

CITY OF PHOENIX

TERMINAL 4 SOUTH 1 CONCOURSE RETAIL PHASE II
CONCESSIONS LEASE

between

THE CITY OF PHOENIX,
an Arizona municipal corporation

and

TBD

TABLE OF CONTENTS

SECTION 1	TERM.....	2
SECTION 1.1	Initial Term	2
SECTION 1.1	Primary Term	2
SECTION 2	PREMISES AND PRIVILEGES.....	2
SECTION 2.1	Premises.....	2
SECTION 2.2	Rights and Privileges	2
SECTION 3	RENT	4
SECTION 3.1	Gross Sales	4
SECTION 3.2	Credits and Discounts	5
SECTION 3.3	Annual Rent	5
SECTION 3.4	Percentage Rent Payments and Reports	6
SECTION 3.5	Rent Remittances	7
SECTION 3.6	Miscellaneous Charges.....	7
SECTION 3.7	Delinquent Rent and Charges	7
SECTION 3.8	Late Statements or Reports	8
SECTION 3.9	Books and Records.....	8
SECTION 3.10	Independent Audits	9
SECTION 3.11	Final Audit Binding	10
SECTION 3.12	Support Space	10
SECTION 4	LESSEE OPERATING STANDARDS.....	10
SECTION 4.1	Service Standards.....	10
SECTION 4.2	Employee Standards.....	12
SECTION 4.3	Management	12
SECTION 4.4	Sanitation, Hygiene, and Cleanliness	12
SECTION 4.5	Deliveries	14
SECTION 4.6	Signs.....	14
SECTION 5	IMPROVEMENTS TO BE MADE BY LESSEE	15
SECTION 5.1	Furnish and Equip Premises	15
SECTION 5.2	Plans and Specifications for Leasehold Improvements	16
SECTION 5.3	Title to Leasehold Improvements	17
SECTION 5.4	Removal and Demolition	18
SECTION 6	CLOSURE, RELOCATION, REDUCTION, EXPANSION OR CONDEMNATION	18
SECTION 6.1	Lessor's Authority.....	18
SECTION 6.2	Compensation.....	18
SECTION 6.3	Condemnation.....	19
SECTION 7	JANITORIAL SERVICES.....	19
SECTION 8	MAINTENANCE OF PREMISES	19
SECTION 8.1	Maintenance	19
SECTION 8.2	Repairs	19
SECTION 8.3	Right to Enter	20
SECTION 8.4	Failure to Maintain or Repair	20
SECTION 8.5	Operation Costs	21
SECTION 8.6	Utilities	21

SECTION 9	INSURANCE REQUIREMENTS	21
SECTION 9.1	Introduction	21
SECTION 9.2	Minimum Scope and Limits of Insurance.....	21
SECTION 9.3	Notice of Cancellation	23
SECTION 9.4	Acceptability of Insurers	24
SECTION 9.5	Verification of Coverage.....	24
SECTION 9.6	Sublessees and Partners	25
SECTION 9.7	Approval.....	25
SECTION 10	INDEMNIFICATION OF CITY	25
SECTION 11	LIENS AND PERFORMANCE AND PAYMENT BONDS	26
SECTION 11.1	Liens	26
SECTION 11.2	Payment Bond	26
SECTION 11.3	Performance Guarantee.....	26
SECTION 12	ASSIGNMENT AND SUBLETTING	27
SECTION 12.1	Assignment	27
SECTION 12.2	Terms of Sublease	28
SECTION 12.3	Approved Partners	28
SECTION 13	CANCELLATION BY LESSOR	28
SECTION 13.1	General Default.....	28
SECTION 13.2	Rental Default	28
SECTION 13.3	Failure to Commence Construction of Leasehold Improvements.....	29
SECTION 14	CANCELLATION BY LESSEE	29
SECTION 14.1	General Defaults	29
SECTION 15	REDELIVERY AND HOLDING OVER	29
SECTION 15.1	Redelivery	29
SECTION 15.2	Holding Over	30
SECTION 16	DAMAGE OR DESTRUCTION	30
SECTION 16.1	Damage or Destruction to T4 or the Unimproved Shell	30
SECTION 16.2	Damage to Premises.....	31
SECTION 16.3	Protection of Contents of Premises	31
SECTION 17	FORCE MAJEURE.....	31
SECTION 18	ATTORNEYS' FEES	31
SECTION 19	AMENDMENT	32
SECTION 20	RELATIONSHIP OF PARTIES	32
SECTION 21	NO THIRD-PARTY BENEFICIARIES.....	32
SECTION 22	PROHIBITED INTERESTS.....	32
SECTION 23	QUIET ENJOYMENT	32

SECTION 24	COMPLIANCE WITH LAWS	33
SECTION 24.1	Rules and Regulations.....	33
SECTION 24.2	Supplemental Terms and Conditions to All Airport Agreements	33
SECTION 24.3	Taxes and Licenses.....	33
SECTION 25	GENERAL PROVISIONS	34
SECTION 25.1	Small Business Participation	34
SECTION 25.2	Equal Employment Opportunity and Equal Pay	35
SECTION 25.3	Subordination to Agreements with the United States	36
SECTION 25.4	Notices	36
SECTION 25.5	Approvals, Consents and Notices	37
SECTION 25.6	Offset Provisions	37
SECTION 25.7	Transactional Conflicts of Interest.....	37
SECTION 25.8	Paragraph Headings.....	37
SECTION 25.9	Savings Clause.....	38
SECTION 25.10	Waiver of Claims	38
SECTION 25.11	Business Certification	38
SECTION 25.12	Right to Develop Airport.....	38
SECTION 25.13	Incorporation of Exhibits	38
SECTION 25.14	Incorporation of Required Provisions	39
SECTION 25.15	Successors and Assigns Bound	39
SECTION 25.16	Right to Amend.....	39
SECTION 25.17	Time of Essence.....	39
SECTION 25.18	Good Faith.....	39
SECTION 25.19	Interpretation	39
SECTION 25.20	Entire Lease	39
SECTION 25.21	Conflicts.....	40
SECTION 25.22	Hazard, Potential Hazard, Nuisance, or Annoyance	40
SECTION 25.23	Airport Security Plan.....	40
SECTION 25.24	Lessee and Sublessee Worker Background Screening	40
SECTION 25.25	Contract Worker Access Controls, Badge and Key Access Requirements.....	41
SECTION 25.26	Lessor Improvements to T4.....	43
SECTION 25.27	Statutory Remedies	43
SECTION 25.28	Non-Waiver	43
SECTION 25.29	Tenant Liability Continues	43
SECTION 25.30	Lessee Bankruptcy	43
SECTION 25.31	Governing Law; Forum; Venue	43
SECTION 25.32	Calculating Time Periods.....	43

LIST OF EXHIBITS

EXHIBIT 1	PREMISES
EXHIBIT 2	CONCEPTS
EXHIBIT 3	TENANT DESIGN CRITERIA
EXHIBIT 4	PROPOSED CAPITAL INVESTMENTS
EXHIBIT 5-A	LETTER OF CREDIT FORM
EXHIBIT 5-B	CASH DEPOSIT FOR PERFORMANCE GUARANTEE
EXHIBIT 6	COMPLIANCE WITH ENVIRONMENTAL LAWS
EXHIBIT 7	SUPPLEMENTAL TERMS & CONDITIONS
EXHIBIT 8	FOOD AND BEVERAGE / RETAIL OPERATING AND SERVICE STANDARDS MANUAL
EXHIBIT 9	AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM RACE- AND GENDER-NEUTRAL CONTRACT CLAUSE
EXHIBIT 10	MANAGEMENT, MARKETING, OPERATIONS, AND TECHNOLOGY PLANS
EXHIBIT 11	FORM EO3 PER AVN RCS 23-006 SMALL BUSINESS UTILIZATION COMMITMENT

EXHIBIT 12 FORM E02 PER AVN RCS 23-006 SMALL BUSINESS OUTREACH EFFORTS
EXHIBIT 13 SUSTAINABILITY SUMMARY

**PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 4 SOUTH 1 CONCOURSE
RETAIL PHASE II CONCESSIONS LEASE**

This RETAIL PHASE II CONCESSIONS LEASE (“**Lease**”) is made and entered into between the CITY OF PHOENIX, a municipal corporation of the State of Arizona (“**Lessor**” or “**City**”), and **XXXX** (“**Lessee**”), whose principal place of business is located at **XXXXX**. This Lease is effective upon execution by Lessor (“**Effective Date**”).

RECITALS

1. Lessor is the owner and operator of Phoenix Sky Harbor International Airport (“**Airport**” or “**PHX**”) in Phoenix, Arizona, including Terminal 4 (“**T4**”).
2. Lessor desires to grant to Lessee the non-exclusive rights specified in this Lease and to establish the terms and conditions for the operation of Lessee's retail (“**Retail**”) concessions in Terminal 4 South 1 Concourse (“**T4S1**”).
3. Lessor desires to have existing Retail facilities developed, operated and managed to offer the traveling public current Retail concepts.
4. Lessor has solicited responses from Retail concessionaires for T4S1 and Lessor has negotiated with Lessee to operate first class Retail concessions for the convenience and necessity of the customers, passengers and public using T4.
5. At any time during the term of this lease, Lessor reserves the right to add or change Retail concessions in T4.
6. Lessee is responsible for all contractual obligations of its Retail operations in T4S1, including those Retail operations operated by its Airport Concessions Disadvantaged Business Enterprise (**ACDBE**), Disadvantaged Business Enterprise (**DBE**), small business, sublease, and joint ventures partners (collectively referred to as “**Partners**”).
7. On **XXXXX**, Phoenix City Council approved Ordinance S-**XXXXX** authorizing this lease.

NOW, THEREFORE, in consideration of the foregoing recitals, which the parties acknowledge are a part of this Lease, and of the following terms and conditions which are agreed by and between the parties as follows:

SECTION 1 TERM

SECTION 1.1 – Initial Term

The Initial Term of this Lease shall commence on the **Effective Date** listed above and shall extend until Lessee begins all Retail operations included under this Lease for T4S1, or 12 months after the Effective Date, whichever comes earlier. All dates are subject to change at the discretion of the City.

SECTION 1.2 – Primary Term

The Primary Term of this Lease shall commence when Lessee begins all Retail operations included under this Lease for T4S1, or 12 months after the effective date, whichever occurs earlier. The Primary Term will expire in ten (10) years, unless this Lease is terminated earlier as hereinafter provided. If Lessee begins all operations on a day other than the first day of the month, all monetary obligations under the Lease will be prorated for the remainder of the month.

SECTION 2 PREMISES AND PRIVILEGES

SECTION 2.1 - Premises

2.1.1 Lessor hereby leases to Lessee those Premises and facilities in T4S1 shown on the drawings attached to this Lease and denoted as R3 and R4 in **Exhibit 1 (“Premises”)**, which occupy approximately 2,219 square feet (**sq. ft.**) for concessions space. The R3 space is approximately 1,080 sq. ft. and the R4 space is approximately 1,139 sq. ft. Lessor grants Lessee the right of ingress and egress to and from the Premises on public access roadways, sidewalks and areas of the Airport.

2.1.2 If available, Lessee may lease support space at the Airport at the current rates authorized by Phoenix City Code, subject to annual adjustment. Any leased support space will be added to **Exhibit 1** prior to Lease execution.

2.1.3 Lessee leases the Premises after a full and complete examination of the Premises and the title, and has full knowledge of the present uses and non-uses. Lessee accepts the foregoing in the “as-is” condition without any representation or warranty, express or implied in fact or by law, by Lessor and without recourse to Lessor as to the title, nature, condition or usability or use to which the Premises may be put. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises other than those expressly provided in this Lease. Lessee assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Premises.

SECTION 2.2 - Rights and Privileges

2.2.1 Lessor hereby grants to Lessee a nonexclusive right to engage in business at the Premises as a Retail concessions operator, a commercial activity defined and regulated by this Lease and the Phoenix City Code, to operate the concession concepts identified in **Exhibit 2 (“Concepts”)**. Lessee shall use the Premises for no other purpose. Lessor may grant rights

to others to conduct the same or similar operations in T4S1.

2.2.2 It is the objective of Lessor and Lessee that each T4S1 concession unit maintains a distinctive quality. Therefore, each Retail concession unit must be operated in compliance with **Exhibit 2**. Any modifications to **Exhibit 2** must be approved in writing, in advance, by Lessor.

2.2.3 Unless expressly provided by this Lease, Lessee shall not operate electronic games or vending machines containing any food or retail items on the Premises.

2.2.4 The Lessor reserves the right to require modification to Lessee's merchandise plan.

2.2.5 Lessee may use no more than ten percent (10%) of the floor space of the Premises for storage, office, or other purposes not directly related to the display and sale of goods to customers unless otherwise approved by Lessor.

2.2.6 Exclusive of any support space allotted to the Premises under Section 2.2.5 or leased by Lessee as part of the Premises, Lessee agrees one hundred percent (100%) of the Premises shall be devoted to Lessee's operation of the Retail concession Concepts listed in **Exhibit 2**. Lessee's failure to comply with **Exhibit 2** will be grounds for termination of this Lease. Such compliance by Lessee shall be at the sole determination of Lessor.

2.2.7 Lessor reserves the right, in its sole discretion, to install one (1) or more public address system speakers on or within the Premises for announcing flight arrivals and departures and other Airport information. Lessee shall not install any public address or paging system on the Premises.

2.2.8 The rights and privileges described in this Section may be modified by Lessor to implement the purpose and intent of this Lease.

2.2.9 Lessee shall have the right and obligation to construct Leasehold Improvements to the Premises for use in its Retail concession units in accordance with **Section 5**.

2.2.10 As a condition of its right to occupy the Premises, Lessee shall ensure the operation of any wireless access point does not cause interference with existing communication users, including, without limitation, aviation-related operations and equipment at the Airport, the operation of any existing wireless users operating at the Airport, and the Airport's own radio systems. If the operation of Lessee's wireless access point causes any interference to any existing users, Lessee shall take all steps necessary to remove the cause of the interference. Lessee shall cooperate with the Lessor and any necessary third parties to identify and eliminate the cause of the interference. If Lessor determines, in its sole discretion, that Lessee's wireless access point or signals being transmitted by means of the wireless access point, are the cause of any interference, Lessor may direct Lessee to immediately cease operation of all or any portion of Lessee's wireless access point, or otherwise take action to eliminate the interference at sole cost to Lessee.

2.2.11 Lessee shall submit for Lessor's approval any and all television programming packages (including content of all channels) to be used within the Premises, prior to Lessee's implementation of such programming. The volume of all television programming must be set at a level that does not disturb other Airport operations or passengers. It is expressly agreed, however, that any programming related to any accident or incident involving a commercial passenger airline may only be included in the programming without graphic video coverage of the accident site, unless the incident involves a national emergency or threat to security. In accordance with 49 CFR 27.71 (i), Lessee must also ensure that the captioning function is enabled on all televisions for any programming, live or pre-recorded, shown within the Premises. The Airport conducts periodic monitoring for the captioning function and will notify the Lessee in

writing about noncompliance. A Lessee that receives three Airport notifications within one calendar year could be subject to further Airport action, including fine or citation.

2.2.12 Lessee may participate in the Airport's Employee Parking Program, in accordance with all rules and regulations promulgated by the Aviation Department, and Phoenix City Code. Lessee shall be responsible for any parking fees for anyone enrolled under Lessee's account.

2.2.13 Lessor reserves the right to develop, construct, and operate a Consolidated Receiving and Distribution Center (**CRDC**) during the term of the lease. Lessee, along with Lessee's subtenants, joint venture partners and authorized vendors will be required to utilize this facility. Tenant costs associated with the CRDC will be assessed, if developed.

2.2.14 The City may enter into an exclusive beverage pouring rights partnership and subsequent contract. City reserves the exclusive right to solicit and enter into product advertising and sponsorship agreements for the display and sale of non-alcoholic beverages including but not limited to carbonated drinks, sports drinks, juices, and bottled water for the display and sale at the Airport. Lessee agrees to cooperate and assist City, as necessary, in the implementation of such exclusive agreements.

SECTION 3 **RENT**

SECTION 3.1 - Gross Sales

The term "**Gross Sales**," shall be construed to mean the aggregate amount of all sales made and services rendered at or from the Premises, and any other revenues of any type arising out of or in connection with Lessee's operation under this Lease on the Premises, regardless of when or where the order therefore is received, where performed by Lessee or its Partners, from the Premises for cash or credit or otherwise, of every kind, name, and nature, regardless of when or whether collected or not, as if the same had been sold for cash, or the fair and reasonable value thereof, whichever is greater. Only the following shall be excluded or deducted from the computation of Gross Sales:

3.1.1 Any and all transaction privilege taxes ("**sales taxes**"), excise taxes or related taxes upon or passed through to customers and collected by Lessee on such sales.

3.1.2 Receipts from the sale or trade-in value of any furniture, fixtures or equipment used upon the Premises and owned by Lessee.

3.1.3 The value of any merchandise, supplies or equipment exchanged or transferred from or to Lessee's other business locations where such exchanges or transfers are not made for the purpose of avoiding a sale that otherwise would be made at or from the Premises.

3.1.4 Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers.

3.1.5 Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by a customer to and accepted by Lessee, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

3.1.6 The amounts of cash or quantity discounts received from sellers, suppliers and manufacturers.

3.1.7 Expenses charged to customers that are paid by Lessee for the shipment of approved retail goods sold as a convenience to customers.

3.1.8 The amounts of any gratuities paid or given by customers to Lessee's employees.

3.1.9 Receipts from the sale, at cost, of uniforms or clothing to Lessee's employees where such uniforms or clothing are required to be worn by such employees.

3.1.10 Receipts from the sale of garbage or scrap materials resulting from Lessee's operations at the Premises.

3.1.11 Meal, tip and other wage credits to Lessee's employees for purposes of compliance with minimum wage laws.

3.1.12 Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Sales.

SECTION 3.2 - Credits and Discounts

Lessee may allow customary discounts on sales to its own employees. Lessee shall not be credited with nor allowed to have any reduction in the amount of Gross Sales that results from any arrangements for a rebate, discount or hidden credit given or allowed to any customer, City, or other Airport employees.

SECTION 3.3 - Annual Rent

3.3.1 Immediately upon Lessee's receipt of monies from the operation of the Retail concessions herein authorized, the portion of monies belonging to Lessor under the terms of this Lease shall immediately be vested in and become the property of Lessor, and Lessee shall be responsible for the monies until the same are delivered to Lessor.

3.3.2 For purposes of this Lease, "**Lease Year**" means the twelve-month period beginning on January 1st and ending December 31st. "**Prorated Lease Year**" means the period from when Lessee begins operation or December 31st, whichever occurs first, until the beginning of the first Lease Year, and the period from the last Lease Year until termination.

3.3.3 Lessee, for and in consideration of the use of the Premises, facilities, rights and privileges granted hereunder, hereby covenants and agrees to pay Lessor without notice, and free from any and all claims, deductions or set-offs against Lessor, as rent:

- a. For the Initial Term, Lessee shall pay only a Percentage Rent of annual Gross Sales as follows: **R3** – Specialty Open Concept: twelve percent (12%) for Children's apparel and/or Toys; sixteen percent (16%) for Chocolates/Candy; fourteen percent (14%) for Contemporary art and local/regional crafts; twelve percent (12%) for Cosmetics/Perfumes; twelve percent (12%) for Fashion jewelry; twelve percent (12%) for Men's clothing and accessories; twelve percent (12%) for Women's clothing and accessories; sixteen percent (16%) for Souvenirs and Native American; twelve percent (12%) for Sunglasses or watches; twelve percent (12%) for Travel accessories and Leather goods; fifteen percent (15%) for other concepts. **R4** – News and Convenience: twelve percent (12%) for Reading Materials, twelve percent (12%) for Sundries; fourteen percent (14%) for Pre-packaged snacks & bottled/canned beverages; fifteen percent (15%) for High Tech Accessories; sixteen percent (16%) for Souvenirs.

- b. For the Primary Term and through each Lease Year of the Primary Term hereof, Lessee shall pay the greater of Minimum Annual Guaranteed (“**MAG**”) rent as described below; or Percentage Rent as described above.

3.3.4 MAG for the first full Lease Year will be MAG in the amount of XXX (\$) for the R3 – Specialty Retail (Open Concept) unit and XXX (\$) for the R4 – News and Convenience unit. MAG shall be prorated for the Prorated Lease Year. MAG for the second Lease Year and all years thereafter will be established at eighty-five percent (85%) of the annual rent owed by Lessee during the immediate preceding year or one hundred percent (100%) of MAG for the first Lease Year, whichever is greater.

3.3.5 MAG shall be paid in installments in advance on the first day of each month. On each such date Lessee shall pay one-twelfth (1/12) of MAG, plus all applicable taxes.

3.3.6 In the event the required MAG payment specified in Section 3.3.5 is in excess in any one (1) period of an amount that would be due were the Percentage Rent calculation applied, the MAG payment set forth above is nevertheless to be submitted to Lessor.

3.3.7 Although each new MAG will be effective on January 1, the calculation of MAG may not be finalized until later, at which time Lessor will send Lessee written notice of the new MAG amount. Lessee shall then pay Lessor the difference or receive a refund for any current Lease Year MAG payments made prior to the calculation.

3.3.8 If Lessee fails to complete construction on its Leasehold Improvements within its Lessor-approved construction timetable, Lessee shall nevertheless be responsible for MAG per Section 3.3.4.

3.3.9 The termination of this Lease, by the lapse of time or as otherwise provided herein, shall not relieve Lessee of its obligation to pay any rent or other charges that have accrued during the period in which this Lease is in effect or Lessee has had the benefit of the Premises.

SECTION 3.4 - Percentage Rent Payments and Reports

3.4.1 In computing Percentage Rent to be paid by Lessee, the first reporting period shall commence on the date Lessee opens for business and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

3.4.2 Lessee shall, within twenty (20) days after the close of each month, furnish Lessor a detailed statement of Gross Sales and any deductions from Gross Sales, from each individual Retail concession unit for the preceding month prepared in accordance with Generally Accepted Accounting Principles (“**GAAP**”) and certified by a responsible financial officer of Lessee. These Gross Sales reports must show such data and breakdown for Lessee and Lessee’s Partners, including ACDBEs and small businesses, including an itemized list identifying all Gross Sales by Percentage Rent category purchases of Goods & Services and any other type of reporting as may be required by Lessor, and shall be accompanied by Lessee's payment of additional rent that may be due hereunder based on the application of Percentage Rent, plus all applicable taxes. Lessor may require changes to the format of these reports at any time.

3.4.3 By March 31st of each Lease Year, Lessee is required to submit to Lessor an annual accounting statement of Gross Sales and Percentage Rent for each Retail concession unit, including all Partners, ACDBEs and small businesses in accordance with GAAP. This statement must be prepared and audited by an independent Certified Public Accountant (“CPA”), in accordance with Generally Accepted Auditing Standards (“GAAS”). This requirement applies to prorated Lease Years at the start and end of the Lease.

The purpose of the audit is to determine if the Gross Sales and Percentage Rent reported accurately reflect the rents due and paid to Lessor for the Lease Year for each Retail concession unit.

3.4.4 Lessor requires all Lessees to report concessions sales data via an automated process utilizing the Lessor-provided API (Application Program Interface) standard. Lessee shall provide near real-time, weekly, and monthly reporting of concession sales data using this published API specification. Reporting of concessions sales data via this method is required regardless of other means that the Lessor might choose to report similar data to Lessor on a monthly basis for reporting MAG or percent sales revenue information to meet its other reporting requirements. Any and all equipment and transmission changes necessary to accomplish this reporting process will be the responsibility of the Lessee.

The draft API specification can be accessed at the below URL. The API specification may change depending on the Lessors operational needs.

Draft API Specification: https://skyharbor.com/docs/default-source/technology/avn-phx-concession-data-openapi-json_v1.json?sfvrsn=31846389_2&download=true

Click on the link, save the file to your computer, the file can be opened using any standard text editor program like “Notepad”, “WordPad”, etc.

3.4.5 Lessee must provide weekly sales reports to the Aviation Department Business and Properties, avn.buscon@phoenix.gov every Wednesday for the prior week’s sales.

SECTION 3.5 – Rent Remittance

Rent payments shall be made payable in check form to the Aviation Department’s lockbox at Aviation Department, City of Phoenix, P.O. Box 29110, Phoenix, Arizona 85038-9110. In the event technological advances make point of sale Gross Sales reporting and payment transfers more economically feasible, Lessor reserves the right to revise how payment remittances are made. Any and all equipment and transmission changes necessary to accomplish the change in the reporting and/or remittance process will be the responsibility of Lessee.

SECTION 3.6 – Miscellaneous Charges

Lessee agrees it is responsible for all miscellaneous charges for services rendered by the Lessor to support the Premises and Retail concession operations. These charges may include, but are not limited to: security badging for employees, City inspections for Lessee’s construction projects, parking, and work orders.

SECTION 3.7 - Delinquent Rent and Charges

Without waiving any other right or action available to Lessor in the event of default in payment of rents or charges hereunder, late rent or charges are subject to delinquent fees as defined in Section 4-7 of the Phoenix City Code, currently eighteen percent (18%) per annum and as may be amended, beginning on the date the rent or charges were due.

SECTION 3.8 - Late Statements or Reports

If Lessee is delinquent for ten (10) or more days in furnishing Lessor any monthly statements or reports required under this Lease, Lessee shall pay one hundred dollars (\$100) per late statement or report to Lessor as liquidated damages for the additional administrative costs incurred by Lessor in processing and reviewing delinquent statements or reports. The parties agree this is a fair and reasonable estimate of Lessor's costs incurred in processing a delinquent monthly statement or report.

SECTION 3.9 - Books and Records

3.9.1 For the ten (10) most recent years of the term hereof, and until all claims by Lessor for payments hereunder shall have been fully ascertained, fixed and paid, or until three (3) years after expiration or earlier termination of this Lease, whichever is later, Lessee shall keep, in accordance with GAAP and GAAS, separate and accurate records of Gross Sales showing in detail all business done or transacted in, on, about, from, or pertaining to the Premises. Lessee shall enter all receipts arising from such business in regular books of accounts kept on the Premises for that purpose, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. It is the intent and purpose of the foregoing provisions that Lessee shall keep all such records available for inspection by Lessor as will enable Lessor to ascertain and determine, accurately and clearly, the amount of money payable to Lessor hereunder, and the exact share of Gross Sales billed and/or received by Lessee under this Lease.

These records shall include, but are not limited to: chart of accounts, general ledger, daily business reports, and original or copies of rent agreements for all Airport-related transactions. Lessor prefers the records be kept in Phoenix. If Lessee elects not to maintain its records in Phoenix, then upon Lessor's request or in the event of an audit, it shall either: 1) pay for all expenses associated with delivering the records to the address of the auditors; or 2) pay for reasonable travel expenses for the auditors to have the audit conducted at Lessee's specified location, including an administrative fee of fifteen (15%) percent of the actual costs of the audit.

3.9.2 Lessor may audit Lessee's books and records at any time to verify compliance with this Lease. Within ten (10) days of Lessor's request, during normal business hours, Lessee will make available for inspection and review to Lessor's employees, agents, and contractors all of its records, which shall be maintained in accordance with GAAP and GAAS, showing in detail all business conducted pursuant to this Lease.

The records requirements of this Section shall extend to any of Lessee's subsidiaries, Partners, and sublessees.

Lessor may use its own staff to perform audits under this Section, or may engage an independent CPA to perform the audits. If an audit reveals that Lessee has understated its Gross

Sales by two percent (2%) or more, the entire expense of the audit shall be borne by Lessee. Lessee shall immediately pay any additional amounts due to Lessor in compliance with Section 3.7.

3.9.3 Lessee shall install and use, or cause to be installed and used at each Retail concession unit, cash registers, sales slips, invoicing machines and other automatic accounting equipment required to properly and accurately record the gross revenues on all sales, by type and location, services, and other business transactions. The devices shall be equipped with a transaction log with auditing capabilities that track and store each transaction that is accumulated through the point of sale register(s). The transaction history shall be consecutive and cannot be interrupted or restarted without the proper audit logs to support the interruption in numerical sequence. Lessee shall provide evidence of such internal controls documenting complete recording of all receipts for all operating hours. All transactions recorded on the devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance.

3.9.4 Lessee shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's authority, and that the financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures.

3.9.5 It is agreed that examination of the books, ledgers, journals and accounts of Lessee will be conducted in accordance with GAAP and GAAS applicable in the circumstance, and that as such, the examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Lessee. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by Lessor to the entire period of reporting under examination and will be binding upon Lessee, and to that end shall be admissible in any court of law to prove any amounts due Lessor.

SECTION 3.10 – Independent Audits

If, as a result of an audit, Lessor determines that additional monies are due to Lessor, Lessee shall be notified of Lessor's findings and invoiced for the total amounts due. Within thirty (30) days of the notice and invoice from Lessor, Lessee shall do one of the following: (1) notify Lessor in writing that Lessee agrees with Lessor's audit findings and pay all monies due to Lessor; or (2) dispute the audit findings, in writing. Failure of Lessee to dispute the audit findings, in writing, within thirty (30) days of receiving the notice and invoice, shall constitute acceptance of the findings and waiver of the right to appeal the findings. If Lessee elects to dispute the audit findings, it shall, within ninety (90) days after providing notice to Lessor of the dispute, furnish to Lessor, at Lessee's expense, an audit made by an independent CPA mutually agreeable to both parties. If Lessee elects to request an independent audit under this Section, and if that audit results in a finding that there is a deficiency of two percent (2%) or more of the amount payable to Lessor, then Lessee agrees to pay Lessor for the cost of Lessor's audit and for all deficiencies and delinquent fees. Interest shall accrue from the date the delinquent payment was due under the Lease in accordance with Section 3.7.

SECTION 3.11 – Final Audit Binding

The final audit of the independent CPA shall be conclusive upon the parties, and Lessee shall pay to Lessor, within thirty (30) days after a copy of the CPA's final report has been delivered to Lessee, the amount, if any, shown thereby to be due and owing Lessor. The failure of Lessee to make payment to Lessor within this thirty (30) day period shall constitute a material breach of this Lease and shall give cause to Lessor for immediate termination thereof.

SECTION 3.12 – Support Space

Based on availability, Lessee may lease support space in Terminal 4. Lessee shall pay rent equal to the rate set forth in the Phoenix City Code Section 4-173 for terminal rental rates, as may be amended throughout the term of this Lease. Effective July 1, 2022, terminal rent is \$123.00 per sq. ft. per fiscal year (July 1, 2022 - June 30, 2023). All rent and fees assessed in accordance with Section 4-173 are due and payable monthly in advance on the first day of each month. On each such date, Lessee shall pay one-twelfth (1/12) of the annual rent plus applicable tax as may be adjusted by the taxing authority throughout the term of this Lease. The current tax rate is 2.9% for sales tax. Rent and fees are delinquent if not received by Aviation by the tenth day of the month. Rent and fees shall be deemed delinquent and assessed a delinquent account fee in accordance with Section 4-7 of the Phoenix City Code.

SECTION 4 LESSEE OPERATING STANDARDS

SECTION 4.1 - Service Standards

4.1.1 Lessor is dedicated to providing exceptional customer service and requires Lessee to operate the Retail concession units in an efficient, customer friendly, well-run manner to meet the needs of passengers and other customers. Lessee shall maintain the standards in this Section and in **Exhibit 8 (“Food & Beverage / Retail Operating and Service Standards Manual”)**, and maintain equal or higher standards included in the proposed Operation Plan as attached as **Exhibit 10 (“Management, Marketing, Operations, and Technology Plan”)**.

4.1.2 Lessee shall conduct its Retail operations in a proper business-like manner so as not to disturb or be offensive to other tenants, customers, or passengers. Lessee shall not solicit business anywhere at the Airport, except within the Premises.

4.1.3 Lessor may monitor, test, or inspect the services of Lessee at any time through the use of a shopping service or other commercially reasonable means that do not unduly interfere with Lessee’s Retail operations.

4.1.4 If any of Lessee’s Partners fail to maintain Retail operations in compliance with this Lease, Lessee shall operate the Retail unit(s) to maintain compliance.

4.1.5 Lessee shall be responsible for escorting all unbadged Partners, contractors and any invitees to post-security locations, twenty-four (24) hours a day, seven (7) days a week.

4.1.6 Lessee shall utilize attractive merchandising that entices potential customers to purchase goods. Lessee shall develop and implement creative and effective merchandising displays within the Premises; those displays may include without limitation window displays, display cases, promotional displays (for which Lessor approval must be obtained), and attractive

packaging. All signage and merchandising displays must conform to the Tenant Design Criteria attached as **Exhibit 3 (“Tenant Design Criteria”)** and must be approved in advance by Lessor under the Tenant Improvement Process.

4.1.7 Processing of payments from customers shall be prompt. Receipts shall be properly itemized, reflect precisely the actual sale of goods and date of sale, and list individual prices, taxes and totals. All customers shall be thanked for their patronage.

4.1.8 Lessee shall accept traveler's checks and at least three (3) major credit cards for any purchase. Lessee understands and agrees the operation of T4S1 Retail concession units necessitates the rendering of public services such as making reasonable change and giving directions.

4.1.9 Lessee is responsible for ensuring all debit and credit card transactions are conducted in accordance with all applicable laws and in compliance with payment card industry standards.

4.1.10 Tip buckets, jars or containers are prohibited at all Retail concession units unless approved in writing, in advance, by Lessor.

4.1.11 “Tipping” language is prohibited on printed sales and credit card receipts.

4.1.12 Lessee shall offer the same promotions and discounts, sell, and accept gift cards, as offered in street location(s). Customers should not experience operational differences between the T4S1 Retail concession units and its street location(s).

4.1.13 Lessee is expected to be at the forefront of implementing new technologies to enhance the customer experience at PHX, including:

- Expediting the in-store checkout process by accommodating virtual wallets and mobile payment options including Google Pay, Apple Pay and Samsung Pay, and offering checkout-free technologies, contactless card readers, wireless terminals, self-checkout and email receipts.
- If approved by Lessor, Lessee may contract with Lessor-approved third-party delivery companies that will allow passengers to order, via an app, retail merchandise from concession operators at the Airport no matter their location;
- At the discretion of the Lessor, Lessee will be required to participate in a third-party delivery program once such program has been implemented at PHX.

4.1.14 Lessee may offer gift wrapping and mailing services to its customers provided that Lessee may charge only enough for those services to cover Lessee's actual cost to provide the services. The prices to be charged by Lessee shall be reviewed and approved in writing by Lessor before Lessee begins providing the services. Lessee shall not deviate from the approved prices without the prior written consent from Lessor.

4.1.15 Except as otherwise expressly agreed by Lessor, Lessee shall operate the designated retail store seven (7) days a week which shall include Lessee's obligation to open for business at least ninety (90) minutes prior to the first scheduled flight departure daily from Terminal 4 and thirty (30) minutes after the last scheduled flights arrival daily at Terminal 4. Exact Hours of Operation will be established and reestablished from time to time by Lessor based upon airline schedules and demands of the traveling public, including satellite locations. Such Hours of Operation shall be communicated to Lessee. Failure to adhere to the established hours of operation will result in inconvenience to the public and will adversely affect the operation of the Airport. Quantification of the resulting damages is difficult. The parties agree that the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred

by the public and Lessor for the specified breaches of the foregoing operating standards. Therefore, for each violation of this Section, Lessee shall pay \$100.00 to Lessor as liquidated damages.

SECTION 4.2 - Employee Standards

4.2.1 Lessee shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service requirements of this Lease. Each employee shall: (1) be clean, neat, free from offensive body odor, professional, courteous, friendly, and not wear excessive amounts of jewelry, perfume, or cologne; (2) wear Lessor-approved uniforms and clearly display an Airport security identification badge showing the names of the employee and employer at all times while at the Airport. If an employee is found within a Security Identification Display Area (SIDA) without an Airport security identification badge clearly displayed, Lessee shall discipline, and, if necessary, discharge, the employee.

4.2.2 Lessee shall provide services in English to meet the expectations of the traveling public, whom are predominantly domestic passengers at this Airport. Offering services in other languages is encouraged but not required. Lessor reserves the right to require Lessee to increase staffing levels if the customer service requirements set forth in this Lease are not being met in Lessor's judgment. Lessee should anticipate peak travel seasons such as Spring Break, Thanksgiving, Christmas, other holidays and events, and add additional staff accordingly.

SECTION 4.3 - Management

4.3.1 The operation and maintenance of concession units operated by Lessee shall be under the constant direct supervision of trained, qualified, and experienced managers employed by Lessee. Managers shall be authorized to accept any notice required or allowed by this Lease, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the concession units. Managers shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager.

4.3.2 Lessee must identify the General Manager ("**GM**") to be assigned to the oversight of Retail operations of the Premises including those Retail concession units operated by Lessee's Partners. The GM is the primary individual responsible to fulfill Lessee's obligations under the Lease and is the primary point of contact for interaction with Lessor. The GM should be available twenty-four (24) hours a day, seven (7) days a week for Lessor to communicate any challenges and/or emergencies. If the GM is not available, Lessee shall provide a name and telephone number of a manager who is available twenty-four (24) hours a day, seven (7) days a week and able to make decisions on Lessee's behalf. The GM assigned under this Lease must be fully qualified. Lessee shall submit and maintain an updated organizational chart on file with Lessor at all times. At any time hereafter Lessee desires to change the GM while performing under the Lease, Lessee shall submit the qualifications of the new GM in writing to Lessor for prior approval. Lessor reserves the right to reject the requested change.

SECTION 4.4 - Sanitation, Hygiene, and Cleanliness

4.4.1 Lessee shall keep the Premises, along with any service pathways used by

Lessee, clean, well-maintained and free of garbage, unpleasant odors, and hazardous conditions and notify Lessor promptly of hazardous conditions in the public areas outside the Premises.

4.4.2 Lessee shall provide a complete and sanitary handling of all garbage and recyclables generated as a result of concession operations on the Premises, and shall provide for its timely removal to the central collection point provided by Lessor. At no time shall Lessee accumulate garbage or recyclables outside the Premises or within passenger view.

4.4.3 Lessee shall keep all garbage and recyclable materials in durable, insect- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them and shall be cleaned as necessary to prevent odors. Boxes, cartons, barrels, or other conveyance items shall be disposed of promptly by Lessee and not be within passenger view.

4.4.4 Lessee shall make arrangements to provide containers, for each individual concession, to separate concession-generated recyclable materials from non-recyclable materials. All Retail concession-generated recyclable materials acceptable to Lessor's recycling program must be brought to the recycle collection areas. All garbage and recycle containers (full or empty) shall be kept within the Premises, out of passenger view, and in compliance with Section 4.4.3.

4.4.5 Lessee shall retain within each Retail concession unit, and available upon Lessor's request, all equipment servicing schedules, maintenance logs and invoices documenting any and all routine inspections, services and cleanings of any equipment including, but not limited to: fire suppression equipment inspections and pest control services.

4.4.6 Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin within the Premises and within all Lessee on-Airport support space areas.

4.4.7 Lessee shall provide for Lessor's approval a schedule for the routine inspections, services, and cleanings required to meet 4.4.6 above. The schedule shall be updated with Lessor when changes are made. Lessor reserves the right to add items as necessary to ensure Lessee is conducting regular and routine cleanings, inspections and maintenance for each retail concession unit.

4.4.8 To mitigate against the spread of COVID-19 and its variants, Lessee shall require the wearing of face masks as required by applicable City ordinance, local and state law, and in compliance with Centers for Disease Control and Prevention ("**CDC**") guidelines and Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel.

4.4.9 Lessee's operation at the Airport should promote environmental sustainability and environmental conservation. Lessee should avoid the use of polystyrene foam (also branded as Styrofoam) cups and containers for eat in or take-out food and beverage or grab-and-go service. The use of bio-based products (cardboard, etc.) or reusable dishes and utensils are suggested alternatives. The Airport has energy and water conservation requirements for lease spaces, outlined in its Tenant Improvement Handbook and Design Manual. Those include the use of EnergyStar and WaterSense appliances (with certain efficiency ratings) and LED lighting. During the Tenant Improvement process, submittal of energy needs and illumination calculations for the leased space will be submitted for Aviation approval. The Airport is developing a voluntary Green Tenant Program to incentivize conservation actions that can be taken by the tenants. These initiatives can control costs by reducing waste disposal and energy and water consumption.

Lessee may appoint a staff person to serve as the environmental liaison and point of contact with the Airport Recycling Coordinator or designee. This person would oversee training of new staff on recycling procedures and check recycling efforts in the lease space. At Lessor's request, Lessee will update its Sustainability Summary, attached as Exhibit 13, to keep Lessor informed of its continued efforts to promote environmental sustainability and environmental conservation.

4.4.10 Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin within the Premises and within all Lessee on-Airport support space areas.

4.4.11 To mitigate against the spreadsheet of COVID-19 and its variants, Lessee shall comply with all applicable City, local state or federal requirements and guidelines.

SECTION 4.5 - Deliveries

4.5.1 All designated vendor delivery vehicles must be inspected prior to entry into secured areas of the Airport.

4.5.2 Authorized vendor delivery zones are located on the service level of the T4 building. Delivery zones may be changed from time to time due to Lessor's construction activities or operational requirements. Use of the delivery zone by Lessee or Lessee's suppliers is limited to thirty (30) minutes at any one time. Deliveries taking longer than thirty (30) minutes must be approved in advance by Lessor.

4.5.3 All deliveries to Retail concession units shall be scheduled during non-peak passenger periods. Lessor may issue schedules for acceptable delivery times, which may be adjusted from time to time, and from which Lessee shall not deviate without Lessor's prior consent.

4.5.4 Lessee shall ensure items transported within the Airport are handled with care and packaged in covered containers that do not leak. The conveyance of items via delivery cart, dolly, Lessor-approved pallet jack, or any other Lessor-approved means within the Airport, shall not exceed the height of the person delivering the items as a safety precaution. In transporting items associated with Lessee's operations to and from Retail concession units, Lessee shall use only those delivery routes established by Lessor and shall use only carts, vehicles, or conveyances ("Delivery Carts") that are sealed and leak-proof. Items may only be transported on Delivery Carts equipped with rubber, air-filled, polyurethane non-marking wheels. Black wheels or other marking wheels are strictly prohibited. Delivered items must immediately be placed into the Retail concession units and not left within hallways or other Airport areas causing obstructions to Partners, passengers, Lessor's staff, or other lessees.

4.5.5 Deliveries are the responsibility of Lessee. Lessor shall take no responsibility or sign for any deliveries.

4.5.6 Commercial Delivery Vehicles on the Airfield: Lessor reserves the right to regulate and approve the size of all large commercial delivery vehicles to be used on the Airfield by Lessee and all of Lessee's authorized vendors.

SECTION 4.6 - Signs

Lessor will permit Lessee to install and operate signs in and about the interior and exterior of the Premises to advertise the retail shops, but Lessee shall not install any sign until the sign has been approved in writing by Lessor. Lessee shall request the Lessor's approval by

submitting a written request identifying the number, general type, size and location and must be accompanied by a detailed rendering or drawing of the proposed sign. Freestanding floor signs outside of the lease line are not permitted. All signs must conform to the minimum requirements established by the signage standards in the Tenant Design Criteria that are incorporated by reference as **Exhibit 3** and must be approved through the Lessor's Tenant Improvement Process.

SECTION 5 **IMPROVEMENTS TO BE MADE BY LESSEE**

SECTION 5.1 - Furnish and Equip Premises

5.1.1 Lessee shall provide and maintain at its own expense first-class Retail concession units. This includes all improvements, alterations, and fixtures necessary for the customary operation of such a business, including, but not limited to: sales counters, display cabinets, interior partitions, special lighting, fixtures, wall coverings and finishes, and all other equipment, furniture, furnishings, and supplies necessary to conduct first-class Retail concession units. All improvements affixed in any manner to the Premises are "**Leasehold Improvements.**" All non-affixed items, including cash registers, safes, racks and other furnishings and equipment are "**Trade Fixtures.**" All Leasehold Improvements must comply with **Exhibit 3.**

5.1.2 Lessee shall submit a construction plan listing the start and end dates of construction for each Retail concession Premises.

5.1.3 Lessee shall not request, nor will Lessor execute, a Landlord's Waiver, Landlord's Consent, or similar document that would subordinate Lessor's interest in the Lease to any security interest or consent to Lessee's pledge of Leasehold Improvements or Trade Fixtures to obtain financing.

5.1.4 Lessee shall spend a minimum of three hundred fifty dollars (\$350.00) per square foot for the Retail concession Premises for initial capital investment or the proposed initial capital investment included as **Exhibit 4 ("Proposed Capital Investment")**. In the event Lessee does not spend the proposed initial capital investment per sq. ft. per Retail concession Premises, Lessee shall remit the unspent balance to Lessor within four (4) months of commencement of the Primary Term. Lessor reserves the right to conduct an audit of Lessee's initial capital investment expenditures.

5.1.5 Lessee shall maintain all Retail concession Premises in "opening day" condition throughout the term.

5.1.6 Lessee shall spend a minimum average of one hundred dollars (\$100) per sq. ft. per Retail concession space as a midterm capital investment to upgrade the Leasehold Improvements. This midterm capital investment is not intended for general maintenance and should be used to refurbish areas of the Premises visible to customers. Lessee shall submit for Lessor's review a refurbishment plan ("**Refurbishment Plan**") no later than **XXX**, for midterm capital investment expenditures to be completed by **XXX**. The Refurbishment Plan must specify the types of capital investments to be made in each concession or at the Aviation Director's discretion. Should Lessee not spend one hundred dollars (\$100) per sq. ft. per concession block of space, Lessee shall remit the unspent balance to Lessor by **XXX**. Lessor reserves the right to conduct an audit of Lessee's midterm capital investment expenditures.

5.1.7 Within one hundred twenty (120) days from beneficial occupancy, Lessee shall

provide Lessor a certified cost statement of total initial capital investment costs for each Premise and a certified cost statement listing the total initial capital investment costs of all Premises. The certified cost statements must be itemized and segregated into the categories of Leasehold Improvements and Trade Fixtures. Lessee agrees to pay Lessor one hundred dollars (\$100) per day each certified cost statement is late.

5.1.8 Lessor shall provide Lessee with all demising walls, concrete subfloors, and electrical, HVAC, fire alarm and sprinklers, water, and sewer (in sufficient capacity to support the Concepts in **Exhibit 2**) stubbed to the leasehold line at each Premises. Lessee shall be responsible for all interior utility installations and distribution of those utilities. If City determines in the future that utility separation is necessary, Lessee will work cooperatively with the City.

5.1.9 If Lessee requires cooling of the Premises beyond that provided by Lessor, Lessee may request approval for additional cooling, compliant with **Exhibit 3**, to be provided by Lessee.

5.1.10 The Premises will be available to Lessee as soon as reasonably practicable after the Effective Date of this Lease. Lessee agrees Lessor shall not be legally, financially, nor equitably responsible for any delays in delivering the Premises to Lessee. Lessee acknowledges Lessor shall not be responsible for demolition of existing space, demising walls, or flooring within the Premises. Lessor shall be responsible for all costs associated with abating any asbestos existing on the Premises.

5.1.11 Lessee shall not use any asbestos-containing material. If Lessee or its Partners use any asbestos-laden material within the Premises, Lessee shall be responsible for removing all asbestos-laden material at its cost and in compliance with all applicable environmental laws.

SECTION 5.2 - Plans and Specifications for Leasehold Improvements

5.2.1 In accordance with **Exhibit 3**, Lessee shall submit schematic design drawings and construction documents for Lessor's approval.

5.2.2 Lessor will provide written notice to Lessee once the Premises have been certified by Lessor's engineer as available for improvement by Lessee. Upon approval of the construction documents by all appropriate City departments, Lessee shall receive a written Notice To Proceed ("**NTP**") providing approval from Lessor's Tenant Improvement Coordinator to initiate construction within the Premises.

5.2.3 All Leasehold Improvements shall be at Lessee's sole cost and expense and shall not damage T4S1 of which the Premises are a part.

5.2.4 Lessor's approval shall not constitute a representation or warranty as to conformity with the requirements of local, state, and federal laws. Lessee shall at all times remain responsible for compliance with all applicable laws. Lessor reserves the right to approve architectural and aesthetic matters for each Retail concession block of space. Lessor may reject any design submitted and require Lessee to resubmit designs and layout proposals until they meet Lessor's approval.

5.2.5 In the event Lessor rejects any portion of the Schematic Design drawings or Construction Documents, Lessee shall promptly submit necessary modifications and revisions. No substantial changes or alterations shall be made in any executed plans or specifications after Lessor's initial approval, and no Leasehold Improvements or changes to Leasehold Improvements shall be made to or upon the Premises without Lessor's prior written approval.

5.2.6 One hundred twenty (120) days after completion of any Leasehold Improvement, Lessee shall provide to Lessor two (2) sets of detailed plans and specifications of the work as

completed. One (1) copy shall be produced in a computer automated drafting (“**CAD**”) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined by Lessor at the time of submittal. Upon Lessor’s request, Lessee will inspect the Premises jointly with Lessor to verify the as-built drawings.

5.2.7 Lessee shall, in the design and construction of Leasehold Improvements and operation of the Premises, comply with all applicable provisions of the Americans with Disabilities Act (“**ADA**”), 42 U.S.C. §12101 et al., the ADA Accessibility Guidelines (“**ADAAG**”), and implementing regulations as imposed upon the owner and/or operator of public facilities.

5.2.8 Any subsequent changes, alterations or additions to constructed Leasehold Improvements or the Premises shall be subject to the prior written approval of the Aviation Director. Before commencing any such improvements, additions or alterations, Lessee shall submit plans and specifications; construction costs and engineering and architectural fees; and a construction schedule for all work, facilities and improvements to the Aviation Director. All construction shall conform to the architectural requirements of **Exhibit 3** and in accordance with the Tenant Improvement Handbook which may be amended from time to time.

SECTION 5.3 - Title to Leasehold Improvements

5.3.1 All contracts for the construction of the Leasehold Improvements must include provisions of insurance and suretyship reasonably satisfactory to Lessor for protection of Lessor, laborers, suppliers, subcontractors, and the general public.

5.3.2 All Leasehold Improvements approved by Lessor become and remain the property of Lessee until the expiration or termination of this Lease. Upon expiration or termination of this Lease for any reason, all Leasehold Improvements become the property of Lessor, with Trade Fixtures, signs and other personal property remaining the property of Lessee so long as: (1) the removal of such Trade Fixtures, signs, or personal property, at Lessee’s sole expense, does not result in material damage to the Premises that cannot be repaired by Lessee to Lessor’s satisfaction; (2) Lessee is not in default at the time of the expiration or termination of the Lease; and (3) the Trade Fixtures, signs, or personal property are removed from the Premises no later than ten (10) days after the expiration or termination of the Lease.

5.3.3 Notwithstanding the foregoing, if the Primary Term is less than five (5) years, upon the expiration or termination hereof, Lessor shall reimburse Lessee for the then-unamortized value of its Leasehold Improvements. For purposes of this provision, the amortization period for all of the foregoing assets installed on the commencement of the Primary Term shall be five (5) years commencing with the start of the Primary Term. Any additional assets installed on the Premises must be brought to the attention of Lessor and will be amortized over five (5) years commencing on the date of installation.

5.3.4 Lessee shall remove its Trade Fixtures, signs, and personal property in a manner and at times that do not interrupt Airport operations. Lessee shall repair all damage done to the Premises or other Lessor-owned property resulting from the removal of such Trade Fixtures, signs, and personal property and shall restore the Premises and other Lessor-owned property to the state of good repair that existed prior to the installation of Lessee’s Trade Fixtures, signs, and personal property, less normal wear and tear. Should Lessee fail to repair the damage to Lessor’s satisfaction, Lessor shall have the right to make such repairs and be reimbursed by Lessee within ten (10) days following demand by Lessor for payment at Lessor’s standard rates plus Lessor’s administrative costs, or, if the work is performed by Lessor’s contractor, Lessor’s actual cost, including but not limited to Lessor’s administrative costs. If Lessee fails to become

current on all payments owed to Lessor within thirty (30) calendar days, title to the Trade Fixtures shall vest in Lessor. If Lessee is in default at the time of expiration or termination of this Lease, Lessor may hold title to the Trade Fixtures until Lessee is current on all payments owed to Lessor. If Lessee fails to remove its Trade Fixtures, signs, and other personal property within ten (10) calendar days, or a longer period of time agreed to in writing by Lessor, after the expiration or termination of this Lease, Lessor, at its option, may determine that title to these items shall vest in Lessor at no cost to Lessor, or Lessor may elect to exercise its rights under Section 13.

5.3.5 In the event of dispute as to the affixed or non-affixed nature of any Leasehold Improvements or Trade Fixtures, Lessor's determination shall be final.

5.3.6 Lessee shall maintain all Leasehold Improvements and Trade Fixtures at its own expense.

SECTION 5.4 - Removal and Demolition

Lessee shall not remove or demolish, in whole or in part, any Leasehold Improvement on the Premises without Lessor's prior written approval. Lessor may, at its sole discretion, condition such approval upon the obligation of Lessee to replace the Leasehold Improvement by an improvement specified by Lessor.

SECTION 6 **CLOSURE, RELOCATION, REDUCTION, EXPANSION, OR CONDEMNATION**

SECTION 6.1 - Lessor's Authority

If at any time during the term of this Lease Lessor determines it is necessary for the efficient operation of the Airport, Lessor may require Lessee to close or reduce its operations. If Lessor requires Lessee to close any or all of its operation, Lessee shall vacate the Premises within ninety (90) days of receipt of closure notice, unless exigent circumstances require an earlier closure or reduction of the Premises. If Lessor requires a reduction of Lessee's Premises, Lessee may elect to close the specific Retail concession unit and the closure shall be treated in the same manner as if Lessor had required closure. If Lessee makes a request to relocate a specific Retail concession unit promptly after receiving notice of a closure or reduction, Lessor will attempt to negotiate a mutually acceptable relocation within T4; but Lessee acknowledges relocation is unlikely.

SECTION 6.2 – Compensation

If a closure occurs under this Section, Lessor's liability shall be limited to reimbursement of Lessee for the net book value of all Leasehold Improvements and Trade Fixtures that Lessee cannot reasonably remove and use in a relocated or reduced Retail concession unit. For the purposes of this Lease, net book value shall mean the current value of the Leasehold Improvements after depreciation in accordance with Section 5.3.3.

SECTION 6.3 - Condemnation

This Lease shall terminate upon the filing of an action to condemn the Premises and Lessor shall be entitled to all compensation awarded in any condemnation action, except for the amount indicated in Section 6.2.

SECTION 7 JANITORIAL SERVICES

Lessee shall provide janitorial services within the Premises and along pathways to and from support space and garbage disposal areas, as needed, to maintain safety and cleanliness standards described in this Lease. Lessee shall ensure routine floor cleaning of back-of-house service ways and common areas will occur as needed and that no Retail concession-generated garbage is tracked onto T4 flooring. Lessee's responsibility includes the immediate cleaning of any flooring soiled by its Retail operations.

Lessee-provided janitorial services must be provided equal to or greater than the standards of cleanliness and appearance required by Lessor for T4 public areas. To maintain high standards throughout T4, Lessor shall have the right to perform such services for Lessee in the event of Lessee's failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish; provided, however, that Lessor, before commencing janitorial services within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.

SECTION 8 MAINTENANCE OF PREMISES

SECTION 8.1 – Maintenance

8.1.1 Obligations of Lessor: Lessor shall, at its expense, maintain T4 in good condition, including the ventilating and air conditioning equipment, electrical, fire suppression, water and sewer systems, and gas, where applicable, up to the leasehold of each Retail concession unit.

8.1.2 Obligations of Lessee: Lessee shall, at all times and at its sole expense, maintain in good repair and keep in a clean and orderly condition the appearance of the Premises, all Leasehold Improvements and Trade Fixtures therein, whether installed by Lessee or Lessor. All maintenance shall be equal to or better than the materials, workmanship and appearance representative of similar areas in T4 directly controlled by Lessor. Lessee shall conduct regular and routine cleaning, inspections and maintenance within the Premises, any support space and the pathways in between, and shall provide documentation of the cleaning, inspections and maintenance when requested by the Lessor. To maintain high standards of maintenance throughout T4, Lessor shall have the right to accomplish any required work in the event of Lessee's failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish provided, however, that Lessor, before commencing any required work within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.

SECTION 8.2 - Repairs

8.2.1 All repairs to the Premises done by or on behalf of Lessee shall be of first-class quality materials and workmanship, equal to or better than the Lessee's original materials and workmanship, and, except in emergencies requiring immediate response, approved in advance by Lessor in writing. Lessee shall be responsible for the cost to repair any damage to T4 or the Premises caused by the negligence or misconduct of Lessee or its Partners, contractors or invitees. Lessor shall be the sole judge of the quality of the repairs.

8.2.2 Lessee shall repaint or refinish, at its sole expense, high traffic areas subject to greater-than-normal wear as required by Lease, or as may be directed by Lessor. All Leasehold Improvements and Trade Fixtures that become worn, chipped, dented, or gouged, shall be repaired or replaced at Lessee's sole expense. If the floor within the Premises is carpeted, Lessee shall replace the carpet every thirty (30) months at Lessee's sole expense. The materials used to repair or replace Leasehold Improvements and Trade Fixtures must adhere to the requirements of Section 5.

8.2.3 It is the responsibility of the Lessee to routinely inspect and maintain all concession related plumbing and mechanical systems to prevent leaks from occurring into neighboring spaces. If a leak occurs from any Lessee concession block or support space, Lessee shall immediately initiate clean-up and repairs. Lessee shall also immediately inform Lessor of leak and shall provide a detailed description of the occurrence along with the remedy, to be approved by Lessor, within 24 hours of when the Lessee knew or should have known of the leak occurring.

SECTION 8.3 - Right to Enter

8.3.1 Lessor shall have the right to enter the Premises to inspect the Premises at reasonable times during Lessee's regular hours of operation to determine whether Lessee has complied, and is complying, with this Lease.

8.3.2 Lessor shall have the right to enter the Premises to cure any material breach that remains uncured by Lessee after reasonable notice and opportunity to cure.

8.3.3 Lessor shall have the right to enter the Premises to respond to any emergency.

8.3.4 Nothing in this Section shall be construed to be a limitation or restriction on the exercise of Lessor's police power.

SECTION 8.4 - Failure to Maintain or Repair

8.4.1 If found that Lessee or its Partners was responsible for damages associated with a lack of regular and routine cleaning, inspections or maintenance of the Premises, including support space, Lessee shall be responsible for all associated costs to repair the Premises as well as any adjacent spaces to which damage may have spread.

8.4.2 If Lessee refuses or neglects to undertake the maintenance, repair, or replacements requested by Lessor; or if Lessor is required to make any repairs necessitated by the acts or omissions of Lessee, its Partners, contractors, or invitees, Lessor shall have the right to make such repairs on behalf of and for Lessee. Such work shall be paid for by Lessee within ten days' receipt of invoice from Lessor for payment at Lessor's standard rates, plus Lessor's administrative costs, or, if the work is performed by Lessor's contractor, Lessor's actual cost, including but not limited to Lessor's administrative costs.

SECTION 8.5 - Operation Costs

Lessee shall be responsible for all costs of operating Lessee's Retail concessions included under this Lease, and shall pay, in addition to rent and other payments specified in this Lease, all other costs connected with the use of the Premises and facilities, and those rights and privileges granted.

SECTION 8.6 - Utilities

Lessor has provided and will maintain all utility service (ventilating and air conditioning equipment, electrical, fire suppression) to the Premises. Lessee shall be required to provide all utility hook-ups. Lessor shall not be responsible for charges relating to utility service usage, telephone service and special wiring and hookups for computer(s) for the Premises, including wireless internet access. Lessor shall have no liability for blackouts, brownouts, cessation, interruption, or failure of utilities.

SECTION 9 **INSURANCE REQUIREMENTS**

SECTION 9.1 – Introduction

9.1.1 Lessee and its Partners must procure and maintain for the term of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

9.1.2 Lessee shall deliver to Lessor, prior to its occupancy of the Premises, a certificate of insurance acceptable to Lessor in the amounts as stated within Section 9.2. Lessor reserves the right to review the sufficiency of and to modify the insurance requirements of this Lease at the time MAG is reviewed for adjustment in order to determine whether existing insurance requirements are reasonable, adequate and commercially available so that Lessee's operations are insured to protect the Lessor's interests. Lessee shall maintain insurance coverage throughout the term of the Lease or Lessor may terminate this Lease. Additional insurance coverage may be required depending on the type of concession services being provided.

The City in no way warrants that the limits stated in this section are sufficient to protect the Lessee from liabilities that might arise out of this Lease. Lessee may purchase additional insurance as Lessee determines necessary.

SECTION 9.2 – Minimum Scope and Limits of Insurance

Lessee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is within on a "following form" basis, and (2) all terms under each line of coverage below are met.

1. Commercial General Liability – Occurrence Form

Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract.

- General Aggregate \$2,000,000
 - Products – Completed Operations Aggregate \$1,000,000
 - Personal and Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage (Damage to Rented Premises) \$ 100,000
 - Liquor Liability (if applicable) \$1,000,000
- a. The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the use and/or occupancy of the property subject to this Lease.
 - b. Policy must not contain any restrictions of coverage for operations on or near airport premises.
 - c. There shall be no endorsement of modification which limits the scope of coverage or the policy limits available to the City of Phenix as an additional insured.
 - d. City of Phoenix is an additional to the full limits of liability purchased by the Lessee.
 - e. The Lessee’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Lease.

- Combined Single Limit (CSL) airside driving (including contracted deliveries of goods and services) \$ 5,000,000
- a. The policy shall not contain any restrictions of coverage for operations on or near the Airport.
 - b. The policy must be endorsed to include the City of Phoenix an as additional insured with respect to liability arising out of the activities performed by or on behalf of the Lessee, relating to this Lease.
 - c. City of Phoenix is an additional insured to the full limits of liability purchased by the Lessee.
 - d. The Lessee’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

3. Worker's Compensation and Employer's Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$ 100,000
 - Disease-Each Employee \$ 100,000
 - Disease-Policy Limit \$ 500,000
- a. Policy must contain a waiver of subrogation against the City of Phoenix.
- b. This requirement does not apply when a Lessee or sublessee is exempt under A.R.S. 23-902 (E), **AND** when such Lessee or sublessee executes the appropriate sole proprietor waiver form.

4. Property Insurance

- Coverage for Lessee's Leasehold Improvements Replacement Value
- Coverage for Lessee's contents/equipment Replacement Value
- a. If Lessee is the sole occupant, lessee must purchase property insurance for the building. Coverage must be written on a Special Causes of Loss property insurance form with replacement cost value, including coverage for flood and earth movement.
- b. The City of Phoenix must be named as a loss payee if Lessee is a sole occupant and/or if Lessee is making tenant improvement.
- c. Lessee tenant improvements must be insured. Coverage must be written of a Special Causes of Loss property insurance form with replacement cost value.
- d. Policy must contain a waiver of subrogation against the City of Phoenix.

5. Fidelity Bond or Crime Insurance – Employee Theft

The bond or crime policy shall provide coverage for loss of monies belonging to the Lessor under the terms of the Lease as a result of theft by Lessee's employees.

Bond or Policy Limit \$ 10,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Lessee.
- b. The bond or policy must include coverage for third party fidelity, i.e. property of the Lessor that is held by the Lessee in any capacity, or property for which the Lessee is legally liable.
- c. The bond or policy shall not contain a condition requiring an arrest and conviction.

SECTION 9.3 – Notice of Cancellation

For each insurance policy required by the insurance provisions of this Lease, Lessee must provide to the Lessor, within five (5) business days of receipt, a notice if a policy is suspended, voided, or canceled, for any reason. Such notice shall be mailed, hand-delivered

or sent via facsimile transmission to:

City of Phoenix
Aviation Dept. - Business & Properties Division
Phoenix Sky Harbor International Airport
2485 East Buckeye Road
Phoenix, AZ 85034
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

and shall be sent by certified mail, return receipt requested.

SECTION 9.4 – Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than B+ VI. Lessor in no way warrants the above-required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.

SECTION 9.5 – Verification of Coverage

Lessee must furnish Lessor with certificates of insurance (ACORD form or equivalent approved by Lessor) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by Lessor before the Lease term commences. Each insurance policy required by this Lease must be in effect at or prior to the commencement of work and must remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal will be considered a material breach of the Lease.

The City Lease number and project description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

The initial certificates required by this Lease shall be sent directly to:

City of Phoenix
Aviation Dept. - Business & Properties Division
2485 East Buckeye Road
Phoenix, AZ 85034
ATTN: Terminal Concessions Program
Fax Number: 602-273-4083
Email: aviation.business@phoenix.gov

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix
Aviation Department
c/o Exigis Insurance Compliance Services
PO Box 4668 – ECM #35050
New York, NY 10163-4668
Email: certificates-cityofphoenix@riskworks.com

SECTION 9.6 – Sublessees and Partners

Lessee's certificate(s) shall include all sublessees and Partners as additional insureds under its policies **or** Lessee shall be responsible for ensuring and verifying that all contractors and subcontractors have valid and collectable insurance. At any time throughout the life of the Lease, the City of Phoenix reserves the right to require proof from the Lessee that its subcontractors have insurance coverage. All subcontractors providing services included under this Lease are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Lessee may, on behalf of its subcontractors waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Lessee assumes liability for all subcontractors with respect to this Lease.

SECTION 9.7 – Approval

Any modification or variation from the insurance coverages and conditions in this Lease must be documented by an executed contract amendment.

SECTION 10 **INDEMNIFICATION OF CITY**

Lessee (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or contractors ("Indemnitor's Agents") arising out of or related to Lessee's occupancy and use of the Leased Premises. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amounts arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of

Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Leased Premises, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from or related to the use, occupancy or condition of the Leased Premises. The obligations of Indemnitor under this provision survive the termination or expiration of this Lease.

SECTION 11 **LIENS AND PERFORMANCE AND PAYMENT BONDS**

SECTION 11.1 - Liens

Lessee shall not create, permit, or suffer any lien to be imposed upon the Premises or upon any Leasehold Improvements without promptly discharging the same. Lessee shall at all times indemnify and save the City harmless from all liens, claims, losses, demands, costs, expenses or liability cost for labor or materials in conjunction with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and against all reasonable attorneys' fees and other costs arising by reason of any such liens or claims and the removal of liens.

SECTION 11.2 - Payment Bond

Prior to the commencement of any construction, alteration, or repair hereunder of Lessee's Leasehold Improvements and/or Trade Fixtures which exceeds \$10,000 in cost, Lessee shall furnish to the Lessor, without expense to the Lessor, a payment bond issued by a surety company licensed to transact business in the State of Arizona and satisfactory to and approved by the Lessor with Lessee's contractor or contractors as principals. The penal amount of the bond shall be not less than 100 percent of the total cost of the contract or contracts for the construction, alteration, or repair of such Leasehold Improvements and/or Trade Fixtures. In the event that such contracts involve alteration or work on or to the Lessor's facilities, the payment bond shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract and shall protect the Lessor from any liability, losses, or damages arising from it.

SECTION 11.3 - Performance Guarantee

Lessee shall provide and maintain during the term of this Lease a form of security approved in advance by Lessor guaranteeing the full and faithful performance by Lessee of all the terms and conditions of this Lease, including security for payment by Lessee of all claims by Lessor. The performance guarantee shall be in the form of attached **Exhibit 5-A, Irrevocable Standby Letter of Credit ("LOC")**, or a "**Cash Deposit** for Performance Guarantee" in the form of **Exhibit 5-B**. The amount of the performance guarantee for this Lease shall be either six (6) months' rent or \$XXX, whichever is greater. Lessee shall increase the performance guarantee upon written demand of Lessor, provided such increases are found reasonable and necessary

by Lessor. Lessor may draw or make a claim against the posted performance guarantee for failure of Lessee to perform according to the covenants, terms and conditions of the Lease. If Lessor draws or makes a claim on the posted performance guarantee, Lessee shall replenish the performance guarantee to its original amount within thirty (30) days' notice of Lessor's draw or claim unless otherwise agreed by Lessor in writing. The performance guarantee is required to be in place for the entire term of this Lease. Lessee's failure to provide and maintain a performance guarantee under this paragraph shall be a material breach of this Lease.

If the performance guarantee in the form of a LOC, it shall be issued by a local financial institution preferably in the Phoenix Metropolitan area in a form that is satisfactory to the Lessor and Lessor must be able to draw upon the letter of credit at any of the financial institution's counters in the Phoenix Metropolitan area. Any modification to the Lessor approved LOC form must be approved by Lessor. If an LOC is obtained, then unless Lessor receives a written extension of that LOC, in a form acceptable to Lessor, at least sixty (60) days before the end of the term of such LOC, Lessor, without notice to Lessee, may draw upon the full amount of that LOC and retain all proceeds as a cash security pursuant to this Section. Lessor will not pay interest to Lessee on any performance guarantee.

SECTION 12 **ASSIGNMENT AND SUBLETTING**

SECTION 12.1 – Assignment

12.1.1 Lessee shall not assign, hypothecate, surrender, sublease, or transfer all or any portion of its interest under this Lease, (collectively, an “**Assignment**”) nor permit any other person, firm or corporation to occupy the Premises without the prior written consent of Lessor. Lessor's consent may be unreasonably withheld at the sole discretion of Lessor provided, however, that Lessee may, with the consent of Lessor, assign its interest under this Lease to a corporation in which fifty-one percent (51%) or more of the stock is owned by and management is controlled by the same person who owns and controls Lessee. For purposes of this Section, any transfer of control of Lessee's business by sale of stock consolidation, merger or other means, is considered to be an Assignment of interest.

12.1.2 Lessor, as a condition of approval, will require that any transferee submit biographical and financial information and Lessor shall have thirty (30) days from the date Lessor receives a completed request to approve or deny same.

12.1.3 In the event Lessor consents to an Assignment of this Lease within the first Lease Year, if Lessee receives as any consideration for such Assignment, Lessee shall pay Lessor fifty percent (50%) of the consideration received for such Assignment, less any unamortized initial capital investment. Amortization must be calculated in accordance with Section 5.3.3. Total capital investment shall equal the total dollar amount identified in Section 5.1.4.

12.1.4 Lessee understands and agrees that any such approval will require Lessee to pay in advance a \$250 document processing fee. This Lease or any interest therein, shall not be subject to Assignment by operation of law. Any Assignment without prior written consent of Lessor shall be null and void.

SECTION 12.2 – Terms of Sublease

12.2.1 Each sublease to this Lease is in all respects subject to and subordinate to this Lease. The terms of this Lease shall be reviewed with each Partner, and each Partner shall confirm in its sublease that such review has occurred. A copy of this Lease shall be attached as an exhibit to each sublease. Lessee shall provide complete copies of the executed subleases to Lessor.

12.2.2 The use, distribution and all associated rent fees for support space Premises among Lessee and its Partners shall be the responsibility of Lessee. Lessor reserves the right to reduce, or relocate Lessee's support space to other reasonably comparable areas in T4 if available, by giving thirty (30) days' prior notice.

SECTION 12.3 – Approved Partners

Lessee's selection of Partners shall be subject to Lessor's approval and the operation of Retail concession units by Partners shall be in accordance with **Exhibit 2**.

SECTION 13 **CANCELLATION BY LESSOR**

SECTION 13.1 - General Default

In addition to those events of defaults provided elsewhere in this Lease, Lessor may immediately terminate this Lease by giving Lessee written notice of the immediate termination upon the happening of any of the following events:

13.1.1 The taking of possession for a period of twenty (20) or more days of all or substantially all of the property used on the Premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.

13.1.2 The filing of any lien against the Premises because of any act or omission of Lessee that is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within twenty (20) days' receipt of notice by Lessee.

13.1.3 Unless otherwise provided in this Lease, the breach by, or the failure, or refusal of Lessee to observe or perform, any of the covenants, terms and conditions herein contained and on its part to be observed and performed, which is addressed below, and such failure shall continue for a period of more than twenty (20) days after delivery by Lessor of a written notice of such breach.

13.1.4 The voluntary abandonment by Lessee of its operations at T4 for a period of one (1) day or longer.

SECTION 13.2 - Rental Default

Lessor may place Lessee in default of this Lease by giving Lessee ten (10) days written notice for Lessee's failure or refusal to timely pay rent as provided in Section 3. During the ten (10) day notice period, Lessee shall cure its rent default, including delinquent fees; otherwise, this Lease may be terminated at Lessor's sole option without further notice.

SECTION 13.3 - Failure to Commence Construction of Leasehold Improvements

If Lessee fails to commence construction of the Leasehold Improvements in accordance with the Lessor-approved construction plan or if Lessee fails to furnish the required performance guarantee and insurance policies on or before the time Lessee has given its contractor a Notice to Proceed, this Lease shall be considered breached and may be terminated by Lessor, and Lessee's performance guarantee shall be forfeited as liquidated damages, not as a penalty, but to cover expenses incurred by Lessor as a result of Lessee's breach. Further, all of Lessee's rights and claims upon the Premises shall be immediately forfeited.

SECTION 14 **CANCELLATION BY LESSEE**

SECTION 14.1 - General Defaults

14.1.1 Lessee may cancel this Lease at any time that it is not in default in its obligations by giving Lessor thirty (30) days written notice after the happening of any of the following events materially impairing the conduct of its normal business from the Premises:

14.1.2 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining normal use of the Airport or any substantial part of it and the remaining in force of such injunction for a period of ninety (90) consecutive days.

14.1.3 The inability of Lessee or its customers to use, for a period of ninety (90) consecutive days, the Airport or any substantial part of it due to enactment or enforcement of any law or regulation, or because of fire, earthquake or similar casualty, or Acts of God or the public enemy.

14.1.4 The lawful assumption by the United States ("U.S.") government of the operation, control, or use of the Airport or any substantial part of it for military purposes in time of war or national emergency.

SECTION 15 **REDELIVERY AND HOLDING OVER**

SECTION 15.1 - Redelivery

Upon expiration or other termination of this Lease, Lessee's right to occupy the Premises and exercise of the privileges herein granted shall cease and it shall surrender the same and leave the Premises in good condition except for normal wear and tear. Unless otherwise provided, personal property placed by Lessee on the Premises shall remain the property of Lessee, and Lessee shall have the right at any time during the term of the Lease, and for up to an additional period of thirty (30) calendar days after its expiration, to remove same from Airports; provided Lessee is not in default in its payments to Lessor hereunder, and provided that Lessee shall repair any damage caused by such removal. In the event Lessee fails to repair any damage to the Premises caused by the removal of Lessee's personal property, Lessor shall have the right to make such repairs it deems necessary at Lessee's sole expense. If Lessee's personal property remains on the Premises up to an additional period of thirty (30) days after expiration, cancellation or termination of the Lease, then Lessee shall pay the proportionate share of rent for every day that the personal property remains on the Premises. Any personal property not

removed by Lessee within the thirty (30) day period shall become a part of the Premises and title thereto shall vest in Lessor.

SECTION 15.2 - Holding Over

Lessor may, at its option, allow Lessee to hold over under this Lease on a month-to-month basis. It is agreed and understood that any holding over of Lessee after the termination of this Lease with Lessor's consent shall not renew and extend the Primary Term but shall operate and be construed as a month-to-month permit and Lessee agrees to pay to Lessor fees or other payments that are in effect at the end of the Primary Term of the Lease unless Lessor has given prior notice of any increased fees. Such increase in fees may be given at any time with notice of not less than sixty (60) days. Lessee shall be liable to Lessor for all loss or damage on account of any such holding over against Lessor's will after the termination of this Lease, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment to Lessor in the event that Lessee fails or refuses to surrender possession shall not constitute a waiver by Lessor of its right to immediate possession.

SECTION 16 **DAMAGE OR DESTRUCTION**

SECTION 16.1 - Damage or Destruction to T4 or to Unimproved Shell

16.1.1 Lessor shall be under no obligation to repair damage or destruction to T4 or to the unimproved shell. At Lessor's sole discretion, Lessor may choose not to repair or reconstruct if the repairs cannot be made within six (6) months), if repair of damage deemed too costly by Lessor, or if the lease term would expire within twelve (12) months from the date of the damage or destruction.

16.1.2 If the unimproved shell is damaged by fire, explosion, Act of God, the public enemy, or other casualty, but not rendered untenable, the same may be repaired with due diligence by Lessor at its own cost and expense. If such damage is so extensive as to render the unimproved shell untenable, but capable of being repaired within six (6) months, the same may be repaired with due diligence by Lessor at its own cost and expense, and the rent payable under Section 3 shall be proportionately paid up to the time of such damage, and thereafter abate and cease until such time as the unimproved shell is again tenable.

16.1.3 If any portion of T4 other than the unimproved shell is so damaged and such damage is capable of being repaired within six (6) months, the same may be repaired, with due diligence by Lessor at its own cost and expense. If such damage is so extensive as to substantially impair Lessee's operations within the Premises, the rent payable hereunder shall be paid up to the time of such damage, and thereafter shall be equitably reduced in proportion to such impairment until such time as Lessee's operations shall be fully restored.

16.1.4 If either the unimproved shell, excluding Lessee's Trade Fixtures or Leasehold Improvements, or T4, or both, be completely destroyed by fire, explosion, Act of God, the public enemy or other casualty, or so damaged as to be untenable and incapable of being repaired within six (6) months the rent obligations of Lessee hereunder shall be paid up to the time of such damage or destruction, and thereafter shall be proportionately reduced for impaired operation, or if no operation is possible, shall cease until such time as the Premises are fully

restored, and rent obligations shall thereafter resume in the same proportion as Lessee's operation on the Premises shall resume.

16.1.5 If the damage or destruction to the unimproved shell, Trade Fixtures or Leasehold Improvements, or T4, or all of the above, renders the entire premise untenable and is not repaired or restored within twelve (12) months after such damage or destruction, Lessor or Lessee shall have the right to cancel this Lease upon written notice to the other party as to such election.

16.1.6 If damage was caused by Lessee, Lessee shall pay for the repair or restoration at Lessee's own cost and expense.

SECTION 16.2 - Damage to Premises

If any of the Leasehold Improvements or Trade Fixtures constructed or installed by Lessee in or at the Premises are damaged or destroyed by fire, explosion, Act of God, the public enemy or other casualty, Lessee shall repair or replace the same with due diligence at its own cost and expense. Such replacements or repairs shall be equivalent to or better in quality than the Leasehold Improvements and Trade Fixtures so destroyed or damaged. This paragraph shall not be applicable, however, if Lessor is not obligated and elects not to rebuild pursuant to Section 16.1. If Lessee fails to repair or replace such damaged Leasehold Improvements or Trade Fixtures subject to a schedule approved by Lessor and provided that this Lease has not been canceled, Lessor may make such repairs or replacement and recover from Lessee the cost and expense of such repair or replacement, plus an additional twenty-five percent (25%) of the expenses for Lessor's administrative costs.

SECTION 16.3 - Protection of Contents of Premises

Protection against loss by fire or other casualty to the contents of the Premises shall not at any time be an obligation of the Lessor.

SECTION 17 **FORCE MAJEURE**

In the event Lessor or Lessee shall be prevented or unable to perform any act required by this Lease by reason of acts or determination of federal, state or local governments or fire, earthquake or similar Acts of God, or any other reason of a like nature beyond their control, then performance of such act shall be extended for a period equivalent to the period of delay; provided, however, that no such delay shall exceed ninety (90) days unless approved in writing by Lessor; otherwise, this Lease shall terminate.

SECTION 18 **ATTORNEYS' FEES**

In the event of litigation between Lessor and Lessee to enforce the rights or obligations provided by this Lease, the non-prevailing party shall pay for the prevailing party's reasonable attorneys' fees and costs of litigation as may be determined by the court.

SECTION 19
AMENDMENT

Any amendment, modification, or alteration of this Lease shall be effective only if mutually agreed upon, reduced to writing, and signed by both parties.

SECTION 20
RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by Lessor or Lessee, or by any third party, as creating the relationship of principal and sublessee, agent, Partners, joint venturers, or any other similar such relationship, between Lessor and Lessee. It is understood and agreed that neither the method of computation of rent and other payments, nor any other provision contained in this Lease, nor any acts of Lessor or Lessee creates a relationship other than the relationship of Lessor and Lessee as described in this Lease.

Lessee agrees no persons supplied by it in the performance of the Lease are employees of Lessor and further agrees no rights to Lessor's civil service, retirement or personnel rules and benefits accrue to such persons.

Lessee shall be responsible for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation, other benefits, taxes and premiums appurtenant thereto concerning such persons provided by Lessee in the performance of the Lease, and Lessee shall save and hold Lessor harmless with respect thereto.

SECTION 21
NO THIRD-PARTY BENEFICIARIES

The parties expressly agree that this Lease is not intended by any of its provisions to create any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Lease to maintain a suit for injuries or damage pursuant to the terms or provisions of this Lease.

SECTION 22
PROHIBITED INTERESTS

No member, officer, or employee of Lessor during his or her tenure, and for one (1) year thereafter, shall have any interest, direct or indirect, in this Lease or its proceeds.

SECTION 23
QUIET ENJOYMENT

Lessor agrees that, on payment of rent and all other fees due Lessor and the performance of the covenants and agreements on the part of Lessee to be performed hereunder, Lessee shall peaceably have and enjoy the Premises free from interference from Lessor except as may otherwise be provided herein and the privileges granted herein for the commercial use of Airport facilities.

SECTION 24 **COMPLIANCE WITH LAWS**

SECTION 24.1 - Rules and Regulations

24.1.1 Lessee, its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the U.S. government, the State of Arizona, the County of Maricopa, and the City and all agencies thereof that may be applicable to its operations or to the operation, management, maintenance or administration of the Airport now in effect or hereafter promulgated, without limits to other conditions in this Lease.

24.1.2 Without limiting the above, in performing this Lease, Lessee its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control, shall comply with Section 504 of the Rehabilitation Act of 1973 (**Section 504**), and the Americans with Disabilities Act of 1990 (**ADA**), and all pertinent Executive Orders, regulations and rules promulgated thereunder, and must train all employees and agents performing under this Lease on Section 504 and ADA requirements.

24.1.3 Compliance with Environmental Laws - Lessee shall, at its own expense, comply with all present and subsequently enacted environmental law, and any amendments thereto, affecting Lessee's use of the Premises including the requirements set forth in **Exhibit 6 ("Compliance with Environmental Laws")** attached hereto and incorporated herein by reference.

SECTION 24.2 - Supplemental Terms and Conditions to All Airport Agreements

Without limiting any other conditions set forth in this Lease, Lessee shall comply with the specific requirements more particularly set forth in **Exhibit 7 ("Supplemental Terms and Conditions to All Airport Agreements")**, attached hereto and incorporated herein by reference.

SECTION 24.3 - Taxes and Licenses

24.3.1 Lessee shall pay, on or before their respective due dates, to the appropriate collecting authority, any and all leasehold tax, sales tax, transaction privilege tax, federal, state, and local taxes, including real or personal property taxes and business taxes that are now or may be levied upon the Premises, or upon Lessee, upon Lessee's interest in this Lease, or upon the business conducted on the Premises, or upon any of Lessee's property used in connection with the Premises whether or not such tax, fee or assessment is levied, charged or assessed on City or Lessee; provided, however, that Lessee may at its sole expense dispute and contest these taxes and in such case such disputed items need not be paid until finally adjudged to be valid. In the event laws or judicial decisions result in imposition of a real property tax on the interest of Lessor, the prorata share of such tax attributable to the Premises should also be paid by Lessee for the period this Lease is in effect.

24.3.2 Lessee shall maintain in current status all federal, state, and local licenses and permits necessary or required by law for the construction of Leasehold Improvements and/or the installation of Trade Fixtures, and any other licenses necessary for the operation of Lessee's Retail concessions.

SECTION 25
GENERAL PROVISIONS

SECTION 25.1 – Small Business Participation

25.1.1 This Lease is subject to ACDBE Program requirements issued by USDOT in 49 CFR Parts 23 and 26. Although there is no ACDBE, DBE, or Small Business participation goal for this Agreement, the City must track and report all Small Business participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving Small Business. For this reason, the concessionaire shall provide all relevant information to enable the required reporting. See attached **Exhibit 9, Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race-and Gender-Neutral Lease Clause.**

25.1.2 Lessee acknowledges it proposed the following utilization throughout the term of this Lease.

- a. Participation as Partners as a percentage of this Lease's value: ACDBE (%), DBE (%), and Small Business (%).

- b. Participation as suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this Lease: Lessee: ACDBE (%), DBE (%), and Small Business (%).

Lessee agrees to maintain the above-listed ACDBE, DBE and small business utilization throughout the term of the Lease. Lessee agrees to notify the City of Phoenix Equal Opportunity Department of any changes in ACDBE, DBE or small business status, including level of utilization, identity of ACDBE, DBE or small business Partners and suppliers of goods and services, if applicable, and eligibility of those businesses for ACDBE or DBE designation. Lessee agrees to use continued good faith efforts to maintain the utilization of its ACDBE, DBE and small business Partners in its Retail concessions included in this Lease.

25.1.3 Concessionaire shall fulfill all required small business outreach requirements and submit all required outreach efforts documentation in Exhibit 11 (Form EO3 per AVN RCS 23-006) and Exhibit 12 (Form E02 per AVN RCS 23-006) with the response at the time of submittal.

25.1.4 If during the term of this Lease an ACDBE, DBE or small business Partner or supplier of goods and services is no longer available to conduct business with Lessee, then Lessee will be required to conduct outreach efforts to continue to achieve small business utilization in accordance with this Lease. The outreach efforts by Lessee must meet requirements of Lessor and the selection of the replacement Partner or supplier of goods and services is subject to the approval of the Lessor.

25.1.5 Lessee shall provide a Small Business Participation Plan ("Participation Plan") on an annual basis by the anniversary date of contract award. The Participation Plan shall contain strategies to foster small business participation and information concerning the small businesses, including any material changes to the initial Participation Plan.

25.1.6 In compliance with the City's Airport ACDBE Program Plan and 49 C.F.R. Parts 23 and 26, Tenant shall track and report all ACDBE, DBE, and/or small business participation that occurs at the Airport as a result of contracts, procurements, purchase orders, subleases, joint ventures, goods/services or other arrangements involving sub-tier participation. Such

documentation must be entered monthly into the internet-based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

25.1.7 This Lease shall be subject to review for small business participation and utilization prior to any Lease and Lease extension.

25.1.8 Failure of Lessee to maintain its ACDBE, DBE or small business utilization throughout the term of the Lease, or to demonstrate it has met the outreach requirements for a reduction in the amount of utilization, may be a material breach of the Lease.

SECTION 25.2 – Equal Employment Opportunity and Equal Pay

- A. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements.
- B. Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee will SHALL ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, AND SHALL ADHERE TO A POLICY TO PAY EQUAL COMPENSATION TO MEN AND WOMEN WHO PERFORM JOBS THAT REQUIRE SUBSTANTIALLY EQUAL SKILL, EFFORT, AND RESPONSIBILITY, AND THAT ARE PERFORMED WITHIN THE SAME ESTABLISHMENT UNDER SIMILAR WORKING CONDITIONS. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee. The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

- C. Lessee and any sublessee must provide the City with a plan detailing their non-discrimination policies, training procedures to end discrimination in the workplace, and all other alternatives they utilize to prevent discrimination; subject to local, state, and federal law and consistent with privacy interests and any collective bargaining agreements.

- D. Subject to local, state, and federal law and consistent with privacy interests and any collective bargaining agreements, Lessee and any sublessee shall disclose to the City on an annual basis all information and data that demonstrates their compliance with the equal pay commitment and non-discrimination requirements.
- E. Supplier/Lessee's refusal or failure to comply with any non-discrimination provision in this Lease shall be deemed an event of default subject to the termination provisions in Section 13.1.3.

SECTION 25.3 - Subordination to Agreements with the United States

This Lease is subject to and subordinate to the provisions of any agreement currently in force or subsequently made between Lessor and the U.S. government, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Lessor for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. Lessor warrants it has no existing agreements with the U.S. government in conflict with the express provisions of this Lease.

SECTION 25.4 - Notices

Any notice, consent or other communication ("**Notice**") required or permitted under this Lease shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the U.S. mail, postage prepaid.

If to Lessor: City of Phoenix
 Aviation Dept. - Business & Properties Division
 2485 E. Buckeye Rd.
 Phoenix, AZ 85034-4405
 ATTN: Terminal Concessions

Telephone: (602) 273-4391
 Facsimile: (602) 273-4083
 E-Mail: aviation.business@phoenix.gov

If to Lessee: Company Name
 Address 1
 Address 2
 ATTN: Contact Name

Telephone: (____) ____ - ____
 Facsimile: (____) ____ - ____
 E-Mail: _____@_____.

Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent via facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five (5) business days after the Notice is deposited in the U.S. mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

SECTION 25.5 - Approvals, Consents and Notices

All approvals, consents and notices called for in this Lease must be in writing and may not be established by oral testimony.

SECTION 25.6 – Offset Provisions

Lessee acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, which require that no payment be made to Lessee as long as there is any outstanding liquidated undisputed obligation due to the City and direct that any such obligations be offset against any payment due Lessee.

Lessee agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes (“**A.R.S.**”) §§ 12-821 and 12- 821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law shall control.

Moreover, nothing in this Lease shall constitute a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S. § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within A.R.S. § 12-821.01(A) and (B).

SECTION 25.7 - Transactional Conflicts of Interest

Lessee acknowledges that this Lease is subject to cancellation by the City pursuant to the provisions of A.R.S. § 38-511.

SECTION 25.8 - Paragraph Headings

All section and subsection headings of this Lease are inserted for reference only and shall not be considered to define or limit the scope of any provision.

SECTION 25.9 - Saving Clause

Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall nonetheless remain effective, provided that elimination of the invalid provision does not materially prejudice either Lessor or Lessee with regard to their respective rights and obligations.

SECTION 25.10 - Waiver of Claims

Lessee hereby waives any claim against Lessor and its officers or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease or any part of this Lease, or by any judgment or award in any suit proceeding declaring this Lease null, void, or voidable, or delaying the Lease or any part of it from being carried out.

SECTION 25.11 - Business Certification

If Lessee is a trust, then Lessee certifies that it is authorized to do business in the state of Arizona. If Lessee is a corporation, limited liability company, or other business entity regulated by the Arizona Corporation Commission (“**ACC**”), then Lessee certifies that it is authorized to do business in the state of Arizona, is in good standing with the ACC, and shall remain in good standing with the ACC throughout the Term of this Lease. If Lessee is a foreign limited partnership, foreign limited liability company, or other business entity regulated by the Arizona Secretary of State (“**ASOS**”), then Lessee certifies that it is registered with the ASOS, is in good standing with the ASOS, and shall remain in good standing with the ASOS throughout the Term of this Lease. If Lessee is an individual or any other unregulated business entity, then Lessee certifies that it is authorized to transact business in the state of Arizona and shall remain authorized throughout the Term of this Lease. Lessee certifies that the person signing this Lease on its behalf is authorized to bind Tenant to this Lease. Lessee may be required to furnish Lessor with documentation of entity status and authorizations specified above prior to final execution of this Lease.

SECTION 25.12 - Right to Develop Airport

Lessee agrees Lessor reserves the right to further develop or improve the Airport and all landing areas and taxiways as Lessor may see fit, regardless of the desires or views of Lessee and without any interference or hindrance from Lessee.

SECTION 25.13 - Incorporation of Exhibits

All exhibits and documents referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

SECTION 25.14 - Incorporation of Required Provisions

Lessor and Lessee hereby incorporate by this reference all provisions lawfully required to be contained in this Lease by any governmental body or agency.

SECTION 25.15 - Successors and Assigns Bound

All the provisions of this Lease shall bind the legal representatives' successors and assigns of the respective parties.

SECTION 25.16 - Right to Amend

In the event that the Federal Aviation Administration ("**FAA**") or its successors requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to satisfy the FAA requirements.

SECTION 25.17 - Time of Essence

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

SECTION 25.18 - Good Faith

The terms and conditions set forth in this Lease are for the mutual benefit of both parties. Because of the nature of this Lease, Lessor and Lessee agree that there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions, and covenants imposed by this Lease.

SECTION 25.19 - Interpretation

Lessor and Lessee agree that any rule of construction of contracts resolving disputes of interpretation against the drafting party is waived and shall be inapplicable to this document.

SECTION 25.20 - Entire Lease

It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire Lease between Lessor and Lessee as to this Lease. Lessee's response to the Terminal 4 South 1 (T4S1) Concourse Phase II Retail Concessions at PHX Revenue Contract Solicitation (AVN RCS 23-006) ("**RCS**") is incorporated by reference as fully set forth herein. It is further understood and agreed by Lessee that Lessor and Lessor's agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against Lessor for, and Lessor shall not be liable by reason of, the breach of any representations or promises not expressly

stated in this Lease. Any other written or parole agreement with Lessor is expressly waived by Lessee. It is understood Lessor requires leases to be in writing and adopted by the City Council.

SECTION 25.21 - Conflicts

Conflicts among the documents composing this Lease shall be resolved in favor of the document that appears earliest in the following list:

- a. Lease amendments, with later amendments superseding inconsistent provisions of earlier amendments;
- b. This Lease including all Exhibits.
- c. Phase I Retail Concessions at PHX Terminal 4 RCS Response

SECTION 25.22- Hazard, Potential Hazard, Nuisance, or Annoyance

Any nuisance, annoyance, or hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Lessee's actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from Lessor. If, in Lessor's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, Lessor may require Lessee to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this subsection shall be deemed to preclude Lessor from pursuing any available remedy for breach of this Lease. Lessee's failure to promptly correct a nuisance, annoyance, or hazardous or potentially hazardous condition under this paragraph shall be a material breach of this Lease.

SECTION 25.23 – Airport Security Plan

Lessor has implemented an Airport Security Program (**Program**) in a form acceptable to the Federal Aviation Administration (“**FAA**”) and/or Transportation Security Administration (“**TSA**”) pursuant to Title 49 Code of Federal Regulations. Lessor reserves the right to modify that Program from time to time as it deems necessary to accomplish its purposes. Lessee shall at all times comply with the Program and indemnify and hold harmless Lessor from any violations of the Program committed by Lessee, its employees, agents, invitees or contractors.

SECTION 25.24 – Lessee and Sublessee Worker Background Screening

25.24.1 Lessee agrees all employees and subcontractors [collectively “**Contract Worker(s)**”] that Lessee and its Partners furnish to the City pursuant to this Lease shall be subject to background and security checks and screening (collectively “**Background Screening**”) at Lessee's sole cost and expense as set forth in this Section. The Background Screening provided by Lessee shall comply with all applicable laws, rules and regulations. Lessee further agrees the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Lease. The City in no way warrants

that these minimum requirements are sufficient to protect Lessee from any liabilities that may arise out of Lessee's services under this Lease or Lessee's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Lessee and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Lease.

25.24.2 Lessee agrees it will verify legal Arizona worker status as required by A.R.S. § 41-4401. Lessee further agrees it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City.

25.24.3 In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Lease.

25.24.4 By executing this Lease, Lessee certifies and warrants it has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Lease, Lessee further certifies and warrants it has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Lease shall not be proposed to perform work under other City contracts or engagements without the City's prior written approval.

25.24.5 Lessee shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Lease including, but not limited to, supervision and oversight services.

25.24.6 The Background Screening requirements of this Section are material to the City's entry into this Lease and any breach of this Section by Lessee shall be deemed a material breach of this Lease. In addition to the indemnity provisions set forth in Section 10 of this Lease, Lessee shall defend, indemnify and hold harmless the City for any and all losses and claims arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Lessee or the City for failure to satisfy this Section.

25.24.7 Lessee's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Lease.

25.24.8 Lessee shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Lessee shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Lessee's compliance with this Section pursuant to Section 3.9.

SECTION 25.25 – Contract Worker Access Controls, Badge and Key Access Requirements

25.25.1 A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE

WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

25.25.2 After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

25.25.3 If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Lessee for each key issued.

25.25.4 Lessee shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

25.25.5 All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Lease. Lessee shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation, or expiration of this Lease.

25.25.6 Lessee's default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Lease without the proper badge, key or Background Screening; (4) Contract Worker or Lessee submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Lessee fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Lease. Lessee acknowledges and agrees the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Lessee agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree Lessee's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Lessee shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000) for each breach by Lessee of this Section. The parties further agree the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Lease in the event Lessee breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event Lessee breaches this Section. The parties further agree three (3) breaches by Lessee of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Lessee of this Section arising out of the same default within a period of twelve (12) consecutive months, shall constitute a material breach of this Lease by Lessor and the City expressly reserves all of its rights, remedies and

interests under this Lease, at law and in equity including, but not limited to, termination of this Lease.

SECTION 25.26 - Lessor Improvements to T4

Lessor and Lessee agree and acknowledge that, from time to time, Lessor may undertake improvements to T4 during the term of this Lease. Lessor will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Lessee authorized under this Lease. Lessee expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Lessee that may arise as a result of such improvements undertaken by Lessor.

SECTION 25.27 - Statutory Remedies

A.R.S. Title 33, Chapter 3, Article 4, entitled "Remedies of Landlord" and any subsequent amendments shall apply to this Lease and shall be in addition to any other remedy available to Lessor under law or in equity at the election of Lessor.

SECTION 25.28 - Non-Waiver

No waiver or failure or delay in exercising any rights, power, or privilege by Lessor of default by Lessee in performance of any requirements of this Lease shall be construed to be or act as a waiver of any subsequent default in performance of the same or any other requirement. The acceptance of rent or other payments by Lessor for any period or periods after a default by Lessee shall not be deemed a waiver of Lessor's right to exercise its remedies under this Lease for nonperformance.

SECTION 25.29 - Tenant Liability Continues

No such cancellation or termination of this Lease shall relieve Lessee of its liability and obligations under this Lease and such liability and obligations shall survive any such expiration or termination.

SECTION 25.30 - Lessee Bankruptcy

In the event that a petition in bankruptcy is filed:

- a. this Lease shall be deemed to be a "Shopping Center Lease" as provided in 11 U.S.C. §365(b)(2)(D) and (b)(3), governing certain non-monetary defaults;
- b. Lessor shall have the right to cure and be reimbursed for any non-monetary defaults that it cures;
- c. Under 11 USC § 365(b)(1), the meaning of a "prompt" cure shall be defined as a cure which occurs within thirty (30) days; and
- d. Lessee shall seek no more than an additional thirty (30) days in addition to the time provided by law whenever Lessee may petition the court for "additional time."

SECTION 25.31 Governing Law; Forum; Venue

This Lease is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern its interpretation and enforcement. Any action brought to interpret or enforce any provision of this Lease that cannot be administratively resolved, or otherwise related to or arising from this Lease, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

SECTION 25.32 Calculating Time Periods

25.32.1 For purposes of calculating time periods, all references to “days” means calendar days, unless otherwise expressly provided.

25.32.2 A time period to perform after receipt of a notice shall be calculated as follows: The day the notice is given shall not be included in calculating the notice period. The last day of the notice period is included. A party has until midnight Phoenix time on the last day of the notice period to cure its default. If the notice period is ten (10) days or fewer, then intermediate Saturdays, Sundays, and legal holidays listed in A.R.S. § 1-301 are not included. If the Notice period is eleven (11) days or more, then intermediate Saturdays, Sundays, and legal holidays are included. If the last day of the notice period is a Saturday, Sunday, or legal holiday, then the time to perform is extended to the next day that is not a Saturday, Sunday, or legal holiday.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date stated above.

Lessor

CITY OF PHOENIX, a municipal corporation
Jeffrey Barton, City Manager

By: _____
Chad R. Makovsky, C.M.
Director of Aviation Services

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:
CRIS MEYER, City Attorney

By: _____
Carolina Potts
Assistant Chief Counsel

Lessee

TBD
State and Type of Business Entity

By: _____
Name of Authorized Signer

Title

Date: _____

EXHIBIT 1

Premise

Terminal 4 S1 Concourse – Concessions Map (Retail Phase II)

R3 Retail (1,080 SF) and R4 Retail (1,139 SF)

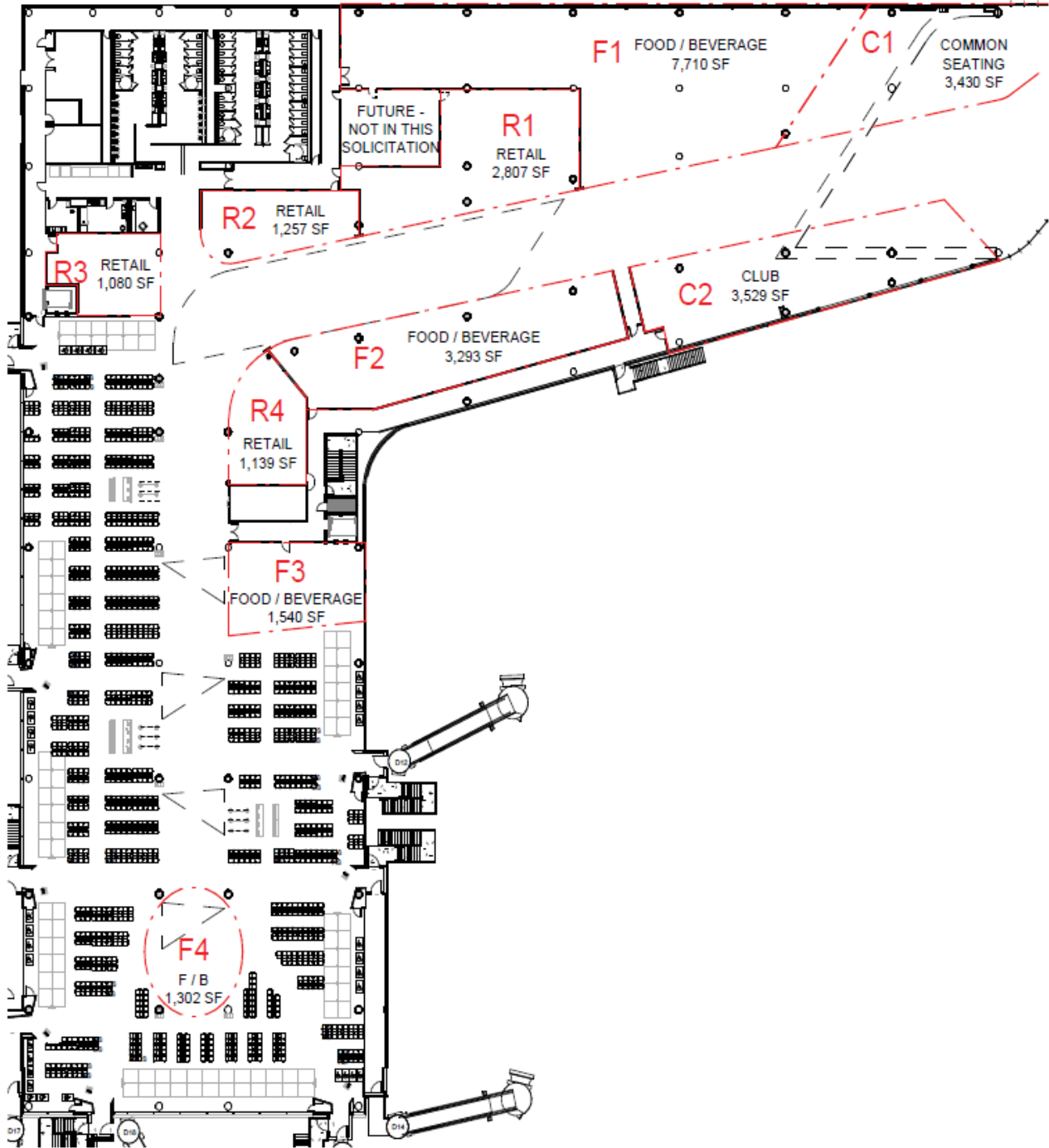


EXHIBIT 1

Premise – Support Space (if applicable)

Terminal 4 S1 Concourse – Level 2 (Apron)

EXHIBIT 2

Concepts

To be added prior to Lease execution

EXHIBIT 3

Tenant Design Criteria

TENANT DESIGN CRITERIA IS LOCATED AT:

<https://solicitations.phoenix.gov/Solicitations/Details/1290>

EXHIBIT 4

Proposed Capital Investments

To be added prior to Lease execution

EXHIBIT 5-A

Letter of Credit Form

[BANK]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. [REDACTED]

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4301
Attn: Deputy Aviation Director

Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

We hereby establish our irrevocable Standby Letter of Credit No. [REDACTED] in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (insert address of bank), accompanied by the following documents:

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to perform its obligations under or failed to comply with its Agreement No., or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ [REDACTED].

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].

C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. [REDACTED] will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].

2. This original Standby letter of credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile ("fax"). Documents to be directed to our counters at: [insert address as to counter location]. Drawing presented to us via fax must be sent to our fax number [insert – bank's fax number] (each such drawing, a "Fax Drawing") provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. [insert – bank's telephone number(s)].

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) 273-4083 that the demand was not effected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not effected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

Partial drawing and multiple presentations are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least sixty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail or overnight courier that we elect not to renew this Standby Letter of Credit.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: _____
Authorized Signature

EXHIBIT 5-B

CASH DEPOSIT FOR PERFORMANCE GUARANTEE

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4405
Attn: Deputy Aviation Director

Tenant: Tenant Full Legal Name _____
Address 1 _____
Address 2 _____
City, State, Zip _____

Date: [Insert Date]

Amount: [Insert Amount]

As required by [Lease Agreement No. TBD – dated] or [Permit No. _____], [Insert Tenant Full Legal Name (_____)] is providing a cash deposit to the City of Phoenix (City) as security for the faithful performance by [Insert Tenant Name] to secure payment of all amounts owed by [Insert Tenant Name] to City and its performance of other obligations under the [Lease No. TBD – dated] or [Permit No. _____]. [Insert Tenant Name]'s cash deposit is for the initial amount of (Insert Printed Dollar Amount) (Insert Numerical Dollar Amount), representing six months of payments under its [Lease No. TBD – dated] or [Permit No. _____].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated] or [Permit No. _____] may become inadequate during the [Lease No. TBD – dated] or [Permit No. _____] term and [Insert Tenant Name]'s agrees that it will increase the amount as the City may reasonably prescribe from time to time on at least thirty (30) days prior written notice to [Insert Tenant Name]. The City may commingle the performance guarantee with the City's other funds and City shall have no obligation to pay or account to [Insert Tenant Name] for any interest that may be earned on the performance guarantee.

If [Insert Tenant Name] defaults with respect to any provision of the [Lease No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated] or [Permit No. _____].

If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease No. TBD – dated] or [Permit No. _____] to be performed by it, the performance guarantee or any balance thereof shall be returned to [Insert Tenant Name]'s within a reasonable time after the expiration of the [Lease No. TBD – dated] or [Permit No. _____], provided, however, that the City may retain the performance guarantee until such time as any amount due from [Insert Tenant Name] under the [Lease No. TBD – dated] or [Permit No. _____] has been determined and paid in full.

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____

EXHIBIT 6
COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's expense, comply with all current and future Environmental Laws to the extent that they apply to Contractor's use or occupancy of the Premises or the Airport. If Contractor has any question about its obligations under this Exhibit, then Contractor may contact the City of Phoenix Aviation Department's Planning and Environmental Division for information, but not legal advice.

1. Definitions

1.1 *Airport* means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, or Phoenix Goodyear Airport according to the context of this Contract.

1.2 *Contract* means the lease, license, permit, or other agreement to which this Exhibit is attached.

1.3 *Contractor* means each person and entity that is a named party to this Contract.

1.4 *Contractor's Agents* means all persons under Contractor's direction or control, including Contractor's officers, managers, employees, heirs, personal representatives, invitees, volunteers, guests, successors, and assigns.

1.5 *Premises* means the area of the Airport or other City-owned property used or occupied by Contractor pursuant to this Contract or where Contractor causes or contributes to a Release of a Regulated Substance.

1.6 *Environmental Laws* means all current and future federal, state, and local laws, rules, regulations, and ordinances as clarified by advisory circulars or guidance documents, promulgated to protect the public health or the environment, including the following, as they may hereafter be amended or supplemented:

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9628, as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA), Pub. Law No. 99-499.

B. Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901-6992k, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), Pub. Law No. 94-580, including the Regulations of Underground Storage Tanks, 42 U.S.C. §§ 6991-6991m.

C. Toxic Substances Control Act of 1976 (TSCA), 15 U.S.C. §§ 2601-2629.

D. Public Health Service Act, 42 U.S.C., Chapter 6A, and Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-27, and the amendments thereto.

E. Federal Water Pollution Control Act of 1948 (FWPCA), as amended by the Clean Water Act, 33 U.S.C. §§ 1251-1388.

F. Clean Air Act, 42 U.S.C. §§ 7401-7515.

G. Title 49 of the Arizona Revised Statutes, A.R.S. §§ 49-101 to 49-1408, including

the Arizona Environmental Quality Act, A.R.S. §§ 49-101 to 49-192.01.

- H. Arizona Comprehensive Air Quality Act, A.R.S. §§ 49-401 to 49-593.
- I. Arizona Solid Waste Management Act, A.R.S. §§ 49-701 to 49-881.
- J. Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901 to 49-973.
- K. Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-1001 to 49-1093.
- L. Occupational Safety and Health Act of 1970, Pub. Law No. 91-596, as amended by 29 U.S.C. §§ 651-678.
- M. Chapter 28 and Chapter 32C of the Phoenix City Code and City of Phoenix Aviation Department Rule and Regulations, including R&R 01-02 (Storm Water Enforcement).
- N. National Environmental Policy Act (NEPA), Pub. Law. No. 91-190, and all FAA-approved NEPA documents.
- O. Endangered Species Act, 16 U.S.C. §§ 1531-1544.
- P. Arizona Antiquities Act, A.R.S. §§ 41-841 to 41-847.
- Q. Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.
- R. AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit); AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit); and AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit).
- S. Interstate Conveyance Sanitation, 21 C.F.R. Part 1250.
- T. Maricopa County Air Quality Department Rule 310 (Fugitive Dust from Dust-Generating Operations) and Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust).
- U. All current and future federal, state, and local laws, rules, regulations, and ordinances promulgated under the foregoing Environmental Laws that provide for the protection of the public health or the environment, including the ambient air, groundwater, surface water, land use, and substrata soils.

1.7 *Regulated Substances* means:

A. The substances identified or listed as a hazardous substance, pollutant, hazardous material, and petroleum in CERCLA; Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101-5128; RCRA; Arizona Regulation of Underground Storage Tanks; Clean Air Act; and all rules and regulations promulgated to implement these Environmental Laws.

B. The substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or hazardous, special, or solid waste in the Arizona Environmental Quality Act,

including the Water Quality Assurance Revolving Fund Act (WQARF), A.R.S. §§ 49-281 to 49-298; Arizona Comprehensive Air Quality Act; Arizona Solid Waste Management Act; Arizona Underground Storage Tank Regulation Act; Arizona Management of Special Waste Act; Arizona Hazardous Waste Management Act; and all rules and regulations promulgated to implement these Environmental Laws.

C. All substances, materials, and wastes that are or hereafter become regulated or that are classified as hazardous or toxic under any Environmental Law, including building materials that may contain any hazardous substance and its disturbance is subject to any Environmental Law. If a building material, including pavements and paint, will be disturbed by Contractor and the building material is not unpainted wood, metal, or glass, then Contractor shall employ an Asbestos Hazard Emergency Response Act (AHERA)-certified inspector, who shall comply with advance survey and testing requirements and the following rules, as applicable:

(i) 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart M (National Emission Standards for Asbestos)).

(ii) Maricopa County Air Pollution Control Regulations: National Emission Standard for Asbestos Regulation III Maricopa County Air Quality Department (MCAQD) Rule 370, § 301.9 - subpart M

(iii) To the extent required by Environmental Law, NESHAP Notification Form and Delivery Requirement. A NESHAP Notification Form shall be completed and postmarked or delivered to the MCAQD Asbestos NESHAP Coordinator at least ten (10) days before disturbing any building material even if no asbestos is present.

(iv) 29 C.F.R. Part 1926 (OSHA Safety and Health Regulations for Construction).

(v) RCRA waste determination and proper handling, transport, and disposal.

1.8 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing of a Regulated Substance.

2. Compliance

2.1 Contractor shall not cause or allow any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, Released on or under, or transported to or from the Premises by Contractor or Contractor's Agents in a manner that constitutes or would foreseeably result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

2.2 Contractor may remediate any Release of a Regulated Substance under Chapter 28 of the Phoenix City Code (the City's pretreatment ordinances), under such other ordinances as may be promulgated by the City, and applicable Environmental Laws, including the Clean Water Act to the extent it applies.

2.3 Contractor (Indemnitor) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials, (elected and appointed), agents, and employees (Indemnitee) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses, including interest, penalties, and reasonable attorney fees, expert witness fees, and reasonable expenses of investigation and remedial work, (including investigations and remediation by engineers, environmental consultants, and similar technical personnel) asserted against

or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any violation of Environmental Law, including any use, generation, storage, spill, Release, discharge, or disposal of any Hazardous Substance that is now or comes to be located on, at, about, or under the Premises or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Losses") to the extent that such Losses are caused by the fault of Indemnitor or its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees, or licensees (collectively, "Indemnitor's Parties"). Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever occurs first. Indemnitor's duty to defend exists whenever it is alleged that either the Indemnitor and/or one or more of the Indemnitor's Parties, or both, is/are liable, regardless of whether they are ultimately found liable. As used in the section, (a) Hazardous Substance are the Regulated Substances and other substances defined as toxic or hazardous substances, pollutants, or wastes by any Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" has the meaning prescribed above; (c) "Fault" means those nonculpable acts and omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against the City and its officers, officials, (elected and appointed), agents, and employees for losses arising out of or related to this Contract. The obligations of Indemnitor under this provision shall survive the expiration or earlier termination of this Contract.

2.4 To the extent Contractor or Contractor's Agents Release any Regulated Substance in violation of Environmental Law on or under the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises, then Contractor shall, at its expense, promptly take all actions that are necessary or appropriate to remediate the Release and mitigate any threat to the public health or the environment consistent with Environmental Law. Subject to the City's prior written consent, Contractor shall undertake all remedial actions that are necessary to return the contaminated area to the condition that existed immediately prior to the Release or, if such prior condition is unknown, to such condition as is acceptable to the governmental agency with jurisdiction. Contractor shall undertake its remedial actions under this Section 2.4 without regard to the potential liability of Contractor or any other person. However, remedial actions undertaken by Contractor shall not impair Contractor's rights, if any, to seek contribution or indemnity from any other responsible party.

2.5 Contractor shall, at its expense, prepare all tests, reports, and studies and provide all information to any appropriate governmental agency that is required pursuant to any Environmental Law as a result of Contractor's use or occupancy of the Premises. Contractor's obligation includes any requirement under Environmental Law for a site characterization, site assessment, and/or remediation plan that may be necessary due to any actual or potential Releases of a Regulated Substances by Contractor or Contractor's Agents on, under, or from the Premises, or to the air, groundwater, or surface waters on or adjacent to the Premises during the Term of this Contract and during the time Contractor has possession of the Premises. Contractor shall, at its expense, promptly (A) provide all information requested by the City related to the applicability of the Environmental Laws to the Premises, (B) respond to any governmental investigation pursuant to Environmental Laws regarding the Premises, and (3) respond to any claim of liability by third parties that relate to any Release of a Regulated Substance by the Contractor or Contractor's Agents on the Premises or the Airport.

2.6 After giving Contractor at least thirty (30) days prior notice, the City may inspect and copy all of Contractor's records, test results, studies, and other documents, not protected by attorney-client privilege, regarding environmental conditions related to the use, storage, or treatment of any Regulated Substance on, under, or from the Premises.

2.7 Contractor shall promptly notify the City in writing upon the occurrence of any of the following:

A. Contractor receives any correspondence or communication from any governmental agency regarding the application or enforcement of any Environmental Law to the Premises or to Contractor's use or occupancy of the Premises.

B. There is any change in Contractor's activities on the Premises that changes or may change Contractor's or the City's obligations or liabilities under any Environmental Law.

C. Any person or entity asserts any claim or any other event occurs for which Contractor may incur an obligation under this Exhibit.

2.8 Contractor shall, at its expense, obtain and comply with all permits and approvals that are, or may become, required as result of Contractor's use or occupancy of the Premises.

2.9 Contractor shall include the provisions of this Exhibit in all agreements and contracts by which it grants a right or privilege to any person or entity under this Contract.

2.10 Contractor shall obtain and maintain compliance with all applicable financial responsibility requirements of all Environmental Laws regarding the ownership or operation of any underground storage tank or other device used to treat or store a Regulated Substance and upon request present evidence thereof to the City.

2.11 Contractor shall take reasonable precautions to prevent persons not acting under Contractor's or Airport's authority, direction, or control from conducting any activity on the Premises that may result in the Release of a Regulated Substance on, under, or from the Premises or to the air, groundwater, or surface waters on or adjacent to the Premises. Contractor shall exercise due care with respect to any Regulated Substance that is located on the Premises as a result of any action of any person who is not under Contractor's authority, direction, or control.

2.12 Contractor shall use its best efforts to minimize its production of a waste stream that includes Regulated Substances, and Contractor shall minimize the storage of Regulated Substances on, in, and around the Premises.

3. Breach and Termination

Subject to the terms and conditions of this Section, Contractor's failure to comply with any requirement or obligation of this Exhibit or any applicable Environmental Law is a default under this Contract. Contractor's failure to cure its default after being provided with notice thereof and a reasonable opportunity to cure, as provided in this Contract, shall constitute a material breach of this Contract. Upon a breach that is not timely cured as provided in this Contract, the City may pursue any and all remedies available under this Contract and all applicable federal, state, and local laws, including the following:

3.1 Without termination of this Contract, the City may enforce all its rights and remedies under this Contract, including, without limitation, any or all the following:

A. The right to file an action or proceeding seeking to recover rent, fees, and other amounts due and that become due under this Contract.

B. The right to recover interest at the rate of 18% per annum on all accrued, but unpaid,

rents, fees, and other amounts due calculated from the date the amount was due pursuant to § 4-7 of the Phoenix City Code.

C. The right to file an action or proceeding seeking to recover possession of the Premises.

D. The right to make payments and to perform obligations required of Contractor under this Contract and to be reimbursed by Contractor for the costs thereof, including all attorney fees, expert fees, and other cost incurred by the City.

E. The City may terminate this Contract.

F. The City may exercise the right of “self-help” or similar remedy in order to minimize any damage, expense, penalty, and related fees or costs arising out of or related to the violation of any Environmental Law related to the Premises.

G. By exercising its rights under this Section, the City does not, and may not be construed as, releasing Contractor from any obligation it would otherwise have under this Exhibit or any applicable Environmental Law.

H. The covenants of this Exhibit shall survive the termination of this Contract.

If this Contract does not require Contractor to perform any activity on the Airport or other City-owned property, then the following stormwater provisions do not apply to Contractor or this Contract.

4. AZPDES Stormwater General Permit and Phoenix City Code Chapter 32C Compliance

4.1 Contractor shall comply with the City’s AZPDES Stormwater General Permit and Aviation Department R&R 01-02 (Storm Water Enforcement). Except for discharges on Indian land, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality (ADEQ) through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

4.2 The City and Contractor are required to obtain AZPDES permit coverage as required by AZPDES regulations and to the extent that covered stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2013-001 and AZG2020-001) (AZPDES Construction General Permit) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Point Source Discharges from the Application of Pesticides to Waters of the United States (AZG2011-0001) (AZPDES Pesticide General Permit) is required for certain applications of pesticides. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity to Waters of the United States (AZMSG2019-001) (AZPDES Multi-Sector General Permit) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in certain activities within the air transportation and associated activities.

4.3 The City has obtained coverage under the AZPDES Multi-Sector General Permit for its air transportation facilities at the Airports. The City has adopted Stormwater Quality Protection ordinances (Phoenix City Code §§ 32C-1 to 32C-111) and has in place an Aviation Department Stormwater

Enforcement Procedures and Civil Penalty Policy (Aviation Stormwater Policy), both of which were developed to comply with Environmental Laws governing stormwater pollution.

4.4 The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department and its contractors and permittees. Contractor is subject to the Aviation Stormwater Policy as a condition to its use or occupancy of the Premises or any part of the Airports. The City has the right to monitor Contractor's activities on the Premises and the Airport and enforce Contractor's compliance with the Aviation Stormwater Policy. The City will provide reasonable advance notice to the Contractor ahead of monitoring and audit activities.

4.5 Contractor shall comply with the Aviation Stormwater Policy and shall implement, at its expense, all requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to Contractor's operations and activities on the Premises and the Airports to the extent the operations and activities have a potential to release pollutants to stormwater. Contractor shall use its best efforts to meet all deadlines that are established by applicable Environmental Laws and the Aviation Stormwater Policy. Contractor agrees that time is of the essence in the implementation of all City permit requirements.

4.6 Contractor's compliance with the AZPDES Permit Program set forth in 18 A.A.C. Chapter 9, Article 9 (R18-9-A901 to R18-9-A909); Chapter 32C of the Phoenix City Code; and the Aviation Stormwater Policy is a material requirement and condition of this Contract. If Contractor fails to comply with the foregoing and the City is exposed to any civil or criminal fine, penalty, sanction, or remediation cost, then the City may, in addition to all other remedies available under this Contract and applicable law, terminate this Contract.

4.7 AZPDES Construction General Permit. If Contractor decides to perform construction activities at the Premises or the Airports, Contractor shall, prior to commencing any such construction activity, obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor must obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's manager assigned to the project. The City may consult with and assist Contractor with filing for AZPDES Construction General Permit coverage. Contractor shall work with the City's project manager to develop pollution controls (e.g., best management practices, control measures, and schedules and procedures) for the SWPPP. Contractor is solely responsible for implementing the pollution controls and paying for all costs related to its compliance with its AZPDES Construction General Permit obligations.

4.8 AZPDES Multi-Sector General Permit.

A. If Contractor activities performed at the Premises are under AZDPES Multi-Sector General Permit, the Contractor shall, prior to using, occupying, or commencing any operation or activity on the Premises or the Airports, obtain stormwater discharge authorization from ADEQ under an AZPDES Multi-Sector General Permit. Contractor shall obtain that authorization as a "co-permittee" with the City. As a co-permittee, Contractor shall do all the following:

(i) Provide the City with a copy of Contractor's written Authorization to Discharge that Contractor receives from ADEQ.

(ii) Implement the Airports' SWPPP, including all best management practices, control measures, schedules, and procedures that apply to the Contractor's use or occupancy of the Premises or the Airports.

B. In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of stormwater and other precipitation event water with Significant Materials (as that term is defined in the Section 32C-101 of the Phoenix City Code) generated, stored, handled, used, or otherwise located on the Premises or the Airports. The City shall provide a copy of the SWPPP, including best management practices, control measures, schedules, and procedures, to Contractor, who shall implement that portion of the SWPPP applicable to its use or occupancy of the Premises or the Airports.

C. To the extent allowed by applicable Environmental Laws, Contractor may ask to be removed as a co-permittee from coverage under the AZPDES Multi-Sector General Permit when this Contract expires or is terminated, Contractor vacates the Premises, Contractor fails to comply with the all AZPDES Multi-Sector General Permit requirements, or Contractor decides it does not want to be covered as a co-permittee. Contractor shall not be relieved of its obligation to comply with the requirements of the AZPDES Permit Program with regard to its use or occupancy of the Premises or the Airports, and Contractor shall not be excused from any obligation or indemnification incurred and owed to City prior to Contractor being removed as a co-permittee because Contractor failed to fulfill an obligation of a co-permittee.

4.9 Pollution Controls.

A. City reserves the right to impose upon Contractor any best management practices, control measures, schedules, procedures, and any other action reasonably necessary to ensure the City's ability to comply with its AZPDES Permit Program requirements or applicable City ordinances. However, except in Extreme Emergency Conditions (as that term is defined below), Contractor shall have thirty (30) days from the City's notice imposing such pollution control measures and any other requirement to notify the City in writing if Contractor objects to any action Contractor is being directed by the City to undertake. If Contractor does not provide a timely objection, then Contractor will be deemed to have consented to the implementation of the pollution control measures or other requirements. If Contractor provides the City with timely notice of its objections, then the City and Contractor shall negotiate a prompt resolution of their differences. If a resolution is not reached within thirty (30) days, then the City's decision resolving the matter shall control. Contractor warrants that it will not serve a written notice of objections for purposes of delay or to avoid compliance with AZPDES Permit Program requirements or applicable City ordinances.

B. *Extreme Emergency Conditions* means all the following:

(i) Conditions that immediately impact the waters of the United States (e.g., Salt River) that result from an emergency, such as a fire, Release of a Regulated Substance, or explosion, that requires the responsible party or parties to immediately begin appropriate response activities independent of City's direction or oversight.

(ii) A catastrophic event that requires Contractor to close its business in the Premises. Contractor must implement pollution control measures before it reopens.

(iii) A collapse of the stormwater system or any other event that prevents the City from performing its obligations under the City's permit due to lack of capacity.

4.10 Covenant of Good Faith. City and Contractor shall act in good faith to implement any requirement imposed on them pursuant to the AZPDES Permit Program. The City and Contractor agree that close cooperation is necessary to ensure compliance with all AZPDES Multi-Sector General Permit requirements and to promote safety and minimize costs. The City and Contractor agree to a candid

exchange of information necessary to coordinate a stormwater management and monitoring plan.

Revised May 2022
2321602

EXHIBIT 7

Supplemental Terms and Conditions to All Airport Agreements

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination

Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

(i) Withholding payments to Contractor under this Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds Contractor and sub-tier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.4 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may

include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.5 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

2.6 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky

Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). Therefore, Contractor agrees that:

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

- A.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).
- B.** 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).
- C.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).
- D.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).
- E.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).
- F.** The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).
- G.** Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).
- H.** Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against

minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

J. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*), as amended, which prohibits you from discriminating because of sex in education programs or activities.

EXHIBIT 8
FOOD AND BEVERAGE / RETAIL OPERATING
AND SERVICE STANDARDS MANUAL

Section 1 – Cleanliness Standards

Section 2 – Premises Standards

Section 3 – Storage Space / Delivery Standards

Section 4 – Information, Directions & Signs Standards

Section 5 – Employee Standards

Section 6 – Operational Standards

Section 1 - Cleanliness Standards

- 1.1 All Premises shall be kept clean and well-maintained at all times.
- 1.2 All garbage shall be removed from counters and tables within five (5) minutes, following the previous customer's exit.
- 1.3 Carpeting and flooring shall be vacuumed or cleaned daily or immediately when soiled.
- 1.4 Entrance doors (if applicable), glass windows and display cases shall be clean and free of smears, smudges, and dirt.
- 1.5 Sales and cashier areas shall be clean and organized.
- 1.6 Tray slides (if present) shall be clean.
- 1.7 Food trays shall be washed regularly (not just wiped down).
- 1.8 Light fixtures and their attachments shall be kept clean and free of dust.
- 1.9 Delivery palettes shall be neatly stacked/organized (while on loading dock or outside the Premises) between deliveries.
- 1.10 All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.
- 1.11 Hallways, elevators and areas around the Premises shall be free of Lessee-generated garbage.
- 1.12 Garbage receptacles shall be emptied regularly to avoid overflow of garbage.
- 1.13 Garbage shall be disposed of by placing accumulated garbage in Lessor-provided garbage compactor(s) and compacted.
- 1.14 Air conditioning, heating registers, and vents shall be clean regularly.
- 1.15 Premises and high touch point areas shall be cleaned in accordance to CDC guidelines to prevent the spread of Covid-19.

Section 2 - Premises Standards

- 2.1 Floors within the Premises shall be free of garbage, stains, holes, potential trip hazards and shall be clean and well-maintained.
- 2.2 All tables, chairs, booths display cases and fixtures shall be in good condition with no broken pieces, deep scratches or graffiti.
- 2.3 All walls, ceilings, glass surfaces and fixtures shall be free of dust, stains, and well maintained.
- 2.4 All lights shall be in working order and all burned out bulbs shall be replaced within 24 hours.
- 2.5 Shipping materials, packaging, and delivery carts shall be stored out of the public view when not in use.
- 2.6 Cleaning supplies and equipment shall be stored out of public view.
- 2.7 Closet doors shall be kept closed.
- 2.8 Garbage receptacles shall be odor free, kept clean and in good condition, without dents, marks, or peeling paint.
- 2.9 The personal belongings of employees shall not be in public view.
- 2.10 All entrances to F&B/Retail concession units shall be free from obstruction(s), including concession merchandise any loading and unloading equipment, sales/advertising stanchions, and Lessee-generated garbage.
- 2.11 Lessee-provided air conditioning and heating units shall be maintained in good working order.
- 2.12 Music shall not be played from the F&B/Retail concession unit.

Section 3 - Storage Space / Delivery Standards

- 3.1 Products and merchandise stocked in Lessee's support space (if applicable) shall not block doors, electrical panels or hinder the fire suppression system.
- 3.2 Lessee shall not erect walls within the storage space (if applicable) to create office space, private storage or additionally secured areas.

Section 4 - Information, Directions and Signs Standards

- 4.1 Store policies pertaining to credit cards, returns/refunds, shall be clearly displayed.
- 4.2 Clearly display a toll-free number for customer complaints or customer compliments.

- 4.3 Hours of operation shall be fully displayed.
- 4.4 Handwritten and unprofessional signs shall not be used.
- 4.5 Illuminated signs shall be in proper working condition.
- 4.6 All signage/postings shall receive Aviation approval prior to installation. All necessary licenses, permits, notices and inspection certificates on the Premises will be clearly displayed.
- 4.1 All signage/postings shall comply with plans approved by the Aviation Director.
- 4.2 All necessary licenses, permits, notices and inspection certificates on the Premises shall be clearly displayed.

Section 5 - Employee Standards

Employees shall:

- 5.1 Project a friendly and attentive demeanor and have a positive attitude towards customers and fellow employees at all times.
- 5.2 Provide appropriate attention to customers, purchasing, asking questions, or needing assistance and not gather to chat while on duty.
- 5.3 Make every effort to satisfy a customer's needs, even when those needs are outside the employee's scope of work.
- 5.4 Maintain appropriate eye contact and a pleasant tone of voice while conversing with customers and fellow employees.
- 5.5 Provide each customer with correct change, a receipt, and a "thank you."
- 5.6 Be well informed, capable of providing directions and knowledgeable about where and how to obtain requested information or service for customers.

Remain calm when encountering an upset customer, try to calm the customer, listen carefully and show empathy with the customer's problem. When encountering a dissatisfied customer, employees should obtain the facts; state any applicable policy clearly and politely; and be able to offer a solution or an adequate alternative to the customer. If unable to satisfy the customer or resolve the issue, employees shall direct the customer to the immediate supervisor.

- 5.7 Be trained on how to obtain assistance to resolve customer questions, address language barriers, and respond to medical and operational emergencies.
- 5.8 Refrain from using foul or inappropriate language at all times.
- 5.9 Have access to personal protective equipment (PPE) to prevent the spread of COVID-

19, pursuant to CDC and TSA guidelines.

Employees shall not:

- 5.10 Eat, drink or chew gum in the view of customers.
- 5.11 Sleep on duty or in a public area.
- 5.12 Use cell phones and personal music devices while on duty.
- 5.13 Wear sunglasses indoors while on duty, unless medically required and accompanied by a doctor's note.

Additionally, to support employee standards, Lessee shall ensure:

- 5.14 Employees have sufficient cash available immediately upon opening to make change for early morning sales.
- 5.15 All complaints be dealt with promptly and documented appropriately.
- 5.16 Employees wear appropriate uniforms or clothing, which shall be clean and presentable to the public.
- 5.17 Employees wear appropriate types and amounts of jewelry, if applicable.

Section 6 - Operational and Product Standards

- 6.1 All odor-producing operations, products and equipment must be controlled by wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors include odors of machinery, electrical devices, perfumes and perfume products, cleansers, and oils.
- 6.2 All prepackaged food items shall be labeled with an "expiration date." No items shall be offered for sale or remain on shelves after the expiration dates and times.
- 6.3 Food service preparation must comply with all applicable regulations, including those established by the Maricopa County Health Services Department (MCESD).
- 6.4 All food merchandisers and related equipment shall be in good working order maintaining the hot or cool temperature, as necessary, in accordance with MCESD.
- 6.5 Any activities that involve the final preparation of food from raw or partially prepared ingredients, shall be concealed from public view unless otherwise approved by the Landlord and MCESD. Food preparation that is entertaining to watch or commonly accepted as part of a serving operation may be performed in public view with the Landlord's prior approval.
- 6.6 All odor-producing operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors

into public spaces. Objectionable odors shall include odors of machinery, electrical devices, food preparation, perfumes and perfume products, cleansers, oils and garbage disposal systems.

- 6.7 All food used for display purposes shall be rotated daily.
- 6.8 All prepackaged food items shall be labeled with an "expiration date." No items shall be offered for sale or remain on shelves after the expiration dates.
- 6.9 Lessee shall make every attempt to ensure all menu items are available.
- 6.10 Hot food shall be delivered hot and cold food shall be delivered cold.

Exhibit 9

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Lease Clause

SECTION I DEFINITIONS

The following definitions shall apply to this Exhibit, Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Lease Clause:

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City acting as a member of the Arizona Unified Certification Program pursuant to the criteria contained in 49 Code of Federal Regulations (CFR) Parts 23 and 26.

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov/Search>. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix

Commercially Useful Function means that an ACDBE or DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If an ACDBE or DBE does not perform or exercise responsibility for at least 30% of the total cost of the contract with its own work force, or if the ACDBE or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the ACDBE or DBE is presumed not to be performing a Commercially Useful Function.

Compliance Specialist means an EOD employee responsible for ACDBE Program compliance with this Lease Clause.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

Contract is a written agreement between any of the following parties: Respondent and JV partner, sublessee, subcontractor, or a Goods and Services Provider.

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services that represent a Commercially Useful Function directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. For purposes of this Lease Clause, one participant in the JV arrangement must be a certified ACDBE or DBE by an AZUCP member. The JV is limited in scope and duration to this Lease. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Lease is a written agreement for a direct concession opportunity with the City

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Respondent to solicit participation from Small Businesses. Respondent shall: identify and document potential business opportunities for Small Businesses; describe what efforts were undertaken to solicit Small Business participation; disclose results of negotiations with Small Businesses; and communicate and record Respondent's selection decisions and notifications relating to Small Business participants.

Respondent means an individual, partnership, JV, corporation or firm that submits a Response to the City to perform services requested by a RCS.

Response is a written proposal to the City prepared by a Respondent to perform services.

Revenue Contract Solicitation (RCS) is a solicitation or procurement issued by the City.

Race- and Gender-Neutral (RGN) Measures means effort(s) or program(s) that is, or can be, used to assist all Small Businesses, in the absence of a goal.

Small Business means, with respect to firms seeking to participate as ACDBEs or DBEs in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b) and self-identified small businesses. "Small Business" and "Small Business Concern" are used interchangeably in this Lease Clause.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the Lease, including a vendor under a purchase order.

Sublease is an agreement between the Respondent and another entity or entities

[sublessee(s)].

Successful Respondent means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

SECTION II GENERAL REQUIREMENTS

- A. **Applicable Federal Regulations**. This Lease is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 26 and 23. Despite the lack of a race- and gender-conscious ACDBE participation goal for this Lease, the Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Respondent shall provide all relevant information to enable the required reporting.
- B. **ACDBE Participation**. For this solicitation, the City has *not* established a race- or gender-conscious ACDBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of Small Businesses. The City *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work—a Commercially Useful Function—that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- C. **Counting ACDBE and DBE Participation**. The City will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod .
- A. **ACDBE and DBE Certification**. *Only* firms (1) certified by the City or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RGN measures on this Lease. This ACDBE and DBE determination affects the City's tracking and reporting obligations to USDOT.
- B. **Civil Rights Assurances**. As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Lease signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT- assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate."

Note: For purposes of the required Contract and Subcontract language above, the Successful Respondent is the “contractor.”

SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this Lease. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent’s Outreach Efforts as indicated in Section IV, Parts A, B and C below, the City may determine that the Respondent’s proposal is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the Lease award.

SECTION IV POST-AWARD GENERAL REQUIREMENTS

- A. **Subcontracting Commitment.** Promptly after Lease award, the Successful Respondent shall submit to City copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Respondent and any Small Businesses.

The Successful Respondent shall not reduce the amount, alter the scope of work, or terminate the Subcontractor without the Compliance Specialist’s prior written approval. Any request to alter a Small Business Subcontract must be submitted in writing to the Equal Opportunity Department before any change is made. If the Successful Respondent fails to do so, the City may declare the Successful Respondent in breach of the Lease.

- B. **Post-Award Relief from DBE Requirements.** After Lease award, the City will not grant relief from the proposed ACDBE, DBE or Small Business utilization except in extraordinary circumstances. The Successful Respondent’s request to modify ACDBE, DBE or Small Business participation must be in writing to the Compliance Specialist, who has final discretion and authority to determine if the request should be granted.

The Successful Respondent’s waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Respondent shall include with the request all documentation of its attempts to subcontract with Small Businesses and any other action taken to locate and solicit a replacement Small Business.

If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation

of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

- C. **Substitutions.** If a Small Business was approved by the City, but the firm subsequently loses its Small Business status before execution of a contract, the Compliance Specialist will consider whether or not the Successful Respondent has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Respondent shall notify the Equal Opportunity Department in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Compliance Specialist's written approval has been obtained.

SECTION V. RECORDS & REPORTING REQUIREMENTS

- A. **Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation.

- B. **Reports.** The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

- C. **Annual Submittals of Small Business Participation Plan.** As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.

1. Failure to Foster Small Business Participation

The Compliance Specialist will determine whether Successful Respondent has

satisfied all outreach activities in the development of the **Small Business Participation Plan**. If the Compliance Specialist determines that Successful Respondent has failed to satisfy the **Small Business Participation Plan** requirements as specified in this clause, then the Compliance Specialist may determine that the Successful Respondent is not compliant. The City shall send a written notice to the Successful Respondent stating the basis for the Compliance Specialist's decision. The Successful Respondent has seven (7) business days to cure the deficiency. If Successful Respondent fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Successful Respondent noncompliant, in default of the Lease and not in good standing with the City of Phoenix.

D. Counting of Small Business Participation:

1. In instances where Small Business participation occurs as the result of a JV arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE firms to be reported to the Federal Aviation Administration each year of the Lease.
2. If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

EXHIBIT 10

Management, Marketing, Operations, and Technology Plans

Extraction from Successful Respondent's response submittal to AVN RCS 23-006 and includes additional sections from the Proposal/Response.

To be added prior to Lease execution

EXHIBIT 11

Form EO3 per AVN RCS 23-006 Small Business Utilization Commitment

To be added prior to Lease execution

EXHIBIT 12

Form EO2 per AVN RCS 23-006 Small Business Outreach Efforts

To be added prior to Lease execution

EXHIBIT 13

Exhibit Sustainability Summary

To be added prior to Lease execution