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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

32846

LONG BEACH MUNICIPAL AIRPORT

NEWS/GIFT/RETAIL CONCESSION AGREEMENT

between

CITY OF LONG BEACH, a municipal corporation

"City"

and

PARADIES-LONG BEACH, LLC,
a California limited liability company

"Concessionaire"

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

LIST OF EXHIBITS AND SCHEDULES

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Exhibit "A"	Premises
Exhibit "B"	Concourse
Exhibit "C"	Required Improvements
Exhibit "D"	City Inspection Checklist
Exhibit "E"	Retail Sales Definitions
Exhibit "F"	FAA Lease and Use Agreement Provisions
Exhibit "G"	ACDBE Program Overview and Form
Schedule "1"	Declining Balance Depreciation Example

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1.5 Concession. "Concession" means a non-exclusive right to occupy, equip, furnish and operate and maintain news/gift/retail facilities at the Airport.

1.6 Concessionaire. "Concessionaire" means Paradies-Long Beach, LLC, or any valid assignee pursuant to Section 16.

1.7 Concourse. "Concourse" means, collectively, those certain concourse buildings and plaza areas as shown on Exhibit "B".

1.8 Federal Aviation Administration. "Federal Aviation Administration" or "FAA" means the Federal Aviation Administration, created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

1.9 Food and Beverage Agreement. "Food and Beverage Agreement" means that certain Food and Beverage and Specialty Food/Beverage Concession Agreement dated as of even date herewith executed by and between City and Paradies-Long Beach II, LLC, a California limited liability company.

1.10 Premises. "Premises" means the premises occupied by Concessionaire, as more fully set forth in Exhibit "A" attached hereto. The term "Premises" may also include additional adjacent areas used for storage or otherwise, if mutually agreed upon by both City and Concessionaire.

1.11 Public Areas. "Public Areas" means those areas within the Airport which are not licensed to any person, company, or corporation and are open to the general public.

1.12 Laws. "Laws" means all rules, regulations, resolutions, ordinances, statutes or laws now or hereafter adopted, amended or administered by City, the County of Los Angeles, the State of California, the United States Government (including without limitation the FAA) or any other

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governmental agency.

2. CONCESSION, PREMISES AND ACCESS.

2.1 Grant of Concession. For and in consideration of the payment of the compensation to City as provided in this Agreement, and subject to all Laws and Airport Rules and Regulations, City hereby grants to Concessionaire the right to operate a food and beverage and specialty food/beverage concession (the "Concession"). Concessionaire's right to operate the Concession shall be non-exclusive and City may enter into concession agreements with other parties to provide the same or similar service at the Airport.

2.2 Use of Airport and Premises. Subject to all Laws and Airport Rules and Regulations, as well as the terms and conditions hereinafter set forth, Concessionaire shall be entitled to exclusive use of the Premises for the sole purpose of operating the Concession. Concessionaire shall have the right to install such equipment and improvements in the Premises (the "Facilities") required in connection with the operation of the Concession. Concessionaire's use of the Premises or the Facilities for any purpose other than operating the Concession shall not be permitted without obtaining the Airport Director's prior written approval.

2.2.1 Relocation of Premises. At any time during the Term, the Airport Director may require the relocation of a portion or all of the Premises or Facilities. In the event that Concessionaire is required to relocate all or any portion of the Premises or any Facilities, the Airport Director shall propose a relocation plan ("Relocation Plan"). The Relocation Plan shall provide Concessionaire adequate Facilities to carry out operations at all times. If the Relocation Plan requires Concessionaire to suspend operations in the Concourse then (i) the term of this Agreement shall automatically be extended for the same period of time that

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Concessionaire was required to suspend operations and (ii) Concessionaire shall have no obligation to pay that portion of the Guaranteed Fee corresponding with the period of time that operations were suspended. Concessionaire shall have thirty (30) days to comment on the Relocation Plan, after which the Airport Director may, in his or her sole discretion, modify the Relocation Plan in order to accommodate Concessionaire's requests. The Relocation Plan shall take effect sixty (60) days after it is deemed final by the Airport Director.

2.2.2 Reduction of Premises. Concessionaire and City may, at any time during the Term, mutually agree to decrease the total area of the Premises and/or the Facilities. If City unilaterally requires a permanent reduction of the total area of the Premises and/or the Facilities in connection with a Relocation Plan or otherwise, City shall reimburse Concessionaire for the unamortized net book value of the affected Facilities, based on a declining balance depreciation method (an example of which is attached as Schedule "1"), commencing on the first day of the month in which the improvement was placed into service, with no residual value. It shall be a requirement of any reimbursement by City that Concessionaire has reported each improvement, its cost, and the date upon which its depreciation began to the Airport Director. All of such costs shall be properly supported and made available for audit by City. Architectural and design costs for such improvements may be included in the costs of the improvement but shall not exceed ten percent (10%) of total costs. All costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on the Premises, or materials furnished. Costs associated with Concessionaire's employees shall not be included in the calculation of costs for purposes of this Section 2.2.2.

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2.2.3 Parking. Concessionaire shall have the right to utilize vehicular parking facilities for Concessionaire's employees in a manner and of a type similar to or equal that provided for employees of other Airport concessionaires.

2.3 Access.

2.3.1 Ingress and Egress. Subject to all Laws and Airport Rules and Regulations, City hereby grants to Concessionaire, its agents, employees, passengers, guests, and invitees the right and privilege of free and adequate ingress to and egress from the Premises and Public Areas of the Airport.

2.3.2 Other Airport Users. All means of access provided by City pursuant to this Section 2.3 shall, without exception, be in common with such other persons as City may permit.

2.3.3 Relocation of Access. City shall have the right at any time to close or relocate any means of access provided for Concessionaire's use pursuant to this Agreement, provided that reasonable notice be given to Concessionaire and a reasonably convenient and adequate alternate means of ingress and egress shall exist. City shall suffer no liability by reason thereof and such action shall in no way affect any of Concessionaire's obligations under this Agreement.

3. TERM. The term of this Agreement shall be for a period of ten (10) years (as the same may be extended, the "Term") commencing on December 1, 2012 ("Commencement Date"); provided, however, that the Term may be extended by City for five (5) additional periods of one year each (each, a "Renewal Term") on ninety (90) days written notice to Concessionaire prior to the expiration of the Term or a Renewal Term. Upon and after the Execution Date, but prior to the Commencement Date, Concessionaire shall have a right of entry to the Premises for the purpose of preparing the Premises for occupation by Concessionaire.

1 4. OPERATING COVENANTS.

2 4.1 Continuous Use. A condition for the granting of the
3 Concession is the active and continuous use of the Premises by
4 Concessionaire, except for failure of use caused by reason of wars, strikes,
5 riots, civil commotion, acts of public enemies, and acts of God, for the
6 purposes herein described, in that such use enhances the value of the Airport,
7 provides needed public service, provides additional employment, taxes, and
8 other benefits to general economy of the area.

9 4.2 Hours of Operation. Concessionaire shall operate during
10 those hours as are necessary to adequately serve the public demand, as such
11 demand may be determined from time to time by the Airport Director.

12 4.2.1 Minimum Hours of Operation. Concessionaire shall be
13 obligated to open the Premises no later than one and one-half (1.5) hours
14 prior to the first flight of the day (arrival or departure) and close the Premises
15 no earlier than the last flight (arrival or departure).

16 4.2.2 Airport Director May Alter Hours. The Airport Director
17 may, on 48-hour written notice to Concessionaire, require earlier opening
18 times or later closing times for any location. The Airport Director may, at
19 the request of Concessionaire, authorize a later opening or earlier closing
20 time for any location, provided that the Airport Director first finds that
21 Concessionaire has submitted adequate justification therefore.

22 4.3 Signs. Concessionaire shall have the opportunity to install
23 and operate, at Concessionaire's expense, advertising signs representing its
24 business only, which signs shall be consistent with graphic standards adopted
25 by City and in effect at the time of installation. Concessionaire shall not erect,
26 construct or place any signs or advertisements upon any portion of the
27 Premises or the Airport without the prior written consent of the Airport Director,
28 which shall not be unreasonably withheld. Prior to the placing of any signs at

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Airport, Concessionaire shall submit drawings and design dimensions to the Airport Director for approval. Upon the termination of this Agreement, Concessionaire shall, at its own cost, remove all of its signs, advertising and displays.

4.4 Safety Precautions. Concessionaire shall not do anything which may interfere with the effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Airport.

4.5 Insurance. Concessionaire shall not do anything which will invalidate, conflict with or increase the rate of any fire or other casualty insurance policies covering the Airport or any part thereof. If, by reason of any failure on the part of Concessionaire after receipt of notice in writing from City to comply with the provisions of this Section 4.5, any fire insurance rate on the Airport, or any part thereof, shall at any time be higher than it normally would be, then Concessionaire shall pay City, on demand, that part of all fire insurance premiums paid by City which have been charged because of such violation of failure of Concessionaire.

4.6 Waste. Concessionaire shall not dispose of any waste material (whether liquid or solid) into the sanitary or storm sewers at the Airport or elsewhere unless such waste material or products first be properly treated.

4.7 Vending Machines. Concessionaire shall not install or operate pay telephones, coin vending machines, or coin-operated amusement machines and devices for the sale of cigarettes, soft drinks, and candy in the Premises or the Concourse without the prior written approval of the Airport Director.

4.8 Maintenance of Premises. Concessionaire shall at all times keep the Premises, including all interior areas and surfaces, neat, orderly, sanitary, and presentable at its own cost and expense. The Airport

1 Director shall determine the adequacy of maintenance of the Premises.
2 Concessionaire agrees to implement all reasonable requests and suggestions
3 of the Airport Director regarding the maintenance of the Premises.
4 Concessionaire shall pay for electric power for the Premises. Concessionaire
5 shall, at its sole costs and expense, furnish its own janitor service for the
6 Premises. Concessionaire shall establish and maintain an adequate
7 preventive maintenance program the provisions of which shall be subject to the
8 approval and periodic review by the Airport Director. Such program shall
9 include, without limitation, the cleaning and repair of all floors, interior walls,
10 ceilings, lighting, decor and equipment utilized at the Premises.

11 4.9 Trash Facilities. Concessionaire shall at all times maintain
12 adequate trash facilities in locations approved by the Airport Director.
13 Concessionaire agrees to implement all reasonable requests and suggestions
14 of the Airport Director regarding Concessionaire's trash facilities.
15 Concessionaire shall cause all trash to be removed from the Premises at
16 Concessionaire's own expense, and agrees not to deposit the same on any
17 part of the Airport. Accumulation of trash, boxes, cartons, barrels or other
18 similar items shall not be permitted in any Public Area.

19 4.10 Pest Control. Concessionaire shall be solely responsible
20 for a pest free environment within the Premises and shall maintain its own pest
21 control services. All materials used in pest control shall conform to applicable
22 Laws. All pest control substances shall be used with all precautions to obviate
23 the possibility of accidents to humans, domestic animals and pets. Whenever
24 City deems that pest control services must be provided to a building or area
25 that includes the Premises, Concessionaire shall pay for the costs of services
26 provided for the Premises.

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1 shall be available after hours via telephone in case of emergency.

2 4.11.4 Conduct of Business; Competitors. Concessionaire, its
3 agents, servants and employees shall conduct and carry on the Concession
4 so as to maintain a friendly relationship with its competitors engaged in
5 similar business at Airport. Concessionaire shall not engage in disputes
6 with its competitors or co-licensees at the Airport tending to deteriorate the
7 quality of the service of Concessionaire or its competitors or be
8 incompatible with the best interests of the public at the Airport. The Airport
9 Director shall have the right to resolve all disputes between Concessionaire
10 and other operators or tenants at the Airport, and his determination thereof
11 and the manner in which Concessionaire shall thereafter operate shall be
12 binding upon Concessionaire.

13 4.11.5 Inspection. Concessionaire shall ensure that its
14 employees make daily inspections of the Premises for the purpose of
15 maintaining the required condition of repair of the Premises and degree of
16 cleanliness of the surrounding areas and otherwise to ensure compliance
17 with Section 4. These inspections should be documented pursuant to a
18 standard form acceptable to the Airport Director. Upon request, the written
19 inspection results shall be made available to City. In addition, at Airport
20 Director's discretion, City may inspect the Premises and the Facilities to
21 ensure that Concessionaire satisfactorily meets the requirements of the
22 City's Inspection Checklist attached hereto as Exhibit "D". Concessionaire
23 covenants that it shall meet all requirements of the City's Inspection
24 Checklist. City may conduct inspections from areas generally accessible by
25 the public without notice to Concessionaire, but shall only inspect those
26 areas of the Premises not open to the public after advance notice to
27 Concessionaire.

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4.11.6 Amendments May Be Required. The Airport Director may re-evaluate the selection of items at any time during the Term. The Airport Director's determination that the selection offered is inadequate (in general or at any particular location), or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive.

4.11.7 Pricing Policy. To the extent applicable, all food and beverage products offered for sale by Concessionaire shall have similar prices to like facilities in the Long Beach area. What constitutes "like facilities" and "similar prices" shall be determined by the Airport Director in accordance with the following guidelines: (1) if the restaurant is branded (i.e., Polly's Gourmet Coffee, Sweet Jill's Bakery, George's Greek Café, Taco Beach Cantina, 4th Street Vine, and/or McKenna's), then the pricing shall be no more than the lowest pricing found in the same branded restaurants located within a ten (10) mile radius of the Airport; (2) if the restaurant is a stand-alone brand, then like facilities shall mean Casual Dining Establishments located within a ten (10) mile radius of the Airport. Prior to the Commencement Date and throughout the Term, City and Concessionaire shall cooperatively establish a list of at least three establishments which will constitute "Casual Dining Establishments" for purposes of this Section 4.11.7. If after good faith efforts the parties fail to agree upon a list, then the Airport Director shall establish the list of Casual Dining Establishments. Concessionaire shall give at least a twenty percent (20%) discount on sales of all food and non-alcoholic beverages to all Airport-based employees who have been issued Airport Security Identification badges by City or identification issued by Airport-based employers.

4.11.8 Cash and Record Handling Requirements. Concessionaire shall prepare a description of its cash handling and sales

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recording systems and equipment and a record retention schedule which shall be submitted to the Airport Director for approval. When approved by the Airport Director, such systems and equipment and record retention schedule, including any revisions thereto approved by Airport Director, shall be utilized by Concessionaire in its operations at the Airport.

4.11.9 Cash Registers. Concessionaire shall accurately record each sale on a point of sale register acceptable to the Airport Director.

4.11.10 Credit Cards. Customers shall be permitted to utilize at a minimum the following credit cards in payment for all sales: Visa, Mastercard and American Express.

4.11.11 Change-Making. Concessionaire shall provide, without charge, change-making service at each cashier's location in the Premises. Concessionaire shall not exchange foreign currency except as needed to make change in sales transactions.

4.11.12 Deliveries and Storage. Concessionaire and its contractors shall make deliveries only within the times and at the locations authorized by the Airport Director and otherwise in accordance with Airport Rules and Regulations. Concessionaire shall avoid making large deliveries during peak traffic hours. Concessionaire shall limit storage to those areas shown on Exhibit "A" and shall otherwise not permit storage or restocking bins or carts to be visible to the public, except while in the actual process of restocking shelves and other merchandise displays.

4.11.13 Interference with Access. Concessionaire shall not do anything which may interfere with free access and passage in the Premises or the Public Areas, or hinder police, fire fighting or other emergency personnel in the discharge of their duties, or hinder access to utility, heating, ventilating or air-conditioning systems, on or adjoining the

1 Premises.

2 4.11.14 Interference with Systems. Concessionaire shall
3 not do anything which may interfere with the effectiveness of utility, heating,
4 ventilating or air-conditioning systems on or adjoining the Premises
5 (including lines, pipes, wires, conduits and equipment connected with or
6 appurtenant thereto) or interfere with the effectiveness of elevators or
7 escalators in or adjoining the Premises.

8 4.11.15 Smoking. Concessionaire shall not do anything
9 contrary to City policy prohibiting smoking. At the present time, Airport
10 policy prohibits smoking in the Premises and the Concourse.

11 4.11.16 Unauthorized Locks. Concessionaire shall not
12 place any additional lock of any kind upon any window or door in the
13 Premises or the Concourse, or make any change in any existing door or
14 window lock or the mechanism thereof, unless a key is maintained on the
15 Premises.

16 4.11.17 Menu. To the extent applicable,
17 Concessionaire's proposed menu and all subsequent menus shall include a
18 description of each item including, if requested by City, the weight of each
19 portion and the government grade of quality (if any) for its component
20 item(s). No menu shall misrepresent quality, grade or weight of any item.

21 4.11.18 Publicly Displayed Pricing. Prices for each item
22 sold at each location shall be conspicuously displayed next to the product
23 or printed in a menu to the satisfaction of the Airport Director.

24 5. QUIET ENJOYMENT. Upon payment of the charges and fees
25 herein provided for and performance of the covenants and agreements on the part of
26 Concessionaire to be performed hereunder, City shall not act or fail to act, except as
27 otherwise provided by this Agreement, in a manner that will prevent Concessionaire from
28 peaceably having and enjoying the Premises together with the appurtenances, facilities,

1 rights, licenses and privileges granted herein.

2 6. ALTERATIONS AND IMPROVEMENTS.

3 6.1 Alterations and Improvements by Concessionaire.

4 Concessionaire and Concessionaire under the Food and Beverage Agreement
5 shall collectively expend a minimum of Four Million Three Hundred Forty-Five
6 Thousand One Hundred Fifty Dollars (\$4,345,150) ("Improvement Budget") in
7 connection with the initial construction of (i) the Required Improvements at the
8 Premises and (ii) the Required Improvements at the Premises as defined in the
9 Food and Beverage Agreement. The Improvement Budget may include
10 architectural and design costs, but such costs shall not exceed ten percent
11 (10%) of total costs. The "Required Improvements" are listed and described in
12 Exhibit "C" attached hereto and incorporated herein by this reference.
13 Concessionaire shall complete construction of the Required Improvements on
14 or before December 1, 2012 (the "Completion Date"), as the same may be
15 extended in the sole discretion of the Airport Director. Concessionaire shall
16 pay to City an amount equal to the difference between the Improvement
17 Budget and the actual amount expended by Concessionaire on the Required
18 Improvements ("Shortfall Payment"). The Shortfall Payment, if any, shall be
19 made within thirty (30) days of completion of the Required Improvements.

20 6.2 Liquidated Damages. Concessionaire understands that if
21 the Required Improvements are not one hundred percent (100%) fully
22 operational by the Completion Date, City will suffer damages which are difficult
23 to determine and accurately specify. Concessionaire agrees that if the
24 Required Improvements are not one hundred percent (100%) fully operational
25 by the Completion Date, Concessionaire shall pay City Six Hundred Eighty-
26 Five Dollars (\$685) as liquidated damages for each day that the Required
27 Improvements remain incomplete past the Completion Date. The above-
28 described liquidated damages are based upon a daily pro ration of the

1 Guaranteed Fee required under this Agreement.

2 6.3 Capital Improvement Account. Concessionaire shall make
3 monthly deposits into an escrow account, held by City ("Capital Improvement
4 Account"), in an amount equal to forty-eight hundredths of one percent (0.48%)
5 of Concessionaire's monthly Gross Receipts (as defined in Section 8.2)
6 ("Capital Improvement Payment"). Funds on deposit in the Capital
7 Improvement Account ("Capital Improvement Funds") will be released by City
8 to Concessionaire in order to refinish, replace or upgrade the Premises and/or
9 the Facilities during the Term. Concessionaire shall request release of Capital
10 Improvement Funds in writing and shall provide the Airport Director with a
11 detailed description of the nature of the work to be paid for by the Capital
12 Improvement Funds. The Airport Director shall determine, in his or her
13 reasonable discretion, whether such requested work constitutes a "Capital
14 Improvement", and shall expend or withhold the Capital Improvement Funds
15 accordingly. "Capital Improvements" shall generally be those improvements
16 which add value to the Premises and/or the Facilities and significantly extend
17 the useful life of the Premises and/or the Facilities. Day-to-day or regularly
18 scheduled maintenance of the Premises and/or the Facilities shall not
19 constitute "Capital Improvements". Any amounts in the Capital Improvement
20 Account at the expiration of the Term shall automatically become the property
21 of City.

22 6.4 Mid-Term Refurbishment. After the commencement of the
23 fifth year of the Term, and before the end of the sixth year of the Term,
24 Concessionaire shall refurbish the Required Improvements. Such refurbishing
25 shall include, but shall not be limited to, all refinishing, repair, replacement,
26 redecorating and painting necessary to keep the Required Improvements and
27 the Premises in first class condition. Concessionaire shall expend all Capital
28 Improvement Funds then available for the required mid-term refurbishment.

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The amount spent for mid-term refurbishment shall be exclusive of any amount spent for normal repair and maintenance as determined in the sole discretion of the Airport Director.

6.5 Required Consent. Except as expressly provided herein, Concessionaire shall make no alterations, additions, improvements to, or installations on the Premises without the prior written approval of the Airport Director.

6.6 Conditions Precedent to the Required Improvements or Alterations. All initial Required Improvements and subsequent alterations, additions, improvements to, or installations on the Premises shall comply with the following conditions:

6.6.1 Approval of Plans. Before the commencement of any work, plans and specifications and the construction contract shall be approved by the Airport Director. Plans and specifications shall be approved by all governmental departments or authorities having jurisdiction thereover. Concessionaire shall contract with general contractors which are unaffiliated with Concessionaire, and the contractors performing the work shall be specified to the Airport Director and all work shall be subject to and in accordance with applicable Laws.

6.6.2 Construction Bond. Before the commencement of any work, Concessionaire shall furnish, at its sole cost and expense, an Improvement Performance Bond in the principal sum of the work budget ("Bond") or a security deposit for such amount acceptable to the Airport Director, to guarantee compliance with this Section 6. The Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of California and be for the full amount stated above with City of Long Beach as obligee conditioned upon full, faithful and satisfactory performance by Concessionaire of its

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obligations to construct and install the Required Improvements and/or additional improvements, as applicable.

6.6.3 Quality of Work. Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same. Concessionaire shall replace, at its sole cost and expense, any work which is not performed in accordance with the approved plans and specifications. Concessionaire shall notify the Airport Director within ten (10) days of final cessation of work, and the Airport Director will make a final inspection and will issue a letter of approval or disapproval. Any request to replace any such work shall be made by the Airport Director within ten (10) days after receipt of notice of completion from Concessionaire.

6.6.4 Ownership of Alterations. All alterations, additions, or improvements placed at any time upon the Airport by Concessionaire shall be deemed to be and become a part of the realty and the sole and absolute property of City upon expiration or earlier termination of this Agreement.

6.6.5 Liens. Concessionaire shall promptly pay all lawful claims and discharge all liens made against it or against City by Concessionaire's contractors, subcontractors, materialmen, and workmen and all such claims and liens made against Concessionaire or City by other third parties arising out of or in connection with, whether directly or indirectly, any work done by or for Concessionaire, its contractors, subcontractors, or materialmen; provided however, that Concessionaire shall have the right to contest the amount or validity of any such claim or lien without being in default of this Agreement upon furnishing security satisfactory to the Airport Director guaranteeing that such claim or lien will be properly and fully discharged forthwith in the even that such contest is finally determined against Concessionaire or City.

OFFICE OF THE CITY ATTORNEY
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6.6.6 Conformity with Airport Design. All visible improvements or alterations shall conform to the overall design scheme of the Concourse and Airport Rules and Regulations.

6.6.7 Notice of Non-Responsibility. Concessionaire shall cause to be posted in conspicuous places on the Premises statutory notices of non-responsibility to the effect that City is not and will not be responsible for any materials furnished or labor performed on the Premises. Concessionaire guarantees that all statutory notices of non-responsibility will be filed, posted, and maintained on the Premises and wherever else as required by law at all times during the Term in accordance applicable Laws and shall furnish two copies of the notice of non-responsibility to City. Before making any contract or doing any work or employing any labor in constructing, or repairing the Premises, Concessionaire shall obtain the prior written approval of the Airport Director at least five (5) days prior to the commencement of any work to allow City to record in the office of the Recorder of Los Angeles County a copy of the notice of non-responsibility in accordance with applicable Laws.

6.7 Conformity to Plans. Construction of the Required Improvements and interior design and decor thereof, including the plans and specifications therefore, shall conform in all respects to the architectural requirements of City, applicable Laws, and Airport Rules and Regulations. The approval given by City shall not constitute a representation or warranty as to such conformity; responsibility for conformity shall at all times remain with Concessionaire. All construction work shall be subject to inspection by City at all reasonable times to assure that such work complies with the final plans, specifications and applicable Laws and Airport Rules and Regulations. Concessionaire and City shall maintain close contact in order to coordinate Concessionaire's construction work with the work of City at the Airport. A set

1 of final "As-Built" drawings of the completed improvements shall be furnished
2 to City.

3 6.8 Alterations and Improvements by City. Alterations and
4 improvements by City, at the request of Concessionaire, if undertaken, shall be
5 done at City cost plus normal City overhead and administrative cost.
6 Concessionaire agrees to reimburse City such cost plus normal City overhead
7 and administrative costs promptly upon receipt of the invoice for same.

8 6.9 Books and Records. Concessionaire shall maintain
9 adequate books and records to evidence the actual amounts expended by
10 Concessionaire on the Required Improvements and any subsequent
11 improvements, and, at City's request, shall make such books and records
12 available to City for City's inspection and audit in order to determine
13 compliance with this Section 6.

14 7. MAINTENANCE AND OPERATION OF AIRPORT.

15 7.1 Operation of Airport by City. City agrees that it will
16 prudently operate, and keep in good repair, the Airport and all appurtenances,
17 facilities, and services now or hereafter connected therewith. The standards of
18 operation and maintenance shall in no event be less than the standards set
19 forth by the FAA for airport certification.

20 7.2 Contracting by City. City covenants that in maintaining
21 and operating the Airport, it will exercise its best business judgment in
22 connection with prudently contracting with all concessionaires, lessees, and
23 licensees at the Airport so as to optimize revenue and maintain high standards
24 of quality.

25 7.3 Maintenance by City. City shall keep the Public Areas
26 neat, orderly, sanitary and presentable.

27 7.4 Utilities. City shall provide to the Premises (i) facilities for
28 the delivery of heating and cooling, (ii) electricity, (iii) gas, and (iv) water and

1 sanitary sewer facilities. Concessionaire shall be responsible for payment of all
2 ongoing utility charges incurred in connection with its operation of the
3 Concession. City shall reasonably estimate such charges which are paid by
4 City for the entirety of the Concourse and/or the Airport and invoice
5 Concessionaire accordingly. Concessionaire may, at any time and at its own
6 expense, request that any utilities for the Premises be separately metered.

7 7.5 Limitation on Obligation. City shall not be obligated to
8 perform or furnish any other utility services whatsoever at or to the Premises,
9 nor shall it be obligated to provide any utility services hereunder if it is
10 prevented from doing so by acts or events beyond its control.

11 8. CHARGES AND FEES.

12 8.1 Percentage Fee. Concessionaire shall pay to City the sum
13 of (1) fifteen and one-half of one percent (15.5%) of the Gross Receipts
14 (defined below) earned from the sale of food and non-alcoholic beverages; (2)
15 twenty-two percent (22%) of the Gross Receipts earned from the sale of
16 alcoholic beverages; (3) twenty-one percent (21%) of the Gross Receipts
17 earned from non-food/beverage retail sales; (4) sixteen percent (16%) of the
18 Gross Receipts earned from in-flight catering sales; (5) sixteen percent (16%)
19 of the Gross Receipts earned from Category 1 gift/news/retail sales (as defined
20 in Exhibit "E" to this Agreement); and (6) twenty percent (20%) of the Gross
21 Receipts earned from Category 2 gift/news/retail sales (as defined in Exhibit
22 "E" to this Agreement) (collectively, the "Percentage Fee"). The Percentage
23 Fee shall be payable monthly in arrears, on or before the twenty-fifth (25th) day
24 following the end of any calendar month.

25 8.2 Gross Receipts. "Gross Receipts" include all receipts,
26 whether by coin or currency, on account, by check or credit card, collected or
27 uncollected, whether conducted on or off the Premises, derived by
28 Concessionaire as a result of its operation of the Concession, without any

1 exclusion whatever, except those expressly permitted under Sections 8.2.1
2 through 8.2.9. Gross Receipts shall include the sales revenues received or
3 billed by Concessionaire from the sale, dispensing and serving of food, food
4 products and beverages, including alcoholic beverages, and other related
5 services and products. Goods, work or services furnished by any person or
6 firm in lieu of payment in exchange for value received shall be deemed to be
7 cash sales. Excluded from Gross Receipts, or subtracted if previously
8 included, shall be the following:

9 8.2.1 Taxes. Retail sales taxes, excise taxes or related
10 direct taxes on the consumer which are collected by Concessionaire on
11 such sales, provided all such taxes are properly accounted for and
12 recorded;

13 8.2.2 Sale of Scrap, Equipment or Uniforms. Receipts from
14 the sale of waste or scrap materials resulting from the operation of
15 Concessionaire's business; receipts from the sale of or the trade-in value of
16 furniture, fixtures or equipment used on the Premises, and owned by
17 Concessionaire; receipts from the sale at cost of uniforms/clothing to
18 Concessionaire's employees where such uniform/clothing is required to be
19 worn by such employees;

20 8.2.3 Exchanges and Refunds from Suppliers. The value of
21 any merchandise, supplies or equipment exchanged or transferred from or
22 to other business locations of Concessionaire, where such exchanges or
23 transfers are not made for the purpose of avoiding a sale by
24 Concessionaire which would otherwise be made at the Premises; receipts
25 in the form of refunds from or the value of merchandise, supplies or
26 equipment returned to shippers, suppliers or manufacturers;

27 8.2.4 Refunded Receipts. Receipts with respect to any sale
28 where the subject of such sale, or some part thereof, is thereafter returned

1 by the purchaser to and accepted by Concessionaire, to the extent of any
2 refund actually granted or adjustment actually made, either in the form of
3 cash or credit;

4 8.2.5 Employee Meals and Employee Discounts. The cost of
5 free meals given to employees of Concessionaire pursuant to the
6 employment contracts of such employees and the discount on all items
7 except alcoholic beverages which Concessionaire may give to those
8 Airport-based employees who have been issued Airport Security
9 Identification badges by City or identification issued by Airport-based
10 employers;

11 8.2.6 Supplier Discounts. The amount of any cash or quality
12 discounts received from sellers, suppliers or manufacturers;

13 8.2.7 Tips. The amount of any gratuity paid or given by
14 patrons or customers to employees of Concessionaire;

15 8.2.8 Reimbursements. Receipts in the form of
16 reimbursements from Concessionaire's subcontractor(s) for any taxes, loan
17 payments and/or license fees paid by Concessionaire for or on behalf of
18 such subcontractor; and

19 8.2.9 Other Contracts. Receipts from sales in non-Public
20 Areas for services performed for one or more of City's other Airport
21 concessionaires under separate contracts, such as sales to an airline's
22 employees in an employee lunchroom, and to VIP passengers in private
23 airline lounges.

24 8.2.10 Complimentary Meals. Complimentary meals provided
25 to customers in order to address customer complaints.

26 8.3 Guaranteed Minimum Annual Concession Fee.
27 Concessionaire shall pay to City a guaranteed minimum annual concession fee
28 (as adjusted, the "Guaranteed Fee") equal to Two Hundred Fifty Thousand

1 Dollars (\$250,000) during the first year of the Term. The term "year" shall
2 mean a period of twelve (12) consecutive calendar months commencing
3 December 1 and ending November 30. For each additional year of the Term,
4 the Guaranteed Fee shall be an amount equal to the greater of (i) eighty
5 percent (80%) of the amount of the Percentage Fee paid during the prior year,
6 or (ii) the Guaranteed Fee payable in the previous year. If the Percentage Fee
7 paid during any year of the Term pursuant to Section 8.1 is less than the
8 Guaranteed Fee applicable to a given year, Concessionaire shall pay the
9 difference to City within thirty (30) days after the end of such year. In the event
10 that enplaning passengers in the Terminal decrease by an amount greater than
11 twenty percent (20%) from one year to the immediately following year, City will
12 reduce the Guaranteed Fee for that year by the amount of the percentage
13 decrease in enplaning passengers. Within ninety (90) days after each year,
14 City will compare the actual number of enplaning passengers for that year to
15 the immediately preceding year. For purposes of this Section 8.3, the term
16 "enplaning passengers" means the aggregate number of passengers departing
17 from the Terminal excluding everyone else who may be in the Terminal, such
18 as arriving passengers, persons coming into the Airport to greet arriving
19 passengers, employees of the Airport, and the employees of other tenants at
20 the Airport. These other persons may be a source of revenue for
21 Concessionaire, but City will only report the number of enplaning passengers
22 for purposes of this Agreement.

23 8.4 Income Statements. For the purpose of determining the
24 monthly Percentage Fee, Concessionaire shall, prior to the twenty-fifth (25th)
25 day after the end of each calendar month, submit to City, in such manner and
26 detail and upon such forms as are prescribed by Airport Director, an
27 accounting of the Gross Receipts billed or received by Concessionaire in the
28 operation of the concession business for the preceding calendar month. (The

1 monthly reports should include a breakdown of sales by location, i.e., north
2 restaurant, south restaurant, wine bar, north gift shop, south gift shop.) In
3 addition to the data required by the form prescribed, such accounting shall also
4 contain other information regarding Concessionaire's business at the Airport
5 which the Airport Director may, from time to time, direct. Payment due for the
6 preceding month shall accompany such report.

7 8.4.1 Gross Receipts. Concession shall also furnish to City a
8 detailed Gross Receipts or Income Statement, prepared at the close of
9 Concessionaire's taxable year, covering all business transacted by
10 Concessionaire at the Airport upon which City is entitled to a percentage of
11 Gross Receipts, and such other reasonable financial and statistical reports
12 as the Airport Director may, from time to time, require by written notice to
13 Concessionaire. Such income statement shall be certified by
14 Concessionaire's chief financial officer.

15 8.4.2 Pro Rata Payment. If the termination of this Agreement
16 falls upon any date other than the first or last day of any calendar month,
17 the applicable compensation for such month shall be paid by
18 Concessionaire to City pro rata in the same proportion that the number of
19 days the Agreement is in effect for that month bears to the total number of
20 days in that month.

21 8.5 Delinquencies, Interest and Disputes. Without waiving any
22 other right of action available to City in the event of delinquency by
23 Concessionaire for a period of thirty (30) days or more in its payment to City of
24 the above compensation, and without waiving the interest specified herein
25 upon acceptance of such payment, Concessionaire shall pay to City interest at
26 a rate equal to eight percent (8%) per annum from the date such item was due
27 and payable until paid. Interest shall be compounded annually until the debt is
28 paid. City may terminate this Agreement if (1) there are recurring disputes over

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deficiency assessments arising from the provisions in this Agreement; or (2) Concessionaire fails to maintain adequate records and accounts reflecting its business and Gross Receipts under this Agreement.

8.6 Procedures for Payment. All fee payments shall be delivered to and all statements and reports filed with the Airport Director at 4100 Donald Douglas Drive, Long Beach, California 90808. The designated place of payment and filing may be changed at any time by City upon ten (10) days written notice to Concessionaire.

8.7 Business Office, Record Retention. Concessionaire shall maintain in its corporate office, during the Term, its permanent books, ledgers, journals and accounts wherein are kept all entries reflecting both the Gross Receipts received or billed by it from the business transacted at the Airport plus all other transactions of Concessionaire at the Airport. All records must be supported by appropriate source documents. All such records and documents shall be delivered to City within five (5) business days when requested by City.

8.8 Right to Inspection. The City Auditor and/or City Manager, or their designated representatives, shall be permitted, with or without prior notification, to examine and review the records required to be kept by Concessionaire under this Agreement at all reasonable times during Concessionaire's regular business hours in a manner causing as little inconvenience as possible to Concessionaire for the purpose of determining compliance with this Agreement. If the actual data for any twelve (12) month period determined by such examinations and reviews differ by more than five percent (5%) from the total reported by Concessionaire for the same period in accordance with Sections 8.1 and 8.2, the cost of such examinations and reviews shall be borne by Concessionaire.

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1 9. SECURITY DEPOSIT.

2 9.1 Security Deposit. A security deposit in a sum of Two
3 Hundred Fifteen Thousand Nine Hundred Fifty Dollars (\$215,950) ("Security
4 Deposit") shall be provided to City by Concessionaire prior to the
5 commencement date of this Agreement. The Security Deposit shall be by one
6 of the methods set forth below and shall guarantee Concessionaire's full and
7 faithful performance of all the terms, covenants and conditions of this
8 Agreement.

9 9.1.1 Cash.

10 9.1.2 Surety bond written by a surety company authorized to
11 transact business in the State of California. Such bond shall be subject to
12 approval by the City Manager as to sufficiency and by the City Attorney as
13 to form.

14 9.1.3 The assignment to City of a savings deposit held in a
15 financial institution acceptable to City. At a minimum, such assignment
16 shall be evidenced by the delivery to City of the original passbook reflecting
17 such savings deposit and a written assignment of such deposit to City in a
18 form approved by City.

19 9.1.4 A time certificate of deposit from a financial institution
20 wherein the principal sum is made payable to City or order. Both the
21 financial institution and institution wherein the principal sum is made
22 payable and the form of the certificate must be approved by City.

23 9.1.5 An instrument or instruments of credit from one or more
24 financial institutions, subject to regulation by the state or federal
25 government, pledging that funds necessary to secure performance of the
26 Agreement terms, covenants, and conditions are on deposit and
27 guaranteed for payment and agreeing that such funds shall be trust funds
28 securing Concessionaire's performance and that all or any part shall be

1 paid to City or order, upon demand by City. Both the financial institution(s)
2 and the form of the instrument(s) must be approved by City.

3 9.2 Use of Security Deposit. Regardless of the manner in
4 which Concessionaire elects to make such security deposit, all or any portion
5 of the principal sum shall be available unconditionally to City for correcting any
6 default or breach of this Agreement by Concessionaire, or for payment of
7 expenses incurred by City as a result of the failure of Concessionaire to
8 faithfully perform all of the terms, covenants and conditions of this Agreement.
9 Should Concessionaire elect to assign a savings deposit to City or provide a
10 time certificate of deposit, or provide an instrument of credit to fulfill the security
11 deposit requirements of this Agreement, such assignment, certificate or
12 instrument shall have the effect of releasing the depository or financial
13 institution therein from liability on account of the payment of any or all of the
14 principal sum to City, or order, upon demand by City. The agreement entered
15 into by Concessionaire with a financial institution to establish the deposit
16 necessary to permit assignment or issuance of a certificate as provided above
17 may allow the payment of interest accruing on account of such deposit to
18 Concessionaire or order. Concessionaire shall maintain the Security Deposit
19 throughout the Term. Failure to maintain the Security Deposit, after thirty (30)
20 days written notice of such failure, shall be deemed a default and shall be
21 grounds for immediate termination of this Agreement. The Security Deposit
22 shall be rebated, reassigned, released, or endorsed to Concessionaire, or
23 order as applicable, at the end of the Term, provided Concessionaire has fully
24 and faithfully performed each and every term, covenant, and condition of this
25 Agreement.

26 10. RULES AND REGULATIONS – COMPLIANCE WITH LAWS.

27 10.1 Rules and Regulations. Concessionaire agrees to observe
28 and obey all Airport Rules and Regulations, which are now in effect or as may

1 from time to time during the Term be promulgated by City, except that City
2 agrees that Airport Rules and Regulations shall be consistent with any Law
3 which is binding on Concessionaire. Concessionaire covenants and agrees
4 that it will not violate or permit its agents, contractors, or employees to violate
5 any Airport Rules and Regulations. Copies of the Airport Rules and
6 Regulations, as adopted, shall be forwarded to Concessionaire's local
7 manager. City may prescribe civil penalties and injunctive remedies for
8 violations of Airport Rules and Regulations and same may be applied to
9 Concessionaire for violations of their agents, employees, and contractors.

10 10.2 Compliance with Laws. This Agreement is made subject
11 and subordinate to all existing and future agreements between City and the
12 United States of America, and Concessionaire shall act in compliance
13 therewith. In connection with its operations at the Airport, Concessionaire
14 shall:

15 10.2.1 Present and Future Laws. Comply with and conform to
16 all present and future Laws.

17 10.2.2 Alterations. At its expense, make all nonstructural
18 improvements, repairs, and alterations to the Premises and its equipment
19 and personal property required to comply with or conform to any of such
20 Laws or Airport Rules and Regulations.

21 10.2.3 Workers' Compensation. At all times during the Term,
22 subscribe to and comply with the Workers' Compensation Laws of the State
23 of California and pay such premiums as may be required thereunder and
24 save City harmless from any and all liability arising therefrom.

25 10.2.4 Independent Contractor Status. Be and remain an
26 independent contractor with respect to all installations, construction, and
27 services performed hereunder and agree to and hereby accept full and
28 exclusive liability for the payment of any and all contributions or taxes for

1 social security; unemployment insurance; or old age retirement benefits,
2 pensions, or annuities now or hereafter imposed under any applicable Laws
3 which are measured by the wages, salaries, or other remuneration paid to
4 persons employed by Concessionaire on work performed under the terms
5 of this Agreement. Concessionaire shall indemnify and save harmless City
6 from any such contributions or taxes or liability therefore.

7 10.3 FAA Lease and Use Agreement Provisions. This
8 Agreement is subordinate and subject to all FAA rules, regulations and
9 guidelines, as the same are currently in effect and as the same may be
10 adopted or amended in the future. Such FAA rules, regulations and guidelines
11 include, without limitation, paragraphs 1 through 10 of the Federal Aviation
12 Administration Lease and Use Agreement Guide, and the caveat at Page III
13 page 2 thereof, a copy of which is attached hereto as Exhibit "F" and
14 incorporated herein by this reference.

15 11. DAMAGE OR DESTRUCTION. If the Premises shall be damaged or
16 partially or totally destroyed by fire, flood, windstorm, or other casualty, there shall be no
17 abatement or reduction in the fees payable by Concessionaire hereunder, so long as (1)
18 the portion of the Premises so damaged or destroyed shall be promptly repaired, rebuilt,
19 or restored by City with such changes, alterations and modifications (including the
20 substitution and addition of other property) as may be agreed upon by City and
21 Concessionaire; and (2) there shall be applied for such purpose so much as may be
22 necessary of any net proceeds received by City under insurance policies covering such
23 losses, after payment of any expenses of obtaining or recovering such net proceeds. In
24 the event that such net proceeds are insufficient to pay in full the costs of such repair,
25 rebuilding, or restoration, City will arrange financing and complete such repair, rebuilding
26 or restoration. This Section 11 shall not apply if Concessionaire is precluded by such
27 damage or destruction from conducting its business at the Airport, in which case this
28 Agreement may be terminated by mutual consent, or fees and charges reduced or

1 abated in an amount mutually agreed upon.

2 12. INDEMNITY.

3 12.1 Concessionaire shall indemnify, protect and hold harmless
4 City, its Boards, Commissions, and their officials, employees and agents
5 ("Indemnified Parties"), from and against any and all liability, claims, demands,
6 damage, loss, obligations, causes of action, proceedings, awards, fines,
7 judgments, penalties, costs and expenses, including attorneys' fees, court
8 costs, expert and witness fees, and other costs and fees of litigation, arising or
9 alleged to have arisen, in whole or in part, out of or in connection with (1)
10 Concessionaire's breach or failure to comply with any of its obligations
11 contained in this Agreement, or (2) negligent or willful acts, errors, omissions or
12 misrepresentations committed by Concessionaire, its officers, employees,
13 agents, subcontractors, or anyone under Concessionaire's control, in the
14 performance of work or services under this Agreement (collectively "Claims" or
15 individually "Claim").

16 12.2 In addition to Concessionaire's duty to indemnify,
17 Concessionaire shall have a separate and wholly independent duty to defend
18 Indemnified Parties at Concessionaire's expense by legal counsel approved by
19 City, from and against all Claims, and shall continue this defense until the
20 Claims are resolved, whether by settlement, judgment or otherwise. No finding
21 or judgment of negligence, fault, breach, or the like on the part of
22 Concessionaire shall be required for the duty to defend to arise. City shall
23 notify Concessionaire of any Claim, shall tender the defense of the Claim to
24 Concessionaire, and shall assist Concessionaire, as may be reasonably
25 requested, in the defense.

26 12.3 If a court of competent jurisdiction determines that a Claim
27 was caused by the sole negligence or willful misconduct of Indemnified Parties,
28 Concessionaire's costs of defense and indemnity shall be (1) reimbursed in full

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if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

12.4 The provisions of this Section 12 shall survive the expiration or termination of this Agreement.

13. INSURANCE. As a condition precedent to the effectiveness of this Agreement, and without limiting Concessionaire's obligations of indemnity, Concessionaire at no cost to City shall procure and maintain in full force and effect during the Term the types and levels of insurance specified herein. All insurance shall be obtained from an insurance company that is admitted to write insurance in the State of California or that has a rating of or equivalent to an A:VIII by A.M. Best and Company, unless otherwise approved in writing by the City Risk Manager.

13.1 Commercial General Liability Insurance. Commercial general liability insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 10 93, with limits of not less than \$5,000,000 per occurrence, and in aggregate.

13.2 Commercial Auto Liability Insurance. Commercial automobile liability insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 06 92 covering commercial automobile liability symbol 1 (any auto), with a limit of not less than \$1,000,000 combined single limits.

13.3 Workers' Compensation Insurance. Workers' Compensation insurance, as required by the State of California, and employer's liability insurance, with a limit of not less than \$1,000,000 bodily injury by accident, each accident, \$1,000,000 bodily injury by occupational disease, each employee, and \$1,000,000 bodily injury by occupational disease, policy limit.

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1 13.4 Property Insurance. Property insurance related to
2 personal property, improvements, equipment, and business interruption related
3 to this Agreement as delineated in Sections 13.4.1 and 13.4.2.

4 13.4.1 Special Perils. Special perils property insurance in an
5 amount sufficient to cover the full replacement value of the
6 Concessionaire's personal property, improvements and equipment on the
7 Premises.

8 13.4.2 Business Interruption. Business interruption insurance
9 providing that the Guaranteed Fee shall be paid to City as loss payee for a
10 period of up to twelve (12) months if the Premises are destroyed or
11 rendered inaccessible or inoperable.

12 13.5 General. Any deductible or self-insured provision shall
13 protect the indemnified parties in the same manner and to the same extent as
14 they would have been protected had the insurance not contained such
15 provision. The deductible or self-insured amount shall be shown on any
16 evidence of insurance provided to City, and City reserves the right to limit such
17 amount and to review the self-insured's financial statements if the amount
18 exceeds a level acceptable to City.

19 13.5.1 Endorsement. Each such policy shall be endorsed to
20 provide that the policy shall not be canceled or coverage reduced until a
21 thirty (30) day written cancellation has been served upon the Airport
22 Director by registered or certified mail except ten (10) days notice shall be
23 sufficient upon cancellation for nonpayment of premium. The policy or
24 policies required under Sections 13.1, 13.2 and 13.4 above shall also be
25 endorsed to provide as follows:

26 (a) Additional Insured. The Indemnified Parties,
27 while acting within the scope of their authority, shall be additional
28 insureds with regard to liability and defense of suits or claims arising

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from the operations, products, and activities performed by or on behalf of the named insured.

(b) Primary Insurance. Except for claims based on the negligence of City, such insurance is primary and any other insurance, deductible, retention or self-insurance maintained by City shall not contribute with such primary insurance.

(c) Order of Precedence. In the event a claim is made or a suit is filed against an insured (whether named or additional), including a claim or suit by another insured (whether named or additional), the policy shall cover the insured against whom the claim is made or suit is filed in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

(d) Indemnification Obligations. The coverage provided therein shall apply to the obligations assumed by Concessionaire under the indemnity provisions of this Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

(e) Failure to Report. Any failure by the named insured to comply with reporting provisions of the policy or breaches or violation of warranties shall not affect coverage provided to the indemnified parties.

13.5.2 Additional Endorsement. The policy or policies required under this Section 13 shall also be endorsed to provide a waiver of subrogation stating that the insurer waives indemnification from the indemnified parties or any of them.

13.5.3 Tail Coverage. If any of the required insurance is provided on a "claims-made" basis, any "prior acts" coverage or "retroactive

1 date" on such insurance and all subsequent insurance shall be as of the
2 Execution Date. Upon expiration or termination of coverage of required
3 insurance, Concessionaire shall procure and submit to City evidence of
4 "tail" coverage or an extended reporting coverage period endorsement for
5 the period of at least three (3) years from termination or expiration of this
6 Agreement.

7 13.5.4 Evidence of Insurance. Concessionaire shall deliver
8 certified copies of the endorsements on forms approved by City ("evidence
9 of insurance") to the Airport Director for approval as to sufficiency and to the
10 City Attorney for approval as to form. At least fifteen (15) days prior to the
11 expiration of any such policy, evidence of insurance showing that such
12 insurance coverage has been renewed or extended shall be filed with the
13 Airport Director. If such coverage is canceled or reduced, Concessionaire
14 shall, within ten (10) days after receipt of written notice of such cancellation
15 or reduction of coverage, file with the Airport Director evidence of insurance
16 showing that the required insurance has been reinstated or has been
17 provided through another insurance company or companies.
18 Concessionaire agrees to suspend and cease all operations hereunder
19 during such period of tie as the required insurance coverage is not in effect
20 and evidence of insurance has not been furnished to City.

21 14. WAIVER OF SUBROGATION, WAIVER OF CLAIMS.

22 14.1 Waiver of Subrogation. City and Concessionaire hereby
23 mutually agree that so long as all of their respective insurance carriers concur,
24 any fire and extended coverage insurance policies carried on the Airport
25 properties or other properties which are the subject of this Agreement shall
26 include a waiver of subrogation clause whereby the underwriters agree to
27 waive any rights of subrogation against the other party hereto, provided that
28 such agreement applies only to subsequent loss. Any change or revocation of

1 that waiver shall be deemed a material change requiring thirty (30) days
2 advance written notice to both parties.

3 14.2 Waiver of Claims. Concessionaire, as a material part of
4 the consideration to be rendered to City under this Agreement, hereby waives
5 all claims or causes of action against City, its officers, or employees which it
6 may now or hereafter have for damages to any property on, about, or related to
7 the Airport, and for injuries or death to persons on, about, or related to the
8 Airport, from any cause or causes arising at any time, except from the
9 negligent or willful act or omission of City, its officers, or employees. By way of
10 example and not limitation, save and except as arises out of the negligent or
11 willful act of City, its officers, or employees, Concessionaire hereby waives any
12 and all claims or causes of action which it may now or hereafter have against
13 City, its officers, or employees:

14 14.2.1 Interruption of Utilities. For loss, injury, or damage
15 sustained by reason of any deficiency, impairment, and interruption of any
16 water, electrical gas, plumbing, air conditioning, or sewer service or system
17 serving any portion of the Airport;

18 14.2.2 Negligence. For any loss, injury, or damage arising or
19 resulting from any act or neglect or omission of any other concessionaire,
20 subtenant permittee, concessionaire, or occupant of the Airport, or any
21 person who uses the Airport with authorization or permission of City; and

22 14.2.3 Use and Operations. For any loss or damage to the
23 property of, or injury or damage to Concessionaire, its officers, employees,
24 agents, contractors, or any other person whomsoever, from any cause or
25 causes arising at any time because of Concessionaire's use or occupancy
26 of such building or of the Airport, or its operations thereon.

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1 15. DEFAULTS.

2 15.1 Concessionaire Defaults. Concessionaire shall be in
3 default in its obligations under this Agreement if:

4 15.1.1 Failure to Pay. Concessionaire fails to pay any sum
5 due from it to City for ten (10) days after written demand shall have been
6 made therefore by City; or

7 15.1.2 Failure to Observe. Concessionaire neglects, violates,
8 defaults, or fails to perform or observe any of the other covenants,
9 agreements, terms, or conditions, contained in this Agreement on its part to
10 be performed (including without limitation failure to meet the requirements
11 of City's Inspection Checklist provided in Section 4.11.5), and has not
12 remedied such violation within thirty (30) days after written notice thereof
13 given by City; or

14 15.1.3 Attachment. Any execution or attachment is issued
15 against Concessionaire in connection with its operation at the Airport and
16 such execution or attachment is not discharged within thirty (30) days after
17 levy or seizure thereunder or the Premises are occupied by someone other
18 than Concessionaire; or

19 15.1.4 Abandonment. the Premises are abandoned, vacated,
20 or not operated at the minimum service levels specified herein, for any
21 three (3) day period; or

22 15.1.5 Abatement of Violations. Concessionaire violates any
23 provision of any of the insurance policies referred to herein so that such
24 policy shall be void or unenforceable in whole or in part and Concessionaire
25 does not, within ten (10) days after being required in writing by City so to
26 do, either abate such violation and cause such policy to be reinstated or
27 procure other insurance of the same amount, which shall conform to the
28 provisions for insurance referred to herein, and shall be enforceable.

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15.1.6 Default Under Food and Beverage Agreement. Any default exists under the Food and Beverage Agreement, it being the intention of Concessionaire and City that the Food and Beverage Agreement be cross-defaulted with this Agreement.

15.2 City Rights and Obligations on Default. In any one or more events described in Section 15.1, this Agreement and the term thereof shall, upon the date specified in a written notice given by City to Concessionaire setting forth the nature of such default, breach, matter, or condition (which date shall be not less than five (5) days after the date of such notice), wholly cease and terminate, with the same force and effect as though the date so specified was the date hereinabove set forth as the date of the expiration of this Agreement, and that thereupon City may, in addition to other remedies, re-enter the Premises and take possession of same by summary proceedings, reentry, or otherwise, and remove all persons and/or any property from the Premises without being liable to indictment, prosecution, or damages therefore, and without prejudice to any other rights which it may have by reason of such breach, default, matter or condition.

15.3 Concessionaire Rights and Obligations on Default. Notwithstanding any such notice of termination, if prior to the date specified therein, Concessionaire shall not have completely remedied the breach, default, matter or condition specified therein, by reason of governmental restriction or any cause beyond Concessionaire's reasonable control, or by contesting or protesting with any public authority, any Law relating to any such breach, default, matter, or condition, then Concessionaire may have such additional time as is reasonably necessary to remedy the breach, default, matter, or condition specified as aforesaid (unless the notice was given for nonpayment of any payments to be made by Concessionaire to City pursuant to this Agreement) and to continue such contest or protest to a settlement or

1 final determination or adjudication; provided however, that Concessionaire
2 shall completely defend and protect City and indemnify and hold it harmless
3 from any loss, liability, costs, damages, or expenses arising by virtue of any
4 liability, lien, penalty, or forfeiture due to such contest or protest. As soon as
5 reasonably possible after notice from City so to do, Concessionaire shall cause
6 any lien upon the Premises to be promptly discharged or bonding or otherwise,
7 and if any such breach, default, matter, or condition be thereafter remedied
8 with due diligence, subject to delays by reason of governmental regulation and
9 any cause beyond Concessionaire's reasonable control, or if contested or
10 protested as aforesaid, the same shall be remedied in view of all the
11 circumstances within a reasonable time after it shall have been finally
12 determined or adjudicated against Concessionaire shall have fully protected
13 City, as aforesaid, against any loss, costs, damages, or expenses arising by
14 virtue of any lien on the Premises or any other liability, penalty, or forfeiture.

15 15.4 Effect of Default. In case of such breach or default by
16 Concessionaire as aforesaid and termination of this Agreement, all payments
17 to be made by Concessionaire to City pursuant to this Agreement shall be
18 prorated for the portion of the current calendar year prior to the time of such
19 termination and shall become due and payable forthwith; provided, however,
20 that this shall not relieve Concessionaire from liability for further payment of
21 fees, and charges pursuant to the terms of this Agreement.

22 15.5 Additional Rights of City. In the event of a breach or
23 default or threatened breach or default by Concessionaire of any of the
24 covenants or provisions hereof, City shall have the right to seek an injunction
25 and the right to invoke any remedy allowed at law or in equity as if reentry,
26 summary proceedings, and other remedies were not herein provided for.
27 Mention in this Agreement of any particular remedy shall not preclude City from
28 any other remedy, in law or in equity.

1 15.6 City Defaults. City shall be in default in its obligations
2 under this Agreement if:

3 15.6.1 Failure to Observe. City neglects, violates, is in default
4 under, or fails to perform or observe any of the covenants, agreements,
5 terms or conditions of this Agreement for a period of ninety (90) days after
6 written notice thereof given by Concessionaire and shall not have remedied
7 such violation within such ninety (90) day period; or

8 15.6.2 Airline Withdrawal. The FAA withdraws the right of all
9 passenger airlines to operate into and from the Airport; or

10 15.6.3 Force Majeure. Subject to the provisions of Section
11 22.9, if Concessionaire is unable to use the Premises for a period longer
12 than ninety (90) days due to any order of any governmental authority having
13 jurisdiction over the Airport or the Premises.

14 15.7 Concessionaire Rights On Default. In any one or more
15 events described in Section 15.6, this Agreement and the term thereof shall, at
16 the option of Concessionaire and upon the date specified in a written notice
17 given by Concessionaire to City setting forth the nature of such default, breach,
18 matter or condition (which date shall not be less than five (5) days after the
19 date of such notice), shall wholly cease and terminate, with the same force and
20 effect as though the date so specified was the date hereinabove set forth as
21 the date of the expiration of this Agreement, and thereafter Concessionaire
22 may, in addition to other remedies, vacate the Premises and remove all
23 personal property and trade fixtures therefrom without prejudice to any other
24 rights which it may have by reason of such breach, default, matter or condition.

25 15.8 City Rights and Obligations on Default. Notwithstanding
26 any such notice of termination, if prior to the date specified therein, City shall
27 not have completely remedied the breach, default, matter or condition specified
28 therein, by reason of governmental restriction or any cause beyond City's

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reasonable control, or by contesting or protesting with any public authority, any law, rule, or regulation relating to any such breach, default, matter, or condition, then City may have such additional time as is reasonably necessary to remedy the breach, default, matter, or condition specified as aforesaid, and to continue such contest or protest to a settlement or final determination or adjudication; provided, however, that City shall completely defend and protect Concessionaire and indemnify and hold it harmless from any loss, liability, costs, damages, or expenses arising by virtue of any liability, lien, penalty, or forfeiture due to such contest or protest.

15.9 Effect of Default. If this Agreement is terminated by Concessionaire under Section 15.7 due to a default under Section 15.6.1, City shall reimburse Concessionaire for the unamortized Net Book Value of the Required Improvements computed in accordance with a declining balance depreciation method.

16. ASSIGNMENT AND SUBLETTING.

16.1 Assignment. Concessionaire covenants that it will not assign, transfer, convey, sublet, sell, mortgage, pledge, or encumber this Agreement, the Premises or any part thereof, or any rights of Concessionaire hereunder or allow the use of the Premises hereunder by any other person, whether voluntary or by operation of law except as otherwise provided in this Agreement. Concessionaire covenants that it will not transfer (i) a controlling interest in Concessionaire, or (ii) more than forty-nine (49%) of the ownership interests in Concessionaire, without the prior written approval of City, which may be withheld in City's sole and absolute discretion. Consent by City to any type of transfer described in this Section or elsewhere in this Agreement shall not in any way be construed to relieve Concessionaire from obtaining further authorization from City for any subsequent transfer of any nature whatsoever.

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1 16.2 Requests for Assignment. Any and all requests by
2 Concessionaire for authorization to make any transfer described in Section
3 16.1 shall be made in writing by certified mail to the Airport Director and shall
4 include copies of the proposed documents of transfer.

5 16.3 Filing of Assignment. If and when City authorizes any
6 transfer as described in Section 16.1, the instrument or document of
7 authorization together with the instrument or document of transfer shall be filed
8 with the Airport Director. The instruments and documents shall not be effective
9 without the prior approval of the Airport Director endorsed thereon.

10 16.4 Application of Fees and Charges. If this Agreement is
11 assigned or if the Premises are licensed or occupied by any party other than by
12 Concessionaire, or should any other transfer of interest or rights of any nature
13 prohibited by Section 16.1 occur without authorization of City, City may collect
14 fees and charges from any assignee, and in such event apply the net amount
15 collected to the fees and charges payable by Concessionaire hereunder,
16 without such action by City being a waiver of the covenant contained in Section
17 16.1 or constituting acceptance of such assignee, sublessee, or transferee by
18 City or releasing Concessionaire from this Agreement or any of its obligations
19 hereunder.

20 17. TERMINATION OF AGREEMENT IN ENTIRETY.

21 17.1 Events of Termination. City, in addition to any other rights
22 to which it may be entitled by law, may declare by written notice to
23 Concessionaire or its representative this Agreement terminated in its entirety,
24 upon or after the happening of any one or more of the following events and,
25 upon such declaration, City may exercise all of the rights, and Concessionaire
26 shall be subject to all the obligations more fully provided in this Agreement:

27 17.1.1 Voluntary Bankruptcy. The filing by Concessionaire of
28 a voluntary petition in bankruptcy or any assignment for benefit of creditors

1 of all or any part of Concessionaire's assets;

2 17.1.2 Involuntary Bankruptcy. The adjudication of
3 Concessionaire as a bankrupt pursuant to any involuntary bankruptcy
4 proceedings;

5 17.1.3 Attachment. The taking of jurisdiction by a court of
6 competent jurisdiction of Concessionaire or its assets pursuant to
7 proceedings brought under the provisions of any federal reorganization act;

8 17.1.4 Appointment of Receiver. The appointment of a
9 receiver or trustee of Concessionaire's assets by a court of competent
10 jurisdiction or a voluntary agreement with Concessionaire's creditors;
11 provided, however, that City may permit Concessionaire to continue
12 operations pursuant to this Agreement notwithstanding such events so long
13 as Concessionaire shall continue to pay the rates, fees and charges
14 specified in this Agreement and shall continue to carry out Concessionaire
15 operations.

16 17.1.5 Uncured Breach. Continuation of any breach hereof
17 more than thirty (30) days after notice to Concessionaire of the existence
18 thereof, except as otherwise provided in this Agreement.

19 18. DELIVERY OF POSSESSION. Concessionaire agrees to peaceably
20 yield and deliver to City possession of the Premises at the expiration or earlier
21 termination of this Agreement, in good condition in accordance with its express
22 obligations hereunder, excepting deterioration due to reasonable wear and tear and acts
23 of God.

24 19. HOLDING OVER. If Concessionaire shall, with the consent of City,
25 hold over after the expiration or sooner termination of the Term, the resulting tenancy
26 shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-
27 month basis. During such month-to-month tenancy, Concessionaire shall pay to City the
28 same rate of fees as were in effect at the expiration of the Term and thereafter

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Long Beach, CA 90802-4664

1 subsequently adjusted as provided herein unless a different rate shall be agreed upon,
2 and shall be bound by all of the additional provisions of this Agreement insofar as they
3 may be pertinent. Concessionaire shall not hold over without the express written consent
4 of City to such action. Holding over whether authorized or not shall not be deemed to
5 create any new tenancy.

6 20. ACDBE Goal and Reporting Requirements. City has implemented a
7 race-neutral ACDBE program at the Airport in compliance with directives issued by the
8 U.S. DOT under 49 CFR Part 23. In a race-neutral program, City may not set numeric
9 contract DBE participation goals on any of its FAA-assisted contracts for which DBE
10 participation possibilities exist until such time that City can adequately document
11 evidence of discrimination in its transportation contracting program within its relevant
12 geographic area to meet narrow-tailoring provisions of the governing regulations (Title 49
13 CFR, Part 23). City has established an overall Race-Neutral ACDBE Program goal of
14 five percent (5%) of the gross sales projected to be generated from operation of the
15 Concession during the Term. ACDBE reporting is required by the Concessionaire to
16 track ACDBE achievement in order for City to report yearly to the FAA the level of
17 ACDBE participation achieved. Concessionaire must submit a complete ACDBE
18 Certified Monthly Operating Statement (CMOS) which is due by the 25th day of each
19 following month. See Exhibit "G" attached hereto for the ACDBE Program Overview and
20 required ACDBE Form. The CMOS shall contain all required information and signatures.
21 Any CMOS received late will result in Concessionaire being designated as "non-
22 compliant". In order to ensure that City achieves its overall DBE Program goals and
23 objectives, City encourages the participation of small businesses, including DBEs as
24 defined in 49 CFR 23, in the performance of contracts financed in whole or in part with
25 U.S. DOT funds.

26 21. FAA NON-DISCRIMINATION REQUIREMENT. Concessionaire
27 assures that it will comply with pertinent statutes, Executive Orders and such rules as are
28 promulgated to assure that no person shall, on the grounds of race, creed, color, national

1 origin, sex, age or handicap be excluded from participating in any activity conducted with
2 or benefiting from Federal assistance. This Section obligates Concessionaire or its
3 transferee for the period during which Federal assistance is extended to the Airport,
4 except where Federal assistance is to provide, or is in the form of personal property or
5 real property or interest therein or structures or improvements thereon. In these cases,
6 this Section obligates Concessionaire or any transferee for the longer of the following
7 periods: (a) the period during which the Airport is used by City or any transferee for a
8 purpose for which Federal assistance is extended, or for another purpose involving the
9 provision of similar services or benefits; or (b) the period during which City or any
10 transferee retains ownership or possession of the Airport. In the case of contractors, this
11 Section binds the contractors from the bid solicitation period through the completion of
12 the contract.

13 22. MISCELLANEOUS PROVISIONS.

14 22.1 No Personal Liability. No elected official, director, officer,
15 agent, or employee of either party shall be personally liable by or to the other
16 party pursuant to any term or provision of this Agreement or because of any
17 breach thereof or because of its or their execution or attempted execution.

18 22.2 Taxes.

19 22.2.1 Concessionaire shall pay all taxes, assessments, and
20 charges of a like nature, if any (including any possessory interest tax) which
21 at any time during the Term may be levied against Concessionaire or
22 become a lien by virtue of any levy, assessment, or charge against
23 Concessionaire by the federal government, the State of California, City or
24 any municipal corporation, any governmental successor in authority to the
25 foregoing, or any other tax or assessment levying bodies, in whole or in
26 part, upon or in respect to the Premises or such facilities of the Airport as
27 are made available for use by Concessionaire hereunder, or in respect to or
28 upon any personal property belonging to Concessionaire situated on the

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Premises. The property interest of Concessionaire, if any, created by this Agreement may be subject to property taxation as a possessory interest and Concessionaire may be subject to the payment of property tax levied on such interest. Payment of such additional charges for all such taxes, assessments, and charges, when and if levied or assessed, shall be made by Concessionaire directly to the taxing or assessing authority charged with collection thereof, in which event Concessionaire shall be responsible for obtaining bills for all of such taxes, assessments, and charges and promptly providing City with evidence of payment therefore. Taxes imposed by City shall not be made applicable solely to concessionaires.

22.2.2 Concessionaire may, at its expense, contest the amount or validity of any tax or assessment, or the inclusion of the Premises as taxable or assessable property, directly against the taxing or assessing authority. Concessionaire shall indemnify City from all taxes, penalties, costs, expenses, and attorneys' fees incurred by City resulting directly or indirectly from all such tax contests other than contests of City-imposed taxes or contests where City is an opposing party.

22.2.3 Upon any termination of this Agreement, all lawful taxes then levied or a lien upon any of such property or taxable interest therein shall be paid in full by Concessionaire forthwith, or as soon as a statement thereof has been issued by the tax collector if termination occurs during the interval between the attachment of the lien and issuance of statement.

22.3 Interpretation of Agreement. This Agreement shall be deemed to have been made in, and be constructed in accordance with, the laws of the State of California.

22.4 Notices. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall

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1 be sent by United States Certified Mail, Return Receipt Requested, addressed
2 to:

3 Long Beach Airport
4 4100 Donald Douglas Drive
5 Long Beach, California 90808
6 Attn: Airport Director

7 All notices by City to Concessionaire shall be in writing and shall be
8 sent by United States Certified Mail, Return Receipt Requested, addressed to:

9 The Paradies Shops
10 5950 Fulton Industrial Blvd.
11 Atlanta, Georgia 30336
12 Attn: Gregg Paradies

13 The parties, or either of them, may designate in writing from time to
14 time any changes in addresses or any addresses of substitute or supplementary
15 persons in connection with such notices. The effective date of service of any such
16 notice shall be the date such notice is received by Concessionaire or by City. Any
17 provision herein that one party shall notify the other of some matter is to be
18 construed as a requirement that notice is to be given in accordance with the
19 provisions of this Section 22.4.

20 22.5 Entire Agreement, Amendment. This Agreement
21 constitutes the entire Agreement between the parties regarding the use and
22 occupancy of the Premises, and cancels and supersedes all other agreements,
23 representations, or statements heretofore made, oral or written, except as
24 otherwise herein provided. This Agreement may be amended only in writing
25 and executed by duly authorized representatives of the parties.

26 22.6 Waiver. No waiver of default by either party of any of the
27 terms, covenants, and conditions hereof to be performed, kept, and observed
28 by the other party shall be construed as, or 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.

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22.8.1 During the performance of this Agreement, Concessionaire certifies and represents that Concessionaire will comply with the EBO. Concessionaire agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a contract with the City of Long Beach, the Consultant will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach's Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200."

22.8.2 The failure of Concessionaire to comply with the EBO will be deemed by City to be a material breach of this Agreement.

22.8.3 If Concessionaire fails to comply with the EBO, City may cancel, terminate or suspend this Agreement, in whole or in part, and monies due or to become due under this Agreement may be retained by City. City may also pursue any and all other remedies at law or in equity for any breach.

22.8.4 Failure to comply with the EBO may be used as evidence against Concessionaire in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.

22.8.5 If City determines that Concessionaire has set up or used its contracting entity for the purpose of evading the intent of the EBO, City may terminate this Agreement. Violation of this provision may be used as evidence against Concessionaire in actions taken pursuant to the provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

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22.9 Force Majeure. Neither City nor 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, shortage of material acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, temporary grounding of aircraft due to action of the manufacturer or any regulatory authority or any other circumstances for which it is not responsible or which is not within its reasonable control; provided, however, that except as otherwise provided herein these provisions shall not excuse Concessionaire from its obligation to pay the fees specified in this Agreement. City agrees to use its best efforts to restore any interrupted utilities or services which it is obligated to furnish or provide under this Agreement, but Concessionaire shall not be entitled to any abatement of fee payments or discharge of financial obligations in the event of any interruption, reduction, or cessation or any utilities or services.

22.10 Severability. In the event any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided the invalidity of any such covenant, condition, or provision does not materially prejudice either City or Concessionaire in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

22.11 Headings. The headings of the several articles and Sections of this Agreement are inserted only as a matter of convenience and for reference, in no way define, limit, or describe the scope of 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.

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22.12 Nonexclusivity. Nothing herein contained shall be deemed to grant to Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof Concessionaire shall have the right to exclusive possession of the Premises.

22.13 Approvals. Whenever the approval of City or of Concessionaire or their representatives is required herein, no such approval shall be unreasonably requested, withheld, or delayed. Unless otherwise specified herein, all approval shall be in writing.

22.14 Binding Nature. All of the terms, provisions, covenants, stipulations, conditions, and considerations in this Agreement shall extend to and bind the legal representatives, successors, sublessees, and assigns of the respective parties.

22.15 Inspection. City reserves the right to inspect the Premises at any and all reasonable times throughout the Term provided that it shall not interfere unduly with Concessionaire's operations and that it gives Concessionaire reasonable advance notice. The right of inspection reserved to City hereunder shall impose no obligation on City to make inspections to ascertain the condition of the Premises and shall impose no liability upon City for failure to make such inspections.

22.16 Incorporation of Exhibits. All exhibits referred to herein and any appendices, exhibits, or schedules which may, from time to time, be referred to in any duly executed amendment thereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Agreement as fully as if set forth herein.

22.17 Right to Amend. This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States, by which City obtains federally-owned surplus property or aid for the

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improvement, operation, and/or maintenance of the Airport. In the event that the Federal Aviation Administration, or any other federal agency, requires modifications or changes in this Agreement as a condition for the granting of funds for the improvement of the Airport or lands and improvements covered by its laws, rules, or regulations, Concessionaire agrees to consent to the amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be required to obtain such funds, except, however, that in no event will Concessionaire be required, pursuant to this Article, to agree to an increase in the fees or charges provided for in this Agreement.

22.18 Concessionaire Independent Contractor. For all the purposes of this Agreement, Concessionaire is and shall be deemed to be, with respect to City, an independent contractor. It is mutually agreed and understood that nothing contained in this Agreement shall be deemed or construed to constitute a partnership or joint venture between the parties to this Agreement.

22.19 Surrender. Concessionaire covenants that on the last day of this Agreement, or any extension of it, Concessionaire will peaceably and quietly leave and surrender the Premises, ordinary wear and tear accepted. Concessionaire shall have no further right or interest in the Premises upon termination, except as specifically provided in this Agreement.

22.20 Replacement Concessionaire. City reserves the right to replace Concessionaire if this Agreement is terminated prior to the expiration of its stated term or any extension or renewal thereof.

22.21 Eminent Domain. If the whole or a substantial part of the Premises shall be taken by any public authority under the power of eminent domain, then the Term shall cease as to the part so taken, from the day the possession of that part shall be taken for any public purpose, and the fees shall

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be paid up to that day, and from that day Concessionaire shall have the right either to cancel this Agreement and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided, except that the minimum guaranteed concession fee shall be reduced in proportion to the amount of the Premises taken. All damages awarded for such taking shall belong to and be the property of City whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Premises herein licensed; provided, however, that City shall not be entitled to any award made for the taking of any installations or improvements on the Premises belonging to Concessionaire.

22.22 Supersedure. This Agreement upon becoming effective shall supersede and annul any and all permits, leases or agreements heretofore made or issued for the Premises between City and Concessionaire, and any such permits, leases or agreements shall hereafter be void and of no effect except as to any fees or charges which may have accrued thereunder.

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IN WITNESS WHEREOF, the parties have caused these presents to be duly executed with all the formalities required by law as of the date first set forth hereinabove.

PARADIES-LONG BEACH, LLC, a California limited liability company

September 10, 2012

By: Don Mead
Its: SVP & Chief Administrative Officer

September 10, 2012

By: Karen B. Beach
Its: VP & General Counsel

"Concessionaire"

CITY OF LONG BEACH, a municipal corporation **Assistant City Manager**

9.25, 2012

By: [Signature]
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on September 17, 2012.

ROBERT E. SHANNON, City Attorney

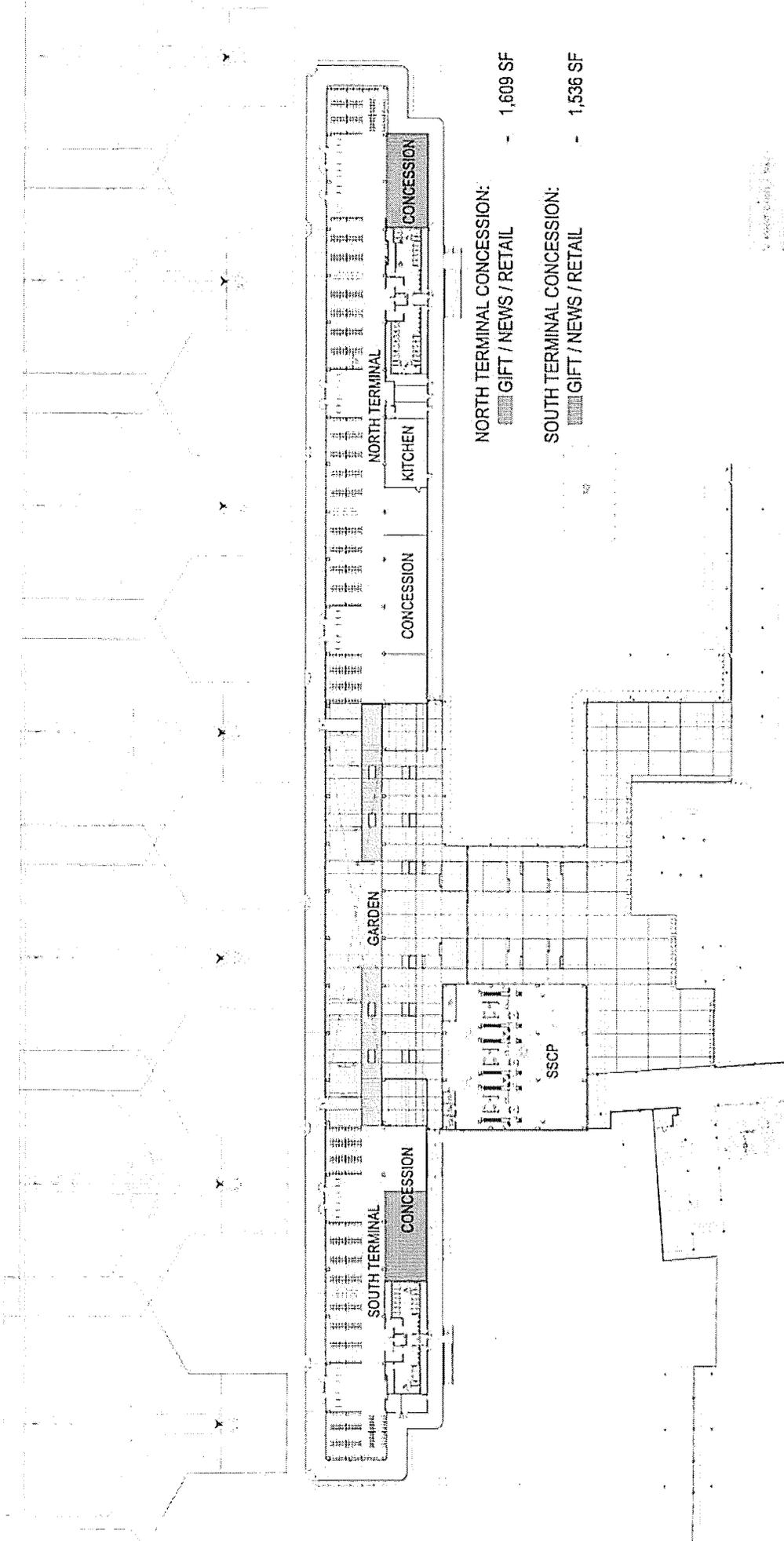
By: [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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EXHIBIT "A"
PREMISES



NORTH TERMINAL CONCESSION:
 [Hatched Box] GIFT / NEWS / RETAIL - 1,609 SF

SOUTH TERMINAL CONCESSION:
 [Hatched Box] GIFT / NEWS / RETAIL - 1,536 SF

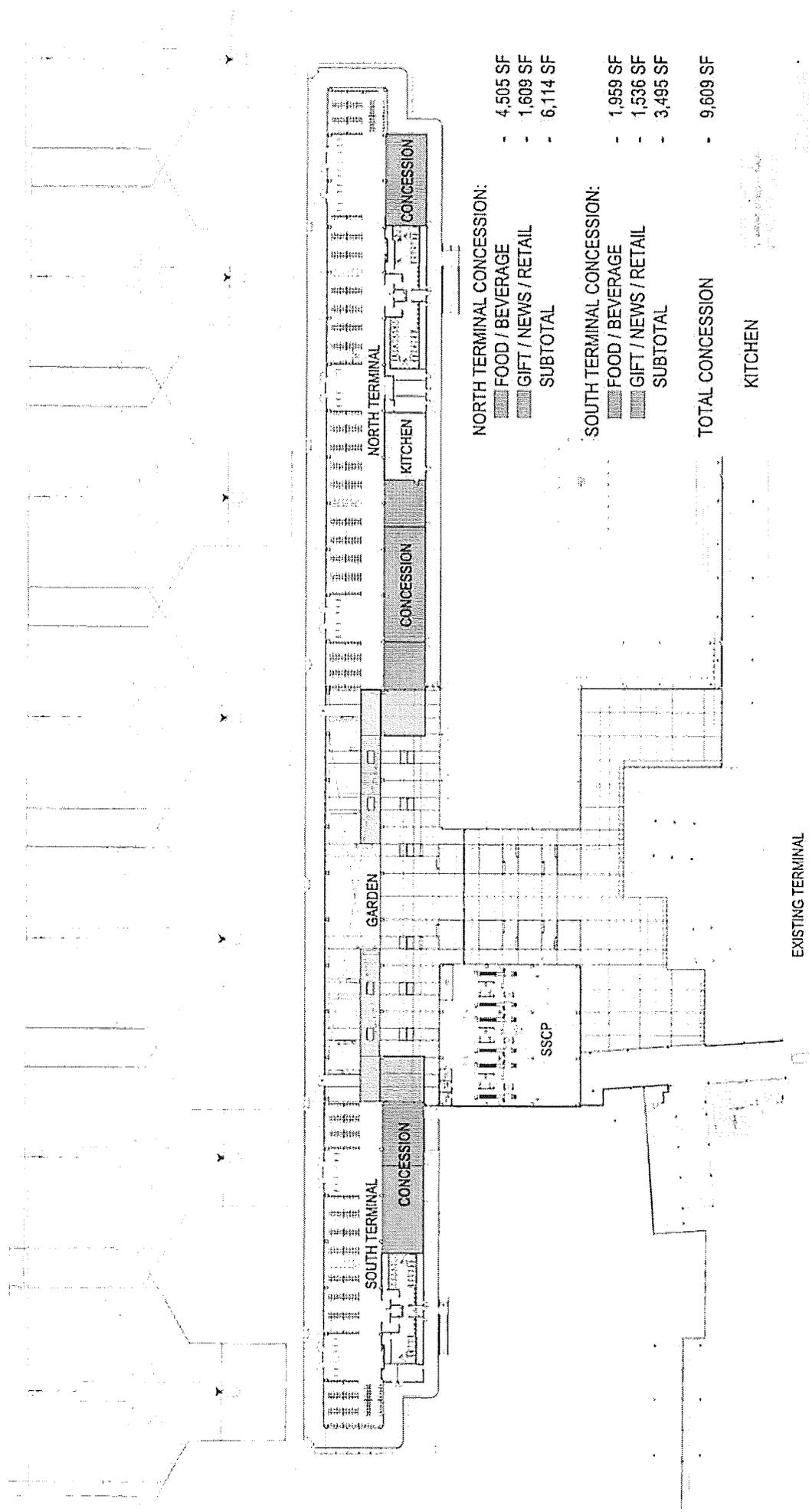
EXISTING TERMINAL

Long Beach Airport
 Paradises - Long Beach, LLC
 Exhibit "A"

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333 West Ocean Boulevard, 11th Floor
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EXHIBIT "B"
CONCOURSE



NORTH TERMINAL CONCESSION:	
■	FOOD / BEVERAGE - 4,505 SF
■	GIFT / NEWS / RETAIL - 1,609 SF
	SUBTOTAL - 6,114 SF
SOUTH TERMINAL CONCESSION:	
■	FOOD / BEVERAGE - 1,959 SF
■	GIFT / NEWS / RETAIL - 1,536 SF
	SUBTOTAL - 3,495 SF
	TOTAL CONCESSION - 9,609 SF
	KITCHEN

EXISTING TERMINAL

Long Beach Airport
 Paradies - Long Beach, LLC
 Exhibit "B"

OFFICE OF THE CITY ATTORNEY
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Long Beach, CA 90802-4664

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EXHIBIT "C"

REQUIRED IMPROVEMENTS

Required Improvements shall be those certain improvements, fixtures and facilities as described and shown on all approved plans and drawings submitted to City in connection with Building Permit Nos. BRMD-137031, BMEC-137033, BELE-137034, BPLM-137035, and all related permits and approvals, as the same may be amended with City's approval.

EXHIBIT "D"
INSPECTION CHECKLIST

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LONG BEACH AIRPORT
Concessionaire Operations Checklist
GIFT / NEWS / RETAIL

Worst -----> Best

Lighting (including illuminated signage)	1	2	3	4	5	N/A
Is all lighting functioning as intended?						

NOTES:

Signage	1	2	3	4	5	N/A
Are all signs printed and displayed properly? (i.e., no handwritten signage)						

NOTES:

Cleanliness	1	2	3	4	5	N/A
Are floors and fixtures clean?						

NOTES:

Presentation	1	2	3	4	5	N/A
Is merchandise neatly displayed?						
Is merchandise well-stocked?						

NOTES:

Customer Service	1	2	3	4	5	N/A
Are customers being greeted in a timely manner?						
Are transactions being handled in an efficient and friendly manner?						

NOTES:

General Maintenance	1	2	3	4	5	N/A
Are display tables, clothing racks, refrigeration units and other fixtures well-maintained?						
Review of most recent Health Department Inspection Summary Report.						

NOTES:

Pricing	1	2	3	4	5	N/A
Is the Concessionaire's/Airport's Pricing Policy being adhered to?						

NOTES:

Customer Comments	1	2	3	4	5	N/A
Review of recent comments regarding customer experience, including those received via letters, email, telephone or in-person. Comments posted via social media will also be considered.						

NOTES:

Date of Inspection:

Time of Inspection:

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EXHIBIT "E"
RETAIL SALES DEFINITIONS

Category 1

Newspapers
Magazines
Books

Category 2

Packaged snack foods/beverages
Drugs/sundries
Clothing
Film and disposable cameras
Postcards and other stationary
Traveler convenience and necessity items
Gifts
Souvenirs
Toys
Apparel

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EXHIBIT "F"
FAA LEASE AND USE AGREEMENT PROVISIONS

LEASE AND USE AGREEMENT PROVISIONS

1. Paradies-Long Beach, LLC ("Concessionaire"), for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in that certain News/Gift/Retail Concession Agreement ("Agreement") between Concessionaire and the City of Long Beach ("City") for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

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

Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

2. City reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of Concessionaire and without interference or hindrance.
3. City reserves the right, but shall not be obligated to Concessionaire, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Concessionaire in this regard.
4. The Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation, or maintenance of the airport. Failure of Concessionaire or any occupant to comply with the requirements of any existing or future agreement between City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of lessee's rights under the Agreement.
5. There is reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the licensed premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.
6. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the licensed premises or in the event of any planned modification or alteration of any present or future building or structure situated on the licensed premises.
7. Concessionaire by executing the Agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of Concessionaire.
8. Concessionaire by executing the Agreement agrees for itself, its successors and assigns that it will not make use of the licensed premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises licensed under the Agreement and cause the abatement of such interference at the expense of Concessionaire.

9. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).

10. The Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

11. Concessionaire will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

12. Concessionaire will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

Revised: January 2004 (AWP-620.1)

EXHIBIT "G"

ACDBE PROGRAM OVERVIEW AND FORM

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SCHEDULE "1"

DECLINING BALANCE DEPRECIATION EXAMPLE*

Year	Net Book Value	Depreciation Factor	Depreciation Expense	Accumulated Depreciation
1	\$4,345,150	0.20	\$869,030	\$869,030
2	\$3,476,120	0.20	\$695,224	\$1,564,254
3	\$2,780,896	0.20	\$556,179	\$2,120,433
4	\$2,224,717	0.20	\$444,943	\$2,565,377
5	\$1,779,773	0.20	\$355,955	\$2,921,332
6	\$1,421,818	0.20	\$284,364	\$3,205,696
7	\$1,139,454	0.20	\$227,891	\$3,433,587
8	\$911,563	0.20	\$182,313	\$3,615,890
9	\$729,260	0.20	\$145,852	\$3,761,742
10	\$583,408	0.20	\$116,682	\$3,878,424

*This example shows annual depreciation, however for purposes of the Agreement the net book value of the improvements shall be depreciated monthly.

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