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CONCESSION AGREEMENT

*BY AND BETWEEN*

**RHODE ISLAND AIRPORT CORPORATION**

**AND**

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Effective Date: \_\_\_\_\_, 2018

CONCESSION AGREEMENT

EXHIBITS

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## CONCESSION AGREEMENT

This Concession Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”) 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, a public corporation, governmental agency, and public instrumentality of the State of Rhode Island and Providence Plantations. 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 T.F. Green State 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 airport terminal advertising concessions ("the Concessions"), 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 Concession 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 to 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 the tract of land and any enlargements thereof with all improvements thereon and to be erected thereon, designated as "T.F. Green State Airport," including interior and exterior areas of the existing Terminal, existing Concourses, and future Concourse Expansion(s) (together, the “Facilities”) all as depicted on **Exhibit A**.

1.3 "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.

1.4 "Concessionaire" shall mean \_\_\_\_\_, or its permitted successors or assigns.

1.5 "President & CEO or his designee" shall mean the President and CEO, or his designee, of RIAC.

1.6 "Disadvantaged Business Enterprise" and "DBE" shall mean, as certified 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 as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23 and Part 26.

1.7 "Effective Date" shall mean \_\_\_\_\_, 2018.

1.8 "Fixed Improvements" shall mean all structural or permanent-type improvements made by Concessionaire pursuant to Paragraph 11.1 of this Agreement, if applicable, including but not limited to ceilings, walls, floors, finishes and coverings, power, water and other utility installations and connections, all of which are affixed to the Assigned Premises. Any removable, portable kiosks 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.

1.9 "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 all others, 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 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, 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. When properly recorded and accounted for, Gross Revenue shall not include the amount of any sales, use or gross receipts tax imposed by any federal, state, municipal or 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, 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; and
- b. 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's or Concessionaire's trade fixture, unless otherwise provided in this Agreement.

1.10 "Lease Year" or "Year" shall mean each 12-calendar month period commencing on the Effective Date and each annual anniversary of the Effective Date during the Term or Option Term.

1.11 "Mid-Term Refurbishments" shall have the meaning ascribed to it in Paragraph 11.5 herein.

1.12 "Minimum Annual Guarantee" or "MAG" shall mean the minimum amount of monetary compensation due to RIAC annually from the Concessionaire in consideration of the rights granted Concessionaire under this Agreement in accordance with Paragraph 9.1a. herein.

1.13 "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 concession continuously, and throughout the term in accordance with the terms and conditions of this Agreement.

1.14 "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.

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

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

1.17 "Term" shall have the meaning ascribed to it in Paragraph 4.2 herein.

1.18 "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. Any item normally defined as a Trade Fixture, which is affixed to or installed in 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.

## **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 exclusive use of the following Assigned Premises: Individual advertising concession locations in the Facilities as Operational Space and more specifically set forth on **Exhibit B-1**, 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-1** without further amendment hereto, and; (ii) One (1) individual location comprising a total of approximately \_\_\_\_\_ (\_\_\_) square feet of space (\_\_\_' x \_\_\_') in the Facilities as Non-Operational Space and more specifically set for on **Exhibit B-2**, incorporated herein by reference. 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 anytime during the Term of this Agreement if RIAC, in its sole and absolute discretion, determines that the Assigned Premises are 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.

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 ninety (90) days before the effective date of

the recapture.

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.

#### **ARTICLE IV LEASE TERM and OPTION TERM**

4.1 This Agreement shall be effective and binding as of the date first set forth above (the "Effective Date").

4.2 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 Five (5) years, from \_\_\_\_\_, 2018 through \_\_\_\_\_, 2023. Provided that Concessionaire is not in default of this Agreement as defined herein, this Agreement may be extended by one (1) Option Term of Five (5) years, from \_\_\_\_\_, 2023 through \_\_\_\_\_, 2028 by mutual agreement of the parties, as evidenced by written notice provided by each party to the other, no less than One Hundred Eighty (180) days prior to the expiration of the Term.

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

4.4 Failure of Tenant to Open: RESERVED.

#### **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 hereinafter 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 Lease

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; 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 rentals, fees, charges, 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 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 rentals, fees, charges, and other terms will be fixed by RIAC in its absolute uncontrolled discretion.

## **ARTICLE VI USES AND PRIVILEGES**

6.1 The Concessionaire shall have the exclusive right, privilege, and obligation to continuously and uninterruptedly occupy, operate, and manage the Assigned Premises only, in accordance with the provisions of this Agreement, subject to the provisions of Paragraph 9.1, for the sole purposes of conducting the operation of the Advertising Concession Program, only.

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 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. Any change in the character of Concessionaire's business, trade name or use 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 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 such item or service.

6.3 RESERVED.

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 as permitted and approved by the President & CEO or his designee. Concessionaire shall not install or suffer to be installed any amusement, dispensing, or vending machine(s) on the Assigned Premises.

6.5 Concessionaire shall, within its Assigned Premises, install, maintain and operate, "Display Facilities" for the provision of commercial advertising within the Assigned Premises. The term "Display Facilities" as used in the preceding sentence shall mean and refer to, but not be limited to, display cases, exhibits, dioramas, backlit showcases, courtesy direct-line phone boards, signage, displays, banners, monitors, 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 products or businesses 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 hereunder, with the exception of those granted for the Assigned Premises, are granted on a non-exclusive basis.

6.7 The Concessionaire has the non-exclusive right of ingress 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.

## **ARTICLE VII OPERATIONAL STANDARDS**

7.1 Adherence to Standards: Concessionaire, its employees, agents, and servants shall at all times observe, obey, 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 laws and regulations of the United States of America, the State of Rhode Island and of governmental authorities having jurisdiction over Concessionaire's operation 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.

7.2 Airport Performance Operating Standards: Concessionaire shall observe, obey, and abide by all applicable operating performance standards, rules, regulations, or procedures as may be in effect or amended by RIAC from time to time. 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.

7.3 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: RESERVED.

7.6 Operations During Periods of Flight Delays: RESERVED.

7.7 Penalties for Failure to Maintain Airport Hours: RESERVED.

7.8 Concessionaire's Conduct of Business: Concessionaire shall develop, market, operate, and manage, an innovative, state-of-the-art advertising concession program at the Airport as outlined below:

- a. Concessionaire shall operate its business in the Assigned Premises so as to maximize the gross sales produced by such operation and shall maintain an adequate staff of employees and maintain the Assigned Premises at all times 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. Develop and promote new growth from national, regional and local advertisers.
- c. Identify, develop, and implement new advertising opportunities as well as enhance existing advertising displays.
- d. Retain traditional airport advertisers and attract new advertisers that are relevant to the local market and the Airport's passengers.
- e. Provide a contemporary and innovative advertising program that utilizes state-of-the-art technology and optimizes advertising effectiveness while

minimizing visual clutter.

- f. Include new "cutting edge" and creative, innovative, multi-media advertising concepts such as video walls, interactive devices, multi-media devices, digital, tension fabric, etc., or those technologies that represent new methods of generating advertising revenues not identified herein.
- g. Maintain a commitment to the Airport's role in the travel and tourism industry through coherent and complementary advertising that is aesthetically consistent with the design and architecture of airport properties.
- h. Complement and promote existing concessions and tenants at T.F. Green Airport where possible.
- i. Provide advertisers with "campaign opportunities" that integrate multiple media formats.
- j. Incorporate social media and other sensory elements by including advertising technology that allows the viewer to see movement and/or interaction.
- k. Evaluate current advertising and provide an aesthetic review of all advertising for acceptability and attractiveness to all members of the general public.
- l. Identify potential improvements, additions, and/or expansions to the advertising program.
- m. Formulate and negotiate terms for contracts with individual advertisers, including fees and/or rents.
- n. Administer advertising contracts, including designing, scheduling and monitoring installation, maintenance/janitorial, and removal of displays.
- o. Address contract administration issues with advertising clients, including dispute resolution.
- p. Provide monthly reporting on advertising contracts, their administration, and revenue generated to RIAC as provided for herein.
- q. Conduct all business in accordance with RIAC's Advertising Standards Policy, attached hereto as **Exhibit E**, as may be amended from time-to-time.

7.9 Interior Store Signage: RESERVED.

7.10 Product Labeling: RESERVED.

7.11 Entrances: Concessionaire shall ensure that the public and passenger entrances to the Assigned Premises are kept clear of any boxes, cartons, trash, refuse, barrels, or other similar items which would impede entrance/exit from the Assigned Premises. Piling of boxes, cartons, trash,

refuse, barrels, or other similar items in an unsightly or unsafe manner within the Assigned Premises is forbidden.

7.12 Merchandising: RESERVED.

7.13 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, or other similar broadcast device, antenna, 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 devices 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.

7.14 Promotions: If applicable, Concessionaire shall be required to submit to the President & CEO or his designee by the 1<sup>st</sup> 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.

7.15 Employee Discount: RESERVED.

7.16 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. 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.

7.17 Plumbing Facilities: RESERVED.

7.18 Method of Payment: RESERVED.

7.19 Point of Sale Devices: RESERVED.

7.20 Foreign Currency: RESERVED.

7.21 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.

7.22 Management: All concession operations shall be supervised at all times by an active, qualified, competent manager or a qualified assistant manager in the manager's absence. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire with respect to the Assigned Premises, 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.

7.23 Staffing Levels: RESERVED.

7.24 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, and display a positive attitude within the Assigned Premises.
- f. All personnel shall provide warm, friendly, smiling, prompt and courteous service.
- g. All personnel shall be familiar with all applicable policies of this Agreement, the Airport and Concessionaire.
- h. All personnel engaged in sales activities shall speak and comprehend English, at a level appropriate to their duties.
- i. The use of cell phones by personnel while in the Assigned Premises, unless solely for business purposes of the Concessionaire, is expressly prohibited.

7.25 Customer Complaints: Concessionaire shall be required to respond to any complaints in writing within two (2) days 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 the Airport shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure.

7.26 Pricing: RESERVED.

7.27 Product: RESERVED.

7.28 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 concession facilities (including lines, pipes, wires, duct work, vents, conduits, and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the concession facilities, or overload any floor in the concession premises.

7.29 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.

7.30 Required Security Gate: RESERVED.

7.31 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.

7.32 Auction: Concessionaire shall not permit, or undertake itself, any sale by auction upon the concession 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 authorities, 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. 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 subsidiaries, subcontractors, or suppliers, 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 subsidiaries, subcontractors, or suppliers, 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 federal, state or local governmental authority authorities 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, its members, officers, agents, servants, employees nor customers 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 guidelines and rules and regulations. 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 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 customers or, (c) the existence of any Hazardous Materials within the interior portions of the Assigned Premises if placed by the Concessionaire, its members, officers, agents, servants, employees, and customers.

**ARTICLE IX  
RENTALS, FEES, CHARGES AND ACCOUNTABILITY**

9.1 Concessionaire Rent: Beginning on the Effective Date, and for each month during the entire Term of this Agreement, for 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) the greater of the Minimum Annual Guarantee (MAG) in subsection a., or the Monthly Percentage Rent in subsection b. below for the Operational Spaces, plus (ii) for the Non-Operational Spaces, the concession rent specified in subsection c. below.

a. Minimum Annual Guarantee (MAG):

For the period of \_\_\_\_\_, 2018 through \_\_\_\_\_, 2019 (the first Lease Year), the Minimum Annual Guarantee (MAG) will be \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_). Commencing with the second Lease Year, the Minimum Annual Guarantee for each remaining Lease Year of the Term or Option Term shall be established as a figure calculated as the greater of; (A) Eighty-Five Percent (85%) of the Percentage Rent paid to RIAC by Concessionaire for each prior twelve (12) month period, or (B) the MAG for such immediately preceding Lease Year multiplied by 1.02, to be paid to RIAC in equal monthly installments, provided however, in no event will there be a decrease in the Minimum Annual Guarantee during the Term or Option Term of the Agreement.

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

<p><b>Category: Advertising Concession Sales:</b></p> <p><b>_____ Percent ( __ %) of Monthly Gross Revenue From All Sources</b></p>
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c. Non-Operational Spaces:

The Concessionaire shall rent \_\_\_\_\_ (\_\_\_) square feet of Non-Operational Space more specifically set forth on **Exhibit B-2**, incorporated herein by reference, to be utilized as storage area at a rate equal to the per square foot terminal rental rate charged to airline tenants of the Facilities that are Signatory Airlines. The initial rate at \_\_\_\_\_, 2018 is One Hundred Four and 66/100 Dollars (\$104.66) per square foot, for an initial monthly payment of

\_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_). This rate will be adjusted on July 1 of each calendar year of the Term to reflect the updated terminal rental rate charges, provided, however, that in no event will there be a reduction of the monthly Non-Operational Space rent during the Term of the Agreement.

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 any applicable MAG. Beginning on the fifteenth (15th) 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 excess difference (if any) between the Monthly Percentage Rent for the immediately preceding month and one-twelfth (1/12) of 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 Percent (1.5%) 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 fifteenth (15th) 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 shown on **Exhibit C**, attached hereto and incorporated herein by reference. RIAC shall have the right to require Concessionaire to modify the report of Gross Revenues at any time. Such reports shall, at a minimum, reflect total Gross Revenues, Gross Revenues by individual Assigned Premises, and Gross Revenues by category. Such 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.

9.4 The report of Gross Revenues 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.

9.5 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 thirty (30) days of any request by RIAC, showing all of Concessionaire's and its subtenants, assignees and licensees said Gross Revenues in a form consistent with good accounting practices 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.

9.6 Audit: RIAC reserves the right to audit Concessionaire's activity at the Airport. If so requested, 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 Rent due the Airport 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 such amount 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.

9.6.1 Revenue Reporting: The Concessionaire shall also furnish a written report to RIAC listing the Concessionaire's, its subtenants, assignees or 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 made 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 Pubic Accountants reports as hereinabove described. These reports shall be completed within ninety (90) calendar days after the 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.

9.6.2 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

controlling law. RIAC and the Concessionaire covenant that, subject to controlling 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.

9.7 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 and No/100 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.

9.8 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.

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

9.10 Past Due Rent and Additional Rent: If Concessionaire shall fail to pay, when the same is due and payable, any Rent, or amounts or charges as contained herein, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate which is the lesser of Eighteen percent (18%) per annum or the maximum interest rate permitted by law.

## **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 Concessionaires operation of the Assigned Premises. If RIAC shall decide to supply any of the utility services described herein, unless such utilities provided are minimal in nature as determined by RIAC, 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, by way of example without limitation such drainage or sewerage systems, fire hydrants, heating and air conditioning systems, electrical systems, 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. 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.

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.

Concessionaire agrees that **Exhibit D** shall be completed upon acceptance by RIAC of the statements submitted in accordance with Paragraph 11.10.

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 statutes, ordinances, building codes, and rules and regulations of RIAC, other appropriate agencies, and commissions.

Any changes, alterations or improvements to the Assigned Premises by the Company 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 not in default hereunder 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, 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: RESERVED.

11.5 Facility Improvements and Trade Fixtures: As additional consideration for the rights and privileges granted in this Agreement, the Concessionaire shall expend \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) during the first two Lease Years of the Term for Fixed Improvements to construct the Assigned Premises as further detailed on **Exhibit D** hereto. Additionally, should the Option Term be exercised by mutual agreement of the parties as provided for herein, the Concessionaire shall expend \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_) during the first Lease Year of the Option Term as Mid-Term Refurbishments. Opening costs, Trade Fixtures, Personal Property, in-house design costs and amounts paid for by Concessionaire's vendors, suppliers, distributors or other parties shall not count toward the initial Term minimum expenditure or Mid-Term Refurbishment requirements.

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 RIAC's Design Review and Construction Approval processes. These processes, among other things, 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 or codes 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 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 construction contractor(s), architect(s), and engineer(s) 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 rentals, percentage payments or MAG 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 Term of this Agreement on a straight line basis with no salvage value.

## **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

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, signs, lighting fixtures, bulbs and tubes, wall coverings, the surfaces of Airport base building interior columns exclusive of structural deficiencies, electrical systems, electrical lines, electrical equipment and all other work, improvements and repairs and replacements, renewals and restorations, 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, 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 RESERVED.

12.5 Waterproofing: RESERVED.

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 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 Fifty percent (50%) 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 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 or otherwise caused by, directly or indirectly: (i) any failure by Concessionaire to perform its obligations in accordance with the terms and conditions of this Agreement; (ii) any other breach by Concessionaire of the terms and conditions of this Agreement; or (iii) the acts or omissions of Concessionaire, or any of its officers, directors, employees, agents, suppliers, business visitors, or guests, in, on or about the Airport. 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 \$3,000,000 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.
- c. 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 CGL insurance required to be maintained by the Concessionaire under Paragraphs 13.4 a and b shall be increased to a limit of not less than \$10,000,000 each occurrence or any other

increased amount as RIAC may require. Full policy limits shall apply to this Agreement in respect to operations under this Agreement.

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 \$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 \$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 as required under the Rhode Island Law.

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 Media Coverage Insurance: Concessionaire shall obtain and maintain continuously in effect at all times during the Term, and if applicable the Option Term, at its sole cost and expense, media liability insurance coverage with a limit of not less than \$1,000,000.00 per occurrence, that insures against damages, losses and liabilities arising from claims for libel, slander, defamation, copyright, title and slogan infringement, piracy, plagiarism and invasion of privacy in its operations under this Agreement.

13.10 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 RIAC's coverage shall be secondary.

13.11 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.

13.12 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.

13.13 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 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.

13.14 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.

13.15 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.

13.16 Performance Guarantee: Concessionaire shall obtain a third-party guarantee of their

performance under this Agreement in accordance with the following provision:

- 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 \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_), such amount equal to One Hundred Percent (100%) of the MAG for the first Lease Year of the Term.

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, renew such financial guarantee(s) upon expiration of their coverage term shall be deemed a material breach 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 shall agree 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 expressed prior 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 accurately 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(s) of the 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 discretion may cause within its sole and absolute discretion 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 portion thereof untenable, and notice of intent to repair or reconstruct has been given by RIAC, an appropriate portion of the Minimum Monthly 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 the agents or employees of either, 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, its agents, servants, employees, contractors, suppliers, customers, or invitees, 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 Effective 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 refurbishing/re-equipping shall be equal in quality to that originally installed. Nothing in this Article XV 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, agents, servants, employees, contractors, licensees, and any other person over which the Concessionaire has the right to exercise control shall comply with all 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 providing thirty (30) calendar days 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 throughout 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 TERMINATION BY RIAC**

18.1 RIAC reserves the right to terminate this agreement, for whatsoever cause, by providing ninety (90) days advance written notice to Concessionaire of its intent to do so. 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 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, passes to or devolves upon, by operation of law or otherwise, to any other person or entity without the written consent of RIAC;
- c. Except as otherwise permitted in this Agreement, Concessionaire becomes, without the prior written approval of RIAC, 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.

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 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, 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 rentals 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 suboperators or any other party acceptable to RIAC, at such rentals, 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 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 ("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, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person, on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements and the furnishing of services, no person on the grounds of race, color, creed, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Concessionaire shall use the Assigned Premises in compliance with all other applicable requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination covenants, RIAC shall have the right to terminate this Agreement and re-enter and repossess said Assigned Premises, and hold the same as if said Agreement had never been made or issued and no reimbursement shall be made to Concessionaire. This provision shall not be effective until the procedures of 49 CFR, Part 21, are followed and completed including exercise or expiration of appeal rights.
- c. 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.
- d. 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.

- e. The Concessionaire assures that it will comply with any pertinent and legally applicable statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, gender, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Concessionaire for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the Concessionaire or its transferee for the longer of the following periods:
  - 1) The period during which property is used by RIAC or any transferee for a purpose for which Federal assistance is extended or for another purpose involving the provision of similar services or benefits; or
  - 2) The period during which RIAC or any transferee retains ownership or possession of the property.
- f. It is the policy of the Department of Transportation and of RIAC that 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 DBE program, apply to this Agreement to the extent therein provided.

The Concessionaire agrees to ensure, to the extent legally required to do so, that 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 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 Concessionaire which 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 DBE 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 to 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. This Agreement is subject to and subordinate to the provisions of the Bond Resolution.
- c. 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, as defined in the Bond Resolutions issued by RIAC to finance construction at the Airport. 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 on 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. 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  
T.F Green 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. Any Notice given by facsimile received after 3:00 p.m. local time shall be deemed to have been received at 8:00 am local time, of the recipient, the next business day.

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, 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 Presidents & CEOs, 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 Incorporation of Required Provision: The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

20.10 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 shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of RIAC and the Concessionaire creates a relationship other than the relationship of Concessionaire as permitted of RIAC.

20.11 Nonliability of Agents or Employees: No President & CEO or his designee, 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.

20.12 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.

20.13 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.

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

20.15 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.

20.16 Force Majeure: Except for the payment of any rent or 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 Article XVII

20.17 Representative of RIAC: The President & CEO or his 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 his designee shall have the right and authority to act on behalf of RIAC with respect to all action required of RIAC in this Agreement.

20.18 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 the Eastern District of Rhode Island, Warwick Division or in the consolidated Court 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.

20.19 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 on the project 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 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.

20.20 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.

20.21 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.

20.22 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 the 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.

20.23 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.

20.24 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 ENTIRE AGREEMENT**

21.1 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.

IN WITNESS WHEREOF, the parties hereto have executed these presents through their respective officers duly authorized so to do this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

RHODE ISLAND AIRPORT CORPORATION

Approved as to Substance and Form:

BY: \_\_\_\_\_

Printed Name: Annette P. Jacques, Esq.

Title: Corporate Counsel

BY: \_\_\_\_\_

Printed Name: Iftikhar Ahmad

Title: President & CEO

\_\_\_\_\_

BY: \_\_\_\_\_

Printed Name:

Title:

**Exhibit A**  
**The Airport**

**Exhibit B**  
**Assigned Premises**

**Exhibit C**

**Concessionaire Report of Gross Sales**

**Exhibit D**

**Capital Investment Detail  
Lease Years One and Two**

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**CERTIFIED ACTUAL FIXED IMPROVEMENT INVESTMENT:**

\$ \_\_\_\_\_  
Amount in Dollars

\_\_\_\_\_ AND \_\_\_\_\_ /100 Dollars  
Amount in Words

**Capital Investment Detail  
Mid-Term Refurbishments**

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**CERTIFIED ACTUAL FIXED IMPROVEMENT INVESTMENT:**

\$ \_\_\_\_\_  
Amount in Dollars

\_\_\_\_\_ AND \_\_\_\_\_ /100 Dollars  
Amount in Words

## **Exhibit E**

### **Summary of Rhode Island Airport Corporation Advertising Standards Policy**

## **Rhode Island Airport Corporation Summary of Advertising Standards**

The following Standards shall apply to all licenses for installation, display and maintenance of advertising on properties and facilities operated by the Rhode Island Airport Corporation (“RIAC”).

All advertising displayed at T.F. Green Airport, Block Island State Airport, Newport State Airport, North Central State Airport, Quonset State Airport and Westerly State Airport (collectively, “the Airports”) shall comply with the following Standards:

(a) Permitted Subject Matter. The subject matter of the advertisement shall be limited to speech which is within one or more of the following permissible areas:

- (1) proposes a commercial transaction;
- (2) proposes the patronage of a commercial business;
- (3) promotes a particular industry;
- (4) promotes tourism; or
- (5) promotes economic development.

(b) Limitations Upon Advertisements. The licensee shall not display or maintain any advertisement that falls within one or more of the following categories:

- (1) The advertisement or information contained in it is false, misleading or deceptive;
- (2) The advertisement or information contained in it promotes unlawful or illegal goods, services or activities;
- (3) The advertisement or information contained in it implies or declares an endorsement by RIAC of any service, product or point of view without prior written authorization of RIAC;
- (4) The advertisement contains obscene material. For purposes of this provision, the term “obscene” shall have the meaning contained in R.I.G.L. 11-31-1, as such provision may be amended, modified or supplemented from time to time;
- (5) The advertisement contains an image or description, which, if sold or loaned to a minor for monetary consideration with knowledge of its character and content, would rise to a violation of R.I.G. L. 11-31-10, as such provision may be amended, modified, or supplemented from time to time;
- (6) The advertisement contains an image or description which, if displayed in a transportation facility with knowledge of its character and content, would give rise to a violation of R.I.G.L. 9-1-28.1, as such provision may be amended, modified or supplemented from time to time;
- (7) The advertisement, or any information contained in it is libelous;

- (8) The advertisement promotes the consumption of alcohol, tobacco or tobacco-related products;
- (9) The advertisement contains an image of a person, who appears to be a minor, in sexually suggestive dress, pose or context;
- (10) The advertisement contains images or information that demean an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability or sexual orientation;
- (11) The advertisement contains images or information that are so violent, frightening, or otherwise disturbing as to be harmful to minors; or
- (12) The advertising promotes an escort service, dating service, or sexually oriented business.

(c) Review of Advertisements. RIAC advertising contractors shall forward to RIAC each advertisement submitted for installation, display and maintenance on RIAC properties and facilities to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in Section (a) of these Standards. If RIAC determines that an advertisement falls within, or may fall within, one or more of the categories set forth in Section (b) of these Standards:

- (1) RIAC shall advise the advertising contractor of its determination;
- (2) The advertising contractor may, in consultation with RIAC, discuss with the advertiser one or more revisions to the advertisement, in order to bring the advertisement into conformity with the Standards. The advertiser shall then have the option of submitting a revised advertisement for review in accordance with these procedures;
- (3) In the event that the advertising contractor and the advertiser do not reach agreement with regard to a revision to the advertisement, or in the event that the advertising contractor determines that no appropriate revision would bring the advertisement into conformity with the Standards, the advertiser may request that the advertising contractor obtain a formal determination from RIAC. In reaching a formal determination, RIAC may consider any materials submitted by the advertiser, and may consult with the advertising contractor; and
- (4) RIAC shall promptly provide the advertising contractor with a written notice of the formal determination, and the advertising contractor shall relay the formal determination to the advertiser. RIAC's formal determination shall be final.

(d) Unsold Space. Any advertising space not sold or traded for value may be used by RIAC for displays promoting use of the Airports and/or economic development in the State of Rhode Island.

(e) Severability. The provisions of these Advertising Standards are severable, and if any provision thereof shall be held invalid in any circumstances, such invalidity shall not affect any other provisions or circumstances. These Advertising Standards shall be construed in all respects so as to meet all constitutional and other legal requirements.