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Seminar 21

Off the Beaten Path: How to Navigate The Bumpy Road of Airport and Entertainment Lease Negotiations

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I. MOTION PICTURE THEATRE AND CONCERT VENUE LEASING

A. BACKGROUND; PROJECT TYPES

1. Stand Alone Movie Theatre

   (a) Traditional Project. Standalone movie theatres were more customary from the 1920s to the 1980s. Even if movie theatres were part of a larger retail center, they were often separated from the main improvements of the retail center. For example, at regional malls that included movie theatres, the theatres were often located outside the "ring road." LLs of retail centers concluded that movie theatre patrons occupied parking for too long with insufficient spending.

   (b) Less Common Today. Because of LLs' desire to drive traffic to retail centers, theatres that have been built more recently are more often located in or contiguous to the main improvements of the retail center or mixed use project.

2. Retail Centers

   (a) Regional Retail. Movie theatres are generally part of regional retail or other large retail centers. Movie theatres are not typically part of grocery-anchored retail or small retail centers.

   (b) Experiential. Movie theatres are a central part of the focus on experiential retail. Experiential retail involves cultivating experiences in a retail setting, which is different than ordinary commerce. The drive toward experiential retail has led to movie theatres, restaurants, fitness centers and specialized grocers being invited into the main retail improvements, where they were not previously as welcome.

   (c) Competition. Retail centers that offer experiential tenants and amenities to customers are more likely to attract customers, attract other tenants, command higher rights and survive changes in the bricks and mortar environment.

   (d) Synergies. In addition to the general benefits that experiential tenants like movie theatres provide, movie theatres have particular synergies with restaurants.

   (e) Parking Revenue. Where LLs are able to charge for parking, parking by customers watching a feature length film (and having a meal and/or shopping) provides an additional source of revenue for LLs.

   (f) Anchor or Quasi-Anchor. The benefits to LLs of movie theatres, and the loss of other traditional anchors has made movie theatres not just welcome into the central portion of the mall, but has made them anchor or quasi-anchor tenants.

   (g) Concert Venues. Movie theatres are more common in retail centers than concert venues. Concerts are less consistently held, less synergistic with restaurants and other retail, generate less parking revenue and are viewed by retail LLs as presenting noise and nuisance issues.

3. Mixed-Use Projects

   (a) Urban Areas. Mixed-used projects are complicated and expensive. Mixed-use projects are more common in dense urban areas.

   (b) Multi-Level or Podium Projects. In newer mixed use projects, the movie theatre is often not on the ground level. Movie theatres don't use or need traditional storefronts, so other retail tenants occupy the ground levels with storefronts, and movie theatres can occupy upper levels. Pedestrian traffic to the movie theatre can then be drawn through the retail center to the storefront of the movie theatre.

(c) Parking Issues. Mixed use projects usually involved multi-level parking structures which are expensive to build, and call for layering and segregation. The best parking for customers of movie theatres is often also the best parking for other users, but in mixed-use projects non-retail users often arrive first and stay longer.

(d) Concert Venues. Concert venues are more common in mixed-use centers than in retail centers, but movie theatres are still more common than concert venues in mixed use centers. There are more situations in which a concert venue makes sense. For example, with a mix of office and retail, the parking demand is competitive for much of the day. But with a mix of office and a concert venue, the parking is almost completely complementary.

4. New Construction

(a) New Projects. Many new movie theatres are new construction in new centers. However, these opportunities are limited to those parts of the country in which construction of new regional retail is occurring.

(b) Urban Areas. A high proportion of new regional retail is happening in urban centers. Urban markets support sales of premium offerings, such as premium food and beverage services, premium seating, and premium film formats such as 4DX and ScreenX. For example, in New York, my clients have recently opened, under development or in negotiation for theatres in Manhattan, Queens, the Bronx and Staten Island.

(c) Mixed Use Projects. A high proportion of new theatres is happening in mixed use projects. These projects are more prevalent in urban centers.

(d) Concert Venues. As existing venues are being claimed and filled, there is a greater need for new, dedicated concert venues. Construction of new venues is increasing significantly, at least compared to the last two or three decades.

5. Re-Positioning

(a) Anchor Boxes. A significant number of department stores and other big box retailers have vacated. LLs want to fill those boxes. Movie theatres can sometimes work on what was the top floor of a multi-floor department store. Movie theatres require demolition of ceilings and roofs, which leads to placement of movie theatres on top floors of vacant boxes.

(b) Entertainment Districts. A significant number of retail centers have underutilized areas, including underutilized parking. Movie theatres can be used to create entertainment districts in those retail centers.

(c) Existing Theatres. Some movie theatres require significant new investment to reactivate them. Many LLs are eager and willing to fund renovations in exchange for lease extensions and rent adjustments.

(d) Give Backs. Some movie theatres were over-sized in the late 1990s, with as many as 24 screens. Some deals can be made to surrender and demolish auditoriums, allowing LLs to develop other retail or residential, in exchange for rent adjustments.

(e) Concert Venues. Many operators have converted classic old venues (such as 1920s era 3,000 single auditorium movie palaces in urban centers). Very few are left. The opportunity to convert existing spaces to concert venues is limited.

B. ACCESS AND VISIBILITY ISSUES

1. Theatres

(a) Visibility of Theatre. A movie theatre is large and usually conspicuous. The theatre itself is a quasi-sign. Considerable thought is often given to placement of the theatre in a retail center to emphasize its visibility, size, lighting, signage and overall attractiveness. Sightlines from major vehicular intersections and parking is important. (The foregoing is sometimes but not always less true in urban cores, where sightlines may be more limited). Ts require that sightlines be respected during construction and maintained during the term of lease, including limitations on landscaping.

(b) Vehicular and Pedestrian Access. Ts require convenient vehicular and pedestrian access. Auditoriums fill and empty in short intervals, and sometimes concurrently. Ts require a parking plan, and require that the parking plan be followed during construction and maintained during the term of the lease. Ts require parking in reasonable proximity to the Theatre, and require that the path of travel be protected during the term of the lease.

(c) No Change Area/Restricted Change Area. Ts generally require a No Change Area and a Restricted Change Area.

(d) Other Events. Ts prohibit or limit the occurrence of events immediately in front of the movie theatre, or in the protected parking area or in the path of travel from parking to the theatre.

2. Concert Venues. Ts are usually less concerned about the visibility or appearance of a venue, or vehicular or pedestrian access. The offering at a concert venue on any given night is more unique than it is at a movie theatre. The offering at a concert venue on any given night is not being offered that day or night anywhere else in the world, and may not be repeated in the vicinity for months or years. Convenience is less of a concern. Customers will find the venue.

C. PARKING

1. Theatres

(a) Overall Quantity. Ts require that LL maintain minimum overall parking for the entire center or project, not just the theatre, to try to avoid an overall parking shortage that could affect theatre customer parking. The minimum is often expressed as a mathematical ratio based on T's own experience, but not less than the parking required by zoning laws. Ts will not rely upon zoning alone. These issues become more difficult in mixed-use projects, where LLs are often relying on shared parking arrangements between complementary parking uses to obtain variances from zoning laws. These issues are also affected by uncertainty about the future of ride-sharing services, autonomous vehicles, electric scooters, traditional mass transit, etc. These issues are also affected by LL's firm or fanciful plans for future development of the center or project, which can either result in removal of existing parking or increased parking demand, or both.

(b) Protected Parking. Ts require that LL maintain certain protected parking proximate to the theatre. This is not exclusive parking, but protected parking, meaning that all of the spaces must remain available on a non-exclusive basis for use by Tenant's customers (and customers of other retail tenants) for the term of the lease. The minimum number is usually sufficient for T's customers, at full capacity, or more, but use is not limited to T's customers. In large retail projects, Ts require that parking be limited to retail use. In mixed use projects, Ts require that LLs make commercially reasonable efforts to limit parking through retail use,

including through use of gates, signage, parking access cards and parking charges.

(c) Quality. Proximity of protected parking to motion picture theatre is important. Entry and exiting to parking is important, particularly in multi-level parking structures.

(d) Mixed-Use Projects

i. Other Retail. Ts willing to share protected parking area with other retail tenants. Protected parking area then benefits all retail tenants.

ii. Office. Ts reluctant to share with office tenants. Office employees arrive early and stay until 5 pm or later.

iii. Residential. Ts also reluctant to share with residential tenants. Residential tenants usually have dedicated parking.

iv. Hotel. Ts reluctant to share with hotel guests. Hotel guests arrive in early evening and stay overnight.

(e) Parking Charges. Ts prefer that customers of motion picture theatres park for free, either by no charge generally or by validation. If not free, then Ts prefer that customers be entitled to validations which provide for free initial period, followed by MFN pricing with respect to other tenants in retail center and/or with respect to other motion picture theatres nearby.

(f) Valet Parking. Usually optional. If offered, then Ts require MFN pricing and that drop off/pick up and storage be located outside protected parking area.

(g) Employee Parking.

i. Location. LLs often request designated employee parking. Ts have concerns about employees working later at night. Ts also have concerns about empty parking lot in front of theatre. LLs and Ts sometimes compromise, either based on holiday periods or visible problem.

ii. Charge. Ts require employee parking for free. Where parking is validated, either requires use of validations or use of parking access cards.

2. Concert Venues. Ts are usually less concerned about number, quality and location of automobile parking spaces. Ts must still be concerned about compliance with zoning laws. Ts very concerned about parking for buses and trucks for load in and load out for shows.

D. CONSTRUCTION

1. LL Build/T Build. Construction of theatres is unique and expensive. Ts generally prefer that LL build warm shell, with T installing FF&E. Where a motion picture theatre is built on a podium, LLs must build shell because of integration into overall building. Where T's borrowing costs are lower than LLs costs, then T may elect to build shell.

2. Plans Approval. T usually prepares theatre plans, even where LL is building shell.

3. Contractor Approval. Ts generally require approval of general contractor who will build theatre, even where LL is building shell.

4. Construction Costs. Where theatre building costs are segregable, then LL's construction costs are sometimes subject to a cap, usually a soft cap, or a tiered cap, or some other

arrangement that requires value engineering and further negotiation. Sometimes Ts share of cost increases, if any, are rentalized, either automatically or at Ts option. Value engineering and negotiation of cost sharing for estimated cost increases must happen at plans approval stage. Then further vetting must happen after delivery of motion picture theatre.

5. Essential Contingencies Deadline. Ts require an interim test deadline to confirm that LL is on track. Essential contingencies usually include zoning approvals, plan approvals, LOIs evidencing co-tenancy and ground breaking. Ts require option to terminate and reimbursement of T's costs for failure by LL to comply with deadline.

6. Delivery Deadline. Ts require a delivery deadline. Ts usually have an idea of film releases 1 or 2 years in advance. Ts are also concerned about competitive theatres being built or renovated. Ts require option to terminate and reimbursement of Ts costs for failure by LL to comply with deadline.

7. T's Work. T wants LL to provide a staging area for Ts FF&E 90-120 days prior to Delivery Date. T wants "early access" for the same period for the purpose of concurrent work in auditoriums.

8. Concert Venues. In new construction, Ts usually take a cold shell. Finishes not as refined. Construction not as complex. Seats are sometimes folding chairs.

E. PERCENTAGE RENT

1. Gross vs. Net. Percentage Rent is generally calculated on gross. Easier to calculate, less susceptible to manipulation, avoids disclosure of business model. Differs from Broadway, where Participation Rent is generally calculated on net. Gross means amounts actually received by T (not by others), and excluding sales tax.

2. Box Office. Some exclusions for IMAX, 4DX, ScreenX. In many cases, box office is public information anyway.

3. Concessions. Includes food and beverages. Sometimes a discussion about game machines, vending machines, public telephones, bathroom dispensers, advertising.

4. Breakpoint. Percentage rent is payable only if and to extent that Gross Revenue exceeds Breakpoint. Breakpoint is usually sized so that Percentage Rent is payable only if Gross Revenues exceed expectations.

5. Payable. Usually annually, sometimes monthly with annual true up. Usually academic.

6. Reporting. Usually annually, sometimes monthly.

7. Other Issues. LLs often want protection from T operating another theatre in same market. In such cases, LLs sometimes ask that other theatre's gross revenues be included in Gross Revenue. Ts sometimes ask for protection if competitive theatres are built in same market, especially those which are believed to be coming in foreseeable future.

8. Concert Venues. Also based on Gross Revenues. Sometimes no breakpoint. More often than for motion picture theatres, breakpoint is sized with expectation that Percentage Rent will be paid. Gross means amounts actually received by T (not by others). Gross Revenues often excludes sales of alcohol because alcohol is sold by third-party concessionaire. And tickets are often sold by ticket agencies. So, while Percentage Rent is more often paid, the amounts are calculated on a smaller base.

F. CO-TENANCY

1. Overall Percentage. Ts often require an overall percentage. This percentage has been getting lower in recent years. Ts sometimes require certain types of tenancies, in certain locations.

2. Restaurants. Ts want synergy with restaurants, particularly sit down and full service restaurants serving alcohol. Ts want restaurants in certain locations.

3. T's Remedies. T requires Special Rent for failure of co-tenancy. Special Rent is usually a form of percentage rent, in lieu of Base Rent, Percentage Rent, CAM and/or Taxes. T requires a termination right if co-tenancy failure persists.

4. Guaranteed Access/Alternative Access. Ts often require assurances of access regardless of performance/existence of remainder of center or project, so that termination is not necessary.

G. PERMITTED USES

1. Primary Use. Exhibition of motion pictures in any form. Not limited to first-run. No control of content by LL, other than by reference to MPAA ratings. No "fully-stocked or staffed" language. Any technological innovations or evolutions included.

2. Incidental Uses. Sales of food and beverages. Live simulcasts of other events. Other filmed entertainment. Meetings, graduations, conferences. Church uses. Charitable events. Coffee shop. Game machines and amusement devices. Anything else that is part of other motion picture theatres.

H. CONTINUOUS OPERATION.

1. Primary Use only. T will usually only to covenant the Primary Use. Other uses will follow, as justified.

2. No mandatory hours. Opening and closing hours of motion picture theatres vary by day of the week and time of year, and depend upon film product. Fixed hours are problematic. Comparison to other exhibitors is problematic. Comparison to other theatres of same exhibitor is problematic. T will usually require discretion to determine appropriate operating hours. T will also negotiate Permitted Closure periods.

3. Limited Remedies. T will usually agree to specific performance and termination remedies. T will usually not allow damages, but will sometimes surrender FF&E. T will usually not allow "recapture" other than through termination.

I. PROTECTED USES.

1. Primary Use. T wants protection against showing all or any substantial portion of any feature length-film anywhere for any reason, including in restaurants, bars, bowling alleys, fitness centers, common areas, etc. In mixed use projects, extends to community centers, museums, offices, residential common areas, rooftops, schools, adult education, etc. Ts usually ask for protection from LL's other projects within a radius.

2. Concessions. T typically requires protection for sale of popcorn because it is an iconic motion picture concessions product. T typically requires protection from certain other products within a specified area from customer entrance to the motion picture theatre. Protections include hot dogs, ice cream, frozen yogurt, candy and soda. Hot dogs and candy are associated with motion picture theatres. Ice cream, frozen yogurt and sodas are difficult maintenance issues. From T's perspective, maintenance issue cannot be addressed by confronting customers at entry. Ts usually require limits on carts, kiosks and vending machines in proximity to parking areas or motion picture theatre.

3. T's Remedies. T requires Special Rent for violation of protected uses. Special Rent is usually a form of percentage rent, in lieu of Base Rent, Percentage Rent, CAM and/or

Taxes. T requires a termination right if violation persists, with shorter fuse for violation of Primary Use protection. T usually objects to "rogue tenant" carve-outs that favor LL.

4. Concert Venues. T wants protection for live music by touring artists which is ticketed in advance. T also concerned about sponsorships, naming rights and use of names and marks. In mixed use projects with concert venues, LL's interests are sometimes reciprocal/non-aligned.

J. PROHIBITED USES.

1. Child Care Center. Restricted to locations at a substantial distance from theatre because of traffic issues and alcohol sales.

2. NC25. When theatre is built, sound attenuation is installed based on existing or anticipated uses and LL/T agreement. After theatre is built, sound attenuation can no longer be reasonably installed in the Theatre. Noise issues originate from a wide variety of causes, including dance clubs, flushing toilets and demolition/new construction.

3. Concert Venues. Not usually an issue. Shows are late. Shows are loud.

K. SECURITY

1. Motion Picture Theatres. Ts resist security outside motion picture theatres. This issue has become less important as advance ticket sales have become common, and queuing is no longer common. Exterior areas are LL's common area, not T's premises. Compromise usually reached involving consultation.

2. Concert Venues. Ts resist security outside concert venues. Queuing is becoming less common with advance ticket sales, but general admission still happens. Queuing still occurs typically in LL's common area. LL's also concerned about drunk and loud patrons, particularly after shows. From T's perspective, it can be difficult to determine origin of drunk and loud people in common areas. For legal reasons, T's recourse outside a concert venue is 911. Compromise usually involves reasonable discretion, within specified areas.

L. SIGNAGE

1. Motion Picture Theatres. Ts want sole discretion on signage inside theatre. Ts want rights to maximum signage on theatre building. As a practical matter, exterior signage usually consists of poster cases on storefront, and digital signage at box office/marquee, and building top signage if and where appropriate on exterior walls of theatre. Negotiations regarding pylon and monument signs are different at every theatre. If LL has or will have a full motion video sign, MFN is usually considered. Signage is for theatre related marketing, but can include third party names and logos such as IMAX. Rarely, T will have full third-party advertising right.

2. Concert Venues. Ts want sole discretion on signage inside theatre. Ts are often willing to accept more limited signage on exterior of concert venue or in common areas. Naming rights and other sponsorships are key revenue sources, so third-party marketing is common. Third-party advertising can be sensitive for LLs.

II. AIRPORT CONCESSION LEASING

A. Public Procurement Process

1. When and Why? - oftentimes governmental entities are required by law to publicly procure contracts if the value of the procurement exceeds a certain threshold. Private entities, such as airlines or developers, may also choose to run a procurement process to evidence a fair and transparent process.

2. Request for Information – a possible first step in the process, used to:

   (a) Obtain industry feedback on what type of model/structure would best fit the needs of the airport and the passengers, what would produce the most income and what is the most desirable for the industry.

   (b) Obtain interest in the airport from potential bidders.

   (c) Provide insight to the airport of possible responders.

Examples of RFI language:

George Bush Intercontinental Airport (IAH)

The Houston Airport System (HAS) is requesting information and input for innovative strategies and approaches for financing, developing, designing, leasing and managing all concession/commercial and related activities in:

The new Mickey Leland International Terminal (MLIT);

Certain concessions in the Federal Inspection Services Building; and

Central Receiving and Distribution Center (CRDC) to service all terminals at IAH. The Central Receiving and Distribution Center anticipated under this contract will serve as a central receiving and delivery location for food, beverage, retail, and other goods. The CRDC will help reduce traffic on surrounding roadways and will reduce congestion at the passenger security checkpoints. The Houston Airport System is also hopeful that the CRDC will enhance safety and security measures at the airport and will streamline operations.

The Houston Airport System is seeking information in a variety of areas regarding the CRDC including: Recycling and Environment.

The purpose of this Request for Information (RFI) is to seek information from concessions operating, management and development parties who are capable of achieving same and/or similar strategies and approaches.

Baltimore/Washington International Thurgood Marshall Airport (BWI)

The Maryland Aviation Administration (MAA) is seeking public and industry feedback regarding food, retail and services concessions at Baltimore/Washington International Thurgood Marshall Airport ("BWI Marshall"). MAA is receptive to all suggestions, ideas and concepts which would result in increasing competition and revenues to the State as well as enhancing the quality of the concessions and the working conditions and opportunities for the employees of the concessionaires. MAA is also hopeful that public and industry feedback may highlight any potential concerns that there may be associated with the food, retail and services concessions at BWI Marshall.

This Request for Information ("RFI") is issued solely for information and planning purposes and does not constitute a formal solicitation or procurement by MAA or the State of Maryland. Responses to this RFI are not offers and cannot be accepted by MAA, or the State of Maryland, to form a binding contract. This RFI is a unique opportunity for MAA to examine the

interest and the various options and business model principles in connection with food, retail and services concessions at BWI Marshall. Respondents are solely responsible for all expenses associated with responding to this RFI. Responses to this RFI will not be returned.

Issues to be Addressed:

In the development of information to be submitted, Respondents should address the issues below and submit any supporting material and/or documents, at the Respondents' discretion:

1. What business models (e.g. Master Concessionaire, Developer, Direct Leasing, etc.) best meets the primary objectives outlined above? If one model is preferred over another, or if a hybrid approach is preferred, please explain in detail the benefits of your suggested approach.

2. Should MAA require contractors and subcontractors to sign Labor Peace Agreements with labor organizations? Why or why not?

3. The Minimum Wage in Maryland is presently $7.25 an hour but will increase to $8.00 an hour on January 1, 2015, $8.25 on July 1, 2015, $8.75 on July 16, 2016, $9.25 on July 17, 2015, and $10.10 July 1, 2018. Should the concessionaires pay a wage to its employees that is higher than Maryland's Minimum Wage (e.g. Maryland's Living Wage which is presently $13.39 an hour)? Why or why not? If you support the payment of a wage higher than Maryland's Minimum Wage to concessionaire employees, how would you handle payments to tipped employees (i.e. tip credits)?

4. What fringe employee benefits, such as tuition reimbursement, worker retention plans, guaranteed full time work weeks, etc., if any, would be ideal for BWI Marshall's concession program?

5. What innovative or cutting edge ideas are you aware of that are presently not being utilized in BWI Marshall's concession program?

6. What is the ideal term that a contractor would need in order to recoup any Capital Investments by the concessionaire?

7. What limits the ability of ACDBEs, small and local businesses or national and international chains to participate in the concession program at BWI Marshall?

8. MAA receives approximately $13 million a year in revenue from existing food, retail and services concessions. Please explain how you think additional revenues could be generated. Please include with your explanation revenue projections and estimates of sales.

9. Please provide any additional information, suggestions and ideas you may have for working with various stakeholders, including state and local governments, international, national, local, large and small vendors, labor unions and ACDBEs, on food, retail and services concessions at BWI Marshall.

3. Request for Qualifications – used to gather vendor information from multiple companies to generate a pool of prospective bidders. This stage eases the RFP review process by preemptively short-listing candidates who meet the desired qualifications.

Examples of RFQ Language:

<u>Miami International Airport</u>

This Request to Qualify (RTQ) will establish a List of Vendors that will qualify to participate in future solicitations at Miami International Airport as one of the following: Developer, Fee Manager, Master Concessionaire or Prime Operator as determined in the Scope of Services for each solicitation. Placement on the List is not a contract between the County and the Vendor, but an acknowledgement that the Vendor meets the qualifications as outlined throughout this RTQ.

Vendor Submittals will continue to be accepted throughout the term of the RTQ for placement on such List.

Qualification Criteria:

Vendors shall meet the following criteria to be considered for placement on the List; and for participation in future competitions:

1. Vendor(s) shall provide evidence of seven (7) or more years' experience within the last ten (10) years in a Retail AND/OR Food and Beverage Concession Program in an airport, as one of the following: Developer, Fee Manager, Master Concessionaire or Prime Operator.

2. Vendor(s) must submit documentation confirming a minimum of Twenty-Five Million dollars ($25,000,000.00) in gross sales, per year, for two (2) or more years within the last five (5) years, derived from one Food/Beverage Concession Program, relative to the experience provided for Qualification Criteria No. 1 as a Developer, Fee Manager, Master Concessionaire or Prime Operator.

OR

Vendor(s) must submit documentation confirming a minimum of Twenty Million dollars ($20,000,000.00) in gross sales, per year, for two (2) or more years within the last five (5) years, derived from one Retail Concession Program, relative to the experience provided for Qualification Criteria No. 1 as a Developer, Fee Manager, Master Concessionaire or Prime Operator.

Vendor(s) shall submit letters on official letterhead from entities which confirm the awarded contracts, term, scope, value and gross sales of each program. Letters must be signed by an executive officer/principal of the organization.

If the Vendor is an individual or partnership, the individual and/or the partner shall meet the specified qualification criteria. If the Vendor is a Joint Venture, then at minimum one (1) of the Joint Venture Partners shall satisfy all the foregoing qualification criteria.

If a Vendor is a joint venture, at least one of the joint venture partners must possess majority ownership (at least 51%) of the entity proffered to meet the qualification criteria listed above. Executed ownership agreements must be submitted for any joint ventures used to meet qualification criteria. A vendor, other than a joint venture, who is added to the Prequalified List may choose to submit a response to any subsequent RFP through an affiliate, subsidiary, or other corporate form, if the Vendor has majority ownership in such entity.

Vendors shall provide all of the specified information, documents and attachments listed above with their Submittal as proof of compliance with the requirements of this RTQ. However, the County may, at its sole discretion and in its best interest, allow Vendors to complete, supplement or supply the required documents throughout the term of the RTQ. It shall be the sole right of the County to determine the number of Vendors who will be included in the List. During the term of the RTQ, the County reserves the right to add or delete Vendors as it deems necessary and in its best interest.

4. Request for Proposals – issued to potential bidders (or to shortlisted bidders determined by an RFQ) to submit business proposals through a bidding process.

Examples of RFP Language:

<u>Denver International Airport</u>

This Request for Proposals (RFP) is issued by the City of Denver (the City) Department of Aviation (the Department) to seek competitive proposals from each of the prequalified Proposers to enter into a Predevelopment Agreement (PDA) to plan, design and prepare to implement the Project that will best achieve the Project Goals within the Project Envelope. The City is issuing

this RFP to the Proposers who were shortlisted in May of 2015 based on Statements of Qualifications (SOQs) in response to the Request for Qualifications (RFQ) No. 201418237 released on 1/28/2015. Only these Proposers may respond to this RFP. This RFP supersedes the RFQ.

Nashville International Airport (BNA)

The Metropolitan Nashville Airport Authority ("MNAA") invites the submission of proposals from all interested and qualified Proposers ("Proposers") with demonstrated expertise desiring to develop, sublease and manage, as a Developer/Manager/Lessee ("Contractor") initially, and as both available space and passenger traffic necessitate: (1) convenience, specialty, duty free (when traffic levels support such opportunity), and automated retail; (2) food service: (3) retail financial services, including Automated Teller Machines, currency exchange, and/or branch banking; (4) WiFi and internet services (build, transfer, maintain), (5) business services; (6) shared-use airport lounge; (7) vending machines, including food and drinks, SIM cards, electronic power supplies and other relatively low-value offers; and (8) certain passenger services, including, but not limited to, nail salon, medical services, and shoe shine opportunities, (collectively referred to as "Concessions") at Nashville International Airport ("BNA").

B. Airport Approval Processes

1. Design Review Committee/Tenant Construction Approval Process – subtenants must have drawing sets reviewed and approved by the airport's committee designated specifically for plan review. Oftentimes this is a slow process, sometimes only occurring monthly or periodically.

2. ACDBE Joint Venture Agreement Approval

(a) Joint Venture Guidance – "As guidance, this document sets forth the interpretations of the Department of Transportation of its existing legal authorities and the Department's recommendations for carrying out the airport concessions disadvantaged business enterprise (ACDBE) program. This guidance does not create new legal mandates independent of the Department's statutory and regulatory authorities, but is intended to inform interested parties and the public of the way in which the Department understands and will implement those authorities. Regulated parties may consult the Federal Aviation Administration with respect to alternative means of compliance with ACDBE joint venture requirements."

3. Board Approval – Port Authorities will require the approval of sublease economics by their board of directors.

4. City Council Approval – Cities and other governmental entities will require the approval of City Council for any changes to a master contract (between prime landlord and developer).

C. Public Records Requests

1. Freedom of Information Act - any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by an exemption.

2. Subleases/contracts will be made public upon request

D. Applicable Parties and Relationships

1. *Prime Landlord* – in an airport, the Prime Landlord is typically a governmental entity (or quasi-governmental authority) or an airline. The Prime Landlord leases bulk concession space to the Developer/Landlord through a Ground/Prime Lease. The Landlord then subleases individual spaces to concessionaires through a sublease.

2. *Landlord* – the Landlord is either a Consortium, Developer or Fee Manager engaged by the Prime Landlord to manage the concessions in the airport (along with other duties, if more than a fee manager).

3. *Subtenants* – Concessionaires (or Tenants) – entities which actually operate the retail, food & beverage and service concessions in airports.

E. Structure of a Contract

1. *Fee Manager* – Fee Managers are hired to negotiate leases on behalf of the landlord-client. They are not named "landlord" on subleases, but instead act as agent to the Landlord. They have no interest in the premises, thus they have little to no investment risk. Their primary duties include collecting rent and managing security deposits and insurance certificates (in the name of their client). Fee Managers are typically engaged through short-term contracts.

2. *Developer* – a Developer typically leases the entire "concession" premises from the Prime Landlord. They are named "landlord" on all subleases, and are the beneficiaries of subtenants' security deposits (unless negotiated otherwise). Developers carry more investment risk, are indemnitors under the Prime Lease (including for loss caused by subtenants, which is ultimately passed through to those subtenants), are heavily invested in the entire concession premises, and thus engaged through relatively long-term leases.

3. *P3* – A public-private partnership ("PPP" or "P3") is an arrangement, typically of a long-term contractual nature between two or more public and private sectors, and usually involving governmental entities or authorities and private enterprises. Common themes of PPPs are the sharing of risk and the development of innovative, long-term relationships between the public and private sectors. The use of private funding is a critical aspect of this structure, which is becoming more prevalent in many forms in the United States, including recently the upgrading of certain airport terminals and other transportations hubs. A P3 typically involves a private entity financing, constructing or managing a project in return for a promised stream of payments over the projected life of the project (or some other specified period of time as set forth in the contract).

   P3 projects first became introduced in US airports in 2013, with the privatization of San Juan International through the FAA's Airport Privatization Pilot Program. Other airports include Austin-Bergestrom (rehabilitation and redevelopment of South Terminal), Branson Airport (initial construction and operation/maintenance), and JFK Terminal 4 (redevelopment of original International Terminal). Current ongoing projects include, LaGuardia Central Terminal (redevelopment of Central Terminal and Terminals A and B with on-going Operation & Maintenance obligations of the private entity), Denver International Airport (redevelopment of Jeppeson Terminal including relocation of ticketing and new TSA security checkpoints) and Newark International Airport (redevelopment of Terminal A with on-going Operation & Maintenance and Concession Management obligations of the private entity).

   With respect to concessions, the private entity partner typically assumes all risks in the redevelopment of the existing infrastructure, as well as the ongoing leasing, development, management and operation of the overall concessions program, and will share in revenues generated with the public entity partner. Due to the significant investment in public facilities, which include non-concession items, the private entity partner receives a longer term lease or agreement than that typical of a management or developer form of contract, and thus has the ability to refresh the program, change out concepts and re-lease the program to keep the offering current with the latest concepts and trends.

4. *Direct Deals* – deals between a governmental entity/airline/port authority and an operating subtenant, with no middleman acting as Landlord or agent for the Prime Landlord.

F. Prime Lease/Sublease Interaction

1. *Forms*

Each sublease is subject to the prior written approval of the Prime Landlord prior to its execution by Landlord.

If the Prime Landlord does not have its own form sublease, the Landlord typically develops the form sublease and submits it to the Prime Landlord for review and approval. Any changes to the form (updates, subtenant negotiation) are subject to the Prime Landlord's review and approval, and the Prime Landlord may require reasonable changes to the form from time to time.

No sublease can be amended, extended or terminated without the prior written approval of the Prime Landlord. The Prime Landlord is accordingly a heavily-involved party at all times.

2. *SNDAs*

The sublease is subject to and subordinate in all respects to the Prime Lease and, in the event of any conflicts or inconsistencies between the sublease and the Prime Lease, the provisions of the Prime Lease will control. The rights and duties of the Landlord are governed by the Prime Lease and subtenants must agree to comply with all applicable terms, covenants, conditions and provisions of the Prime Lease.

The Prime Landlord may execute an SNDA for each subtenant.

(a) Subordination: The sublease and any extensions, renewals, amendments, modifications, consolidations, replacements or expansions thereof, and all right, title and interest of subtenant thereunder, in and to the premises, are subject and subordinate to the Prime Lease.

(b) Non-Disturbance: Prime Landlord agrees that, in the event of a termination of the Prime Lease or the exercise by the Prime Landlord of any of its rights under the Prime Lease to take possession of and to operate the premises, the Prime Landlord will not disturb the subtenant's right to possession of the premises under the terms of the sublease so long as the subtenant is not in default beyond any applicable notice and cure period.

(c) Attornment: In the event of a termination of the Prime Lease or the exercise by the Prime Landlord of any of its rights under the Prime Lease to take possession of and to operate the premises, the subtenant agrees to attorn to and recognize the Prime Landlord or its designee as its landlord under the sublease for the remainder of the term of the sublease (including all extension periods which have been or are thereafter exercised) upon the same terms and conditions as are set forth in the sublease.

G. Lease Between Prime Landlord and Airlines/Airport Authorities

The Prime Landlord also leases portions of the airport directly to airlines operating at the airport. These portions include the holdroom/seating areas located outside of the gates. If an expansion of existing retail space or a proposed new space overlaps with any holdroom area, then the airline becomes relevant for purposes of transferring its rights in the relevant holdroom space back to the Prime Landlord so the Prime Landlord can then convey it to the Landlord, who then leases it to the subtenant.

III. AIRPORT PROVISIONS

A. *Street Pricing Requirements*

Historically, concessionaires charged higher prices in airports than comparable businesses located "on the street" within the greater metropolitan area within which the airport served. As the airline industry was deregulated and the market opened up to more travelers, passengers began to complain about the prices charged at concessions. As airport authorities and airlines sought additional revenue streams (to offset rising jet fuel and other operating costs, and reduction in passenger facility charges in order to remain competitive), they increased both the number of and quality of concession offerings. Street pricing policies began to go into effect in the mid-1990s and have continued requiring concessionaires to competitively price all products and services sold from their premises (while at the same time ensuring high quality), such that the products and services are priced in accordance with a "street pricing" policy. The "street pricing" policy is usually established by the governmental or quasi-governmental airport authority who owns or operates the airport.

The "street price" of a product or service is derived from the concessionaire's off-airport business located within a certain radius from the airport, or within the airport's greater metropolitan area if the concessionaire or another entity operates the same concept (brand) in the off-airport location. If there is none within the applicable market but part of a regional or national chain with system-wide prices, then those prices will serve as the street prices for the same brand. If the concept or brand is unique, then the landlord will take a sample of similar concepts in the applicable market (anywhere from 3 to 5 locations as mutually agreed to) and the average of such prices shall be used to determine the allowable "street price." Concessionaires are typically required to provide pricing information for review and approval as part of the leasing process, ongoing product pricing and menu pricing comparisons annually or more often as may be required by the landlord, airline or airport authority.

From the concessionaire's perspective, particularly in restaurants, know your client's business. Does the concessionaire offer features either daily or weekly? If so, understand the lead time for the subtenant's business. Also, consider the impact of price fluctuations in the supply of product.

Recognizing the higher costs of construction, labor and operating costs, some airports have permitted concessionaires to add an additional mark-up to partially compensate by allowing them to charge "street price" plus a certain percentage of that price (typically between 10% to 18%).

Examples of "Street Pricing" language:

Street Pricing (No % Markup):

Massachusetts Port Authority (Boston-Logan International Airport)

"Price Schedule/Street Pricing.

The Authority is committed to offering goods and services at a price/value relationship consistent with food and beverage, news and specialty retail establishments at comparable locations as defined in paragraph (c) ("Street Pricing"), as determined by the Authority, in the Boston and Cambridge area. Subject to sections (b) through (f) hereof, the prices charged at Terminal A by the Subtenants shall be comparable to the prices charged for such goods and services as those found at the Cambridgeside Galleria, Copley Place, Faneuil Hall, Newbury Street, Prudential Center Shops and South Station or at other major regional malls, shopping centers, or other appropriate retail/entertainment complexes located in the Boston and Cambridge area as mutually agreed to by the Parties.

Tenant shall cause its Subtenants to comply with and shall monitor and enforce compliance with the Authority's Street Pricing requirements. Tenant shall submit to the Authority with its Annual Business Plan a street pricing report demonstrating compliance by its Subtenants with the Authority's Street Pricing requirements.

Tenant shall provide the Authority with a complete list of its Subtenants' current product availability and price list on a quarterly basis. This information shall be provided in both printed form and in an electronic format reasonably acceptable to the Authority.

Tenant's Subtenants shall observe Street Pricing for goods and services as defined herein. The Street Price for a good or service shall be the regular price of the good or service charged at an off-Airport, comparable location, determined as follows, unless common branded goods are sold at premium prices at such location(s) in which event the price charged for such common branded goods shall be the average non-discounted prices charged for such goods at three (3) locations in the Boston and Cambridge area:

- If an entity of the same business, franchise or trade name as Tenant's Subtenant operates in a non-Airport location in the Boston and Cambridge area, the Street Price shall be the price of the good or service at the non-Airport location. Acceptable street locations in the Boston and Cambridge areas are found at the Cambridgeside Galleria, Copley Place, Faneuil Hall, Newbury Street, Prudential Center Shops and South Station or at other major regional malls, shopping centers, or other appropriate retail/entertainment complexes located in the Boston and Cambridge area as mutually agreed to by the Parties.

- If an entity of the same business, franchise or trade name as Tenant's Subtenant does not operate within the Boston and Cambridge area, the Street Price shall be the regular price of the good or service at the nearest agreed entity of the same business, franchise or trade name.

- If a good or service is not available from an entity of the same business, franchise or trade name as stated in subparts (1) and (2), the Street Price shall be the average of the regular prices of three (3) separate businesses, of comparable nature, ambiance and product and service lines, within a reasonable geographic radius as defined in subparagraph (b)(1).

- If Tenant's Subtenant is a franchisee or retail outlet of an entity with a national pricing structure which is identical for all franchisees or outlets, the Street Price shall be the same.

The comparable locations described in subparagraph (b)(1) may be amended from time to time if approved in writing by the Manager, Airport Concessions. Requests by Tenant for changes to such location or locations shall be made in writing to the Authority for approval by the Manager, Airport Concessions and shall become effective only upon written approval.

Where an identical good or service, including food, beverages and liquor, is not available at the agreed comparable location, any difference in size or quality shall constitute a price differential.

Introductory, special, temporary, sale or off-price retailers, including without limitation Wal-Mart and Target, shall not be used as comparable locations.

Tenant shall submit to the Authority, within thirty (30) days after the end of each Lease Year, an annual pricing report containing the price list for products at each Subtenant location and comparison prices in accordance with paragraph (c) hereof. Such report shall include the actions taken by Tenant to remedy any noncompliance."

<u>Port Authority of New York and New Jersey (JFK, LaGuardia and Newark Int'l Airports)</u>

"The Lessee shall comply with the Port Authority Aviation Department Street Pricing Policy. In connection therewith, the Lessee shall not charge prices to its customers in excess of "Street Prices", which for purposes of this Agreement is defined as follows:

If the Lessee conducts a similar business to the business operation permitted under this Agreement in off-Airport location(s) in the Greater New York City – Northern New Jersey Metropolitan Area (herein referred to as the "Metro Area"), "Street Prices" shall mean the average price regularly charged by the Lessee for the same or similar item in such Metro Area location;

If the Lessee does not conduct a similar business to the business operation permitted under this Agreement in off-Airport location(s) in the Metro Area, "Street Prices" shall mean the average price regularly charged in the Metro Area by similar retailers for the same or similar item; and

If neither the Lessee nor other similar retailers sell a particular item in the Metro Area, "Street Prices" shall mean the average price regularly charged by the Lessee or similar retailers for the same or similar item in any other geographic area, with a reasonable adjustment for any cost of living variance between such area and the Metro Area.

If the Lessee is engaged in the business of selling duty-free goods, "Street Prices" shall mean the price regularly charged by the Lessee or similar retailer for the same or similar duty-free item at other urban airports in the Northeast region of the United States, including but not limited to John F. Kennedy International Airport, New York, New York.

For purposes of clarification, for purposes of this Section 13(c), Metro Area shall have the same meaning as "Port of New York District" (e.g., 25 mile radius from the Statute of Liberty).

The Lessee's breach of the aforesaid Street Pricing policy shall be deemed a material breach of the Lessee's obligations under this Agreement.

The Lessee shall post in each sales area (including any temporary sales space) a notice in form and substance satisfactory to the Port Authority notifying the public that the Lessee subscribes to a "Street Pricing Policy", such notice to be clearly visible and unobstructed. If the Lessee charges any price to a customer in excess of the price which would satisfy the "Street Pricing Policy" in violation of its obligations under this Agreement, the amount of such excess shall constitute an overcharge which shall, upon demand by the Port Authority or the Lessee's customer, be promptly refunded to the customer.

The Lessee shall submit to the Port Authority from time to time (and not less than annually), a current pricing survey and report demonstrating compliance by the Lessee with the aforementioned pricing requirements. For purposes of establishing the Street Price of an item, any difference in the size or quality of a product or service shall constitute a price differential."

Street Pricing (Plus 10%):

Atlanta Aviation Department (Hartsfield-Jackson International Airport)

"Pricing. Concessionaire must submit all of its proposed prices to the Aviation General Manager for review at least thirty (30) days prior to Concessionaire offering its services to the public. Concessionaire may not charge any prices that have not been approved in writing by the Aviation General Manager, once Concessionaire's initial proposed prices are approved in writing. Concessionaire must submit any proposed price changes to the Aviation General Manager for approval prior to implementation.

Street Plus Ten Percent (10%) Pricing. To determine Street Plus Ten Percent (10%) Prices, the Aviation General Manager may, at any time, conduct a Market Basket Pricing Survey. This survey shall consist of at least three (3) and up to six (6) Greater Atlanta area same store or similar locations where residents, travelers or visitors normally shop. Concessionaires' price on any specific item or service may not exceed the average price

of those locations plus ten percent (10%) for any particular item. The Aviation General Manager has the sole discretion to determine whether a price is reasonable.

Same or Similar Store Pricing. For any operations where Concessionaire currently operates the same or similar store in the Greater Atlanta area, Concessionaire may not charge higher prices at the Airport for like or similar items and services. The Aviation General Manager has the right to survey prices at those stores and to use these prices for same or similar items as the primary basis for pricing in the Premises. If the same brand does not exist in Greater Atlanta area, the Concessionaire shall charge Street Plus Ten Percent (10%) Price, as approved by the Aviation General Manager."

City of Cleveland, Ohio (Cleveland-Hopkins International Airport)

"Pricing

Street Prices. Subtenant will strictly comply with Street Prices as defined herein and may not charge prices for any products or services that exceed Street Prices. The "Street Price" for a product or service shall be no more than ten percent (10%) in excess of the regular price of the product or service charged at an off-Airport location such as regional malls or prominent shopping streets determined as follows:

• If an entity of the same brand, franchise or trade name as Subtenant operates in a non-Airport location, within Cuyahoga County and/or a 25 mile radius of Cleveland Hopkins Airport, the Street Price shall be the price of the good or service at the nearest agreed non-Airport location. A reasonable geographic radius shall be Cuyahoga County, Ohio.

• If a good or service is not available from an entity of the same brand, franchise or trade name as stated in subparagraph (a), the Street Price shall be within a range of the regular prices of three (3) separate businesses, of comparable nature, ambiance and product and service lines, within Cuyahoga County and/or a 25 mile radius of Cleveland Hopkins Airport.

• If Subtenant is a franchisee or retail outlet of an entity with a national pricing structure which is identical for all franchisees or outlets, the Street Price shall be same.

• For currency exchange and duty-free goods, the Street Price shall be within the range of regular fees or prices of the currency exchange and duty-free shops at Kennedy International Airport, New York, New York; Hartsfield International Airport, Atlanta, Georgia; Miami International Airport, Miami, Florida; Logan International Airport, Boston, Massachusetts; and LaGuardia Airport, New York, New York.

Subtenant shall submit to Landlord from time to time, and within thirty (30) days of the end of each Sublease Year, an annual pricing report demonstrating strict compliance by Subtenant with the aforementioned pricing requirements. The parties have agreed that if Subtenant fails to comply with the Street Prices at any time throughout the Sublease Term, Landlord shall not be required to prove its actual damages for such breach, but in lieu thereof Subtenant shall pay to Landlord Liquidated Damages.

Comparable Location Adjustment. The comparable location described above shall be from time to time agreed or amended by AMC and Subtenant, approved in writing by AMC. Requests by Subtenant for changes to its comparable location or locations shall be made in writing to AMC and shall be subject to AMC's approval, shall become effective only upon written approval. Where an identical good or service, including food, beverages and liquor, is not available at the agreed comparable location, any difference in size or quality shall constitute a price differential. Introductory, special, temporary, sale or off-price retailers, including without limitation Kmart and Walmart, shall not be used as comparable locations. Special venues such as Cleveland Indians baseball stadium (a/k/a Progressive Field), Cleveland Browns football stadium (a/k/a First Energy Stadium),

Cleveland Cavaliers basketball arena (a/k/a Quicken Loans Arena), travel plazas, theme parks or special events are not considered comparable locations.

Pricing Adjustments. Subtenant acknowledges that three times per year, Landlord shall conduct, at its own expense, an audit concerning Subtenant Street Pricing compliance with respect to current products available and price levels at the Premises. The audit shall compare the price levels at the off-Airport comparable locations as described above. In the event of non-compliance by Subtenant, Subtenant shall be given five (5) days to bring all products into compliance with the Street Pricing based upon the audit results. If Subtenant fails to bring all products into compliance within said five (5) day period, Subtenant shall pay to Landlord Liquidated Damages as set forth in Section 9.3 for each day of Subtenant's failure."

Miami-Dade Aviation Authority (Miami International Airport)

"Street Pricing. Tenant shall provide to customers high quality products and services and competitively price all products and services sold from the Premises such that the prices are comparable to "street" prices for comparable products and services sold in the metropolitan Miami area as set forth in the Department's "Street Pricing" requirements attached hereto as Exhibit F, as such exhibit may be administratively modified by the Department from time to time. Tenant agrees to adjust its prices to ensure that they meet the above criteria in accordance with the Department's pricing policy and enforcement guidelines upon written notice from Landlord and shall provide reports on pricing issues to Landlord whenever requested. Failure to comply with or perform any of the requirements may result in liquidated damages being imposed hereunder.

The Department has instituted a market basket pricing policy to ensure that Airport prices are comparable to retail outlets and dining facilities in the Miami-Dade County, Florida area. Tenant shall be required to charge no more than the market basket prices as determined in accordance with the following methodology:

Same of Similar Product Line: To determine reasonable prices, Landlord (in consultation with the Department) annually will select three (3) Miami-Dade County sites where visitors may purchase similar product categories. Such sites in Miami-Dade County shall exclude any locations which do not have multiple independent competitive sources and operators. All tenant's prices at the Airport on any specific item may not exceed the average by more than ten percent (10%) of those remaining after eliminating the lowest priced site outside of the Airport. If fewer than three (3) sites carry a specific item, the maximum permissible price shall not exceed the average price of all sites outside of the Airport carrying the specific item by more than ten percent (10%). If no other non-Airport site carries the item, the tenant shall charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.

Same Store: For any and all operations where a tenant currently operates the same or a similar store in the Miami-Dade County area, such tenant may not charge more than ten percent (10%) higher at the Airport for like or similar merchandise. Landlord and the Department have the right to survey prices at said store and to use these prices for same or similar merchandise as the primary basis for pricing at the Airport. If no other location carries the item, tenants shall charge a reasonable price; in which case, the Department reserves the right to determine whether the price is reasonable.

Price Increases: All tenants must receive the prior written approval from Landlord and the Department to increase the price of any item sold or offered for sale by a tenant, and any such request must be accompanied by a price survey conducted and prepared by the requesting tenant at its cost and subject to Landlord's and the Department's prior approval of the price survey. Landlord and the Department reserve the right to visit any locations referenced therein and verify price before approval.

Price Check Policy: Prices may be checked periodically at any time, without notice to tenants, to assure compliance with this policy. A selection of items, picked at random from any location, is compared to similar items in the price survey. Landlord and the

Department may appoint professional shoppers to survey and shop locations at the Airport."

Street Pricing (Plus 18%):

City of Los Angeles World Airport (Los Angeles International Airport)

"Pricing. Concessionaire shall provide to customers high quality products and services and competitively price all products and services sold from the Premises such that the products and services are priced in accordance with the City's "street" pricing policy. For the purposes of this Agreement, the "Airport Pricing Policy" shall mean establishing prices that are no more than a maximum of eighteen percent (18%) higher than prices charged by comparable off-Airport businesses located within a 25 mile radius of the Airport. Promptly upon request and at least on an annual basis, Concessionaire shall provide TCM pricing and menu information and reports on Airport Pricing Policy issues and shall provide street pricing comparisons in a format as determined by TCM in its discretion. In addition, TCM and/or the City may conduct price comparisons to ensure compliance with the Airport Pricing Policy as TCM and/or the City considers necessary. If TCM and/or the City identify price overcharging, Concessionaire shall correct the price overage discrepancies immediately (and in all events within two (2) days). If any such price comparisons disclose a violation of the requirements of this Agreement, the cost of such City-initiated and TCM-initiated price comparisons shall be borne by Concessionaire, and Concessionaire shall reimburse TCM and/or the City for any and all reasonable costs incurred by TCM and/or the City as result thereof (including an amount for fully allocated administrative charges and the Administrative Fee) together with interest thereon at the Default Rate from and after the date upon which costs were incurred."

B. *Airport Employee Discount Requirements*

In order to support the thousands of people who work in major urban airports in the United States, more airports are seeking to establish mandatory or voluntary employee discounts with respect to the sale of various products and services by concessionaires. In many instances, the requirement is imposed under the sublease, but there are certain exclusions to this policy (for example, no discounts on the sale of alcoholic beverages, duty free or foreign currency exchange). The mandatory requirement is more often imposed on food & beverage concession operators as opposed to specialty retail, travel essential or service concession operators. The discount is typically determined based on a concessionaire's normal, non-sale prices and certain "loss leaders" may also be negotiated to be excluded from the provision.

When reviewing the definition of "Gross Sales" for the calculation of percentage rent, the concessionaire should ensure that the employee discounts or promotional items are excluded from the Gross Sales for the purposes of calculating percentage rent, usually up to a cap of 2 or 3%.

Examples of "Employee Discount" language:

"Airport Employee Discount. TCM shall require its Concessionaires to offer a ten percent (10%) discount on all food and non-alcoholic beverages purchased by those Airport employees of City and employees of Airport tenants who have been issued Airport Security Identification badges by City, which discount shall be based on Concessionaire's normal non-sale or non-promotional prices."

"Airport Employee Discount. Concessionaire shall offer a ten percent (10%) discount on all food and non-alcoholic beverages purchased by Airport employees, City employees, employees of airlines operating in the terminals and employees of other concessionaires who have been issued (and show at the time the discount is requested) appropriate identification badges, which discount shall be based on Concessionaire's normal non-sale or non-promotional prices. Although not mandatory, all concessionaires who operate a retail and/or service concessions within the Terminal may, but shall not be required,

also offer a similar discount on all products purchased or services rendered to such employees."

"Tenant shall offer a ten percent (10%) discount on all food and non-alcoholic beverages purchased by Airport (and Authority) employees as compared to the Subtenant's normal non-sale prices."

C. *Minimum Wage/Living Wage/Prevailing Wage Requirements*

From an operational point of view, concessionaire and its counsel should ensure that they understand this requirement and the impact on operations.

Airport leases may be subject to local minimum wage laws, such that concessionaires will be required to pay the required minimum wage and provide certain minimum benefits to their employees. The sublease provisions imposing this obligation are typically non-negotiable. However, subtenants may qualify for an exemption if such an exemption is provided under applicable law (e.g., if a subtenant hires less than a threshold number of employees).

Examples of "Minimum Wage/Living Wage/Prevailing Wage" language:

"The Port Authority has adopted a minimum wage policy ("Minimum Wage Policy") for workers performing under non-trade labor service contracts at all Port Authority facilities. It has also adopted a rule for implementing the Minimum Wage Policy. The Lessee has reviewed the Minimum Wage Policy and the implementing rule and agrees to comply with the Minimum Wage Policy and implementing rule, as the same may be amended. The Port Authority reserves the right to amend the aforesaid policy and rule from time to time. A failure to comply with this obligation shall constitute a breach of the Sublease and, accordingly, the Port Authority shall be entitled to all rights and remedies available to it under law, equity or otherwise in the event of such breach. Further, the Lessee acknowledges that the Port Authority has audit rights with respect to the Lessee's operations at the Airport and that such audit rights extend to the Lessee's compliance with its obligations hereunder concerning the Minimum Wage Policy and the implementing rule. Notwithstanding such audit rights, the Lessee acknowledges its obligation to provide to the Port Authority an annual statement, signed by a responsible officer or authorized representative of the Lessee, certifying as to its own compliance with the Minimum Wage Policy and the implementing rules.

The Lessee further agrees that it shall include in any agreements entered into by the Lessee related to Covered Services (as defined in the Minimum Wage Policy), including, without limitation, subcontracts and subleases (but excluding agreements with government agencies or authorities) a clause which states that the party providing such services (the "Lessee Counterparty") to the Lessee (i) has reviewed the Minimum Wage Policy and the implementing rule, (ii) agrees to comply with them, as the same may be amended from time to time, (iii) agrees to provide the Lessee and the Port Authority an annual statement, signed by a responsible officer of the Lessee Counterparty, certifying as to its own compliance with the obligations described in this paragraph, and (iv) acknowledges and agrees that the Port Authority shall be a third party beneficiary of such clause entitled to all rights and remedies available to it under law, equity or otherwise in the event of a breach of such clause by the Lessee Counterparty.

At the request of the Port Authority, the Lessee further agrees that it shall terminate any agreements entered into by the Lessee related to Covered Services (as defined in the Minimum Wage Policy), including, without limitation, subcontracts and subleases (but excluding agreements with government agencies or authorities), with any Lessee Counterparty which fails to comply with its contractual obligations related to the Minimum Wage Policy, as set forth in the foregoing sub-paragraph (ii)."

"Requiring Minimum Compensation.

Tenant agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Tenant's obligations under the MCO is set forth in this Section. Tenant is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

The MCO requires Tenant to pay Tenant's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Tenant is obligated to keep informed of the then-current requirements. Any subcontract entered into by Tenant shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Tenant's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

Tenant shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

Tenant shall maintain employee and payroll records as required by the MCO. If Tenant fails to do so, it shall be presumed that the Tenant paid no more than the minimum wage required under State law.

The City is authorized to inspect Tenant's premises and conduct interviews with employees and conduct audits of Tenants.

Tenant's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Tenant fails to comply with these requirements. Tenant agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Tenant's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

Tenant understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

If Tenant is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Tenant later enters Tenant an agreement or agreements that cause Tenant to exceed that amount in a fiscal year, Tenant shall thereafter be required to comply with

the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Tenant and this department to exceed $25,000 in the fiscal year."

"Living Wage Policy. This Agreement is subject to the Living Wage Ordinance (the "LWO") (Section 10.37, et seq., of the Code, which is incorporated herein by this reference. The LWO requires that, unless specific exemptions apply, any employees of a service contractor who render services that involve an expenditure in excess of Twenty-Five Thousand Dollars ($25,000) and a contract term of at least 3 months are covered by the LWO if any of the following applies: (1) at least some of the services are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least 12 compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least 10 additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than Twelve Dollars ($12) per hour of their possible right to the Federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Concessionaire shall permit access to work sites for authorized TCM and/or City Representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by TCM and/or the City. Whether or not subject to the LWO, Concessionaire shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Concessionaire agrees to comply with Federal Law prohibiting retaliation for union organizing. Concessionaire agrees and acknowledges that the City, as the intended third-party beneficiary of this provision, may (i) enforce the LWO directly against the subcontractor with respect to City property, and (ii) invoke, directly against the subcontractor with respect to City property, all the rights and remedies available to City under Section 10.37.5 of the LWO, as same may be amended from time to time.

Living Wage Coverage Determination. An initial determination has been made that this is a service contract under the LWO, and that it is not exempt from coverage by the LWO. Determinations as to whether this Agreement is a service contract covered by the LWO, or whether an employer or employee is exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the Law are considered. In some circumstances, applications for exemption must be reviewed periodically. TCM shall notify Concessionaire in writing about any redetermination by the City of coverage or exemption status. To the extent Concessionaire Claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Concessionaire to prove such non-coverage or exemption.

Living Wage Policy. If Concessionaire is not initially exempt from the LWO, Concessionaire shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the execution date of this Agreement. If Concessionaire is initially exempt from the LWO, but later no longer qualifies for any exemption, Concessionaire shall, at such time as Concessionaire is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Code, violation of the LWO shall constitute a material breach of this Agreement and notwithstanding anything in this Agreement to the contrary, TCM shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Concessionaire violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO."

"Prevailing Wage. Construction work performed on City's property will require payment of prevailing wages, if applicable. Concessionaire is obligated to make the determination of whether the payment of prevailing wages is applicable, and Concessionaire shall be bound by and comply with applicable provisions of the California Labor Code and Federal, State, and local Laws related to labor. Concessionaire shall indemnify, defend and pay or reimburse TCM and the City for all Claims arising from noncompliance with applicable prevailing wage Laws in connection with the construction work performed in connection with this Agreement."

The Metropolitan Washington Airport Authority ("MWAA"), in 2017, adopted an Airport Workers Wage Policy requiring Covered Businesses (as defined in its Administrative Rules) to pay not less than the "Base Wage Rate" (as defined in the Administrative Rules). However, to alleviate the economic burden, MWAA offered concessionaires the opportunity to extend their leases for a period of time depending upon the number of months remaining on their term at the time the Airport Workers Wage Policy was effective which was January 1, 2018.

D. *Campaign Contributions*

Some jurisdictions place limits on the amount any person or company can contribute to candidates for local or state-wide office. Affected concessionaires may need to disclose their campaign contributions as a condition to entering into an agreement for the operation of a concession on public property. In some jurisdictions, an entity and its subsidiaries, parent company or otherwise affiliated companies, and any of their employees, officers, directors and partners who make a political contribution for which they are reimbursed by the entity or its affiliates are considered a single person for purposes of these contribution limitations. It is very important to check the restrictions in each jurisdiction well in advance of seeking to do business there.

For example, under local ordinances of the City of Chicago, certain persons or entities (lobbyists registered with the City or persons doing business within the preceding 4 years or seeing to do business with (i) City of Chicago, (ii) Chicago Transit Authority, (iii) Board of Education; (iv) Chicago Park District, (v) Chicago City Colleges, or (vi) Metropolitan Pier and Exposition Authority) may not contribute in excess of $1,500 to a candidate for City elected office or to a City elected official, or to any City official or employee who is seeking election to any office, in any calendar year.

Another example is the limitation imposed by the City of Los Angeles for the 2017 election cycle, which covered contributions under the Los Angeles City Charter to candidates running for the City Council, Mayor, City Attorney and Controller. A contribution can be in the form of a monetary payment, a non-monetary payment such as donated goods, services or discounts, forgiveness of a loan, payment of a loan by a third party or an enforceable promise to make a payment for political purposes.

The limits are adjusted annually to reflect the CPI and are updated each March by the City of Los Angeles Ethics Commission. The contribution limits for 2017 were $700 by a person to any single candidate for the City Council and $1,400 by a person to any single candidate for Mayor, City Attorney or Controller. The primary and general elections are considered two different elections and the limits apply separately to each election (a person could make a $700 contribution to Candidate A in both the primary election and an additional $700 contribution in the general election). In certain instances, contributions are aggregated.

This is something that is very important to understand when responding to a City or public authority-initiated Request For Qualifications or Request For Proposals, as a disclosure most likely will be required in any response submitted for the RFQ or RFP. If in violation of the applicable local requirements, this may result in the response not being considered.

Examples of Disclosures:

"INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS? [ ] Yes [ ] No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS? [ ] Yes [ ] No

If "yes" to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation: _____

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago ("MCC") in the Disclosing Party? [ ] Yes [ ] No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

E. *Disclosures – RFPs and Sublease Levels*

Oftentimes certifications or disclosures regarding items such as past criminal conduct, breach of contract and current claims or litigation may be required when doing business with a governmental entity.

Examples of Disclosures:

"Per Miami-Dade County Board of County Commissioners (Board) Resolution No. R-63-14, County Vendors and Contractors shall disclose the following as a condition of award for any contract that exceeds one million dollars ($1,000,000) or that otherwise must be presented to the Board for approval:

(1) Provide a list of all lawsuits in the five (5) years prior to bid or proposal submittal that have been filed against the firm, its directors, partners, principals and/or board members based on a breach of contract by the firm; include the case name, number and disposition;

(2) Provide a list of any instances in the five (5) years prior to bid or proposal submittal where the firm has defaulted; include a brief description of the circumstances;

(3) Provide a list of any instances in the five (5) years prior to bid or proposal submittal where the firm has been debarred or received a formal notice of non-compliance or non-performance, such as a notice to cure or a suspension from participating or bidding for contracts, whether related to Miami-Dade County or not."

"(a) Neither the Sublessee nor any officer, director, other senior executive, lobbyist or other agent thereof has made any offers or agreements, or given or agreed to give anything of value or taken any other action with respect to any Port Authority Commissioner, officer or employee, or any public official, public appointee or public employee, political candidate, party or party official, or any person formerly in any such position, or immediate family member thereof, in each case in connection with responding to the RFP, and, if awarded, obtaining the New Sublease, and which would constitute a breach of ethical standards under the public officers laws of the State of New York or the State of New Jersey or the Port Authority Code of Ethics and Financial Disclosure dated as of April 11, 1996, nor does the Sublessee have any knowledge of any act which would constitute a breach of said ethical standards.

(b) The Sublessee has not offered, promised or given, demanded or accepted, any improper inducement, directly or indirectly, to or from a Port Authority Commissioner,

officer or employee, or any public official, public appointee or public employee, political candidate, party or party official, in connection with responding to the RFP, and, if awarded, obtaining the New Sublease.

(c) Disclosure of any pending claims or litigation."

City of Chicago:

The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council or other City agency approval. For example, all bidders seeking a City contract are required to submit EDSes. Through the EDS, applicants make disclosures required by State law and City ordinances and certify to compliance with various laws and ordinances. EDSes are also required of certain parties related to the applicant, such as owners and controlling parties.

An EDS must be submitted in any of the following three circumstances:

Applicants: An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.

Entities holding an interest: Whenever a legal entity has a beneficial interest (i.e. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.

Controlling entities: Whenever a legal entity directly or indirectly controls the Applicant, each such controlling legal entity must file an EDS on its own behalf.

F. *Airport Concession Disadvantaged Business Enterprises (ACDBEs)*

The Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program is implemented by recipients of DOT Federal Financial Assistance. Recipients are primarily state highway, transit, and airport agencies that receive funds subject to Title 49 Code of Federal Regulations part 26 (49 CFR 26). Most, if not all of the airports in the United States receive some form of federal funding and thus have established an ACDBE Program in accordance with U.S. Department of Transportation, 49 Code of Federal Regulations Parts 23 and 26. If the Airport is a recipient of DOT funding, then an ACDBE Program is required at the Airport, the purpose of which is to provide ACDBEs with the opportunity to participate in the construction, concession, management, and other services at the airport.

Subpart A of Section 23.1 provides, "This part seeks to achieve several objectives: (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance; (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions; (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law; (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs; (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs."

To be an ACDBE, a firm must meet the following criteria: 1) Operate as a for-profit business concern (no non-profits); 2) Be a small business as defined by the Small Business Administration; 3) Be at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; 4) An ACDBE's management and daily business operations must be controlled by one or more of the socially and economically disadvantaged individuals who own it; and 5) Owners must be a citizen (or lawfully admitted permanent resident) of the United States.

Socially and economically disadvantaged individual means any individual who is a and who is—

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa; (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women; (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective. (viii) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

It does not matter whether the airport determines to use a P3, Developer, Fee Manager or Direct Leasing structure in its concession program as to providing opportunities for ACDBE’s to participate in and operate concessions. The private entity in a P3 structure, the Developer or Fee Manager will still have the obligation to use “good faith” efforts to meet the airport’s particular ACDBE percentage goal. “Good faith” efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Concessionaires can meet these ACDBE requirements by being at least 51% owned by a certified ACDBE participant or “partnered” with a certified ACDBE participant in the form of a corporation, limited liability company and/or joint venture and will have to use “good faith” efforts in accordance with the ACDBE rules and regulations promulgated by the DOT.

Airports have their own ACDBE Participation Goals, which are typically based upon the percentage of Gross Receipts at the Airport derived from ACDBE concessionaires (as compared to non-ACDBE concessionaires), but can also sometimes be based upon the percentage of square footage of total premises leased to ACDBE concessionaires. Concessionaires are required to submit periodic reports describing their total Gross Receipts. This report will be consolidated for all concessionaires in the program reflecting the total Gross Receipts from all ACDBEs for each month compared against the total Gross Receipts from all concessionaires (ACDBE and non-ACDBE).

Joint Venture Guidance

Airports frequently receive proposals from large national concessionaires to meet ACDBE goals by establishing a joint venture with a small, local or locally certified ACDBE participant (ACDBE’s are required to obtain certification initially in their state of primary residence and then seek certification in other states in which there is a desire to operate). These arrangements are typically complex and it can be difficult for airports to determine how much credit toward a goal should be counted for the ACDBE’s participation. The Joint Venture Guidance was developed for airport sponsors to assist with the issue of how to credit the participation of ACDBE joint venture participants. The guidance sets forth the interpretations of the DOT of its existing legal authorities and the DOT’s recommendations for carrying out the ACDBE program. The guidance does not create new legal mandates independent of the DOT’s statutory and regulatory authorities, but is

intended to inform of the way in which the DOT understands and will implement those authorities.

If the ACDBE participant is not required to perform independently a distinct portion of the joint venture's work, it becomes very easy for a prime concessionaire seeking to circumvent ACDBE requirements by having an ACDBE silent partner on its payroll.

Joint Venture Agreements must address:

(a) Capital Contribution: The ACDBE's portion of the initial and future capital contributions should be equal to its ownership percentage.

(i) Capital Loans to the ACDBE from the non-ACDBE: A non-ACDBE may provide financing to the ACDBE upon certain conditions:

- Terms and Conditions @ prevailing market conditions offered by commercial lenders for similar projects
- Promissory note of loan agreement
- Full Recourse Note, personally guaranteed by the ACDBE and/or secured by assets outside of the JV
- The loan should not be for 100% of the capital requirement
- Term of the loan should be shorter than the term of the contract
- No provisions which have the effect of limited the ACDBEs ability to control its business or independently perform its designated role in the JV

(b) Control: The ACDBE should have control in proportion to their ownership interest and proportionate control of the governance of the joint venture. Usually a JV will have a management committee that controls the overall business. The ACDBE is usually a minority participant, owning less than 50% of the business. In this case, the ACDBE can be out-voted on most business decisions. So the agreement should provide for control by the ACDBE of the activities for which it is responsible. Also, there should be some major decisions requiring a unanimous vote to substantiate some level of control attributable to the ACDBE.

(c) Management: Under a management committee structure, the committee is responsible for managing and directing the business of the joint venture. Each participant is represented on the management committee and votes according to its ownership interest in the venture.

(d) Risks: Each of the participants must share in the risks of the business in proportion to their ownership interest (financial, legal, operational, etc.).

(e) Profits: Each of the participants must share in the profits and losses in proportion to their ownership interest. There should be no provisions in the agreement which have the effect of creating separate profit centers to siphon profits before each participant's share is calculated.

Service and Management Fees: Management fees should represent a recovery of costs and not profit to the non-ACDBE if it is the provider of the service. Fees should be reasonable, and not used as a method of draining profits of the JV to the benefit of a particular participant. Management fees are not to be used in place of a "draw" arrangement.

Minority Business Enterprises and Women-owned Business Enterprises

“As a matter of policy, the Port Authority requires the Lessee/Permittee and the Lessee/Permittee shall require that any Contractor utilized by the Lessee/Permittee, to perform contract work (“the Work”) on the premises including without limitation construction work to use every good faith effort to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in the Work pursuant to the provisions of Part II of this Schedule E. In the event that any portion of the Work is subcontracted, every good faith effort to meet the goals for meaningful participation by Minority Business Enterprises and Women-owned Business Enterprises shall be made and documented. To ensure meaningful participation of MBEs and WBEs in the Work, The Port Authority has set a goal of twelve percent (12%) MBE and five percent (5%) WBE for Work performed on the Premises, including: (a) Design Work; (b) Construction Work and (c) in the case of Operations and Maintenance Work, a combined seventeen percent (17%) MBE/WBE goal per annum of the total Operations and Maintenance Work cost for the relevant year, in each case, for firms owned and controlled by minorities or women.

For the purposes hereof, the following defined terms have the meanings set forth below:

"Minority Business Enterprise" or "(MBE)" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

"Women-owned Business Enterprise" or "(WBE)" shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women; and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens and such ownership is real, substantial and continuing.

“Minority” shall have the meaning set forth in paragraph II(c) of Part I of this Schedule (Affirmative Action-Equal Opportunity-Minority Business Enterprises-Women-owned Business Enterprises Requirements).

The Lessee/Permittee shall use and document every good faith effort to comply with the plan submitted by or on behalf of the Lessee/Permittee to comply with the participation goals set forth in this Part II (the “MBE/WBE Participation Plan”), and to permit its MBE/WBE subcontractors to perform. Participation percentages shall be monitored throughout the performance of the Work.

Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(a) Attendance at pre-bid meetings, if any, scheduled by the Authority;

(b) Utilizing the Port Authority’s Directory of certified MBE/WBEs available on-line at http://www.panynj.gov/supplierdiversity and/or proposing for certification other MBE/WBEs which appear to meet the Port Authority’s criteria for MBE/WBE certification and which are technically competent to perform the Work which the bidder plans to subcontract;

(c) Active and affirmative solicitation of bids for subcontracts from MBE/WBEs, including circulation of solicitations to minority and female contractor associations. The Contractor shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(d) Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before commencement of the Work or the Operations and Maintenance Work, as the case may be;

(e) Dividing the work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors in order to increase the likelihood of achieving the MBE/WBE goals;

(f) Providing a sufficient supply of drawings and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

(g) Utilizing the services of available minority and women's community organizations; contractors' groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;

(h) Ensuring that progress payments are made in a timely fashion in accordance with the requirements of the relevant subcontract, preferably bi-weekly, and that retainage is paid to MBE/WBEs when they have completed their work;

(i) Where appropriate, not requiring bonds from and/or providing bonds and insurance for subcontractors;

(j) Requiring each contractor to submit to the Lessee/Permittee with each payment request evidence that all MBE/WBE Contractors have been paid in accordance with their contract;

(k) Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Authority staff responsible for such participation; and

(l) Nominating subcontractors for participation in business assistance programs sponsored by the Port Authority or the Regional Alliance for Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.).

The MBE/WBE Participation Plan may be modified only with the written approval of the Port Authority's Authorized Representative.

Certification of MBEs and WBEs hereunder shall be made by the Office of Business Diversity and Civil Rights of the Port Authority of New York and New Jersey (the "OBDCR"). If the Contractor wishes to utilize a firm not already certified by the OBDCR, the Contactor shall submit to the OBDCR a written request for a determination that the proposed firm is eligible for certification. This shall be done by completing and forwarding such form as may be then required by the OBDCR. All such requests shall be in writing addressed to the Office of Business Diversity and Civil Rights, the Port Authority of New York and New Jersey, 2 Montgomery Street, 2nd Floor, Jersey City, NJ 07302 or such other address as the Port Authority may specify by notice to the Lessee/Permittee. Certification shall be effective only if made in writing by the Director in charge of the OBDCR. The determination of the OBDCR shall be final and binding.

The Port Authority has compiled and made available on-line an MBE/WBE Directory which sets forth the firms that the Port Authority has determined to be (1) MBE/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directory. The Directory can be accessed at http://www.panynj.gov/supplierdiversity. The Port Authority makes no representation as the financial responsibility of such firms or their ability to perform Work.

Only MBE's and WBE's certified by the OBDCR will count toward the MBE and WBE goals.

Please note that only sixty percent (60%) of expenditures to MBE or WBE suppliers will count towards meeting the MBE and WBE goals for the Work. However, expenditures to MBE or WBE manufacturers (i.e. suppliers that produce goods from raw materials or substantially alter them before resale) are counted dollar for dollar.

The Lessee/Permittee shall ensure that all approved MBE/WBE subcontractors maintain a regular on site presence at the construction site for the portions of the Work they are subcontracted to perform and that they exercise financial and operational management and control of such portions of the Work."

G. *Worker Retention and Employee Training*

The Prime Landlord may operate a "displaced worker program" to cover Airport retail employees who lose their jobs when a concessionaire vacates and stops operating at the Airport. If there is such a program, then concessionaires may be required to participate in connection with their own hiring needs for their premises.

Displaced employees are placed into a pool, then assigned to various worker categories. A new concessionaire is required to interview all displaced workers who are in the category of the employees the concessionaire needs.

Although the concessionaire is required to *interview* displaced workers, the concessionaire is typically not obligated to *hire* any displaced worker. However, the concessionaire may need to interview from the displaced worker pool for any future hiring needs until a certain percentage of the concessionaire's employees are hired from the displaced worker program.

Airports are recently requiring primes/developers to provide employee training at their cost.

<u>Examples of "Worker Retention" language"</u>

"Employee Retention. If the Lessee's concession at the Premises is of the same type (i.e., food, retail, news/gifts or duty-free concession) as that of the immediately preceding concession operator at the Premises (the "Predecessor Concession"), the Lessee agrees to offer continued employment for a minimum period of ninety (90) days, unless there is just cause to terminate employment sooner, to employees of the Predecessor Concession who have been or will be displaced by cessation of the operations of the Predecessor Concession and who wish to work for the Lessee at the Premises. The foregoing requirement shall be subject to the Lessee's commercially reasonable determination that fewer employees are required at the Premises than were required by the Predecessor Concession; provided, however, that the Lessee shall retain such staff is deemed commercially reasonable on the basis of seniority with the Predecessor Concession at the Premises. The Port Authority shall have the right to demand from the Lessee documentation of the name, date of hire, and employment occupation classification of all employees covered by this provision. In the event the Lessee fails to comply with this provision, the Port Authority have the right at any time during the continuance thereof to take such actions as the Port Authority may deem appropriate including, without limitation, termination of this Agreement."

"Concessionaire acknowledges that employees of preceding operators at the Airport have been or are being pooled and ordered by seniority within job classification pursuant to a Memorandum of Agreement between TCM's affiliate and the Union dated October 12, 2011 ("Memorandum"). Concessionaire agrees to offer continued employment for a minimum period of ninety (90) days to such pooled employees who wish to work at the Premises as needed to perform available work on the basis of seniority and job classification, in accordance with the terms of the Memorandum and the Los Angeles Service Contractor Worker Retention Ordinance. In the event Concessionaire fails to comply with this provision, TCM shall have the right at any time during the continuance thereof to take such actions as TCM may deem appropriate including, without limitation, termination of this Agreement."

"Concessionaire shall abide by Chapter 22, Article III, Division 1 of the City of Atlanta Code of Ordinances, Airport Service Contractor Worker Retention Program, which requires Concessionaire to retain service employees from a former employer with a similar service contract with the City for a 90-day trial employment period that have been employed for at least the immediate preceding six months."

H. *FAA / TSA Compliance, including Security (Employee Badging)*

Airports are required to have TSA-approved security programs pursuant to regulations promulgated by the U.S. Department of Homeland Security, Transportation Security Administration. All concessionaires, and their employees, agents, and contractors, must comply with these security protocols. A substantial aspect of this requirement is the "badging" process. Because concessionaire employees will have unescorted access to the airport, they will need to obtain a badge, which involves undergoing a criminal background check, fingerprinting, and a security threat assessment conducted by Homeland Security.

I. *Volatility of Airlines and Mergers and Impact on Concessions*

1. *How does a concessionaire protect itself if an airline moves and there is no gate traffic?*

Typically, an airport authority or airline will NOT guarantee any level of enplanements, whether throughout the entire airport, terminal or concourse, or any portion thereof, and the risk is placed on those operating businesses. Airlines are relocated within an airport from time to time based on several factors and concessionaires have no control over airlines, types of aircraft or gate usage. From an operator perspective, one might try to negotiate some protections in the concession agreement that will allow closing of the units and a buy-out of unamortized investment from the airport authority, airline or landlord if gates are taken out of service for a specified period of time (for example, 3 or 6 month periods). Another method would be to allow the temporary closing of the unit while the gates are not operational and allow the units to be reopened when flights have resumed, and add additional term to the concession agreement to reflect the length of the original term. When areas of terminals or concourses are shut down for gate renovation or redevelopment, or due to overall lack of business, airport authorities and airlines seem to be more willing to allow closures of units or a buy out the unexpired portion of the concession agreement.

One example that is used often relates to the operation of duty-free concessions. Unless the duty-free concession is also allowed to sell duty-paid products to non-international passengers, then these concessions are typically opened only during the periods of the day when there are international flights and they may open and close more than once per day depending on the schedule of international flight departures.

2. *Sales Kickouts.*

This is another avenue to consider when negotiating the concession agreement. From the operator perspective, if sales haven't reached a certain level by the end of a specified period of time, you might want to have the right to terminate early. However, if this right is given to the concession operator and is exercised, it would be extremely rare for a landlord to agree to reimburse for any remaining unamortized investment.

J. *Enplanement Protection*

1. *Sales per Enplanement* – refers to how much on average each enplaned passenger spends. This is the metric used to measure success for the Developer.

2. *MAG Tied to Enplanements* - at the Prime Lease level, Minimum Annual Guarantee owed to the Prime Landlord may be tied to enplanements (e.g., $0.50 per enplanement). The Prime Landlord and Landlord may set a base year for enplanements from which they will compare any future year's enplanements. If any such year has more or less than a certain percentage of the base year's enplanements, MAG may be adjusted under the Prime Lease by a calculation agreed upon between the parties.

3. *Landlord's Right to Terminate* – in certain circumstances, the Landlord may have the right to terminate the Prime Lease if enplanements dip below a certain number, and usually have to stay below that number over a 12-month period.

4. *Percentage Rent Tied to Enplanements* - at the sublease level, percentage rent and MAG may similarly be tied to enplanements, although this strategy is not often used in most deals. Depending on the underlying economics of the deal, one of the parties may attempt to tie MAG to enplanements. Similarly, one of the parties may attempt to tie percentage rent to enplanements. If enplanements are expected to rise during the length of the sublease term, then the Landlord has the incentive to tie the economics to enplanements. If enplanements are expected to decrease during the length of the sublease term, then subtenants have the incentive to tie the economics to enplanements.

5. *Example of Rent Reduction Based on Enplanements*

   "Reduction in Rent Due to Changes in Enplanements.

   These definitions apply to this Section entitled "Reduction in Rent Due to Changes in Enplanements":

   "Affected Concourse" means a Concourse in which Concessionaire operates Concessions under the Agreement and is limited to Concourses XXXXX.

   "Enplaned Passenger" means and includes each passenger boarding an airplane from an Affected Concourse, whether such passenger has paid a fare for his/her ticket, is flying on frequent flyer miles, boards under a buddy pass, or otherwise.

   "Year" means a three hundred and sixty-five (365) day period beginning on the effective date of the Agreement. For example, a Year under an Agreement effectively dated January 1, 2018, will be the period from January 1, 2018, through December 31, 2018, and a Year under an Agreement effectively dated August 1, 2018, will be the period from August 1, 2018, through July 31, 2019.

   Reduction in Enplaned Passengers; Reduction of MAG.

   Rules Applicable to Concessions Located in Concourses.

   If the total number of Enplaned Passengers departing an Affected Concourse, as documented by the City's Department of Aviation in monthly reports received from Airlines departing flights from such Affected Concourse, for any whole month in the second or any subsequent Year during the term of the Agreement decreases by more than twenty-five percent (25%) from the same month of the previous Year, then MAG rent payments due under this Agreement will be reduced (the "Reduction") in the following manner:

   MAG Monthly Installment: the monthly installment of the MAG due for the following month (and for that month only) will be reduced by the month over month percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease; and

   Agreement Year MAG: the Minimum Annual Guarantee for the Agreement Year in which the reduced monthly payment amount falls will also be reduced by the dollar amount by which the monthly installment of the MAG was reduced. The same test and calculation shall apply each month thereafter until the first month that the reduction in Year over Year

monthly enplanements is less than twenty-five percent (25%) at which time the adjusted MAG in effect prior to the adjustment provided for herein shall be reinstated.

Calculation Examples. For example, if the number of Enplaned Passengers for the month of July 2018 declined by thirty percent (30%) over the number of Enplaned Passengers for the month of July 2017, then the MAG amount payable for the month of August 2018 will reduce by thirty percent (30%); the MAG for the Agreement Year in which August 2018 falls will decrease by the dollar amount of the reduction.

Submission of Claim for Reduction; Reduction Only Available if Concessionaire is Paying MAG; Reduction Not Available if Concessionaire is Paying Percentage Rent. Claims for a Reduction may only be submitted quarterly and may only include entire monthly periods. Reduction in Enplaned Passengers for partial monthly periods will not qualify for a Reduction. If, during any month in which Enplaned Passengers are reduced, Concessionaire is required to pay percentage rent, a claim for a Reduction will not be available. A claim for a Reduction must be submitted by the last day of the month following the last month in the quarter for which a Reduction is sought. For example, if there is a reduction in the number of Enplaned Passengers for an Affected Concourse or the Airport as a whole (depending on the location of the affected Premises) beginning on August 15, 2017, and continuing through December 31, 2017, a claim for a Reduction may only be made for the months of September, October, November and December 2017, and must be submitted by January 31, 2018.

Certification of Claim for a Reduction. If Concessionaire desires to submit a claim for a Reduction, it must submit on forms developed by Department of Aviation."

"Tenant's Guaranteed Rent shall be adjusted (i) once on the Rental Commencement Date, if the Actual Enplaned Passengers in the Terminal for the period from _____ to and including _____, are less than the Actual Enplaned Passengers in the Terminal for the period from June 1, 2010 to and including _____ ("Base Enplanement Period"), then the Guaranteed Rent shall be decreased below the initial amount set forth in Section 2.01 hereof in the same proportion as the decrease in Actual Enplaned Passengers from the Base Enplanement Period, and (ii) thereafter, annually commencing on the first anniversary of the Rental Commencement Date and on each anniversary thereafter in an amount equal to eighty percent (80%) of the actual Guaranteed Rent and Percentage Rent required to be paid hereunder for the prior twelve (12) month period ("Effective Rent"); provided, however, Tenant's Guaranteed Rent shall not decrease below the initial amount of _____ ($_____) set forth above or such lesser amount as determined in (i) hereinabove.

In addition, the Annual Thresholds shall also be adjusted on the third anniversary of the Rental Commencement Date annually in connection with the annual adjustments to Tenant's Guaranteed Rent by the same percentage increase or decrease adjustment made to Tenant's Guaranteed Rent."

K. *Tenant's Store Hours*

1. The Airport is open for business every day, 365 days per year, and is busy during non-traditional working and shopping hours.

2. Most concessionaires are required to remain open during all hours necessary to provide service for the earliest daily incoming and outgoing flights (including the provision of service to passengers who arrive in advance of same) and the latest daily incoming and outgoing flights, including non-scheduled activity by charter airlines.

3. In general, concessionaires are required to be open during the following base hours: (i) if the space is located on the departures level, at least 2 hours before the 1st scheduled departure until the last departure of the day, without exception, and (ii) if the space is

located on the arrivals level, from the first scheduled arrival to at least an hour after the last scheduled arrival, without exception.

4. If passenger traffic conditions, flight scheduling, flight or weather delays or other considerations make it necessary – almost always in the sole opinion of the Landlord or the Prime Landlord – the affected terminal's concessions must be open at times not then-scheduled. This is almost always a requirement imposed on food and beverage concessionaires, in particular.

5. In an emergency, concessionaires are required to open or keep open their space upon 1-hour advance verbal notice. Concessionaires will normally be required to expressly acknowledge the need for flexibility in the service hours from time to time in their subleases.

L. *Labor Harmony*

Increasingly, more and more airports (whether the municipality, airport authority or airline) will want to avoid labor issues in the airport for numerous reasons – disruption of passenger services, effect on non-aviation revenue streams, security risks, impact on the overall airport experience, amongst other reasons. In some airports, concessionaires must provide evidence of a labor harmony agreement or a labor peace agreement as a condition to submitting a proposal in response to a public or private (P3 private entity, private developer or fee manager) competitive solicitation or, if awarded, prior to or at the time of signing the concession agreement.

The labor harmony agreement must contain a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppages, boycotts or other interference with the airport's concession program. Typically, this is in exchange for the concessionaire's agreement to remain neutral and not oppose attempts to organize or seek union representation for concession employees. The duration of the agreement is usually tied to the term of the concession agreement. In some instances, there are exceptions to the requirements for a labor peace agreement – companies which employ less than a prescribed number of employees at their concessions at the airport, small local companies or ACDBE certified companies with less than a prescribed number of employees.

Examples of Labor Harmony language:

"In connection with its operations at the Airport under this Agreement, the Lessee shall serve the public interest by promoting labor harmony, it being acknowledged that strikes, picketing, or boycotts may disrupt the efficient operation of the Terminal. The Lessee recognizes the essential benefit to have continued and full operation of the Airport as a whole and the Terminal as a transportation center. The Lessee shall immediately give oral notice to the Port Authority (to be followed reasonably promptly by written notices and reports) of any and all impending or existing labor-related disruptions and the progress thereof.

If any type of strike, picketing, boycott or other labor-related disruption is directed against the Lessee at the Terminal, or against its operations thereat pursuant to this Agreement, which in the opinion of the Port Authority (i) physically interferes with the operation of the Airport, the Terminal or the Premises, or (ii) physically interferes with public access between the Premises and any portion of the Terminal or the Airport, or (iii) physically interferes with the operations of other operators at the Airport or the Terminal, or (iv) presents a danger to the health and safety of users of the Airport or the Terminal, including persons employed thereat or members of the public, the Port Authority shall have the right at any time during the continuance thereof to take such actions as the Port Authority may deem appropriate including, without limitation, terminating this Agreement and the letting on five (5) days' written notice to the Lessee. In the event of termination by the Port Authority hereunder this Agreement and the letting hereunder shall cease and expire on the effective date of termination stated in the notice with the same force and effect as if such date were the original expiration date of the letting hereunder.

The Lessee represents that, prior to or upon entering into this Agreement, it has delivered to the Port Authority evidence of a signed labor peace agreement, in the form attached hereto as Exhibit

X, or in the event Exhibit X is inapplicable, then a signed officer's certification to such effect in the form required by the Port Authority.

The provisions of this section shall apply to concession operators which employ ten (10) or more persons at the Premises.

EVIDENCE OF SIGNED LABOR PEACE AGREEMENT

[Insert Name of Company] (the "Company") has complied with board Resolution "All airports – Labor Harmony Policy" passed October 18, 2007, which stipulates that the Company must sign a Labor Peace Agreement with a labor organization that seeks to represent the Company's employees and that contains provisions under which the labor organization and its members agree to refrain from engaging in any picketing, work stoppages, boycotts or any other economic interference with the Company's operations.

FOR THE COMPANY: FOR THE UNION:"

"Concessionaire agrees that in the use of the Premises or any work performed by or on behalf of Concessionaire in or about the Premises, Concessionaire shall employ, directly or indirectly, only labor which can work in harmony with that being employed by TCM, the City and by other concessionaires at the Airport. Concessionaire shall not employ or permit the use of any labor or otherwise take any action which might result in a labor dispute involving personnel performing work or providing services at the Airport by or on behalf of Concessionaire. Further, in the event of any such interference or conflict, Concessionaire, upon demand of TCM or the City, shall cause such contractors or laborers causing such interference or conflict to leave the Airport immediately. In the event that the City determines that it is necessary for public safety or the efficient operation of the Airport to post police details or to take other actions as a result of the inability of Concessionaire or its employees, contractors, subcontractors, or other parties performing work on or about the Premises to work in harmony with other elements of labor employed at the Airport, Concessionaire shall reimburse the City for all reasonable and actual costs incurred by the City in doing so.

Concessionaire shall participate in forming, if not already formed, and join either the food & beverage or retail multiemployer association, as applicable, at the Airport. Concessionaire shall (a) assign all of its bargaining rights, duties and obligations to the association and make the assignment irrevocable for any reason until January 1, XXXX and revocable as of that date or any subsequent anniversary thereof by giving at least ninety (90) days advance notice to the union and the association, and (ii) waive any and all rights it has or may acquire to withdraw from such association. In the event Concessionaire has a separate collective bargaining agreement with the Union (as hereinafter defined), Concessionaire shall be exempted from the requirements of this subsection (b). Such obligation shall not apply to news & gift concessions.

Concessionaire represents that, prior to or upon entering into this Agreement, it has delivered to TCM (i) Evidence of a Signed Labor Peace Agreement, in the form attached hereto as Exhibit C, and (ii) a copy of a Labor Peace Agreement meeting the requirements of the Board of Airport Commissioners ("BOAC") Resolution No. 23437 from October 15, 2007, executed by all of the parties and stating that such Labor Peace Agreement shall prohibit such labor organizations and their members from engaging in any picketing, work stoppages, boycotts or other economic interference with the business of Concessionaire at any of the airports operated by LAWA for the duration of the Agreement. A sample of such Labor Peace Agreement is attached hereto as Exhibit D.

EVIDENCE OF SIGNED LABOR PEACE AGREEMENT

_____ (the "Company") has complied with LAWA's Labor Peace Policy for the Los Angeles International Airport, which stipulates that all concessionaires must have a signed labor peace agreement with the labor organizations that represent or are seeking to represent employees in the concession industry that prohibit the labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of the concession operators for the duration of their concession agreements with LAWA.

FOR THE COMPANY: FOR THE UNION:

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into by and between _____ (hereinafter the "Employer"), and _____ (hereinafter called the "Union") (together, with the Employer, "the parties").

1. This Agreement shall cover all employees covered in classifications listed in Exhibit A (referred to hereinafter as "Employees") at all of the Employer's concessions including food and beverage, specialty retail, news and gifts operations ("Operations") at Los Angeles International Airport ("LAX"), which during the term of this Agreement are operated by the Employer. The term "Employer" shall be deemed to include any sole proprietorship, firm, partnership, corporation, joint venture or other legal entity substantially under the control of the Employer covered by this Agreement, or one or more principal(s) of the Employer covered by this Agreement, or a subsidiary of the Employer covered by this Agreement, or any person, firm, partnership, corporation, joint venture, or other form of business organization that has or acquires any right to operate Operations at LAX.

2. The parties hereby establish the following procedure for the purpose of ensuring an orderly environment for the exercise by the Employees of their rights under Section 7 of the National Labor Relations Act and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to conduct an organizing campaign among Employees.

3. The parties mutually recognize that national labor law guarantees employees the right to form or select any labor organization to act as their exclusive representative for the purpose of collective bargaining with their employer, or to refrain from such activity.

4. The Employer will take a neutral approach to unionization of Employees. The Employer will not undertake any action nor make any statement that will directly or indirectly state or imply any opposition by the Employer to the selection by such Employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent.

5. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards, or otherwise unlawfully interfere with any rights afforded the Employees under the NLRA.

6. The Employer shall comply with Los Angeles Service Contractor Worker Retention ordinance. Following compliance with the Worker Retention ordinance, whenever the Employer finds it necessary to hire new Employees for vacancies in job classifications covered by this Agreement in the Operations, the Employer shall notify the Union to request applicants for such vacancies. When requesting applicants, the Employer shall state the qualifications applicants are expected to possess. The Union may furnish applicants for the job vacancies specified by the Employer. The Union's selection of applicants for referral shall be on a non discriminatory basis and shall not be based upon or in any way affected by membership in the Union or the Union's bylaws, rules, regulations, constitutional provisions, or any other aspects or obligation of Union membership policies or requirements, or upon personal characteristics of an applicant where discrimination based upon such characteristics is prohibited by law. The Employer agrees that any interest demonstrated by an applicant in joining the Union shall not constitute grounds for discriminatory or disparate treatment nor adversely impact the applicant's ability to be hired by the Employer. The Employer shall be the sole judge of an applicant's suitability, competence and qualifications to perform the work of any job to be filled. If, within five (5) calendar days after being notified by the Employer, the Union is unable to furnish applicants adjudged suitable by the Employer for the vacant position(s), the Employer may seek applicants for those positions from other sources.

7. If the Union provides written notice to the Employer of its intent to organize Employees covered by this Agreement, the Employer shall provide access to its premises and to such

Employees by the Union under the following conditions: The Union may engage in organizing efforts in non-work areas during Employees' non-working times (before work, after work, and during meals and breaks) and/or during such other periods as the parties may mutually agree upon. "Organizing" includes communicating with Employees before and after recognition of the Union as provided in Paragraph 9. The Employer shall request the granting of security clearance from the Airport authority and use commercially reasonable efforts in good faith to obtain clearance for the organizers. The Union shall exercise due care so that its access to Employees does not disrupt the Employer's business or violate any security regulations.

8. Within ten (10) days following receipt of written notice of intent to organize Employees, the Employer will furnish the Union with a complete list of Employees, including both full and part-time Employees, showing their job classifications, departments, terminals, and addresses. Thereafter, the Employer will provide updated complete lists monthly. This obligation will expire 12 months following the Union's initial written notice of intent to organize the Employer's Employees and thereafter the Employer will only be required to provide lists to the Union within 10 days of a specific request by the Union. The Union will keep the information provided pursuant to this Paragraph confidential and not use it for any purpose other than the purposes of this Agreement.

9. The Union may request recognition as the exclusive collective bargaining agent for the Employees in a unit consisting of all the Operations. The Union may request recognition at any time a substantial and representative complement of Employees is actively at work in the Operations, even if some of the Operations have not yet opened at the time the Union makes its request. The Arbitrator identified in Paragraph 14, or another person mutually agreed to by Employer and Union, will conduct a review of Employees' authorization cards and membership information submitted by the Union in support of its claim to represent a majority of such Employees. The review shall involve a comparison of the authorization card signatures of the Employees to W-4 or I-9 forms for such Employees provided to the Arbitrator by the Employer. The identity of all card-signers shall be kept confidential from the Employer. Such review shall take place no more than ten (10) days after the Union's request absent mutual agreement by the parties to extend time. If that review establishes that a majority of such Employees has designated the Union as their exclusive collective bargaining representative, the Employer will recognize the Union as such representative of such Employees. The Employer will not file a petition with the National Labor Relations Board ("NLRB") for any election in connection with any demands for recognition provided for in this Agreement or file a notice of voluntary recognition with the NLRB, so that the decision of when and whether to provide such notice is within the sole discretion of the Union. If the Union notifies the NLRB of recognition pursuant to this Agreement, the Employer shall post the NLRB notice of recognition in accordance with the instructions from the NLRB immediately upon receipt of the notice. The Union and the Employer agree that if any other person or entity petitions the NLRB for any election as a result of or despite recognition of the Union pursuant to this Paragraph, (a) if the NLRB notice has been posted for 45 days before the petition is filed (a condition that applies only to this subparagraph (a)), the Employer and the Union will each request that the NLRB dismiss the petition on grounds of recognition bar or, if they have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the Employer and the Union shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the Employer and the Union shall at all times abide by the provisions of this Agreement except the following sentence. The Union and the Employer will not file any charges with the NLRB in connection with any act or omission occurring within the context of this Agreement; arbitration under Paragraph 14 shall be the exclusive remedy.

10. If the Union is recognized as the exclusive collective bargaining representative as provided in paragraph 9, negotiations for a collective bargaining agreement shall be commenced immediately. To ensure labor peace throughout the collective bargaining process, if the parties are unable to reach agreement on a collective bargaining agreement within 90 days after the Union's request for collective bargaining, all unresolved issues shall be submitted for resolution to final and binding arbitration pursuant to Paragraph 14. The arbitrator identified in paragraph 14 below shall be the arbitrator, unless another arbitrator is mutually agreed to by the parties. The arbitrator shall be guided by, but not limited to, the following considerations: (a) wages, hours and other terms and conditions of employment of the Employer's competitors; (b) the Employer's financial capacity (if the Employer places this in issue); (c) cost of living as it affects the

Employees and the ability of Employees to earn a living wage; and (d) regional and local market conditions. This paragraph shall not apply if the Employer has made an assignment to a multiemployer association.

11. During the life of this Agreement, the Union will not engage in strikes (including sympathy strikes), picketing, work stoppages or slowdowns, sit-ins, concerted business interruptions, leafleting or boycott or other protest or adverse economic action directed at or with respect to or interfering with the Employer's Operations at LAX, and the Employer will not engage in a lockout of the Employees. If the Employer recognizes any union besides Union as the exclusive collective bargaining representative of Employees, or any of them, this paragraph shall terminate immediately and without notice.

12. In the event that the Employer sells, transfers, or assigns all or a controlling interest in its right, title, or interest in the Operations, or in the event there is a change in the form of ownership of the Employer, the Employer shall give the Union reasonable advance notice thereof in writing consistent with legal requirements, and the Employer further agrees that as a condition to any such sale, assignment, or transfer, the Employer will obtain from its successor or successors in interest a written assumption of this Agreement and furnish a copy thereof to the Union, in which event the Employer or such other assignor shall be relieved of its obligations hereunder to the extent that the Employer or such other assignor has fully transferred its right, title, or interest. This Agreement shall be binding upon any successor to the Union; and, the Union shall take all necessary measures to ensure its continuing application to any successor(s).

13. The Employer shall incorporate the entirety of paragraphs 4, 6, 7, 8, 9, and 10 of this of Agreement in any contract, subcontract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument giving a right to any business organization to operate any enterprise in LAX employing Employees in classifications listed in Exhibit A, or in classifications called by different names when performing similar duties, and shall obligate any business organization taking such interest, and any and all successors and assigns of such business organization, to in turn incorporate said paragraphs in any further agreement or instrument giving a right as described above. The Employer shall enforce such provisions, or at its option, assign its rights to do so to the Union. The Employer shall give the Union written notice of the execution of such agreement or instrument and identify the other party(ies) to the transaction within 15 days after the agreement or instrument is signed. The terms "Employer" and "Operations" shall be modified in such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement, and the terms "Employer" and "Employees" as used herein shall be modified to refer, respectively, to the business organization(s) receiving a right to operate an enterprise in LAX and the employees of such business organization(s). Employer's obligations under this paragraph shall be waived in the case of a bona fide agreement between an operator and the Union, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

14. The parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration, with XXXX serving as the arbitrator. If he is unavailable to serve within thirty (30) calendar days of notification then XXXXX or another mutually acceptable person who can serve at the earliest opportunity, shall be the arbitrator. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The arbitrator shall also have the authority to order the non-compliant party to comply with this Agreement. The United States District Court for the Central District of California shall have exclusive jurisdiction in any action concerning arbitration under this Agreement. The parties hereto agree to comply with any order of the arbitrator, which shall be final and binding.

15. This Agreement shall be in full force and effect from the date it is fully executed on behalf of the Employer and the Union until three (3) years from the date the Employer has opened all of the Operations that it is entitled to operate under its contract(s) with LAX or LAX's agent, or if sooner upon execution of a collective bargaining agreement or issuance of an interest arbitration award which concludes the collective bargaining agreement negotiations, either of which explicitly supersedes this document.

16. Nothing herein shall be interpreted as superseding a locally imposed "labor peace" requirement, nor any government or legal requirement which mandates a contrary obligation

upon either or both of the parties. During the term of this Agreement, representatives of the Union will not have any communications with any representative of Los Angeles World Airports ("LAWA") in which they (a) make negative or disparaging comments about the Employer or its policies at LAX; or (b) express the opinion or suggest that LAWA should either decline to do business with the Employer or choose to do business with one of the Employer's competitors at LAX.

EXHIBIT A

All regular full-time and regular part-time food and beverage, retail clerk, stocking and warehouse and concessions driver employees, including lead employees and working supervisors who are not authorized to hire, fire or effectively recommend discipline, and excluding supervisors, managers and guards as defined in the National Labor Relations Act."

M. *Special Sublease Considerations*

1. *Rental upon Delivery*

- In some Airports, MAG is due upon delivery of the premises from the Prime Landlord to the Landlord, translating into the same requirement being imposed upon the subtenants to the Landlord.

2. *Airport Modifications/Relocation*

- The Prime Landlord typically retains the right to modify the Airport as it deems necessary or proper, in its sole and absolute discretion. Thus, concessionaires must accept that their subleases may be terminated if necessary in connection with any such modifications; provided, however, that they are reimbursed their unamortized investment costs. Concessionaires typically must also accept that if the Landlord or Prime Landlord has comparable space available, the concessionaires will negotiate in good faith to be relocated, but with the right to terminate the sublease if an agreement cannot be reached.

3. *Pouring Rights*

Pouring rights agreements are becoming increasingly relevant at airports. The Prime Landlord or Landlord may enter into an agreement with a third-party granting the third-party exclusive or semi-exclusive rights to be the sole provider of beverages or other products at the airport. These agreements are most frequently entered into with beverage companies, such as Pepsi or Coca-Cola.

If a pouring rights agreement exists, then concessionaires will be required to comply with it, advertise and sell only those products or brands protected under the agreement to the exclusion of all other similar protects or brands.

Concessionaires may, however, already have an existing exclusive agreement with a conflicting provider. In such a case, language should be added to the sublease stating that the concessionaire's existing exclusive agreement controls for so long as it remains in effect. Or, in the alternative, a Landlord may elect to grant an exception to its exclusive arrangement. It is important to consider who is responsible for any penalties or fines assessed against any Subtenant associated with its breach of, or exception to, its own pouring and/or supply rights contract caused by the Landlord's failure to grant an exception.

<u>Examples of "Pouring Rights" language</u>

"Concessionaire acknowledges that the Board currently has a semi-exclusive (95%) beverage pouring rights agreement with Coca-Cola Refreshments USA, Inc. Pouring rights shall apply to the dedication of display and cooler space and the selection of non-

alcoholic beverage products displayed, sold and served by Concessionaire. The Board reserves the right to allow other competitive beverage products to be allocated in the remaining 5% of space, provided that: (a) no competitive product shall be displayed, sold and/or served on or from any equipment, except as set forth below, provided by Concessionaire or bearing Concessionaire's trademarks or logos; and (b) there shall be no competitively- branded coolers anywhere on the premises. Allocation of display space for non- exempt beverage products shall be according to the Beverage Exclusivity Policy.

All water products must be purchased through Coca-Cola Refreshments USA, Inc. Beverage pouring rights shall exclude any coffee or tea product that is not bottled. Concessionaire agrees to include products included in said Agreement in Concessionaire's menu, if applicable, and purchase said products via the Airport's exclusive agreement to the extent those products are not in conflict with agreements existing prior to January 2004. An initial price ceiling on 20 oz. bottled beverages has been set not to exceed $XXX. The price ceiling for various beverage products shall be reviewed annually for price adjustments. Should The Coca-Cola Company Agreement expire during the term of this contract and another soft drink company wins the contract, the concessionaire shall comply with the new company's product mix."