

AIRPORT ADVERTISING CONCESSION AGREEMENT

29080

This Concession Agreement, hereinafter referred to as "Agreement," is made and entered into this 14 day of April 2005, by and between THE CITY OF LONG BEACH, a California municipal corporation, hereinafter referred to as the "Airport", and IN-TER-SPACE SERVICES, INC., D/B/A INTERSPACE AIRPORT ADVERTISING, a Pennsylvania corporation qualified to do business in the State of California, hereinafter referred to as the "Concessionaire."

W I T N E S S E T H:

WHEREAS, the Long Beach City Council is the authority responsible for oversight of the Long Beach Airport, hereinafter referred to in its entirety as the "Facility"; and,

WHEREAS, the Concessionaire is a corporation engaged in the business of operating airport display advertising concessions similar in nature to that proposed for the Airport, and

WHEREAS, the Airport wishes to grant to Concessionaire the right to operate the Airport's display advertising concession at the Facility under an agreement containing mutually satisfactory terms and covenants.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, and intending to be bound hereby, the Airport and the Concessionaire hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

Article I.

TERM

- 1.1 This Agreement shall become effective upon execution by the City Manager. The term ("Term") of this Agreement shall commence on July 1, 2005 ("effective date"), and continue for five (5) years thereafter. The Term of this Agreement may at the option of the Airport be extended for an additional five

(5) year period. Should the Airport desire to extend the initial term as provided herein, the Airport will provide no less than sixty (60) days advance written notice to Concessionaire. The Concessionaire will then have up to fifteen (15) days to send written notice of acceptance of the term renewal to the Airport. Should the Airport not extend the initial term, then the Term of this Agreement may be extended for a five (5) year period by Concessionaire provided Concessionaire has met the "Operational Standards" listed and described below for at least 4 of the 5 years of the term. Should the Concessionaire desire to extend the initial term as provided herein, the Concessionaire will provide no less than sixty (60) days advance written notice to Airport. The Airport will then have up to thirty days (30) to perform a review of the "Operational Standards" specified below during the fifth Agreement year. The Airport agrees to provide its acceptance of renewal to Concessionaire provided such review determines Concessionaire's compliance with the Operational Standards during the term. The Concessionaire shall provide documentary evidence proving compliance with the Operational Standards for purposes of this review. The following Operational Standards shall apply:

- a. At least 80% annual display case occupancy after the first Agreement year;
- b. Invest no less than \$163,456 into the advertising program at the Airport ("Initial Investment Amount"). Concessionaire shall expend no less than seventy-five percent (75%) of the Initial Investment Amount within one hundred eighty (180) days of the effective date. Concessionaire shall expend the remainder of the Initial Investment Amount within four-years and six months (4.5 years) of the effective date. Concessionaire shall provide documentary evidence of such investment acceptable to the Airport, in its sole reasonable discretion, such as paid invoices, time sheets, receipts, or tax records, whichever may be applicable, confirming the required 75% investment no later than April 1, 2006 and the 100% investment no later than April 1, 2010;
- c. At least 750 telephone sales calls per Agreement year, which calls shall be documented by Concessionaire (subject to availability of displays for sale);

- d. At least 80% of advertisers at the Airport shall be local advertisers or have locally-focused display graphics, as reasonably determined by the City Manager or his/her designee who shall make use of the graphics approval process provided in Section 3.3, below, for this purpose;
- e. Provide national sales force to ensure that the Facility is part of the national advertiser sales effort;
- f. Provide a CAD-certified display designer;
- g. Provide architect-approved engineering drawings;
- h. Provide properties personnel sufficient for display case relocation at Airport request with 14 days notice;
- i. Provide maintenance staff and scheduling commensurate with facilities, with on site availability within 24 hours upon Airport or advertiser request;
- j. Provide graphic guidance to advertisers and obtain written approval by Airport of all graphic renditions prior to install; and
- k. Assist Airport in public relations efforts including media release support.

1.2 This Agreement may continue on a month-to-month basis after the expiration of the term, subject to the terms and conditions hereof, in the sole discretion of the Airport.

1.3 Within six (6) months of the beginning of the renewal term, in the event the term is extended pursuant to Section 1.1 above, or within six months of the opening of any new terminal facilities and upon the written agreement of the parties, Concessionaire shall invest an additional Seventy-Five Thousand Dollars into the advertising program at the Airport. Concessionaire shall provide documentary evidence of such investment, acceptable to Airport in its sole reasonable discretion such as paid invoices, time sheets, receipts, or tax records confirming the required investment no later than April 1, 2011.

Article II.

PRIVILEGES AND OBLIGATIONS OF THE CONCESSIONAIRE

2.1 The Airport hereby grants to Concessionaire the right to operate, maintain and provide the Facility-wide display advertising concession.

- 2.2 Concessionaire shall develop and maintain a comprehensive advertising program totally integrated and coordinated as to design, quality, and content for the Facility. Under this program, Concessionaire shall have the right to establish, operate, service and maintain prime quality, expertly designed commercial advertising displays, including, but not limited to: floor exhibits, wall and floor back-lit units, product cases, brochure cases, posters, exposition space, car and boat displays, direct telephone line hotel and transportation displays, electronic displays, computer displays, video displays, board advertising, outdoor advertising and other forms of advertising relating to an attractive and profitable means for the graphic display of materials, articles, and services of various manufacturers, industries, companies, and persons.
- 2.3 All installations shall be in good taste, professionally developed, and of such high caliber as to contribute to the establishment of the Facility as a prestige location for commercial advertising media.
- 2.4 The specific locations for backlit displays, product cases, poster boards, telephone boards and all other sites available for advertising use at the Facility ("Assigned Areas") are indicated on Exhibit "A", attached hereto and made a part hereof. Any additional areas made available for advertising at the Facility by the City Manager or his/her designee shall be added to the Assigned Areas and, in such instance, Exhibit "A" shall be substituted to show such additions. Concessionaire shall have the exclusive advertising use of all Assigned Areas.
- 2.5 All Assigned Areas selected are subject to relocation at anytime at the Airport's discretion in accordance with the provisions for "relocation" provided herein. Should the Airport and the Concessionaire disagree on any advertising locations, the Airport's decision shall be final. The Airport shall make best efforts to keep available for the use of Concessionaire during the term advertising locations of at least equal number, passenger exposure and commercial advertising value as those in the original Exhibit "A".
- 2.6 Concessionaire shall be responsible for the commercial advertising program within the Assigned Areas and shall apply to that program the fiscal, marketing and administrative resources of its organization. Through its national and regional organization, Concessionaire shall make best efforts to:
- a. Develop, on a continuing basis, integrated master plans for advertising at the Facility;

- b. Follow quality criteria that recognize the need for integrity of design and advertising content appropriate to the prestige and dignity of the Facility;
 - c. Practice space utilization planning which will recognize and meet the needs of all advertising classifications and insure maximum revenue return to the Airport consistent with the scope and integrity of the advertising master plan;
 - d. Provide a sales organization with ability and experience of sufficient scope to solicit and sell local, regional, and national advertising for display at the Facility, with a primary emphasis on local advertising; and
 - e. Provide advertising and display equipment and fixtures that are consistent with the architectural design of the Facility.
- 2.7 Except as provided elsewhere in this Agreement, Concessionaire shall pay all expenses associated with planning, implementing, and operating the display-advertising program provided for in this Agreement, including, without limitation, the cost of electric and telecom/electronic communications wiring within the Assigned Areas.
- 2.8 Upon execution of this Agreement, the Concessionaire shall have rights of ingress and egress to and from the Assigned Areas, including but not limited to common use roadways, subject to any rules or regulations which may have been established or shall be established in the future by the Airport. Such rights of ingress and egress shall apply to the Concessionaire's employees, customers, agents, contractors, suppliers, and other authorized individuals.
- 2.9 Employees, agents and contractors of Concessionaire shall be permitted to park at the Facility under the same terms and conditions as employees of other concessionaires at the Facility. Visiting service personnel shall be permitted to park in areas designated for temporary vendor parking.
- 2.10 The Concessionaire may utilize additional storage space identified by the Airport as available for such purposes, at the discretion of the Airport.
- 2.11 The Concessionaire shall have the right to install and maintain appropriate informational signs in the Assigned Areas, provided, that the design, installation and maintenance of such signs shall be consistent with the graphic standards and policies of the Airport. All such signage shall be subject to written approval of the Airport prior to installation.

Article III.

ADVERTISING RATES AND STANDARDS

- 3.1 The Concessionaire agrees to use the Assigned Areas solely for the sale, placement and display of advertising products and shall make good faith efforts in every proper manner to maintain, develop and increase the sales of advertising developed hereunder.
- 3.2 The Concessionaire shall submit to the Airport, by July of each calendar year, a schedule of monthly rates to be applied to the advertising locations. Advertising locations may be subject to quantity purchase and other incentive discounts and to standard sales/advertising agency deductions or commissions.
- 3.3 Advertisements, advertising copy, advertising materials and manners of commercial presentation ("Advertisements") shall be subject to the reasonable approval of the Airport. The Airport shall provide written notice to Concessionaire of any disapproval of Advertisements within five (5) days of submission of graphics sample by Concessionaire. Concessionaire shall not display any Advertisements reasonably disapproved by the Airport. Concessionaire shall immediately remove from the Facility upon written demand of the Airport, at Concessionaire's sole cost and expense, any reasonably disapproved Advertisements. In the event that any so disapproved Advertisement is not removed promptly upon receipt of written demand, the Airport may remove and store said Advertisement. The Airport shall not in any way be held responsible or liable for any damage to any Advertisement so removed.
- 3.4 No Advertisements reasonably considered offensive by the Airport may be presented to the public. The Concessionaire will promptly remove or modify the presentation of any Advertisement if so directed by the Airport.
- 3.5 Where any backlit or other graphic display case of Concessionaire does not contain an Advertisement, such display case shall contain filler graphics promoting charitable entities or advertising sales at the Facility.

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Article IV.

RESPONSIBILITY OF AIRPORT

- 4.1 The Airport shall provide finished floors, walls and ceilings for the Assigned Areas.
- 4.2 The Airport shall be responsible for the providing of, maintenance of, and upkeep of: partitions about the perimeter of the Assigned Areas, structural walls and supports, structural roof construction, structural floor construction, exterior window walls designed about the perimeter of the Assigned Areas, Facility security, any required electric service and electrical connections to the Assigned Areas, any required telecom/electronic communications conduit and wiring to the Assigned Areas. The Airport shall further be responsible for the general maintenance and upkeep of the Facility outside of Concessionaire's Assigned Areas.

Article V.

WORK BY CONCESSIONAIRE

- 5.1 Concessionaire shall submit, prior to commencing the work to be preformed hereunder, plans and specifications ("Preliminary Plans") to the Airport for review.
- 5.2 The City Manager or his/her designee shall, within fourteen (14) days of receipt of any such Preliminary Plans, provide notice to Concessionaire of its approval or disapproval of the Preliminary Plans. Review and approval by Airport shall be based on the conformity of such plans and specifications to the general architectural and aesthetic plan for the Facility and such approval shall not be unreasonably withheld. Any written notice to Concessionaire of disapproval shall include the reason for such rejection with adequate specificity to allow Concessionaire to modify such Preliminary Plans accordingly.
- 5.3 In the event of disapproval of the Preliminary Plans or any portion thereof by the Airport, the Concessionaire shall have up to fourteen (14) days to submit adequately revised Preliminary Plans for Airport review. Approval of the revised Preliminary Plans by the Airport shall not be unreasonably withheld.
- 5.4 Once approved by the Airport, the Preliminary Plans shall become final ("Final Plans"). No changes or alterations shall be made to the Final Plans

after approval by the Airport, except as may be agreed to in writing by the parties.

- 5.5 The Concessionaire shall submit a schedule depicting the estimated time required to complete the construction and installation of the displays and improvements called for in the Final Plans.
- 5.6 Upon written "Notice to Proceed" from the City Manager or his/her designee, the Concessionaire shall immediately begin construction and installation of the approved displays and improvements in the Assigned Areas and pursue the same to completion. However, any delay in construction and installation due to fire, earthquake, wars, acts of the Airport or one of the Airport's contractors, or other impediment beyond the control of the Concessionaire shall reasonably extend the time within which such construction and installation shall be completed.
- 5.7 Except as otherwise provided herein, all work shall be at Concessionaire's sole cost and expense and Concessionaire shall provide all necessary labor, supervision, materials, supplies and transportation. .
- 5.8 All work performed by Concessionaire shall be in accordance with the Final Plans. No structural alterations or improvements shall be made to or upon the Assigned Area without the prior written approval of the Airport. The determination of the quality and acceptability of the finishes in the Assigned Areas shall be within the reasonable discretion of the City Manager or his/her designee.
- 5.9 All improvements and displays installed by the Concessionaire in the Assigned Areas shall be of high quality, safe, fire resistant materials and shall be attractive in appearance.
- 5.10 One reproducible final "as built" copy of the Final Plans for all displays and improvements, as may have been revised by the parties during the course of construction and installation, shall be signed by the Concessionaire and submitted to the City Manager or his/her designee within ninety (90) days following completion of the construction and installation.
- 5.11 Upon completion of the work, the Concessionaire shall, upon request, forthwith provide the Airport with a certification that the improvements and displays have been constructed and installed in accordance with the Final

Plans, and in strict compliance with all applicable building codes, laws, statutes, ordinances and regulations.

- 5.12 All permanent improvements made to the Assigned Areas by the Concessionaire shall be and remain the property of the Concessionaire until the expiration or earlier termination of this Agreement, at which time said permanent improvements shall become the property of the Airport. Notwithstanding anything to the contrary in this Agreement, all non-permanent advertising displays, equipment, trade fixtures, materials and supplies of Concessionaire, which shall include, without limitation, telephone boards, wall displays and freestanding displays and display cases, are and shall remain the property of Concessionaire unless Concessionaire shall fail within sixty (60) days following the expiration or earlier termination of this Agreement to remove such personal property. In the event of such failure to remove non-permanent property, title to such personal property shall, at the option of the Airport, vest in Airport at no cost to Airport.
- 5.13 All improvements, displays, equipment and interior design and decor constructed or installed by the Concessionaire, its agents, or contractors, including the plans and specifications therefore, shall conform to all applicable statutes, ordinances, building codes, and rules and regulations. Concessionaire shall obtain at its-own expense all necessary building permits.

Article VI.

PRIVILEGE FEES, CHARGES AND ACCOUNTABILITY

- 6.1 Subject to the terms hereof, Concessionaire agrees to pay to the Airport forty-two percent (42%) of the Adjusted Gross Revenue derived from the sale of static, backlit poster advertising and advertising space at the Facility ("Static Percentage Fee") and thirty-five percent (35%) of the Adjusted Gross Revenue derived from the sale of video, motion, computer operated and other high-technology, themed or specialty display advertising at the Facility ("Technology Percentage Fee") during each calendar year during the term. For the purposes of this Agreement the term "calendar year" shall mean the twelve (12) month period commencing on the effective date. In the event enplaned and deplaned commercial airline passengers at the Airport, as

reported to the US Department of Transportation, ("passengers") exceeds three million five-hundred thousand (3,500,000) during any calendar year during the term. the Static Percentage Fee shall increase to forty-five percent (45%) of Adjusted Gross Revenue for the next succeeding calendar year. In the event that the number of passengers at the Airport thereafter falls below three million five-hundred thousand (3,500,000) during any calendar year the Static Percentage Fee shall be reduced to forty-two percent (42%) of Adjusted Gross Revenue for the succeeding calendar year. The foregoing percentage fees shall be referred to jointly and severally herein as the "Percentage Fee" or the "Airport Fee". "Adjusted Gross Revenue", as used herein, shall mean all moneys paid to Concessionaire for advertising sales made at or from the Facility, regardless of when or where the order therefore is received, or delivered, whether on a cash basis or credit; provided, however, that:

a. Adjusted Gross Revenue shall exclude the following:

- (1) Any amount paid by advertisers in connection with design, fabrication or installation of any advertiser's specialty or custom display/graphics (including, without limitation, the printing, distributing or maintaining of any advertiser's brochures) or with the design, fabrication, installation or ongoing service of any new media technologies (including, without limitation, the programming and maintenance charges for computer-operated, plasma screen, video, interactive or motion displays);
- (2) Any amount paid by the advertisers to Concessionaire for telephone service;
- (3) Standard 15% sales commission for advertising agencies, only where applicable, or standard 15% sales commission for commissioned sales representatives;
- (4) Any sales or excise tax imposed by law and separately stated to and paid by an advertiser ("Sales Tax"); and
- (5) Amounts owed which are deemed uncollectible by Concessionaire after prudent collection efforts. Concessionaire shall provide Airport with such evidence as may be reasonably required by the

Airport to confirm the uncollectibles of any amount due
Concessionaire

b. In the event Concessionaire is unable to collect amounts due from advertisers upon which Concessionaire had previously based Percentage Fee payments after diligent efforts, such "bad debts" shall be deemed uncollectible and an appropriate adjustment shall be made in Concessionaire's subsequent statements and Percentage Fee submissions. If any "bad debts" are collected by Concessionaire after adjustment, then an appropriate upward adjustment shall be made to a subsequent revenue statement and Percentage Fee submission, excluding collection costs.

c. Commercially reasonable and non-discriminatory quantity purchase and incentive discounts shall be allowed; provided, that if the City Manager or his/her designee determines, after prudent investigation and review, that such any such discount is not commercially reasonable or is discriminatory, then any such quantity purchase and/or incentive discounts may be disallowed.

6.2 The Percentage Fee shall be paid by the twentieth (20th) day of the month following each calendar quarter of service, beginning with the month following the first calendar quarter in which Concessionaire used the Assigned Areas for display advertising purposes. For purposes of this agreement the term "calendar quarter" shall mean such Percentage Fee shall be due for the previous calendar quarters on April 20th, July 20th, October 20th, and January 20th of each calendar year. Notwithstanding the above, any real estate tax, use tax, or other state and local taxes relating to the Assigned Areas or other property of the Airport and levied or assessed to Concessionaire shall be deducted from the calculation of Adjusted Gross Revenues.

6.3 The Static Percentage Fee and Technology Percentage Fee shall be: (i) subject to a proportional percentage reduction equal to the percentage of passenger traffic decline during any calendar quarter of the Term when passenger enplanements and deplanements at the Facility shall fall ten percent (10%) or more below those recorded during the same quarter of 2003 (For example, should the Static Percentage Fee generally be 42% and passenger traffic fall by 10%, then the adjusted Static Percentage Fee would

be determined as follows: $42\% \times 10\% = 4.2\%$. $42\% - 4.2\% = 37.8\%$. The adjusted Static Percentage Fee would become 37.8%); and (ii) subject to reduction equal to Concessionaire's share of actual and prospective advertising revenues lost and unearnable where the Airport requires any removal or relocation of any Assigned Area shown in Exhibit "A", as may be amended, without the contemporaneous assignment to Concessionaire of a replacement location of at least equal passenger exposure and commercial advertising value. Where a display case or other display advertisement in an Assigned Area was visually obstructed or subject to electric supply failure for more than three (3) days without fault to Concessionaire, any amounts refunded to or withheld by affected advertisers shall not count towards Adjusted Gross Revenues and Concessionaire's share of such lost revenues shall be deducted from the Airport Fee payment to the Airport provided that the details of such obstruction or electrical supply failure and the impact on revenues has been reported to and confirmed by the Airport.

- 6.4 Concessionaire shall furnish to the Airport for each calendar quarter a statement showing total Adjusted Gross Revenue for the preceding calendar quarter. With each quarterly statement, the Concessionaire shall remit to the Airport the Percentage Fee derived through the end of the last month of the calendar quarter.
- 6.5 The Concessionaire shall keep full and accurate books and records showing Gross Revenue and all adjustments and credits utilized to arrive at Adjusted Gross Revenue, and the Airport shall have the right, through its representatives, and at all reasonable times, to inspect and audit all such records as may be necessary to verify the reported Adjusted Gross Revenue, including State of California sales tax return records. The Concessionaire agrees that all such books and records shall be maintained at Concessionaire's office location for at least a two (2) year period following the end of each Agreement year and shall be made available at the Airport's designated location within the City of Long Beach, at reasonable intervals, within fifteen (15) business days notice to the Concessionaire.
- 6.6 No later than one hundred twenty (120) days after the end of Concessionaire's fiscal year, Concessionaire shall furnish to the Airport the written statement of a Certified Public Accountant certifying that the

Percentage Fee paid by the Concessionaire to the Airport pursuant to this Agreement during each of Concessionaire's fiscal years is accurate. Such statement shall also certify Adjusted Gross Revenues as shown on the books and records of Concessionaire that were used to compute the Percentage Fee made to the Airport during the period covered by the statement.

- 6.7 Without waiving any other right of action available to the Airport, in the event that Concessionaire is delinquent for a period of fifteen (15) days or more in paying to the Airport any fees payable to the Airport pursuant to this Agreement, the Concessionaire shall pay to the Airport interest thereon at the rate of twelve percent (12%) per annum from the date such amount was due and payable until paid. Such interest shall not accrue with respect to disputed amounts being contested in good faith by Concessionaire.
- 6.8 In the event that any additional Airport Fee shall be determined to be rightly due and owing by any audit of Concessionaire's books and records as provided in **Article 6.5**, such amount shall forthwith be paid by the Concessionaire to the Airport with interest thereon at the rate of twelve percent (12%) per annum from the date such additional Airport Fee became due; provided, however, that the foregoing not be applied to amounts contested in good faith by Concessionaire. In addition, should any audit by the Airport rightly reveal a shortage in Airport Fee payments by Concessionaire of five percent (5%) or more, then Concessionaire shall reimburse the Airport for all reasonable fees incurred by the Airport in connection with in the preparation of such audit.

Article VII.

CONCESSION OPERATIONS

- 7.1 The management, maintenance and operation of the Assigned Areas shall at all times be under the supervision and direction of an active, qualified, competent manager who shall at all times be subject to the direction and control of the Concessionaire.
- 7.2 The operations of Concessionaire, its employees, agents, suppliers and contractors shall be conducted in an orderly and proper manner.
- 7.3 The Concessionaire agrees that its employees and contractors shall be of sufficient number so as to properly conduct the Concessionaire's operation.

Article VIII.

MAINTENANCE

- 8.1 The Concessionaire shall provide at its own expense such janitorial and cleaning services and supplies as may be necessary in the operation and maintenance of the Assigned Areas. The Concessionaire also agrees to keep and maintain the Assigned Areas in a clean, neat and sanitary condition, and attractive in appearance.
- 8.2 The Concessionaire agrees to maintain and make necessary general repairs to all of the to the improvements, fixtures and equipment placed or installed in the Assigned Areas by Concessionaire, including, without limitation, signs, showcases, displays, and telephone boards. Concessionaire agrees to keep and maintain in good condition the electrical equipment located at or on the Assigned Areas.
- 8.3 All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs shall be made in conformity with the rules and regulations prescribed from time to time by federal, state or local authority having jurisdiction over the work in the Concessionaire's Assigned Areas.
- 8.4 The Concessionaire shall, in a timely manner, provide for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of the Concessionaire's operations.
- 8.5 The Airport shall have the right to construct or install over, in, under or through the Assigned Areas new lines, pipes, mains, wires, conduits and equipment; provided, however, that such repair, alteration, replacement or construction shall not unreasonably interfere with Concessionaire's use of the Assigned Areas. The Airport will repair at its sole cost, any damage to Concessionaire's property resulting from such activities.

Article IX.

COMPLIANCE

- 9.1 The Concessionaire, its officers, agents, servants, employees, contractors, and licensees shall in the carrying out of this Agreement comply with all present and future laws, ordinances, orders, directives, rules and regulations

of the United States of America, the State of California, the County of Los Angeles and the City of Long Beach, their respective agencies, departments, authorities or commissions ("Applicable Law").

- 9.2 Except as otherwise provided herein, Concessionaire shall pay, or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees which may be levied upon Concessionaire on account of the business being conducted by Concessionaire in the Assigned Areas. It is the expressed intent of the parties that this Agreement not be a lease and that this Agreement grant no real property rights to Concessionaire. Concessionaire's advertising displays and equipment shall not be viewed as the real property of Concessionaire. The Airport shall not assess or bill Concessionaire for any property, real estate, or lease tax. Concessionaire shall maintain in current status all federal, state, and local licenses and permits required for the operations of the business conducted by Concessionaire.
- 9.3 Concessionaire shall pay wages that are not less than the minimum wages required by law to persons employed in its operations hereunder.
- 9.4 This Agreement is governed by the laws of California. Any disputes relating to this Agreement shall be resolved in accordance with the laws of California.

Article X.

ASSIGNMENTS AND SUBAGREEMENTS

- 10.1 Concessionaire shall not assign this Agreement or allow same to be assigned by operation of law or otherwise without the prior written consent of Airport, which consent shall not unreasonably be withheld.

Article XI.

INSURANCE AND INDEMNIFICATION

- 11.1 Concessionaire shall protect, defend, indemnify and hold Airport, its officers, employees, boards and commissions, completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to any property, including all reasonable costs from investigation and defense thereof (including but not limited to attorney fees, court costs, and expert

fees), of any nature whatsoever to the extent caused by the negligence or willful misconduct of Concessionaire, its agents, employees, licensees, or contractors, and arising out of or incident to the operation of the Facility advertising program pursuant to this Agreement or the use by Concessionaire of the Assigned Areas, regardless of where the injury, death or damage may occur. Concessionaire shall have the right to control the defense of any such claim, suit or other action as mentioned above for which Concessionaire indemnifies the Airport. This subsection shall not create any third party rights and shall not be interpreted as a waiver by the Airport of any immunities or limitations on damages available to the Airport pursuant to Applicable Law. Concessionaire shall indemnify and hold harmless the Airport, its officers, employees, boards and commissions, from any and all loss, cost, expense and damages on account of any and all manner of claims, demands, actions and proceedings that may be instituted against the Airport, its officers, employees, boards and commissions, on grounds alleging that the Airport, its officers, employees, boards and commissions have violated any copyright or any proprietary right of any person, that it contains any matter that is libelous or scandalous or invades any person's right to privacy or other personal rights, except to the extent the Airport, its officers, employees, boards and commissions have contributed to the matter. The Concessionaire agrees, at the Concessionaire's own expense, to promptly defend and continue the defense of any such claim, action or proceeding that may be brought against the Airport, its officers, employees, boards and commissions provided that the Airport shall promptly notify the Concessionaire with respect thereto, and provided further that the Airport, its officers, employees, boards and commissions shall give Concessionaire such reasonable time as the exigencies of the situation may permit in which to undertake and continue the defense thereof.

- 11.2. Concurrent with the execution of this Agreement and as a condition of continuance, Concessionaire shall procure and maintain the following types of insurance at Concessionaire's sole expense for the duration of this Agreement, including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of

California or from authorized, non-admitted insurers that have ratings of or equivalent to an A:VIII by A.M. Best Company:

- (a) Commercial general liability insurance equivalent in coverage scope to ISO form CG 00 01 10 93 in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and in aggregate. Such coverage shall include but is not limited to broad form contractual liability coverage, cross liability protection, products and completed operations, and advertising liability. The City of Long Beach, its officials, employees, and agents shall be added as additional insureds by endorsement equivalent in coverage scope to ISO form CG 20 26 11 85 and such endorsement shall protect the City, its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Concessionaire or from maintenance or use of the Premises. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents, and such insurance shall be endorsed to waive the insurer's rights of subrogation against the City.
- (b) Special perils property insurance in an amount sufficient to cover the full replacement value of Concessionaire's personal property, improvements and equipment on the Premises.
- (d) Workers' compensation insurance as required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occupational illness. Concessionaire agrees to obtain and furnish evidence to City of the waiver of Concessionaire's workers' compensation insurance carrier of any right of subrogation against the City.

11.3 With respect to damage to property, Facility and Concessionaire hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

11.4 Any self-insurance program or self-insured retention must be approved separately in writing by Facility and shall protect the City of Long Beach, its

officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions.

- 11.5 Each insurance policy shall be endorsed to state that coverage shall not be cancelled, nonrenewed or changed by either party except after thirty (30) days prior written notice to Facility and shall be primary to Facility. Any insurance or self-insurance maintained by Facility shall be excess to and shall not contribute to insurance or self-insurance maintained by Concessionaire.
- 11.6 Concessionaire shall deliver to Facility certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of this Agreement. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. Concessionaire shall, at least thirty (30) days prior to expiration of such policies, furnish Facility with evidence of renewals. Facility reserves the right to require complete certified copies of all said policies at any time.
- 11.7 Such insurance as required herein shall not be deemed to limit Concessionaire's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Concessionaire understands and agrees that, notwithstanding any insurance, Concessionaire's obligation to defend, indemnify, and hold Facility, its officials, agents, and employees harmless hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or liabilities caused by the condition of the Facility or in any manner connected with or attributed to the acts or omissions of Concessionaire, its officers, agents, contractors, employees, licensees, vendors, patrons, or visitors, or the operations conducted by or on behalf of Concessionaire, or the Concessionaire's use, misuse, or neglect of the Premises.
- 11.8 Not more frequently than every three (3) years, if in the opinion of Facility the amount of the foregoing insurance coverage is not adequate, Concessionaire shall amend the insurance coverage as required by Facility's Risk Manager or designee.

11.9 Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the Facility's Risk Manager or designee.

Article XII.

TERMINATION BY AIRPORT

12.1 In addition to all other remedies available to the Airport, this Agreement shall be subject to termination by Airport should any one or more of the following events occur ("Concessionaire Default"):

- a. If Concessionaire shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Concessionaire's part to be performed and observed and if such neglect or failure should continue for a period of sixty (60) days after receipt by Concessionaire of written notice of such neglect or failure or, if more than sixty (60) days shall be required because of the nature of the default, if Concessionaire shall fail within said sixty (60) day period to commence and thereafter diligently proceed to cure such default;
- b. If the concession rights hereby created shall be taken by execution or by other process of law;
- c. The taking by a court of competent jurisdiction of Concessionaire's assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the enumerated remedies for license default are provided for or permitted in such code or act;
- d. If any court of competent jurisdiction shall enter a final order with respect to Concessionaire, providing for modification or alternation of the rights of creditors;
- e. If Concessionaire shall after thirty (30) days written notice from Airport fail to abide by any material Applicable Law;
- f. If Concessionaire shall fail to make productive use of the Assigned Areas as reasonably determined by Airport; or,
- g. If Concessionaire shall abandon the Assigned Areas or shall discontinue the conduct of its operations in the Assigned Areas.

12.2 In the event Concessionaire shall fail to cure a Concessionaire Default within the time herein specified, the Airport, then, or at any time thereafter, while

such breach is continuing, shall have the right, at its election, to terminate this Agreement by giving at least ten (10) days written notice to Concessionaire.

- 12.3 If Airport shall terminate this Agreement by reason of a condition of Concessionaire Default, Concessionaire shall forthwith and at its own expense remove its non-permanent improvements, fixtures, displays and equipment from the Assigned Areas.

Article XIII.

TERMINATION BY CONCESSIONAIRE

- 13.1 In addition to all other remedies available to the Concessionaire, this Agreement shall be subject to termination by the Concessionaire, should any one or more of the following events occur ("Airport Default"):
- a. The abandonment of the Facility for longer than sixty (60) days;
 - b. The issuance of an order or injunction by any court of competent jurisdiction preventing or restraining the use of the Facility in such a manner as to substantially restrict the Concessionaire from conducting its operation of the Facility display advertising concession where such order or injunction was not caused by any act or omission of the Concessionaire; provided that such order or injunction remain in force of such injunction for at least sixty (60) days;
 - c. The breach by the Airport of any of the material terms, covenants, or conditions of this Agreement to be kept, performed, and observed by the Airport, and the failure of the Airport to remedy such breach, for a period of sixty (60) days after receipt of written notice from the Concessionaire of the existence of such breach;
 - d. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Facility and its facilities in such a manner as to substantially restrict the Concessionaire from conducting its display advertising concession if such restriction be continued for a period of sixty (60) days or more;
 - e. If the number of enplaned passengers at the Facility decreases twenty percent (20%) or more below the traffic recorded during the same quarter of calendar year 2000; or,

- f. The destruction of such a significant portion of the Facility terminal building(s) due to fire, earthquake or any other causes not the fault of Concessionaire so as to make continuation of the advertising concession commercially unreasonable.
- 13.2 In lieu of or in addition to other rights granted hereunder, during any of the above events of Airport Default, there shall be an abatement in Concessionaire's obligations, fees and charges that may otherwise be due Airport to the extent such obligations or Concessionaire's ability to generate advertising revenues are affected by such events.
- 13.3 In the event of Airport Default, Concessionaire shall then, or at any time thereafter, have the right, at its election, to terminate this Agreement by giving at least ten (10) days written notice to Airport. Concessionaire shall upon the passing of the ten (10) days quit and surrender the Assigned Areas and any permanent improvements, as described in **Article 5.12**, to the Airport. In such event except for such even under subsection 13.1.f, Concessionaire shall be reimbursed by the Airport for the undepreciated portion of its actual capital costs (including, without limitation, construction and installation costs) of the permanent and non-permanent improvements, fixtures, displays and equipment used or acquired to be used in the Assigned Areas per a ten year straight-line depreciation schedule.

Article XIV.

SECURITY

- 14.1 Concessionaire agrees to observe all security requirements of Federal Aviation Regulations Part 107, and the Airport's security rules and regulations, as the same may be from time to time amended. Concessionaire shall take such steps as may be necessary or directed by the Airport to ensure that its employees, agents and contractors observe these requirements.

Article XV.

FIRE AND OTHER DAMAGE

- 15.1 In the event that structural or permanent portions of the Assigned Areas shall be partially damaged by fire or other casualty not the fault of Concessionaire,

the Concessionaire shall give immediate notice after discovery thereof to the Airport and the same shall be repaired at the expense of the Airport without unreasonable delay unless Airport determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until such area is so repaired (including if such area is not repaired), any fee payments otherwise due hereunder shall abate in amounts proportional to the loss of available advertising space; provided, however, that if an area shall be so slightly injured in any such casualty as not to be rendered unfit for normal usage, the fees related thereto shall not cease or be abated during any repair period. In the event of the area being damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of the Airport not to rebuild the same, then, at the option of the Airport or Concessionaire, and upon thirty (30) days written notice to the other, this Agreement as it applies to said area shall cease and come to an end, and the fees payable to the Airport shall be proportionally adjusted to represent the loss of the use of the area to Concessionaire. If the Airport elects to rebuild said areas, the Airport shall notify Concessionaire of such intention within thirty (30) days of the date of the damage.

Article XVI.

AMENDMENT

- 16.1 This Agreement constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

Article XVII.

APPROVALS BY

- 17.1 Whenever this Agreement calls for approval by the Airport, such approval shall be evidenced by the written approval of the City Manager or his/her designee or his designee.

Article XVIII.

ENVIRONMENTAL PROTECTION

- 18.1 Concessionaire agrees to comply in the performance of this Agreement with all applicable environmental laws, statutes, ordinances, regulations and orders, including all rules and regulations adopted by Airport relating to protection of the environment.

Article XIX.

GENERAL PROVISIONS

- 19.1 Federal Aviation Act, Section 308 — Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act. Without derogation to the Act and subject to the terms and provisions hereof, the Concessionaire shall have the sole right to use the Assigned Areas for advertising purposes under the provisions of this Agreement.
- 19.2 Subordination to Agreements With the United States Government — This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Airport and the United States Government relative to the operation or maintenance of the Facility, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the Airport for airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Facility in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. The Airport covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.
- 19.3 Nonwaiver of Rights — No failure by either party to strictly enforce any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.
- 19.4 Notices — All notices, requests and other communications under this Agreement shall be effectively given only if in writing and sent by United

States registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized and receipted overnight courier service (e.g. FedEx, DHL or Airborne Express) guaranteeing next business day delivery, addressed as follows:

If to Airport:

City of Long Beach
333 West Ocean Blvd
Long Beach, CA 90802
Attn: City Manager

With a Copy to:
City of Long Beach
Office of the City Attorney
333 West Ocean Blvd
Attn: City Attorney 562.570.2200
fax 562.436.1579

If to Concessionaire:

President
Interspace Airport Advertising
4635 Crackersport Road
Allentown, PA 18104

or to such other addresses of which Airport or Concessionaire shall have provided notice as herein provided.

- 19.5 Captions — The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- 19.6 Severability — If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, the parties hereto agree that the remaining portions of this Agreement or portions thereof shall not be affected thereby, and such remaining provisions or portions thereof shall remain in full force and effect.
- 19.7 Right to Develop Facility — The Airport reserves the right to engage in further major development and improvement to the Facility as it may see fit,

regardless of the desires or view of the Concessionaire and without interference or hindrance.

- 19.8 Nonliability of Officers and Employees — No member, director or officer of any Airport board or commission or its sponsoring authority, nor any officer, director, employee, elected or appointed official of the Airport or its sponsoring authority, and no officer, director, employee or agent of Concessionaire, shall be charged personally or held personally contractually liable by or to the other due to any breach of this Agreement or relating to the execution of this Agreement.
- 19.9 Successors and Assigns Bound — This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- 19.10 Right to Amend — In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Facility, or otherwise, the Concessionaire 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.
- 19.11 Force Majeure — Neither the Airport nor the Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority; weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.
- 19.12 Right of Relocation/Removal — The Airport reserves the general right to relocate or delete portions of the Assigned Area in accordance with the terms of this Agreement. Notice of such required relocation or removal shall be provided to Concessionaire in writing from the Airport no less than sixty (60) days prior to such requirement. Reasonable costs incurred by Concessionaire directly relating to any Airport-ordered removal or relocation of an Assigned Area prior to the expiration or earlier termination of this Agreement shall be deducted by Concessionaire from subsequent Airport Fee payments; provided, that the Airport shall have the right to review paid

invoices, time sheets, receipts or other documentary evidence, whichever may be applicable, proving such costs and may disallow any costs not reasonably evidenced or directly relating to the removal or relocation. In addition to the above, where an Assigned Area is being removed or relocated, any refunds or credits granted to affected advertisers resulting therefrom shall be deducted from the calculation of Adjusted Gross Revenues.

Article XX.

DISADVANTAGED BUSINESS ENTERPRISE AND NONDISCRIMINATION

- 20.1 Concessionaire agrees to submit all information necessary for the Airport to determine the eligibility of an individual or firm for certification as a Disadvantaged Business Enterprise, or a regional or local suboperator. Concessionaire agrees that it will comply with the Airport's Disadvantaged Business Enterprise Program, which Program shall be in accordance with 49 CFR Part 23 and shall apply to Concessionaire as an "Airport Concessionaire." Concessionaire agrees that participation by Disadvantaged Business Enterprises will be in accordance with the goals and objectives of the Airport's Program.
- 20.2 Nondiscrimination — The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E.

Article XXI.

ENTIRE AGREEMENT

- 21.1 The parties hereto understand and agree that this instrument contains the entire agreement between the parties hereto. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth. No claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of the making

of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

21.2 The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

21.3 The parties hereto acknowledge that they have thoroughly read and understand this Agreement, including any exhibits or attachments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the date and year first above written.

AIRPORT:

City of Long Beach, a municipal corporation,

Name: Gerald R. Miller

BY: [Signature]

Title: City Manager

Date: April 14, 2005

WITNESSED AS TO FORM
4/14, 2005
ROBERT E. SHANNON, City Attorney
[Signature]
DEPUTY CITY ATTORNEY

CONCESSIONAIRE:

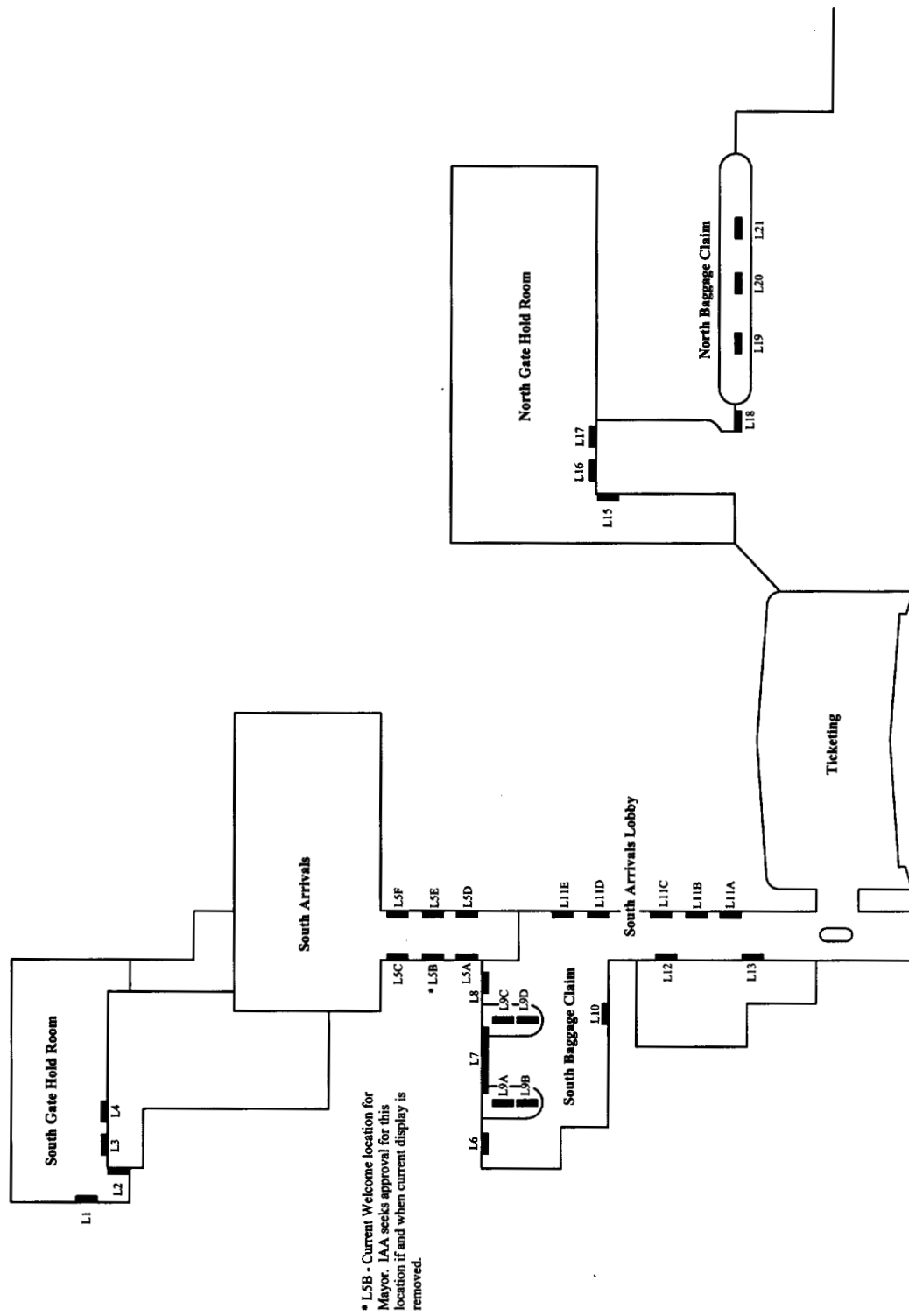
In-ter-space Services, Inc., d/b/a
Interspace Airport Advertising

ATTEST: [Signature]

BY: [Signature]

Title: President & CEO

Date: 4/8/05



SHEET NO. 1 of 1	Long Beach Airport Advertising Concession Proposal Main Floor- Location Plan	IAA CODE: 218	
		DRAWN: KFL	
ISSUE DATE: 03.07.05			
CAD FILE:			

Exhibit A