



## Lease and Concession Contract

**Lease No.:** \_\_\_\_\_

### Parties And Addresses:

Authority: Hillsborough County Aviation Authority  
Post Office Box 22287  
Tampa, Florida 33622  
Telephone: 813-870-8700  
Fax: 813-875-6670

Concessionaire: XpresSpa Tampa Airport, LLC  
3 East 54<sup>th</sup> St., 9<sup>th</sup> Floor  
New York, NY 10022  
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## LEASE AND CONCESSION CONTRACT[Click HERE and Type Lease Number]

This Lease and Concession Contract for Tampa Airport Concessions Redevelopment Program; Spa Services Concession (hereinafter referred to as Contract) is made and entered into this \_\_\_\_ day of December 2015 between the Hillsborough County Aviation Authority, a public body corporate under the laws of the State of Florida whose post office address is Post Office Box 22287, Tampa, Florida 33622 (hereinafter referred to as Authority), and XpresSpa Tampa Airport, LLC, a Limited Liability Company, authorized to do business in the State of Florida, (hereinafter referred to as Concessionaire), (collectively hereinafter referred to as the Parties).

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

### Article I. DEFINITIONS

#### Section 1.01 DEFINITIONS

The following terms shall have the meanings set forth below:

- A. **Airport:** Tampa International Airport located at 4100 George J. Bean Parkway, Tampa, Florida.
- B. **Airport Terminals:** The passenger transportation facilities at the Airport, existing or under construction as of the Effective Date of this Contract, or to be constructed during the Term of this Contract, known individually, as of the Effective Date, as the Main Terminal, Airside A, Airside C, Airside E, and Airside F, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas therein and interconnecting hallways, concourses, and bridges.
- C. **Approved Project:** As it applies to any portion of the Premises, Concessionaire's construction, furnishing, fixturing, and remodeling of such portion of the Premises as reviewed and approved by Authority in accordance with the Authority Tenant Work Permit Handbook.
- D. **Authority Fiscal Year:** The twelve-month period beginning October 1<sup>st</sup> of a calendar year through September 30<sup>th</sup> of the following calendar year.
- E. **Authority Work:** The work to be done by or on behalf of Authority to prepare the Premises for Concessionaire.
- F. **Capital Investment:** Those dollars spent by Concessionaire in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Premises, including reasonable architectural and engineering fees relating thereto, in connection with an Approved Project for such portion of the Premises. Capital Investment includes:
  - 1. **Leasehold Improvements:** All improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the

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Premises including, but not limited to, mechanical, electrical and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.

2. **Trade Fixtures:** All furniture, fixtures and major equipment installed by Concessionaire within the Premises for use in its performance of the Concession which may be removed from the Premises without causing material damage to the Premises.
- G. **Common Areas:** Those areas of the Airport Terminals that are not leased, licensed, or otherwise designated or made available by Authority for exclusive or preferential use by a specific party or parties.
- H. **Concession:** The rights granted to Concessionaire by Authority to develop and operate a business to sell and perform spa and/or personal care services and related products, to the public, and related operations thereto, in accordance with the terms and conditions of this Contract.
- I. **Concession Location(s):** The locations, individually or collectively, within the Premises which are intended for the sale of Concessionaire's goods and services.
- J. **Concessionaire:** The legal entity that is party to this Contract who is bound by this Contract to develop and operate the Concession at the Airport. Concessionaire shall include all approved sub-concessionaires of Concessionaire who are actually operating within the Premises pursuant to subleases with Concessionaire. In all provisions of this Contract that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.
- K. **Concessionaire's Operating Obligations:** The various maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the performance of the Concession. The performance of the obligation by the Concessionaire, or payment to a third party for the performance of these obligations, are not rental payments or other considerations for the right to occupy real property, but are acknowledgements by the Concessionaire of its obligation to maintain, repair, and otherwise keep the Premises in First Class condition.
- L. **Concessions Handbook:** The compilation of Authority standards, procedures, requirements, directives, and rules and regulations governing the operations of concessionaires and actions of their employees, representatives, agents, contractors, and vendors, which is incorporated herein by reference. Authority reserves the right to amend the Concessions Handbook during the Term. Any amendment of the Concessions Handbook will be binding on Concessionaire without amendment to this Contract, provided that the amendment of the Concessions Handbook does not conflict with other terms and conditions of this Contract.
- M. **Concessions Design Criteria Manual:** The compilation of Authority design and construction standards governing all aspects of the Concessionaire's design and construction of the

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Premises, which is incorporated herein by reference. Authority reserves the right to amend the Concessions Design Criteria Manual during the Term. Any amendment will be binding on Concessionaire without need for amendment of this Agreement, provided that the amendment of the Concessions Design Criteria Manual does not conflict with the other terms and conditions of this Contract.

- N. **Concessions Services:** Those certain Concessionaire's Operating Obligations and other maintenance and repair performed by Authority on behalf of and for the benefit of Concessionaire as further described in Section 12.03 hereunder.
- O. **Concessions Services Fee:** Amounts paid to Authority by Concessionaire as payment for Concessions Services as further described in Section 5.04 hereunder.
- P. **Contract:** This Contract, including all exhibits, schedules, subsequent amendments and attachments thereto.
- Q. **Contract Dates:**
  - 1. **Commencement Date:** The day the first Concession Location under this Contract opens for business.
  - 2. **Effective Date:** The date of full execution of this Contract by the Parties.
  - 3. **Expiration Date:** The tenth (10<sup>th</sup>) anniversary of the Package Completion Date.
  - 4. **Package Completion Date:** The earlier to occur of (a) the opening for business of all Concession Locations following completion of all Approved Projects, or (b) the latest of the dates established under this Contract for completion of all Approved Projects for all Concession Locations.
  - 5. **Shell Space Turnover Date:** The date provided in a Notice to Proceed which makes a portion of the Premises available to Concessionaire to commence the Approved Project in such portion of the Premises.
- R. **Contract Year:** (a) With respect to the first Contract Year during the Term, the period commencing on the Commencement Date and continuing through the end of the Authority Fiscal Year in which the Commencement Date occurs, and (b) with respect to each Contract Year thereafter during the Term, each twelve-month period commencing on the first day of the Authority Fiscal Year and ending on the last day of the Authority Fiscal Year, provided that if the Term expires or is terminated on a day other than the last day of a Contract Year, the last Contract Year will then end as of the date of such expiration or termination.
- S. **Director of Concessions:** The Authority employee designated by the Authority Chief Executive Officer to manage and oversee this Contract.



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- T. **FAA:** The Federal Aviation Administration or any successor thereto.
- U. **First Class:** A manner of operation of the Concessions, a standard of quality of materials and construction, or a standard of quality of products, merchandise and services, comparable to those of upscale shopping centers in the Tampa Bay Statistical Area and similar high-quality airport and non-airport service establishments.
- V. **Gross Receipts:** The total amount of monies paid to or earned by Concessionaire at or from the Premises in its performance of the Concession, as further described in Section 5.01.
- W. **Minimum Annual Privilege Fee:** The minimum amount payable by Concessionaire to Authority each Contract Year for the Privilege Fee as further described in Section 5.03. The Minimum Annual Privilege Fee is hereinafter referred to as the MAPF.
- X. **Notice to Proceed:** As it applies to any portion of the Premises, the written notice from Authority to Concessionaire delivering possession of such portion of the Premises to Concessionaire to commence the initial Approved Project for such portion of the Premises, and which establishes the Shell Space Turnover Date and Required Completion Date for such portion of the Premises.
- Y. **Percentage Fee:** The annual fee paid by Concessionaire to Authority, as a portion of the Privilege Fee, calculated in accordance with Section 5.03.
- Z. **Premises:** Specific areas of the Airport Terminals, or elsewhere at the Airport, that are leased to Concessionaire to occupy and use for the purposes set forth herein.
- AA. **Premises Rent:** The annual amount payable by Concessionaire to Authority for the use and occupancy of the Concession Locations, as further described in Section 5.02.
- BB. **Premises Rent Rate:** The fair market rental rate per square foot for the Concession Locations, as further described in Section 5.02.
- CC. **Privilege Fee:** The annual fee paid by Concessionaire to Authority as consideration for the privilege of concession rights at the Airport comprised of the MAPF and Percentage Fee.
- DD. **Required Completion Date:** The date set forth in a Notice to Proceed by which Concessionaire must achieve Substantial Completion of an Approved Project, except as such date may be extended in accordance with the provisions herein.
- EE. **Substantial Completion:** The stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by Authority, so that (i) in the case of Authority Work, Concessionaire is able to take possession of the Premises for the purpose of performing the Approved Project, or (ii) in the case of Approved Project work, Concessionaire

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has received a Certificate of Completion and/or a Temporary Certificate of Completion from the City of Tampa Building Department and is able to occupy the Premises for the purpose of opening for business. In no event shall Substantial Completion of any work occur prior to the issuance by Authority of the Notice to Proceed. It is the intent of the Parties that the application of the term Substantial Completion in the context of this Contract shall coincide with the application of that term in Florida Statute Section 192.042, so that the date on which Substantial Completion occurs under this Contract shall be the same date relative to the imposition and levy of local ad valorem taxes.

- FF. **Support Space(s):** The non-selling locations, individually or collectively, within the Premises which are intended for the support of Concessionaire's operation of the Concession including, but not limited to, offices, commissary, and storage spaces.
- GG. **Support Space Rent:** The annual amount payable by Concessionaire to Authority for the use and occupancy of the Support Spaces, as further described in Section 5.02.
- HH. **Support Space Rent Rate:** The fair market rental rate per square foot for the Support Spaces, as further described in Section 5.02.
- II. **Tampa Bay Statistical Area:** The Tampa-St. Petersburg-Clearwater Metropolitan Statistical Area, as defined by the U.S. Office of Management and Budget.
- JJ. **Tenant Work Permit Handbook:** The compilation of Authority standards, procedures, requirements, and rules and regulations governing Concessionaire's construction activities at the Airport which is incorporated herein by reference. Authority reserves the right to amend the Tenant Work Permit Handbook during the Term. Any such amendment to the Tenant Work Permit Handbook will be binding on Concessionaire without need for amendment of this Agreement, provided that such amendment of the Tenant Work Permit Handbook does not conflict with the other terms and conditions of this Contract.
- KK. **Term:** The period of time beginning on the Commencement Date and ending on the Expiration Date.
- LL. **TSA:** The U.S. Department of Homeland Security Transportation Security Administration or any successor thereto.
- MM. **Unamortized Investment:** The unamortized amount, for that portion of the Premises at the time such amount is referred to herein, of Concessionaire's Capital Investment or portion thereof, using straight line amortization, calculated on a daily basis, over the period beginning on the latter of (i)the Package Completion Date or (ii)the completion of an Approved Project to which such Capital Investment refers and ending on the Expiration Date.

**Section 1.02 CONTRACT**

**A. Exhibits**

The following Exhibits are attached hereto and are hereby incorporated and made a part of this Contract:

- 1. Exhibit A, Premises Description
- 2. Exhibit B, Permitted Uses
- 3. Exhibit C, Monthly Concession Report
- 4. Exhibit D, Development Schedule
- 5. Exhibit E, Form of Guaranty of Contract

**B. Concessionaire’s Response**

Concessionaire’s response to RFP No. 15-534-039, Tampa Airport Concessions Redevelopment Program; Spa Services Concession, and any subsequent information submitted by Concessionaire during the evaluation process as modified and accepted by Authority, are incorporated herein by reference (such response and subsequent information are collectively hereinafter referred to as Concessionaire’s Response). Concessionaire and Authority acknowledge that Concessionaire’s Response was a valuable consideration in the award of this Contract to Concessionaire and is an authoritative reference for understanding the intention of the Parties. Accordingly, Concessionaire shall be obligated to meet all specifications described in Concessionaire’s Response; provided, however, that where an express provision of this Contract conflicts with any provision of Concessionaire’s Response, this Contract shall control.

**C. Interpretations**

- 1. Day(s), as used herein, unless otherwise stated, shall mean calendar day(s).
- 2. Month(s), as used herein, unless otherwise stated, shall mean calendar month(s).

**Article II. SUMMARY OF CONTRACT PROVISIONS**

The following table is a statement of key provisions of this Contract (hereinafter referred to as Summary of Contract Provisions).

Summary of Contract Provisions	
Authority Address:	Hillsborough County Aviation Authority Post Office Box 22287 Tampa, FL 33622 Attn: Airport Concessions Department Telephone: 813-870-8700 Fax: 813-875-6670

	<u>Address for courier delivery:</u> Hillsborough County Aviation Authority Tampa International Airport 4100 George J. Bean Parkway, Suite 3311 Tampa, FL 33607		
Concessionaire Address:	XpresSpa Tampa Airport, LLC 3 East 54th St., 9th Floor New York, NY 10022		
Guarantor:	XpresSpa Holdings, LLC 3 East 54th St., 9th Floor New York, NY 10022		
Concession Locations:	See Exhibits A and B:		
	Space	Area	Trade Name
	A-2-2719	440 sq. ft.	XpresSpa
	C-2-3717	664 sq. ft.	XpresSpa
	E-2-4771	701 sq. ft.	XpresSpa
	Total	1,805 sq. ft.	
Support Spaces:	See Exhibit A:		
	Space	Area	
	TBD	TBD	
	Total		
Effective Date:	December 3, 2015		
Commencement Date:	TBD		
Package Completion Date:	TBD		
Expiration Date:	TBD		
Initial Premises Rent Rate:	\$41.00 per square foot		
Initial Support Space Rent Rate:	\$22.00 per square foot		

Initial MAPF:	\$90,000
Percentage Fee Rate:	9.0%
Concessions Services:	<p>Maintenance and repair services performed by Authority, on behalf of and for the benefit of the Concessionaire to include:</p> <ul style="list-style-type: none"> <li>• Pest control</li> <li>• Trash, waste, and other refuse disposal</li> <li>• Common grease trap and interceptor cleaning and maintenance</li> <li>• Operation of the Concession Central Receiving and Distribution Center for distribution and delivery services</li> </ul>
Concessions Services Fee Rate:	1.5% of Gross Receipts
Minimum Initial Capital Investment:	<p>\$568,517 (Aggregate)  \$145,730 (A-2-2719)  \$212,076 (C-2-3717)  \$210,711 (E-2-4771)</p>

**Section 2.01            MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS**

The Parties acknowledge and agree that certain provisions stated in the Summary of Contract Provisions are, as of the Effective Date, unknown or estimates. The Parties further acknowledge and agree that other provisions stated in the Summary of Contract Provisions are subject to change throughout the Term in accordance with the provisions of this Contract. The Parties therefore agree to modify the Summary of Contract Provisions by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

**Article III. PREMISES**

**Section 3.01            PREMISES DESCRIPTION**

Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Authority the Premises within the Airport Terminals consisting of the Concession Locations and Support Spaces as listed and depicted in Exhibit A, Premises Description, including any improvements to be made or modifications to be made thereto. No other part of the Airport Terminals or the Airport shall be part of the Premises.

The total estimated areas of the Premises, Concessions Locations, and Support Spaces are listed in the

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Summary of Contract Provisions. No later than 30 days after the Package Completion Date, Concessionaire shall certify in writing the actual as-built areas of the Premises, Concession Locations, and Support Spaces. The Parties agree to modify the Summary of Contract Provisions and Exhibit A to incorporate such as-built areas, such modifications to be confirmed by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

**Section 3.02            ADDITIONS TO AND DELETIONS FROM THE PREMISES**

Authority and Concessionaire may, during the Term and by mutual agreement, add additional space(s) or delete space(s) from the Premises. All space(s) added to the Premises pursuant to this Section 3.02 shall be subject to all the terms, conditions, and other provisions of this Contract and Concessionaire shall pay to Authority all rents, fees, and charges applicable to the additional space(s) in accordance with this Contract. In the case of deletions of space(s) from the Premises, rents, fees, and charges paid to Authority by Concessionaire shall be appropriately adjusted. The Parties agree to modify the Summary of Contract Provisions, Exhibit A, and Exhibit B as necessary, to incorporate space additions to the Premises and space deletions from the Premises by letter executed by the Director of Concessions and acknowledged by Concessionaire, without need for formal amendment to the Contract.

**Section 3.03            RECLAIMING OF PREMISES FOR AIRPORT PURPOSES**

Authority reserves the right to reclaim the Premises when, in the sole discretion of Authority, such reclaiming is necessary for the development or operations of the Airport or is in the best interest of Authority. Authority will make a reasonable effort to identify other location(s) within the Airport Terminals containing substantially the same area, visibility and exposure to passenger traffic as the portion(s) of the Premises being reclaimed (such other location(s), if any, hereinafter referred to as the Replacement Premises).

Authority shall exercise such right to reclaim by giving Concessionaire not less than 90 days' prior written Notice of Intent to Reclaim Premises specifying the effective date of the reclaiming and identifying Replacement Premises, if any. Concessionaire shall, by written notice given to Authority no later than 30 days after receipt of Notice of Intent to Reclaim Premises, notify Authority of its acceptance of the Replacement Premises, if any, whereupon, as of the effective date provided in the Authority Notice of Intent to Reclaim Premises:

1. All of the terms, covenants, conditions and provisions of this Contract shall continue in full force and effect and apply to the Replacement Premises;
2. Concessionaire shall move from the Premises, or portion(s) thereof being reclaimed by Authority, into the Replacement Premises on or before the effective date stated in the Authority Notice of Intent to Reclaim Premises and shall vacate and surrender possession of the Premises or portion(s) thereof being reclaimed by Authority;
3. Subject to the other provisions of this Contract, Concessionaire shall be deemed to have accepted possession of the Replacement Premises in its "as is" condition as of the effective

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date stated in the Authority Notice of Intent to Reclaim Premises; and

4. Authority will pay to Concessionaire reasonable and proper moving expenses to include moving of furniture, equipment, and other personal property into the Replacement Premises. Concessionaire shall pay all other costs to improve and fit out the Replacement Premises.

In addition, Authority will pay to Concessionaire, within 15 days of the effective date stated in the Authority Notice of Intent to Reclaim Premises, an amount equal to the Unamortized Investment in the portion(s) of the Premises being reclaimed less any of the unamortized investment attributable to Trade Fixtures moved to the Replacement Premises.

Concessionaire shall not be compensated and Authority shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, as a result of moving to Replacement Premises.

If no Replacement Premises are available, as determined solely by Authority, if Concessionaire fails to respond to the Authority Notice of Intent to Reclaim Premises within 30 days after receipt of such notice or otherwise rejects the Replacement Premises, or if Authority deems the use(s) or concept(s) are not appropriate at the Replacement Premises, then the Contract for the Premises or portion(s) thereof being reclaimed will terminate on the effective date provided in the Notice of Intent to Reclaim Premises and provisions of this Contract related to termination shall apply.

The Parties agree to modify, within ten (10) days of the effective date stated in the Notice of Intent to Reclaim Premises, the Summary of Contract Provisions, Exhibit A and Exhibit B, as necessary, to delete the portion(s) of the Premises being vacated and incorporate the Replacement Premises, if any. These modifications will be confirmed by letter executed by the Director of Concessions and acknowledged by Concessionaire, without need for formal amendment to the Contract.

#### **Section 3.04            MINOR MODIFICATIONS TO PREMISES**

Authority shall have the right to make minor modifications to any portion of the Premises at the sole discretion of Authority to accommodate Airport operations, security renovations, maintenance, or other work to be completed in the Airport Terminals. Minor modifications are subject to all provisions in Section 3.02.

#### **Section 3.05            INGRESS AND EGRESS**

Concessionaire will have the right of ingress to and egress from the Airport and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery and other property. Right of ingress and egress will be subject to FAA Regulations, as amended, applicable laws, and Authority Rules and Regulations and Operating Directives.

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**Section 3.06            PREMISES ACCEPTANCE AS IS**

Concessionaire accepts the Premises in its present condition, as is and with all faults. Authority shall not be obligated to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any utilities or telephone/data service) on or to the Premises during the Term other than as explicitly stated in this Contract.

**Section 3.07            NO WARRANTY OF ECONOMIC VIABILITY**

Authority makes no warranty, promises or representations as to the economic viability of the Premises or Concessionaire's business concept(s) or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire business operations. Concessionaire acknowledges that airline gate usage and other aspects of Airport operations are subject to change during the Term without notice and that the Authority makes no warranty regarding the location of airline gate usage. Except as is specifically set forth herein, Authority shall not, by virtue of the existence of this Contract, be constrained in connection with its operation of the Airport.

**Article IV. TERM**

**Section 4.01            TERM**

This Contract shall be effective and binding upon the Parties as of the Effective Date. The Term of this Contract shall begin on the Commencement Date and continue through the Expiration Date, as stated in the Summary of Contract Provisions, unless sooner terminated as herein provided.

**Section 4.02            CRITICAL DATES**

The Effective Date, Commencement Date, Package Completion Date, and Expiration Date shall be the dates stated in the Summary of Contract Provisions (collectively, Critical Dates). The Parties agree to modify, no later than 30 days after the Package Completion Date, the Summary of Contract Provisions to incorporate the actual Critical Dates, to be confirmed by letter executed by the Director of Concessions and acknowledged by Concessionaire, without need for formal amendment to the Contract.

**Section 4.03            HOLDOVER**

Any occupancy of Premises by Concessionaire with the written consent of Authority after the Expiration Date shall be on a month to month basis with all provisions of this Contract, including rent, fees and charges, remaining in place until such time that Authority gives notice to Concessionaire to surrender the Premises. Notice to surrender premises will be provided not less than 30 days prior to the anticipated surrender date.

Any occupancy of Premises by Concessionaire after the termination of this Contract without the written approval of Authority constitutes a month-to-month lease on the same terms and conditions as this Contract. Concessionaire must pay Premises Rent, Support Space Rent, Privilege Fee and the Concessions Services Fee for the entire holdover period for that portion of Premises where the Contract has expired or been terminated. Premises Rent and Support Space Rent will be payable at



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double the annual rate for that portion of the Premises during the immediately preceding Contract Year. No occupancy of any portion of the Premises by Concessionaire after the expiration or other termination of this Contract with respect to such portion of the Premises extends the Term, except as a holdover tenancy. In the event of such holdover tenancy, Concessionaire shall indemnify Authority against all damages arising out of the Concessionaire's holdover tenancy, including but not limited to, any costs incurred by Authority to evict Concessionaire, and all insurance policies and Security Deposits required to be obtained and maintained by Concessionaire as set forth in this Contract shall continue in full force and effect.

**Section 4.04            RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION**

Concessionaire shall, upon termination of this Contract, with or without cause, surrender the Premises to Authority peaceably, quietly and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or Authority, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore, excepted. Concessionaire shall remove all signage and provide temporary walls to seal all openings of premises that meet the guidelines outlined in the Tenant Work Permit Handbook. Concessionaire shall also provide to Authority any and all keys to doors, window displays or any area of controlled access within the footprint of the Premises. Authority shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing the Authority right of possession, regardless of whether Concessionaire is delinquent in rental payments, including without limitation the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect Authority governmental police powers to de-activate security credentials for security or other governmental reasons.

Upon expiration or termination of this Contract, Concessionaire shall, subject to the Authority Lien described in Section 5.06, remove all furniture, fixtures and equipment installed by Concessionaire and Concessionaire or brand proprietary property, inventory and other personal property, and leave the Premises in broom clean condition. Any damage to the Premises caused by Concessionaire's removal of such furniture, fixtures, equipment or property shall be immediately repaired by Concessionaire at Concessionaire's expense and to the satisfaction of Authority. Notwithstanding the foregoing, if Concessionaire fails to remove such furniture, fixtures, equipment or property within ten (10) days from the date of termination of this Contract, then Concessionaire shall be deemed to have abandoned same and Authority shall have the right, at its option, and in its sole discretion, to take title to said furniture, fixtures, equipment and/or property and sell, contract, salvage, or dispose of the same in any manner permitted by law. Concessionaire shall have no right, interest or claim in or to any proceeds of the sale or other disposition of such items. Any net expense Authority incurs in disposing of such items shall be immediately reimbursed by Concessionaire. No act by Authority shall be deemed an acceptance of a surrender of the Premises. No acceptance of a surrender of the Premises shall be valid unless it is in writing and signed by Authority.

**Section 4.05            END OF TERM TRANSITION**

During the final Contract Year, Authority plans to award and transition to a new contract for spa and/or personal care services or other concessions that may include rights to the Premises or portions thereof.

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If Concessionaire is not selected for the new contract, Authority will notify Concessionaire in writing of the exact dates of a transition period. Concessionaire will cooperate fully with Authority and Concessionaire's successor to ensure an effective and efficient transition of the Premises and concession operations to the successor. Concessionaire acknowledges its responsibility to continuously perform the Concession in a First Class manner during the transition to the successor.

## **Article V. RENTALS, FEES, OTHERCHARGES, REPORTING, AND ACCOUNTING RECORDS**

### **Section 5.01 GROSS RECEIPTS**

Gross Receipts include all monies paid or payable to Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Premises, regardless of when or where the customer order is placed (including outside the Premises), and any other receipts, credits, rebates, allowances, internet sales or revenues of any type arising out of or in connection with Concessionaire's or Concessionaire's sub-concessionaires' or agents' operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances (RDA), and any other type of ancillary advertising or product placement fees, and other allowances and fees. Gross Receipts shall not include:

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

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received are ultimately included in Gross Receipts.

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

## **Section 5.02        PREMISES RENT**

As consideration for the lease of the Premises granted herein, Concessionaire will pay to Authority fair market rental for all occupied space. Authority will establish the Premises Rent, which will be subject to Florida sales tax. Premises Rent will be paid in monthly installments, in advance and without demand, beginning on the Commencement Date and on the first day of each month thereafter throughout the Term.

The Premises Rent to be paid monthly equals the sum of:

1. The total area of Concessions Locations occupied by Concessionaire and open for business during the month multiplied by one-twelfth ( $1/12^{\text{th}}$ ) of the Premises Rent Rate plus applicable sales tax, and
2. The total area of Support Spaces occupied by Concessionaire multiplied by one-twelfth ( $1/12^{\text{th}}$ ) of the Support Space Rent Rate plus applicable sales tax.

For any period of less than one month during the Term, the Premises Rent will be calculated on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the Premises Rent is payable.

The initial Premises Rent Rate and Support Space Rent Rate are set forth in the Summary of Contract Provisions. Beginning on October 1, 2018 and the first day of each Authority Fiscal Year thereafter, the Premises Rent Rate and Support Space Rent Rate will each be increased two percent (2%) per year. Notice of such increases to Concessionaire shall not be required.

## **Section 5.03        PRIVILEGE FEE**

In consideration of the rights granted hereinto operate the Concession at the Airport, beginning on the Commencement Date and continuing through the Term, Concessionaire agrees to pay to Authority for each Contract Year, or portion thereof, a Privilege Fee equal to the sum of the MAPF and the Percentage Fee. The payment of this Privilege Fee is not a payment of rent, but is a payment excluded from the tax imposed by Florida Statute Section 212.02(10)(j).

A. MAPF. MAPF shall equal:

1. For the period from the Commencement Date through the Package Completion Date, MAPF is abated.
2. Beginning on the Package Completion Date and continuing through the Contract Year in

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which the Package Completion Date occurs, the initial MAPF amount in the Summary of Contract Provisions is pro-rated to include only the period of time from the Package Completion Date to the end of that Contract Year.

3. Beginning with the Contract Year following the Contract Year in which the Package Completion Date occurs and each Contract Year thereafter, the MAPF will equal eighty-five percent (85%) of the Privilege Fee paid in the prior Contract Year, but never less than the initial MAPF set forth in the Summary of Contract Provisions. The MAPF applicable to the last Contract Year of this Contract will be pro-rated if such Contract Year is less than 12 months.
- B. Percentage Fee. In addition to the MAPF, Concessionaire shall pay a Percentage Fee for each Contract Year in an amount equal to Gross Receipts for the Contract Year multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such amount exceeds the MAPF for the Contract Year. If the Percentage Fee calculated in accordance with this Section 5.03 is an amount less than the MAPF, no Percentage Fee shall be payable.
- C. Payment of Privilege Fee. On or before the Package Completion Date, and the first day of each month thereafter, Concessionaire shall pay to Authority, in advance and without set off, deduction, prior notice, or demand, one-twelfth (1/12th) of the MAPF. For any payment period of less than one month, the MAPF payment shall be paid on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the MAPF is payable.

Within ten (10) days after the end of each month during the Term, Concessionaire shall pay to Authority the Percentage Fee in the amount, if any, by which Gross Receipts for the Contract Year to date (for the Contract Year in which the month falls) multiplied by the Percentage Fee Rate exceeds the sum of MAPF and Percentage Fee previously paid for such Contract Year, as shown on the Monthly Concession Report required in Section 5.07.

#### **Section 5.04            OTHER FEES AND CHARGES**

- A. Concessions Services Fee. Concessionaire agrees to pay within ten (10) days after the last day of each month during the Term, not as additional rent but as a payment excluded from the tax imposed by Florida Statute Section 212.02(10)(j), and as payment for the performance by Authority on Concessionaire's behalf of the Concessions Services, a Concessions Services Fee in an amount equal to the Concessions Services Fee Rate as stated in the Summary of Contract Provisions multiplied by Gross Receipts during the month.

Subject to the terms and conditions set forth in the next paragraph, Authority and Concessionaire agree that Authority may modify, upon written notice to Concessionaire, the Concessions Services Fee Rate; provided that such modification may not occur until the end of the first full Contract Year after the Package Completion Date and the end of every third (3<sup>rd</sup>) Contract Year thereafter and that any such modification in the Concessions Services Fee Rate

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may not exceed one-half of one percent (0.5%).

Notwithstanding the foregoing, if at any time Authority elects, in its sole discretion, to modify the Concessions Services, the Concession Services Fee Rate may be adjusted accordingly in an amount determined as reasonable by Authority in its sole judgment. Authority will provide no less than thirty (30) days' written notice of the effective date of any modification to the Concessions Services Fee Rate to Concessionaire. The Parties agree to modify, the Summary of Contract Provisions to reflect any such change in the Concessions Services Fee Rate. Any modification will be confirmed by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

- B. Utilities. Authority will provide certain utility connections to the Premises as stated in the Concessions Design Criteria Manual. Concessionaire may connect into or extend, at its cost, such utilities in accordance with the Concessions Design Criteria Manual. Concessionaire shall pay for all utilities necessary in the operation of the Concession. All charges, including, but not limited to, deposits, installation costs, connection charges, usage, service charges, and applicable taxes for utility services metered directly to the Premises or pro-rated by usage shall be paid by Concessionaire, regardless of whether the utility services are furnished by Authority or other utility service entities.
  
- C. Other Charges. Concessionaire agrees to pay in a timely manner other charges and fees as Authority assesses, in accordance with its procedures and requirements, and that Concessionaire incurs in the normal course of business.

#### **Section 5.05            FAILURE TO MAKE TIMELY PAYMENTS**

Without waiving any other right or action available to Authority, in the event Concessionaire is delinquent in the payment of rents, fees, or charges hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 5.10, and in the event Concessionaire is delinquent in paying to Authority any such rents, fees, or charges for a period of seven(7) days after the payment is due, Authority reserves the right to charge Concessionaire interest thereon, from the date such rents, fees, or charges became due to the date of payment, at the Federal Reserve Bank of New York prime rate in effect on the date the rents, fees, or charges became due plus four percent (FRBNY prime +4%) or 18% per annum, whichever is greater, to the maximum extent permitted by law.

In the event of a dispute as to the amount to be paid, Authority shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

The right of Authority to require payment of interest and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the right of Authority to enforce other provisions herein, including termination of this Contract, and to pursue other remedies provided by law.

The failure of Authority to take action in the event of a delinquent payment or series of payments shall in no way waive the right of Authority to take action at a subsequent time. Authority expects all rents, fees and charges to be paid on time and Concessionaire agrees to pay on time.

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Notwithstanding other provisions of this Contract, and without limiting the other provisions of this Contract concerning, among other things, events deemed to constitute default of Concessionaire, Authority may, in Authority reasonably exercised discretion, terminate this Contract upon written notice to Concessionaire if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at the Airport and calculation of Gross Receipts under this Contract; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

**Section 5.06            AUTHORITY LIEN**

Authority shall have a lien upon all Trade Fixtures and Personal Property of the Concessionaire placed in or on the Premises, to the extent permitted by law, for the purpose of securing the payment of all sums of money that may be due to Authority from Concessionaire under this Contract.

This lien shall supersede any other lien including any lien created in connection with Concessionaire's financing. Concessionaire is prohibited from pledging any Trade Fixtures and/or Personal Property without prior, written permission of the Authority.

**Section 5.07            RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT**

- A. Generally Accepted Accounting Principles. Concessionaire shall prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Contract. Concessionaire's system of accounts shall allow each Concession Location to be distinguished from all other Concession Locations. Concessionaire shall maintain source documents sufficient to support its books, records, and reports. All monies related to this Contract shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.
  
- B. Financial Reports.
  - 1. Daily Gross Receipts. Upon request of the Authority, Concessionaire agrees to report Gross Receipts for periods of less than one month in a format and frequency as requested by Authority.
  - 2. Monthly Concession Report. No later than ten (10) days after the end of each month during the Term, Concessionaire shall deliver to Authority a Monthly Concession Report, in a form as set forth in Exhibit C attached hereto, stating Gross Receipts for said month for each Concession Location and the calculation of Percentage Fee payable for said month.
  - 3. Quarterly Income Statements. No later than 30 days after the end of each calendar quarter during the Term, Concessionaire shall deliver to Authority a quarterly income statement signed by Concessionaire's chief financial officer or other duly authorized official of

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Concessionaire, in such detail and form as may be specified by Authority, for each Concession Location, as well as for the total Premises.

- C. Annual Audit. No later than 90 days after the end of each Contract Year during the Term, Concessionaire shall, at its sole cost and expense, provide an annual audit report by an independent Certified Public Accountant, licensed in the State of Florida and acceptable to Authority, of Concessionaire's monthly Gross Receipts and the amounts paid to Authority as a Privilege Fee for the subject Contract Year, or part thereof (said annual audit report hereinafter referred to as Annual Report). There may be no limitation on the scope of the engagement that would preclude the auditor from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Receipts. The engagement will include a Schedule of Gross Receipts and Privilege Fees for each month of the Concessionaire's operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to Authority. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion on whether the Schedule of Gross Receipts and Privilege Fees has been completely and accurately presented, calculated and reported according to the terms of this Contract.

Authority reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such event, Authority may conduct its own audit under the provisions in Section 5.10, or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by Authority of any dispute will be final. Delivery of an Annual Report containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Contract.

If Concessionaire has paid to Authority an amount greater than Concessionaire is required to pay as Privilege Fee for a Contract Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's MAPF for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Privilege Fee for such Contract Year, then Concessionaire shall pay the difference to Authority in the next payment of the MAPF.

- D. Form, Frequency, and Method of Reporting. Acceptance of monthly reports and payments by Authority does not constitute agreement by Authority with the amounts reported and paid. Authority reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Receipts hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by Authority and to provide any additional statistics and information Authority may request.

Authority shall have the right at any time to require that reports be delivered electronically

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using technology and procedures designated by Authority. If Authority instructs Concessionaire to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, Authority shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

**Section 5.08 PLACE OF PAYMENT AND STATEMENT FILING**

Payments, reports, and statements required by this Contract shall be delivered to:

Hillsborough County Aviation Authority  
Attn: Finance Department  
Post Office Box 22287  
Tampa, Florida 33622

The designated place of payment and filing may be changed at any time by Authority upon ten (10) days' written notice to Concessionaire. Checks shall be payable to Hillsborough County Aviation Authority. Concessionaire assumes all risk of loss of payments.

**Section 5.09 FORM OF PAYMENT**

All payments due under this Contract shall be paid in lawful money of the United States of America. Authority may accept payment without prejudice to its right to recover the balance of said amount due and to pursue any other remedies in this Contract or otherwise. Concessionaire shall pay returned check fees as reasonably determined by Authority in the event of a returned check.

Authority may require all payments of Premises Rent, MAPF, Percentage Fee, and all other fees and charges to be made by Automated Clearing House electronic transfers, or other method as designated in writing by Authority. Concessionaire shall provide Authority with necessary information and authorizations as needed to facilitate such payments.

**Section 5.10 AUTHORITY RIGHT TO PERFORM AUDITS, INSPECTIONS, OR ATTESTATION ENGAGEMENTS**

Notwithstanding Concessionaire's requirement to submit the Annual Report set forth herein, Authority, or its representative, will have the right through the expiration of the third year after the expiration or termination of this Contract, through its representatives, and at all reasonable times, to review all books, records, and contracts of Concessionaire and where applicable, all individuals or other business entities who are party to this Contract, requested by Authority representatives to substantiate the accuracy of reported Gross Receipts and Concessionaire's compliance with other provisions of this Contract. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance contracts, records of refunds or voids, and joint venture or partnership contracts. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting Authority in obtaining from



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governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by Authority, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder Authority in testing the accuracy and completeness of the reported Gross Receipts. All such books, records, and contracts shall be kept for a minimum period of five (5) years after the close of each Contract Year.

Engagements will be conducted at the Airport. However, if agreed to by Authority, the engagement can be conducted at another location, in which event Concessionaire shall reimburse Authority for reasonable transportation, food and lodging costs associated with the engagement, accrued in accordance with Authority Policy and Standard Procedure relating to Travel Expenses. Concessionaire shall allow Authority representatives to photocopy any records the representatives determine to be necessary to conduct and support the engagement. Concessionaire shall provide Authority representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the engagement. Concessionaire shall not charge Authority for reasonable use of Concessionaire's photocopy machine while conducting the engagement, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested within seven (7) days of the request. The Parties recognize that Authority will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree that Authority may assess liquidated damages in the amount of \$100 per day for each record requested that is not received. Such damages may be assessed beginning on the eighth (8<sup>th</sup>) day following the date the request was made. Accrual of such damages will continue until specific performance is accomplished.

If, as a result of any engagement, it is established that Concessionaire owes additional rents, fees or charges to Authority, Concessionaire will pay such additional rents, fees and charges and Authority may assess interest in accordance with in accordance with Section 5.05. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or more for the period under consideration, the entire expense of the engagement may be billed to Concessionaire. Any additional payments due shall be paid, no later than Concessionaire's next payment of the MAPF, by Concessionaire to Authority. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by five percent (5%) or more for the period under consideration, Authority shall be entitled to terminate this Contract for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid. If as a result of any engagement, it is established that Concessionaire has correctly reported or over reported Gross Receipts or has paid fees related to Gross Receipts equivalent to or greater than the sum due, Authority shall refund Concessionaire and the entire expense of the engagement shall be paid by Authority.

Concessionaire will include a provision providing Authority the same rights to initiate and perform audits, inspections or attestation engagements in any subconcessionaire agreement that it enters and cause its subconcessionaires to similarly include the statements in further subconcessionaire agreements.

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## Article VI. PERMITTED USES

### Section 6.01 PERMITTED USE

- A. Uses. The Premises shall be used by Concessionaire only for the purposes of performing the Concession, as further described in this Article VI, and for such other uses as Authority may agree to in writing. The Support Spaces shall be used by Concessionaire only for office and administrative purposes related to the operation of the Concession and/or the storage and preparation of products necessary for the operation of the Concession. No portion of the Premises shall be used to warehouse, stock or store any goods, wares or merchandise not intended to be offered for sale at or from the Premises.
- B. Concession Locations. Exhibit B, Permitted Uses, which is attached hereto and made a part hereof, sets forth the trade name for each Concession Location and a listing, by general category, of goods and services that Concessionaire is allowed to sell from each Concession Location. Such list of the Permitted Uses shall constitute a limitation of the goods and services which may be sold at each Concession Location.
- C. Permitted Products, Services and Prices. No later than 30 days prior to the opening of a Concession Location, Concessionaire must submit to Authority, for its written approval, a listing, substantially consistent with Exhibit B and as requested by Authority, of the goods and services to be sold from the Concession Location. Such listing (hereinafter referred to as the Product Price List) must include the prices to be charged to the public for the goods and services.

Once approved by Authority, the Product Price List for each Concession Location shall remain in effect through the remainder of the Term. Concessionaire shall not add, delete or sell any goods or services not included on the Product Price List, nor change the price of any good or service, without first receiving written approval from Authority, which approval shall not be unreasonably withheld or delayed. Written approval shall serve to modify the Product Price List without need for amendment of this Contract.

Authority may, at its discretion, require Concessionaire to add goods or services that are in public demand to the Product Price List for any Concession Location.

Within ten (10) days of a written request by Authority, Concessionaire shall provide a current Product Price List.

### Section 6.02 NON-EXCLUSIVE RIGHTS

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

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In the event of a dispute between Concessionaire and any other party operating at the Airport as to the rights of the parties under their respective contracts, Authority shall determine the rights of each party and Concessionaire agrees to be bound by Authority decision.

**Section 6.03            RESTRICTIONS**

Nothing in this Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Contract or in areas at the Airport other than the Premises.

Any and all rights and privileges not specifically granted to Concessionaire for its use of and operations at the Airport pursuant to this Contract are hereby reserved for and to Authority.

**Section 6.04            PERMITS AND LICENSES**

Concessionaire will obtain and maintain throughout the Term all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Premises and forwarded to Authority upon issuance and each renewal.

**Article VII.            OPERATIONS AND PERFORMANCE STANDARDS**

**Section 7.01            AUTHORITY RIGHT TO MONITOR PERFORMANCE**

- A. Performance Audits. It is the intention of Authority that Concessionaire's business be conducted in a manner so as to meet the needs of Airport patrons and employees and in a manner that will reflect positively upon the Concessionaire and Authority. The Concessionaire shall equip, organize and efficiently manage the Concession to provide First Class service and products in a clean, attractive and pleasant atmosphere.

Authority in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to Authority to be promptly remedied by Concessionaire. If requested by Concessionaire, Authority shall submit its objections in writing and provide Concessionaire an opportunity to reply to the objections. Such reply will be given consideration by Authority.

Authority reserves the right to conduct periodic performance audits of the Premises to assure that all of the operational, safety and compliance standards of this Contract are consistently performed by Concessionaire. Concessionaire acknowledges that performance audits will be conducted by Authority, or its representative, and hereby agrees to cooperate with all performance audits.

- 1. Performance audits may include minimum objective standards in any or all of the areas of (i) product quality; (ii) customer service; and (iii) cleanliness and maintenance. If

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Concessionaire fails to meet minimum standards in any of these areas, Authority may, at its discretion, assess fines as set forth in Section 7.20

2. In order to assure consistent adherence to performance standards throughout the Term, the Authority will use a rolling 12-month cycle in the recording of incidents of failure to meet standards. Authority reserves the right to assess fines for violations of performance standards as set forth in Section 7.20.
  3. Repeated violations and deficiencies in performance by Concessionaire may be cause, at Authority sole discretion, to terminate this Contract.
- B. Annual Review. No later than 90 days after the end of the first full Contract Year after the Package Completion Date, and the end of each Contract Year thereafter, Concessionaire and Authority will meet to review and evaluate the financial, customer service, and operational performance of each Concession Location. During the course of the review, Authority may determine, in its sole discretion, that the performance of one or more of the Concession Locations is unsatisfactory if one or more of the following occurred during the prior Contract Year:
1. Sales per Enplaned Passenger were less than 80 percent (80%) of the Projected Sales per Enplaned Passenger for the Concession Location, as set forth in Concessionaire's Response to RFP No. 15-534-039, Tampa Airport Concessions Redevelopment Program; Services Concessions;
  2. Sales per Enplaned Passenger were less than 85 percent (85%) of Sales per Enplaned Passenger for the same Concession Location during each of the two (2) preceding Contract Years;
  3. Scores on any secret shopper survey(s) conducted by Authority or its representative were less than 80 percent (80%) of the maximum achievable scores for the survey(s);or
  4. Scores on any operational survey(s) conducted by Authority or its representative were less than 80 percent (80%) of the maximum achievable scores for the survey(s).
- C. Remediation Plan. In the event that Authority determines, based on the performance criteria specified in this Section 7.01, that a Concession Location performed unsatisfactorily during the prior Contract Year, Authority will provide written notice to Concessionaire. Within 30 days of receipt of such written notice, Concessionaire shall prepare and submit to Authority, for its approval, a Remediation Plan, as described below, to improve the performance of the Concession Location.

The Remediation Plan shall include, but not be limited to, proposed remedial activities such as staff training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by Authority,

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Concessionaire agrees to diligently implement the approved Remediation Plan and further agrees to submit to Authority monthly reports on the progress of such implementation. If the approved Remediation Plan includes the replacement of a concept or brand, then Authority and Concessionaire will enter into good faith negotiations concerning a concept or replacement brand. If the concept or brand replacement is mutually agreed to, the reimbursement for Unamortized Investment and the Capital Investment required for the concept or brand substitution will be a component of the good faith negotiations.

In the event Authority determines, after six (6) months of implementation of a Remediation Plan, the subject Concession Location is still performing in an unsatisfactory manner, Authority reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan. Within 90 days of receipt of written notice from Authority requiring a replacement, Concessionaire shall submit to Authority a proposal for a brand or concept replacement plan. Such replacement plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand or concept. Authority, in its sole discretion, reserves the right to approve or deny the replacement plan and require Concessionaire to submit another replacement plan.

## **Section 7.02 OPERATING PROCEDURES AND STANDARDS**

- A. Authority Requirements. The occupancy and use by Concessionaire of the Premises and the rights herein conferred upon Concessionaire shall be subject to Authority Rules and Regulations, and Operating Directives as are now or may hereafter be prescribed by Authority through the lawful exercise of its powers. Concessionaire agrees to operate the Concession in accordance with the Concessions Handbook.
- B. Health and Safety Standards. Concessionaire shall comply with all health and sanitary regulations adopted by Authority, City of Tampa, Hillsborough County, State of Florida and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide Authority with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes and permits in the conduct of its operations under this Contract including, but not limited to, TSA regulations regarding products or procedures.
- D. Concessionaire's Standards. Concessionaire shall submit to Authority a copy of its standards, plans and manuals for customer service and operations, at least 30 days prior to Commencement Date, and as updated during the Term. Concessionaire shall ensure continuous adherence to Concessionaire's own standards in addition to other standards as set forth herein.

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### **Section 7.03           QUALITY OF PRODUCTS AND SERVICES**

Concessionaire shall ensure that all customers are provided First Class products and services, and Concessionaire shall keep in stock and have ready for sale at all times of operation, a sufficient supply and variety of products and goods offered for sale at each Concession Location, consistent with the Product Price List, to meet the demand of customers at the Airport.

If Authority identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by Authority and shall correct, or cause to be corrected, such problem or problems within seven(7) days, unless Authority authorizes in writing a longer period. If Concessionaire fails to correct within seven (7) days after written notice is given by Authority, Authority may assess fines as described in Section 7.20.

Concessionaire shall develop and implement creative merchandising techniques to optimize customer satisfaction and Gross Receipts, including without limitation, retail merchandise displays; promotional displays; attractive and durable packaging; and menu boards. Prices for all goods, products, and services shall be displayed and visible to all customers. All retail merchandise and other items sold or kept for sale shall be of high quality and wholesome, and must conform to the fullest extent with all applicable food and drug laws, ordinances and regulations, as well as Authority Rules and Regulations and Operating Directives. Concessionaire's printed signage and price lists shall include the appropriate use of descriptive terminology that accurately and truthfully describes the services or products being offered.

Authority reserves the right to approve all product displays, including, but not limited to, the type, construction, and placement of display fixtures. Concessionaire hereby affirms that Authority, in its sole discretion, has the absolute right to require that Concessionaire discontinue the sale of any product Authority deems unsatisfactory, distasteful, or inappropriate for any reason and to require Concessionaire to modify product displays (including, but not limited to, display fixtures) for any reason. If Concessionaire fails to comply with any such Authority request within one (1) day after written notice from Authority, Authority may assess fines as described in Section 7.20.

All franchise standards applicable to a Concession Location shall be met or exceeded. Copies of the franchise standards and performance audit forms shall be sent to Authority prior to the first day of business at such Concession Location. Concessionaire shall submit to Authority copies of all inspections conducted by the franchisor or mystery shopper service hired by the franchisor within ten (10) days of receipt by Concessionaire.

### **Section 7.04           CLEANING AND ROUTINE MAINTENANCE**

- A. General Obligations. Concessionaire shall ensure that the Concession is maintained and operated in a First Class manner and that the Premises are kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to Authority. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises and its operations at the Airport.

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- B. Janitorial Service. Concessionaire shall, at its own cost and expense, provide all janitorial services for the Premises in accordance with the Concessions Handbook. Concessionaire shall ensure that the Premises and the Common Areas adjacent to the Premises are kept clean and free from all rubbish and refuse.
- C. Pest Control. Concessionaire, at its cost and expense, is responsible for pest control within the Premises. Concessionaire will contract with a professional pest control service to provide pest control services on a regular basis and at any other times as needed. Concessionaire will coordinate its pest control service with third parties as directed by Authority. Upon request, Concessionaire must furnish Authority a copy of its pest control contract and monthly service reports.

Authority, in its sole discretion, may elect to provide or contract for pest control services on Concessionaire's behalf. If Authority elects to provide or contract for pest control services on Concessionaire's behalf, Concessionaire must pay its share of the cost of such services, in an amount determined by Authority. In such cases, Concessionaire must cooperate with the pest control contractor chosen by Authority.

- D. Maintenance of Grease Removal Systems. If installed in connection with the Premises and used only by Concessionaire, Concessionaire shall, at its own expense, regularly, but not less than four times per year, check and clean its grease removal systems, whether located within the Premises or elsewhere in the Airport.
- E. Preventive and Routine Cleaning and Maintenance Program. No less than 30 days prior to the opening of any portion of the Premises, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises. The provisions of the program shall be subject to the initial written approval of and periodic review by Authority. Upon request by Authority, Concessionaire shall provide Authority a written schedule of Concessionaire's cleaning and maintenance program.
- F. Routine Refurbishment. On or about the commencement of each Contract Year, representatives of Authority and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in First Class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and Authority cannot jointly agree upon the type and extent of refurbishment, Authority may determine, in its sole discretion, the refurbishment required. For purposes of this Section 7.04, refurbishment shall mean the routine repainting or redecoration of public areas within the Premises, including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures or finishes.
- G. Maintenance Personnel and Program. Concessionaire agrees to employ sufficient personnel and provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures and equipment clean, neat, safe, sanitary and in good working order and condition at all times pursuant to the maintenance requirements of this Contract.

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H. Authority Sole Judge of Maintenance. Authority shall be the sole judge of the quality of Concessionaire's maintenance of the Premises. Authority or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to Authority is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by Authority shall be conclusive evidence of satisfactory maintenance unless Authority determines that there is a present and substantial danger or safety hazard within the Premises. If Authority determines that maintenance is not satisfactory, Authority shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to the satisfaction of Authority, within 15 days after receipt of written notice or Authority or its representative shall have the right to enter upon the Premises and perform the maintenance. Concessionaire agrees to promptly reimburse Authority for the cost thereof, plus an administrative fee of 15 percent (15%) of the maintenance costs.

#### **Section 7.05 TRASH, WASTE AND REFUSE**

Concessionaire shall, at its own cost and expense, provide for sanitary removal and disposal of all trash, waste and other refuse caused as a result of the operation of the Concession. Piling of boxes, cartons, barrels or other similar items in, or within view of, a Common Area shall not be permitted. Concessionaire shall use designated locations, containers and transport routes for trash, waste and refuse removal and disposal as set forth in the Concessions Handbook.

In transporting trash, waste and refuse associated with operating the Concession to and from the Premises, where not otherwise restricted or prohibited by this Contract, Concessionaire shall use only carts, vehicles, or conveyances that are sealed, leak proof and equipped with wheels suitable for operating without damaging floor coverings and which are approved by Authority. Concessionaire shall not use the Airport shuttle system for the purpose of transporting trash, waste or other refuse. Authority reserves the right to require changes in Concessionaire's transporting of trash, waste and other refuse, including permitted hours for transport, equipment used for each activity and routes of transport.

The plumbing facilities within the Premises and elsewhere in the Airport shall not be used for any purpose other than for the purposes for which they were constructed, and no foreign substance of any kind shall be thrown therein. The expense to repair any breakage, stoppage, or damage resulting from a violation of this paragraph, wherever the breakage, stoppage or damage occurs, shall be charged by Authority to Concessionaire, regardless of the cause.

If at any time during the Term, Authority establishes an Airport-wide recycling program, Concessionaire agrees to participate in any such program at its own cost.

Authority reserves the right, if deemed to be in its best interests, to provide trash, waste and other refuse removal, disposal and recycling services. In the event Authority elects to provide these services on behalf of Concessionaire, Concessionaire shall pay its share of the cost of such trash, waste and other refuse removal, disposal and recycling services in an amount determined by Authority.



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**Section 7.06 COMMON MAINTENANCE**

Grease Traps and Interceptors. Authority will clean, maintain, and repair, for the benefit of Concessionaire, all grease traps and grease interceptors located along common sewer lines. Concessionaire agrees to pay to Authority Concessionaire's share of the costs of such cleaning, maintenance, and repair, in an amount determined by Authority.

**Section 7.07 PRICING**

A. Pricing Standard. Concessionaire acknowledges the Authority objective to provide Airport patrons and employees high quality products and services at reasonable prices. Accordingly, Concessionaire agrees that all products and services sold by Concessionaire shall be comparable in price to similar or equivalent products and services sold in comparable off-Airport locations within the Tampa Bay Statistical Area as follows (such pricing hereinafter referred to as Pricing Standard):

1. For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price at the Airport shall not exceed the pre-printed price;
2. For nationally and locally branded Concession Locations that are also represented off-Airport in the Tampa Bay Statistical Area, the selling price for products and services at the Airport shall not exceed the selling price for the same products and services at the closest off-Airport establishment of the same brand name by more than ten percent (10%); and
3. For all non-branded, proprietary, or branded Concession Locations not represented off-Airport in the Tampa Bay Statistical Area, the selling price for products and services at the Airport shall not exceed the average selling price for similar or equivalent products (of like size and quality) and services at three Price Benchmark Establishments, as described below, by more than ten percent (10%).

B. Price Benchmark Establishments. No less than 45 days prior to the opening of a Concession Location, Concessionaire must submit to Authority for its approval the names and addresses of at least three businesses for each product, service, or substantially similar menu item within the Tampa Bay Statistical Area that Concessionaire proposes to use to determine compliance with the Pricing Standard stated above. The businesses must be comparable in concept, size, ambiance, service style and quality to the Concession Location and, to the extent practical, be the same businesses as identified in Concessionaire's Response. Venues specifically excluded from consideration as comparable businesses include entertainment or sports venues, other transportation terminals, amusement parks, zoos, resorts and hotels.

Once approved by Authority, the businesses (hereinafter referred to as the Price Benchmark Establishments) will be used as the basis for price comparisons during the remainder of the Term. In the event any of the Price Benchmark Establishments ceases operations or, in the sole discretion of Authority, alters its concept, branding, service style, merchandise selection or menu so as to no longer be a valid comparison, Concessionaire must propose a substitute Price

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Benchmark Establishment for approval by Authority.

If Price Benchmark Establishments cannot be determined by Concessionaire as described above, then Authority will identify local area businesses similar to Concessionaire's business at the Airport to be deemed as Price Benchmark Establishments.

- C. Price Surveys. No later than 30 days prior to the opening of a Concession Location and prior to the beginning of each Contract Year, Concessionaire shall, at its own expense, prepare a product and price survey of the Price Benchmark Establishments that demonstrates, to the satisfaction of Authority, Concessionaire's compliance with the Pricing Standard.
- D. Price Changes. Throughout the Term, Concessionaire may request changes to pricing once every four (4) months, or more frequently as agreed to by Authority. Requested price changes must be submitted in writing and include such information and data as reasonably requested by Authority including, but not limited to, the results of price surveys or other economic justification supporting the requested price changes(s). Authority shall, in its sole discretion, determine which, if any, price changes are consistent with the Pricing Standard and shall notify Concessionaire in writing of its approval or rejection of each requested price change.

No later than ten (10) days after any adjustment to prices, the Parties agree to modify the Product Price List to incorporate said price adjustments. Modification will be confirmed by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

- E. Price Conformance. At any time during the Term, Authority may survey or cause to be surveyed, prices being charged for goods or services offered by Concessionaire. Authority shall have the right to monitor and test all of Concessionaire's goods and services prices by a shopping service or Authority personnel. If Authority concludes, based on the results of the survey, that any prices being charged by Concessionaire do not comply with the Pricing Standard, Authority will require Concessionaire to adjust prices to the amounts permitted herein.

Concessionaire will, within three (3) days of written notice from Authority, adjust any prices that Authority determines, in its sole discretion, to be inconsistent with the Pricing Standard. Failure to rectify any pricing discrepancies within the aforementioned three (3) days shall constitute a material breach by Concessionaire of this Agreement and, in addition to the assessment of fines as set forth herein and all other remedies available to Authority, Authority may, in its sole , terminate this Contract.

## **Section 7.08            HOURS OF OPERATION**

- A. Store Hours. Concessionaire shall ensure that each Concession Location is open for business without interruption during the specified hours of operation (hereinafter referred to as Store Hours) and is providing all goods and services as required by this Contract. Unless otherwise approved in writing by Authority, the Parties agree to the Store Hours as listed in Exhibit B.

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Authority may, in its sole discretion, change Store Hours during the Term. Concessionaire hereby acknowledges and agrees to operate the Concession Locations as required which, if requested by Authority, may be 24 hours per day seven (7) days per week, including all holidays. Concessionaire may request changes to Store Hours. The Authority may, in its sole discretion, approve such requested changes.

No later than ten (10) days after a change to Store Hours for any Concession Location, the Parties agree to modify Exhibit B to incorporate the change in Store Hours, which will be confirmed by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

- B. Extension of Store Hours. Concessionaire agrees to remain open beyond Store Hours for certain events including, but not limited to, the following:
1. In the event of a delayed flight on the Airside Terminal in which any Concession Location(s) is located, Concessionaire shall remain continuously open and provide all goods and services as required by the Contract beyond the then current Store Hours for the Concession Location(s) in the affected Airside Terminal and until the delayed flight departs the gate or Authority otherwise instructs.
  2. In the event of an emergency, as determined by Authority, Concessionaire shall remain continuously open and provide all goods and services as required by the Contract for the Concession Locations beyond the then current Store Hours as instructed by Authority.
- C. Failure to Open. Failing to open for business within 30 minutes of the required opening time, or closing more than 30 minutes early, shall constitute a violation of this Section for which Authority may assess fines as further described in Section 7.20.
- D. Posted Hours. The Concessionaire will prominently post Store Hours for a Concession Location at the Concession Location and in a format approved by Authority.

## **Section 7.09 DELIVERY OF GOODS**

- A. Central Receiving and Distribution. Authority will implement a Central Receiving and Distribution Center (hereinafter referred to as CRDC) and may contract, at its discretion, with a third party to operate the CRDC and provide distribution and delivery services to the Airport Terminals (hereinafter referred to as Logistics Manager). Concessionaire agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by Authority. Concessionaire agrees to pay Concessionaire's share of the costs of the operation of the CRDC and said distribution and delivery services, as determined reasonable by Authority.

Concessionaire acknowledges that Authority will not be responsible for and will have no liability related to the operation of (or the failure to operate) the CRDC nor related distribution and

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delivery services, including lost profits, consequential damages or any other losses or damages whatsoever.

Concessionaire acknowledges that the Logistics Manager may establish rules and procedures regarding the operations of the CRDC and the distribution and delivery services to the Airport Terminals including, but not limited to, operating hours of CRDC, scheduling and acceptance of Concessionaire's deliveries to the CRDC, scheduling and place of deliveries to the Airport Terminals, and transportation of goods and related equipment such as pallets, storage bins, and racks among the Airside Terminals, Main Terminal, and CRDC. CRDC rules and procedures will be stated in the Concessions Handbook and may be modified from time to time in accordance with this Contract. Concessionaire agrees to conform to said CRDC rules and procedures.

- B. Transporting Goods. The Logistics Manager will make deliveries to Concession Locations, Concessionaire's Support Spaces, or such other locations in the Airport Terminals as stated in the Concessions Handbook. Concessionaire shall transport inventory among Concession Locations and Storage Spaces in the same Airport Terminal building at such times and by such routes stated in the Concessions Handbook. Concessionaire shall make every effort to avoid using the Common Areas for large quantity deliveries during peak periods. Concessionaire shall be responsible for the return of all pallets, storage containers and other equipment belonging to its suppliers to locations designated for return by the Logistics Manager. Concessionaire shall use only carts or conveyances for transporting goods that are sealed, leak-proof, and equipped with pneumatic wheels suitable for operating on carpet or other flooring without damage thereto, and which are approved by Authority.

#### **Section 7.10 PERSONNEL**

- A. Staffing. Concessionaire shall hire, train, supervise, and deploy a sufficient number of properly trained representatives, agents, and employees (collectively hereinafter referred to as Personnel) to service customers in a timely and efficient manner and to properly meet Concessionaire's obligations herein.

Concessionaire shall closely monitor Personnel to ensure First Class service to customers in compliance with this Contract. The satisfactory performance of the obligation hereunder shall be determined in the sole discretion of Authority. Concessionaire shall take all proper steps to discipline Personnel who participate in acts of misconduct on or about the Premises.

- B. General Manager. Concessionaire shall appoint an active, qualified, competent and experienced employee to oversee and manage the performance of the Concession and represent and act on behalf of Concessionaire (hereinafter referred to as General Manager). The General Manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the Concession including, but not limited to, authority to control the conduct and demeanor of Concessionaire's Personnel. The General Manager shall represent the Concessionaire in dealings with Authority and shall coordinate all concession activities with Authority. The General Manager shall be assigned to an office at or near the Airport and shall

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be available during Authority regular business hours. The General Manager shall designate a qualified, competent, and experienced subordinate to be in charge and available during his/her absence during Concessionaire's regular operating hours.

- C. Customer Service Training. If Authority establishes a customer service training program for the employees of all concessionaires at the Airport, Authority, after first giving reasonable notice to Concessionaire, will require all of Concessionaire's employees to complete the training program.
1. Concessionaire's employees as of the date of implementation of the Authority customer service training program must complete the training within six (6) months of the date of notice from the Authority.
  2. Concessionaire's employees hired after the date of implementation of the Authority customer service training program must complete the training within one (1) month of beginning employment.

If established, the Authority customer service training program will be limited to no more than two (2) full working days per employee per year, will be conducted at the Airport, and will be evidenced by a certificate issued by the Authority to each employee upon successful completion of any such training program. The Authority customer service training program will be offered at no cost to Concessionaire; however Concessionaire will be responsible for employees' wages, benefits and other employment costs incurred as a result of the training.

- D. Additional Personnel Requirements. In addition to the Personnel requirements set forth herein, Concessionaire shall ensure that all Personnel engaged in the performance of the Concession shall conform to the applicable rules and procedures stated in the Concessions Handbook and other Authority Rules and Regulations and Operating Directives.
- E. Authority Right to Object. Authority shall have the right to object to the demeanor, conduct, and appearance of any Personnel of Concessionaire or any of its invitees or those doing business with it. Immediately upon notice of objection by Authority, Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, Authority shall present its objections in writing and provide Concessionaire the opportunity to reply to the objections and such reply will be given consideration by Authority.

## **Section 7.11           BADGING AND SECURITY REQUIREMENTS**

All of Concessionaire's Personnel who work at the Airport must apply for and be issued a proper security identification badge prior to beginning work at the Airport. Concessionaire shall be responsible for ensuring Personnel, vendor and contractor compliance with all security rules, regulations and procedures including, but not limited to, those issued by the FAA, TSA, and Authority. The rules, regulations and procedures of the FAA, TSA and Authority regarding security matters may be modified during the Term and Concessionaire shall be required to comply with all modifications. Concessionaire shall pay all costs associated with obtaining the required security identification badge and security

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clearances for its Personnel, including, but not limited to, the costs of training and badging as established by Authority.

Authority will fine Concessionaire for each security identification badge that is lost, stolen, unaccounted for or not returned to Authority at the time of security identification badge expiration, employee termination, termination of this Contract, or upon written request by Authority. This fine will be due within 15 days from the date of invoice. The fine is subject to change without notice, and Concessionaire will be responsible for paying any increase in the fine.

If any of Concessionaire's Personnel is terminated or leaves Concessionaire's employment, Authority must be notified immediately, and the security identification badge must be returned to Authority promptly.

Concessionaire's Personnel who are issued security identification badges shall only utilize such badges and access rights in connection with the operation of Concessionaire's business as outlined herein. Concessionaire's Personnel shall be informed by Concessionaire, in writing of this requirement and a violation of such shall be a basis for the termination of a person's employment if that person violates such restrictions.

**Section 7.12 EMPLOYEE PARKING**

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

**Section 7.13 PAGING, AUDIO, VIDEO SYSTEMS AND FREQUENCY PROTECTION**

If Concessionaire installs, in accordance with the Tenant Work Permit Handbook and the Concessions Design Criteria Manual, and with Authority approval, any type of radio transceiver or other wireless communications equipment, Concessionaire will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating in the vicinity of Concessionaire's equipment. If frequency interference occurs as a result of Concessionaire's installation, Authority reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense.

**Section 7.14 POINT OF SALE TERMINALS**

Concessionaire must install electronic point-of-sale terminal(s) (hereinafter referred to as POS Terminals) to accurately record all transactions occurring in each Concession Location for accounting, reporting and auditing purposes as set forth herein.

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All POS Terminals used at the Airport must have, at a minimum, the following features:

1. Multiple segregated category addresses to allow for accurate and complete reporting of Gross Receipts by various merchandise and services categories;
2. The capability of recording transactions by sequential control number to an audit tape or computer file;
3. The capability of recording any discounts that are applied to a transaction;
4. The capability of printing a transaction history to tape or computer file by product category, time of day, day, month, and year by product category;
5. The capability of printing customer receipts showing the transaction amount, the amount tendered, the amount of change due to the customer, and the time and date of the transaction. Additionally, the customer receipt must show Concessionaire's contact information including name, phone number and email address for any customer concerns, complaints or questions;
6. A fee display of sufficient size and legibility that is placed in a location visible to the customer during a transaction; and
7. A secure transaction audit tape or ASCII transaction file on a removable storage device.

Authority reserves the right to implement a universal point-of-sale system or other technology to work in tandem with Concessionaire's POS Terminals. Concessionaire agrees to fully cooperate in the implementation of such a universal point-of-sale system or other technology. If Authority instructs Concessionaire to install any technology, equipment, software and systems as part of such implementation, Authority shall not be obligated to furnish Concessionaire with the technology, equipment, software or systems necessary to do so.

#### **Section 7.15 CASH HANDLING REQUIREMENTS**

Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to Authority. Authority may at any time during the Term request a copy of these procedures. Authority shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures.

#### **Section 7.16 ADVERTISED SALES OR PROMOTIONS**

Concessionaire is required to participate in all advertised sales or promotions, by whatever media outlet, conducted by its parent corporation, its franchisor, or its selected operating brands. Concessionaire is not permitted to participate in or post any type of sign related to liquidations, going out of business, moving sales or closeouts of products or brands.

Concessionaire must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Airport as a participating location of the promotion or sales. In the event that participation in a sale or promotion harms Concessionaire, Concessionaire may request, in writing to the Authority in advance of the sale or promotion, to be exempted from participation.

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**Section 7.17 COMPLAINTS**

All customer complaints referred to Concessionaire by Authority must be responded to by Concessionaire within 48 hours of notice. A written copy of Concessionaire's Response shall be delivered to Authority within the 48-hour period.

**Section 7.18 CONCESSION PROMOTIONS PROGRAM**

Authority may, at its discretion, operate a Concession Promotions Program (hereinafter referred to as Promotions Program) to promote the concession businesses at the Airport. The Promotions Program may include, but is not limited to, activities with direct application to promoting and monitoring the concessions at the Airport such as food service and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program.

In addition to other rents, fees, and charges due Authority under this Contract, Concessionaire agrees to pay to Authority, within 15 days of the last day of each month during the Term, a Promotions Fee equal to the Promotions Fee Rate as established herein multiplied by Concessionaire's Gross Receipts for the month. Authority may determine, in its sole discretion, the Promotions Fee Rate for each Authority Fiscal Year and will notify Concessionaire of such in writing no later than 60 days prior to the beginning of the Authority Fiscal Year; provided, however, the Promotions Fee Rate may not exceed one-half of one percent (0.5%) of Concessionaire's Gross Receipts. Authority will administer the Promotions Program and may, in its sole discretion, contribute to the Promotions Program. Promotion Fees collected may be expended as determined by Authority in its sole discretion. Concessionaire has no ownership or beneficial interest whatsoever in the Promotions Program or any unspent moneys collected under this Section.

Authority may prohibit Concessionaire from participating in any promotional activities including, but not limited to Grand Opening events, if Concessionaire is in breach of this Contract.

**Section 7.19 PROHIBITED ACTS**

Unless approved in writing in advance by Authority, which approval is in the Authority sole discretion, Concessionaire shall not install or permit to be installed coin-operated vending machines on the Premises. Authority reserves the right to install and maintain, through independent contractors, coin-operated vending machines at the Airport including in Support Spaces.

Concessionaire will not place excessive loads on the walls, ceilings, and floor or pavement areas of the Airport and will repair any area damaged by excessive loading to the satisfaction of Authority.

Unless approved in writing in advance by Authority, which approval is in Authority sole discretion, Concessionaire will not permit the active display or operation on the Premises of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by Authority, which approval is in Authority sole discretion,



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Concessionaire will not keep or display any merchandise on or within, or otherwise obstruct, any part of the Airport Terminals outside of the Premises. Concessionaire shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Premises free and clear of all obstructions.

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical or other systems installed or located from time to time at Airport.

Concessionaire will not engage in any activity prohibited by Authority Rules and Regulations and Operating Directives as may be modified during the Term. In the event Concessionaire fails to adhere to Authority Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this Section, Authority may assess fines as set forth in Section 7.20 until such prohibited act is ended. Moreover, if the prohibited act is not corrected as directed by Authority, Authority or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse Authority for any related costs, plus an administrative fee equal to 15 percent (15%) of the corrective action costs.

**Section 7.20 FAILURE TO COMPLY WITH PERFORMANCE STANDARDS**

- A. Violations. Concessionaire acknowledges the Authority objective to provide the public and air traveler with the level and quality of service as described herein. Accordingly, Authority has established a series of fines, as set forth in the table below, that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Contract, the Concessions Handbook, and/or Authority Rules and Regulations or Operating Directives. Concessionaire and Authority agree that the fines set forth herein are reasonable, and Concessionaire further agrees to pay to Authority such fines in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation and upon written demand by Authority. The Authority will, in its sole discretion, determine the classification of each fine as per day or per occurrence. Concessionaire further acknowledges that the fines are not exclusive remedies and Authority may pursue other remedies as allowed for in this Contract and at law, in Authority sole discretion. Authority waiver of any fine provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation.
  
- B. Multiple Violations. Except for violations of requirements regarding health and safety and delivery and vendor access infraction, fines for which shall accrue immediately and without notice upon violation, all other fines shall be assessed as follows:
  - 1. For the first and second violation of a requirement during any 12-month rolling year, the Authority will provide notice to Concessionaire to correct the violation within the time specified in the notice.
  - 2. For the third and subsequent violations of the same requirement during any 12-month rolling year commencing upon the first notice of violation, the fine shall be immediately

assessed with no grace period.

- Further, after two (2) violations of the same requirement within any 12-month rolling year, Authority reserves the right, in its sole discretion, to deem the repeated violations a breach of Contract and to seek any other remedies available to it under this Contract including, but not limited to, termination.

**Performance Standard Fines**

<b>Infraction</b>	<b>Fee Schedule</b>
<ol style="list-style-type: none"><li>Operational Deficiencies</li><li>Pricing Policy Infraction</li><li>Late Pricing Survey</li><li>Late Reporting</li><li>Other Infractions</li></ol>	\$100 per day until corrected to Authority satisfaction
<ol style="list-style-type: none"><li>Security Infractions</li><li>Health Code Violations</li><li>Other Infractions</li></ol>	\$500 per occurrence

**Article VIII. Non-Discrimination / Affirmative Action**

Concessionaire assures that, in the performance of its obligations hereunder, it will fully comply with the requirements of 14 CFR Part 152, subpart E (Nondiscrimination in Airport Aid Program), as amended during the Term, to the extent applicable to Concessionaire, to ensure, *inter alia*, that no person will be excluded from participating in any employment, contracting or leasing activities covered by these regulations on the grounds of race, creed, color, national origin, or sex. Concessionaire, if required by these regulations, will provide assurances to Authority that Concessionaire will undertake an affirmative action program or steps for equal employment opportunity and will require the same of its subconcessionaires.

Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, (1) that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport 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 will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (3) that Concessionaire will fully comply with the requirements of 49 CFR Part 21 (Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), as amended.

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In the event of breach of any of the above non-discrimination covenants pursuant to 49 CFR Part 21, as amended, Authority will have the right to terminate the Contract and to re-enter the Premises as if the Contract had never been made or issued. The provision will not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

## **Article IX. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE**

### **Section 9.01 AUTHORITY POLICY**

Authority is committed to a policy and program for the participation of Airport Concession Disadvantaged Business Enterprises (herein referred to as ACDBEs) in concession-related contracting opportunities in accordance with 49 CFR Part 23, as set forth in the Authority Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program, incorporated herein by reference (hereinafter referred to as ACDBE Program). In advancing the Authority ACDBE Program, Concessionaire agrees to ensure that ACDBEs, as defined in 49 CFR Part 23 and the Authority ACDBE Program, have a fair opportunity to participate in the performance of this Contract. Concessionaire will take all necessary and reasonable steps in accordance therewith to ensure that ACDBEs are encouraged to compete for and perform subcontracts under this Contract.

### **Section 9.02 NON-DISCRIMINATION**

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Concessionaire will carry out applicable requirements of 49 CFR Part 23 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Authority deems appropriate.
- B. This Contract is subject to the requirements of the U. S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- C. Concessionaire agrees to include the statements in paragraphs (A) and (B) above in any subsequent concessions agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

### **Section 9.03 ACDBE PARTICIPATION AND COMPLIANCE**

- A. ACDBE Goal. Concessionaire agrees that it will provide for a level of ACDBE participation in this Contract equal to or greater than twenty-five percent (25 %) of the total annual Gross Receipts, or clearly demonstrate in a manner acceptable to Authority its good faith efforts to do so. Concessionaire will contract with those ACDBEs as identified in Concessionaire's plan as stated in the ACDBE Assurance and Participation Form and Letter of Intent for each ACDBE presented with Concessionaire's Response and approved by the Authority, or such other ACDBEs certified with the

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Florida Unified Certification Program as may be approved by the Authority. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable through direct ownership arrangements with ACDBEs.

Concessionaire shall not take any action during the term of this Contract that may have a materially negative impact upon the Concessionaire's ability to meet its stated ACDBE goal.

- B. ACDBE Termination and Substitution. Concessionaire will not terminate an ACDBE for convenience without Authority prior written consent. If an ACDBE is terminated by Concessionaire with Authority consent or, if an ACDBE fails to complete its work on the Contract for any reason, Concessionaire must make good faith efforts, in accordance with the requirements of 49CFRPart23.25(e) (1) (iii) and (iv), to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation.
- C. Reporting Requirements. No later than fifteen (15) days after the end of each calendar month during the Term, Concessionaire will submit to Authority, on the Authority monthly ACDBE Utilization Report form, a report of Concessionaire's total Gross Receipts during the month and the total dollar value of Gross Receipts earned by an ACDBE under this Contract or the total dollar value of goods and services purchased or leased from each ACDBE during the month, in each case calculated in accordance with the requirements of 49CFRPart23. If any reported ACDBE participation is from the purchase and/or lease of goods and services, Concessionaire must submit to Authority, on the Authority monthly ACDBE Utilization Report form, a report of the total dollar value of goods and services procured by the Concessionaire from ACDBE and non-ACDBE (non-minority/woman-owned) firms.
- D. Monitoring. Authority will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Authority will have access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Contract. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Contract to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Contract, Authority reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.
- E. Prompt Payment. Concessionaire agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Authority. This clause applies to both ACDBE and non-ACDBE subcontractors.

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- F. Other Requirements. Concessionaire agrees to comply with other provisions of the ACDBE Program. ACDBE participation through joint venture is subject to 49CFR Part 23 and the Airport Concessions Disadvantaged Business Enterprise Joint Venture Guidance, dated July 2008 (as may be revised)
- G. Non-Compliance. In the event of Concessionaire's non-compliance with the ACDBE Program or failure to meet the ACDBE goal set forth in Section 9.03(A), or to demonstrate a good faith effort to do so, Authority may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Contract in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with Authority in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by Authority, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.

## **Article X. CONSTRUCTION AND CAPITAL INVESTMENT**

### **Section 10.01 CONSTRUCTION BY CONCESSIONAIRE**

Concessionaire shall not make any improvements or modifications, do any construction work on the Premises, or alter, modify, or make additions, improvements, replacements or repairs, except emergency repairs, to any structure now existing or built without prior written approval of Authority. Concessionaire shall not install any fixtures, other than Trade Fixtures, without the prior written approval of Authority. In the event that any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without Authority approval, or done in a manner other than as approved, Authority may, at its discretion, (i) terminate this Contract in accordance with the provisions herein; or (ii) require Concessionaire to remove the same; or (iii) require Concessionaire to change the same to the satisfaction of Authority. In case of any failure on the part of Concessionaire to comply, Authority may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to Authority plus 15% of the costs for administration.

### **Section 10.02 AUTHORITY STANDARDS**

In its design and construction work on the Premises, Concessionaire will fully comply with the Concessions Design Criteria Manual and Tenant Work Permit Handbook. Authority reserves the right to amend the Concessions Design Criteria Manual and Tenant Work Permit Handbook during the Term. Concessionaire agrees to comply with the Concessions Design Criteria Manual and Tenant Work Permit Handbook in effect as of the date of any construction it undertakes.

### **Section 10.03 INITIAL CAPITAL INVESTMENT**

As a valuable consideration for Authority entering into this Contract, but not as a payment of rent or a form of consideration for the right to occupy space at the Airport, but rather to relieve the Authority from making expenditures for Premises occupied by Concessionaire for the Term of this Contract, Concessionaire's Capital Investment expended in the initial construction, furnishing and equipping of

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the Premises shall not be less than the Minimum Initial Capital Investment set forth in the Summary of Contract Provisions. If the actual initial Capital Investment, as certified by the Concessionaire, is less than the Minimum Initial Capital Investment, Concessionaire agrees to pay to Authority, within thirty (30) days of such determination, the difference between the actual initial Capital Investment and the Minimum Initial Capital Investment. Any amounts paid to Authority as a result of this provision shall not be deemed a Capital Investment for any purpose under this Contract nor shall it be deemed payment of any rent or other fees due under this Contract.

**Section 10.04 DEVELOPMENT SCHEDULE**

No later than 30 days after the Effective Date, or at such later date as Authority may agree, Concessionaire and Authority will meet for the Pre-Design Meeting described in the Concessions Design Criteria Manual. Within seven (7) days after the Pre-Design Meeting, Concessionaire must submit to Authority, for its approval, a Development Schedule that sets forth for each of the Concession Locations the anticipated dates of design submittals and reviews, the anticipated Shell Space Turnover Date, and the anticipated date of Substantial Completion of the initial Approved Project. Upon approval by Authority, the Development Schedule will be attached hereto as Exhibit D, Development Schedule, and will be confirmed by letter executed by the Director of Concessions, without need for formal amendment to the Contract.

**Section 10.05 SUBMITTAL AND APPROVAL OF PLANS**

- A. Submittal of Plans. Prior to Concessionaire's commencement of any construction activities on the Premises at any time during the Term, Concessionaire shall submit plans and specifications that conform to all of the requirements of the Concessions Design Criteria Manual to Authority for review and approval. No construction work shall commence until Authority has approved the plans and specifications and has issued a Notice to Proceed.

Concessionaire shall submit plans and specifications, in the form and number stated in the Concessions Design Criteria Manual, for each of the Concession Locations and Support Spaces in accordance with the Development Schedule. Authority will review and respond to submittals of plans and specifications within ten (10) days or provide notice to Concessionaire that the review time has been extended. In the event of disapproval by Authority of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by Authority.

- B. Disclaimer of Compliance with Laws or Codes. The approval by Authority of any plans and specifications refers to the conformity of such plans and specifications to the Concessions Design Criteria Manual and other Authority standards. Approval of any plans and specifications by Authority does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits and responsibility therefore at all times remains with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Required approval of Authority will extend to and include architectural and aesthetic matters. Authority reserves the right to reject

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any designs submitted by Concessionaire and to require Concessionaire, at Concessionaire's expense, to make modifications and revisions and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by Authority.

- D. Design and Permitting. Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises, and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to Authority, Authority shall cooperate in all reasonable respects with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities in order for Concessionaire to apply for and obtain such permits and approvals.

### **Section 10.06 CONSTRUCTION**

Concessionaire shall, at its own cost and expense, commence construction of an Approved Project within ten (10) days of the later to occur of: (i) the Shell Space Turnover Date stated in the Notice to Proceed for such Approved Project; or (ii) receipt of Building or Demolition Permit. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of First Class quality and in accordance with the Approved Project and the Development Schedule. All construction shall be performed in accordance with the requirements of this Contract, the Concessions Design Criteria Manual, the Tenant Work Permit Handbook, and applicable laws, regulations, ordinances, codes and permits. Authority and its designees shall have the right from time to time to inspect each Approved Project.

Concessionaire must complete an Approved Project and open for business no later than the Required Completion Date set forth in the Notice to Proceed for the Approved Project, subject to any extensions that may be approved by Authority. Concessionaire acknowledges that if it fails to open for business by the Required Completion Date, the delay may cause Authority to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to either complete the Approved Project or open the Concession Location for business by the Required Completion Date, the following will apply:

1. Concessionaire shall pay liquidated damages to Authority at the rate of \$1,000 per day for each day from the Required Completion Date until the date on which the Concession Location actually opens to the public for business; and
2. If the Concession Location is not open for business within 30 days after the Required Completion Date, the failure is an Event of Default and Authority has the right to exercise any and all remedies herein, at law or in equity, including but not limited to, the option to terminate this Contract or to remove the applicable Concession Location from the Premises.

Notwithstanding the foregoing, the Parties agree that any delay in construction of any improvements due to *force majeure* or acts of Authority or Authority contractors shall extend the Required Completion Date for an Approved Project. Authority shall have no liability to Concessionaire for

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compensation or damages for any such delay.

**Section 10.07      COMPLETION OF CONSTRUCTION**

For each Approved Project, Concessionaire shall conform to Project Closeout Activities set forth in the Concessions Design Criteria Manual. Concessionaire further agrees that it shall deliver to Authority within 60 days of the Package Completion Date the following:

1. "As Built" record documents of the construction, additions and other modifications constructed by Concessionaire on the Premises. During the Term, Concessionaire shall keep said documents current, with all changes or modifications made by Concessionaire in or to the Premises or additions thereto.
2. A statement certified by Concessionaire's chief financial officer specifying the final Capital Investment related to each of the Approved Projects with the level of detail as requested by Authority.
3. A certification that construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations and orders.
4. Certified proof demonstrating that no liens exist on the Premises, including but not limited to, a waiver of lien from all construction contractors and signed releases from all subcontractors that indicate receipt of payment in full for all work performed or Trade Fixtures delivered.

**Section 10.08      TITLE TO IMPROVEMENTS**

All Leasehold Improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, will be and remain the property of Concessionaire until the termination of this Contract, whether by expiration of the term, cancellation, forfeiture or otherwise, at which time said Leasehold Improvements will become the property of Authority at no cost to Authority, except if Authority reclaims space pursuant to Section 3.03. Subject to the provisions of this Contract, including, but not limited to, Authority Lien described in Section 5.06, Trade Fixtures, inventory, expendables, and other personal property remain property of Concessionaire.

**Section 10.09      SIGNAGE**

Subject to the terms and conditions of Section 10.05, Concessionaire shall have the right to install and maintain signs on the Premises, provided that the design, installation and maintenance of all signs shall be subject to the terms of this Section and comply with the Concessions Design Criteria Manual. Concessionaire further acknowledges the desire of Authority to maintain a high level of aesthetic quality in all concession facilities throughout the Terminal Buildings. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to Authority, for its review and approval, the size, design, content, construction or fabrication and intended location of each and every sign it proposes to



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install on or within the Premises. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of Authority, which approval shall not be unreasonably withheld or denied if the proposal is in compliance with the Concessions Design Criteria Manual, and other Authority Rules and Regulations and Operating Directives governing signage.

**Section 10.10 REFURBISHMENT**

In addition to the ongoing, routine maintenance described in Section 7.04, Concessionaire shall, at its sole cost and expense, refurbish the Premises at or about the midpoint of the Term (hereinafter referred to as the Mid-Term Refurbishment). The Mid-Term Refurbishment shall include without limitation all refinishing, repair, replacement, redecorating, repainting and re-flooring necessary to keep the Premises in First Class condition and shall comply with all other terms and conditions of this Contract. The scope and extent of the Mid-Term Refurbishment for each Concession Location shall be jointly determined by Authority and Concessionaire. If Concessionaire and Authority cannot jointly agree upon the necessary scope and extent of the Mid-Term Refurbishment for any particular Concession Location, Authority may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by Authority determination.

Concessionaire's plans and specifications for refurbishment must be in accordance with the Concessions Design Criteria Manual. Concessionaire shall submit its plan specifications for refurbishment to Authority for review and approval no later than the mid-point of the fifth full Contract Year following the Package Completion Date. The Mid-Term Refurbishment shall be completed prior to the midpoint of the sixth full Contract Year following the Package Completion Date.

**Article XI. DISCLAIMER OF LIENS**

The interest of Authority in the Premises will not be subject to liens for any work, labor, materials or improvements made by or for Concessionaire to the Premises, whether or not the same is made or done in accordance with an agreement between Authority and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will Authority or the interest of Authority in the Premises be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at the Airport or any interest in this Contract without prior, written approval by the Authority. Concessionaire is specifically prohibited from subjecting Authority interest in the Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify and hold Authority harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Premises or Authority, including attorney fees incurred by Authority. Concessionaire will provide notice of this disclaimer of liens to all contractors or subcontractors providing any materials or making any improvements to the Premises.

In the event any construction, mechanic's, laborer's, materialmen's or other lien or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises,

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whether or not the same is made or done in accordance with an agreement between Authority and Concessionaire, Concessionaire will cause any such lien to be discharged of record within 30 days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to Authority, security reasonably satisfactory to Authority to secure payment of such lien, if requested by Authority, while Concessionaire contests to conclusion the claim giving rise to such lien.

## **Article XII. MAINTENANCE, UTILITIES AND REPAIRS**

### **Section 12.01 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS**

Except for such maintenance of the Premises as is to be provided by Authority hereunder, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures and personal property, in good appearance and repair, and in a safe, First Class condition. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Leasehold Improvements on the Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by Authority. All of the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of Authority.

If it is determined that the maintenance is not in compliance with this Contract, Authority shall so notify Concessionaire in writing. If the maintenance required to be performed as provided in the Authority notice to Concessionaire is not commenced by Concessionaire within five (5) days after receipt of notice, or is thereafter not diligently executed to completion, Authority or its representative shall have the right to enter upon the Premises and perform the maintenance, and Concessionaire agrees to promptly reimburse Authority for the cost thereof, plus an administrative fee equal to 15 percent (15%) of the maintenance costs.

Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from Authority. At the sole discretion of Authority, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

Concessionaire agrees to comply with all present and future laws, orders and regulations, including any rules, regulations and procedures promulgated by Authority regarding Authority provided maintenance within the Airport Terminal in which the Concession Location is located. If and when any system for Authority provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost. Concessionaire must pay its proportional share of the actual costs for the Authority provided maintenance

### **Section 12.02 AUTHORITY MAINTENANCE AND UTILITY OBLIGATIONS**

Authority shall provide structural maintenance of the Terminal Buildings and, except as provided below, maintain and repair the exterior walls of the Premises in the Terminal Buildings. However,

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maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.

Authority provides utility mains and lines throughout the Terminal Buildings. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by Authority. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire in excess of what is customarily available in the Terminal Buildings will be, if approved by Authority, at the expense of Concessionaire.

Authority or its representative may, at Authority sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises at all reasonable times to make any repairs, replacements and alterations as may, in the opinion of Authority, be deemed necessary. Furthermore, Concessionaire will permit Authority or its representatives access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that Authority shall exercise such right in a manner that minimizes interference with Concessionaire's operations.

Authority agrees that it will at all times maintain and keep utility mains and lines in good repair in the Terminal Buildings and all appurtenances, facilities and services now or hereafter connected therewith; provided, however, Concessionaire's sole remedy for interruption of any utilities provided by Authority shall be an abatement of the Premises Rent. Concessionaire shall have no remedy against Authority for interruption of any utilities or failure of any utilities not caused by Authority.

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

### **Section 12.03      AUTHORITY PERFORMANCE OF CONCESSIONAIRE'S OPERATING OBLIGATIONS**

Concessionaire acknowledges its obligation to perform, at its cost and expense, Concessionaire's Operating Obligations. Authority has determined, in consideration of Airport security, public safety, and operating efficiency, that it is in Authority best interest to perform, on Concessionaire's behalf and for the benefit of Concessionaire, certain of these Concessionaire Operating Obligations, as set forth in the Summary of Contract Provisions (which Concessionaire's Operating Obligations performed by Authority are hereinafter referred to as Concessions Services).

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Authority may, in its sole discretion, add to, delete from, or otherwise modify the Concessions Services during the Term. Authority will provide no less than 30 days' written notice of the effective date of any modification to the Concessions Services to Concessionaire. Concessionaire agrees to cooperate with Authority in the implementation and performance of the Concessions Services.

The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Concessions Services. Any such modification will be confirmed by letter executed by the Director of Concessions and acknowledged by Concessionaire, without need for formal amendment to the Contract.

## **Article XIII. DEFAULT, REMEDIES AND TERMINATION RIGHTS**

### **Section 13.01 EVENTS OF DEFAULT**

Concessionaire will be deemed to be in default of this Contract upon the occurrence of any of the following:

1. The failure or omission by Concessionaire to perform its obligations under this Contract or the breach of any terms, conditions and covenants required herein.
2. The conduct of any business or performance of any acts at the Airport not specifically authorized in this Contract or by any other agreement between Authority and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within 30 days of receipt by Concessionaire of Authority written notice to cease said business or acts (which 30 day notice and cure period shall also satisfy the 30-day notice requirement of Section 13.03 below).
3. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
4. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
5. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
6. Concessionaire's violation of Florida Statute Section 287.133 concerning criminal activity on contracts with public entities.

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### **Section 13.02 CONCESSIONAIRE REMEDIES**

Upon 30 days' written notice to Authority, Concessionaire may terminate this Contract and all of its obligations hereunder, if Concessionaire is not in default of any term, provision, or covenant of this Contract or in the payment of any fees or charges to Authority, upon or after the inability of Concessionaire to use the Airport or operate its business for a period longer than 90 consecutive days due to war, terrorism, or the issuance of any order, rule or regulation by a competent governmental authority or court having jurisdiction over Authority; provided, however, that such inability or such order, rule or regulation is not due to any fault or negligence of Concessionaire.

### **Section 13.03 AUTHORITY REMEDIES**

In the event of any of the foregoing events of default of Concessionaire, and following 30 days' notice by Authority and Concessionaire's failure to cure, Authority, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law:

1. Terminate Concessionaire's rights under this Contract and, in accordance with law, take possession of the Premises. In doing so, Authority will not be deemed to have thereby accepted a surrender of the Premises, and Concessionaire will remain liable for all payments or other sums due under this Contract and for all damages suffered by Authority because of Concessionaire's breach of any of the covenants of this Contract; or
2. Treat the Contract as remaining in existence, and cure Concessionaire's default by performing or paying the obligation which Concessionaire has breached. In such event all sums paid or expenses incurred by Authority directly or indirectly in curing Concessionaire's default will become immediately due and payable, as well as interest thereon, from the date such fees or charges became due to the date of payment, at 18 percent per annum to the maximum extent permitted by law; or
3. Declare this Contract to be terminated, ended, null and void, and reclaim possession of the Premises, whereupon all rights and interest of Concessionaire in the Premises will immediately end.

No delay, failure, or omission of Authority to re-enter the Premises or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment, or acquiescence of the Premises. No option, right, power, remedy, or privilege of Authority will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Authority by this Contract are cumulative and that the exercise of one right, power, option, or remedy by Authority will not impair its rights to any other right, power, option, or remedy available under this Contract or provided by law. In the event Authority terminates this Contract or reclaims the Premises under this Section 13.03, Authority has no liability to Concessionaire for any Unamortized Investment.

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## **Article XIV. INDEMNIFICATION**

To the fullest extent permitted by law, Concessionaire agrees to protect, reimburse, indemnify and hold Authority, its agents, employees, and officers free and harmless from and against any and all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character arising out of, resulting from, incident to, or in connection with Concessionaire's presence on or use or occupancy of Premises or Airport; Concessionaire's acts, omissions, negligence, activities, or operations; Concessionaire's performance, non-performance or purported performance of this Contract; or any breach by Concessionaire of the terms of this Contract, or any such acts, omissions, negligence, activities, or operations of Concessionaire's officers, authorized officials, employees, agents, subcontractors, invitees, or any other person directly or indirectly employed or utilized by Concessionaire, that results in any bodily injury (including death) or any damage to any property, including loss of use, incurred or sustained by any party hereto, any agent or employee of any party hereto, any other person whomsoever, or any governmental agency, regardless of whether or not it is caused in whole or in part by the negligence of a party indemnified hereunder.

In addition to the duty to indemnify and hold harmless, Concessionaire will have the duty to defend Authority, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Concessionaire, Authority, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Concessionaire.

Concessionaire recognizes the broad nature of these indemnification, hold harmless, and duty to defend clauses, and voluntarily makes this covenant and expressly acknowledges the receipt of \$10.00 and such other good and valuable consideration provided by Authority in support of this indemnification in accordance with the laws of the State of Florida. This Article shall survive the termination of this Contract. Compliance with insurance requirements under this Contract shall not relieve Concessionaire of its liability or obligation to indemnify, hold harmless, and defend Authority as set forth in this Article.

## **Article XV.INSURANCE**

### **Section 15.01 INSURANCE TERMS AND CONDITIONS**

Concessionaire must maintain the following limits and coverages uninterrupted or amended through the term of this Contract. In the event the Concessionaire becomes in default of the following requirements the Authority reserves the right to take whatever actions deemed necessary to protect its interests. Required liability policies other than Workers' Compensation/Employer's Liability, will provide that the Authority, members of the Authority governing body, and the Authority officers, volunteers, and employees are included as additional insureds.

**Section 15.02 REQUIRED COVERAGES**

**A. Commercial General Liability**

The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) covering the work performed pursuant to this Contract will be the amounts specified herein. Coverage will be provided for liability resulting out of, or in connection with, ongoing operations performed by, or on behalf of, Concessionaire under this Contract or the use or occupancy of Authority premises by, or on behalf of, Concessionaire in connection with this Contract. Coverage shall be provided on a form no more restrictive than ISO Form CG 00 01. Additional insurance coverage shall be provided on a form no more restrictive than ISO Form CG 20 10 10 01 and CG 20 37 10 01.

	Contract Specific
General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal and Injury	\$1,000,000

**B. Liquor Liability**

If alcoholic beverages are served or sold at the Airport by the Concessionaire, the Commercial General Liability insurance shall include Host Liquor Liability Coverage.

**C. Workers' Compensation and Employer's Liability Insurance**

The minimum limits of Workers' Compensation/Employer's Liability insurance (inclusive of any amount provided by an umbrella or excess policy) are:

Part One (Workers' Compensation)	Florida Statutory
Part Two (Employer's Liability)	
Each Accident	\$,1,000,000
Disease – Policy Limit	\$,1,000,000
Disease – Each Employee	\$,1,000,000

**D. Business Automobile Liability Insurance**

Coverage will be provided for all owned, hired and non-owned vehicles. Coverage shall be provided on a form no more restrictive than ISO Form CA 00 01. The minimum limits of insurance (inclusive of any amounts provided by an umbrella or excess policy) covering the work performed pursuant to this Contract are:

Each Occurrence – Bodily Injury and Property Damage combined	\$1,000,000
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In the event the Concessionaire operates vehicles on the airport operations area (AOA) used or intended to be used for aircraft landings, the minimum limits of Business Automobile Liability

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insurance (inclusive of any amounts provided by an umbrella or excess policy) covering all owned, hired, and non-owned vehicles are:

Each Occurrence – Bodily Injury and Property  
Damage combined \$5,000,000

**E. Property Insurance**

Concessionaire shall procure and maintain Property insurance covering all forms of risk on all tenant improvements and any other interests of Concessionaire, if applicable, on or about Authority premises, including inventory, supplies, and other property of Concessionaire located at said premises, insuring against the perils of fire, lightning, extended coverage, vandalism, malicious mischief, glass breakage and sprinkler, in an amount equal to the full replacement value of tenant improvements and any other interests of Concessionaire in or about said premises.

**F. Business Interruption Insurance**

Concessionaire shall procure and maintain Business Interruption insurance in such amounts as will reimburse Concessionaire for direct or indirect loss of earnings attributable to the perils commonly covered by the Concessionaire’s property insurance described in Section 1.02 (5), which shall include losses arising from mechanical failures on or interruption of services to Authority premises.

**G. Commercial Crime Insurance**

The minimum limits of Commercial Crime insurance covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositors forgery; computer fraud, on-premises and in-transit are:

Each Occurrence \$1,000,000

**H. Waiver of Subrogation**

Concessionaire, for itself and on behalf of its insurers, to the fullest extent permitted by law without voiding the insurance required by the contract, waives all rights against the Authority, members of the Authority governing body and the Authority officers, volunteers and employees, for damages or loss to the extent covered and paid for by any insurance maintained by the Concessionaire.

**Section 15.03 CONDITIONS OF ACCEPTANCE**

The insurance maintained by Concessionaire must conform at all times with the Authority Standard Procedure S250.06, Contractual Insurance Terms and Conditions, which may be amended from time to time.



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## **Article XVI. SECURITY FOR PERFORMANCE**

### **Section 16.01 FORM OF SECURITY DEPOSIT**

To secure payment for rents, fees, charges and other payments required hereunder, Concessionaire will post with Authority a surety bond or irrevocable letter of credit drawn in favor of the Authority (hereinafter referred to as Security Deposit).

The Security Deposit will be maintained throughout the Term of this Contract and any holdover or extension and will be in an amount equal to the sum of the Premises Rent plus MAPF payable to Authority hereunder for a period of three (3) months. The Security Deposit will be issued by a bank or surety provider acceptable to Authority and authorized to do business in the State of Florida, and will be in a form and content satisfactory to Authority. Each time the Security Deposit expires it shall be renewed at the amount equal to the sum of the Premises Rent plus MAPF payable for a period of three months then in effect. The Concessionaire shall provide the Authority with a renewal or replacement Security Deposit no later than 60 days prior to the date of expiration.

Concessionaire shall furnish the Security Deposit within ten (10) days of the Effective Date as security for the full performance of every provision of this Contract by Concessionaire. Failure to maintain the Security Deposit as set forth herein shall be an event of Default hereunder.

### **Section 16.02 APPLICATION OF SECURITY DEPOSIT**

In the event Concessionaire fails to perform the payment terms and conditions of this Contract, Authority, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Security Deposit or any part thereof toward the payment of Concessionaire's obligations under this Contract. In such an event, within five days after notice, Concessionaire will restore the Security Deposit to its original amount. Authority will not be required to pay Concessionaire any interest on the Security Deposit.

### **Section 16.03 RELEASE OF SECURITY DEPOSIT**

The release of the Security Deposit will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein throughout the entire Term. Upon termination of this Contract, the release of Security Deposit will not occur until all rents, fees, charges, and other payments due to Authority are satisfied and Authority has accepted the findings of Concessionaire's audit or has successfully conducted an audit in accordance with the provisions of Section 5.10 of this Contract. In the event of a dispute as to the condition of the Premises, only the amount in dispute will be retained for remedy. Authority shall release the Security Deposit without interest within 30 days of meeting the above requirements.

### **Section 16.04 GUARANTY OF CONTRACT**

This Contract is contingent upon execution of a Guaranty of Contract by the person or entity designated, in the form shown in Exhibit E, Form of Guaranty of Contract.

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## **Article XVII. PROPERTY DAMAGE**

### **Section 17.01 PARTIAL DAMAGE**

In the event all or a portion of the Premises are partially damaged by fire, explosion, the elements, a public enemy, Act of God, or other casualty, but not rendered unusable, Concessionaire will give Authority immediate notice thereof, and Authority will make the necessary repairs immediately, at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article X with respect to all work required to be performed in accordance with this Section.

### **Section 17.02 EXTENSIVE DAMAGE**

In the event damages as a result of any event outlined in Section 17.01 are so extensive as to render all or a significant portion of the Premises unusable, but capable of being repaired within 120 days, Concessionaire will give Authority immediate notice thereof, and Authority will make the necessary repairs with due diligence, at its own cost and expense.

### **Section 17.03 COMPLETE DESTRUCTION**

In the event the Premises are completely destroyed as a result of an event outlined in Section 17.01 and the damages render the entire Premises unusable and the Premises cannot be repaired within 120 days, Concessionaire will give Authority immediate notice thereof, and Authority will be under no obligation to repair, replace, or reconstruct said Premises. In the event Authority elects not to repair, replace, or reconstruct said Premises, Authority will not be required to grant alternative premises to Concessionaire and this Contract and the obligations of the Parties hereunder will terminate.

### **Section 17.04 ABATEMENT OF FEES**

In the event of extensive damage or complete destruction as referenced in Section 17.02 and Section 17.03, the portion of the Premises Rent and MAPF attributable to unusable Premises will abate from the date of casualty until such time as Authority issues notice to Concessionaire that the unusable portion of the Premises can be re-occupied. For purposes of this Section 17.04, the portion of MAPF attributable to the unusable Premises shall be the proportion of MAPF equal to the proportion of total Gross Receipts in the prior Contract Year attributable to the unusable Premises. Notwithstanding the foregoing, in the event the Premises are damaged or destroyed as a result of an act, omission, or negligence of Concessionaire, its employees, agents, representatives, invitees and/or subcontractors, Concessionaire's Premises Rent and MAPF will not abate and Concessionaire will be responsible for all costs to repair or rebuild that portion of the Premises damaged or destroyed as a result thereof.

### **Section 17.05 LIMITS OF AUTHORITY OBLIGATIONS DEFINED**

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

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**Section 17.06      ALTERNATE SPACE**

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

**Section 17.07      WAIVER OF SUBROGATION**

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

**Article XVIII.      DAMAGING ACTIVITIES**

No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous (as defined below) or that may be offensive or cause harm to the general public or cause damage to the Premises. Nothing will be done on the Premises other than as provided in this Contract that will increase the rate of or suspend the insurance on the Premises or on any structure of the Authority. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by Authority, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Contract.

The term "Hazardous" will mean:

1. Any substance the presence of which requires or may later require notification, investigation or remediation under any environmental law; or
2. Any substance that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations; or
3. Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or
4. Any substance that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or

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5. Any substance that contains polychlorinated biphenyls, asbestos or urea formaldehyde foam insulation; or
  6. Any substance that contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

## **Article XIX. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES AND RULES**

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, Airport Rules, Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by Authority, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or Authority including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of Airport.

## **Article XX. AIRPORT SECURITY**

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or Authority by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against Authority, then, in addition to any other remedies available to Authority, Concessionaire will be responsible and will reimburse Authority in the full amount of any such monetary penalty or other damages. This amount must be paid by Concessionaire within 15 days from the date of the invoice or written notice.

## **Article XXI. AMERICANS WITH DISABILITIES ACT**

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act; the Florida Americans with Disabilities Accessibility Implementation Act; Florida Building Code, Chapter 11, "Florida Accessibility Code for Building Construction"; and any similar or successor laws, ordinances, rules, standards, codes, guidelines, and regulations and will cooperate with Authority concerning the same subject matter.

## **Article XXII. FAA APPROVAL**

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

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### **Article XXIII. RIGHT OF FLIGHT**

Concessionaire expressly agrees for itself, its successors and assigns, to prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of Airport, or otherwise constitute an Airport hazard.

### **Article XXIV. FEDERAL RIGHT TO RECLAIM**

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

### **Article XXV. PROPERTY RIGHTS RESERVED**

This Contract shall be subordinate to the provisions of any existing or future contracts between the Authority (or its predecessor or successor) and the United States of America, relative to the operation and maintenance of the Tampa International Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the Authority (or its predecessor or successor) of Federal funds for the development of the airport (Grant Assurances). In the event that this Contract, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, the Authority has the right to amend, alter or otherwise modify the terms of this Contract in order to resolve such conflict or violation and Concessionaire shall not withhold its consent to such amendments, alterations of modifications.

### **Article XXVI. ASSIGNMENT AND SUBCONTRACT**

Concessionaire may not assign, subcontract and/or sublease its rights, interests or obligations in whole or in part under this Contract without the prior written consent of Authority in the Authority sole and absolute discretion. Subject to the terms and conditions set forth in this Section, and only after it has received Authority written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.

Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by Authority. The subcontract must contain substantially the same business terms and conditions as those found in this Contract, and the subcontract must acknowledge the existence of this Contract and that the subcontracting parties are bound by the terms and conditions of this Contract, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All rent, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-

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up by Concessionaire. Sub-lessees must independently operate any subcontracted premises and adhere to and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein.

**Article XXVII. CORPORATE TENANCY**

If Concessionaire is a corporation, the undersigned officer of Concessionaire hereby warrants and certifies to Authority that Concessionaire is a corporation in good standing, is authorized to do business in the State of Florida, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Contract by his or her signature thereto.

**Article XXVIII. NON-EXCLUSIVE RIGHTS**

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

**Article XXIX. RIGHT TO DEVELOP AIRPORT**

It is covenanted and agreed that Authority reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.

**Article XXX. APPLICABLE LAW AND VENUE**

This Contract will be construed in accordance with the laws of the State of Florida. Venue for any action brought pursuant to this Contract will be in Hillsborough County, Florida, or in the Tampa Division of the U.S. District Court for the Middle District of Florida.

Concessionaire hereby waives any claim against Authority and its officers, Board members, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part hereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

**Article XXXI. ATTORNEYS' FEES AND COSTS**

In the event legal action is required by Authority to enforce this Contract, Authority will be entitled to recover costs and attorneys' fees, including in-house attorney time (fees) and appellate fees.

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**Article XXXII. RIGHT TO AMEND**

In the event that the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in this Contract as a condition precedent to the granting of funds for the improvement of the Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Contract as may be reasonably required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this paragraph, to agree to an increase in the charges provided for hereunder.

**Article XXXIII. HEADINGS**

The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Contract. If for any reason there is a conflict between content and headings, the content will control.

**Article XXXIV. NOTICES AND COMMUNICATIONS**

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

**TO AUTHORITY:  
(MAIL DELIVERY)**

Hillsborough County Aviation Authority  
Tampa International Airport  
P.O. Box 22287  
Tampa, Florida 33622-2287  
Attn: Chief Executive Officer

**TO CONCESSIONAIRE:  
(MAIL DELIVERY)**

XpresSpa Tampa Airport, LLC  
3 East 54<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10022  
Attn: Rhonda Schladerbach

**OR**

**(HAND DELIVERY)**

Hillsborough County Aviation Authority  
Tampa International Airport  
Administrative Offices Bldg., 2nd floor  
4100 George J. Bean Parkway  
Tampa, Florida 33607  
Attn: Chief Executive Officer

**(HAND DELIVERY)**

XpresSpa Tampa Airport, LLC  
3 East 54<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10022  
Attn: Rhonda Schladerbach

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

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

### **Article XXXV. SUBORDINATION TO TRUST AGREEMENT**

This Contract and all rights of Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by Authority to secure financing. This Contract is subject and subordinate to the terms, covenants, and conditions of the Trust Agreement made by Authority authorizing the issuance of bonds by Authority. Conflicts between this Contract and the documents mentioned above will be resolved in favor of such documents.

### **Article XXXVI. RADON GAS NOTIFICATION**

In accordance with requirements of the State of Florida, the following notification statement will be included in all agreements relating to rental of real property. This is provided for information purposes only.

RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department.

### **Article XXXVII. RELATIONSHIP OF THE PARTIES**

Concessionaire is and will be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and Authority will in no way be responsible therefore.

### **Article XXXVIII. AUTHORITY APPROVALS**

Except as otherwise indicated elsewhere in this Contract, wherever in this Contract approvals are required to be given or received by Authority, it is understood that the Authority Chief Executive Officer, or a designee of the Authority Chief Executive Officer, is hereby empowered to act on behalf of Authority.

### **Article XXXIX. INVALIDITY OF CLAUSES**

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



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## **Article XL. TIME IS OF THE ESSENCE**

Time is of the essence of this Contract.

## **Article XLI. TAXES**

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

## **Article XLII. SIGNATURES**

### **Section 42.01 SIGNATURE OF PARTIES**

It is an express condition of this Contract that it will not be complete or effective until signed by Authority and by Concessionaire.

### **Section 42.02 COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

## **Article XLIII. SCRUTINIZED COMPANIES LIST**

This Contract will be terminated in accordance with Florida Statute Section 287.135(3) if it is found that Concessionaire submitted a false Scrutinized Company Certification as provided in Florida Statute Section 287.135(5) or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

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## **Article XLIV. AGENT FOR SERVICE OF PROCESS**

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

## **Article XLV. COMPLIANCE WITH PUBLIC RECORDS LAW**

Concessionaire agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

- A. Keep and maintain public records that ordinarily and necessarily would be required by Authority.
- B. Provide the public with access to public records on the same terms and conditions that Authority would provide the public records and at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining public records and transfer, at no cost, to Authority all public records in possession of Concessionaire upon termination of this Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Authority in a format that is compatible with Authority information technology systems.

## **Article XLVI. DATA SECURITY**

Concessionaire will establish and maintain safeguards against the destruction, loss or alteration of Authority data or third party data that Concessionaire may gain access to or be in possession of in the performance of this Contract. Concessionaire will not attempt to access, and will not allow its personnel access to, Authority data or third party data that is not required for the performance of the

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services of this Contract by such personnel.

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

## **Article XLVII. FLORIDA PUBLIC ENTITY CRIMES**

Company attests compliance with Florida Statute Section 287.133, concerning Public Entity Crimes.

## **Article XLVIII. HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE**

- A. No goods, merchandise or material will be kept or stored by Concessionaire at the Airport which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Contract which will increase the rate of or suspend any insurance policy or coverage of Authority.
- B. Concessionaire assures that all materials, equipment, and all other items used in the performance of this Contract are in compliance with Occupational Safety and Health Administration (OSHA).

## **Article XLIX. NON-DISCLOSURE**

All written and oral information and materials (hereinafter referred to as Information) disclosed or provided by Authority to Concessionaire under this Contract will not be disclosed by Concessionaire, whether or not provided before or after the date of this Contract.

The Information will remain the exclusive property of Authority and will only be used by Concessionaire for purposes permitted under this Contract. Concessionaire will not use the Information for any purpose which might be directly or indirectly detrimental to Authority or any of its affiliates or subsidiaries.

Concessionaire will prevent the unauthorized use, disclosure, dissemination or publication of the Information. Concessionaire agrees that it will cause its employees and representatives who have access to the Information to comply with these provisions and Concessionaire will be responsible for the acts and omissions of its employees and representatives with respect to the Information.

Concessionaire agrees that any disclosure of the Information by Concessionaire's employees and/or representatives will be deemed a breach of this Contract. Concessionaire agrees that in the event of any breach or threatened breach by Concessionaire of its non-disclosure obligation, Authority may

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obtain such legal remedies as are available, and, in addition thereto, such equitable relief as may be necessary to protect Authority.

The non-disclosure obligation imposed on Concessionaire under this Contract will survive the expiration or termination, as the case may be, of this Contract and the obligation will last indefinitely.

## **Article L. WAIVERS**

No waiver by Authority at any time of any of the terms, conditions, covenants, or agreements of this Contract, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or Contract herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of Authority to exercise any right, power, privilege or option arising from any default nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege or option, or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No notice by Authority will be required to restore or revive time as being of the essence hereof after waiver by Authority or default in one or more instances. No option, right, power, remedy or privilege of Authority will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Authority by this Contract are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by Authority will not impair its rights to any other right, power, option or remedy.

## **Article LI. COMPLETE CONTRACT**

This Contract represents the complete understanding between the Parties, and any prior contracts or representations, whether written or verbal, are hereby superseded. This Contract may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Contract.

## **Article LII. ORDER OF PRECEDENCE**

The documents listed below are a part of this Contract and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and Conditions as contained in this Contract;
- B. RFP No. 15-534-039, Tampa Airport Concessions Redevelopment Program; Spa Services Concession, and all its addenda;

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C. Concessionaire's Response to RFP No. 15-534-039, Tampa Airport Concessions Redevelopment Program; Spa Services Concession, and any subsequent information submitted by Concessionaire during the evaluation process, as modified and accepted by Authority.

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**IN WITNESS WHEREOF**, the parties hereto have set their hands and corporate seals on this \_\_\_\_\_ day of December, 2015

**HILLSBOROUGH COUNTY AVIATION AUTHORITY**

ATTEST: \_\_\_\_\_  
Victor D. Crist, Secretary

BY: \_\_\_\_\_  
Robert I. Watkins, Chairman

Address: PO Box 22287  
Tampa, FL 33622

Address: PO Box 22287  
Tampa, FL 33622

**LEGAL FORM APPROVED:**

WITNESS: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
David Scott Knight, Assistant General Counsel

\_\_\_\_\_  
Printed Name

**HILLSBOROUGH COUNTY AVIATION AUTHORITY**

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 2015, by Robert I. Watkins, in the capacity of Chairman of the Board of Directors and Victor D. Crist, in the capacity of Secretary of the Board of Directors, HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida, on its behalf. They are personally known to me and they did not take an oath.

Stamp or Seal of Notary

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date Notary Commission Expires (if not on stamp or seal)

**XPRESSPA TAMPA AIRPORT, LLC**

Signed in the Presence of:

BY:

Signature

Witness

Title

Printed Name

Printed Name

Witness

Printed Address

Printed Name

City/State/Zip

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledge before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ in the capacity of \_\_\_\_\_,  
(Individual's Name) (Individual's Title)  
at \_\_\_\_\_, a corporation on its behalf,  
(Company Name)  
\_\_\_\_\_ known to me and  
(He is / She is) (Personally / Not Personally)  
has produced \_\_\_\_\_.  
(Form of Identification)

Stamp or Seal of Notary

Signature of Notary

Printed Name

Date Notary Commission Expires (if not on stamp or seal)

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## Exhibits

### EXHIBIT A PREMISES DESCRIPTION

A. The Premises shall be comprised of the following Concession Location(s) and Support Space(s):

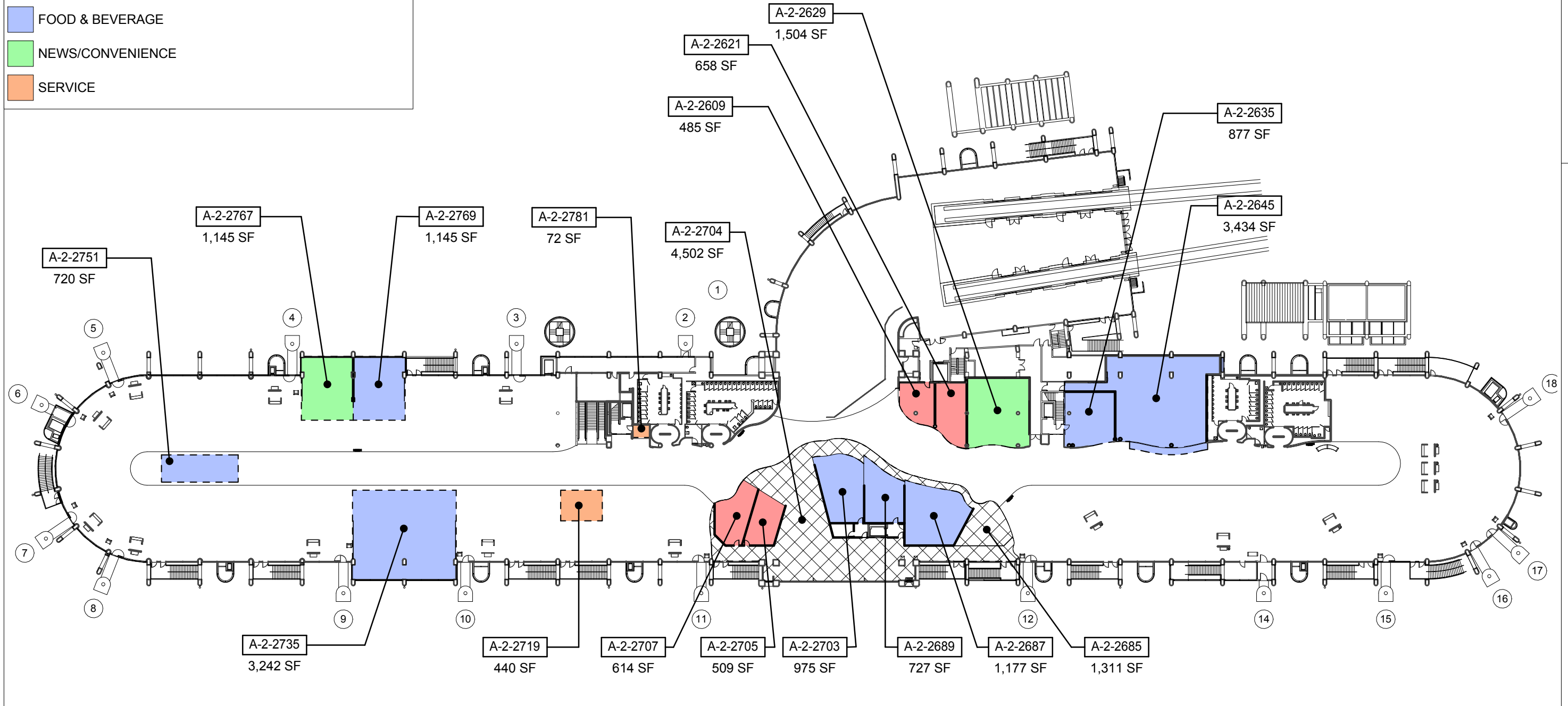
Location Number	Area (square feet)	Type	Date of Substantial Completion
A-2-2719	440	Concession Location	TBD
C-2-3717	664	Concession Location	TBD
E-2-4771	701	Concession Location	TBD
TBD	TBD	Support Space	TBD

B. Lease Outline Drawings of the Premises follow:



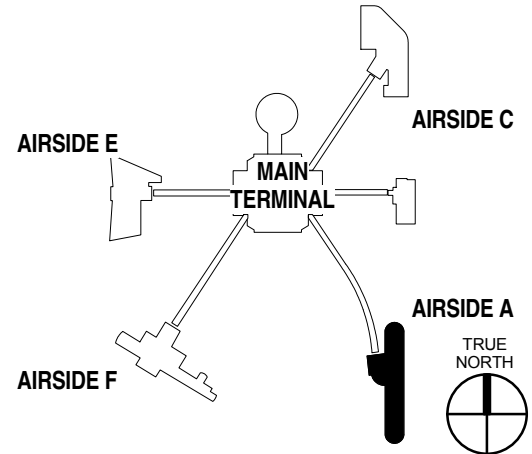
**LEGEND**

- BY HCAA
- SPECIALTY RETAIL
- FOOD & BEVERAGE
- NEWS/CONVENIENCE
- SERVICE



**TAMPA INTERNATIONAL AIRPORT  
HILLSBOROUGH COUNTY AVIATION AUTHORITY  
LEASE OUTLINE DRAWINGS  
AIRSIDE A OVERALL BOARDING LEVEL PLAN**

**KEY PLAN:**



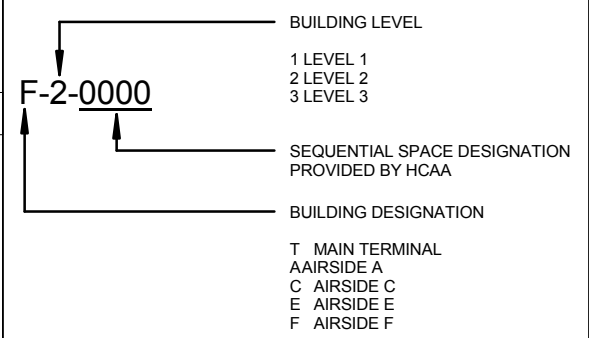
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**GENERAL NOTES:**

1. ALL DIMENSIONS TO BE FIELD VERIFIED WITH AS-IS CONDITIONS AND COORDINATED WITH ALL WALL TYPES.
2. OVERHEAD MEP AND STRUCTURAL CONDITIONS VARY. TENANT SHALL FIELD VERIFY AND CONFIRM ALL AS-IS CONDITIONS.
3. REFER TO CONCESSIONS SERVICE MATRIX 7.6 FOR MEP AND STRUCTURAL CONDITIONS RELATIVE TO LEASE SPACE.
4. BEFORE MAKING FLOOR PENETRATIONS OR ANY KIND OF REMOVAL OF CONCRETE FROM THE FLOOR SLAB, G.C. TO ENSURE THAT THE CONCRETE AT THAT LOCATION IS FREE OF REBAR, STRUCTURAL BEAMS, PAN JOISTS OR GIRDERS. IF FLOOR IS CONSTRUCTED OF POST TENSIONED SYSTEM, G.C. SHALL ENSURE THAT THE ADEQUATE MEASURES ARE TAKEN TO STEER CLEAR STRESSED BARS IN ORDER TO AVOID INJURY OR COMPROMISE OF THE STRUCTURAL INTEGRITY OF THE FLOOR. IN CASE, CUTTING OF ANY REBAR SHALL REQUIRE PRIOR APPROVAL FROM A PROFESSIONAL STRUCTURAL ENGINEER FAMILIAR WITH THE ORIGINAL CONSTRUCTION OF THE FLOOR SYSTEM. USE OF SYSTEMS SUCH AS GPR FOR LOCATING REBAR IS HIGHLY RECOMMENDED BEFORE MAKING PENETRATIONS INTO THE SLAB.

**SHEET NUMBER LEGEND:**



GRAPHIC SCALE: 1" = 60'-0"

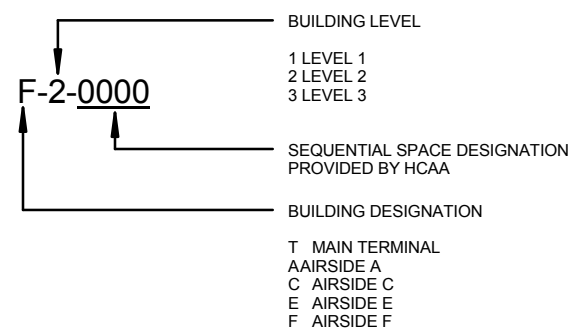


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Sheet Number: A-2-0000

**SHEET NUMBER LEGEND:**



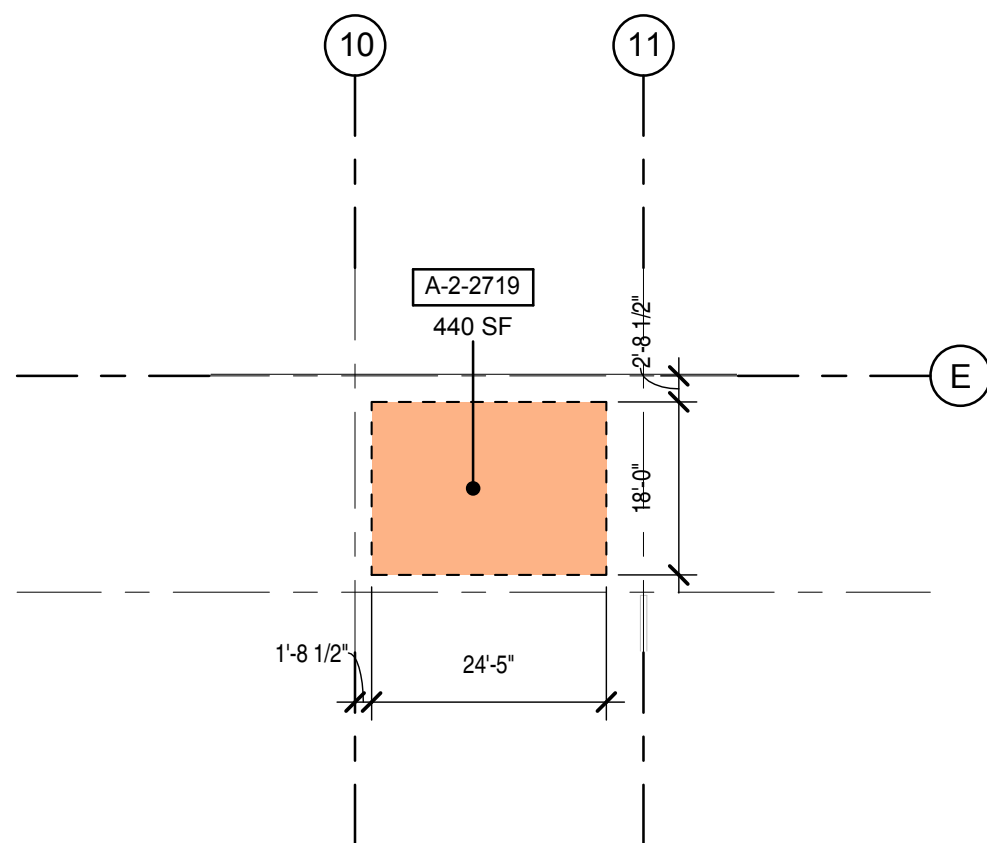
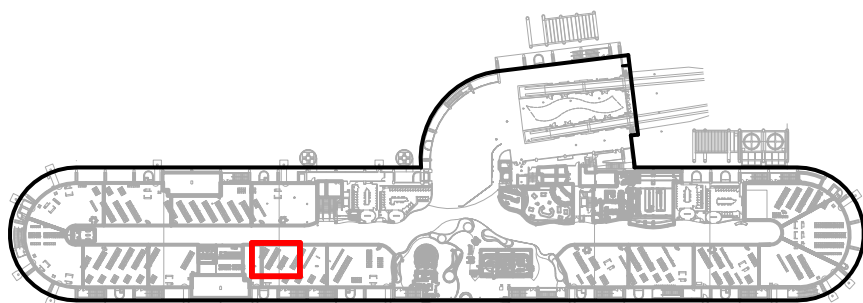
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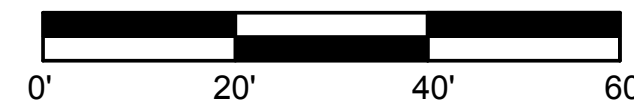
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**KEY PLAN :**



GRAPHIC SCALE: 1" = 20'-0"



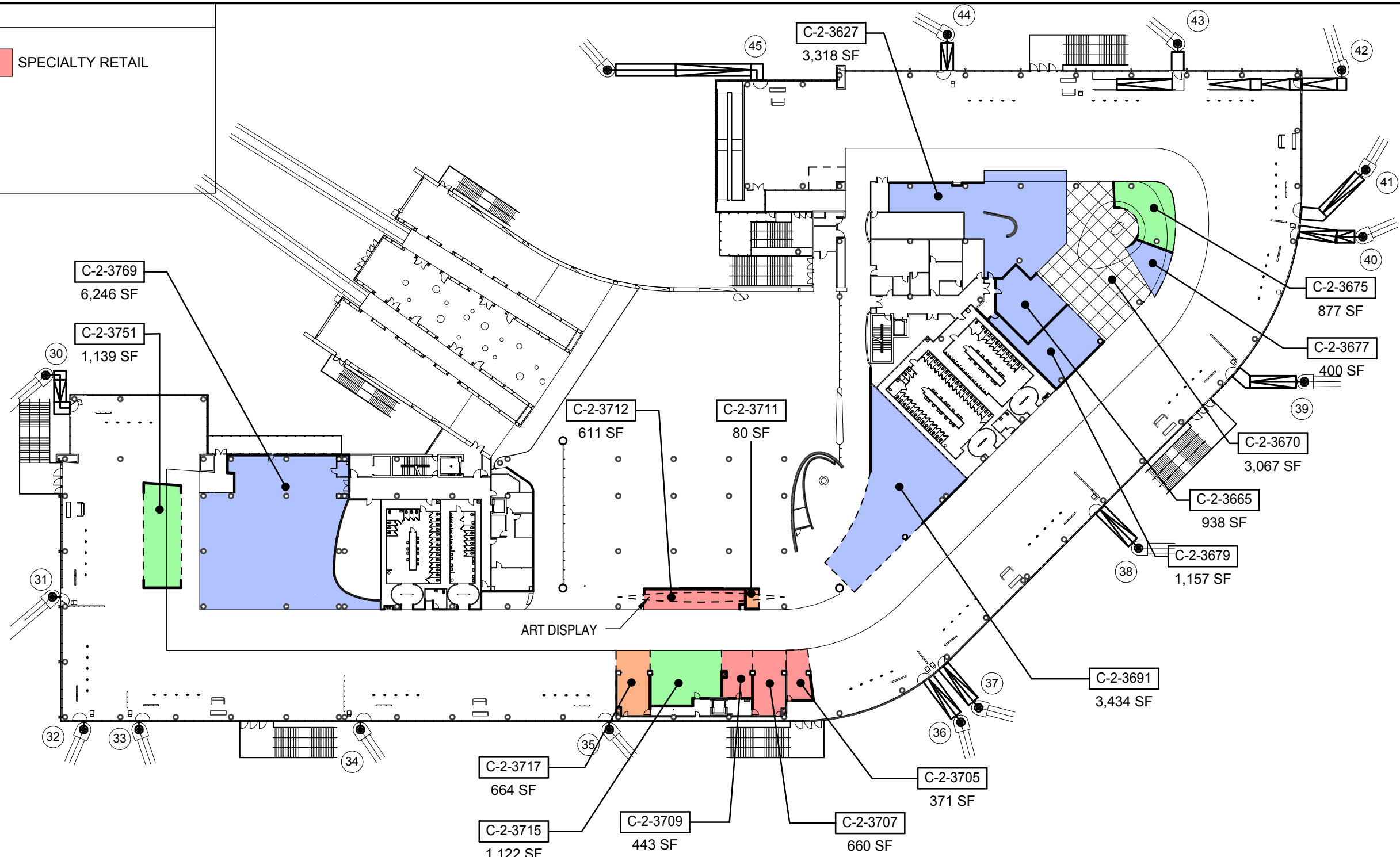
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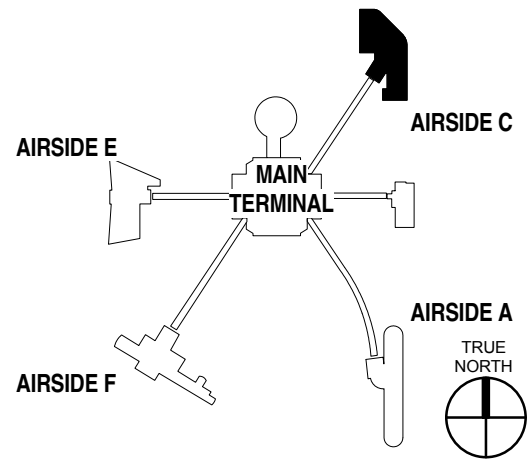
**LEGEND**

- BY HCAA
- SPECIALTY RETAIL
- FOOD & BEVERAGE
- NEWS/CONVENIENCE
- SERVICE



**TAMPA INTERNATIONAL AIRPORT  
HILLSBOROUGH COUNTY AVIATION AUTHORITY  
LEASE OUTLINE DRAWINGS  
AIRSIDE C OVERALL BOARDING LEVEL PLAN**

**KEY PLAN:**



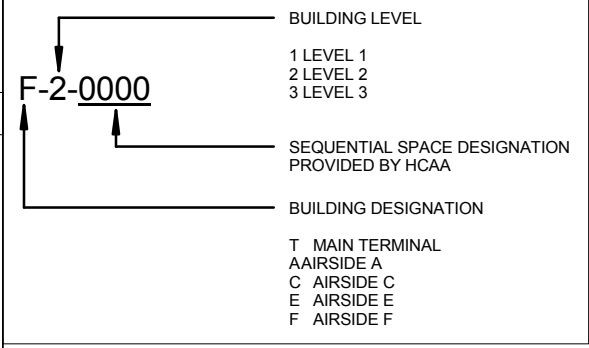
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**SHEET NUMBER LEGEND:**



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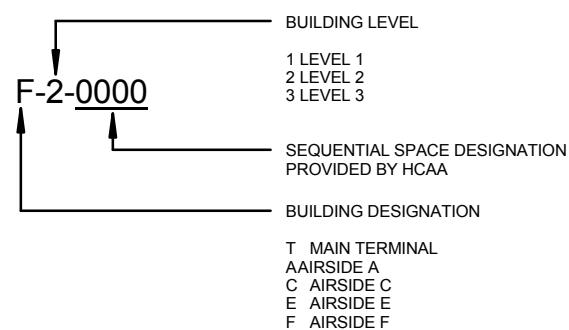


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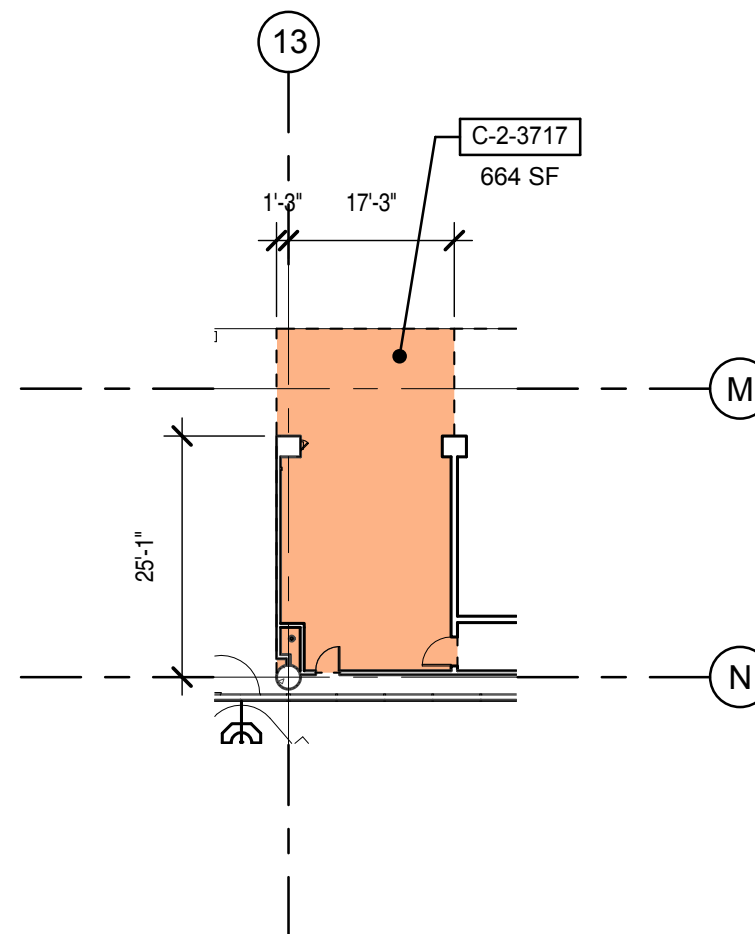
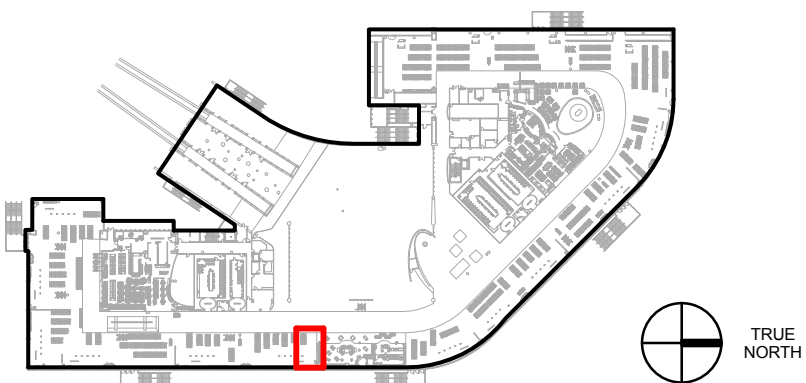
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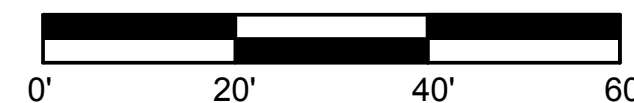
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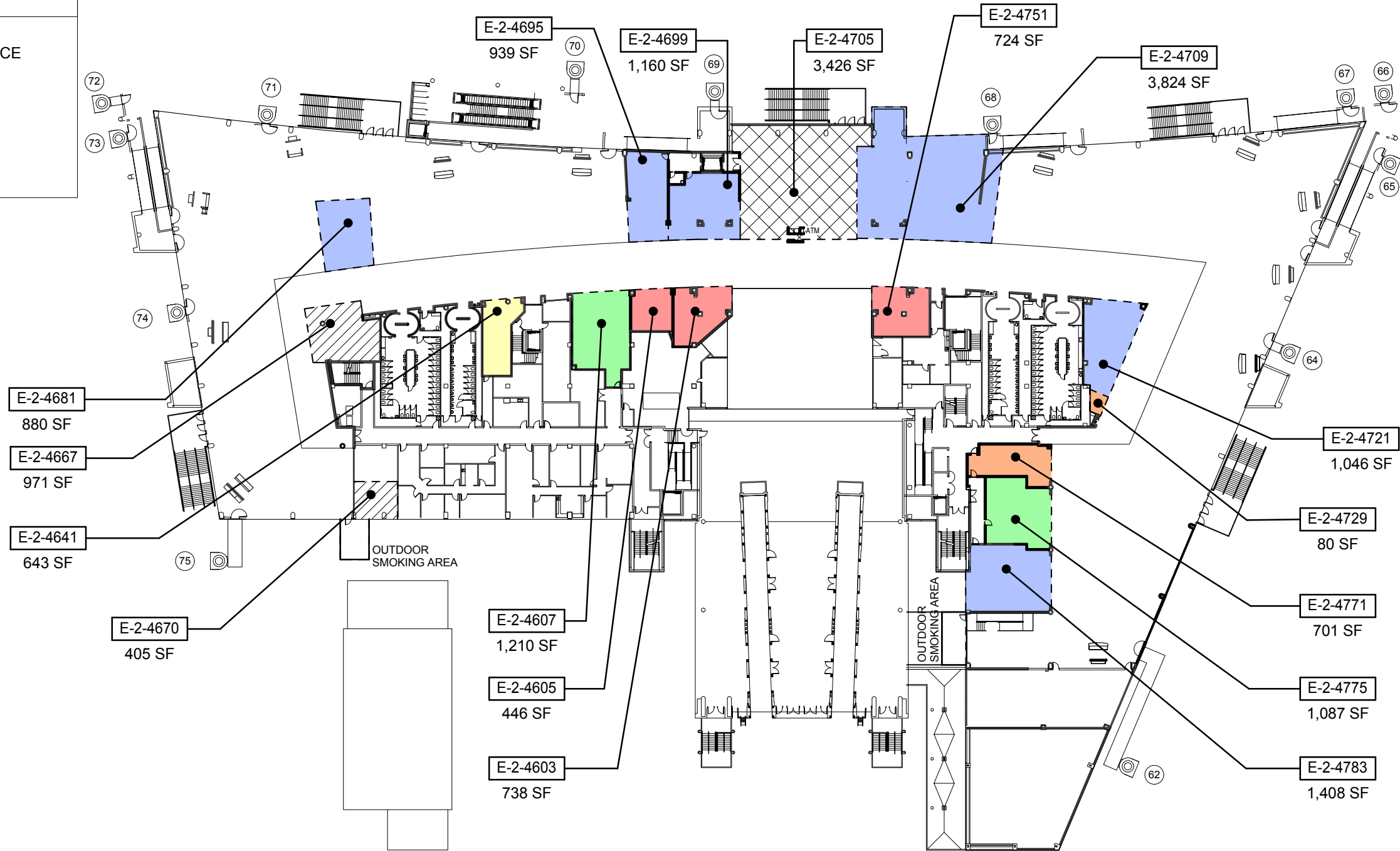
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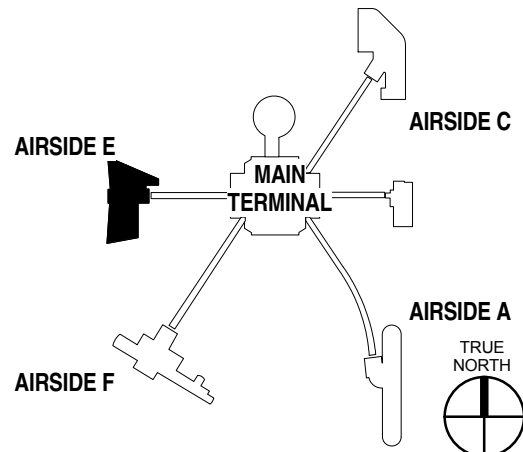
**LEGEND**

- BY HCAA
- NEWS/CONVENIENCE
- DUTY FREE
- SERVICE
- FOOD & BEVERAGE
- SPECIALTY RETAIL
- FUTURE DEVELOPMENT



**TAMPA INTERNATIONAL AIRPORT  
HILLSBOROUGH COUNTY AVIATION AUTHORITY  
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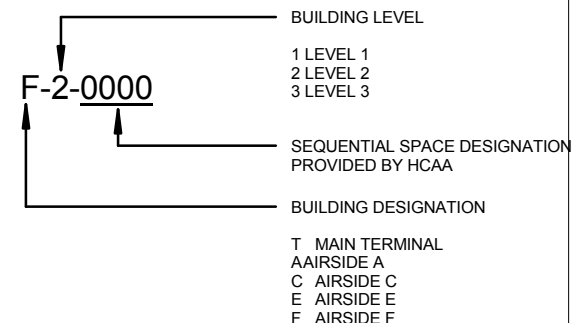
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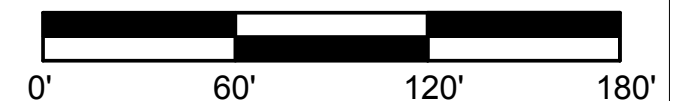
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**SHEET NUMBER LEGEND:**



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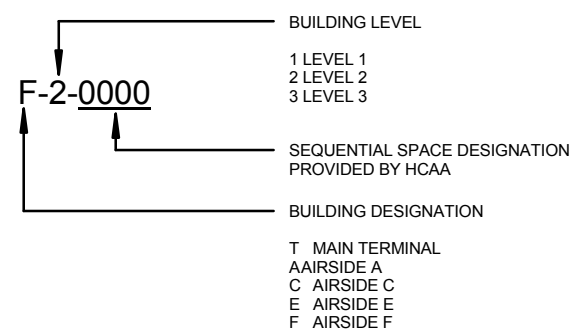


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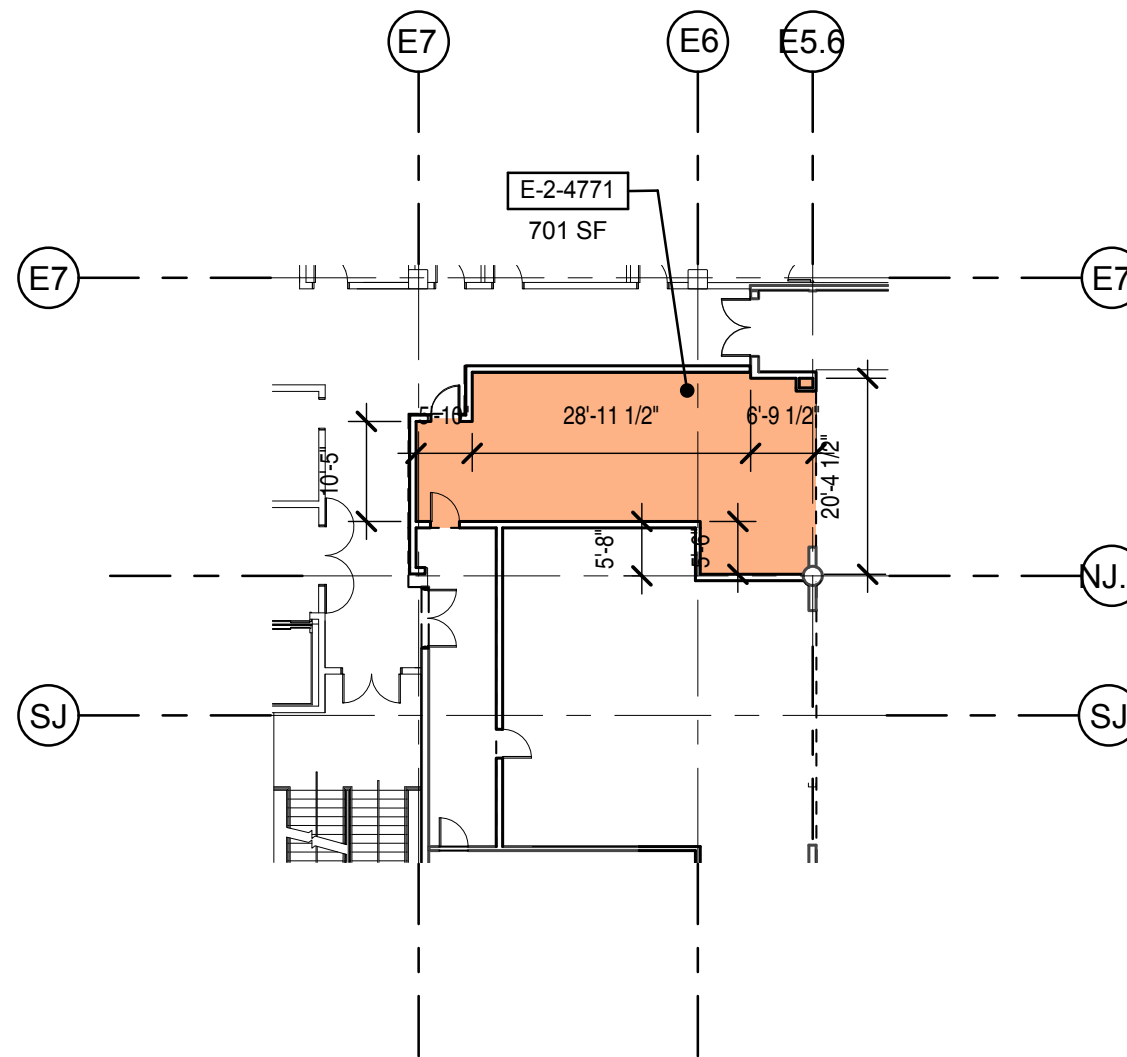
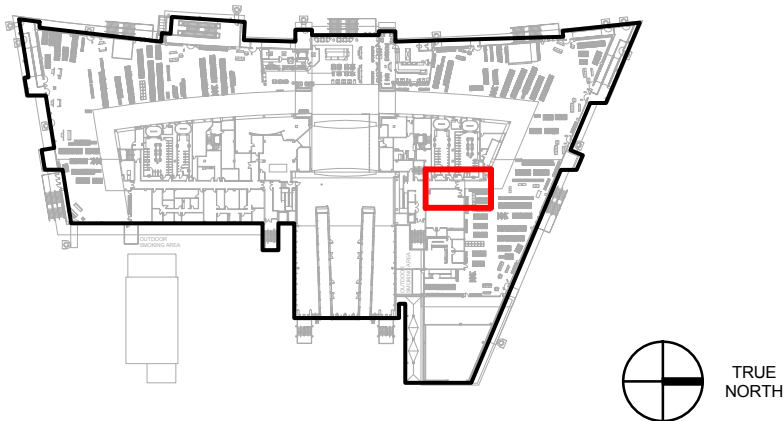
**DISCLAIMER:**

THIS LEASE OUTLINE DRAWING IS PRELIMINARY AND INTENDED TO PROVIDE BASIC ARCHITECTURAL CHARACTERISTICS, APPROXIMATE DIMENSIONS AND OVERALL AREA OF SHELL LEASE SPACE. INFORMATION CONTAINED WITHIN IS SUBJECT TO CHANGE WITHOUT NOTICE. AS STATED IN GENERAL NOTES 1 AND 2, TENANT IS REQUIRED TO FIELD VERIFY ALL AS-IS CONDITIONS PRIOR TO COMMENCEMENT OF DESIGN WORK.

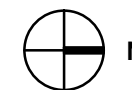
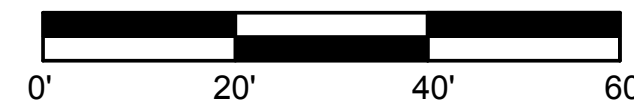
**GENERAL NOTES:**

1. ALL DIMENSIONS TO BE FIELD VERIFIED WITH AS-IS CONDITIONS AND COORDINATED WITH ALL WALL TYPES.
2. OVERHEAD MEP AND STRUCTURAL CONDITIONS VARY. TENANT SHALL FIELD VERIFY AND CONFIRM ALL AS-IS CONDITIONS.
3. REFER TO CONCESSIONS SERVICE MATRIX 7.6 FOR MEP AND STRUCTURAL CONDITIONS RELATIVE TO LEASE SPACE.
4. BEFORE MAKING FLOOR PENETRATIONS OR ANY KIND OF REMOVAL OF CONCRETE FROM THE FLOOR SLAB, G.C. TO ENSURE THAT THE CONCRETE AT THAT LOCATION IS FREE OF REBAR, STRUCTURAL BEAMS, PAN JOISTS OR GIRDERS. IF FLOOR IS CONSTRUCTED OF POST TENSIONED SYSTEM, G.C. SHALL ENSURE THAT THE ADEQUATE MEASURES ARE TAKEN TO STEER CLEAR STRESSED BARS IN ORDER TO AVOID INJURY OR COMPROMISE OF THE STRUCTURAL INTEGRITY OF THE FLOOR. IN CASE, CUTTING OF ANY REBAR SHALL REQUIRE PRIOR APPROVAL FROM A PROFESSIONAL STRUCTURAL ENGINEER FAMILIAR WITH THE ORIGINAL CONSTRUCTION OF THE FLOOR SYSTEM. USE OF SYSTEMS SUCH AS GPR FOR LOCATING REBAR IS HIGHLY RECOMMENDED BEFORE MAKING PENETRATIONS INTO THE SLAB.

**KEY PLAN :**



GRAPHIC SCALE: 1" = 20'-0"



Date: **08/08/14**

Scale: AS INDICATED

Sheet Number: **E-2-4771**

**EXHIBIT B PERMITTED USES**

Concession Location	Trade Name	Store Hours	Permitted Uses
A-2-2719	XpresSpa	To be determined, but not less than the earlier of opening time described in Appendix E of RFP 14-534-039 or Respondent’s proposed opening time through the last scheduled flight departure.	This location is intended for the performance of personal services which include manicure/pedicure services, chair massage, aromatherapy, and similar personal care services as offered in upscale salons. Subject to the Product Price List, the sale of a limited selection of related products.
C-2-3717	XpresSpa	To be determined, but not less than the earlier of opening time described in Appendix E of RFP 14-534-039 or Respondent’s proposed opening time through the last scheduled flight departure.	This location is intended for the performance of personal services which include manicure/pedicure services, chair massage, aromatherapy, and similar personal care services as offered in upscale salons. Subject to the Product Price List, the sale of a limited selection of related products.
E-2-4771	XpresSpa	To be determined, but not less than the earlier of opening time described in Appendix E of RFP 14-534-039 or Respondent’s proposed opening time through the last scheduled flight departure.	This location is intended for the performance of personal services which include manicure/pedicure services, chair massage, aromatherapy, and similar personal care services as offered in upscale salons. Subject to the Product Price List, the sale of a limited selection of related products.

**EXHIBIT C MONTHLY CONCESSION REPORT**

**Tampa International Airport - Airport Concession Department  
Monthly Concession Report**

Concessionaire: \_\_\_\_\_ Contract Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Reporting Period: \_\_\_\_\_  
 \_\_\_\_\_ Report Date: \_\_\_\_\_  
 \_\_\_\_\_

Space ID	Concession Location DBA	Gross Receipts	
		Monthly Reporting Period	Fiscal Year to Date
1		\$ -	\$ -
2		0.00	0.00
3		0.00	0.00
4		0.00	0.00
5		0.00	0.00
6		0.00	0.00
7		0.00	0.00
8		0.00	0.00
9		0.00	0.00
10		0.00	0.00
11		0.00	0.00
12		0.00	0.00
13		0.00	0.00
14		0.00	0.00

Total	\$ -	\$ -
Percentage Fee Rate		%
Accrued Fiscal Year to Date Privilege Fee		\$ -
Less Cumulative Privilege Fee Paid Fiscal Year to Date:		
Cumulative MAPF Paid Fiscal Year to Date	\$ -	
Cumulative Percentage Fee Paid Fiscal Year to Date	\$ -	
Total Cumulative Privilege Fee Paid Fiscal Year to Date		\$ -
Equals: Current Privilege Fee Due (but not less than zero)		\$ -

Certification: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_



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**EXHIBIT D    DEVELOPMENT SCHEDULE**

To be inserted following Pre-Design Meeting.

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**EXHIBIT E      FORM OF GUARANTY OF CONTRACT**

WHEREAS, a certain Contract, more fully described below, has been or will be executed:

Location:                      Tampa International Airport  
   4100 George J. Bean Parkway  
   Tampa, FL 33607

Authority:                      Hillsborough County Aviation Authority

Concessionaire:              XpresSpa Tampa Airport, LLC

Guarantor:                     XpresSpa Holdings, LLC

WHEREAS, Authority under said Contract requires as a condition to its execution of said Contract that the undersigned (hereinafter referred to as Guarantor) guarantee the full performance of the obligations of Concessionaire under said Contract; and

WHEREAS, the undersigned is desirous that Authority enter into said Contract with Concessionaire.

NOW THEREFORE, in consideration of the execution of said Contract by Authority, Guarantor hereby unconditionally guarantees the complete and timely performance of each and all of the terms, covenants and conditions of said Contract to be kept and performed by said Concessionaire, including the payment of all Premises Rent and all other rent, fees and other charges to accrue thereunder. Guarantor further agrees as follows:

1. That this Guaranty shall continue in favor of Authority notwithstanding any extension, modifications, or alteration of said Contract entered into by and between the parties thereto, or their successors or assigns, notwithstanding any assignment of said Contract, with or without the consent of Authority, and no extension, modification, alteration or assignment of the above referred-to Contract shall in any manner release or discharge Guarantor and it does hereby consent thereto; and
2. This Guaranty will continue unchanged by any bankruptcy, reorganization or insolvency of Concessionaire or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee to Concessionaire; and
3. Authority, may, without notice, assign this Guaranty in whole or in part, and no assignment or transfer of the Contract shall operate to extinguish or diminish the liability of Guarantor hereunder; and
4. The liability of Guarantor under this Guaranty shall be primary and, in any right of action that shall accrue to Authority under the Contract, Authority may, at its

- 
- option, proceed against the undersigned without having commenced any action or obtained any judgment against Concessionaire; and
  5. Guarantor shall pay Authority reasonable attorney fees and all costs and other expenses incurred in any negotiations, action or proceeding commenced to enforce this Guaranty; and
  6. Guarantor hereby waives notice of any demand by Authority as well as of any notice of Concessionaire's default in the payment of rent or any other amounts contained or reserved in the Contract; and
  7. Guarantor hereby consents to personal jurisdiction and venue in the state and judicial district in which the Premises is located.

The use of the singular herein shall include the plural. The obligation of two or more parties shall be joint and several. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successor and assigns of the parties herein named.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty of Contract to be executed as of the effective date of the above mentioned Contract.

Corporate Seal:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_

NOTE: If Guarantor is a corporation, its authorized officials must sign on behalf of the corporation and indicate the capacity in which they are signing. This Guaranty must be executed by the President or Vice President and the Secretary or Assistant Secretary, unless the bylaws or a resolution of Authority of Directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, shall be attached to this Guaranty. The appropriate corporate seal should be affixed hereto.