



Rhode Island
Airport Corporation

December 15, 2022

ADDENDUM NO. 006
Request for Proposals No. 32311R
Food and Beverage Concession Program

Prospective proposers and all concerned are hereby notified of the following changes in the Request for Proposals (RFP) document related to RFP No 32311R. These changes shall be incorporated in and shall become an integral part of the contract documents.

Attached hereto is the Concessions Agreement for this solicitation. Please refer to the Concession Agreement section on page 11 of the RFP, and any related Addenda, for further details.

###END OF ADDENDUM###

CONCESSION AGREEMENT

BY AND BETWEEN

RHODE ISLAND AIRPORT CORPORATION

AND

Effective Date: July 1, 2023

CONCESSION AGREEMENT

EXHIBITS

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CONCESSION AGREEMENT

This Concession Agreement ("Agreement") is made and entered into this 1st day of July, 2023 by and between Rhode Island Airport Corporation, a quasi-public body corporate under the laws of the State of Rhode Island hereinafter referred to as "RIAC" and _____, a corporation organized and existing under the laws of the State of _____, and duly admitted and authorized to do business in the State of Rhode Island, hereinafter referred to as "Concessionaire."

WITNESSETH:

WHEREAS, RIAC is a public corporation organized as a subsidiary of the Rhode Island Commerce Corporation (Commerce RI), a public corporation, governmental agency, and public instrumentality of the State of Rhode Island. RIAC is responsible for the design, construction, operation, and maintenance of the State's airport system. Specifically, through a certain Lease and Operating Agreement with the State of Rhode Island dated June 25, 1993, as amended, RIAC maintains and operates Rhode Island T.F. Green International Airport (the "Airport") located in Warwick, Rhode Island; and,

WHEREAS, RIAC desires that a portion of the concession areas at the Airport described hereinafter be developed as concessions (the "Assigned Premises"), as such term is hereinafter defined, upon the terms and conditions in this Agreement; and,

WHEREAS, Concessionaire desires and is ready, willing and able to establish the Assigned Premises as concessions at the Airport upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which recitals are contractual in nature, the mutual covenants herein, and for other good and sufficient consideration RIAC and the Concessionaire hereby mutually agree, each for itself and its successors and assigns, as follows:

ARTICLE I DEFINITIONS

1.1 "Agreement" shall mean this Concession Agreement between RIAC and the Concessionaire for the right, privilege and obligation, continuously and uninterruptedly through the Term of this Agreement, to occupy, operate and manage the Assigned Premises as defined herein for the specific purpose described in Article VI herein under the terms and conditions expressly set forth herein.

1.2 "Airport" shall mean "Rhode Island T.F. Green International Airport" in Warwick, RI, and its terminal and concourse areas where the Assigned Premises are located.

1.3 “Airport Concession Disadvantaged Business Enterprise” or “ACDBE” shall have the meaning set forth in 49 C.F.R. Part 23, as amended from time to time.

1.4 “Applicable Laws” shall mean present and future laws, ordinances, orders, directives, codes, rules, regulations, directives and contract/grant assurances of, or imposed by, of any Governmental Authority that are applicable to the Airport, the Assigned Premises or any specific situation described in this Agreement, including without limitation, those of the FAA, the TSA and RIAC.

1.5 “Assigned Premises” shall mean the area and/or areas in the Facilities designated by this Agreement, including the Exhibits hereto as: (i) the Operational Spaces where the Concessionaire may operate its concessions pursuant to the terms and conditions of this Agreement; and (ii) if applicable, the Non-Operational Spaces where the Concessionaire may maintain its business offices and store its personal property.

1.6 “Concession Program” means the operation of the Assigned Premises in accordance with this Agreement and the Concessionaire’s Proposal.

1.7 “Concession Rent” shall mean payments equal to: (i) for the Operational Spaces, the greater of the Minimum Annual Guarantee (MAG) specified in Paragraph 9.1, subsection a., or the Percentage Rent specified in Paragraph 9.1, subsection b.; plus (ii) payment for the Non-Operational Spaces specified in Paragraph 9.1, subsection c.

1.8 “Concessionaire” shall mean _____, its permitted subtenants and/or partners, and its successors or assigns.

1.9 “Concessionaire Parties” shall mean agents, servants, employees, contractors, licensees, and any other person over which the Concessionaire has the right to exercise control.

1.10 “Disadvantaged Business Enterprise” or “DBE” shall mean, as certified by the State of Rhode Island and verified by RIAC, a business, whether it is a corporation, sole proprietorship, or partnership, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, as defined in the regulations promulgated at 49 CFR Part 23 and Part 26.

1.11 “Effective Date” shall mean July 1, 2023.

1.12 “Facilities” shall mean the tract of land and any enlargements thereof with all improvements thereon and to be erected thereon, designated as “Rhode Island T.F. Green International Airport,” including the existing Terminal, existing Concourses, and future Concourse Expansion(s), all as depicted on **Exhibit A**.

1.13 "Fixed Improvements" shall mean all structural or permanent improvements made by Concessionaire pursuant to Article XI of this Agreement, if applicable, including but not limited to ceilings, walls, floors, and all interior and storefront finishes and coverings, power, water and other utility installations and connections, all of which are affixed to the Assigned Premises. Any removable, portable kiosk installed on or in the Assigned Premises shall not be deemed a Fixed Improvement, but shall be considered a Trade Fixture. Specialty light fixtures are excluded from Fixed Improvements and shall be considered Trade Fixtures of Concessionaire. If removed by Concessionaire, specialty light fixtures shall be replaced by standard light fixtures by the Concessionaire.

1.14 "Governmental Authority" shall mean any federal, state, municipal or governmental entity with authority over the Airport, the Facilities or any other portion of the Assigned Premises, including without limitation the FAA, the TSA, and RIAC.

1.15 "Gross Revenue" shall mean all monies or other consideration paid or payable to Concessionaire, its officers, employees and agents from all sales of Concessionaire from all business conducted upon or from the Assigned Premises by Concessionaire and its agents, servants, employees, contractors, licensees, and any other person over which the Concessionaire has the right to exercise control, and whether such sales be evidenced by cash, check, credit charge account, exchange or otherwise, and shall include, but not be limited to, the amount received from the sale of goods, wares and merchandise and for services performed on or at or originated from the Assigned Premises, together with the amount of all orders taken, received or originated at the Assigned Premises or sales completed by delivery at the Assigned Premises, whether such orders be filled from the Assigned Premises or elsewhere. Gross Revenue shall specifically include any monies or other consideration paid or payable to Concessionaire, its officers, employees and agents for the use and occupancy of any product display areas, window display areas or signage areas. Gross Revenue shall not include sales of merchandise for which verifiable refunds (as evidenced by a refund slip signed by the customer), or allowances have been made on merchandise claimed to be defective or unsatisfactory, provided such sales have been included in Gross Revenue. When properly recorded and accounted for, Gross Revenue shall not include the amount of any sales, use or gross receipts tax imposed by any Governmental Authority directly on sales and collected from customers, provided that the amount thereof is added to the selling price or absorbed therein, and paid by the Concessionaire to such Governmental Authority. No franchise or capital stock tax and no income or similar tax based upon income or profits as such shall be deducted from Gross Revenue in any event whatsoever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Concessionaire shall receive payment (whether full or partial) thereof. No deduction from Gross Revenue shall be allowed for uncollected or uncollectible installment or credit accounts, credit card discounts, employee purchases and/or discounts, or thefts.

Notwithstanding anything to the contrary in this Agreement, the term Gross Revenues shall not include the following:

- a. Any sale or transfer of all, or such a substantial part of the stock or merchandise of the Concessionaire so as to constitute a “bulk transfer” defined as a transfer in bulk, and not in the ordinary course of business, of materials, supplies, merchandise, inventory, or equipment or sale of the stock or merchandise or business of Concessionaire in connection with the winding down or dissolution of the Concessionaire's business at the Assigned Premises or the sale or transfer of all or substantially all of the Concessionaire's assets or business at the Assigned Premises;
- b. Transfers of merchandise or goods between similar stores owned or operated by Concessionaire in the ordinary course of business; and
- c. Any money received from an insurance or indemnity company or companies as a result of loss, damage, or destruction of or to the merchandise of Concessionaire or Concessionaire's trade fixture, unless otherwise provided in this Agreement.

1.16 "Lease Year" or “Year” shall have the meaning ascribed to it in Paragraph 4.1 herein.

1.17 "Minimum Annual Guarantee" or “MAG” shall mean the minimum annual amount of monetary compensation due to RIAC from the Concessionaire in consideration of the rights granted Concessionaire under this Agreement as herein provided in Paragraph 9.1.

1.18 “Non-Operational Spaces” shall mean the space or spaces in the Facilities, if applicable, in which the Concessionaire shall have the right to maintain its business offices and store its personal property, and for which Non-Operational Space Rent shall be due to RIAC from Concessionaire in consideration of the rights granted Concessionaire under this Agreement as herein provided in Paragraph 9.1.

1.19 “Operational Spaces” shall mean the space or spaces in the Facilities from which the Concessionaire shall have the right, privilege, and obligation to operate its concessions continuously, and throughout the term in accordance with the terms and conditions of this Agreement.

1.20 "Percentage Rent" shall mean the sum of monetary compensation due to RIAC as RIAC's share of Gross Revenues as hereinafter provided in Paragraph 9.1.

1.21 "Personal Property" shall mean all furniture, trade fixtures and other portable property furnished and used by Concessionaire in its operations hereunder not affixed to the Assigned Premises as Fixed Improvements.

1.22 "Term" shall have the meaning ascribed to it in Paragraph 4.1 herein.

1.23 "Trade Fixtures" shall mean all appliances, signage and any other major equipment or improvements commonly regarded as trade fixtures with a useful life in excess of three (3) years, installed by Concessionaire pursuant to Article XI of this Agreement for use in its operations hereunder. Trade Fixtures may be affixed to the Assigned Premises provided the same may be easily removed without damage to the Assigned Premises. The term Trade Fixtures as used herein shall not include Fixed Improvements such as attached built-in shelving, or lighting fixtures other than freestanding lamps. Any item normally defined as a Trade Fixture, which is affixed to the Assigned Premises in such a manner as to cause damage to the Assigned Premises upon such items removal, shall be deemed a Fixed Improvement unless removed and any damaged is repaired by Concessionaire. For purposes of this Agreement, Concessionaire's exterior store signage shall be deemed a Trade Fixture.

ARTICLE II ASSIGNED PREMISES

2.1 Description and General Obligations: RIAC hereby grants to the Concessionaire and the Concessionaire accepts from RIAC the right to use the following Assigned Premises comprising a total of approximately Twenty Thousand Six Hundred and Fifty Three (20,653) square feet of space in the Facilities as Operational Space hereinafter described and more specifically set forth on **Exhibit B**, incorporated herein by reference. It is understood and agreed that, upon completion of construction of the Assigned Premises, electronic and hard-copy "as built" drawings may be substituted as **Exhibit B** without further amendment hereto. In no event will there be a reduction in space of the Assigned Premises by the Concessionaire, except in the events of Recapture by RIAC as per Article III, or default or breach of this Agreement by Concessionaire.

2.2 Possession: RIAC and Concessionaire hereby agree that the Concessionaire's taking possession of the Assigned Premises shall be deemed conclusive evidence of Concessionaire's acceptance of the Assigned Premises in satisfactory condition and in full compliance with all covenants and obligations of RIAC in connection therewith. Concessionaire agrees that it will accept possession of the Assigned Premises in a "where-is", "as-is" condition and that RIAC has made no representations or inducements respecting the condition of the Assigned Premises to the Concessionaire.

ARTICLE III RECAPTURE

3.1 RIAC reserves the right to recapture the Assigned Premises or a portion thereof anytime during the Term of this Agreement if RIAC, in its sole and absolute discretion, determines that the Assigned Premises or a portion thereof is required for changes in or expansion of space for hold rooms, ticket counters or other airline operations, or the requirement of such space for public facilities, utilities, or other uses directly related to the furnishing of air transportation services. In such

event, RIAC shall cause buy-out of the Net Book Value of the Concessionaire's Fixed Improvements in the Assigned Premises or the portion thereof in accordance with Paragraphs "a." and "b." below (the "Buy-Out"). This Agreement shall terminate as to such specified recaptured Assigned Space thirty (30) days after the provision of written notice by RIAC to the Concessionaire of RIAC's determination to recapture such Assigned Premises or a portion thereof.

RIAC may offer substitute space to the Concessionaire in connection with recapture of the Assigned Premises. Nothing in this Agreement shall be deemed to require that RIAC offer substitute space, or that the Concessionaire accept substitute space. The offering of substitute space will be in the sole and absolute discretion of RIAC; provided, however, that any such substitute space shall be offered (if at all) by RIAC to the Concessionaire at least thirty (30) days before the effective date of the recapture. After the recapture of all or a portion of any of Concessionaire's individual locations comprising the Assigned Premises, and the acceptance or refusal of any substitute space by the Concessionaire due to this recapture provision, RIAC shall make an adjustment to the Minimum Annual Guarantee (hereinafter, "MAG"), effective on the date of such recapture. The adjustment to the MAG shall be based on the proportion of the total recaptured area compared to the total square footage of the Assigned Premises.

In the event that substitute space is offered and accepted, the Concessionaire shall make all necessary improvements to such space within ninety (90) days of the date such space becomes available to Concessionaire. All construction and installation shall be in accordance with the provisions of Article XI. Concessionaire shall amortize/depreciate the costs of all Fixed Improvements installed in such substitute space over the remaining portion of the Term of the Agreement, with it being understood that Concessionaire shall not be entitled to any buy-out of improvements to such substitute space at the end of the Term.

- a. "Net Book Value" shall mean the original cost of a capital expenditure made by Concessionaire for a Fixed Improvement, less accumulated amortization or depreciation (as appropriate), calculated in accordance with Article XI, as of the date on which the Concessionaire is required to surrender the Assigned Premises or portion thereof, prorata. Concessionaire's original cost shall include reasonable and direct costs for such Fixed Improvements as defined in Paragraph 1.8. Net Book Value shall be calculated for each individual location, and these calculations shall be incorporated as part of this Agreement.
- b. Any Buy-Out payment made by or on behalf of RIAC under the terms of this Article III shall be paid to Concessionaire by the end of the thirtieth (30th) calendar day following the date the Concessionaire has surrendered the recaptured Assigned Premises and has submitted the statement of Net Book Value to RIAC, whichever is later. Within a reasonable time prior to the date such Buy-Out payment is due (and subject to update immediately prior to the time the Buy-Out payment is made), the President & CEO or his designee shall be entitled to inventory and inspect all Fixed Improvements with respect to which such Buy-Out payments have been or are to be made, and, if any such inventory and inspection indicates that any such improvement

is either missing or substantially damaged, the amount of the Buy-Out payment allocated to such improvement shall be either: (i) subtracted from the Buy-Out payment (in the event the improvement is missing); or (ii) reduced by the amount required to repair the damage as determined by the President & CEO or his designee (in the event the improvement is substantially damaged); provided, however, that no such improvement or fixture shall be deemed to be "substantially damaged" if such improvement is merely obsolete or worn out in accordance with normal and reasonable retail use. Simultaneously with its receipt of the Buy-Out payment, Concessionaire shall deliver to RIAC a Bill of Sale containing full warranties of title, conveying title to the Fixed Improvements contained in the Assigned Premises surrendered, free of all liens and encumbrances, in an "as is-where is" basis. In the event any of such Fixed Improvements are subject to any liens or encumbrances, the amount of the Buy-Out payment shall be reduced by the amount necessary to satisfy such liens or encumbrances and such amount shall be paid to the lienholder in exchange for a release of such lien.

ARTICLE IV LEASE TERM

4.1 The Term of this Agreement shall begin on the Effective Date, and shall continue in full force and effect, unless terminated prior thereto as hereinafter provided, for a term of Ten (10) years (the "Initial Term"). Each Lease Year shall be a successive period of twelve (12) calendar months corresponding to the anniversary of the Effective Date. Except to the extent (if any) otherwise provided in this Agreement, upon mutual agreement of RIAC and Concessionaire, as expressed in writing by the parties no more than three hundred and sixty-five (365) days and no less than one hundred and eighty (180) days prior to the termination of this Agreement, the Agreement may be extended for one additional Five (5) year period (the "Option Term" and, with the Initial Term, the "Term") at the end of the Initial Term on the same terms and conditions as in effect immediately prior to the then-current expiration date. If either party elects not to exercise the Option Term, it must provide the other party written notice prior to January 1, 2032.

4.2 All rentals, fees, charges and payments due hereunder shall begin on the Effective Date.

4.3 Failure of Concessionaire to Open: In the event that Concessionaire fails to open for business each and every one of the individual locations which comprise the Assigned Premises fully fixtured, stocked and staffed, in accordance with the Airport's rules, regulations and criteria, within one hundred and twenty (120) days of receipt of a building permit, then RIAC shall have, in addition to any and all remedies herein provided, the right, at its sole option, to collect additional rent at the rate of 1/30th of the monthly MAG per day until each and every one of the said Assigned Premises has been opened for business, fully fixtured, stocked and staffed in accordance with the Airport's rules, regulations and criteria. The one hundred and twenty (120) day period described herein shall be extended for any period of delay caused by the events stated in Paragraph 20.16 herein.

ARTICLE V
SURRENDER OF PREMISES

5.1 Condition on Surrender: At the expiration or earlier termination of this Agreement, Concessionaire shall quit and surrender up the Assigned Premises to RIAC, peaceably, quietly, broom clean, and in the same condition as when tendered by RIAC, or thereafter improved by Concessionaire, reasonable wear and tear and insured casualty excepted. All Trade Fixtures or Personal Property installed in the Assigned Premises by Concessionaire, to include kiosks, shall have been removed by Concessionaire, provided that Concessionaire is not in default hereunder, and further provided that the same can be removed without damage to the Assigned Premises or the Airport. At the sole option of RIAC, all Fixed Improvements shall, without compensation to the Concessionaire, become the property of RIAC, free and clear of all claims to or against them by Concessionaire or any third person, upon surrender of the Assigned Premises by the Concessionaire for whatever reason. Should RIAC elect not to take ownership of any Fixed Improvements, prior to the date of surrender Concessionaire shall be solely responsible for the expense of the removal of said Fixed Improvements and restoring the Assigned Premises to the same condition as when originally tendered by RIAC. In the event that Concessionaire shall fail to remove its Personal Property and/or Trade Fixtures on or before the termination (whether by expiration of the Term, cancellation, forfeiture, or otherwise, whichever first occurs) of this Agreement, at the sole option of RIAC, (i) said Personal Property and Trade Fixtures may be stored at a public warehouse or elsewhere at Concessionaire's sole cost and expense; and/or (ii) title to such Trade Fixtures and Personal Property shall vest in RIAC, free and clear of all claims to or against them by Concessionaire or any third person, at no cost to RIAC, in the manner allowed by law. In such event RIAC shall not be responsible for any losses related to such Personal Property or Trade Fixtures and RIAC may sell or otherwise dispose of such items.

5.2 Holding Over: In the event Concessionaire shall hold over and remain in possession of the Assigned Premises after the expiration of the Term of this Agreement with or without the consent of RIAC, such holding over shall not be deemed to operate as a renewal or extension of this Agreement (or any lease or license hereunder) but shall create, in the case of holding over with the consent of RIAC, a month-to-month permit at the same Concession Rent, and other terms, conditions and covenants contained in this Agreement and effective at the time holdover commenced, which may be terminated at any time by RIAC or the Concessionaire by providing no less than thirty (30) days' prior written notice to the other to be effective on the first day of the month following the month in which such notice was served. In the event of holding over by Concessionaire after the expiration of the Term of this Agreement without the written consent of RIAC, Concessionaire will be deemed a tenant from month-to-month upon all of the terms and conditions of this Agreement which are not inconsistent with such tenancy, except that the Concession Rent shall be assessed at one hundred-fifty percent (150%) during any such period of holding over.

ARTICLE VI
USES AND PRIVILEGES

6.1 The Concessionaire has the exclusive right, privilege, and obligation to continuously

and uninterruptedly occupy, operate, and manage the Assigned Premises in accordance with the provisions of this Agreement, subject to the provisions of Paragraph 9.1, for the following purposes and as more specifically outlined by the menu, merchandise, and product concepts contained in **Exhibit C**, attached hereto and incorporated herein by reference, only.

Concessionaire shall also have the specific right, privilege and obligation to sell such permitted merchandise from its Assigned Premises as is defined and described in **Exhibit C**, attached hereto and incorporated herein by reference, and for no other purpose whatsoever.

Concessionaire's business in the Assigned Premises shall be conducted under the common name of _____. Concessionaire shall not use or permit the Assigned Premises to be used under any other trade name without RIAC's written consent, such consent not to be unreasonably withheld. Concessionaire represents and warrants that it has the legal rights to use the foregoing trade names and licenses in its operation of the Assigned Premises. Concessionaire acknowledges and hereby agrees that the identity, skill, experience, and reputation of the Concessionaire, the specific character of the Concessionaire's business, the anticipated use of the Assigned Premises, potential for payment of Percentage Rent, and the relationship between such use and other uses within the Facilities were all relied upon by RIAC and served as significant and material inducements contributing to RIAC's decision to entering into this Agreement with the Concessionaire. Failure of Concessionaire to maintain its legal rights to use its trade names and licenses to use any business or trade name shall constitute a material default under this Agreement.

6.2 In the event the President & CEO or his designee, in his sole opinion, determines that any item or service displayed, offered for sale or sold by the Concessionaire is objectionable, Concessionaire shall, upon written notice from the President & CEO or his designee, immediately remove such item or service from display and from its inventory and Concessionaire agrees that it shall not thereafter display, offer for sale, or sell such item or service.

6.3 The sale of items or services other than those identified in **Exhibit C** or discontinuance of the sale of items or provision of services identified in **Exhibit C** by Concessionaire shall not be permitted without prior written approval of the President & CEO or his designee, who may withhold approval for any reason whatsoever or for no reason. In the case of discontinuance of the sale of items or provision of services identified in **Exhibit C** by Concessionaire, Concessionaire shall be required to provide written documentation to justify the discontinuance of said items or services upon request from the President and CEO or his designee. If in the sole discretion of the President & CEO or his designee any discontinued items or services are deemed desirable or beneficial to the Airport, said items and services shall be promptly restored by the Concessionaire to comply with the terms of this Agreement. Failure to make necessary adjustments as directed by the President & CEO or his designee shall be deemed a material breach of this Agreement. Concessionaire shall be required to provide the President & CEO or his designee, at a minimum, in written form, the following information for consideration of any modification of **Exhibit C** with respect to the addition or deletion of items and/or services offered:

- a. Clear description of the items to be added/deleted;
- b. Current prices at off-Airport locations for the affected item(s);
- c. Rationale for the addition/deletion with supporting justification, such as sales volume, trends, etc.

The President & CEO or his designee's consideration of Concessionaire's written request to alter **Exhibit C**, either as a result of addition or deletion of items, shall be based upon, among other items, the determination that such addition/deletion reflects and enhances the overall theme of the concession.

6.4 The Concessionaire shall have no right under this Agreement to provide, display, dispense, offer or sell any items on the Assigned Premises of any kind, type or nature except such permitted merchandise approved by the President & CEO or his designee in **Exhibit C**. Concessionaire shall not install or suffer to be installed any amusement, dispensing, or vending machine(s) on the Assigned Premises unless approved in writing by the President & CEO or his designee prior to installation.

6.5 Concessionaire shall not, within its Assigned Premises, offer for sale or install, maintain or operate, or suffer to be installed, "Display Facilities" for the provision of commercial advertising of any item, product, service or thing which is not available as an item, service, product for sale, or product for demonstration within the Assigned Premises. The term "Display Facilities" as used in the preceding sentence shall mean and refer to display cases, exhibits, video display screens, dioramas, backlit showcases, courtesy direct-line phone boards, or brochure dispensers. Notwithstanding anything contrary in this Agreement, this paragraph is not intended to limit or disallow Concessionaire from utilizing a Display Facility for the purpose of advertising Concessionaire's products or business. RIAC requires that any Display Facilities for the purpose of advertising Concessionaire's product or business receives the written approval of RIAC prior to installation. Such approval shall be in the sole and absolute discretion of RIAC.

6.6 Non-Exclusivity: It is expressly provided that the rights and privileges granted for use of the Assigned Premises hereunder are granted on a non-exclusive basis.

6.7 The Concessionaire has the non-exclusive right of ingress to and egress from its Assigned Premises, subject to any rules or regulations which may have been established or may be established in the future by the President & CEO or his designee or RIAC. Such rights of ingress and egress shall apply to the Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property. In connection with any such ingress or egress, the Concessionaire shall not, and shall not permit others, to obstruct or otherwise interfere with any airlines or other tenant's operations or use of the Facilities or the Airport.

6.8 Should a conflict arise between the Concessionaire and other tenants or concession operators at the Airport regarding the scope of concession privileges, the decision of the President & CEO or his designee shall be final in resolving the conflict.

6.9 While RIAC may provide parking facilities to the Concessionaire's employees in common with employees of other Concessionaires and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. Nothing herein contained shall be deemed to require RIAC to provide parking facilities to Concessionaire's employees.

6.10 If applicable, Concessionaire shall provide the President & CEO or his designee a copy of any health inspection report within twenty-four (24) hours after Concessionaire receives such report. If a health inspection does not result in a report, Concessionaire shall submit a written summary of the nature and findings of such inspection as they were communicated to the Concessionaire. Concessionaire shall also provide the President & CEO or his designee with any required corrective actions and timeframes for each corrective action to be continuously implemented.

ARTICLE VII OPERATIONAL STANDARDS

7.1 Adherence to Standards: Concessionaire and each of its Concessionaire Parties shall at all times observe, obey, abide by, and adhere to all the standards, rules, regulations, and procedures which may from time to time be promulgated by RIAC. Further, Concessionaire, its employees, agents, and servants shall comply with all Applicable Laws applicable to Concessionaire's operations hereunder. The President & CEO or his designee, in his sole opinion, shall have the right to determine the Concessionaire's compliance with all operational standards, rules, regulations, or procedures. Failure of Concessionaire to observe, obey, and abide by applicable operating performance standards shall result in the application by RIAC of penalties or Liquidated Damages in the amount as set forth in this Agreement, in addition to any and all other remedies available to RIAC under this Agreement and/or under applicable law.

7.2 Reserved

7.3 Concessionaire Standards: Concessionaire shall be required to submit to RIAC a copy of any customer service, operational, employee training, or other operational standards, manuals, or handbooks and shall ensure continuous adherence to Concessionaire's own standards in addition to RIAC's standards as set forth herein.

7.4 Testing and Inspection by the Airport: Concessionaire hereby acknowledges and agrees that the Airport may monitor, test, or inspect Concessionaire's services at any time through the use of its own direct review, the use of third parties, and/or by other reasonable means that do not unduly interfere with Concessionaire's business.

7.5 Hours of Operation: The Assigned Premises shall be continuously and uninterruptedly

open for business and provide all services and sales activities as required by this Agreement at such hours as may be established by the President & CEO or his designee from time to time in his sole and absolute discretion, initially 4:30 AM until 30 minutes prior to the last scheduled or delayed departure or arrival daily or as otherwise agreed upon ("Airport Hours"). Approved Airport Hours shall be conspicuously posted at the entrance of each of the Concessionaire's individual locations. Concessionaire hereby understands and agrees that the Airport Hours may be seven (7) days per week, including local, state and federal holidays, for all hours of airline operations. The Concessionaire shall not be deemed to have breached or be in default of such operating requirement as the result of a temporary closure of the Concessionaire's business within the Assigned Premises in connection with maintenance or repairs, renovation or remodeling, inventories, or other temporary closing in the normal course of the Concessionaire's business provided that Concessionaire has received from the President & CEO or his designee, prior to such temporary closing, written permission for such temporary closing. Concessionaire shall be required, in each of the individual locations which comprise the Assigned Premises, to prominently post in an area visible to employees and the public the most current copy of the Airport Hours.

7.6 Operations During Periods of Flight Delays: In the event of delayed flights within the terminal and/or concourse(s) on which the Assigned Premises is located, Concessionaire shall, at the request of the President & CEO or his designee, be required to remain continuously open and provide all services and sales activities as required by the Agreement, even if such period is beyond the current Airport Hours, until said flights depart or arrive at the gate or other instructions are provided by the President & CEO or his designee.

7.7 Penalties for Failure to Maintain Airport Hours: Concessionaire acknowledges that failure to open and conduct business during the Airport Hours will (i) cause RIAC to lose Percentage Rent; (ii) be detrimental to the retail image of the Facilities due to Concessionaire's Assigned Premises being closed; and (iii) result in decreased impulse shopping traffic to other areas of the Facilities thereby potentially decreasing the sales volume of other concessionaires in the Airport. If for four (4) or fewer hours during any day, Concessionaire is not open and conducting business during the Airport Hours, then at RIAC's sole option, Concessionaire shall pay in addition to the MAG or Percentage Rent and all other sums due hereunder, an amount equal to One Hundred dollars (\$100.00) per instance. If for more than four (4) hours but less than or equal to eight (8) hours during any day Concessionaire is not open and conducting business during the Airport Hours, then at RIAC's sole option, Concessionaire shall pay in addition to the MAG or Percentage Rent and all other sums due hereunder, an amount equal to Two Hundred Fifty dollars (\$250.00). If for more than eight (8) hours during any day Concessionaire is not open and conducting business during the Airport Hours, then at RIAC's sole option, Concessionaire shall pay in addition to the MAG or Percentage Rent and all other sums due hereunder, an amount equal to Five Hundred dollars (\$500.00). The exact monetary value of said losses and/or injuries caused by Concessionaire's failure to be open and conducting business during the Airport Hours is extremely difficult and impractical to determine; therefore the parties agree that the above described sums represent fair and reasonable estimates of the monetary value of such losses and/or damages. Nothing herein shall diminish RIAC's right to terminate this Agreement or exercise any other remedy available to RIAC for failure of Concessionaire to carry on its business during the Airport Hours.

7.8 Employee Retention: RIAC is dedicated to exceptional customer service. Incumbent concessions employees have invaluable knowledge and experience regarding Airport operations and the professional handling of conditions peculiar to an airport, such as sudden influxes of customers at odd hours and intervals.

Therefore, the Concessionaire shall retain for a 90-day trial period those employees of the current concessionaires who wish to continue working for the incoming Concessionaire. RIAC may provide, if available, the incoming Concessionaire with a list of the current employees' names, addresses, dates of hire, and employment classifications who are interested in continued employment. Employees may not be discharged without cause during the 90-day trial period. Each employee who receives a satisfactory written performance evaluation at the end of the trial period will be offered continued employment by Concessionaire.

If the Concessionaire determines that fewer employees are required than were required by the previous concessionaire, the Concessionaire shall retain employees by seniority or other applicable performance evaluation within each job classification. During the 90-day trial period or until the previous concessionaires completely cease operations, whichever is later, the Concessionaire shall maintain a preferential hiring list of employees not retained from which the Concessionaires shall hire additional employees.

7.9 Concessionaire's Conduct of Business:

- a. Concessionaire shall operate its business in the Assigned Premises so as to maximize the Gross Revenues produced by such operation and shall maintain an adequate staff of employees and maintain in the Assigned Premises at all times a stock of merchandise as is reasonably designed to produce the maximum return to RIAC from the use of the Assigned Premises by a like Concessionaire, and to assure RIAC a return of the greatest possible amount of Percentage Rent.
- b. Concessionaire shall have its display windows, signs, interior sales area, and permitted advertising displays adequately illuminated continuously during the Airport Hours and, if such hours are less than twenty-four (24) hours, such additional hours as the President & CEO or his designee may establish from time to time in the President & CEO or his designee's sole and absolute discretion.
- c. Concessionaire hereby acknowledges that other concessionaires at the Airport may provide similar and competing business services. As it is imperative that passengers, employees, and visitors at the Airport are fairly and unbiasedly informed of the range of services and products available, regardless of the fact that the desired service/product/information may be better provided by a

competitor, Concessionaire hereby agrees that it, its employees, directors, officers, and agents shall inform the public of services and products available elsewhere, and shall direct the public to those other services and products if sought by the public.

7.10 Interior Store Signage: Subject to Paragraph 6.5, Concessionaire shall be permitted and required to install and operate signs on the Assigned Premises to market the products and/or services offered for sale in the Assigned Premises. All signs shall be accurate, showcase a cross section of product, and be visible. All interior store signage shall require the prior written approval of the President & CEO or his designee prior to installation. Such signage shall assist and complement the overall effective and creative merchandising and marketing of the permitted merchandise. All signage shall be professionally designed. No hand-lettered or hand-modified signs shall be permitted without the prior written approval of the President & CEO or his designee. All advertisements are subject to and must be compliant with RIAC's Advertising Standards.

- a. All displays, posters, computer or video screens, and sounds in the Assigned Premises shall reflect good taste, be professionally developed, and presented in such a manner as not to be offensive to the general public and be of such high caliber so as to reflect the dignity of the Airport and the services provided to the public by RIAC. All reasonable complaints from the public or other Airport tenants to RIAC, or from RIAC, will be forwarded to the Concessionaire in writing. Concessionaire shall remedy such offensive items within two (2) calendar days of receipt of said complaints.
- b. Any marketing program in the Facilities, lasting longer than five (5) consecutive calendar days, shall be subject to the review and approval of the President & CEO or his designee. Any program that the President & CEO or his designee determines unacceptable, in his sole and absolute discretion, shall be removed from the Facilities within two (2) days of receipt of written notice to do so.
- c. Concessionaire shall not advertise an individual airline's transportation services, or other goods or services offered in connection therewith, on or in the Assigned Premises without the prior written approval of the President & CEO or his designee. The foregoing shall not be deemed to prohibit: (i) the sale or distribution within the Assigned Premises of any permitted merchandise which includes or features advertising or promotion of an airline, provided that the names or marks of any such other airline (as distinguished from the goods themselves) which might visibly appear on the packaging or exterior of any of the foregoing goods shall not be prominently displayed anywhere within the Assigned Premises.

7.11 Product Labeling: Concessionaire shall individually label each product, or list each

product with its appropriate price on menu/product/service boards, with the appropriate price in an area clearly visible to the passenger. If applicable, Concessionaire shall have menus of products/services available for sale. Any such menu shall include the use of descriptive terminology that accurately describes the product(s). Any terminology or statement that the President & CEO or his designee, in his sole and absolute discretion, determines to be false or misleading shall be immediately removed. Menus shall be of excellent quality and sufficient in number to meet peak period demands. If reasonably required by the President & CEO or his designee to enhance customer service for international passengers, Concessionaire shall create, execute, and maintain on hand an adequate number of menus printed in languages other than English. Concessionaire shall be responsible for a maximum of two (2) additional non-English versions of any menu. Calorie counts shall be displayed on food and beverage menu items.

7.12 Entrances: Concessionaire shall ensure that the public and passenger entrances to the Assigned Premises are kept clear of any boxes, cartons, trash, refuse, delivery carts, or other similar items. Piling of boxes, cartons, trash, refuse, delivery carts, or other similar items in an unsightly or unsafe manner within the Assigned Premises or public areas is forbidden. Additionally, merchandising displays and product offerings of Concessionaire shall not impede entrance to, or exit from, the Assigned Premises, or in any other fashion create a hazard to the public.

7.13 Merchandising: Concessionaire shall be specifically required and obligated to continuously provide such permitted services and merchandise during Airport Hours from its Assigned Premises as is defined and described in **Exhibit C**. Concessionaire shall ensure that all such merchandise is at all times attractively and logically arranged and that all merchandise displays are fully stocked with product.

7.14 Entertainment Systems: No radio, television, loudspeaker, or other similar device shall be installed without first obtaining in each instance the President & CEO or his designee's written consent, which consent may be withheld for any reason whatsoever, or for no reason. No antennas or aerial devices shall be erected on the roof, interior walls or exterior walls of the Assigned Premises, the Facilities or on the Airport without in each instance first obtaining the prior written consent of the President & CEO or his designee. Any radio, television, loudspeaker or other similar broadcast device, antenna, Wi-Fi, or aerial device so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. The cost of said removal shall be borne by the Concessionaire. No radio, television, loudspeaker, or other similar broadcast device, antenna, Wi-Fi, or aerial device shall be used in a manner so as to be heard or seen outside the Assigned Premises without the prior written consent of the President & CEO or his designee, whose consent may be withheld for any reason whatsoever, or for no reason. No radio, television, loudspeaker, or other similar broadcast device, antenna, Wi-Fi, or aerial device shall interfere with any Airport systems or the systems of other concessionaire's or tenant's transmissions of radio, television, loudspeaker, or other similar broadcast device, antenna, Wi-Fi, or aerial device. Any television used in the Assigned Premises must have appropriate closed captioning on at all times in accordance with the Americans with Disabilities Act.

7.15 Advertised Sales and Promotions: If applicable, Concessionaire shall be required to submit to the President & CEO or his designee by the first day of each Lease Year a promotional program, including promotion dates and the types of merchandise and theme of promotions, for the upcoming year. Concessionaire shall ensure that all promotions conducted in the Assigned Premises are located in a prominent location and are timely. Further, Concessionaire is required to participate in all advertised sales and promotions conducted by its parent corporation, its company, its franchisor, or its selected operating brands. Concessionaire is allowed to markup items included in advertising programs by no more than ten-percent (10%) above Street Prices per the provisions of Paragraph 7.27. Concessionaire shall make every reasonable effort to ensure that all corporate advertisements that list multiple locations include Airport location(s).

7.16 Employee Discount: Concessionaire shall provide discounts of at least ten percent (10%) for any person employed on-Airport, either by RIAC or by an Airport badged tenant. Revenues from employee-discount sales shall be considered part of Gross Revenues and accordingly, shall be subject to Percentage Rent.

7.17 Delivery: All loading and unloading of goods, the delivery or shipping of merchandise, supplies, and fixtures, as well as trash removal to and from the Assigned Premises shall be done only at such time, in the areas, and through the routes designated for such purposes by RIAC, as determined in the sole and absolute discretion of the President & CEO or his designee at Concessionaire's sole cost and expense. Concessionaire shall be required to make significant efforts to avoid using the public areas for large quantity deliveries during peak periods. Concessionaire shall ensure that any items being transported within the Airport are handled with care in a manner that ensures that items are safely packaged within appropriate containers. Concessionaire may be required to utilize delivery carts or devices which are in strict conformance with this Agreement.

7.18 Plumbing Facilities: The plumbing facilities (supply lines, drain lines, grease traps and/or interceptors, etc.) shall not be used for any purpose other than that which they are constructed, and no foreign substance or hazardous waste of any kind shall be disposed of therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire whose employees, agents, invitees, or customers may have caused it. Concessionaire shall at all times, on no less than a quarterly basis, and at its sole expense, maintain and clean all drain lines, grease traps, and/or grease interceptors serving the Assigned Premises.

7.19 Method of Payment: The Concessionaire shall accept and honor US currency, major companies' travelers-type checks, major company debit cards, and at least the following three major credit cards branded by: American Express, Visa and MasterCard for any purchase.

7.20 Point of Sale Devices: Concessionaire shall install electronic Point of Sale ("POS") devices to accurately record all transactions occurring in each location for accounting, report and auditing purposes. Concessionaire shall provide RIAC with the POS data as requested. All persons handling sales shall promptly recover said sales (cash or credit) in cash registers and other electronic

or mechanical devices and shall not delay, bundle, or "gang" register or record such sales. All POS terminals must have, at a minimum, the following features:

- a. Multiple segregated category addresses to allow for accurate and complete reporting of Gross Revenues by various merchandise and services categories;
- b. The capability of recording transactions by sequential control number to an audit tape or computer file;
- c. The capability of recording any discounts that are applied to a transaction;
- d. 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;
- e. 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 and phone number;
- f. A fee display of sufficient size and legibility that is placed in a location visible to the customer during a transaction;
- g. A secure transaction audit tape file on a removable storage device;
- h. The capability to report electronically directly to RIAC daily transaction reports; and
- i. The capability to report transactional data for all sales transactions on a continuous, real time basis, with transaction listings specific to Concessionaire's units.

7.21 Foreign Currency: Concessionaire shall not be required to accept foreign currency. No foreign currency exchange services shall be permitted to be provided by Concessionaire.

7.22 Level of Service: Concessionaire shall conduct its concession operation in a first class manner in accordance with the highest standards for similar operations at airports of comparable size and standards throughout the United States. Concessionaire shall conduct its operation to provide prompt and timely service. Concessionaire shall maintain its Assigned Premises and conduct its operations at all times in a safe, clean, orderly and inviting condition, to the satisfaction of the President & CEO or his designee. The Concessionaire shall not create any nuisance, annoyance, or be otherwise offensive or disturbing to others.

7.23 Management: All Concessions operations shall be supervised at all times by an active, qualified, competent manager, or assistant manager in the manager's absence. The manager or assistant manager shall be available at the Assigned Premises during the Airport Hours, or any additional hours

the Concessionaire is open for business. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the Assigned Premises, and shall be responsible for ordering and receiving merchandise, maintaining merchandise and supplies, and supervising sales personnel and other personnel employed in the business of the Concessionaire, represent the Concessionaire in dealings with RIAC, and coordinate all concession activities with RIAC. Concessionaire will cause such manager to be assigned a duty station or office on the Airport (which may be located within the Assigned Premises). Concessionaire shall provide RIAC with the names and contact information (cell phone and email) of manager and assistant manager, to include off-hours information.

7.24 Staffing Levels: Concessionaire shall recruit, train, supervise, direct, and deploy the number of representatives, agents, and employees (collectively referred to as “personnel”), necessary to promptly provide services to all customers and to meet all of the requirements of this Agreement. Concessionaire shall be continuously responsible for actively managing personnel levels to ensure that changes in patterns of passenger activity, whether due to normal daily peak patterns, airline schedule changes, passenger load factor changes, or flight delays, are adequately accommodated through increased levels of personnel. Any actual or perceived degradation in (a) the customer service requirements set forth in this Agreement or other duties, rights, or responsibilities set forth in this Agreement provided by Concessionaire in the course of conducting Concessionaire’s permitted uses; or (b) the training and competence of Concessionaire’s personnel shall be conveyed to the Concessionaire, and Concessionaire hereby agrees that it shall promptly institute training programs and/or add additional adequately trained and capable staff to the satisfaction of RIAC.

7.25 Personnel: Concessionaire shall ensure that all personnel utilized in its Assigned Premises shall conform to the following:

- a. All personnel employed by the Concessionaire shall be neat, clean, and well-groomed at all times. Jewelry shall be tasteful and inoffensive.
- b. No loud, boisterous, harassing, or otherwise improper or offensive actions, language, or conduct shall be permitted while on or about the Airport.
- c. Concessionaire shall, at its sole cost and expense, provide each member of the sales staff with a uniform of a design to be approved by RIAC, in its reasonable discretion, which shall be worn whenever said staff are on the Airport.
- d. Personnel shall prominently display nametags, Airport Identification badges and any other specified airport badges and/or pins while on the Airport.
- e. All personnel shall be attentive to customer needs, display a positive attitude and refrain from discussing personal issues/problems within the sales areas of the Assigned Premises.

- f. All personnel shall know and utilize practices of good customer service such as (1) assisting customers with purchase decisions; (2) identify product alternatives; (3) possess and display good product knowledge; and (4) utilize appropriate suggestive selling.
- g. All personnel shall provide warm, friendly, smiling, prompt and courteous service.
- h. All personnel shall be proficient with and trained in the required operations of all equipment and devices used in the Assigned Premises to facilitate sales (i.e. Point of Sale devices, credit card transaction equipment, etc.).
- i. All personnel shall be familiar with all applicable policies of this Agreement, the Airport and Concessionaire.
- j. All personnel engaged in sales activities shall speak and comprehend English, at a level appropriate to their duties.
- k. The use of cell phones by personnel while in the Assigned Premises, unless solely for business purposes of the Concessionaire, is expressly prohibited.

7.26 Customer Complaints: Concessionaire shall be required to respond to any complaints in writing within one (1) day of receipt, with a good faith effort to explain, resolve, or rectify the corresponding problem. Concessionaire shall provide the Airport with a copy of any complaint received the same day it is received by the Concessionaire, and shall provide the Airport with a copy of the written response by the Concessionaire the same day it is sent to the complainant. Complaints received by RIAC shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure.

Concessionaire shall be required to implement and utilize a customer comment system (cards, telephone, internet, etc.). These comments are to be collected by the manager daily. Copies of all such completed comments and Concessionaire summary reports, in a format acceptable to RIAC, shall be provided to the President & CEO or his designee on a monthly basis.

7.27 Pricing: Concessionaire acknowledges by its entering into this Agreement, RIAC's desire and obligation to provide the traveling public with a mix of high quality products and services at "Street Prices" (as defined below) plus up to ten percent (10%). Concessionaire shall adhere to this pricing requirement. Permitted prices and charges shall apply to each item separately and independently. "Street Prices" for all items or services sold by Concessionaire shall be no greater than (1) manufacturer's suggested retail (pre-printed) price, or; (2) the average price plus of items of comparable size, quantity, and quality, sold at other facilities within a twenty-five (25) mile radius of Rhode Island T.F. Green International Airport, plus up to ten percent (10%) or; (3) the highest price plus up to ten percent (10%) charged for the same or similar products (comparable size, quantity, and quality) sold at any of the

approved Price Comparison Locations (PCLs). If the Concessionaire does not have comparable facilities within a twenty-five (25) mile radius of the Airport, then three other comparable facilities or "Price Comparison Locations" (PCLs) will be chosen by Concessionaire (contingent upon RIAC's approval) for purposes of pricing comparison.

7.27.1 Pricing Survey: Prior to, or upon execution of this Agreement, and on the first business day of each Lease Year thereafter, the Concessionaire shall, at its own expense, conduct a survey of the RIAC-approved PCLs to determine appropriate price levels. This survey shall, at a minimum, include each of Concessionaire's items and services and the price of the same items or services for each of the surveyed facilities. If exact items or services are not available for particular items or services, Concessionaire must include the price(s) of reasonably comparable items or services. The Concessionaire shall provide text descriptions, and any other appropriate information explaining the product similarities and/or dissimilarities. The annual survey shall be provided to the President & CEO or his designee within fourteen (14) calendar days following completion of the survey. Concessionaire will, within fourteen (14) calendar days of completion of the annual survey, adjust any prices that are inconsistent with this Paragraph 7.27. Failure to rectify any pricing discrepancies within the aforementioned fourteen (14) calendar day period shall constitute a material breach by Concessionaire of this Agreement, and in addition to all other remedies of RIAC, RIAC may, in its sole and absolute discretion, terminate this Agreement.

7.27.2 Price Adjustments: Concessionaire shall be required to receive written approval from the President & CEO or his designee prior to any increase in the price of any item or service sold or offered from the Assigned Premises. Any such request must be accompanied by a survey of (1) Concessionaire's other facilities within a twenty-five (25) mile radius of T.F. Green Airport, or (2) the RIAC-approved PCLs, to indicate that the requested increase is in accordance with the stipulations of this, and any other applicable section(s). The Concessionaire shall provide text descriptions, and any other appropriate information supporting the rationale and justification for the increase requested. Price adjustment requests shall be limited to one (1) request per Lease Year. The increase in price of any item or service by Concessionaire without such prior written consent shall be deemed a material breach of this Agreement.

7.28 Product: All services or merchandise offered at the Assigned Premises shall be first quality and conform to all Applicable Laws. Concessionaire shall at all times maintain the degree of quality and quantity for all items offered for sale comparable to items offered for sale at similar establishments in the Warwick/Providence Metropolitan Area. The quality, quantity and specifications of all items shall at all times be subject to the review and approval of the President & CEO or his designee. If items are deemed to be incomparable or lacking in quality, Concessionaire shall restore the original products and/or their quality and specifications to the President & CEO or his designee's reasonable satisfaction within ten (10) days of such notice.

7.29 Non-Interference with Systems: Concessionaire shall not cause or permit any

conditions or actions which may interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the Assigned Premises (including lines, pipes, wires, duct work, vents, conduits, and equipment connected with or appurtenant thereto) or interfere with building systems in or adjoining the Airport or Assigned Premises, or overload any elevator, escalator, or floor in the Airport or Assigned Premises.

7.30 Smoking: Smoking is prohibited by Rhode Island State Law in the Assigned Premises and the Airport. Concessionaire shall not do anything contrary to State or Airport policy, ordinances, rules and regulations regarding smoking.

7.31 Required Security Gate: Concessionaire shall be required to provide a means to secure each area of the Assigned Premises, of a style to be approved by RIAC.

7.32 Unauthorized Locks: Concessionaire shall not place, or suffer to be placed, any additional lock of any kind upon any window or interior or exterior door in the Assigned Premises, or make any change in any existing door, or window lock or the mechanism thereof. Concessionaire shall pay Airport, on demand, the cost for replacement thereof, and the cost of re-keying any such locks. Concessionaire shall not block, alter, disable, or otherwise modify any security access door control or any other security mechanisms or systems in the Assigned Premises or Airport.

7.33 Auction: Concessionaire shall not permit, or undertake itself, any sale by auction upon the Assigned Premises.

7.33 Loitering or Lodging: Concessionaire shall not permit undue loitering on or about the Assigned Premises or use the Assigned Premises for lodging or sleeping purposes.

ARTICLE VIII HAZARDOUS MATERIALS

8.1 Concessionaire covenants and agrees that it will not use, store, maintain, discharge or operate, whether intentionally or unintentionally, on the Assigned Premises or the Airport in violation of any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses or permits of any Governmental Authority, relating to environmental matters (being hereafter collectively referred to as the "Environmental Laws") including by way of illustration and not by way of limitation; the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, the Compensation and Liability Act of 1980 and the Toxic Substances Control Act (including any amendments or extensions thereof and any rules, regulations, standards or guidelines issued pursuant to any Environmental Laws). Except in compliance with all Environmental Laws, Concessionaire, its subsidiaries, subcontractors and suppliers, and anyone on the Airport with the consent of the Concessionaire shall not discharge "Hazardous Substances" (as defined hereinafter) into the sewer and/or storm water drainage system serving the Airport, or cause any Hazardous Substances to be placed, held, stored, processed, treated, released, or disposed of on or at the Airport, except for

use of Hazardous Substances in accordance with Environmental Laws as necessary for Concessionaire's operations. Upon termination of this Agreement, Concessionaire shall, at its sole cost and expense, immediately remove from the Airport all Hazardous Substances and all tanks and other containers which are being used or were used by the Concessionaire, its Concessionaire Parties, or anyone on the Airport with the consent of the Concessionaire, to hold Hazardous Substances, discharged or occasioned from the Concessionaire's operations or the operations of any of its Concessionaire Parties, or anyone on the Airport with the consent of the Concessionaire. "Hazardous Substances" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Authority having jurisdiction over Concessionaire's operation hereunder to pose a present or potential hazard to human health safety or to the environment. Hazardous Substances include, by way of illustration and not by way of limitation, any substance defined as a "hazardous substance" or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any other toxic, dangerous or hazardous chemicals, materials or substance of waste(s).

8.2 Neither Concessionaire, nor its Concessionaire Parties, nor anyone on the Airport with the consent of the Concessionaire shall cause any Hazardous Substance to be brought upon, kept, used, stored, generated or disposed of in, on, or about the Assigned Premises or the Airport, or transported to or from the Assigned Premises or the Airport unless such action is in compliance with all applicable Environmental Laws and the Airport's Rules and Regulations, including but not limited to guidelines, directives, and policies. Concessionaire shall be required to keep, at the Assigned Premises in an orderly and easily accessible manner, all records evidencing its compliance with all applicable Environmental Laws and the Airport's guidelines and rules and regulations for all Hazardous Substances brought upon, kept, used, stored, generated or disposed of in, on, or about the Assigned Premises or the Airport, or transported to or from the Assigned Premises. Concessionaire shall maintain such records from the Effective Date until the expiration or earlier termination of this Agreement. Concessionaire expressly understands, acknowledges and agrees that all such records shall be kept for a period of three (3) years after the expiration or earlier termination of this Agreement.

8.3 Concessionaire shall indemnify, defend, and hold harmless RIAC and the State of Rhode Island from and against any and all claims, damages, costs, losses and liabilities arising during or after the Term as a result of or arising from: (a) a breach by Concessionaire of its obligations contained in the preceding Paragraphs 8.1 and 8.2, or (b) any release of Hazardous Substance from, in, on or about the Assigned Premises or the Airport caused by any act or omission of Concessionaire, its members, officers, agents, servants, employees and or, (c) the existence of any Hazardous Materials within the interior portions of the Assigned Premises if placed by the Concessionaire or its Concessionaire Parties.

8.4 Concessionaire shall have no obligation or responsibility for any Hazardous Materials or environmental conditions to the extent already existing at, on, or under the Assigned Premises prior to the Effective Date of this Agreement, provided that the Concessionaire has not caused or contributed to any release of Hazardous Substance from, in, on or about the Assigned Premises or the Airport whether by its negligence or intentional act or omission of Concessionaire, its members, officers, agents, servants,

employees and.

8.5 Upon reasonable notice and reasonable cause, the President & CEO or his designee shall have, upon his reasonable direction, the right to require Concessionaire, at Concessionaire's sole expense, to conduct an environmental audit of the interior portions of the Assigned Premises for possible environmental contamination or violation of any applicable Environmental Laws or violation of RIAC's Rules and Regulations. In the event Concessionaire fails to conduct such an audit upon request, the President & CEO or his designee shall have the right, but not the obligation, to conduct or cause to be conducted an environmental audit or any other appropriate investigation of the Assigned Premises for possible environmental contamination or violation of any applicable Environmental Laws or violation of RIAC's Rules and Regulations. If such audit is performed by other than the Concessionaire, Concessionaire shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Substance contamination or violation of Environmental Law or violation of RIAC's Rules and Regulations as to which the Concessionaire is liable hereunder.

8.6 Prior to the expiration or earlier termination of the Agreement, Concessionaire, upon the written request of the President & CEO or his designee, shall be required to provide documentation, prepared by a firm acceptable to the President & CEO or his designee, that the interior portions of the Assigned Premises are free of Hazardous Substance contamination and that all Hazardous Substances listed herein have been removed in compliance with RIAC's Rules and Regulations and all Applicable Laws. Such documentation may require an immediate remediation plan and/or long-term care and surveillance of any contamination identified and an acknowledgement of responsibility and indemnification for any and all losses associated with such contamination.

ARTICLE IX RENTALS, FEES, CHARGES AND ACCOUNTABILITY

9.1 Concessionaire Rent: During the entire Term of this Agreement, as consideration for the right to occupy and operate all of the Assigned Premises, Concessionaire will pay RIAC, in lawful money of the United States, without any prior demand and free from all claims, demands, set-offs or counter-claims of any kind, Concession Rent equal to: (i) for the Operational Spaces, the greater of the Minimum Annual Guarantee (MAG) in subsection a., or the Percentage Rent in subsection b. below; plus (ii) for the Non-Operational Space(s), Non-Operational Space Rent as specified in subsection c.

a. Minimum Annual Guarantee (MAG):

Subject to adjustment provided herein, from the Effective Date, the MAG will be established for each twelve-month period commencing on July 1 and ending on June 30 for each year of the remainder of the Term by multiplying the Minimum MAG Per Square Foot rate in the table set forth below by the number of square feet of Concessionaire's Operational Spaces. The aggregate number of square feet in each Operational Space is delineated on the attached **Exhibit B**. For purposes of the determination of concession rent payable by Concessionaire

under Paragraph 9.1 at any time during the Term, the MAG will be equal to the greater of: (i) the Minimum MAG per Square Foot in the table set forth below; or (ii) eighty-five (85%) percent of the prior Lease Year's total payments by Concessionaire under this Paragraph 9.1 a and b. The MAG for any partial Lease Year during the Term and for any partial month during the Concessionaire Construction Period shall be prorated on a per diem basis.

Year	Minimum MAG/Sq Ft.
July 1, 2023 - June 30, 2024	\$ 98.38
July 1, 2024 - June 30, 2025	\$ 100.84
July 1, 2025 - June 30, 2026	\$ 103.36
July 1, 2026 - June 30, 2027	\$ 105.94
July 1, 2027 - June 30, 2028	\$ 108.59
July 1, 2028 - June 30, 2029	\$ 111.31
July 1, 2029 - June 30, 2030	\$ 114.09
July 1, 2030 - June 30, 2031	\$ 116.94
July 1, 2031 - June 30, 2032	\$ 119.87
July 1, 2032 - June 30, 2033	\$ 122.86
July 1, 2033 - June 30, 2034	\$ 125.93
July 1, 2034 - June 30, 2035	\$ 129.08
July 1, 2035 - June 30, 2036	\$ 132.31
July 1, 2036 - June 30, 2037	\$ 135.62
July 1, 2037 - June 30, 2038	\$ 139.01

In the event that for a three-month period, total Airport enplanements are both a) Twenty-five percent (25%) less than in the same three-month period one year prior, and b) less than the total Airport enplanements for the same three-month period most recently occurring prior to the execution of this Agreement, then the MAG shall be temporarily reduced by twenty-five percent (25%) of the then-current level until such time that the three-month total Airport enplanements do not meet the criteria, at which time the MAG will be restored to the level it was at prior to the temporary reduction.

b. Percentage Rent equal to the following percentages of annual Gross Revenue:

_____ Percent (__ %) of annual Gross Revenue from Sales of Food & Non-Alcoholic Beverages.
_____ Percent (__ %) of annual Gross Revenue from Sales of Alcoholic Beverages.
_____ Percent (__ %) of annual Gross Revenue from Lottery Sales.

c. Non-Operational Spaces:

The Non-Operational Space Rent for the Non-Operational Spaces will be equal to the square foot terminal rental rate charged to airline tenants of the Facilities that are Signatory Airlines. The initial rate at July 1, 2023 is \$ _____ per square foot. This rate will be adjusted on July 1st of each subsequent Lease Year of the Term to reflect the updated terminal rental rate charged to Signatory Airlines, provided however, in no event shall there be a decrease in the Non-Operational Space rental rate during any Lease Year of the Term.

9.2 Payments: In advance of or on the first calendar day of each calendar month during the Term of this Agreement, without prior demand or invoice, Concessionaire shall pay to RIAC one-twelfth (1/12) of the yearly MAG. Beginning on the tenth (10th) calendar day of the second month of the Term, and continuing until and including the month immediately following the expiration or other termination of this Agreement, the Concessionaire shall pay to RIAC an amount equal to the difference (if any) between the Percentage Rent for the immediately preceding month and the then applicable MAG. Concessionaire shall make all payments of all rentals, fees and charges required by this Agreement to RIAC. All payments shall be mailed to the following address:

Rhode Island Airport Corporation – Revenue
P.O. Box 845404
Boston, MA 02284-5404

If the MAG and/or if applicable excess Percentage Rent above the MAG are not paid within the time period set forth in this Paragraph 9.2, an interest rate equal to the lesser of one and one-half (1.5%) percent per month or the maximum interest rate permitted under Applicable Law, compounded monthly, will be applied to any amounts overdue or amounts paid without a corresponding Monthly Gross Revenues Report until such overdue amounts shall have been paid in full and/or the corresponding Monthly Gross Revenues Report in proper form received by RIAC.

9.3 Concessionaire Reports: Beginning on the second month of the Term of this Agreement, and continuing until and including the month immediately following the termination or expiration of this Agreement, on or before the tenth (10th) calendar day of each calendar month, without prior demand, the Concessionaire shall submit to RIAC reports setting forth the amount of Concessionaire's Gross Revenues for the preceding calendar month, all in the format solely determined by RIAC (the "Monthly Gross Revenue Report"). RIAC shall have the right to require Concessionaire to modify the Monthly Gross Revenue Report at any time. Such Monthly Gross Revenue Reports shall, at a minimum, reflect total Gross Revenues, Gross Revenues by individual Assigned Premises, and Gross Revenues by category. Such Monthly Gross Revenue Reports shall be signed by a responsible accounting representative of the Concessionaire and shall set forth specifically the amount of Gross Revenues derived from its Assigned Premises.

The Monthly Gross Revenue Report and the computation of Percentage Rent due for the

previous month shall, when paid and added to the previous months in the same Year, be no less than the amount of the total of the applicable MAG amounts for those months.

9.4 Reconciliation: Both RIAC and Concessionaire acknowledge that the Concessionaire's monthly payments of the Percentage Rent and MAG shall be computed and reconciled on an annual basis within ninety (90) calendar days following the last day of the Lease Year.

9.5 Marketing Fund: Commencing on the effective date of this Agreement, Concessionaire shall establish a marketing fund of _____ (\$ _____) to be used during the first Lease Year. Commencing the second Lease Year, Concessionaire shall establish a marketing fund to promote the Concessionaire's business at the Airport. The marketing funds may be utilized for, but not limited to, loyalty programs, passenger demographic studies (not to exceed 25% of expenditures), special events, coupons, in terminal advertising and any other unique program, such as music programs as determined by RIAC. Concessionaire shall deposit into the marketing fund to administer throughout the Lease Year, one half of one percent (0.5%) of Gross Revenues from the prior Lease Year. At least three (3) months prior to the expiration of the Lease Year, Concessionaire shall present RIAC with a plan for the marketing funds for the next Lease Year for RIAC's approval. RIAC reserves the right to audit and fully review the expenditure of marketing funds in its sole discretion.

9.6 Accurate Recordkeeping: The Concessionaire shall keep full and accurate books and pertinent original and duplicate records, both in hard-copy and electronic media formats, which Concessionaire shall make available at the Airport within fifteen (15) days of any request by RIAC, showing all of Concessionaire's and its subtenants', assignees' and licensees' Gross Revenues in a form consistent with Generally Accepted Accounting Principles ("GAAP") for at least a three (3) year period after the expiration or earlier termination of the Term of this Agreement. Pertinent original sales records shall include: (a) cash register tapes, including tapes from temporary registers; (b) serially numbered sales slips; (c) bank statements; (d) credit card transaction reports; and (e) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted accounting standards in performing an audit of Concessionaire sales.

9.7 Audit: RIAC reserves the right to audit Concessionaire's activity at the Airport. The Concessionaire shall employ an independent Certified Public Accountant who shall furnish a written report to RIAC stating that in its opinion all of Concessionaire's, its subtenants', assignees' or licensees' Gross Revenues during the preceding Year were correctly and completely reported in accordance with the terms of this Agreement. The Certified Public Accountants reports for the Concessionaire shall contain a list of the Gross Revenues, as shown on the books and records of Concessionaire reported to RIAC or Concessionaire during the period covered by the report. The independent Certified Public Accountant shall certify that its review of the Concessionaires gross sales and Concession Rent due RIAC was performed in accordance with generally accepted auditing standards and that the report was performed in accordance with the terms and provisions of this Agreement. If it is established that Concessionaire has overpaid RIAC, then such overpayment shall be credited to the fees and charges next thereafter due to RIAC from Concessionaire, provided that if the Term shall have expired or shall have been sooner terminated, then any such overpayment shall be remitted to the Concessionaire within thirty (30) calendar days provided Concessionaire is not in

default as herein defined. If the Concessionaire shall be in default at such time and such default and all related damages, losses, costs and expenses have been determined and reduced to a monetary amount, then the excess of such overpayment, if any, over the amount of such damages, losses, costs and expenses shall be remitted to the Concessionaire within thirty (30) calendar days of such determination. If it is established that Concessionaire has underpaid RIAC, then such underpayment shall be due with the fees and charges next thereafter due to RIAC from Concessionaire, provided that if the Term shall have expired or shall have been sooner terminated, then any such underpayment shall be remitted to RIAC within thirty (30) calendar days.

9.7.1 Revenue Reporting: The Concessionaire shall also furnish a written report to RIAC listing the Concessionaire's, its subtenants', assignees' and licensees', Gross Revenue during the preceding Year as reflected in the independent Certified Public Accountants' reports as hereinabove described. This report shall compute total Rent due to RIAC by Concessionaire, for Concessionaire's, its subtenants', assignees' or licensees', Gross Revenues, during the prior Year and certify that all Rent due to RIAC, by Concessionaire's, its subtenants', assignees' or licensees', operations at the Airport, were correctly and completely paid in accordance with the terms of this Agreement. An officer of the Concessionaire who holds at a minimum the title of Vice President shall certify the Concessionaire's report. Attached to Concessionaire's report shall be the independent Certified Public Accountants reports as hereinabove described. These reports shall be completed within ninety (90) calendar days following the last day of the Lease Year, and shall be furnished to RIAC within five (5) calendar days of said reports completion. Within thirty (30) calendar days of the end of each Year, the Concessionaire shall provide RIAC with a depreciation and/or amortization schedule, as appropriate, for all Fixed Improvements made pursuant to this Agreement.

9.7.2 Proprietary Rights: Any financial statements or materials which reflect the financial condition (the "financial information") of either RIAC as the operator of the Airport, or the Concessionaire as operator of the Assigned Premises shall constitute the proprietary, confidential material of RIAC and the Concessionaire to the extent provided in Applicable Law. RIAC and the Concessionaire covenant that, subject to Applicable Law and orders of courts of competent jurisdiction:

- a. Neither RIAC's nor the Concessionaire's financial information shall be disclosed to any third person for any reason, except to agents, servants, employees, representatives, contractors or Presidents & CEOs of RIAC and the Concessionaire, their staff or attorneys. Provided, however, this provision shall not include disclosure in connection with RIAC's or the Concessionaire's pursuit or defense of any claim arising under this Agreement.
- b. Any notations or remarks recorded for RIAC's or the Concessionaire's records shall likewise be treated confidentially and not disclosed. Provided, however, this provision shall not include RIAC's or the Concessionaire's disclosure in connection with its pursuit or defense of any claim arising under this

Agreement.

- c. Upon completion of review, the originals of all proprietary and confidential materials of either RIAC or the Concessionaire shall be returned to RIAC or the Concessionaire. However, Concessionaire agrees that it will provide continued access to financial information required thereto by RIAC.

9.8 Should any examination, inspection, and audit of such books and records by RIAC or Concessionaire's independent Certified Public Accountant (CPA) disclose an understatement of the Gross Revenues received from all operations in the Assigned Premises by three percent (3%) or more, the entire expense of such audit shall be paid by Concessionaire. Any additional Percentage Rent due shall be paid by Concessionaire to RIAC with interest thereon at the lesser of the rate of eighteen percent (18%) per annum or the maximum interest rate permitted by law from the date such additional percentage rental became due. RIAC shall have the right itself or through its representatives at all reasonable times to audit and otherwise examine and inspect such books and records, including sales tax returns for the State of Rhode Island. If Concessionaire requests, and RIAC agrees, that such audit or examination of records be conducted at a location other than at the Airport, Concessionaire shall reimburse RIAC for travel, expense and additional labor involved. Failure by the Concessionaire to provide such records within the time specified shall be considered an Event of Default and in addition to any other remedies available to RIAC, Concessionaire shall pay to RIAC a penalty of One Hundred dollars (\$100.00) per day until full and complete records as requested are provided. Concessionaire acknowledges that the failure to provide such records on a timely basis will cause injury to RIAC, the exact monetary value of said item is extremely difficult to determine, therefore, the parties agree that the above described sum represents a fair and reasonable estimate of the loss caused by the failure of Concessionaire to provide records on a timely basis.

9.9 Upon request one copy of any financial statements, quarterly or annual shareholder reports, or other publications of the Concessionaire shall be furnished to RIAC, within ten (10) days of receipt of such request, by the Concessionaire at Concessionaire's sole cost and expense.

9.10 Concessionaire shall within thirty (30) days of preparation provide RIAC with any copies of internal or external audit reports conducted for the Assigned Premises.

ARTICLE X UTILITIES

10.1 In the event RIAC's assessment of Concessionaire's proposed operation of the Assigned Premises determines heating and cooling loads to be produced that are excessive for the existing Airport systems, Concessionaire shall, in addition to any other rental, fee, or charge, install at its own expense any such additional heating, ventilation, and air conditioning equipment required to effectively

meet heating and cooling loads produced by Concessionaire's operation of the Assigned Premises. Concessionaire shall install utility meters in conformance with RIAC's specifications and pay for, and be solely responsible for, all utilities required, used, or consumed in the Assigned Premises, including but not limited to, gas, water (including water for domestic uses and for fire protection), telephone, electricity, Wi-Fi, garbage collection services, janitorial services, or any similar services. If RIAC shall decide to supply any of the utility services described herein, then Concessionaire shall pay to RIAC the amounts billed by RIAC for Concessionaire's utility consumption. Concessionaire and RIAC hereby agree that RIAC shall not be liable for any interruption or curtailment in utility services due to causes beyond RIAC's control or due to RIAC's alteration, repair, or improvement of the Assigned Premises or the Airport.

10.2 Non-interference with Utilities: Concessionaire shall do nothing, and shall permit nothing to be done, that may interfere with the utilities on the Airport, including by way of example without limitation such drainage or sewerage systems, fire hydrants, heating and air conditioning systems, electrical systems, Wi-Fi, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, or plumbing. Concessionaire's duty under this section includes but is not limited to preventing grease and oils from entering waste lines, drains, and sewers.

ARTICLE XI IMPROVEMENTS TO ASSIGNED PREMISES

11.1 Assigned Premises Improvements: Concessionaire agrees, at its sole expense, to construct, finish out, furnish and fixture the Assigned Premises, which specifically includes any and all utility or facility connections which are required to be connected at points outside of the Assigned Premises, in accordance with plans and specifications to be approved by RIAC, and upon the following recommended schedule:

11.1.1 Phase I: Construction of two (2) Casual Dining concepts with full bar service, one on each of the North and South Concourses; plus the proposed Food Court concepts and music stage area, beginning from the contract commencement date of July 1, 2023, to be completed no later than December 31, 2023.

11.1.2 Phase II: Construction completion of fifty percent (50%) of the remaining undeveloped concept area after completion of Phase I, to include the remaining one (1) Casual Dining concept with full bar service on the North Concourse; commencing on January 1, 2024, to be completed no later than June 30, 2024.

11.1.3 Phase III: Construction completion of the remaining concept area after completion of Phase II, to include conversion of the former Federal Tavern from "landside" to "airside"; plus any and all remaining concept areas, or new concepts areas proposed, commencing on July 1, 2024 with completion of the entirety of the program no later than December 31, 2024.

With the prior written approval of RIAC, Concessionaire may construct, finish out, furnish and fixture the Assigned Premises, which specifically includes any and all utility or facility connections which are required to be connected at points outside of the Assigned Premises, in accordance with plans and specifications to be approved by RIAC, under an alternate schedule provided that the construction of the entirety of the Assigned Premises Improvements is completed no later than December 31, 2024.

Upon receipt of the certified construction costs, as hereinafter described and defined, the Concessionaire will determine the actual amounts for Fixed Improvements and/or Trade Fixtures for each location or business unit. Design fees and other common costs shall be allocated on a per-square-foot, pro-rata basis among each location or business unit if not delineated as such. These calculations will be utilized as the basis for determination of Concessionaire's "Net Book Value."

Concessionaire's expenditures set forth above shall include reasonable direct costs, other than those excluded herein, paid by Concessionaire for work performed and materials furnished; provided, however, that Concessionaire shall not include in its calculation of the aforementioned expenditures: (1) cost for items with a useful life of less than three (3) years; (2) payments for architectural, engineering, professional and consulting services which exceed fifteen percent (15%) of the total of the costs of such Fixed Improvements and/or Trade Fixtures; (3) interest and other financing charges; (4) any amounts paid directly or indirectly for by parties other than Concessionaire; or (5) Concessionaire's own overhead expenses; except that Concessionaire may include the reasonable cost of paying its own employees to perform architectural, engineering, professional or consulting services, subject to the fifteen percent (15%) limit set forth in (2), above.

11.2 All structural improvements, equipment and interior design and decor constructed or installed by the Concessionaire, its agents, or contractors, including the plans and specifications shall conform to all Applicable Laws, including building codes, and Rules and Regulations of RIAC.

Any changes, alterations or improvements to the Assigned Premises by the Concessionaire which involves in any way the disturbance of any existing portions of the building or structure shall not be performed or undertaken by the Concessionaire until such disturbance shall have been approved in writing by RIAC.

11.3 Concessionaire Installation: Concessionaire shall, at Concessionaire's sole cost and expense, procure and install all Trade Fixtures and/or Fixed Improvements and equipment required to operate its business (all of which shall be of first-class quality and workmanship) during the Term of this Agreement. All Trade Fixtures, signs, or other Personal Property installed in the Assigned Premises by Concessionaire shall remain the property of Concessionaire and may be removed at any time provided that Concessionaire is in compliance with all of the terms and conditions of this Agreement and provided the removal thereof does not cause, contribute to, or result in Concessionaire's default hereunder; and further provided that the removal shall not cause damage to the Assigned Premises or Airport. If Concessionaire removes Trade Fixtures or Personal Property during the term of this Agreement, Concessionaire shall replace same with Trade Fixtures or Personal Property of like or better quality. At the sole option of RIAC, all Fixed Improvements shall become

the property of RIAC upon surrender of the Assigned Premises by the Concessionaire for whatever reason, however, RIAC may require Concessionaire to remove its Fixed Improvements (including Trade Fixtures and Personal Property) prior to surrender of the Assigned Premises. Concessionaire shall not attach any fixtures or articles to any portion of the Assigned Premises, nor make any alterations, additions, improvements, or changes or perform any other work whatsoever in and to the Assigned Premises, without in each instance obtaining the prior written approval of RIAC. Any alterations, additions, improvements, or changes to the Assigned Premises or other work permitted herein shall be made by Concessionaire at Concessionaire's sole cost and expense.

11.4 Signs, Awnings, and Canopies: Upon completion of the improvements to the Assigned Premises, Concessionaire shall not be permitted to place or cause or allow to be placed or maintained on any exterior door, wall or window of the Assigned Premises any additional sign, awning, canopy, advertising matter or other items of any kind, and will not place or maintain any exterior lighting, plumbing fixtures, protruding objects, or any decoration, lettering, or advertising matter on the glass of any window or door of the Assigned Premises without first obtaining the President & CEO or his designee's written approval, which approval may be withheld for any reason whatsoever, or for no reason. Concessionaire further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other items as may be approved in good condition and repair at all times. Any sign, awning, canopy, advertising matter, or other items of any kind so installed without the written approval of the President & CEO or his designee shall be subject to removal without notice at any time. The cost of such removal shall be at the Concessionaire's sole cost and expense.

11.5 Facility Improvements and Trade Fixtures: As additional consideration for the rights and privileges granted in this Agreement, the Concessionaire agrees to expend a minimum of _____, for Fixed Improvements, Trade Fixtures, and Personal Property to construct the Assigned Premises. In-house design costs and amounts paid for by Concessionaire's vendors, suppliers, distributors or other parties shall not count toward this minimum expenditure requirement.

11.6 Approval Process: With respect to the Concessionaire's improvements to the Assigned Premises, the Concessionaire agrees as follows:

- a. The Concessionaire agrees to follow any and all RIAC design review and construction approval processes. These processes, among other things, may contain provisions for submission of construction schedules and plans.
- b. The President & CEO or his designee shall either approve or disapprove the plans and specifications submitted to RIAC. The approval by the President & CEO or his designee of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the Assigned Premises. Such plans and specifications are not approved for architectural or engineering design or compliance with Applicable Laws and RIAC does not assume liability or responsibility thereof or for any defect in any structure or improvement

constructed according to such plans and specifications by RIAC's approval of such plans and specifications. The President & CEO or his designee reserves the right to reject, in their sole discretion, any plans submitted and require the Concessionaire to resubmit designs and specifications until they meet the President & CEO or his designee's approval. At the completion of the construction of the Assigned Premises the Concessionaire shall submit to RIAC the documentation required by Paragraph 11.10, herein.

11.7 All Fixed Improvements, if applicable, and Trade Fixtures at the Assigned Premises shall be and remain the property of Concessionaire until the expiration of the Term of this Agreement or upon termination of this Agreement (whether by expiration of the Term, cancellation, forfeiture, or otherwise, whichever first occurs); at which time the said Fixed Improvements shall become, at the option of RIAC, the property of RIAC. Any Trade Fixtures and Personal Property of Concessionaire shall remain the property of Concessionaire except as provided in Paragraph 5.1.

11.8 Upon completion of initial improvements to the Assigned Premises outlined hereinabove, the Concessionaire shall have the right to install or erect additional, non-structural improvements in the Assigned Premises; provided however, that all such alterations shall be commenced only after plans and specifications have been submitted to and approved by the President & CEO or his designee. Any such alterations and/or repairs shall be without cost to RIAC, completed within the time specified in the written approval, and with the least disturbance possible to the operation of the Airport, the Airport tenants, and to the public.

11.9 The ultimate control over the quality and acceptability of the finishes in the Assigned Premises will be retained by RIAC. All improvements and finishes shall conform to Airport standards, all building, health, fire, and other applicable codes, ordinances, rules and regulations.

11.10 Within ninety (90) calendar days of the completion of construction required under this Agreement, the Concessionaire must provide RIAC with: (1) a certified statement from the construction contractor(s), architect(s) and engineer(s) specifying the total construction cost; (2) a certification that the improvements have been constructed in accordance with the approved plans and specifications, and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations; and (3) certified proof in writing demonstrating that no liens exist or have been filed or may be filed by reason of any or all of the construction. If the total construction cost is less than the minimum amount specified in Paragraph 11.5 above, the difference shall be paid to RIAC within ten (10) days after submission of a certified statement of construction costs. Such amounts paid to RIAC hereunder shall not be deemed a cost of Fixed Improvements or Trade Fixtures for any purpose under this Agreement nor shall it be deemed payment of or receipt of any Concession Rent payments due hereunder.

11.11 The Concessionaire shall not remove or demolish, in whole or in part, any Fixed Improvements upon the Assigned Premises without prior written consent of the President & CEO or his designee, which consent may be conditioned upon the obligation of Concessionaire to replace the

same by a specified Fixed Improvement.

11.12 For purposes of computing depreciation/amortization of Fixed Improvements, the Concessionaire's approved and certified cost for such Fixed Improvement shall be depreciated/amortized over a period of not more than the Initial Term of this Agreement on a straight line basis with no salvage value.

11.13 Routine Refurbishment: On or about the commencement of each Lease Year, representatives of RIAC and Concessionaire shall tour the Assigned Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Assigned Premises in first class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and RIAC cannot jointly agree upon the type and extent of refurbishment, RIAC may determine, in its sole discretion, the refurbishment required. For purposes of this Paragraph, refurbishment shall mean the routine repainting or redecoration of public areas within the Assigned Premises, including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures or finishes.

11.13 Mid-term Refurbishment: In addition to the ongoing, routine maintenance described in this Agreement, Concessionaire shall, at its sole cost and expense, refurbish the Assigned Premises at or about the midpoint of the Term as follows:

- a. Mid-Term Refurbishments Budget. Concessionaire's budget for the Mid-Term Refurbishments shall be equal to the greater of: (1) _____ Thousand Dollars (\$_____) or (2) ___ percent (___%) of the Gross Revenue for the first five (5) years of the Initial Term.
- b. Scope of Refurbishments. The Mid-Term Refurbishments shall include without limitation all refinishing, repair, replacement, redecorating, repainting and reflooring necessary to keep the Assigned Premises in first class condition and shall comply with all other terms and conditions of this Agreement. The scope and extent of the Mid-Term Refurbishment for each concession location shall be jointly determined by RIAC and Concessionaire. If Concessionaire and RIAC cannot jointly agree upon the necessary scope and extent of the Mid-Term Refurbishment for any particular concession location, RIAC may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by RIAC's determination.
- c. Approval of Plans for Mid-Term Refurbishments. Concessionaire shall submit its plan specifications for the Mid-Term Refurbishments to RIAC for review and approval no later than July 1, 2028. The Mid-Term Refurbishment shall be completed prior to January 1, 2029.

- d. Option Term Refurbishment. If Concessionaire and RIAC mutually agree to the Option Term described in Paragraph 4.1 hereof, Concessionaire shall, at its sole cost and expense, refurbish the Assigned Premises.
- e. Option Term Refurbishments Budget. Concessionaire's budget for the Option Term Refurbishments shall be equal to the greater of: (1) _____ Thousand Dollars (\$ _____) or (2) ___ percent (___%) of the Gross Revenue for the second five (5) years of the Initial Term.
- f. Scope of Refurbishments. The Option Term Refurbishments shall include without limitation all refinishing, repair, replacement, redecorating, repainting and reflooring necessary to keep the Assigned Premises in first class condition and shall comply with all other terms and conditions of this Agreement. The scope and extent of the Option Term Refurbishment for each concession location shall be jointly determined by RIAC and Concessionaire. If Concessionaire and RIAC cannot jointly agree upon the necessary scope and extent of the Option Term Refurbishment for any particular concession location, RIAC may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by RIAC's determination.
- g. Approval of Plans for Option Term Refurbishments. Concessionaire shall submit its plan specifications for the Option Term refurbishment to RIAC for review and approval no later than July 1, 2032. The Mid-Term Refurbishment shall be completed prior to January 1, 2033.

ARTICLE XII MAINTENANCE AND REPAIRS

12.1 The Concessionaire agrees to provide at its own expense, maintenance, custodial, and cleaning services for the Assigned Premises. Concessionaire shall keep all of the Assigned Premises and all of the Fixed Improvements, Trade Fixtures, Personal Property, stock, etc. located therein, clean and in good order and shall observe superior sanitation standards at all times. Concessionaire shall keep the Assigned Premises and surrounding areas free of debris, trash, merchandise delivery or packing boxes. Concessionaire shall ensure that all walls, floors, cash wrap, serving, passenger sales areas and employee areas, counters, equipment and other surfaces are cleaned and sanitized at least daily.

- a. Concessionaire shall use at Concessionaire's sole cost and expense such pest extermination contractor as RIAC may direct and at such intervals as RIAC may require.
- b. Concessionaire shall ensure that all personnel conform to personal hygiene and product handling requirements established by Concessionaire, RIAC or

Applicable Laws.

12.2 At no cost to RIAC, the Concessionaire agrees to keep and maintain, in good working order, and make necessary repairs, which repairs shall include all necessary replacements, capital expenditures and compliance with all laws now or hereafter adopted, the Assigned Premises and every part thereof and any and all appurtenances thereto wherever located, including by way of example only but without limitation, the Fixed Improvements, Trade Fixtures and concessionaires equipment, the window frames, interior windows, plate glass, doors, door frames and checks, keys, locks and entrances, storefronts, security gates, utility lines and connections, signs, lighting fixtures, bulbs and tubes, floors, floor coverings, interior walls, wall coverings, ceiling, the surfaces of Airport base building interior columns exclusive of structural deficiencies, any columns or structural improvements erected by Concessionaire, partitions, utility systems, utility lines, utility equipment, HVAC systems, connections and ductwork, sprinkler systems, electrical systems, electrical lines, electrical equipment and all other work, improvements and repairs and replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen. Concessionaire shall ensure that all equipment, devices, electrical lights and bulbs are fully functional at all times. Concessionaire shall ensure that all security and fire exits are fully operational and in excellent working order at all times. Concessionaire shall utilize its best efforts to repair these items if required.

12.3 All work or repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All work and repairs shall be subject to inspection, review and approval by the President & CEO or his designee and shall be made in conformity with the rules and regulations prescribed from time to time by RIAC and/or Federal, state, or local authorities having jurisdiction over the work in the Concessionaire's Assigned Premises. All service companies utilized by Concessionaire shall be subject to Airport security and other Airport regulations.

12.4 Concessionaire shall provide a complete and proper arrangement for the adequate sanitary gathering, sorting, transportation, handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its operations as described herein (trash removal) and additionally in Paragraph 7.17. Concessionaire shall provide and use transportation devices and receptacles for all garbage, trash, or other refuse which meet RIAC's specifications. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Assigned Premises is forbidden. All garbage and refuse shall be prepared for collection in the manner and at the time and places specified by RIAC. If RIAC shall provide or designate a service for picking up refuse and garbage, Concessionaire shall be required to use said service at Concessionaire's proportional cost of said service. Concessionaire shall provide garbage and refuse containers as specified by RIAC. Concessionaire shall be required to regularly clean and sanitize such containers on a regular basis, or as directed by the President & CEO or his designee.

12.5 Waterproofing: If applicable, RIAC shall require Concessionaire to install, keep and maintain and repair all pipes or lines for water supply, water drainage, sewer disposal, grease traps and/or grease interceptors ("Plumbing Lines") such that they are sealed or protected against leakage or discharge of odors in conformance with the Airport's requirements, whether or not such requirements

exceed the minimum requirements of the applicable building codes. In the event that such Plumbing Lines leak, Concessionaire shall at its sole cost and expense and within three (3) calendar days of receipt of notice from the Airport (which notice may be by telephone or electronic mail) repair such Plumbing Lines. Concessionaire shall promptly reimburse RIAC or other tenant for any physical damage to any items, improvements, or property resulting from such leakage. Upon the third occasion of any leak from such Plumbing Lines during the Term hereof, RIAC shall be entitled to require Concessionaire, at Concessionaire's sole cost and expense, to remove the Plumbing Line and completely seal off in a watertight condition the opening from which such Plumbing Line extended.

If applicable, RIAC shall require Concessionaire to install, maintain, and repair waterproof membrane systems under all floors such that they are sealed or protected against leakage in conformance with the Airport's requirements, whether or not such requirements exceed the minimum requirements of the applicable building codes. In the event that such floors leak, Concessionaire shall at its sole cost and expense, and within three (3) calendar days of receipt of notice from the Airport (which notice may be by telephone), repair such waterproof system, which may require the Concessionaire to remove the floor treatment (tile, carpet, etc.), and reapply a watertight floor treatment which meets the requirements of RIAC. Concessionaire shall reimburse RIAC or other tenant for any physical damage to items, improvements, or property resulting from such leakage. Upon the third occasion of any leak from the floor during the Term hereof, RIAC shall be entitled to revoke Concessionaire's right and privilege to utilize water in the Assigned Premises until such time as, in RIAC's sole discretion, appropriate repairs have been completed by Concessionaire.

12.6 RIAC and its agents shall have the right to enter the Concessionaire's Assigned Premises to:

- a. Inspect the Assigned Premises during the Airport Hours, and/or at any time in case of emergency, to determine whether the Concessionaire has complied with and is complying with the terms and conditions of this Agreement. The President & CEO or his designee may, at his discretion, require the Concessionaire to effect repairs at the Concessionaire's sole cost and expense;
- b. Perform any and all actions or procedures which the Concessionaire is obligated to perform and has failed to perform after fifteen (15) calendar days written notice to act and/or at any time in case of emergency, including: maintenance, repairs and replacements to the Concessionaire's Assigned Premises. The cost of all labor and materials, and other charges required for performance of such work, plus fifteen percent (15%) thereof for administrative overhead, will be invoiced to the Concessionaire and Concessionaire shall remit payments in full thereof to RIAC within ten (10) calendar days following receipt of invoice by Concessionaire; or
- c. Perform any duty or function that RIAC may have in relation to the operations of the Airport.

ARTICLE XIII
LIABILITY, INDEMNITY, AND INSURANCE

13.1 No Increased Liability: Concessionaire shall not cause or permit any activity or action upon the Assigned Premises which will invalidate, suspend, or increase the rate of any insurance policy carried by RIAC, covering the Assigned Premises, or the buildings in which the same are located or the Airport, or which, in the opinion of RIAC, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement.

If, by reason of any failure on the part of Concessionaire after receipt of notice in writing from RIAC to comply with the provisions of this paragraph, any insurance rate shall at any time be higher than it normally would be, then Concessionaire shall pay RIAC, on demand, that part of all insurance premiums paid by RIAC which have been charged because of such violation of failure of Concessionaire.

13.2 Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

13.3 Indemnity: To the fullest extent permitted by Applicable Law, Concessionaire will defend, indemnify, and hold RIAC and the State of Rhode Island, their respective officers, directors, employees, agents, affiliates, successors and assigns, harmless from and against any and all loss, costs, claims, demands, actions, causes of action, awards, penalties, damages or liabilities, of every kind and character, whether in law or in equity, including without limitation, costs of investigations, attorneys' fees, expert witness fees and court costs, whether by reason of death, injury, or damage to any person or persons or damage or destruction of property or loss of use thereof, or any other reason, arising out of this Agreement for anything other than a willful or reckless act of RIAC or any of the other indemnities identified in this section. For avoidance of doubt Concessionaire shall not be relieved of the indemnification obligation under this Agreement for the ordinary negligence of RIAC. Concessionaire shall give RIAC prompt and timely notice of any claim made or proceeding instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect RIAC, and RIAC shall have the right to control, at Concessionaire's expense, the defense of such claim or proceeding to the extent of RIAC's own interests. Concessionaire's indemnity and defense obligations under this Agreement will survive the expiration or sooner termination of the Term.

In addition to Concessionaire's undertaking, as hereinabove stated, and as a means of further protecting RIAC and its directors, officers, agents, servants and employees, Concessionaire shall at all times during the Term of this Agreement carry insurance coverage as hereinafter provided with an insurance company(ies) either (i) admitted to do business in the State of Rhode Island and rated not less than "A-VII" in Best's Insurance Rating Guide or by an equivalent organization; or (ii) approved by RIAC's President & CEO, or his designee.

13.4 Commercial General Liability and Umbrella Liability Insurance:

- a. Concessionaire, at its own expense, shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance covering the Concessionaire and RIAC, as their interest may appear, against claims for bodily injury, personal injury, death and property damage occurring on, in, or about the Airport. Such insurance shall have a limit of not less than five million dollars (\$5,000,000) each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to operations under this Agreement.
- b. CGL insurance shall be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract.

13.5 Automobile and Umbrella Liability Insurance: If Concessionaire uses motor vehicles on the Airport, Concessionaire shall, at its own expense, maintain business automobile liability and, if necessary, commercial umbrella insurance with a limit of not less than five million dollars (\$5,000,000) each accident. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) while on Airport. Automobile liability insurance shall be written on form CA 00 01 03 06 (or a substitute form providing equivalent coverage). If Concessionaire shall use motor vehicles on the aircraft ramps, taxiways, or runways of the Airport and such vehicles are not escorted by escorts authorized and approved by RIAC, the limit of the automobile liability insurance required to be maintained by the Concessionaire shall be increased to a limit of not less than ten million dollars (\$10,000,000) each accident.

13.6 Worker's Compensation and Employer's Liability Coverage: Concessionaire shall, at its own expense, procure its own worker's compensation and employer's liability insurance in the minimum amount of one million dollars (\$1,000,000), or as required under laws and regulations of the State of Rhode Island, whichever is greater.

13.7 Unemployment Insurance: Concessionaire, at its own expense, shall maintain statutory unemployment insurance protection for all its employees as required under laws and regulations of the State of Rhode Island.

13.8 Commercial Property Insurance: Concessionaire, at its own expense, shall obtain commercial property insurance that provides for all risk coverage for all Fixed Improvements, Trade Fixtures, and Personal Property on the Assigned Premises. Such insurance shall cover the full replacement cost. All insurance policies shall contain loss payable endorsements in favor of RIAC. Concessionaire and RIAC agree that any payments received by either from such insuring companies

by reason of loss under such policy or policies shall be applied toward repair and reconstruction necessitated by the loss or casualty.

13.9 Additional Insureds: All policies (except Worker's Compensation and Unemployment Insurance and Commercial Property Insurance) shall include RIAC and the State of Rhode Island and all of their respective officers, directors, employees, and agents as additional insureds. RIAC shall have no liability for any premiums charged for such coverage, and the inclusion of RIAC as an additional insured is not intended to, and shall not make RIAC a partner or joint venturer with Concessionaire in Concessionaire's operations at the Airport. Carriers shall waive rights of subrogation. Such coverage provided by Concessionaire shall at all times be primary and insurance coverage carried by RIAC shall be secondary.

13.10 Proof of Insurance: Concessionaire shall furnish RIAC with certificates and declarations evidencing existence of valid policies of insurance with the coverages specified, which certificates shall state that the coverages shall not be amended so as to decrease the protection below the limits specified herein or be subject to cancellation without at least thirty (30) calendar days advance written notice to RIAC. A renewal policy or renewal certificate shall be delivered to the President & CEO or his designee at least thirty (30) calendar days prior to a policy's expiration date, except for any policy expiring on the expiration date of this Agreement or thereafter.

13.11 Failure to Maintain Insurance: In the event Concessionaire shall at any time fail to have in effect the insurance required under the provisions of this Agreement, upon written notice to the Concessionaire of its intention to do so, RIAC shall have the right, but not the obligation, to secure the insurance required hereunder at the cost and expense of the Concessionaire. In the event Concessionaire shall at any time fail to furnish RIAC with the certificates and declarations required hereunder, RIAC may, at any time, after fifteen (15) calendar days of written notice to Concessionaire of its intention to do so, secure the required certificates and declarations at the cost of the Concessionaire. In either event Concessionaire agrees to reimburse RIAC for the cost thereof plus fifty percent (50%) thereof for administrative overhead.

13.12 Contractor Bond and Insurance: Concessionaire shall require that any contractor or contractors who perform any work contemplated herein on behalf of or for the benefit of the Concessionaire to furnish a performance bond with a good and sufficient surety admitted and in good standing in the State of Rhode Island, as well as Builder's Risk Insurance coverage, in an amount not less than the full amount of the contract price for completing the finishing, fixturing, and furnishing of the Assigned Premises for the faithful performance of the contract by the contractor(s) and a good and sufficient payment bond in the full amount of the contract guaranteeing the payment of all persons performing labor and furnishing material in connection with the work. Concessionaire shall further require the contractor(s) to procure adequate Contractor's Commercial General Liability Insurance, Business Automobile Liability Insurance, Property Damage Insurance and Worker's Compensation Insurance, including Employer's Liability Insurance, as indicated in Paragraphs 13.4, 13.5, 13.6, 13.7 and 13.8. Concessionaire shall, before the commencement of any work, furnish RIAC with evidence that the contractor or contractors are covered to the satisfaction of the President & CEO or his designee

with insurance as outlined above. If at any time any surety required hereunder becomes unacceptable to RIAC, RIAC shall have the right to require additional and sufficient sureties, which the contractor shall furnish with ten (10) calendar days of written notice to do so.

13.13 General Insurance Provisions: Concessionaire's insurance shall be primary and noncontributory with respect to any other insurance or insurance retentions available to or for the benefit of RIAC. Concessionaire's insurance policies shall contain a severability of interest clause. Any deductibles or retentions are subject to approval by RIAC.

13.14 Waiver of Subrogation: RIAC and Concessionaire hereby release the other from any and all liability or responsibility for any loss or damage to property caused by an insured fire or any other insured peril to the extent of any insurance proceeds received by the releaser, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible; provided, however, that RIAC's and the Concessionaire's policies contain a clause or endorsement or policy wording to the effect that any such release shall not adversely affect or impair said policy or prejudice the right of the releaser to recover thereunder. The foregoing release shall not apply to the intentional acts or omissions of either party.

13.15 Performance Guarantee: Concessionaire shall obtain a third-party guarantee of their performance under this Agreement in accordance with one of the following provisions:

- a. Upon execution of the Agreement, Concessionaire shall provide RIAC with a document(s) providing for financial guarantees under this Agreement. Such financial guarantee document(s) shall be in the amount of _____ Dollars (\$_____).

At the discretion of the Concessionaire, this financial guarantee may be: (i) in the form of an irrevocable letter of credit drawn on a banking institution acceptable to RIAC, in favor of and deposited with RIAC; (ii) in the form of a surety bond issued by an insurance company or surety company qualified and admitted to do business in the State of Rhode Island. Such insurance company or surety company shall be acceptable to RIAC; or (iii) a combination of both (i) and (ii).

- b. Commitment documents providing for continuation or replacement of the financial guarantee documents shall be received by RIAC at least thirty (30) days prior to their expiration.
- c. In the event Concessionaire shall at any time fail to have in effect the Performance Guarantee required under the provisions of this Agreement, upon written notice to the Concessionaire of its intention to do so, RIAC shall have the right, but not the obligation, to secure the Guarantee required hereunder at the cost and expense of the Concessionaire. In such event Concessionaire

agrees to reimburse RIAC for the cost thereof plus fifty percent (50%) thereof for administrative overhead.

d. Failure to obtain, maintain, or renew such financial guarantee(s) upon expiration of their coverage term shall be deemed an Event of Default of this Agreement.

ARTICLE XIV ASSIGNMENT, DELEGATION, AND CHANGE OF OWNERSHIP

14.1 This Agreement and the rights and privileges contained herein are personal to Concessionaire and the Concessionaire agrees that it will not assign, sublet or sublicense the same or any portion thereof, or assign, sublet or sublicense the Agreement or any portion thereof or advertise for assignment, sublet or sublicense of the Assigned Premises or Agreement without the express prior written consent of RIAC, in writing, and any purported assignment in violation hereof shall be void and shall be a breach of this Agreement. Prior to granting its consent, RIAC shall receive and Concessionaire shall provide sufficient financial and other records and information, as determined by RIAC, of any proposed assignee or sublessee or sublicensee in order for RIAC to accurately evaluate and assess the financial qualifications, responsibility, standing and capability of proposed assignee or sublessee or sublicensee.

14.2 The Concessionaire shall obtain the written consent of RIAC prior to any change in form of business organization or merger or any change or transfer of the controlling interest in Concessionaire and any change, transfer or merger without such consent of RIAC shall constitute a breach of the Agreement. Concessionaire agrees to provide RIAC with sufficient financial and other records and information, as determined by RIAC, for any such person, corporation or entity. Such records and information shall be used by RIAC to evaluate and assess the financial qualifications, responsibility, standing and capability of said person, corporation or entity.

14.3 RIAC reserves the right to deny any assignment, subcontract, sublease or sublicense or other use right or permit hereunder for any reason. Any approved assignee, sublessee, sublicensee or transferee shall comply with all of the items, conditions and obligations of Concessionaire as provided in the Agreement.

14.4 In the event RIAC grants Concessionaire the permission for any assignment, sublease, sublicense, or other transfer of the rights and privileges contained in this Agreement, the obligations and conditions of the Concessionaire as provided in this Agreement shall remain in full force and effect throughout the Term of this Agreement.

ARTICLE XV DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES

15.1 Notice; Options: If all or a portion of the Assigned Premises are damaged or destroyed

by fire, explosion, the elements, or other casualty, RIAC in its sole and absolute discretion may cause such affected premises to be repaired or reconstructed at no cost to Concessionaire, subject to the limits as set forth in Paragraph 15.4. The President & CEO or his designee shall notify Concessionaire within forty-five (45) calendar days of such occurrence of RIAC's intentions to repair or reconstruct or not to repair or reconstruct. Provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire agents or employees, and RIAC elects to repair or reconstruct, Concessionaire shall be responsible for reimbursing RIAC for the cost and expense incurred in such repair.

15.2 Damage: Subject to the provisions of Paragraphs 15.1 and 15.4, if the damages are so extensive as to render the Assigned Premises or a percentage thereof untenable, and notice of intent to repair or reconstruct has been given by RIAC, an equal percentage of the Minimum Annual Guarantee and other fees and charges payable to RIAC pursuant to the Terms of this Agreement shall abate from the time of the damage until such time as the damaged premises are fully restored and certified by RIAC as again ready for use; provided, however, that if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire or its Concessionaire Parties, payment of said Rent, fees and charges to RIAC by Concessionaire shall not abate.

15.3 Destruction: In the event all or a portion greater than fifty percent (50%) of the Assigned Premises is completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are untenable and notice of intent not to repair or reconstruct has been issued, Concessionaire may terminate this Agreement in its entirety as of the date of such destruction. If such destruction is a result of the negligent or wrongful act, or omission to act of Concessionaire, or Concessionaire Parties, Concessionaire shall not have the right to terminate this Agreement and RIAC may, in its discretion, require Concessionaire to repair and reconstruct said premises within sixty (60) calendar days of such destruction and Concessionaire shall pay the cost therefore.

15.4 Limits of RIAC's Obligations Defined: It is understood that, in the application of the foregoing provisions, RIAC's obligations shall be limited to: (i) repair or reconstruction of the Assigned Premises to the same extent and of equal quality as existed at the Commencement Date of this Agreement; and (ii) the extent of insurance proceeds available to RIAC for such purposes. Fixed Improvements, Trade Fixtures, redecoration and replacement of furniture, equipment and supplies shall be the responsibility of the Concessionaire and any such redecoration and refurnishing/re-equipping shall be equal in quality to that originally installed. Nothing in this Paragraph 15.4 shall waive or limit indemnity, defense and hold harmless obligations incurred by Concessionaire under this Agreement.

ARTICLE XVI COMPLIANCE

16.1 The Concessionaire, its officers, and Concessionaire Parties, and any other person over which the Concessionaire has the right to exercise control shall comply with all Applicable Laws

present and future laws, ordinances, orders, directives, codes, rules, regulations, directives and contract/grant assurances of, or imposed by, the federal, state, and local governmental agencies, including those of RIAC, which may be applicable to Concessionaire's operations at the Airport.

16.2 Concessionaire agrees to pay, and hereby guarantees payment of all lawful fines and penalties as may be assessed by RIAC, Federal, State or local agencies or against RIAC for violations of federal, state or local laws, ordinances, ruling or regulations, or RIAC rules and regulations by Concessionaire or its officers, agents, servants, employees, contractors, licensees, or any other person over which Concessionaire has the right to exercise control within the earlier of delinquency or thirty (30) calendar days of written notice of such fines or penalties.

16.3 Concessionaire will operate its concessions hereunder in a safe manner and without interfering with RIAC's, other Airport tenants', and the airlines' use of the Facilities, for themselves and for their passengers and other business invitees.

16.4 Concessionaire shall obtain, pay for, and continuously maintain current, all licenses and permits necessary or required by all applicable Federal, State, county or local laws, regulations, rules, ordinances, codes, standards, orders, licenses or permits for the conduct of the permitted activities hereunder. Concessionaire shall ensure that any such required items are displayed prominently and/or in conformance with applicable guidelines.

ARTICLE XVII TERMINATION BY CONCESSIONAIRE

17.1 The Concessionaire may terminate this Agreement by giving a thirty (30) calendar day written notice to RIAC of its intent to do so, should any one or more of the following events occur, provided however, that none of the Net Book Value or the Rent, charges and fees which are to be paid by Concessionaire herein will be refunded to Concessionaire and RIAC shall have no other or further obligation to Concessionaire, and further provided that Concessionaire shall remain liable for all obligations accrued under this Agreement through the effective date of termination:

- a. The abandonment of the Airport as an airline terminal or the permanent removal of all certificated passenger airline service from the Airport for longer than ninety (90) consecutive calendar days;
- b. The assumption by the United States government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof in such manner as to substantially restrict Concessionaire from operating thereon for a period of at least ninety (90) consecutive calendar days;
- c. The breach by RIAC in the performance of any material covenant of this Agreement required to be performed by RIAC and the failure of RIAC to

commence to remedy such breach for a period of thirty (30) calendar days after receipt of written notice of such breach by RIAC; or

- d. The issuance of an injunction by a court of competent jurisdiction preventing the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its operations hereunder; which prevention or restraint is not caused by the act or omission of the Concessionaire and which injunction remains in force for at least ninety (90) consecutive calendar days.

ARTICLE XVIII EVENT(S) OF DEFAULT AND TERMINATION BY RIAC

18.1 In addition to all other remedies otherwise available to RIAC at law or in equity, RIAC may terminate this Agreement or may, without terminating this Agreement, take possession of the Assigned Premises by giving a thirty (30) calendar day written notice of its intent to do so to the Concessionaire, should any one or more of the following Events of Default occur:

- a. Concessionaire fails to cooperate with any inspection of books and records by RIAC and/or fails to maintain its books and records as required hereunder;
- b. Except as otherwise permitted in this Agreement a majority of the ownership interest of Concessionaire is transferred to, passes to or devolves upon, by operation of law or otherwise, any other person or entity;
- c. Except as otherwise permitted in this Agreement, Concessionaire becomes a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution;
- d. Except for the provisions of Article 18.2, Concessionaire shall breach, materially breach, default under and/or neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement after the giving of written notice of such failure by RIAC to Concessionaire, except where fulfillment of such obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required to remedy such failure within ten (10) calendar days after giving of such written notice and continues such performance without interruption; or
- e. Concessionaire service shall deteriorate to the point which, in the sole opinion of RIAC, materially and adversely affects the operation of service required to be performed by Concessionaire after the giving of written notice of such deterioration by RIAC to Concessionaire, except where fulfillment of such obligation requires activity over a period of time and Concessionaire has

commenced to perform whatever may be required to remedy such failure within ten (10) calendar days after giving of such written notice and continues such performance without interruption.

- f. Concessionaire fails to obtain, maintain, or renew such financial guarantee(s) upon expiration of their coverage terms per the requirements of Paragraph 13.15.

18.2 In addition to all other remedies otherwise available to RIAC at law or in equity, RIAC may immediately terminate this Agreement or may, without terminating this Agreement, take immediate possession of the Assigned Premises by giving written notice of its intent to do so to the Concessionaire, upon the occurrence of any one or more of the following:

- a. Concessionaire fails to pay any Concession Rent or payments when due under this Agreement, to provide and maintain insurance, or to provide and maintain a performance guarantee all as required in accordance with this Agreement;
- b. Any lien is filed against the Assigned Premises arising by or through the Concessionaire or because of any act or omission of Concessionaire and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within sixty (60) calendar days after Concessionaire receives notice of the filing thereof;
- c. Concessionaire permits to continue, for a period of three (3) days after receipt of written notice from RIAC, the existence of unsanitary conditions or practices in or about the Assigned Premises; provided, however, if the unsanitary condition is such as to require replacement, repair or construction, Concessionaire shall have a reasonable time in which to correct such condition, but must begin action on the matter immediately upon receipt of said notice;
- d. Concessionaire abandons, deserts, vacates or discontinues its operation of the business herein authorized from the Assigned Premises for a period of three (3) calendar days without prior written consent of RIAC; or
- e. A voluntary or involuntary bankruptcy petition is filed by or against Concessionaire and not dismissed within sixty (60) calendar days; or Concessionaire makes an assignment for the benefit of creditors; or Concessionaire is adjudged a bankrupt;

18.3 Acceptance by RIAC of any Concession Rent or other payments specified in this Agreement, after a breach, material breach, default under, neglect or failure to perform or observe any of the terms of this Agreement shall not be deemed a waiver of any right on the part of RIAC to terminate this Agreement on account thereof.

18.4 On or before the termination or reentry dates set forth in the written notice by RIAC to Concessionaire as set out in Paragraphs 3.1, 18.1 and 18.2, Concessionaire shall surrender the Assigned Premises according to and as provided in Paragraph 5.1 herein.

18.5 Upon termination or reentry by RIAC, RIAC may reassign Assigned Premises and any improvements thereon or any part thereof to be operated by one or more replacement operator, or any other party acceptable to RIAC, at such Concession Rent, fees and charges, and upon such other terms and conditions as RIAC, in its sole discretion, may deem advisable, with the right to make alterations, repairs or improvements on said Assigned Premises.

18.6 No reentry or reassignment of Assigned Premises by RIAC shall be construed as an election on RIAC's part to terminate this Agreement unless a written notice of termination has been given to Concessionaire. In which event, Concessionaire shall pay as a penalty to RIAC, in addition to any monies then owing under the Agreement, the lesser of the following sum: (a) six (6) months of the current MAG or; (b) the remaining MAG payments due under this Agreement. Such sum shall be due and payable upon termination and RIAC may immediately proceed to bring action to collect thereon. The parties agree that the foregoing sum presents a reasonable forecast of the loss caused by such early termination.

18.7 In the event RIAC, without terminating this Agreement, re-enters, regains or resumes possession of the Assigned Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement. The amount or amounts of Concession Rent, charges, and fees shall become due and payable to RIAC to the same extent, at the same time or times and in the same manner as if no re-entry, regaining or resumption of possession had taken place. RIAC may maintain separate actions each month to recover any monies then due, or at its sole and absolute discretion and at any time, may sue to recover the full deficiency.

18.8 Bankruptcy: If RIAC shall not be permitted to terminate this Agreement as hereinabove provided because of the provisions of Title 11 of the United States Code relating to bankruptcy, as amended, or any successor to such law ("Bankruptcy Code"), then Concessionaire as a debtor-in-possession or any trustee for Concessionaire agrees to promptly, within no more than sixty (60) days upon request by RIAC to the Bankruptcy Court, assume or reject this Agreement. In such event, Concessionaire or any trustee for Concessionaire may only assume this Agreement if (a) it cures and provides adequate assurance that the trustee will promptly cure any default hereunder, (b) compensates or provides adequate assurances that the trustee or Concessionaire will promptly compensate RIAC for any actual pecuniary loss to RIAC resulting from Concessionaire's default, and (c) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Agreement to be performed by Concessionaire. In no event after the assumption of this Agreement shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set herein.

ARTICLE XIX

GOVERNMENTAL AND SUBORDINATION PROVISIONS

19.1 Nondiscrimination

- a. Concessionaire shall comply with the provisions of this **ARTICLE XIX**, as well as the **Required Federal Provisions** included herein as **ARTICLE XXII**, which are fully incorporated herein and as such regulations may be interpreted by the FAA or amended from time to time.
- b. The Concessionaire shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory prices for each unit of services provided however, the Concessionaire may make reasonable and nondiscriminatory discounts, rebates and other similar types of price reduction to volume purchasers unless otherwise provided in this Agreement.
- c. If required to do so under applicable law, the Concessionaire assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, gender, or disability be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it shall require that its covered suborganizations provide assurances to the Concessionaire that they similarly shall undertake any legally required affirmative action programs and that they shall require assurances from their suborganizations, as required by 14 CFR part 152, Subpart E, to the same effect.
- f. It is the policy of the Department of Transportation and of RIAC that Airport Concession Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR section 23.5. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 23, and RIAC's ACDBE program, apply to this Agreement to the extent therein provided.

The Concessionaire agrees to ensure, to the extent legally required to do so, that Airport Concession Disadvantaged Business Enterprises, as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Concessionaire shall, to the extent legally obligated to do so, take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that Airport Concession Disadvantaged Business Enterprises

have the maximum opportunity to compete for and perform contracts. Concessionaire shall not discriminate on the basis of race, color, national origin, or gender in the award or performance of Department of Transportation-assisted contracts.

- g. The Concessionaire hereby assures that it shall include all of the above provisions in any and all agreements and contracts or subagreements and subcontracts entered into by it under which the Concessionaire grants a right or privilege to any person, firm or corporation to render accommodations and/or services within or for the Assigned Premises and will similarly cause the same to be included in any further subleases, subcontracts or subagreements.
- h. The Concessionaire has been advised, and understands, that failure to carry out the requirements of this Article and of any legally applicable ACDBE regulations will constitute a breach of this Agreement.
- i. As used herein, the term "Department of Transportation" means the United States Department of Transportation.

19.2 Federal Aviation Act, Section 308: Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and conditions hereof, the Concessionaire shall have the right to use the Assigned Premises under the provisions of this Agreement.

19.3 Subordination

- a. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between RIAC and the United States Government relative to the financing, operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights or property to RIAC for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time.
- b. Concessionaire shall not use the Assigned Premises, conduct its operations hereunder in any manner, or do, or omit to do anything which adversely impacts the tax-exempt status of the interest on the bonds issued by RIAC to finance construction at the Airport. This Agreement is subject to and subordinate to the provisions of said bonds. Without limiting the foregoing,

Concessionaire hereby acknowledges title to the Assigned Premises is solely in RIAC. Concessionaire elects pursuant to Section 142(b)(1)(B)(i) of the Internal Revenue Code of 1986, as amended, that it will not claim depreciation or investment tax credit for federal income tax purposes with respect to any portion of the Assigned Premises financed with obligations issued by RIAC, or any other governmental entity, the interest on which is excludable from gross income pursuant Section 103 of the Internal Revenue Code of 1986, as amended, (for all purposes hereinafter set out in this paragraph all such obligations are collectively referred to as "bonds"), unless RIAC gives its written consent to do otherwise and unless a written opinion of counsel nationally recognized in matters relating to the issuance of state and local obligations and satisfactory to RIAC (for the purposes of this paragraph "Bond Counsel") is provided to them by Concessionaire to the effect that such election is not necessary in order to maintain the tax exempt status of such Bonds. It is further agreed that said elections shall be irrevocable and binding upon the Concessionaire, and any successor in interest to it or them and that any agreements and any publicly recorded documents in lieu of such agreements shall state that neither the Concessionaire, nor any of their successors in interest may claim depreciation or investment tax credit with respect to the Assigned Premises to any other properties or facilities financed with Bonds now or hereafter used hereunder unless the consents and Bond Counsel opinion referenced above are obtained.

ARTICLE XX GENERAL PROVISIONS

20.1 Nonwaiver of Rights: No waiver of breach by RIAC or Concessionaire of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other parties.

20.2 Notices: Notices required herein shall only be deemed given if sent by registered or certified mail deposited in the United States mail, postage prepaid, or by hand-delivery or overnight courier. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Concessionaire and RIAC shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Notices to RIAC shall be addressed as follows:

President & CEO
Rhode Island Airport Corporation
Rhode Island T.F Green International Airport
2000 Post Road
Warwick, RI 02886

Notices to Concessionaire shall be addressed as follows:

If any notice is given in any other manner or at any other place, it shall also be given at the place and in the manner specified above.

20.3 Captions: The headings of the several articles and paragraphs of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

20.4 Severability: In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not affect the validity of the remaining covenants, conditions or provisions of this Agreement.

20.5 Agent for Service of Process and Personal Jurisdiction: It is expressly understood and agreed that if at any time during the Term of this Agreement and for a period of four (4) year after the expiration and/or termination of this Agreement, if the Concessionaire is not a resident of the State of Rhode Island, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, the Concessionaire will appoint an agent for service of process in the State of Rhode Island. Due to any failure on the part of said agent, or the inability of said agent to perform, or the Concessionaire's failure to appoint an agent when required, the Concessionaire does hereby designate the Secretary of State, State of Rhode Island as its agent for the purpose of service of process in any court action between it and RIAC arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Rhode Island 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, 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 the Concessionaire at the address set forth herein. Any such service out of this State shall constitute valid service upon the Concessionaire as of the date of mailing. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the process so served, and submits to the personal jurisdiction of the State of Rhode Island, or any Federal court located therein and/or exercising jurisdiction over the State of Rhode Island, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

20.6 Waiver of Claims: The Concessionaire hereby waives any claim against RIAC and its

directors, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

20.7 Right to Develop Airport: It is further covenanted and agreed that RIAC 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 the Concessionaire and without interference or hindrance.

20.8 Incorporation of Exhibits: All exhibits, documents and instruments referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement. It is specifically agreed that any or all Exhibits may be modified and substituted in accordance with the provisions of this Agreement without formal amendment hereto.

20.9 Relationship of Parties: Nothing contained herein shall be deemed or construed by RIAC or the Concessionaire, or by any other parties, as creating the relationship of employer and employee, principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. RIAC and Concessionaire understand and agree that neither the method of computation of Concession Rent, nor any other provision contained herein, nor any acts of RIAC or the Concessionaire creates a relationship other than the relationship of concessionaire as permittee of RIAC.

20.10 Nonliability of Agents or Employees: No director, officer, agent, or employee of RIAC or the Concessionaire shall be charged personally or held contractually liable by or to the other party under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

20.11 Successors and Assigns Bound: This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

20.12 Right to Amend: In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

20.13 Time of Essence: Time is expressed to be of the essence in this Agreement.

20.14 Gender: Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

20.15 Force Majeure: Except for the payment of any Concession Rent or other fee or charge

required by this Agreement, neither RIAC nor the Concessionaire shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or Applicable Law, including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its own power to control, provided that, should said cause(s) continue for a period beyond six (6) months, such shall be a grounds for termination by either party in the manner provide in Articles XVII or XVIII.

20.16 Representative of RIAC: The President & CEO or their designee, shall be designated as the official representative of RIAC in all matters pertaining to this Agreement. To the extent expressly authorized by RIAC, the President & CEO or their designee shall have the right and authority to act on behalf of RIAC with respect to all action required of RIAC in this Agreement.

20.17 Governing Law and Venue: This Agreement is governed by the laws of the State of Rhode Island, exclusive of its choice of law rules. Any disputes relating to this Agreement or the interpretation thereof must be resolved in accordance with the laws of Rhode Island. The Concessionaire and RIAC agree that any legal or equitable action for claims, debts, or obligations arising out of or to enforce the terms of this Agreement shall be brought by Concessionaire or RIAC in the United States District Court for Rhode Island, or in the state courts of Kent County, Rhode Island and that either court shall have personal jurisdiction over the parties and venue of the action shall be appropriate in each such court, and that no party shall raise the defense of forum non conveniens.

20.18 Certification: The Concessionaire, by execution of this Agreement, certifies that it:

- a. Is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; or
- c. Has not procured any product nor subcontracted for the supply of any product for use in its operations under this Agreement that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Concessionaire who is unable to certify to the above. If the Concessionaire knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use of the project, the Federal Aviation

Administration may direct, through RIAC, cancellation of the contract at no cost to the federal government.

Further, the Concessionaire agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Concessionaire may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Concessionaire shall provide immediate written notice to RIAC if the Concessionaire learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Concessionaire, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Concessionaire or any subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through RIAC, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Concessionaire is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Concessionaire assures compliance with any and all other applicable Federal regulations, statutes, executive orders and FAA rules, orders, directives or instructions and for purposes of this Agreement the same shall be treated as if specifically set forth and incorporated herein by reference.

20.19 Writing Required: This Agreement may not be amended or otherwise modified in any way whatsoever, except in writing approved by RIAC and signed by the parties' authorized agents.

20.20 Rights Cumulative: Each right of the parties hereto is cumulative and in addition to each of the other legal rights that a party may have in law or equity.

20.21 Subagreements: The Concessionaire agrees that it shall include all of the terms, conditions, covenants, obligations, etc. contained herein in any and all agreements and contracts or subagreements and subcontracts entered into by it under which the Concessionaire grants a right or privilege to any person, firm or corporation to render accommodations and/or services within or for the Assigned Premises. Concessionaire shall require that any document so entered into is subordinate

in all terms to this Agreement. Concessionaire also agrees that it shall similarly cause the same to be included in any further subleases, subcontracts or subagreements. The voluntary or other surrender of this Agreement by Concessionaire or a mutual termination hereof, or a termination by RIAC, or an automatic termination, or termination by a court of competent jurisdiction, or any other termination hereof shall not work a merger, and shall, at the option of RIAC, terminate any or all existing Sub-Leases/Tenancies or may, at the option of RIAC, operate as an assignment to RIAC of any or all such Sub-Leases/Tenancies.

20.22 Inspection of Records: The Concessionaire shall provide all information and reports and shall permit access to and audit of its books, record, accounts and other sources of information, and its facilities, as may be determined by RIAC or the FAA to be pertinent to ascertain compliance with this Agreement and federal regulations, orders and instructions, for the Term of this Agreement and three (3) years thereafter. Where any information required of the Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, the Concessionaire shall so certify to RIAC or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information. This paragraph shall survive termination of the Agreement.

20.23 Precedence of Document: In the event of any conflict between this Agreement and any exhibit or attachment hereto, the terms and conditions of the Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties provided for within the Agreement shall be null and void.

ARTICLE XXI

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

21.1 Airport Concession Disadvantaged Business Enterprise (“ACDBE”) Program. It is RIAC’s policy to comply with, promote, and enforce the objectives of U.S. Department of Transportation regulations, 49 CFR Part 23 (“Part 23”), with respect to the participation of ACDBEs in its concession opportunities.

21.2 ACDBE Participation Goals. In order to provide a fair opportunity for ACDBE participation, RIAC requires that the Concessionaire make good faith efforts, as defined in 49 C.F.R. Section 23.95(i), to provide for a level of ACDBE participation in the Concession Program in each Lease Year during the Term that is equal to or greater than [REDACTED] percent, in a manner consistent with Concessionaire’s Proposal (the “Proposal”). All ACDBEs must be certified under the Rhode Island Unified Certification Program or other UCP acceptable to RIAC. All ACDBEs participating in the Concession Program must perform a commercially useful function, as defined in 49 CFR Section 23.55. Concessionaire’s compliance with the ACDBE participation goals shall be measured annually in accordance with the terms and

conditions set forth in Part 23.

21.3 Failure to Meet ACDBE Goal. If Concessionaire fails to achieve and maintain the ACDBE participation goal set forth herein, Concessionaire shall submit documentation demonstrating its good faith efforts to achieve and maintain the specified goal. The documentation shall include, without limitation, correspondence, telephone calls, and other efforts made to locate and obtain the participation of ACDBEs that are ready, willing, and able to participate in the Concession Program. Concessionaire shall also be subject to the provisions of **Section 21.6**.

21.4 Replacement/Substitution of ACDBEs. Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it demonstrates to RIAC that the originally designated ACDBE(s) is unwilling or unable to perform the functions identified in the Proposal. Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. If an ACDBE is unwilling or unable to perform the functions identified in the Proposal, the Concessionaire shall inform RIAC in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. Concessionaire will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. If Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to RIAC detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal. RIAC shall review all substitutions prior to contract award and during contract performance to ensure that the substitute firms are eligible ACDBEs.

21.5 ACDBE Reporting. Concessionaire shall submit, in the format required by RIAC, a certified monthly report of ACDBE utilization (the "ACDBE Participation Reports"). RIAC reviews the monthly ACDBE Participation Reports to ensure that the ACDBE participation levels remain in compliance with the requirements of this Agreement and to verify that the work committed to ACDBE(s) is actually performed by ACDBE(s). This information will also be used to provide the statistical data for RIAC's ACDBE participation achievement reports to the FAA. Pursuant to Part 23 and its obligations pursuant to certain grant agreements between RIAC and the FAA, the Authority is required to monitor joint ventures that include an ACDBE partner for compliance with Part 23 and FAA-issued guidance intended to effectuate Part 23. As part of that obligation, Concessionaire shall provide ACDBE Participation Reports regarding the activities and finances of any ACDBE partner of Concessionaire and any joint venture to RIAC. Concessionaire acknowledges and agrees that timely delivery of accurate and complete ACDBE Participation Reports is a material obligation of Concessionaire under this Agreement and each ACDBE Participation Report delivered to RIAC shall be certified by Concessionaire as being accurate and complete under the pains and penalties of perjury.

RIAC and its duly authorized representatives shall have the right to audit such monthly ACDBE Participation Reports with or without prior notice, and all such records must be retained

by Concessionaire for a period of five (5) years following the expiration or earlier termination of the Term and will be made available for inspection upon request by RIAC or other Governmental Authority.

21.6 Compliance Monitoring and Penalty for Non-Compliance. RIAC will bring to the attention of the U.S. Department of Transportation (“DOT”) any false, fraudulent, or dishonest conduct in connection with the ACDBE Program and this Agreement, so that DOT or FAA can take the appropriate steps to correct the false, fraudulent, or dishonest conduct (*e.g.*, referral to the Department of Justice for criminal prosecution, referral to the DOT or FAA Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). It would be difficult to estimate the actual damages incurred by RIAC where Concessionaire willfully fails to achieve the agreed upon ACDBE participation goals set forth in this Agreement. Accordingly, as liquidated damages, and in addition to other remedies as may be available to the Authority under this Agreement at law or in equity, for each Lease Year that Concessionaire willfully fails to achieve the applicable stated ACDBE participation goals set forth in Section 21.2 of this Agreement, RIAC may, in its sole discretion, require that Concessionaire pay RIAC an amount equal to the difference between the amount of the agreed upon ACDBE participation goal, expressed as dollars equal to the percentage of Gross Receipts, and the actual ACDBE participation achieved by Concessionaire. In the event Concessionaire can demonstrate and document good faith efforts showing that it failed to achieve the agreed upon ACDBE participation goal notwithstanding good faith efforts, and RIAC concurs with Concessionaire, then Concessionaire shall not be liable to RIAC for liquidated damages arising out of Concessionaire’s failure to achieve the agreed upon ACDBE participation goal set forth in this Agreement.

ARTICLE XXII REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “Concessionaire”) agrees as follows:

1. **Compliance with Regulations:** Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Concessionaire, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when

the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Concessionaire of Concessionaire's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to RIAC or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Concessionaire's noncompliance with the Non-discrimination provisions of this Agreement, RIAC will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** Concessionaire will include the above five provisions (Paragraphs 1 through 5) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Concessionaire will take action with respect to any contract or procurement as RIAC or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Concessionaire may request RIAC to enter into any litigation to protect the interests of RIAC. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the

land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. Concessionaire for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Concessionaire will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. General Civil Rights Provision. Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its

obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the property is owned, used or possessed by Concessionaire and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, RIAC will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. Concessionaire agrees that it shall insert the above six provisions (Sections A through F) in any agreement by which Concessionaire grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

ARTICLE XXIII ENTIRE AGREEMENT

23.1 The parties hereto understand and agree that this document contains the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other writing or parol agreement with the other party being expressly waived.

23.2 This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed these presents through their respective officers duly authorized so to do this _____ day of _____, 20__.

CONCESSIONAIRE

Rhode Island Airport Corporation

Approved by:

By: _____

Name: _____

Name: Iftikhar Ahmad

Title: _____

Title: President & CEO

Approved as to substance and form by:

Name: Brittany Morgan

Title: Vice President Human Resources &
Internal Legal Affairs

Recommended By:

Name: Wallace Tang

Title: Senior Vice President & CFO

Exhibit A
The Airport

Exhibit B
Assigned Premises

Exhibit C

Permitted Menu Items and Merchandise

Concessionaire has the right, privilege and obligation to provide _____ services from the Assigned Premises:

