

**Mobile Airport Authority  
Mobile Regional Airport**

**Concession Agreement Lease**

October 25, 2005

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## **Food & Beverage/Retail Concession Lease Agreement**

THIS LEASE AGREEMENT (“Lease”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between THE MOBILE AIRPORT AUTHORITY, a public corporation organized under the laws of the State of Alabama (hereinafter referred to as the “Authority”), and \_\_\_\_\_ (hereinafter referred to as “Concessionaire”) as described in Exhibit I.

### **RECITALS**

1. The Authority is the owner and operator of Mobile Regional Airport, including but not limited to the Terminal Building and its associated Concourses, as shown in Exhibit A attached hereto.
2. The Authority has solicited proposals for a food, beverage and retail Concession Program in the Terminal and the Concourses and has negotiated the Lease with Concessionaire to operate a first-class concession for the convenience and necessity of the patrons, passengers, and public using the Airport.
3. Certain facilities exist at the Airport, and the Authority expects that additional facilities may be developed at the Airport in the future.
4. The Authority desires to grant to Concessionaire the tenant rights specified in this Lease and to establish the terms and conditions for the operation of Concessionaire’s Concession Program in the Airport.

NOW, THEREFORE, the parties intending to be legally bound by the terms and conditions of this Lease, and in consideration of the mutual covenants and benefits accruing respectively to the Authority and Concessionaire, the Authority and Concessionaire agree as follows:

### **ARTICLE I - TERM**

This Lease shall be binding upon execution. Concessionaire shall have the right to construct improvements to the Premises (as defined below) in accordance with a schedule approved by the Authority, or, in the absence of a schedule, as of the date of execution and the operating rights shall begin on the day after Concessionaire receives written certification from the Authority that Concessionaire may open for business in the Premises (“Commencement Date”), and continue eight years from the commencement date until expiration on \_\_\_\_\_ 1, 2014 (“Expiration Date”), unless sooner terminated under the provisions of this Lease. A one-year period beginning on October 1 of each year shall be considered a “Contract Year” except for the first year which shall be a partial year beginning on the Commencement Date and ending on the following September 30.

There will be two additional one year options potentially available to the Concessionaire. These are solely at the discretion of the Authority and can be exercised by the Authority within 6 months of the end of the 8th year then again within 6 months of the end of the 9th

year. The total term, if the options are granted, will then be ten (10) years.

If the Authority does not exercise an option to extend this Lease in the eighth or ninth contract year and the Concessionaire is not in default under the terms of this lease, the Authority shall reimburse Concessionaire for the net book value, at the end its last contract year, of all previously defined, approved and verified leasehold improvements made by Concessionaire that cannot be reasonably removed and reused by Concessionaire. Net book value shall be calculated using the straight-line depreciation method over a ten-year period.

## **ARTICLE II - PREMISES**

### Section 2.1 - Premises:

The Authority hereby leases to Concessionaire those premises and facilities at the Mobile Regional Airport (“Airport”) shown on the drawings attached to and made part of this Lease as Exhibit A (“Premises”), subject to the terms of this Lease.

### Section 2.2 - Ingress and Egress:

Subject to any applicable rules, regulations, or Authority policies governing the use of the Airport, the Authority grants to Concessionaire the nonexclusive right to use, in common with others, the areas designated by the Authority to be public or to be used in common, including but not limited to the walkways, streets, roadways, waiting rooms, hallways, rest rooms and other passenger conveniences at the Airport (“Public Areas”) for Concessionaire’s employees, patrons, guests and invitees for the use of which the Public Areas were designed. Concessionaire’s right under this section includes the right of ingress to and egress from the Premises for Concessionaire and its employees, patrons, guests, invitees, suppliers of materials and services, along with equipment, vehicles and other property related to Concessionaire’s business at the Airport under this Lease. The rights of ingress and egress granted by this section may be exercised without charge, provided that the Authority may charge Concessionaire for employee, patron, guest, and supplier parking privileges.

### Section 2.3 - Covenants, Conditions, and Restrictions:

This Lease is subject to the effect of (a) any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record; and (b) any land use or zoning laws or regulations of the State of Alabama, County of Mobile, and the City of Mobile.

### Section 2.4 - Rights and Privileges:

2.4.1 The Authority hereby grants to Concessionaire a non-exclusive right to sell products in the Airport in accordance with the provisions of this Lease. The Authority may grant rights to others to sell products in the Airport.

2.4.2 Unless expressly provided by this Lease, Concessionaire does not

have the right to operate vending machines or mobile food or beverage vending carts at the Airport.

2.4.3 The Authority shall have the right, in its sole discretion, to install one or more public address system speakers on the Premises for announcing flight arrivals and departures and other Airport information. Concessionaire can install any public address, paging, or other audio system on the Premises only with the express written approval of the Authority.

### **ARTICLE III - PAYMENTS BY CONCESSIONAIRE**

#### Section 3.1 - Payments Due Under Lease:

As monthly rent under this Lease, beginning with the first month during which all Concessionaire's facilities are in operation, Concessionaire shall pay the greater of (1) the Percentage Fee or (2) one-twelfth of the Minimum Annual Guarantee. Payment shall be due on the fifteenth (15<sup>th</sup>) day of the following month. For any period of less than one month, the payment shall be prorated. Concessionaire shall deliver payment to the Mobile Airport Authority, Mobile Regional Airport, P.O. Box 88004, 8400 Airport Boulevard, Mobile, AL 36608.

#### Section 3.2 - Percentage Fee:

"Percentage Fee" means the applicable percentage from the following table of Concessionaire's gross receipts for the month in question:

<b>Percentage</b>	<b>Cumulative Gross Receipts to Date</b>
<u>TBD</u> %	\$0 to \$520,000
<u>TBD</u> %	\$520,001 to Total Gross Receipts

Percentage Fees will be calculated monthly based upon the cumulative total of Gross Receipts in the then-current contract Year using the above schedule of percentages.

#### Section 3.3 - Minimum Annual Guarantee:

Concessionaire shall not be required to pay a Minimum Annual Guarantee for the [first full Contract Year]. Thereafter, the Concessionaire shall pay a Minimum Annual Guarantee equal to eighty percent (80%) of the rent paid in the previous [Contract Year].

#### Section 3.4 - Gross Receipts:

The term "Gross Receipts" as used in this Lease means Concessionaire's gross revenues from all sales made and services performed for cash or credit at the Airport, including but not limited to all deliveries originating from the Premises.

Gross Receipts does not include: (1) sales taxes separately stated and collected from customers of Concessionaire; (2) customer credit card and cash refunds given for

merchandise returned by customers; (3) receipts from the sales or trade-in value of any furniture, fixture, or equipment used on the Premises and owned by Concessionaire; and (4) receipts from the sale of any item to another operation or affiliate of Concessionaire, whether or not located on the Airport, where such sale is incidental and not made for the purpose of circumventing the fee provisions of this Lease.

#### Section 3.5 - Monthly Statements:

Concessionaire shall provide to the Concession Committee Representative designated by the Authority by the 2<sup>nd</sup> Friday of each month, a statement containing the following information with respect to all units operated by the Concessionaire:

1. Number of weekly transactions
2. Weekly profit per unit
3. Gross Receipts
4. Daily recap of transactions (if requested by the Authority)
5. Average dollars per transaction
6. Units per transaction

#### Section 3.6 - Concessionaire's Duty to Pay Taxes:

Concessionaire shall pay directly to the responsible governmental entity any sales, property, or other taxes, and any fees or license charges that may be levied, assessed, or charged by any governmental entity in connection with Concessionaire's Concession or other activities at the Airport.

#### Section 3.7 - Late Payment or Statement:

3.7.1 If Concessionaire is delinquent for 30 days or longer in paying to the Authority any amounts owed to the Authority under this Lease, Concessionaire shall pay to the Authority a delinquency charge assessed on the delinquent amount at the Authority's then prevailing rate on delinquent accounts (that rate is currently 1-1/2 percent per month). The delinquency charge shall accrue from the date the delinquent amount was due until paid.

3.7.2 If Concessionaire is delinquent for 10 days or more in furnishing the Authority any monthly statements required under this Lease Agreement, Concessionaire shall pay \$200.00 per delinquency to the Authority as liquidated damages for the additional administrative costs incurred by the Authority in processing and reviewing the delinquent statement.

3.7.3 The remedies provided by this section are in addition to all other remedies the Authority may have for a breach of this Lease, and nothing in this section shall be deemed to be a waiver by the Authority or to stop the Authority from asserting any of those other remedies.

#### Section 3.8 - Annual Report and Audit:

3.8.1 Within 120 calendar days after the end of each Contract Year,

Concessionaire shall furnish a written audit to the Authority from an independent Certified Public Accountant stating that, in the Accountant's opinion; the rent paid by Concessionaire during the preceding Contract Year was properly calculated and paid in accordance with the applicable terms of this Lease. The written audit also shall contain a complete, itemized statement of Concessionaire's: (1) total Gross Receipts as shown on the books and records of Concessionaire that were used to compute the Percentage Fees during the period covered by the audit; (2) the total rent paid; and (3) the total Percentage Fees.

3.8.2 If Concessionaire is delinquent for 10 days or more in furnishing the Authority with any annual statement required under this Lease, Concessionaire shall pay the Authority \$100.00 per delinquency as liquidated damages for the Authority's additional costs incurred in reviewing and processing the delinquent statement.

#### Section 3.9 - Annual Adjustment:

Based upon the statement required under Section 3.9, any amount by which the greater of the total Percentage Fees or the Minimum Annual Guarantee exceeds the total rent paid shall be paid to the Authority at the time the accountant's statement is submitted. Any amount by which the total rent paid exceeds the greater of the Minimum Annual Guarantee or the Percentage Fees shall be credited to Concessionaire's rent obligation under this Lease for the then current Contract Year.

#### Section 3.10 - Financial Accountability:

Concessionaire 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. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principals, applying certain estimates and informed judgments as required.

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.

Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts by location within the Airport. Books and records shall be kept in accordance with generally accepted accounting principles, and shall be maintained in Mobile, Alabama, for at least three years after the end of the Contract Year to which they pertain, provided that records may be kept elsewhere after the expiration or termination of this Lease, but shall be produced at Mobile, Alabama, for the Authority's inspection, audit, or copying upon request by the Authority within three years after expiration or termination of this Lease.

#### Section 3.11 - Audit of Records:

The Authority may audit Concessionaire's books and records at any time to verify compliance with this Lease. The Authority may use its own staff to perform audits under this section, or may engage an independent certified public accountant to perform the audits.

If an audit reveals that Concessionaire has understated its Gross Receipts by 3 percent or more, the entire expense of the audit shall be borne by Concessionaire. Concessionaire shall immediately pay any additional amounts due to the Authority, with interest at the Authority's then prevailing interest rate on delinquent accounts payable (that rate currently is 1-1/2 percent per month). Interest shall accrue from the date the delinquent payment was due under the Lease.

#### Section 3.12- Requested Reports:

If requested by the Authority in writing, the Concessionaire will be required to submit, within sixty (60) days of such written request, one (1) or more reports containing the following information:

- A review of prior year's performance by space, including achievement of sales projections, financial results and other goals and objectives;
- The establishment of new operational goals and objectives for the forthcoming year, including identification of sales opportunities;
- Identification of employee and labor initiatives to ensure compliance with the Agreement including training, customer service and employee retention programs, and job fairs;
- Projections of sales by space, sales per Enplaned Passenger and payments to the Authority;
- Any planned expenditures, investments or improvements in the Concession Area;
- Any change or improvements in operation anticipated, in the following year, such as marketing efforts, training or services at the Concession Area by Subtenants;
- Copies or summaries of any cost control plans and manuals;
- Marketing and promotion plan and budget for the Concession Area, including the annual marketing plan;
- An update to Concessionaires plan to meet or exceed DBE and local participation goals, including details of good faith efforts made to expand participation, even if Concessionaire is meeting its goals;
- Copies of any consumer surveys and other industry trend studies, and
- Any other information reasonably requested by the Authority.

### **ARTICLE IV - CONCESSIONAIRE OPERATING STANDARDS**

#### Section 4.1 - Service Standards:

4.1.1 Greeting: All Concessionaire patrons shall receive warm, friendly, smiling, prompt, courteous service. Telephones are to be answered promptly from a location that is not visible or audible to customers inside the store. Walk-in customers are the priority.

4.1.2 Merchandising: Concessionaire shall employ attractive merchandising that entices guests to purchase retail products. Concessionaire shall develop and implement creative and effective merchandising means within the Premises; those means may include without limitation merchandise displays, full retail display cases, promotional displays (for which Authority approval must be obtained), and attractive packaging. All signage and

merchandising displays must conform to the Concessionaire signage standards of the Authority and must be approved by the Authority. During the build-out/remodeling period it is the responsibility of the Concessionaire to adequately enclose construction area.

4.1.3 Service: Service shall be timely, attentive, and friendly. Merchandise requests shall be taken promptly and in a friendly and courteous manner. Processing of payments for retail products shall be prompt. Sales receipts shall be properly itemized, shall reflect precisely the actual retail products purchased, and shall present individual prices, totals, and taxes. All patrons shall be thanked for patronage.

4.1.4 Credit Cards: Concessionaire shall accept traveler's checks and at least two major credit cards for any purchase.

4.1.5 Hours of Service: Except as otherwise expressly agreed by the Authority, Concessionaire shall provide all services required under this Lease during the periods set forth in the "Concession Schedule" that is to be mutually agreed upon and attached and hereby incorporated into this Lease as Exhibit B within thirty (30) days of commencement of operations. The Authority may amend Exhibit B from time to time to accommodate Airport operating requirements; amendments shall be effective upon written notice to Concessionaire. The following must be included in Exhibit B: Facilities must be open three hundred sixty five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic. Facilities must be opened 30 minutes prior to first flight and 30 minutes after last flight. Staffing levels need to be high enough to ensure that employees are able to take breaks, leave to receive shipments, or move products from storage without interrupting operations.

4.1.6 Testing and Inspection by the Authority: The Authority may monitor, test, or inspect Concessionaire's services at any time through the use of a responsible shopping service or by other commercially reasonable means that do not unduly interfere with Concessionaire's business.

#### Section 4.2 - Employee Standards:

Concessionaire shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the work requirements. Each employee shall: (1) be clean, neat, and attired in the approved uniform; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) have a thorough health examination before employment at the Airport and annually during employment there; (5) not wear excessive amounts of jewelry, perfume, or cologne; and (6) wear the employee's Airport identification at all times, showing the names of the Concessionaire and the employee. Concessionaire shall discipline and, if necessary, discharge any employee who fails to conform to the foregoing standards while working at the Airport.

#### Section 4.3 - Sanitation, Hygiene, and Cleanliness:

4.3.1 Concessionaire shall keep the Premises and surrounding areas free of debris, trash or soiled cleaning supplies (e.g., rags and buckets) originating from Concessionaire's operations or patrons. Concessionaire shall ensure that all equipment,

walls, floors, counters, and other surfaces are cleaned and sanitized frequently, and that employee areas are cleaned daily. Concessionaire shall keep the Premises free of hazardous conditions, shall keep public areas around the Premises free of hazardous conditions originating from Concessionaire's operations, and shall notify the Authority promptly of other hazardous conditions in the public areas outside the Premises. Concessionaire shall monitor areas within and contiguous with the Premises to ensure that they are kept clean and orderly, and that trash is not allowed to accumulate. Concessionaire shall ensure that all employees conform to personal hygiene requirements established by Concessionaire policy or by federal, state, or local laws or regulations.

4.3.2 Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises and shall provide for its timely removal to the central collection point to be provided by the Authority. Concessionaire shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Concessionaire shall keep all garbage and putrescible materials in durable, fly- 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. Concessionaire shall clean the containers as necessary to prevent odors.

Concessionaire shall not allow boxes, cartons, barrels, or other similar items to remain within view of Public Areas. The Authority shall be responsible for handling and removal of trash and other refuse deposited by customers in Public Areas.

#### Section 4.4 - Waste Reduction, Recycling, Reuse:

4.4.1 Generally: Concessionaire shall gather, sort, and transport all garbage, refuse, and recyclable materials daily to the Authority's holding area closest to the Premises, or to the holding area designated by the Authority. Concessionaire shall place all garbage, refuse, and recyclable materials in the appropriate containers at the holding area. Concessionaire is encouraged to maximize its participation in the Authority's Airport-wide recycling program.

4.4.2 Garbage: Concessionaire shall take all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove nonessential overwraps, containers, and other packaging, and to use recyclable materials for essential packaging.

4.4.3 Recyclable Materials: The Authority reserves the right to institute a recycling program in which Concessionaire shall participate. The Authority may provide containers for recycling: (1) corrugated cardboard, (2) magazines, (3) newspapers, (4) tin and steel cans, (5) glass that is clear, brown, or green, and (6) high grade office paper, including letterhead, typing paper, photocopy paper, and computer paper. Concessionaire shall ensure that the following materials are not deposited in Authority recycling containers: (1) hazardous materials, (2) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other hazardous liquids; and (3) "non-clean" paper, including wax coated paper, paper that is soiled with food, paper with plastic covers or windows, and colored paper.

#### Section 4.5 – Deliveries:

4.5.1 Hours: All deliveries shall be scheduled during non-peak aircraft arrival and departure times. The Authority may issue schedules of acceptable delivery times, which the Authority may adjust from time to time, and from which Concessionaire shall not deviate without the Authority's prior consent.

4.5.2 Zones: Authorized vendor delivery zones may be established and may be changed from time to time because of Authority construction or operational requirements. Use of the delivery zone by Concessionaire or Concessionaire's suppliers is limited to 30 minutes at any one time; deliveries that will take longer than 30 minutes must be approved by the Authority. All vehicles using the delivery zones in front of the Terminal must be prominently marked on both sides with the company name or logo.

4.5.3 Transportation: Within the Terminal, Concessionaire shall ensure that supplies being transported within the Terminal are handled with care in a manner that ensures that items do not spill or leak. Goods transported from the Terminal to Concourses may be required to pass through x-ray inspection units. In transporting merchandise, products, trash, and refuse associated with operating Concessionaire's business to and from the Premises, Concessionaire shall use only those delivery and receiving routes established by the Authority and shall use appropriate carts, vehicles, or conveyances. If delivery and receiving routes are carpeted, delivery carts must be equipped with wheels suitable for operating on carpets without causing damage to them. Recyclable materials collected by Concessionaire shall be stored separately from trash and refuse, and shall be transported to the Authority's recycling area in the same manner as trash and refuse is transported.

#### Section 4.6 - Merchandise:

4.6.1 Pricing: Concessionaire shall charge reasonable prices for all retail products. The prices shall not exceed, by more than 10%, the average prices charged by comparable non-Airport locations in the Mobile area, excluding resort destinations and attractions. Concessionaire shall confirm compliance with the foregoing requirement semi-annually and shall submit to the Authority a written report documenting comparison pricing and compliance with the requirement.

Compliance with the requirements of this Section 4.6.1 shall be determined by comparing prices of twenty-five percent (25%) of those items offered in each location to the prices of similar items in three (3) of its (or its Subtenant's) local non-Airport facilities or comparable outlets within a 25-mile radius. The operator shall be given seven (7) calendar days to bring all products into compliance with the prices found in the survey. Failure to do so may result in the assessment of liquidated damages in accordance with Section 4.9.

4.6.2 Conflict Resolution: Conflicts among Concessionaires regarding merchandise sold at the Airport shall be submitted to the Authority in writing for resolution. The Authority's decision resolving the conflict shall be final and binding upon all Concessionaires.

#### Section 4.7 - Signs:

The Authority will permit Concessionaire to install and operate signs on the Premises to advertise the concession, but Concessionaire shall not install any sign until the sign has been approved in writing by the Authority. Concessionaire shall request the Authority's approval by submitting a written request, accompanied by a detailed rendering or drawing of the proposed sign. All signs must conform to the minimum requirements established by the signage standards in the "Concessionaire Design Standards" that are attached and incorporated as Exhibit F, which will be provided by Authority.

Section 4.8 - Non-Interference with Utilities:

Concessionaire shall do nothing, and shall permit nothing to be done, that may interfere with the drainage or sewerage systems, fire hydrants, heating and air conditioning systems, electrical systems, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, or plumbing on the Premises or elsewhere at the Airport. Concessionaire's duty under this section includes but is not limited to preventing grease and oils from entering waste lines, drains, and sewers.

Section 4.9 - Liquidated Damages:

Concessionaire's failure to adhere to the foregoing operating standards 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 below are reasonable estimates of the actual damages that would be incurred by the public and the Authority for the specified breaches of the foregoing operating standards, and Concessionaire agrees to pay to the Authority liquidated damages in accordance with this section at the rates or in the amounts specified below upon the occurrence of the specified breach and upon demand by the Authority. The Authority agrees to notify Concessionaire in writing of the first occurrence of the specified breach in each calendar quarter and will defer demand for payment for the first breach under this section until the first reoccurrence of the specified breach in each calendar quarter.

LIQUIDATED DAMAGES FOR VIOLATION OF  
CONCESSIONAIRE OPERATING STANDARDS

Service Standards	\$100 per occurrence
Employee Standards	\$100 per occurrence
Sanitation, Hygiene, & Cleanliness	\$100 per occurrence
Waste Reduction, Recycling, Reuse	\$100 per occurrence
Deliveries	\$100 per occurrence
Product Pricing	\$250 per occurrence
Signs	\$100 per occurrence
Utility Interference	\$100 per occurrence

Section 4.10 - Cash and Record Handling:

Concessionaire shall adhere to the Cash and Record Handling requirements specified in Exhibit C.

Section 4.11 - Management:

The operation and maintenance of the Premises shall be under the constant, direct supervision of a trained, qualified, and experienced manager employed by Concessionaire. Concessionaire's manager 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, including without limitation decisions regarding merchandise quality, merchandise price, and employee conduct. Concessionaire's manager 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. Concessionaire may employ more than one manager to satisfy the requirements of this section.

Section 4.12 – Liquor License:

To the extent the Concessionaire proposes to provide alcoholic beverages, the Concessionaire shall, within one (1) week of execution of this Lease, file the appropriate applications to obtain an Alabama Liquor License and shall diligently prosecute such application until such license is issued.

**ARTICLE V - IMPROVEMENTS TO BE MADE BY CONCESSIONAIRE**

Section 5.1 - Furnish and Equip Premises:

Concessionaire shall make a capital investment, including design, tenant improvements, furniture, fixtures and equipment necessary to operate Concessionaire's retail business. Upon the request of Concessionaire, the Authority may, but is not obligated to, assist Concessionaire in the reduction of its capital costs by providing construction materials or services.

Upon completion of construction, Concessionaire, will submit to the Authority, in a form satisfactory to the Authority, documentation of its total capital investment costs. Upon satisfactory review of the capital investment costs documentation, the Authority will reimburse Concessionaire, within 45 days of document submittal, for capital investment costs, including design, tenant improvements, furniture, fixtures and equipment necessary to operate Concessionaire's retail business.

Any improvements, furniture, furnishings, trade fixtures and equipment must comply with the Authority's standards and may be installed only with the Authority's prior written approval.

The Concessionaire or its agents or contractors shall remove any marble material required by the approved construction plans in such a way so as to avoid damaging the marble. Any

such removed marble material shall be the property of the Authority.

Except as otherwise provided in this Lease, Concessionaire shall provide and maintain at its own expense a first-class operation, and shall provide at its own expense all improvements, alterations, and trade 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 in the proper conduct of Concessionaire's business.

All improvements, ceiling finishes, wall finishes, floor finishes, furniture, fixtures, and equipment used in the Premises shall be in accordance with Concessionaire's Proposal and the Exhibit F "Concessionaire's Design Standards". All furnishings, fixtures, equipment and improvements shall be of high quality, safe, fire-resistant, and attractive in appearance.

All improvements that are affixed in any manner to the Premises are "Leasehold Improvements." All non-affixed items, including cash registers, safes, racks, and non-affixed display fixtures, are hereinafter referred to as "Trade Fixtures." Upon completion of construction, furnishing, decorating, and equipping as described in Article V, Concessionaire and its prime construction contractor or contractors shall provide the Authority with a certified statement setting out the total construction cost, the costs of furnishing, decorating, and equipping the Premises. The costs submitted by Concessionaire shall be itemized and segregated into the two categories of Leasehold Improvements and Trade Fixtures.

#### Section 5.2 - Plans and Specifications:

Prior to construction, Concessionaire shall prepare and submit to the Authority for review, final plans and specifications for the improvements, fixtures, and furnishings, including estimated costs, as finally agreed upon with the Authority. The final plans and specifications shall be as specified by the Concessionaire Design Standards set forth in Exhibit F. Upon approval by the Authority of these final plans and specifications, Concessionaire shall proceed with construction in the Premises which will be delivered as of the date specified by the Authority in writing to Concessionaire. If required by law, Concessionaire shall have these final plans and specifications prepared by an architect or engineer registered and licensed to practice in the State of Alabama.

The Authority will give written notice to Concessionaire of the date the Premises have been certified by the Authority's Engineer as available for improvement by Concessionaire. Except as otherwise provided in this Lease, all Concessionaire improvements shall be at Concessionaire's sole cost and expense and shall not damage the building of which the Premises are a part.

#### Section 5.3 - Approval of Plans and Specifications for Changes or Alterations:

5.3.1 Any subsequent changes, alterations or additions to Leasehold Improvements or the Premises, shall be subject to the prior written approval of the Authority. Three full and complete copies of the design drawings and construction schedule for all work, facilities, and improvements, shall be submitted to, and receive the Authority's written approval before Concessionaire engages a construction contractor. All construction shall

conform to the architectural requirements of the Authority which may be amended from time to time. Three copies of construction plans and specifications for all improvements or subsequent changes or alterations of the Premises shall be given to the Authority for review prior to commencement of construction. After final approval by the Authority, the Authority shall return to Concessionaire one approved copy for Concessionaire's records and shall retain the other copies as official records of the approved plans and specifications.

5.3.2 All improvements, equipment, furnishings, and fixtures constructed or installed by Concessionaire, its agents, or contractors, including their plans and specifications, shall conform in all respects to the Authority's standards, applicable statutes, ordinances, building codes, and rules and regulations, including the Authority's permit requirements. The approval given by the Authority shall not constitute a representation or warranty as to such conformity; responsibility for conformity shall at all times remain in Concessionaire.

5.3.3 Approval of the Authority shall extend to and include architectural and aesthetic matters. The Authority reserves the right to reject any designs submitted and to require Concessionaire to resubmit designs and layout proposals until they meet the Authority's approval.

5.3.4 In the event of disapproval by the Authority of any portion of the plans and specifications, Concessionaire shall promptly submit necessary modifications and revisions of these plans and specifications. No substantial changes or alterations shall be made in any executed plans or specifications after initial approval by the Authority, and no alterations or improvements shall be made to or upon the Premises without the prior written approval of the Authority. The Authority agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations to submitted plans or specifications.

5.3.5 Ninety days after completion of all work, Concessionaire shall provide to the Authority two completed sets of as-built drawings. Concessionaire agrees that, upon the request of the Authority, Concessionaire will inspect the Premises jointly with the Authority to verify the as-built drawings.

#### Section 5.4 - Title to Leasehold Improvements:

5.4.1 All Leasehold Improvements approved by the Authority and any Authority-approved additions and alterations to these Leasehold Improvements shall be and remain the property of Concessionaire until the expiration or termination of this Lease, except that title shall be in the Authority where Concessionaire has sold the Leasehold Improvements to the Authority and leased them back. Upon expiration or termination of this Lease for any reason, all Leasehold Improvements shall become the property of the Authority; provided, however, that any Trade Fixtures, signs, and other personal property of Concessionaire not permanently affixed to the Premises shall remain the property of Concessionaire if Concessionaire is not in default at the time of termination or expiration of the Lease, and if they are removed from the Premises no later than two days after the expiration or termination.

If Concessionaire fails to remove its Trade Fixtures, signs, and other personal property within two calendar days, or a longer period agreed to in writing by the Authority, after the expiration or termination of this Lease, the Authority, at its option, may determine that title to these items shall vest in the Authority at no cost to the Authority.

Concessionaire shall remove its Trade Fixtures, signs, and personal property in a manner and at times that do not interrupt operation of the Airport facilities. Concessionaire shall repair all damage done to the Premises or other Authority-owned property resulting from the removal of such Trade Fixtures, signs, and personal property and shall restore the Premises and other Authority-owned property to the state of good repair that existed prior to the installation of Concessionaire's Trade Fixtures, signs, and personal property, less normal wear and tear.

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

5.4.3 Concessionaire shall maintain all Leasehold Improvements at its own expense, including but not limited to those the title to which is vested in the Authority.

#### Section 5.5 - Removal and Demolition:

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

#### Section 5.6 - Rules and Regulations:

The Authority shall have the right to adopt and enforce reasonable rules and regulations with respect to use of the Airport, Terminal Building, and related facilities, which Concessionaire agrees to observe and obey. The Authority shall further have the right to adopt and enforce reasonable rules and regulations related to construction of improvements by, or on behalf of, the Concessionaire, including but not limited to hours of construction, noise abatement, dust and debris abatement, and protection of patrons. Such rules or regulations may be amended from time to time by the Authority. Those rules include but are not limited to any "Concessionaire Rules and Regulations" that may be promulgated from time to time.

### **ARTICLE VI - RELOCATION, REDUCTION, OR EXPANSION**

#### Section 6.1 - Authority's Authority:

If at any time during the term of this Lease the Authority determines that it is necessary for the efficient operation of the Airport, the Authority may require Concessionaire to close or reduce its Concession. If the Authority requires a reduction, Concessionaire may elect to close its Concession, and the closure shall be treated in the same manner as if the Authority had required closure. If Concessionaire makes a request promptly after receiving notice of a closure or reduction, the Authority will attempt to negotiate a mutually acceptable relocation

within the Airport; but Concessionaire acknowledges that relocation is unlikely.

Section 6.2 - Compensation:

If a closure occurs under this Article, the Authority shall reimburse Concessionaire for the net book value of all Leasehold Improvements made by Concessionaire that cannot reasonably be removed and reused by Concessionaire and that cannot be used by Concessionaire in a relocated or reduced Concession. Depreciation shall be 30 percent for the first 12 months of use, 20 percent for the second twelve months of use, and straight line over the remaining Lease term, except that the life of an improvement for tax purposes shall be used for depreciation if that life is shorter than the remaining Lease term.

Section 6.3 - Notice:

The Authority shall give Concessionaire at least 90 calendar days written notice before requiring Concessionaire to close or reduce its concession.

**ARTICLE VII - MAINTENANCE OF PREMISES**

Section 7.1 - Maintenance:

Concessionaire shall at all times and at its sole expense maintain in good repair and keep in a clean and orderly condition and appearance the Premises and all improvements on the Premises, including furnishings, fixtures, and equipment, whether installed by Concessionaire or by the Authority and Concessionaire. The Authority shall be the sole judge of the quality of maintenance. Without limiting the foregoing, Concessionaire shall maintain those specific items noted as the responsibility of Concessionaire on Exhibit D, attached.

Section 7.2 - Repairs:

7.2.1 All repairs to the Premises done by or on behalf of Concessionaire shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original in materials and workmanship, and, except in emergencies requiring immediate response, must have the prior written approval of the Authority. All repairs shall be approved in advance by the Authority and shall conform to the rules and regulations prescribed from time to time by federal, state, or local authority having jurisdiction over the work in Concessionaire's Premises. The Authority shall be the sole judge of the quality of the repairs.

7.2.2 Concessionaire shall repaint or refinish at its own cost high traffic areas subject to greater-than-normal wear on a schedule to be specified by Concessionaire, or as may be directed by the Authority if Concessionaire fails to specify a reasonable schedule. All Trade Fixtures and furnishings that become worn, chipped, dented, or gouged, shall be repaired or replaced. Premises received by Concessionaire in "as-is" condition, if any, shall be refurbished within three years after the Commencement Date. Concessionaire shall also include, as part of its operating expense, an amount equal to two percent of Concessionaire's

total Gross Receipts per year for the purpose of refurbishing the Premises in accordance with the schedule set forth in the Request for Proposals and in Exhibit D. All refurbishments shall be subject to the provisions of Section 5.

Section 7.3 - Right to Enter:

7.3.1 The Authority shall have the right to enter the Premises to inspect the Premises at reasonable times during Concessionaire's regular business hours or at any time in case of emergency to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Lease.

7.3.2 The Authority shall have the right to enter the Premises to cure any material breach that remains uncured by Concessionaire after reasonable notice and opportunity to cure.

7.3.3 The Authority shall have the right to enter the Premises to respond to any emergency.

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

Section 7.4- Failure to Maintain or Repair:

If Concessionaire refuses or neglects to undertake the maintenance, repair, or replacements requested by the Authority, or if the Authority is required to make any repairs necessitated by the acts or omissions of Concessionaire, its employees, agents, servants, or licensees, the Authority shall have the right to make such repairs on behalf of and for Concessionaire. Such work shall be paid for by Concessionaire within ten days following demand by the Authority for said payment at the Authority's standard rates plus the Authority's overhead, or, if the work is performed by the Authority's contractor, the Authority's actual cost, including but not limited to Authority administrative costs.

Section 7.5 - Operation Costs:

Concessionaire shall bear at its own expense all costs of operating Concessionaire's business under this Lease, and shall pay, in addition to rental and other payments specified in this Lease, all other costs connected with the use of the Premises, facilities, rights and privileges granted, including, but not limited to, electricity, heat, and Janitor service and supplies.

Section 7.6 - Utilities:

Except for utility charges which are part of the Common Area Maintenance Expenses, Concessionaire shall pay directly to the entity (which may be the Authority; e.g., in the case of electricity) providing or delivering utility services the cost of those services provided to or at the request of Concessionaire. The Authority shall have no liability for blackouts, or any other cessation, interruption, or failure of utilities.

Section 7.7 - Hazard, Potential Hazard, Nuisance, or Annoyance:

Any nuisance, annoyance, hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Concessionaire's actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from the Authority. If, in the Authority's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the Authority may require Concessionaire to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this section shall be deemed to preclude the Authority from pursuing any available remedy for breach of this Lease. Concessionaire'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 7.9 - Security:

Concessionaire may provide, but shall not be obligated to provide, any additional or supplemental security services that it may desire at its own cost. That right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of Concessionaire under this Lease. Any extra security protection shall be subject to approval by the Authority's police force and shall in no way hinder or interfere with the performance of their duties.

**ARTICLE VIII - FACILITIES TO BE PROVIDED BY THE AUTHORITY**

Section 8.1 - Generally:

In addition to other duties imposed upon the Authority by this Lease, the Authority shall:

- 8.1.1 Maintain the Terminal Building and Concourses;
- 8.1.2 Provide facilities and services of the type now found in the Terminal Building and Concourses;
- 8.1.3 Maintain reasonable automobile, bus, and truck access to the Terminal Building; and
- 8.1.4 Provide Concessionaire's employees, on a space-available basis in common with other employees of tenants, Concessionaires, and users of the Terminal Building and Concourses, with a certain area or areas designated for employee parking. The Authority reserves the right to charge employees who use the employee parking provided under this section a reasonable charge for this service. Employee parking charges may be changed from time to time.

Section 8.2 - Improvements to the Airport:

The Authority and Concessionaire agree and acknowledge that, from time to time, the Authority may undertake improvements to the Terminal Building and Concourses during the term of this Lease. The Authority will attempt to make those improvements in a manner that

does not interfere unreasonably with the operations of Concessionaire authorized under this Lease. Concessionaire 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 Concessionaire, that may arise as a result of such improvements undertaken by the Authority; provided, however, in the event of damage to physical property of Concessionaire as a result of the negligence or willful acts or omissions of the Authority, its employees, agents or contractors, such waiver shall not be applicable with respect to such physical property.

**ARTICLE IX - INSURANCE, INDEMNITY, AND DAMAGES**

Section 9.1 - Indemnification:

Concessionaire agrees to indemnify, save, and hold harmless the Authority, its directors, agents, officers, representatives and employees, and their successors, and assigns, individually or collectively, from and against all liability for any fines, claims, suits, demands, actions, or causes of action of any kind and nature including, but not limited to, personal injury or death and property damage, in any way arising out of or resulting from any activity or operation of Concessionaire in, on, or about the Premises or upon the Airport or in connection with its use of the Premises or Public Areas of the Airport. Concessionaire further agrees to pay all expenses in defending against such claims made against the Authority; provided, however, that Concessionaire shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of the Authority, its agents, or employees. Concessionaire and the Authority shall give prompt and timely notice to the other of any claim made or suit instituted that in any way might affect either party.

Section 9.2 - Insurance:

Subject to Concessionaire’s right to maintain reasonable deductibles in such amounts as are approved by the Authority, Concessionaire shall procure and maintain, at its own expense, the following types and amounts of insurance for the term of this Lease:

	<u><b>TYPE</b></u>	<u><b>AMOUNT</b></u>
A.	<u>Workers’ Compensation</u> And Employer’s Liability	Amounts required by Workman’s Compensation Act and insurance laws of the State of Alabama
B.	<u>Commercial General (Public) Liability</u> - to include (but not limited to) the following:  (1) Premises/Operations (2) Independent Contractors (3) Personal Injury (4) Products/Completed Operations (5) Contractual Liability Where Exposure Exits	<u>Combined Single Limit for Bodily Injury or Property Damage</u> (Certificate must indicate whether the policy is a claims made or occurrence form): \$2 million per occurrence (or its equivalent).

(6) Elevators/Escalators

- |    |   |  |
|----|---|--|
| C. | <u>Comprehensive Automobile Liability</u> - to include coverage for:<br>(1) Owned/Leased Automobiles<br>(2) Non-owned Automobiles<br>(3) Hired Cars | <u>Combined-Single Limit for Bodily Injury or Property Damage:</u><br>\$1 million (or its equivalent). |
| D. | <u>Property Insurance</u> - for physical damage to the property of Concessionaire including improvements and betterments.                           | Coverage for the replacement value of replacement property.  |

Section 9.3 - Additional Insurance Requirements:

9.3.1 Concessionaire further agrees that with respect to the above-required insurance the Authority shall:

9.3.1.1 Be named as additional insured/or an insured(with respect to property insurance, the authority shall be an additional insured as its interests may appear).

9.3.1.2 Be provided with a waiver of subrogation.

9.3.1.3 Be provided with thirty days' advance notice, in writing, of cancellation or material change.

9.3.1.4 Be provided with Certificates of Insurance evidencing the above-required insurances prior to the commencement of this Lease. Said notices and certificates of insurance shall be provided to the Authority's Risk Manager.

9.3.2 Insurance carried by Concessionaire in compliance with this Lease shall be primary before any insurance carried by the Authority for the Authority's own protection.

9.3.3 All policies of insurance must be provided by insurance carriers with an AM Best rating of A or its equivalent, or by an insurance carrier deemed satisfactory by the Authority.

9.3.4 Concessionaire waives any claim or right of recovery arising during the term of this Lease which the Concessionaire may have against the Authority for any loss or damage to the Premises, or property located on the Premises, caused by fire, explosion, or any other risk covered by standard all-risk property insurance. Concessionaire shall provide to the Authority a release of subrogation rights from any insurance carrier with which the Concessionaire carries fire, explosion, or other risk coverage on the Premises or property located on the Premises.

Section 9.4 - Liens and Performance Bond:

9.4.1 Concessionaire shall not allow any liens to attach to the Premises or its interest in this Lease without prior written approval of the Authority. Prior to the commencement of any construction, alteration, or repair hereunder of Concessionaire's improvements, furnishings, or equipment which exceeds \$20,000 in cost, Concessionaire shall furnish to the Authority, without expense to the Authority a performance bond and a payment bond issued by a surety company licensed to transact business in the State of Alabama and satisfactory to and approved by the Authority with Concessionaire's contractor or contractors as principals. The penal amount of each bond shall be not less than 100 percent of the total contract cost of the contract or contracts for the construction, alteration, or repair of such improvements, furnishings, or equipment. In the event that such contracts involve alteration or work on or to the Authority's facilities, the performance and payment bonds 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 the performance bond shall guarantee the full performance of the work and shall protect the Authority from any liability, losses, or damages arising from it.

9.4.2 Concessionaire agrees to post with the Authority, upon execution of this Lease, and maintain throughout the Term of this Lease, a performance bond in the amount of 10 percent of the Minimum Annual Guarantee for the first Contract Year. This bond shall be adjusted annually to equal 10 percent of the Minimum Annual Guarantee for each Contract Year. Concessionaire agrees that a performance bond reflecting the adjusted amount will be provided annually by Concessionaire to the Authority no later than thirty days prior to the expiration of the performance bond then in force. The performance bond shall insure the full and faithful performance by Concessionaire of all the covenants, terms, and conditions of this Lease and stand as security for payment by Concessionaire of all valid claims by the Authority. Concessionaire's failure to provide a bond under this paragraph shall be a material breach of this Lease.

#### Section 9.5 - Alternative Security:

In lieu of a performance bond and with the Authority's concurrence, Concessionaire may deposit with the Authority, cash in an amount equal to 10 percent of the Minimum Annual Guarantee or establish an irrevocable line or letter of credit payable to the Authority in the same amount with a banking institution acceptable to the Authority, subject to the provision for annual increase set forth in Section 3.4. Any line or letter of credit proposed by Concessionaire is subject to the Authority's sole discretion as to its acceptability.

## **ARTICLE X - COMPLIANCE WITH LAWS**

#### Section 10.1 - Applicable Law:

Concessionaire, its officers, agents, servants, employees, contractor, licensees, and any other person whom Concessionaire controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United

States of America, the State of Alabama, the City of Mobile, and their respective agencies, departments, authorities, or commissions that may either directly or indirectly affect Concessionaire or its operations on or in connection with the Premises on the Airport.

Section 10.2 - Taxes and Licenses:

Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all 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 Concessionaire, upon Concessionaire's interest in this Lease, or upon the business conducted on the Premises, or upon any of Concessionaire's property used in connection with the Premises; provided, however, that Concessionaire 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. Concessionaire shall maintain in current status all federal, state, and local licenses and permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the operation of Concessionaire's business.

Section 10.3 - Laws of Alabama:

This Lease is governed by the laws of Alabama. Any disputes relating to this Lease must be resolved in accordance with the laws of Alabama.

**ARTICLE XI - ASSIGNMENT**

Section 11.1 - Assignment and Subletting:

Concessionaire shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber, or dispose of this Lease or any interest created by this Lease, or any interest in any portion of the same, or permit any other person or persons, company or corporation to occupy the Premises, without first obtaining the written consent of the Authority, which consent shall not be unreasonably withheld.

Section 11.2 - Assignment of Privileges:

The restriction on assignment contained in Section 11.1 above shall also apply to assignment of activities, uses, privileges, and obligations authorized under this Lease.

**ARTICLE XII - DEFAULT OF CONCESSIONAIRE**

Section 12.1 - Events of Default:

Each of the following shall constitute an event of default by Concessionaire:

12.1.1 Concessionaire's failure to pay any fee or other amount due to the Authority under this Lease more than 10 calendar days after Concessionaire's receipt of written notice of the failure to pay.

12.1.2 Concessionaire's failure to obtain or keep in full force and effect the insurance required by this Lease.

12.1.3 Concessionaire's failure to perform any of its duties under this Lease, other than a failure to pay described in section 12.1.1 above or a failure to obtain or keep in full force and effect the insurance required by this Lease described in section 12.1.2 above, for more than 30 calendar days after Concessionaire receives written notice of the failure, except that, if more than 30 calendar days are required because of the nature of the breach, a default shall not be deemed to have occurred if Concessionaire has commenced and diligently proceeded to cure the breach within 30 calendar days after receiving written notice.

12.1.4 To the extent permitted by the United States Bankruptcy Code, Concessionaire's insolvency; Concessionaire's assignment for the benefit of creditors; Concessionaire's filing of a voluntary petition in bankruptcy; an adjudication that Concessionaire is bankrupt or the appointment of a receiver for Concessionaire's properties who is not discharged within 45 days; the filing of an involuntary petition of bankruptcy and Concessionaire's failure to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on any interest in this Lease and Concessionaire's failure to secure discharge of the attachment or release of the levy of execution within 10 days.

12.1.5 Concessionaire's becoming a corporation in dissolution or voluntarily or involuntarily forfeiting its corporate charter.

12.1.6 Concessionaire's failure to abide by all applicable laws, ordinances, rules, and regulations of the United States, State of Alabama, City of Mobile, or the Authority for more than 30 calendar days after Concessionaire's receipt of written notice of the failure.

12.1.7 Concessionaire's failure to take possession of the Premises within 30 calendar days after the Commencement Date or the date the Authority first makes the Premises available to Concessionaire.

12.1.8 Concessionaire's abandonment of all or any part of the Premises, or Concessionaire's discontinuation of its operations in all or any part of its Premises for more than one calendar day, unless such discontinuation is in response to a request by the Authority, or is due to casualty, condemnation or closure of the Airport, and Concessionaire recommences operations as soon as practicable under the circumstances.

12.1.9 Concessionaire's failure to provide staffing sufficient to service its operations and meet customer demand more than one calendar day after written notice of the failure.

12.1.10 Concessionaire's failure to repair or replace, in accordance with Article XVII any improvements that have been destroyed by fire or otherwise, within 60 calendar days from the date on which the Authority certifies that Concessionaire may

proceed with the repair of its improvements.

Section 12.2 - Remedies on Concessionaire Default:

12.2.1 In the event of a default under the provisions of Sections 12.1.1 through 12.1.8, inclusive, the Authority may, at its option, terminate this Lease Agreement and at any time may exercise any other remedy or remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance.

12.2.2 Suit(s) or action(s) for the recovery of the fee payments and other amounts and damages, or for the removal of Concessionaire from the Premises, may be brought by the Authority, from time to time, at the Authority's election, and nothing in this Lease will be deemed to require the Authority to await the date on which the Lease expires. Each right and remedy in this Lease Agreement will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of exercise by the Authority of any such rights or remedies will not preclude the simultaneous or later exercise by the Authority of any other such rights or remedies. All such rights and remedies are nonexclusive.

Section 12.3 - Expenses Charged to Concessionaire:

Any amount paid or expense or liability incurred by the Authority for the account of Concessionaire according to the provisions of this Lease may, at the option of the Authority, be added to any fee or other payment then due or subsequently due under this Lease.

**ARTICLE XIII - DEFAULT OF THE AUTHORITY**

Section 13.1 - Events of Default:

Each of the following shall constitute an event of default by the Authority:

13.1.1 The permanent abandonment of the Airport.

13.1.2 The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting the operations authorized under this Lease; provided such an injunction remains in force for at least sixty days.

13.1.3 The assumption by the United States government, or any authorized agency thereof, of the operation, control, or use of the Airport and its facilities in such a manner as to substantially restrict the operations authorized under this Lease if such restriction continues for a period of three months or more.

13.1.4 The default by the Authority in the performance of any covenant or agreement required to be performed by the Authority under this Lease and the failure of the

Authority to remedy such default for a period of 60 days after receipt from Concessionaire of written notice to remedy the same.

13.1.5 Failure of the Authority to repair and reconstruct (or require Concessionaire to repair and reconstruct) the Premises that are completely destroyed in accordance with the terms of Article XV.

Section 13.2 - Remedies on the Authority Default:

In the event of default by the Authority, Concessionaire may declare this Lease and all rights and interests created by it to be terminated. Concessionaire expressly waives any claim against the Authority, its officers, agents, or employees for loss of anticipated profits in any suit or proceeding involving this Lease or any part of this Lease.

**ARTICLE XIV - REDELIVERY AND HOLDING OVER**

Section 14.1 - Redelivery:

Concessionaire will, at the expiration of the term of this Lease or upon any sooner termination of this Lease, without notice quit and deliver up the Premises to the Authority, its representative or successor. Concessionaire shall leave the Premises peaceably, quietly and in as good order and condition, allowing for reasonable use and wear, as the Premises were in upon the Commencement Date, or as subsequently improved.

Section 14.2 - Holding Over:

The Authority may, at its option, allow Concessionaire to hold over under this Lease on a month-to-month basis. It is agreed and understood that any holding over of Concessionaire after the termination of this Lease with the Authority's consent shall not renew and extend the Term but shall operate and be construed as a month-to-month permit and Concessionaire agrees to pay to the Authority fees or other payment that are in effect at the end of the regular Term of the Lease unless the Authority has given prior notice of any increased fees. Notice of such increase in fees may be given at any time upon not less than thirty day's notice. Concessionaire shall be liable to the Authority for all loss or damage on account of any such holding over against the Authority'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 the Authority in the event that Concessionaire fails or refuses to surrender possession shall not constitute a waiver by the Authority of its right to immediate possession.

**ARTICLE XV - DAMAGE OR DESTRUCTION OF PREMISES**

Section 15.1 - Partial Damage:

If Premises (which term, for purposes of this Article XVII, includes only the unfinished floors, bare walls, and unfinished ceilings of the area in the Terminal Building) are partially

damaged by fire, explosion, the elements, the public enemy or other casualty, but not rendered untenable, the same shall be repaired with due diligence by the Authority at its own cost and expense, and the Minimum Annual Guaranteed payments under this Lease shall be proportionately paid up to the time of such damage, shall cease until such time as the Premises are fully restored and shall then be proportionately reinstated.

#### Section 15.2 - Extensive Damage:

15.2.1 In the event the Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they will remain untenable for more than thirty days, the Authority shall be under no obligation to repair and reconstruct the Premises, and the payments payable under this Lease shall be proportionately paid up to the time of such damage or destruction and shall then cease until such time as the Premises may be fully restored. If, within twelve months after the time of such damage or destruction, the Premises shall not have been repaired or reconstructed, Concessionaire may give the Authority written notice of its intention to terminate this Lease in its entirety as of the date of such damage or destruction.

15.2.2 Notwithstanding the provisions of 17.2.1, if the Premises are completely destroyed as a result of the negligent act or omission of Concessionaire, fees shall not abate and the Authority may, in its discretion, require Concessionaire to repair and reconstruct said Premises within twelve months of such destruction and pay the costs of this repair; or, if Concessionaire fails or refuses to complete such reconstruction, the Authority may itself repair and reconstruct said Premises within twelve months of such destruction and Concessionaire shall be responsible for reimbursing the Authority for the costs and expenses incurred in such repair.

#### Section 15.3 - Limits of the Authority's Obligations Defined:

It is understood that, in the application of the foregoing Sections 15.1 and 15.2, the Authority's obligations shall be limited to the repair or reconstruction of the Terminal Building and Concourses to the same extent and of equal quality as obtained as of the Commencement Date under this Lease and shall further be limited to the extent of the insurance proceeds available to the Authority for such restoration. Redecoration, tenant improvements, and replacement of furniture, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed under the terms of this Lease.

#### Section 15.4 - Damage or Destruction of Leasehold Improvements:

Should the Leasehold Improvements, or any part of them, be destroyed or damaged, they shall in all instances be repaired or replaced by Concessionaire whether or not this damage or destruction is covered by insurance, provided that, in the event construction of the Premises shell is necessary, Concessionaire shall not be obligated to repair or replace until the Authority certifies that Concessionaire may proceed with the repair. If Concessionaire fails to repair or replace such damaged Leasehold Improvements subject to a schedule approved by the Authority, and provided that this Lease has not been canceled, the Authority may make such repairs or replacement and recover from Concessionaire the cost and

expense of such repair or replacement, plus an additional 25 percent of these expenses as and for the Authority's administrative cost.

Section 15.5 - No Duty to-Protect:

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

**ARTICLE XVI - MEDIATION**

Should any dispute arise between the parties to this Lease other than a dispute regarding (1) the failure to pay fees or other payments as required by this Lease, (2) possession, or (3) an adjustment of the fees which shall, be determined in accordance with Section 3.4, it is agreed that such dispute will be submitted to a mediator prior to any arbitration or litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Mobile, Alabama, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten days, or if the parties fail to agree on a mediator within ten days, a mediator shall be appointed by the presiding judge of the Mobile County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Article XVI.

**ARTICLE XVII - ATTORNEY FEES**

The prevailing party in an action brought with respect to this Lease shall be entitled to recover from the other party reasonable attorney fees at trial and on appeal.

**ARTICLE XVIII - 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.

**ARTICLE XIX - RELATIONSHIP OF PARTIES**

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

## **ARTICLE XX - PROHIBITED INTERESTS**

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

## **ARTICLE XXI - GENERAL PROVISIONS**

### Section 21.1 - Disadvantaged Business Enterprise:

21.1.1 This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession.

21.1.2 Concessionaire shall include the statements in the foregoing subsection in any subcontracts of any kind under this Lease, and shall cause those subcontractors to include those statements in second tier subcontracts and to require them to be included in any subcontracts at lower tiers.

21.1.3 Concessionaire shall submit such reports as may be required by the Authority in the form specified by the Authority for the purpose of demonstrating compliance with this section.

### Section 21.2 - Federal Aviation Action, Section-308:

Nothing contained in this Lease shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except that, subject to the terms and provisions of this Lease, Concessionaire shall have the right to possess and use the Premises under the provisions of this Lease.

### Section 21.3 - Subordination to Agreements with the United States Government:

This Lease is subject and subordinate to the provisions of any agreement currently in force or subsequently made between the Authority and the United States 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 the Authority 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. The Authority warrants that it has no existing agreements with the United States government in conflict with the express provisions of this Lease.

### Section 21.4 - Non-waiver of Rights:

No waiver of default by either party of any of the terms, covenants, and conditions to be performed or observed under this Lease by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions to be performed under this Lease by that other party.

Section 21.5 - Notices:

Notices required under this Lease may be given by personal service in the same manner as a summons under the Alabama Rules of Civil Procedure, or by registered or certified mail by depositing the notices in the United States mail in the continental United States, postage prepaid. Any notice mailed in accordance with this section shall be presumed to have been received by the addressee seventy-two hours after being deposited in the United States mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received.

Until any such change is made, notices to the Authority shall be delivered to:

Mobile Airport Authority  
Post Office Box 88004  
8400 Airport Boulevard  
Mobile, Alabama 36608-0004.

Until any such change is made, notices to Concessionaire shall be delivered to:

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

Section 21.6 - Captions:

The marginal headings and article titles of this Lease are not part of the lease and shall have no effect upon the construction or interpretation of any part of this Lease.

Section 21.7 -- Severability:

If one or more clauses, sections, or provisions of this Lease shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Lease shall remain in full force and effect.

Section 21.8 - Waiver of Claims:

Concessionaire hereby waives any claim against the Authority and the State of Alabama 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 21.9 - Right to Develop Airport:

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

Section 21.10 - 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. The Authority's Request for Proposals and Concessionaire's proposal are attached and incorporated as Exhibits J and K, respectively.

Section 21.11 - Incorporation of Required Provisions:

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

Section 21.12 - Successors and Assigns Bound:

This Lease shall be binding upon and inure to the benefit of the successors and assigns of the Authority and Concessionaire where permitted by this Lease.

Section 21.13 - Right to Amend:

In the event that the Federal Aviation Administration 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, Concessionaire 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 Federal Aviation Administration requirements.

Section 21.14 - 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 21.15 - 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, the Authority and Concessionaire 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 21.16 - Definitions:

The following terms are defined for the purposes of this Lease in the sections indicated:

“Gross Receipts”	Section 3.4
“Airport”	Section 2.1
“Public Areas”	Section 2.2
“Percentage Fee”	Section 3.2
“Leasehold Improvements”	Section 5.1

“Premises”  
“Trade Fixtures”

Section 2.1  
Section 5.1

**ARTICLE XXII - ENTIRE AGREEMENT**

It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire agreement between the Authority and Concessionaire. It is further understood and agreed by Concessionaire that the Authority and the Authority’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 Concessionaire against the Authority for, and the Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or oral agreement with the Authority is expressly waived by Concessionaire. It is understood that the Authority requires agreements to be in writing and adopted by the Authority.

**ARTICLE XXIII - CONFLICTS**

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

- (1) Lease amendments, with later amendments superseding inconsistent provisions of earlier amendments;
- (2) This Lease Agreement;
- (3) Concessionaire’s Proposal, with later authorized supplements superseding earlier;
- (4) The Authority’s Request for Proposals, with later addenda superseding earlier addenda.

**Concessionaire**

**Mobile Airport Authority**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Executive Director

Date \_\_\_\_\_

Date \_\_\_\_\_

**Approved as to Legal Sufficiency**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_  
Counsel for The Mobile Airport Authority

Date \_\_\_\_\_

**Approved by Authority On:**

\_\_\_\_\_

**EXHIBIT A**

## **EXHIBIT B**

### **Concession Schedule**

Facilities must be open three hundred sixty five (365) days a year with operating hours and staffing levels adequate for both the hourly and seasonal peaks in passenger traffic. Facilities must be opened 30 minutes prior to first flight and 30 minutes after last flight. Staffing levels need to be high enough to ensure that employees are able to take breaks, leave to receive shipments, or move products from storage without interrupting operations.

The Airport is open every day of the year as are its concessions. The Airport is busy during hours before and after traditional shopping hours. In addition, travelers using the Airport have often just traveled from different time zones and are not yet acclimated to this time zone. For these reasons all concessions facilities shall be operated seven days a week, three hundred sixty five days a year. On the airside (beyond passenger security screening checkpoints) any news & gift locations offering coffee and beverage service shall be open from one and one-half (1 ½) hours before the first schedule departure of the day (or, if later, depending on the time the TSA opens to the public) until the last actual departure of the day. Liquidated Damages, as provided for in the Lease, will be charged should tenant fail to meet the minimum required operating hours. Random checks will be made to assure adherence to rules.

It should be noted that due to unusual circumstances (delayed flights, weather, etc.) the Authority reserves the right to direct select locations to remain open beyond the designated operating hours. A plan for handling such emergency situations shall be submitted in your proposal. Such requirements for operating hours and flexibility shall be included in all Subtenant agreements. The authority reserves the right to adjust facility-operating hours as necessary to meet customer demand.

Additionally, it is expected that at each location, and Prime Operator will work with their Subtenants to ensure that they are aware of what the peak hours are for each location and will staff the facility appropriately to provide excellent customer service and avoid service lines.

The Authority's objective is to provide exemplary customer service while maintaining good overall profitability. It is acknowledged that certain operating hours for some units may not be individually "profitable" nonetheless, if the Lease requires operation during that time, that requirement will be enforced.

## **EXHIBIT C**

### **CASH AND RECORD HANDLING REQUIREMENTS RETAIL CONCESSIONS MOBILE REGIONAL AIRPORT**

A. Equipment such as cash registers, or any other electronic or mechanical device used for recording customers' sales, shall have a serial totaling unit built in them with a continual sequence recording of transaction of sales for proper sales accountability. Such sequence totaling unit shall be sealed or unsealed only in the presence of an authorized and designated representative of Authority. The totalizer of such units may not be turned back, but shall be continuous in adding to each transaction as made. All units, where Authority shall determine visible monitoring is to be made of customers' transactions, shall be placed so that said monitoring can be made readily, and the windows thereof shall be properly illuminated so that transactions can be viewed by customers from a reasonable distance when such equipment is in use.

B. All cash registers and devices used in recording sales to customers shall have a non-resettable grand total that accumulates each transaction entered into these devices. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. No register or device in which cash sales are recorded and deposited may be opened without recording the date and time of said opening. Cash register or device drawers must be kept closed at all times except when sales are made, change is made, or routine audits are conducted. Cash registers must have sufficient keys for proper breakdown of and segregation of transactions and meet all accepted standards of accounting systems and cash control.

C. Cash registers and other electronic or mechanical devices that total customers' transactions shall have a reading taken of same at least once each 24 hours and recorded for accounting purposes. Adequate security protection is to be maintained so that unauthorized persons may not tamper with the totaling unit of such devices.

D. All persons handling sales shall promptly record said sales (cash or credit) in cash registers and other electronic or mechanical devices and shall not delay or "gang" register or record such sales.

**EXHIBIT D**

**CONCESSIONAIRE MAINTENANCE RESPONSIBILITIES**

Asset Maintenance  
Division of Responsibility Matrix

<u>Item #</u>	<u>Description</u>	<u>Authority Respon sibility</u>	<u>Tenant Respon sibility</u>	<u>Remarks</u>
1.	<u>HVAC</u>			
	A. Heating, ventilation, air conditioning and controls to include central system, package units and window units.	X		
2.	<u>ELECTRICAL SYSTEMS</u>			
	A. Primary electric service, to include main conduit, wiring, electric meters, fixtures, power and lighting panels.	X		(To Concession connection point.)
	B. Power from connection point throughout tenant's space, to include conduit and wiring, subpanels, power outlets, switches and all interior lamps.		X	
	C. Area lighting, to include all exterior lighting and power distribution.	X	NA	
	D. Lighting within storefront window zone		X	
	E. Lighting within concessionaire's space.		X	

<u>Item #</u>	<u>Description</u>	<u>Authority Respon sibility</u>	<u>Tenant Respon sibility.</u>	<u>Remarks</u>
3.	<u>WATER SYSTEMS/GROUND UTILITIES</u>			
	A. Storm sewers, sanitary sewers, potable water, natural gas meters, and other site utilities.	X		
	B. Utility fixtures, to include sinks, toilets fountains, etc.			(Public restrooms- maa)
	C. Plumbing system, to include hot/cold water supply piping, hot water heater and DMV piping.	X	X	(Authority maintained facilities)
	D. Natural gas lines from source to connection point.			
4.	<u>STRUCTURE</u>			
	A. Exterior: To include roofs, sidings, locks, gutters, drains and walkways.	X		
	B. Interior leased premises: To include doors, windows, locks, door operators, ceilings, walls.	X		
	C. Furniture maintenance (sofas, chairs, ash/trash receptacles).		X	
5.	<u>FIRE SYSTEM</u>			
	A. Sprinklers (heads and piping)			
	B. Alarm and detection system units		X	
		X		
		X		

<u>Item #</u>	<u>Description</u>	<u>Authority Respon sibility</u>	<u>Tenant Respon sibility.</u>	<u>Remarks</u>
6.	<u>COMMUNICATIONS SYSTEMS</u>			
	A. Telephone cable and wiring			
	B. FAX cable and wiring		X	
	C. Computer cable and wiring	X		
	D. Public address system wiring		X	
		X		
7.	<u>CUSTODIAL SERVICE</u>			
	A. Windows-Interior			
	B. Windows-Exterior structure		X	
	C. Carpets within leased space		X	
	D. Private restrooms		X	
	E. Walls, ceiling, non-carpeted floors		X	
	F. Trash collection		X	
	G. Trash hauling		X	
8.	<u>SIGNAGE</u>		X	
	A. Regulatory/traffic control			
		X		
	B. Non-regulatory/traffic control			
		X		
	C. Building and directory			
		X		
	D. Primary signage			
	G. Store front soffit signage		X	
			X	

**EXHIBIT F**  
**Concession Design Standards**

**EXHIBIT J**  
**Request for Proposal**

**EXHIBIT K**  
**Proposal**

**EXHIBIT I**  
**Concessionaire Organizational Documents**