) has examined or has had an opportunity to examine the Promissory Note and each other Loan Document; and (iii) has full power, authority and legal right to execute, enseal, acknowledge and deliver this Guaranty; and (b) this Guaranty constitutes such Guarantor's valid, legally binding obligation enforceable in accordance with its terms.

6. DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default (an "Event of Default") under this Agreement: (a) the failure of the Guarantor to pay to the Lender as and when due and payable any and all amounts payable by the Guarantor to the Lender under the provisions of this Agreement; (b) the failure of the Guarantor to perform, observe, or comply with any of the provisions of this Agreement; (c) the occurrence of an event of default (as defined therein) under any of the Loan Documents; (d) if any information contained in any financial statement, application, schedule report, or any other document given by the Guarantor is not in all respects true and accurate or if the Guarantor, the Borrower, or such other person omitted to state any material fact or any fact necessary to make such information not misleading; (e) if any event described in Section 9 occurs with respect to the Guarantor; or (f) if Guarantor becomes a Disapproved Member under the Operating Agreement.

Whenever there is an Event of Default under this Agreement, the Lender may, at its option, declare an amount equal to any or all of the then unpaid balance of the Guaranteed Obligations (whether then due or not) to be immediately due and payable by the Guarantor, and the Guarantor shall on demand pay the same to the Lender in immediately available funds in lawful money of the United States of America, at its address specified in or pursuant to Section 10 of this Agreement.

7. ENFORCEMENT EXPENSES. The Guarantor shall indemnify and hold harmless the Lender against any loss, liability, or expense, including reasonable attorneys' fees and disbursements and any other reasonable fees and disbursements, that may result from any failure of the Guarantor to pay and/or perform, as applicable, any of the Guaranteed Obligations when and as due and payable or that may be incurred by or on behalf of the Lender in enforcing any obligation of the Company or of any of the Obligors to pay any of the Guaranteed Obligations and any obligations and liabilities of the Guarantor hereunder.

8. DELAY AND WAIVER BY LENDER. No delay in the exercise of, or failure to exercise, any right, remedy, or power accruing upon any default or failure of the Guarantor in the performance of any obligation under this Agreement shall impair any such right, remedy, or power

or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed by the Lender expedient. In order to entitle the Lender to exercise any right, remedy, or power reserved to it in this Agreement, it shall not be necessary to give any notice to the Guarantor. If the Guarantor should default in the performance of any obligation under this Agreement, and such default should thereafter be waived by the Lender, such waiver shall be limited to the particular default so waived. No waiver, amendment, release, or modification of this Agreement shall be established by conduct, custom, or course of dealing.

9. BANKRUPTCY OR INSOLVENCY OF THE GUARANTOR. Anything contained in any of the provisions of this Guaranty or any of the other Loan Documents to the contrary notwithstanding, the Lender may, in the exercise of its sole and absolute discretion, as to the Guarantor, accelerate the debt evidenced by the Promissory Note, if

9.1. the Guarantor (a) applies for or consents to the appointment of a receiver, trustee or liquidator of Guarantor, or of all or a substantial part of its assets, (b) files a voluntary petition in bankruptcy, or admits in writing its inability to pay its debts as they come due, (c) makes an assignment for the benefit of creditors, (d) files a petition or an answer seeking a reorganization or an arrangement with creditors or seeking to take advantage of any insolvency law, (e) performs any other act of bankruptcy, or (f) files an answer admitting the material allegations of a petition filed against such Guarantor in any bankruptcy, reorganization or insolvency proceeding; or

9.2. (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating Guarantor a bankrupt or an insolvent, or approving a petition seeking such a reorganization, or appointing a receiver, trustee or liquidator of Guarantor, or of all or a substantial part of its assets, or (b) there otherwise commences, with respect to Guarantor or any of its assets, any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or like law or statute, and if in either case such order, judgment, decree or proceeding continues unstayed for any period of sixty (60) consecutive days and in effect for any period of ten (10) consecutive days after the expiration of any stay thereof.

9.3. Nothing in the provisions of this Section shall be deemed in any way to alter or impair any right which the Lender may have under the provisions of the Promissory Note or any of the other Loan Documents to accelerate such debt on the occurrence of any default or other event provided therein and entitling the Lender to accelerate such debt, whether or not relating to the Guarantor.

10. NOTICES AND COMMUNICATIONS. All notices and other communications hereunder shall be in writing and shall be effective when sent by certified mail, return receipt requested at the addresses set forth below, or at such other address as a party shall have furnished in writing to the other party:

Guarantor: M2 Concepts, LLC
11429 Grapeleaf Drive
Fort Worth, Texas 76244
Attn: Ray Mickens, Vice President

Lender: WH Smith USA Retail Inc.
4801 Executive Park Court, Suite 100
Jacksonville, Florida 33414
Attention: Ziad El-Assad, President

11. ASSIGNMENT. The Lender may, without notice to or consent of the Guarantor, sell, assign, or transfer to any person or persons all or any part of the Guaranteed Obligations, and each such person or persons shall have the right to enforce this Agreement, as fully as the Lender, provided that the Lender shall continue to have the unimpaired right to enforce this Agreement as to so much of the Guaranteed Obligations that it has not sold, assigned, or transferred.

12. SUCCESSORS AND ASSIGNS. All covenants and agreements of the Guarantor set forth in this Agreement shall bind the Guarantor and its legal representatives, successors and assigns and shall inure to the benefit of, and be enforceable by, the Lender and its legal representatives, successors and assigns, including, without limitation, any holder of any or all of the Loan Documents. This Guaranty may not be assigned by the Guarantor without the express written consent of the Lender.

13. MISCELLANEOUS. Neither this Agreement nor any term hereof may be terminated, amended, supplemented, waived, released, or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver, release, or modification is sought. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders. Whenever used herein, the word "person" or "persons" shall mean and include a corporation, an association, a partnership, an organization, a business, an individual, a government or political subdivision or agency thereof, or an estate or trust. This Agreement shall in all respects be deemed to be made in, and governed by, construed and enforced in accordance with the laws of, the State of Florida. The Lender shall have the right to grant participations in the Guaranteed Obligations to others at any time and from time to time, and the Lender may divulge to any such participant or potential participant all information, reports, financial statements, and documents obtained in connection with this Agreement, any of the Loan Documents, or otherwise. If any term of this Agreement or any obligation thereunder shall be held to be invalid, illegal, or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby. The paragraph and section headings of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions hereof. This Agreement may be executed in duplicate originals or in several counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument, and it shall not be necessary in making proof hereof to produce or account for more than one such duplicate original or counterpart.

[signatures on the following page]

IN WITNESS WHEREOF, the Guarantor has caused this Agreement to be executed in its name, under its seal, and on the Guarantor's behalf the day and year first written above.

WITNESS/ATTEST:

M2 CONCEPTS, LLC

By: _____
William Ray Mickens, Vice President

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.