

PHX DVT GYR

CITY OF PHOENIX AVIATION DEPARTMENT

Request for Proposals (RFP) For Food and Beverage Concession at Deer Valley Airport (DVT)

Schedule

ACTIVITY All times are local Phoenix time	DATE
Issue RFP	July 30, 2009
Pre-Proposal Meeting at 10:00 a.m.	August 10, 2009
Submittal of Written Questions by 11:00 a.m.	August 14, 2009
Responses to Written Questions	August 21, 2009
Submittal of Affirmative Action Forms	See Section V (A)
Proposal Submittal by 11:00 a.m.	August 28, 2009
Evaluation of Proposals	September 2009
Short List and Interviews (if applicable)	September 2009
Lease Award Recommendation to: Business & Development Subcommittee Phoenix Aviation Advisory Board Phoenix City Council	November 5, 2009 November 19, 2009 December 16, 2009
Commencement of Lease	January 16, 2010

Submit proposals and requests for alternate formats to:

Gretchen Wolfe

City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport – PHX

Terminal 3 - Level 3 East Mezzanine
3400 E. Sky Harbor Boulevard, Suite 3300

Phoenix, AZ 85034-4405
602-273-4082/602-273-8809 (fax)

800-781-1010 (TTY)

busopps.aviation@phoenix.gov

www.phoenix.gov/avirfp

This RFP does not commit the City to award a lease.

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I. INTRODUCTION

A. Introduction

The City of Phoenix (City) is seeking a qualified concessionaire to operate a food and beverage concession in the Phoenix Deer Valley Airport (DVT) terminal.

DVT is classified as a general aviation reliever airport for Phoenix Sky Harbor International Airport. It is currently home to more than 1,277 based aircraft and with nearly 377,000 takeoffs and landings in 2008, it is currently the 20th busiest U.S. airport overall, and the 2nd busiest general aviation airport in the nation. The DVT terminal houses both a retail shop and a family dining establishment. In addition to pilots and passengers, the terminal attracts patrons from off-airport. Patrons have a spectacular view of aircraft activities from inside the restaurant and on the restaurant patio, which is adjacent to the airfield.

Historical gross sales for the DVT food and beverage concession are as follows: \$1,266,500 (2008); \$1,338,977 (2007); and \$1,359,974 (2006).

B. Minimum Qualifications

Each proposer must have 3 years' experience owning or managing a restaurant in the past 5 years. This experience requirement may be met by the proposer or an identified owner, manager, or executive officer of the proposer.

Any proposer that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this RFP, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

Each proposer must demonstrate in its proposal that it meets the minimum qualifications or its proposal will be rejected as non-responsive.

C. Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation Goals

The City extends to each proposer an equal economic opportunity to compete for City business and encourages participation wherever possible. Although the City has temporarily suspended gender- and race- based participation goals until the completion of an ACDBE disparity study, which is currently underway, this business opportunity shall be subject to review for ACDBE goals before any lease extension option is exercised. Therefore, the City strongly encourages each proposer to voluntarily utilize ACDBE firms in its proposal. Each proposer

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must submit a completed Data Collection Form (**Attachment F**) as part of its proposal.

Proposers are encouraged to contact the City's Equal Opportunity Department (EOD) at 602-262-6790 or <http://www.phoenix.gov/CERTIFY/> for assistance in identifying certified and available minority-owned, woman-owned, small, and disadvantaged businesses to reflect both the industry and community ethnic composition whenever practical in performance of the lease resulting from this RFP.

D. Lease Term and Contractual Relationship

The lease term will be for 10 years, with 1 five-year renewal option, to be exercised at the sole discretion of the Aviation Director.

The lease resulting from this RFP is a non-exclusive lease with the City. The City will not enter into an exclusive lease with a successful proposer. At any time, the City has the right to award leases to other food and beverage operators for concepts currently in operation and/or future concepts within the existing terminal or in later additions to the terminal as determined by the City.

The information in this RFP is not intended to completely define the proposed contractual relationship to be entered into by the City and the successful proposer. Proposers are advised to read carefully the draft lease in **Attachment F**, to which the successful proposer shall be bound. These lease terms may be amended at the sole discretion of the City at any time during the RFP process and/or prior to execution.

E. Pre-Proposal Meeting

Proposers are strongly encouraged to attend the pre-proposal meeting at the date and time listed on page 1 at DVT. Please call 602-273-2160 or e-mail busopps.aviation@phoenix.gov to register for this meeting.

F. Proposer Questions and Notification

Proposers are advised to read this RFP in its entirety. Failure to read and/or understand any portion of this RFP shall not be cause for waiver of any portion of the RFP or subsequent lease.

All questions about this RFP must be submitted in writing no later than the deadline listed on page 1 to busopps.aviation@phoenix.gov. All written questions will be responded to in writing. Pre-proposal meeting attendees, and potential proposers who request such notification in writing, will be notified by e-

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mail when documents related to this RFP are available at www.phoenix.gov/avirfp.

Proposers must also identify and notify the City of any exceptions with the draft lease by the question deadline listed on page 1. Proposals that list exceptions to any mandatory provision or material requirement of this RFP may be disqualified as non-responsive.

G. Addenda

The City shall not be responsible for any oral instructions given by any City employees or officials regarding RFP instructions, specifications, or documents. Any changes will be in writing and available at www.phoenix.gov/avirfp.

H. Guarantee Instruments

1. Proposal Guarantee: Each proposal must be accompanied by a Proposal Guarantee in the form of a cashier's check payable, without condition or restrictive endorsement, to the City of Phoenix in the amount of **\$2,000**. The Proposal Guarantee must be submitted in a separate sealed envelope along with the proposal.

Proposal Guarantees of all unsuccessful proposers shall be returned, without interest, immediately after the leasing opportunity has been formally awarded by the Phoenix City Council or after all proposals are rejected.

The Proposal Guarantee of the successful proposer shall be returned, without interest, immediately after the successful proposer has furnished the City with the guarantee instruments and insurance policies required by the lease. Should the successful proposer fail to execute the lease or furnish the guarantee instruments or insurance within 30 days of City Council approval of the lease, the proposer's Proposal Guarantee will be forfeited as liquidated damages.

2. Performance Guarantee: Upon execution of the lease, the successful proposer will be required to post and maintain with the City a performance bond or letter of credit, in a form acceptable to the City, in the amount of 3 months' projected rent.
3. Employee Fidelity Bond: Upon execution of the lease, the successful proposer will be required to post and maintain with the City an employee fidelity bond in the amount of 1 month's projected rent.

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II. SCOPE OF WORK

A. Rent

From the opening date until April 30, 2010, the successful proposer shall pay a percentage rental rate of 7% of gross sales. From May 1, 2010 through the remainder of the lease, the successful proposer shall pay a Minimum Annual Guarantee (MAG) or the percentage rental rate, whichever is greater. The MAG for this opportunity shall not be less than \$50,000.

In subsequent years of the lease, the MAG rent shall be adjusted based upon the greater of 85% the prior year's annual rent payment or 100% of the first year's proposed MAG rent.

B. Restaurant Concession at DVT

The successful proposer shall operate the food and beverage concession in the terminal building of DVT. This opportunity is designed to meet the needs of the general public in the 3 to 5 mile radius around DVT. The restaurant area consists of a total of 6,603 square feet. Currently, 2,669 square feet is dedicated to the kitchen area and 3,934 square feet is dedicated to the dining area.

The successful proposer shall have non-exclusive rights to the adjacent patio area for food and beverage services, with an understanding that the patio area will be kept free of litter.

The successful proposer shall maintain the facility in "opening day" condition throughout the term and any renewals of the lease. Should the food and beverage unit not be maintained in "opening day" condition, it will not be considered for the lease option renewal by the Aviation Director.

C. Menu

The full service restaurant will offer a casual sit-down dining experience in an entertaining environment that complements DVT. At this time, this concession is expected to be the only food and beverage unit in the terminal, so it is important the operator offers a menu appealing to a broad customer base.

The concept will be required to offer breakfast, lunch, dinner, and dessert menus, as well as appetizers. The menu should be varied and moderately priced. Proposers are strongly encouraged to offer a children's and/or senior's menu, and "specialty selections" such as daily or seasonal specials as well as a "To-Go" menu. The menu should also include healthy choices including low calorie food options and heart healthy selections.

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The City desires local participation and encourages a blending of local, regional and nationally recognized menu items. Incorporated into the successful proposer's lease will be the menu and prices finalized by the successful proposer and the City.

Alcoholic beverages shall not be offered.

D. Pricing

The successful proposer shall establish prices at or near prices offered at comparable restaurants in the Phoenix metropolitan area. Any and all additions and deletions, including price changes, to the successful proposer's menu must be submitted in writing to, and approved in writing by, the City prior to inclusion on the menu.

E. Operating Hours

The successful proposer shall operate the food and beverage unit 7 days a week, which shall include proposer's obligation to be open for business from 6:00 a.m. to 9:00 p.m. Exact hours of operation will be established and reestablished from time to time by the Aviation Director based upon the needs of DVT and surrounding community. Although proposers are encouraged to operate the retail unit 365 days a year, the unit may be closed on New Year's Day, Christmas, and Thanksgiving with prior written approval from the DVT Manager. Operating hours and staffing levels should reflect both the hourly and seasonal fluctuations in general aviation traffic and food and beverage unit.

F. As Is Condition and Capital Improvements

1. As Is Condition: The leased premises shall be available to the proposer in an "as is" condition. All leasehold improvements must be provided by the successful proposer in compliance with the Aviation Department's Tenant Improvement Process posted at: <http://phoenix.gov/skyharborairport/about-sky-harbor/tenants-contractors.html>. Please see Section 7 of **Attachment F** for more information about tenant improvements.
2. Initial Capital Investment: The successful proposer is required to spend a minimum average of \$50 per square foot for equipment, furnishings and fixtures, and leasehold improvements. All investments will be evaluated according to value and appropriateness to meet the food and beverage service requirements as outlined in this RFP. The successful proposer will be required to strictly adhere to the design guidelines outlined in the Tenant Design Criteria (Exhibit 3, **Attachment F**).

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3. Midterm Capital Improvements: Between the midway point of the 4th full lease year and midway point of the 5th full lease year, the successful proposer shall be responsible for providing midterm capital improvements to the premises. The required investment shall not exceed \$40,000. For each subsequent year of the lease, the successful proposer shall spend no less than 0.5% of the Gross Sales from the immediately preceding Lease Year on additional capital improvements.

G. Aviation Security Procedures

Although the Federal Aviation Administration (FAA) and Transportation Security Administration (TSA) do not have security requirements for general aviation airports at this time, the successful proposer shall be required to follow any subsequent requirements issued by the FAA or TSA.

III. SUBMITTAL INSTRUCTIONS

A. Delivery of Proposals

Each proposer must submit the following in a sealed package marked with the proposer's name and the name of this RFP:

- Proposal Guarantee,
- 1 original proposal,
- 7 hard copies of the proposal, and
- 1 electronic copy of the proposal in Microsoft Word or Excel on a CD-Rom.

Proposals must be submitted by the deadline listed on page 1 to the address listed on page 1. **Proposals received after the deadline date and time will be rejected as non-responsive.**

B. Form of Proposal

Proposals not following the specified format below or that are incomplete, conditional, obscure, or contain additions not requested, exceptions to material provisions, or irregularities of any kind, may be deemed non-responsive and disqualified from the process.

Proposals shall be limited to 40 single-sided sheets or 20 double-sided pages of letter-sized paper, excluding resumes and required attachments, with Arial font of at least 12 pt. The City prefers double-sided proposals that are stapled or clipped.

1. Notarized Affidavit (Attachment A)

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2. Airport Contracting Policy (Attachment B)

3. Financial Data (Attachment C)

4. Projected Cash Flow (Attachment D)

5. Data Collection Form (Attachment F)

6. Qualification and Experience Statement

Each proposer shall specify the number of years and extent of their food and beverage service experience it has to meet the minimum qualifications listed in **Section I (C)** and individually address each bullet point under **Item 1 of Section IV**.

Each proposer shall provide the following details about food and beverage establishments it currently operates or has operated in the last 5 years.

- Name under which establishment was operated
- Address and location (i.e., airport, shopping center, etc.)
- Customer traffic/sales volume
- Square footage/sales per square foot
- Interior and exterior photographs

7. Food and Beverage Concept, Menu, and Marketing Plan

Each proposer shall provide its proposed menu and descriptions of its concept and marketing plan, as well as individually address each bullet point listed in **Section (IV) (A) (2)**.

8. Management Plan and Operations Plan

Each proposer shall individually address each bullet point listed in **Section (IV) (A) (4)**. Each proposer shall include the following in this section of its proposal.

- a. Staffing Plan
 - 1) Employee recruitment and retention plan
 - 2) Initial pay scale and benefits for employees
 - 3) Minimum qualifications and/or sample resumes for proposed key staff
 - 4) Number of employees and shifts to cover operating hours
 - 5) Organizational chart for the proposed operations

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b. Customer Service Programs

- 1) Description of customer service philosophy, including
 - a. Customer complaint/comment policies (how received/addressed)
 - b. Customer guarantee and refund policies
 - c. Employee training programs
- 2) Description of proposed employee uniform
- 3) Description of the proposer's customer service goals
- 4) List of at least 3 major credit cards to be accepted
- 5) Quality control programs
- 6) Speed of service standards

c. Facility Maintenance Plan

- 1) Cleaning schedule
- 2) Disposal of trash
- 3) Policy for maintenance and repairs
- 4) Replacement schedule for equipment, displays, fixtures, and flooring

d. Security Policies and Practices

- 1) Inventory and cash controls including a description of proposed cash control system
- 2) Security programs

9. Proposed Food and Beverage Unit Design

Each proposer shall provide a narrative description of the proposed capital improvements to be made and the dominant design theme of the proposed food and beverage unit. This narrative shall delineate the square footage allocated to each section of the unit and the distance between tables.

Each proposer shall submit the following plans. Architectural stamps are not required on these documents, which should be 24" by 36" or smaller.

- a. 1 set of architectural renderings depicting the interior and exterior views; the overall design concept and general color scheme, fixtures; and interior and exterior signage and.
- b. Layout/space plan showing the food preparation, services counter, seating, storage, and queuing areas.

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- c. 1 set of material boards with samples of the materials to be used for floor and wall coverings, ceiling treatments, counters, display units, fixtures, and any proposed interior and exterior signage.

10. Exceptions

Proposers shall include a list of exceptions to the requirements of the RFP, if any, stated on a separate page labeled "Exceptions." The list shall identify the requirement, nature of the deviation, and explanation. If there are no deviations or exceptions to any portion of the RFP, proposer shall state so on a page entitled "Exceptions." If no deviations are identified and proposer's proposal is accepted by the City, proposer shall conform to all of the requirements specified therein.

It is the intent of the City to award a lease on a fair, competitive basis. For this reason, the City may view the notation of any "Exception" in response to any material conditions or requirement of the RFP as an attempt by the proposer to vary the terms of the RFP which, in fact, may result in giving such proposer an unfair advantage over other proposers.

Any proposal listing any exception to any mandatory provision or material requirement of this RFP may be disqualified as non-responsive. Proposers should submit questions about mandatory or material requirements in accordance with the process described in Section I (K).

IV. PROPOSAL EVALUATION

Proposals will be reviewed for documentation of minimum qualifications, completeness, and adherence to the RFP requirements. The City reserves the sole right to determine the sufficiency of qualifications and experience of all proposers.

A. Evaluation Criteria

All eligible, responsive, and responsible proposals will be evaluated on the following:

1. Management and Operations Plan (0-25 points)

- Customer Service Philosophy/Programs
- Facility Maintenance Plan
- Policies and Practices
- Staffing Plan

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2. Qualifications and Experience of Proposer (0-25 points)

- Financial capability/sales per sq. ft. and total gross sales volume of existing food and beverage establishments (**Attachment C**)
- Food and beverage service achievements received by proposer
- Number of years and type of experience in food and beverage industry
- Number of years and type of experience in food and beverage outlets in airports, shopping centers, and/or transportation centers
- Number of years experience with proposed concept
- Successful financial performance of existing facilities
- Visual quality of existing food and beverage facilities (review of photographs submitted by proposer)

3. Food and Beverage Concept, Menu, Marketing Plan (0-15 points)

- Pricing, serving sizes and quantities offered
- Frequency and quality of marketing efforts
- Innovation of overall facility theme/uniqueness and creativity
- Methods to monitor and implement current trends
- Overall food and beverage plan and suitability to DVT
- Proposed visual presentation of food and beverage offerings
- Quality, quantity and variety of food and beverage offerings (menu), including children's and/or senior citizens' menus
- Uniqueness and appropriateness of concept in relation to DVT

4. Design and Quality of Improvements (0-15 points)

- Capital Improvement investment adequate for proposed design
- Creative and innovative concepts - interior and exterior (i.e. signage)
- Graphics on signage, bags and other collateral
- Investment in facility capital improvements
- Overall quality of the design and theme, space utilization, floor/wall covering, color scheme, signage, fixtures, merchandise display units, graphics, etc.

5. Proposed MAG (0-10 points)

6. Reasonableness of Financial Projections (0-10 points)

- Projected gross sales compared to proposed MAG
- Reasonableness of projected annual net income, including all assumptions
- Reasonableness of projected gross sales in comparison to other proposals and historical sales of the concession at DVT

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B. Evaluation Panel

If applicable, the Aviation Director will appoint an evaluation panel to review the proposals and recommend a proposer to be awarded the lease resulting from this RFP. The Aviation Director may accept this recommendation and forward it to the Phoenix Aviation Advisory Board and Phoenix City Council, or reject it.

The evaluation panel may interview the proposers or a short list of proposers or may evaluate the proposals solely on the materials submitted by the proposal deadline. In the event a short list process is used, the evaluation panel will use the evaluation criteria established in this RFP to identify the proposers most likely to be successful in the evaluation process. These proposers will then be scheduled for interviews with the evaluation panel.

V. GENERAL TERMS AND CONDITIONS OF THE PROPOSAL

A. Airport Contracting Policy

During the entire length of this RFP process, from issuance until lease award, all proposers, and their representatives, will refrain, under penalty of the proposer's disqualification, from direct or indirect contact, for the purpose of influencing the selection or creating bias in the selection process, with any person who may play a part in the selection process. See the complete Airport Contracting Policy in **Attachment B**.

B. Affirmative Action

Pursuant to Phoenix City Code, Chapter 18, Article V, Affirmative Action Requirements Forms must be completed accurately and be on file with EOD prior to the proposal deadline. **Any proposal received from a proposer that has not filed the appropriate Affirmative Action Requirements Forms by the proposal deadline will be rejected.** Forms are available at www.phoenix.gov/avirfp.

C. Materials Submitted

All materials submitted in response to this RFP become the property of the City. Each proposer, as an express condition for the City's consideration of such proposal, waives any right to access such proposals until 30 days after City Council awards the lease. No submission or supporting documentation will be returned to proposers except rejected or non-responsive proposals. Proposers should note that the City is subject to the disclosure requirements of Arizona's public records law.

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D. City's Reservation of Rights

The City reserves the right to take any course of action the City deems appropriate at the City's sole and absolute discretion, which may include:

1. waiving any defects or informalities in any proposal or proposing procedure;
2. accepting or rejecting any or all proposals or any part of any or all proposals;
3. canceling the RFP in part or in its entirety;
4. reissuing the RFP with or without modification;
5. negotiating any or all proposal elements with entities of its choice or negotiating with any qualified sources; or
6. any other option deemed to be in the City's best interest.

E. City's Right to Disqualify for Conflict of Interest

City reserves the right to disqualify any proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City.

The successful proposer's employees may not be involved with any other Aviation-related business during the term of the agreement resulting from this RFP as an employee, owner, partner, consultant, etc., which may perpetuate a real or apparent conflict of interest.

All determinations regarding potential conflicts of interest shall be made in the sole discretion of the Aviation Director, whose decision shall be final.

Any proposer submitting a proposal herein waives any right to object before any body or agency, including but not limited to, the Phoenix City Council, or any court, to the City's exercise of this right, now or at any future time.

F. Proposer Incurred Costs

The proposer shall be responsible for all costs incurred in preparing or responding to this RFP, including costs associated with interviews. The City shall not be responsible for any costs associated with this proposal submission or process.

G. Right to Investigate

In addition to the references and any information submitted with the proposal, the City may obtain information on past performance.

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The City's determination as to whether the proposer is qualified and responsible will be based on the information furnished by the proposer, interviews (if applicable), and other sources determined to be valid by the City. Award will not be made until such investigations, which each proposer agrees to permit by submitting its proposal, are made by the City.

H. Proposer Certification

By submission of a proposal, each proposer certifies it has not paid or agreed to pay any fee or commission, or any other item of value contingent on the award of a lease to any employee, official or current contracting consultant of the City.

Any proposer that is unable to comply with any required certifications may be disqualified.

I. Execution of Lease

Within 30 days of notice from the City that the lease has been finalized, the successful proposer shall fully execute and deliver such lease. Should the successful proposer fail to deliver the lease within 30 days, the lease award may be canceled by the City. In the event the successful proposer defaults, or refuses or fails to timely execute the formal lease or provide required documents, the City shall consider award to the next highest qualified proposer who is ready and willing to provide service.

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ATTACHMENT A

Affidavit

Assurances

The undersigned proposer hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's RFP and referenced materials. Proposer further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by proposer.

The undersigned proposer acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on proposer's submitted information and the representation that proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
4. The forms and information requested in the RFP are complete and made part of proposer's proposal. The City is not responsible for any proposer errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality of service to the City at reasonable rates.
7. This proposal is valid for a minimum of 120 days subsequent to the RFP proposal deadline.
8. All costs incurred by proposer in connection with this proposal shall be borne solely by proposer. Under no circumstances shall the City be responsible for any costs associated with proposer's proposal or the RFP process.
9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
10. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.
11. To the best of the proposer's knowledge, the information provided in its proposal is true and correct and neither the undersigned proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

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Legal Status

1. In the past 7 years, have you personally, or any business with which you have been involved, been declared bankrupt, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court? If "Yes," provide date, court jurisdiction, case name, case number, amount of liabilities, amount of assets and the status of each occurrence. **Yes () No ()**
2. Have you personally, or any business with which you have been involved, ever been a defaulter as surety upon any obligation to the City? If "Yes," provide details. **Yes () No ()**
3. Are there any pending liens, claims or litigation in excess of \$1,000,000 involving proposer? If "Yes," provide detailed information regarding complaints about how the quality of proposer's services was unsatisfactory. **Yes () No ()**
4. Has the proposer been involved in any lawsuits in the past 5 years? If "Yes," provide list. **Yes () No ()**
5. Have any of the proposer's consulting contracts been terminated prior to their expiration terms, voluntarily or involuntarily, within the last 5 years? If "Yes," provide name, location, and date of the contract(s). **Yes () No ()**
6. Has the proposer, or any corporation or other entity that has, directly or indirectly, a controlling interest in the proposer, or any subsidiary of the proposer or other entity in which the proposer has a controlling interest or any of the proposer's principals, officers, or directors ever been barred from bidding on federal, state, or local government contracts? If "Yes," provide the current status of such suspension or debarment proceedings. **Yes () No ()**
7. Proposer intends to operate the business as a (check one):

Corporation ()	Partnership ()
Joint Venture ()	Sole Proprietorship ()
Limited Liability Company ()	

References

Proposer shall furnish the names and contact information for 3 clients for whom the proposer is furnishing or has furnished services similar to those described in this RFP.

1. Company and Reference Name: _____
Address: _____
Telephone/Fax/E-Mail: _____
2. Company and Reference Name: _____
Address: _____

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Telephone/Fax/E-Mail: _____

3. Company and Reference Name: _____

Address: _____

Telephone/Fax/E-Mail: _____

Affirmative Action

Affirmative Action Compliance Expiration Date: _____

Signature(s)

Name of Proposer (Legal Name): _____

Printed Name of Authorized Person*: _____

Title: _____

Business Address of Proposer: _____

Telephone/Fax/E-Mail: _____

Signature of Authorized Person: _____

*Proposal must be signed by an individual authorized to contractually bind the proposer.

Name of Joint Venture and/or
Subconsultant Partner (if applicable): _____

Printed Name of Authorized Person: _____

Business Address: _____

Telephone/Fax/E-mail: _____

Signature of Authorized Person: _____

NOTARIZED

Signed and sworn before me this _____, day of _____, _____.

Notary Signature: _____

My Commission Expires: _____

Affix Seal

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ATTACHMENT B

Airport Contracting Policy Certification

A. GENERAL AIRPORT CONTRACTING POLICY

Beginning on the date the RFP is issued, and except as provided in the following subsections, all proposers, including proposers' agents, employees, representatives, lobbyists, attorneys, proposed partner(s), subcontractor(s), joint venturer(s), member(s), M/W/DBE, and sublease partner(s) (collectively the "**proposer**") will refrain, under penalty of the proposer's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads and the Phoenix Aviation Advisory Board (PAAB). This policy is intended to create a level playing field for all potential proposers, assure that contract decisions are made in public, and to protect the integrity of the proposal process.

This policy is not intended to preclude proposers from giving public comments at a regularly scheduled meeting of the Phoenix Aviation Advisory Board or one of its subcommittees.

Regular business discussions between current business partners or civic groups and the Aviation Director, Assistant Aviation Directors, and/or any Deputy Aviation Director will not be construed as a violation of this policy as long as a specific proposal is not discussed.

B. CONTACT WITH PHOENIX CITY COUNCIL

This policy is not meant to preclude proposers from discussing their proposals with one or more members of the Phoenix City Council, provided such meetings are scheduled through the Phoenix City Clerk's office, conducted in person at 200 West Washington, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meeting. The Clerk's posting shall include and detail the participants, the subject matter and shall invite the public and press to participate. No contacts made by telephone, other than to schedule a public meeting, are permitted, and copies of contacts made via letter, FAX, E-mail or other written method shall be made available to the public, press, and all proposers.

C. CERTIFICATION

All proposers and proposers' partners(s), subcontractor(s), if applicable, shall execute and submit the Airport Contracting Policy Certification.

D. THE PRE-PROPOSAL MEETING

Potential proposers should attend the pre-proposal information meeting to obtain clarification and explanation of the items included in the RFP. Questions submitted in writing at the pre-proposal meeting shall be responded to in writing and distributed to all proposers who attended the pre-proposal meeting.

Interested proposers who do not attend the pre-proposal meeting will not receive notification of availability of any supplemental materials, responses to written questions, or addenda unless specifically requested in writing.

CITY OF PHOENIX
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E. QUESTIONS

If interested proposers need further information or clarification of the RFP, requests shall be in writing and staff shall notify all registered pre-proposal meeting attendees when written answers are available on the website. **To adequately respond in writing to questions submitted, no questions will be accepted after the deadline date and time listed on page 1 of the RFP.** All questions should be sent to Gretchen Wolfe by fax (602-273-8809) or by e-mail (busopps.aviation@phoenix.gov).

F. APPEAL OF DISQUALIFICATION TO AVIATION DIRECTOR

A violation of the Airport Contracting Policy, or any other grounds for disqualification will be initially determined by the Assistant Aviation Director for Business Opportunities. Protest of a disqualification from the RFP process due to submitting a proposal deemed to be non-responsive, a violation of this policy, or for any other grounds, must be submitted within seven (7) calendar days after the Notice of Disqualification has been delivered to the proposer. Protests shall be in writing and filed with the Aviation Director and must include all of the following:

- The name, address and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the RFP challenged;
- A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
- The form of relief requested.

The Aviation Director, or his/her designee, may submit the information to anyone necessary in order to receive their comments and may choose to meet with proposer(s) at his/her discretion. The decision of the Aviation Director, or his/her designee, is final. As a condition to this right to appeal, the Proposer agrees to comply with paragraphs "A" and "B" of this Policy.

G. REQUEST FOR REVIEW OF AWARD RECOMMENDATION

Protest of an award recommendation must be filed within seven (7) calendar days after an award recommendation is posted on the website. Protests shall be in writing and filed with the Aviation Director and must include all of the following:

- The name, address and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the RFP challenged;
- A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
- The form of relief requested.

The Aviation Director, or his/her designee, may submit the information to anyone necessary in order to receive their comments and may choose to meet with proposer(s) at his/her discretion. The decision of the Aviation Director, or his/her designee, is final. As a condition to this right to protest, the proposer agrees to comply with paragraphs "A" and "B" of this Policy.

**CITY OF PHOENIX
Aviation Department**

H. PROCEDURAL QUESTIONS

If a proposer has a procedural question with regard to this Airport Contracting Policy, the question shall be directed to the staff that is managing the project.

All proposers and proposers' partner(s), subcontractor(s), joint venturer(s), member(s), M/W/DBE partner(s), if applicable, shall execute and submit an Airport Contracting Policy Certification as part of your proposal.

Please list the proposers' partner(s), subcontractor(s), joint venturer(s), member(s), M/W/DBE's partner(s) below and ensure that a copy of the Airport Contracting Policy Certification has been executed and submitted for each of them as part of your proposal, or write "none" if applicable.

Proposer hereby acknowledges that the foregoing Airport Contracting Policy is understood and that the proposer will abide by it. As of the date of this RFP is issued, the Airport Contracting Policy is in effect.

Proposer Signature _____

Proposer Name _____
(please print)

Date _____

List of Proposers' Partner(s), Subcontractor(s), Joint Venturer(s), Member(s), and M/W/DBE's partner(s)		
Company Name (Write "None" if applicable)	Contact Name	Signature of Partner(s), Subcontractor(s), Joint Venturer(s), Member(s), and M/W/DBE's partner(s)

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Aviation Department**

ATTACHMENT C

Financial Data

Proposer's Name: _____

Proposed Concept: _____

A. Historical Gross Sales

Provide the following information for the 3 most current consecutive years of food and beverage management experience at all locations with the proposed concept.

	Number of F&B locations with the proposed concept	Total Gross Sales of with the proposed F&B concept	Approximate Square Footage	Sales Per Square Foot
Calendar Year ____				
Calendar Year ____				
Calendar Year ____				

B. Projected Gross Sales and Rental Revenues

	<u>Projected Gross Sales</u>	<u>Percentage Rent</u>	<u>Projected Rental Revenues</u>	<u>Rental Revenues Per Sq. Ft.</u>
Year 1:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____
Year 2:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____
Year 3:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____
Year 4:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____
Year 5:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____
5 Year Total:				
Gross Sales	\$ _____	<u>7%</u>	\$ _____	\$ _____

**CITY OF PHOENIX
Aviation Department**

C. Proposed Minimum Annual Guarantee (MAG)

Year 1: \$ _____ *

*Not less than \$50,000 nor greater than Year 1's projected rental revenues per sq. ft.

D. Estimated Capital Investment

- | | | |
|-------------------------------------|----------|--------------------------|
| A. Architectural & Engineering Fees | \$ _____ | |
| B. Equipment, Furnishing & Fixtures | \$ _____ | |
| C. Leasehold Improvements | \$ _____ | |
| D. Working Capital | \$ _____ | |
| E. Initial Inventory | \$ _____ | |
| F. Improvements Completion Bond | \$ _____ | |
| G. Total Investment | \$ _____ | (Sum of D-A through D-F) |

E. Source of Investment

- A. Amount Financed \$ _____
Describe any source of financing below (i.e., bank loans, etc.). If financing the capital investment, please **attach a commitment letter** from the lender, bank, or other financial institution.

- B. Cash \$ _____
Describe any source of cash below (i.e., retained earnings, etc.)

- C. Total Investment (D-A + D-B) \$ _____ * (Should equal D-G)

*Must exceed minimum requirement of \$25/sq. ft.

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ATTACHMENT D

**Projected Cash Flow Statement (in Current U.S. Dollars) and
Assumptions for Projected Cash Flow Statement**

Proposer Name _____

Category	Year 1		Year 2		Year 3		Year 4		Year 5	
	Amount	% of Gross Sales	Amount	% of Gross Sales	Amount	% of Gross Sales	Amount	% of Gross Sales	Amount	% of Gross Sales
Gross Sales	\$	%	\$	%	\$	%	\$	%	\$	%
Cost of Goods		%		%		%		%		%
Gross Profit	\$	%	\$	%	\$	%	\$	%	\$	%
Operating Expenses:										
Salaries/Wages/Benefits	\$	%	\$	%	\$	%	\$	%	\$	%
Utilities and Telephone		%		%		%		%		%
Maintenance/Cleaning/Supplies		%		%		%		%		%
Insurance		%		%		%		%		%
Marketing/Advertising		%		%		%		%		%
Licensing Fees		%		%		%		%		%
Rent to City		%		%		%		%		%
General & Administration		%		%		%		%		%
Interest Expense		%		%		%		%		%
Other Misc. Expenses		%		%		%		%		%
Total Expenses	\$	%	\$	%	\$	%	\$	%	\$	%
Cash Flow From Operations	\$	-	\$	-	\$	-	\$	-	\$	-
Beginning Cash Balance	\$		\$		\$		\$		\$	
Plus: Cash Flow From Operations										
Minus: Debt Service (Principle only)		-		-		-		-		-
Minus: On-Going Annual Capital Expenditures										
Ending Cash Balance (Net Income)	\$	-	\$	-	\$	-	\$	-	\$	-
Prepare according to Generally Accepted Accounting Principles.										

On a separate sheet, each proposer shall:

1. Detail any assumptions regarding customer growth for Year 1 through year 5.
2. Provide a detailed description of the reasonableness of the projected sales, operating expenses, net income and annual cash flow.

ATTACHMENT E

DRAFT

CITY OF PHOENIX

LEASE NO.

between

**THE CITY OF PHOENIX
a municipal corporation**

and

(Name of Successful Proposer)

DEER VALLEY AIRPORT FOOD & BEVERAGE LEASE

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DEER VALLEY AIRPORT FOOD & BEVERAGE LEASE

This FOOD AND BEVERAGE LEASE ("**Lease**") is made and entered into this ____ day of _____, 2009 (the "**Execution Date**"), by and between the City of Phoenix, a municipal corporation of the State of Arizona, (hereinafter referred to as the "**City**" and "**Lessor**"), and ____, whose principal place of business is located at ____, I.D. No. ____, (hereinafter referred to as "**Lessee**").

RECITALS

1. The City is the owner and operator of Deer Valley Airport ("**DVT**") in Phoenix, Arizona.
2. The City has solicited proposals for a non-exclusive food and beverage concession at DVT and has negotiated the Lease with Lessee to operate a first-class food and beverage concession for the convenience and necessity of the customers and public using DVT.
3. The City desires to grant to Lessee the rights specified in this Lease and to establish the terms and conditions for the operation of Lessee's food and beverage concession in DVT.
4. The City desires to have existing food and beverage facilities renovated, upgraded and remodeled during the term to offer current marketplace concepts.
5. Phoenix City Council on _____, 2009 adopted Ordinance _____ authorizing the City Manager to enter into a Lease with Lessee based upon certain terms and conditions.

NOW, THEREFORE, the City and Lessee agree as follows:

SECTION 1 **TERM**

SECTION 1.1 – Initial Term

The Initial Term of this Lease shall commence on the date of execution and shall extend until Lessee begins operations, or April 30, 2010, whichever occurs first.

SECTION 1.2 – Primary Term

The Primary Term of this Lease shall commence when Lessee begins operations, or May 1, 2010, whichever occurs first, and shall expire on April 30, 2020 unless this Lease is sooner terminated as hereinafter provided. If Lessee begins operation on a day other than the first day of the month, all monetary obligations under the Lease will be prorated for the remainder of the month.

There is one (1), five-year renewal option from May 1, 2020 until April 30, 2025. The option to extend the Lease is at the sole discretion of the Aviation Director and will be exercised only if it is in the City's best interest to do so.

SECTION 2

PREMISES AND PRIVILEGES

SECTION 2.1 - Premises

The City hereby leases to Lessee those premises and facilities, approximately 6,603 square feet (sq. ft.), depicted in **Exhibit 1** (Premises). City grants Lessee the right of ingress and egress from and to the Premises on public access roadways, sidewalks, and areas of DVT.

SECTION 2.2 - Rights and Privileges

2.2.1 The City hereby grants to Lessee a nonexclusive right to engage in business at the Premises as a food and beverage concession, a commercial activity defined and regulated by this Lease and the Phoenix City Code, to sell the types of goods and services and at the prices listed in **Exhibit 2**. Lessee shall use the Premises for no other purpose. The City may grant rights to others to conduct the same or similar operations and/or to sell the same or similar goods and services at DVT.

2.2.2 As it is the objective of the City and Lessee that the DVT food and beverage concession be renovated under Section 7 hereof, maintain a distinctive quality, therefore, the location is to be operated under an agreed upon merchandising theme, as shown in **Exhibit 2**. Any modifications to the merchandising themes or types of goods sold must be approved in writing by the Aviation Director.

2.2.3 Unless expressly provided by this Lease, Lessee does not have the right to operate vending machines or electronic games for profit inside the Premises.

2.2.4 The City reserves the right to require modification to Lessee's merchandising plan.

2.2.5 As outlined in **Exhibit 2**, Lessee agrees that one hundred percent (100%) of the floor space shall be devoted to the food and beverage concession. Failure on the part of the Lessee to comply with the agreed upon themes above shall be grounds for termination of this Lease. Such compliance by Lessee shall be at the sole determination of the Aviation Director.

2.2.6 Lessee shall have the right and the obligation to construct improvements on the Premises for use in its food and beverage operations in accordance with plans and a construction schedule approved, in writing, by the City. Lessee's construction obligations are set forth in more detail in Section 7.

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

2.2.8 As a condition of its right to occupy premises, Lessee shall ensure that the operation of any wireless access point does not cause interference with existing

communications users, including, without limitation, aviation-related operations and equipment at DVT, the operations of any existing wireless users operating at DVT, and DVT's own radio systems. If the operation of the wireless access point causes any interference to any existing users, Lessee shall take all steps necessary to remove the cause of the interference. Lessee shall cooperate with DVT and any necessary third parties to identify and eliminate the cause of the interference. If the City determines, in its sole discretion, that the wireless access point or signals being transported by means of the wireless access point, are the cause of any interference, the City may direct Lessee to immediately cease operation of all or any portion of the wireless access point, or otherwise take action to eliminate the interference.

2.2.9 The described Premises and rights and privileges may be modified by the Aviation Director to implement the purpose and intent of this Lease.

2.2.10 Lessee shall have non-exclusive rights for food and beverage service on the patio located just north of the Premises. Food and beverage service on the observation deck is prohibited.

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

SECTION 3 **RENTAL**

SECTION 3.1 - Gross Sales

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

3.1.1 Any and all sales taxes, transaction privilege taxes, excise taxes or related taxes upon or passed through to the consumer and collected by Lessee on such sales.

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

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

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

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

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

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

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

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

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

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

3.1.12 Gift cards redeemed at the concession. When a gift card is redeemed or accepted as payment for a purchase, it needs to be reported as part of the Lessee's Gross Sales. If a gift card is sold from the concession, then, the sale of the gift card need not be reported as part of the concession's Gross Sales.

SECTION 3.2 - Annual Rental

3.2.1 For purposes of this Lease, "Lease Year" means the twelve-month period beginning on January 1st and ending December 31st. "Prorated Lease Year" means the period from when Lessee begins operation or May 1, 2010, whichever occurs first, until the beginning of the first Lease Year, and the period from the last Lease Year until termination.

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

- a. For the Initial Term, Lessee shall pay only a percentage rent of seven (7%) of annual Gross Sales.
- b. From May 1, 2010 through each Lease Year of the Primary Term hereof, Lessee shall pay the greater of: (1) a Minimum Annual Guaranteed rental ("**MAG**") in the amount of \$_____; or (2) seven percent (7%) of annual Gross Sales. The MAG shall be prorated for the Prorated Lease Year. The MAG rental for the second Lease Year and all years thereafter will be

established at eighty-five percent (85%) of the rental concession fees paid by Lessee during the immediate preceding year or 100% of the MAG for the first Lease Year, whichever is greater.

3.2.3 Although each new MAG will be effective on January 1, the calculation of the MAG may not be finalized until sometime after January 1, at which time the City will send Lessee written notice of the new MAG amount. Lessee shall then pay the City the difference or shall receive a refund.

3.2.4 In computing the percentage rent to be paid by Lessee, the first reporting period shall commence on the date Lessee opens for business or _____, whichever occurs first, and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

3.2.5 In addition, the Aviation Director has the right to approve other adjustments as may be appropriate.

SECTION 3.3 - Payment

Subject to Section 3.2 above, the MAG shall be paid in installments in advance on the first day of each month. On each such date Lessee shall pay one-twelfth (1/12) of the MAG rental, plus all applicable taxes.

SECTION 3.4 - Delinquent Rentals

Without waiving any other right or action available to the City in the event of default in payment of rentals hereunder, late rent is subject to delinquent fees as defined in Section 4.7 of the Phoenix City Code, as it may be amended, beginning on the dates the amounts were first owed. Lessee shall pay to the City interest thereon at the rate of eighteen percent (18%) per annum from the initial date such item was due and owing until the full amount owed, plus interest, has been paid.

SECTION 3.5 - Late Statement or Reports

If Lessee is delinquent for ten (10) days or more in furnishing the City any monthly statements or reports required under this Lease, Lessee shall pay \$100.00 to the City as liquidated damages for the additional administrative costs incurred by the City processing and reviewing delinquent statements. The parties agree that this is a fair and reasonable estimate of the City's costs incurred in processing a delinquent monthly statement or report.

SECTION 3.6 - Reports and Percentage Rents Payments

Lessee shall, within twenty (20) days after the close of each month, furnish City a detailed statement of Gross Sales and any deductions from Gross Sales for the preceding period prepared in accordance with generally accepted accounting principles (GAAP) and certified by a responsible financial officer of the Lessee. These Gross Sales reports shall show such reasonable data and breakdown, including an itemized

list identifying all percentage Gross Sales by category and any other type of reporting as may be required by City, and shall be accompanied by Lessee's payment of additional compensation that may be due hereunder based on the application of the percentage of Gross Sales as set forth in Section 3.1, plus all applicable taxes. The City may require changes to the format of these reports at any time.

At the end of each Lease Year, an annual accounting on the basis of percentage rents that may be due shall be made by Lessee to the City within ninety (90) days after the end of each Lease Year, but only if the Lessee has provided the Gross Sales reports for the entire year (or partial Lease Years which occur at the beginning and end of the Lease). For the purpose of said annual accounting, Lessee shall furnish to the City an audited annual accounting statement of Gross Sales and Percentage Rents due prepared and audited by an independent certified public accountant (CPA) in accordance with generally accepted auditing standards. The purpose of the audit will be to express an opinion that the statement of Gross Sales and Percentage Rents calculated in accordance with this Lease accurately reflect the rents due and paid to the City for the Lease Year in accordance with the terms of this Lease.

SECTION 3.7 - Credits and Discounts

Lessee shall not be credited with nor allowed to have any reduction in the amount of Gross Sales which results from any arrangements for a rebate, kickback, or hidden credit given or allowed to any customer; provided, however, that Lessee may allow customary discounts on sales of commodities and products to its own employees.

SECTION 3.8 - Books and Records

3.8.1 Lessee shall keep, in accordance with GAAP, separate and accurate records of Gross Sales showing in detail all business done or transacted in, on, about, from, or pertaining to the Premises for the five (5) most recent years during the term hereof, and until all claims by City for payments hereunder shall have been fully ascertained, fixed and paid, or until three (3) years after expiration or earlier termination of this Lease, whichever is later, Lessee shall enter all receipts arising from such business in regular books of accounts kept on the Premises for that purpose, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. It is the intent and purpose of the foregoing provisions that Lessee shall keep all such records available for inspection by the City as will enable City to ascertain and determine, accurately and clearly, the amount of money payable to City hereunder, and determine the exact share of Gross Sales billed and/or received by the Lessee under this Lease.

These records are to be kept within the geographic boundaries of the City and shall include: chart of accounts, general ledger, daily business reports, numbered invoices for catering activity and original or copies of rental agreements for all DVT related transactions. If the Lessee elects not to maintain its records in Phoenix, then upon City's request or in the event of an audit, it shall either: 1) pay for all expenses associated with delivering said records to the address of the auditors or 2) pay for reasonable travel expenses for the auditors to have the audit conducted at Lessee's

specified location, including an administrative fee of fifteen percent (15%) of the actual costs of the audit.

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

The records requirements of this Section shall extend to any of the Lessee's subsidiaries, partners, joint ventures, sublessees, and subcontractors.

The City may use its own staff to perform audits under this Section, or may engage an independent CPA to perform the audits. If an audit reveals that Lessee has understated its Gross Sales by two percent (2%) or more, the entire expense of the audit shall be borne by Lessee. Lessee shall immediately pay any additional amounts due to the City, with interest at the City's then prevailing interest rate on delinquent accounts payable [that rate currently is eighteen percent (18 %) per year]. Interest shall accrue from the date the delinquent payment was due under the Lease.

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

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

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

3.8.6 It is agreed that examination of the books, ledgers, journals and accounts of Lessee will be conducted in accordance with generally accepted auditing standards applicable in the circumstance, and that as such, said examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Lessee. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by City

to the entire period of reporting under examination and will be binding upon Lessee, and to that end shall be admissible in any court of law to prove any amounts due City.

3.8.7 The Federal Aviation Administration (FAA) has deemed this business opportunity to be a concession contract and as such, the resulting contract shall be subject to review for Airport Concession Disadvantaged Business Enterprise (ACDBE) participation and goals may be set before any extension options are exercised. Lessee shall be required to track and submit to Aviation Department monthly reports of receipts expended to all ACDBE third party subcontractors or suppliers of goods and services for the performance of the contract resulting from this contract opportunity and complete an ACDBE Data Collection Form annually.

SECTION 3.9 – Independent Audits

If, as a result of the audit, the City determines that additional funds are due to the City, Lessee shall be notified of the City's findings and invoiced for the total amounts due. Lessee shall elect to: (1) agree with the City's audit findings, and within thirty (30) days after receipt of said notice, make known its agreement to the City in writing and pay all monies due to the City; or (2) within sixty (60) days after receipt of said notice, furnish to the City, at Lessee's expense, an audit made by an independent CPA mutually agreeable to both parties. Failure of Lessee to dispute the audit finding, in writing, within thirty (30) days, shall constitute acceptance of the audit findings, and waiver of the right to appeal the audit findings. If Lessee elects to request an independent audit under this paragraph, in the event any deficiency of two percent (2%) or greater of the amount payable to City is ascertained, Lessee agrees to pay City for the cost of City's audit and for all deficiencies and delinquent fees. Interest shall accrue from the date the delinquent was due under the Lease.

SECTION 3.10 – Final Audit Binding

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

SECTION 4 **PAYMENTS**

SECTION 4.1 - Payments

Rental payments pursuant to this Lease shall be made as follows:

4.1.1 Immediately upon Lessee's receipt of monies from the operation of the concessions herein authorized, the portion of said monies belonging to the City under the terms of this Lease shall immediately be vested in and become the property of City,

and Lessee shall be responsible for said monies until the same are delivered to City. In this regard, an employee fidelity bond in an amount not less than \$_____ (3-months equivalent rent) shall be maintained by Lessee covering all its employees who handle money. This amount is subject to change at the discretion of the Aviation Director.

4.1.2 Payment of percentage rents in each instance shall be accompanied by a statement showing Gross Sales and any deductions from Gross Sales for the previous accounting period.

4.1.3 In the event that the required MAG specified above is in excess in any one period of an amount which would be due were the Percentage rents to be applied, the accounting set forth above is nevertheless to be submitted to City.

4.1.4 Lessee shall follow and comply with the directions of the Aviation Director with respect to forms and methods of said accountings. The City reserves the right to prescribe or change reporting forms, the method and time of submission, and the payment schedule. The City shall first submit to Lessee in writing specific details of any desired changes.

4.1.5 After the close of each Lease year, Lessor shall calculate the rental payments paid to Lessor for the year, these shall be totaled and compared with the rental amount due Lessor, which shall be recalculated as being either the said MAG rental or the said percentage of the annual Gross Sales, whichever is greater, taking into account appropriate credits. In the event of an overpayment or underpayment to the Lessor as determined from the final annual audited statement, an amount equal to such overpayment or underpayment shall be credited to or paid by Lessee as appropriate. If Lessor determines that there has been an overpayment by Lessee during the last Lease Year as determined from the final annual audited statement, the Lessor shall pay to Lessee any amount due to Lessee.

4.1.6 Rental payments shall be made payable to lockbox address in check form.

SECTION 5

LESSEE OPERATING STANDARDS

SECTION 5.1 - Service Standards

5.1.1 Lessee shall implement and conduct its operations in conjunction with the Customer Service Standards Manual attached as **Exhibit 6**.

5.1.2 All of Lessee's customers shall receive warm, friendly, smiling, prompt, courteous service.

5.1.3 Lessee shall utilize attractive merchandising that entices potential customers to purchase goods and services. Lessee shall develop and implement creative and effective merchandising displays within the Premises; those displays may include without limitation window displays, display cases, promotional displays (for which City approval must be obtained), and attractive packaging. All signage and merchandising displays must conform to **Exhibit 3** and must be approved in advance by the City under the Tenant Improvement Process (TI Process).

5.1.4 Service shall be timely, attentive, and friendly. Processing of payments from customers shall be prompt. Receipts shall be properly itemized, shall reflect precisely the actual sale of goods and date of sale, and shall present individual prices, totals, and taxes. All customers shall be thanked for patronage.

5.1.5 Lessee shall maintain and conduct its operations in a proper business-like manner so as not to disturb or be offensive to other lessees, customers, or passengers in the DVT. Lessee shall not solicit business anywhere at the DVT, except in a proper manner within the Premises.

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

5.1.7 Except as otherwise expressly agreed by the City, Lessee shall operate the designated food and beverage concession seven (7) days a week which shall include Lessee's obligation to be open for business, at a minimum, from 6:00 am to 9:00 pm. Exact hours of operation will be established and reestablished from time to time by the City based upon the needs of the DVT and surrounding community. Such hours of operation shall be communicated to Lessee. Failure to adhere to the established hours of operation will result in inconvenience to the public and will adversely affect the operation of DVT. Quantification of the resulting damages is difficult. The parties agree that the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred by the public and the City for the specified breaches of the foregoing operating standards. Therefore, for each violation of this Section, Lessee shall pay \$100.00 to the City as liquidated damages.

5.1.8 The City may monitor, test, or inspect Lessee's services at any time through the use of a responsible shopping service or by other commercially reasonable means that do not unduly interfere with Lessee's business.

SECTION 5.2 - Employee Standards

5.2.1 Lessee shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the work requirements. Each employee shall: (1) be clean and neat; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) not wear excessive amounts of jewelry, perfume, or cologne; (5) wear uniforms of a design approved by the City; and (6) wear the employee's airport identification at all times, showing the names of the Lessee and the employee. Lessee shall discipline and, if necessary, discharge any employee who fails to conform to the standards in Section 5 while working at DVT.

5.2.2 Lessee shall maintain sufficient staff and shall monitor its employees to ensure a high standard of service is rendered to the public, in the judgment of the City. This includes providing services in English to meet the expectations of the traveling public, which is comprised of predominantly domestic passengers at DVT. Offering services in other languages is encouraged but not required. The City reserves the right to require Lessee to add additional staff if the customer service requirements set forth in this Section are not being met, in the judgment of the City.

SECTION 5.3 – Management

5.3.1 The operation and maintenance of the Premises shall be under the constant, direct supervision of a trained, qualified, and experienced manager employed

by Lessee. Lessee's manager shall be authorized to accept any notice required or allowed by this Lease, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the concession. Lessee's managers shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager. Lessee shall provide a name and telephone number of a manager who is available 24 hours a day, 7 days a week. Lessee may employ more than one (1) manager to satisfy the requirements of this Section. The City retains the right to approve the on-site manager at such time as he or she is named. Lessee shall notify the City of the name(s) of the on-site manager(s) for City's approval.

5.3.2 Lessee must identify the General Manager to be assigned to the oversight of operations. The General Manager is the primary individual responsible to fulfill the Lessee's obligations under the Lease and will be the primary point of contact for interaction with the City. The General Manager assigned to the operations of the concessions must have a minimum of three (3) years continuous experience in overall food service management. The City hereby acknowledges its acceptance of _____ as the General Manager. At any time hereafter that the Lessee desires to change the General Manager while performing under the Lease, the Lessee shall submit the qualifications of the new General Manager in writing to the City for prior approval. A new General Manager shall have a minimum of three (3) years' continuous experience in overall food service management. The City reserves the right to reject the requested change.

SECTION 5.4 - Sanitation, Hygiene, and Cleanliness

5.4.1 Lessee shall keep the Premises, including the patio and observation deck described in Section 2.2.10, free of debris, trash, and hazardous conditions, shall keep public areas around the Premises free of hazardous conditions originating from Lessee's operations, and shall notify the City promptly of other hazardous conditions in the public areas outside the Premises.

5.4.2 Lessee shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Premises, and shall provide for its timely removal to the central collection point to be provided by the City.

Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Lessee shall keep all garbage and recyclable materials in durable, fly- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them. Lessee shall clean the containers (and surrounding areas) as necessary to prevent odors. Lessee shall not allow boxes, cartons, barrels, or other similar items to remain within view of public areas. The City shall be responsible for handling and removal of trash and other refuse deposited by customers in public areas.

5.4.3 Lessee is responsible for the regular and routine cleaning of all tallow bins (and surrounding areas), grease traps and interceptors, jetting of the lines, hood vents and drains associated with the Premises. Lessee will retain within Premises schedules

for the routine inspection and cleaning of the Premise's tallow bins, grease traps and interceptors, jetting of the lines, hood vents, and drains. These service/inspection schedules shall be made available to the City upon request. The City recommends, at a minimum, grease traps and interceptors be serviced quarterly, lines be jetted semi-annually and tallow bins be pumped/cleaned monthly. Lessee shall be required to utilize a "Liquid Wastewater Treatment" for treatment of all waste lines associated with the concession and do so per the manufacturer's specifications. The "Liquid Wastewater Treatment" shall be Environmental Protection Agency approved and used in accordance with manufacturers' specifications, and the Material Safety Data Sheets (MSDS) of the products are to be submitted to the City for review and approval of the product(s) prior to the initiation of use. Lessee shall also be responsible for acquiring, and retaining on-site, a video (on a DVD disk) of the interior of the waste lines at twelve (12) month intervals to ensure that the lines are being jetted/cleaned in accordance with City standards. Lessee's first "waste line" video shall be generated after conclusion of the TI Process and prior to the opening for business. The video shall be made available to the City upon request. The City reserves the right to request and/or require the increase of the frequency of inspections, cleanings and video's based on Lessee's Gross Sales and the condition in which the areas are kept. Lessee shall also be responsible for any emergency grease interceptor cleanings and/or grease interceptor line jettings needed outside of the established schedule.

5.4.4 Lessee shall retain, within Premises, copies of all health inspection reports, line jetting/grease interceptor pumping invoices, all maintenance logs including exhaust hoods and fire suppression equipment and all pest control invoices. Lessee shall provide copies of listed documentation within this Section to Lessor upon Lessor's request.

SECTION 5.5 – Menu/Food Quality

5.5.1 Lessee's approved menus are attached as **Exhibit 2**. Lessee may add or delete single menu items within each menu's scope content as approved by the City for Lessee's concession concepts, but shall notify the City promptly, in writing, of each change. Lessee must obtain the City's prior written consent before implementing a menu change that, in conjunction with prior menu changes in the same Lease Year, would result in more than ten percent (10%) of the menu items being affected.

Written notifications and requests for menu changes under this Section must include the following information: (1) a clear description of the menu item(s) to be changed; (2) the current prices and portion size of the affected menu item(s); (3) a clear description of the proposed new menu item(s) and portion sizes; (4) if a price change is involved, the percentage change in price; and (5) the rationale for the change, with any supporting documentation. Lessee shall submit new menus as menu changes are made and approved by the City and the new menus will then become the new **Exhibit 2**, replacing and superseding the old menus.

5.5.2 Lessee shall keep on hand sufficient quantities of all products to allow preparation of all menu items to meet the demands of the DVT customer. Lessee shall make efforts to ensure that only the highest quality of food is sold at DVT. Those efforts shall include, but are not be limited to:

- a. Purchasing products only from reputable commercial food vendors; and
- b. Receiving, transporting, and storing products in a manner that ensures that the quality does not decline.

5.5.3 Products purchased by Lessee for food and beverage service at DVT shall meet or exceed all local, state and federal food quality standards.

SECTION 5.6 – Food and Beverage Menu Items

Lessee's food and beverage menu items should reflect the approved menu lists in **Exhibit 2** and should be consistent with each concession's theme. The City may require the removal of any food or beverage item that does not fit with the concession's theme or are not specified on the menu lists contained in **Exhibit 2**.

SECTION 5.7 – Deliveries

5.7.1 Zones: Authorized vendor delivery zone is located on the east side of the Premises.

5.7.2 Hours: All deliveries to the Premises shall be scheduled during non-peak periods. The City may issue schedules of acceptable delivery times, which the City may adjust from time to time, and from which Lessee shall not deviate without the City's prior consent.

5.7.3 Deliveries of Inventory and Disposal of Trash: Lessee shall ensure goods being transported within the DVT terminal are handled in a manner that ensures items are packaged within containers and containers are properly covered and not leaking. In transporting merchandise, products, trash, and refuse associated with operating Lessee's business to and from the Premises, Lessee shall use only those delivery and receiving routes established by the City and shall use only carts, vehicles, or conveyances that are sealed and leak-proof. All food and supplies moved throughout the terminal may only be transported on carts or other wheeled devices that are equipped with polyurethane non-marking wheels. Black wheels or other marking wheels are strictly prohibited.

SECTION 5.8 - Signs

The City will permit Lessee to install and operate signs in and about the interior of the Premises to advertise the food and beverage concession, but Lessee shall not install any sign until the sign has been approved in writing by the City. Lessee shall request the City's approval by submitting a written request identifying the number, general type, size and location and must be accompanied by a detailed rendering or drawing of the proposed sign. All signs must conform to the minimum requirements established by the signage standards in **Exhibit 3** and must be approved through the City's TI Process.

SECTION 6 **PRICE POLICY**

The prices Lessee has agreed to charge are stated in **Exhibit 2**. Lessee may not increase individual prices by more than the Phoenix-Mesa Consumer Price Index (CPI) in any one Lease Year without prior written consent from the Aviation Director. Requests for price changes must be accompanied by the following information: (1) a list of the items to be changed; (2) the current prices of those items; (3) the proposed price change per item; (4) the percentage change in price per item; and (5) a statement of the reasons for the change. ***In no event shall the price charged by Lessee exceed the price marked on the item being sold.***

SECTION 7 **IMPROVEMENTS TO BE MADE BY LESSEE**

SECTION 7.1 - Furnish and Equip Premises

7.1.1 Lessee shall provide and maintain at its own expense a first-class food and beverage concession, and shall provide at its own expense all improvements, alterations, and fixtures necessary for the customary operation of such a business, including, but not limited to, sales counters, display cabinets, interior partitions, special lighting, fixtures, wall coverings and finishes, and all other equipment, furniture, furnishings, and supplies necessary in the proper conduct of Lessee's business. All improvements, ceiling finishes, wall finishes, floor finishes, furniture, fixtures, and equipment used in the Premises shall be approved in advance by the City. All furnishings, fixtures, equipment and improvements shall be of high quality, safe, fire-resistant, and attractive in appearance. All improvements that are affixed in any manner to the Premises are Leasehold Improvements. All non-affixed items, including cash registers, safes, racks, non-affixed display fixtures, and other furnishings, fixtures and equipment are hereinafter referred to as Trade Fixtures.

7.1.2 City shall not be requested to, nor will City execute a Landlord's Waiver, Landlord's Consent, or similar document which would subordinate the City's interest in the Lease to any security interest or consent to Lessee's pledge of Leasehold Improvements or Trade Fixtures in order to obtain financing. Any improvements, furniture, furnishings, fixtures and equipment must comply with **Exhibit 3** and the Tenant Improvement Handbook (TI Handbook), available at www.phxskyharbor.com, and may be installed only with the City's prior written approval.

7.1.3 In connection with Lessee's performance under this Lease, Lessee shall expend a sum of not less than _____ Dollars (\$_____) as reflected and proposed in Lessee's original response to the RFP. Lessee, is not required to make a minimum investment in the restaurant during the first three (3) years of the Lease, but must make any and all necessary repairs to keep the restaurant in "opening day" condition. Lessee shall maintain the Premises in an "opening day" condition throughout the term and any renewals of the lease. Commencing in the fourth year of the Lease, and continuing for each Lease Year thereafter including the final year of the Lease and all renewals, Lessee shall spend a minimum of an amount equal to one-half of one

percent (0.5%) of the Gross Sales derived from all of its concession operations from each immediately preceding Lease Year to refurbish the Premises and improvements that are visible to customers. Lessee shall submit a plan no later than April 1, _____ to the Aviation Director for approval, which details how much will be spent annually or aggregated into a lump sum amount to be spent bi-annually (the "Refurbishment Plan"). No additional term will be granted due to this Lease required upgrade. In addition, the Refurbishment Plan will specify the types of improvements that will be made, including any reconcepting of unit.

7.1.4 Upon completion of construction, furnishing, decorating, and equipping as described in this Section, Lessee and its prime construction contractor or contractors shall provide the City within one hundred twenty (120) days of completion, a certified cost statement setting out the total construction cost and the cost of furnishing, decorating, and equipping the Premises. The costs submitted by Lessee shall be itemized and segregated into the two categories of Leasehold Improvements and Trade Fixtures.

7.1.5 The City shall provide Lessee with all demising walls, concrete sub floors and all electrical, HVAC, gas, fire alarm and sprinklers, water, sewer, ducts, pipes and conduits, as applicable in sufficient capacity to support the concept described in **Exhibit 2** all stubbed to the lease line at each of the Premises. Lessee shall be responsible for all interior installations and distribution of utilities including any hood and vent required for stoves. Notwithstanding the foregoing, Lessee acknowledges the City shall not be responsible for demolition of existing space, demising walls and flooring. This does not relieve the City from obligations to abate asbestos, should it exist in that location. The City shall be responsible for any and all costs associated with asbestos abatement.

A phasing plan schedule that will be provided to Lessee is an estimated schedule only and no representations, direct or implied, are made by Lessor relating to the time periods stated therein and Lessee waives any rights to rely on same for purposes of any claim against Lessor.

SECTION 7.2 - Plans and Specifications

7.2.1 According to **Exhibit 3**, Lessee shall submit schematic design drawings for review, compliance and approval by the Business and Properties office.

7.2.2 Upon approval of schematic design drawings, Lessee shall prepare and submit construction documents for Leasehold Improvements and Trade Fixtures for approval in accordance with the TI Handbook.

7.2.3 Construction documents shall comply with **Exhibit 3** and all applicable City of Phoenix Ordinances and Building Codes. Lessee shall have the construction documents prepared by an architect or engineer registered and licensed to practice in the State of Arizona. All construction shall be performed by contractors who are licensed and bonded by the State of Arizona.

7.2.4 The City will give written notice to Lessee of the date the Premises has been certified by the City's engineer as available for improvement by Lessee. Upon approval of the construction documents by all appropriate City Departments, Lessee shall proceed with construction in the Premises. Lessee shall have 21 calendar days to

initiate construction and 120 calendar days to complete construction of Premises from the date on the tenant improvement coordinator's written notice providing approval to initiate improvements.

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

7.2.6 One hundred twenty (120) days after completion of any improvement, additions or alternation, Lessee shall provide to the Aviation Director two (2) sets of detailed plans and specifications of the work as completed. One copy shall be produced as a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined at time of submittal by the Aviation Director. Lessee agrees that, upon the request of the City, Lessee will inspect the Premises jointly with the City to verify the as-built drawings.

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

SECTION 7.3 - Approval of Plans and Specifications for Subsequent Changes, Alterations, or Additions

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

7.3.2 Prior to commencing any improvements, additions or alterations, Lessee shall notify the City thereof in writing ten (10) days in advance thereof, and the City shall have the right to enter and post and maintain notices of non-responsibility upon the Premises.

7.3.3 The approval given by the City shall not constitute a representation or warranty as to such conformity with the requirements of local, state, and federal laws and codes; responsibility for conformity shall at all times remain in Lessee. Approval of the City shall extend to and include architectural and aesthetic matters and the City reserves the right to reject any design submitted and to require Lessee to resubmit designs and layout proposals until they meet the City's approval.

7.3.4 In the event of disapproval by the City of any portion of the plans and specifications, Lessee shall promptly submit necessary modifications and revisions of these plans and specifications. No substantial changes or alterations shall be made in any executed plans or specifications after initial approval by the City, and no alterations, additions or improvements shall be made to or upon the Premises without the prior written approval of the City. Request for approval of changes or alterations to submitted plan will be done in accordance with the TI Handbook.

7.3.5 One hundred twenty (120) days after completion of any improvements, additions or alterations, Lessee shall provide to the Aviation Director two (2) sets of detailed plans and specifications of the work as completed. One copy shall be produced as a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined at time of submittal by the Aviation Director. Lessee agrees that, upon request of the City, Lessee will inspect the Premises jointly with the City to verify the as-built drawings.

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

SECTION 7.4 - Title to Leasehold Improvements

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

7.4.2 All Leasehold Improvements approved by the City and any City approved additions and alterations to these Leasehold Improvements shall become and remain the property of Lessee until the expiration or termination of this Lease. Upon expiration or termination of this Lease for any reason, all Leasehold Improvements shall become the property of the City with Trade Fixtures, signs and other personal property remaining the property of Lessee so long as; (1) the removal of such fixtures, signs, or personal property, at Lessee's sole expense, does not result in material damage to the Premises which cannot be repaired by Lessee to the satisfaction of the Aviation Director; (2) Lessee is not in default at the time of termination or expiration of the Lease; and, (3) the Trade Fixtures, signs, or personal property are removed from the Premises no later than ten (10) days after the expiration or termination. Lessee shall remove its Trade Fixtures, signs, and personal property in a manner and at times that do not interrupt operation of DVT. Lessee shall repair all damage done to the Premises or other City owned property resulting from the removal of such Trade Fixtures, signs, and personal property and shall restore the Premises and other City owned property to the state of good repair that existed prior to the installation of Lessee's Trade Fixtures, signs, and personal property, less normal wear and tear. Should Lessee fail to repair the damage to the City's satisfaction, the City shall have the right to make such repairs and shall be reimbursed by Lessee within ten (10) days following demand by the City for said payment at the City's standard rates plus the City's overhead, or, if the work is performed by the City's contractor, the City's actual cost, including but not limited to City administrative costs. If Lessee fails to become current within thirty (30) calendar days, title to the Trade Fixtures shall vest in the City. If Lessee is in default at the time of expiration or termination, the City may hold title to the Trade Fixtures until Lessee is current on all payments owed the City. If Lessee fails to remove its Trade Fixtures, signs, and other personal property within ten (10) calendar days, or a longer period agreed to in writing by the City, after the expiration or termination of this Lease, the City,

at its option, may determine that title to these items shall vest in the City at no cost to the City, or the City may elect to exercise its rights under Section 15.

Notwithstanding the foregoing, in the event that the Term is less than five (5) years, upon termination or expiration hereof the City shall reimburse Lessee for the then unamortized value of its Leasehold Improvements. For purposes of this provision, the amortization period for all of the foregoing assets installed on the commencement of the Term shall be five (5) years commencing with the start of the Primary Term. Any additional Aviation approved assets installed on-site shall be amortized over five (5) years, commencing on date of installation.

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

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

SECTION 7.5 - Removal and Demolition

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

SECTION 8 **CLOSURE, RELOCATION, REDUCTION, EXPANSION, OR CONDEMNATION**

SECTION 8.1 - City's Authority

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

Upon receipt of closure notice from City, the lease shall terminate, and Lessee shall have no future responsibility for payment of rent to Lessor from date of notification forward. Lessee's responsibility continues for any past rentals fees, or changes fee Lessor prior to date of notification.

SECTION 8.2 - Compensation

If a closure occurs under this Section, the City's liability shall be limited to reimbursement of Lessee for the net book value of all Leasehold Improvements, including furniture and fixtures custom made for the Premises made by Lessee that

cannot reasonably be removed and reused by Lessee and that cannot be used by Lessee in a relocated or reduced concession. For the purposes of this Lease, net book value shall mean the current value of the Leasehold Improvements after depreciation. Depreciation shall be calculated on a straight line basis over five (5) years commencing with the start of the Term. Documentation of Leasehold Improvement will be required by City.

SECTION 8.3 - Condemnation

This Lease shall terminate upon the filing of an action to condemn the Premises or when the condemning authority takes possession of the Premises. The City shall be entitled to all compensation awarded in any condemnation action, except for any amount owed as described in Section 8.2.

SECTION 8.4 - Notice

Unless exigent circumstances exist, the City shall give Lessee at least ninety (90) calendar days written notice before requiring Lessee to close or reduce its operation.

SECTION 9 **JANITORIAL SERVICES**

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

SECTION 10 **MAINTENANCE OF PREMISES**

SECTION 10.1 – Maintenance

10.1.1 Obligations of the City: The City shall, at its expense, maintain DVT in good condition, including the ventilating and air conditioning equipment, electrical, fire suppression, water and sewer systems, and gas, where applicable, up to the leasehold of each unit. The City shall maintain the common parking area located south of the DVT terminal building, except for repair or extraordinary damages caused by Lessee's employees, agents, invitees, and suppliers. Such extraordinary repairs will be made by Lessor and the cost billed to the Lessee.

10.1.2 Obligations of Lessee: Lessee shall, at all times and at its sole expense, maintain in good repair and keep in a clear and orderly condition and appearance the Premises and all Leasehold Improvements therein, including Trade Fixtures and

storefront glass, light fixtures, and all signs, whether installed by Lessee or the City. All maintenance shall be equal to or greater than the materials, workmanship and appearance representative of similar areas at DVT directly controlled by the City. In order to maintain high standards of maintenance, the City, at Lessee's expense, may accomplish any required work following Lessee's refusal or failure to perform it in a satisfactory manner. The procedure to be followed by the City in performing maintenance work on behalf of Lessee shall be the same as that used to remedy default in providing janitorial services. The City shall be the sole judge of the quality of maintenance.

SECTION 10.2 - Repairs

10.2.1 All repairs to the Premises done by or on behalf of Lessee shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original materials and workmanship, and, except in emergencies requiring immediate response, must have the prior written approval of the City. Lessee shall be responsible for the cost to repair any damage to DVT or Premises caused by the negligence or misconduct of Lessee's employees, agents, invitees, or suppliers. All repairs shall be approved in advance by the City and shall conform to the rules and regulations prescribed from time to time by federal, state, or local authorities having jurisdiction over the work in Lessee's Premises. The City shall be the sole judge of the quality of the repairs.

10.2.2 Lessee shall repaint or refinish at its own cost high traffic areas subject to greater-than-normal wear as required by Lessor, or as may be directed by the City. All Trade Fixtures that become worn, chipped, dented, or gouged, shall be repaired or replaced. If the floor within the Premises is carpeted, Lessee will be required to replace it two-and-a-half years after commencement of the Lease term. The materials used to replace the carpeting are subject to written approval by the City and must conform to **Exhibit 3**.

SECTION 10.3 - Right to Enter

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

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

10.3.3 The City shall have the right to enter the Premises to respond to any emergency.

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

SECTION 10.4 - Failure to Maintain or Repair

If Lessee refuses or neglects to undertake the maintenance, repair, or replacements requested by the City; or if the City is required to make any repairs necessitated by the acts or omissions of Lessee, its employees, agents, or invitees, the City shall have the right to make such repairs on behalf of and for Lessee. If found that Lessee was responsible for damages to City space due to a lack of routine maintenance or negligence within Premises, then Lessee shall be responsible for all costs to repair the damaged City space associated with the negligence and/or lack of Lessee routine maintenance. Such work shall be paid for by Lessee within ten (10) days following receipt from the City for said payment at the City's standard rates, plus the City's overhead, or, if the work is performed by the City's contractor, the City's actual cost, including but not limited to City administrative costs.

SECTION 10.5 - Operation Costs

Lessee shall bear at its own expense all costs of operating Lessee's business under this Lease, and shall pay, in addition to rental and other payments specified in this Lease, all other costs connected with the use of the Premises, facilities, rights and privileges granted.

SECTION 10.6 - Utilities

The City has provided and will maintain all utility services including (electric, HVAC, gas, fire alarms, and fire sprinklers) up to the Premises. Lessee shall provide and be responsible for all utility hook-ups including any water and electric meters. The City shall not be responsible for charges relating to Lessee's utility service usage, telephone service and special wiring and hookups for computer(s) for the Premises, including wireless internet access. The City shall have no liability for blackouts, brownouts, cessation, interruption, or failure of utilities.

SECTION 11 **INSURANCE REQUIREMENTS**

SECTION 11.1 – Introduction

Lessee shall procure and maintain for the duration of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that might arise out of this Lease. Lessee is free to purchase such additional insurance as Lessee determines necessary.

SECTION 11.2 – Minimum Scope and Limits of Insurance

Lessee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following” form basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury | \$1,000,000 |
| • Each Occurrence | \$1,000,000 |
| • Fire Damage (Damage to Rented Premises) | \$100,000 |

a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the use and/or occupancy by Lessee of the property subject to this Lease."**

b. Policy shall not contain any restrictions of coverage with regard to operations on or near airport premises.

2. Automobile Liability

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

Combined Single Limit (CSL)	\$1,000,000
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a. Policy shall not contain any restrictions of coverage with regard to operations on or near airport premises.

3. Property Insurance

Coverage for Lessee's Leasehold Improvements	Replacement Value
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Coverage for Lessee's contents	Replacement Value
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a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.

b. The **City of Phoenix shall be named as a loss payee** on property coverage for Lessee's Leasehold Improvements.

c. Policy shall contain a **waiver of subrogation** against the City of Phoenix.

4. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
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Employers' Liability

Each Accident	\$100,000
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Disease-Each Employee	\$100,000
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Disease-Policy Limit	\$500,000
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a. Policy should contain a waiver of subrogation against the City of Phoenix.

- b. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form

SECTION 11.3 – Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

- a. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Lessee even if those limits of liability are in excess of those required by this Lease.
- b. The Lessee's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

SECTION 11.4 – Notice of Cancellation

Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided, canceled, except after thirty (30) days prior written notice has been given to the City, or when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **Business & Properties Division, Aviation Department, Phoenix Sky Harbor International Airport, 3400 E. Sky Harbor Boulevard, Suite 3300, Phoenix, Arizona 85034-4405** and shall be sent by certified mail, return receipt requested.

SECTION 11.5– Acceptability of Insurers

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

SECTION 11.6– Verification of Coverage

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

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

All certificates required by this Lease shall be sent directly to the address listed in **Section 11.4**. The City Department, Lease number and location description are to be

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

SECTION 11.7 – Approval

Any modification or variation from the insurance requirements in this Lease must have prior approval from the City's Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

SECTION 12 **INDEMNITY**

Lessee shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "City") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers, directors, agents, employees, contractors or sublessees arising out of or related to Lessee's occupancy and use of the Premises. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Lessee from and against any and all Claims. It is agreed that Lessee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use and occupancy of the Premises, the Lessee agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Premises.

SECTION 13 **LIENS, PAYMENT BONDS & PERFORMANCE GUARANTEE**

SECTION 13.1 - Liens

Lessee shall not create, permit, or suffer any lien to be imposed upon the Premises or upon any Leasehold Improvements without promptly discharging the same. Lessee shall at all times indemnify and save the City harmless from all liens, claims, losses, demands, costs, expenses or liability cost for labor or materials in conjunction with construction, repair, alteration, or installation of structures, improvements,

equipment, or facilities within the Premises, and against all reasonable attorneys' fees and other costs arising by reason of any such liens or claims.

SECTION 13.2 - Payment Bond

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

SECTION 13.3 – Performance Guarantee

Lessee shall provide and maintain during the term of this Lease a performance bond or irrevocable standby letter of credit ("letter of credit") guaranteeing the full and faithful performance by Lessee of all the terms and conditions of this Lease and stand as security for payment by Lessee of all claims by the City. The amount of the performance guarantee for this Lease is _____ dollars (\$_____), the equivalent of three (3) months' rent calculated on the basis of MAG as defined in Section 3.1. Lessee shall increase the performance guarantee upon written demand of the Aviation Director, provided such increases are found reasonable and necessary by the City. The City may draw or make a claim against the posted performance guarantee for failure of Lessee to perform according to the covenants, terms and conditions of the Lease. If the City draws or makes a claim on the posted performance guarantee, then Lessee shall replenish the performance guarantee to its original amount within thirty (30) days notice of the City's draw or claim. The performance guarantee is required to be in place for the entire term of this Lease. Lessee's failure to provide the performance guarantee under this paragraph shall be a material breach of this Lease.

If the performance guarantee is in the form of a performance bond, the performance bond shall be issued in a form that is satisfactory to the City and must be issued by a surety company authorized to write surety business in the State. The surety company providing the performance bond must have an A.M. Best Rating of B+ VI or better for the past four quarters.

If the performance guarantee is in the form of a letter of credit, Lessee shall use City's required letter of credit form, the letter of credit shall be issued by a local financial

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

SECTION 14 **ASSIGNMENT AND SUBLETTING**

SECTION 14.1 – Assignment

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

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

In the event the Aviation Director consents to an Assignment of this Lease, if Lessee at any time receives as any consideration for such Assignment, Lessee shall pay City fifty percent (50%) of the consideration received for such Assignment, less unamortized improvements. The capital improvements will be amortized on a straight-line basis from the opening date of the unit throughout a five (5) year period. Total capital investment shall equal the total dollar amount identified in Section 7.1.3.

Lessee understands and agrees that any such approval will require Lessee to pay in advance a two hundred fifty dollars (\$250.00) document processing fee.

This Lease, or any interest therein, shall not be subject to assignment by operation of law.

Any assignment, transfer, sublease or hypothecation without obtaining the prior written consent of the Aviation Director shall be null and void.

SECTION 14.2 – Terms of Sublease

Each sublease to this Lease is in all respects subject to and subordinate to this Lease. The terms of this Lease shall be reviewed with each sublessee, and each sublessee will confirm in the sublease that such review has occurred. A copy of this

Lease shall be attached as an exhibit to each sublease. Lessee shall provide complete copies of the executed subleases to the City.

SECTION 14.3 – Approved Sublessees

The selection of sublessees shall be subject to approval of the City and the facilities to be operated by sublessees shall be in accordance with the concepts described in **Exhibit 2**.

SECTION 15 **CANCELLATION BY CITY**

SECTION 15.1 - General Default

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

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

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

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

15.1.4 The voluntary abandonment by Lessee of its operations at DVT for a period of ten (10) days or more.

SECTION 15.2 - Rental Default

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

SECTION 15.3 - Failure to Commence Construction

If Lessee fails to commence construction of the improvements in accordance with the City approved construction schedule, prepared by Lessee and submitted to the City by Lessee (the "Timetable") or, if Lessee fails to furnish the required payment bond and insurance policies on or before the time the Lessee has given its contractor a Notice to

Proceed, this Lease shall be considered breached and may be terminated by the Aviation Director, and the Lessee's performance guarantee shall be forfeited as liquidated damages, not as a penalty, but to cover expenses incurred by the City as a result of the Lessee's breach. Further, all rights and/or claims upon said Premises shall be immediately forfeited.

SECTION 16 **CANCELLATION BY LESSEE**

SECTION 16.1 - General Defaults

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

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

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

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

16.1.4 The reduction by Lessor of lessee's operations so that it is no longer viable to operate a food and beverage concession at DVT.

SECTION 17 **REDELIVERY AND HOLDING OVER**

SECTION 17.1 - Redelivery

Upon expiration or other termination of this Lease, Lessee's right to occupy the Premises and exercise of the privileges herein granted shall cease, and it shall surrender the same and leave the Premises in good condition except for normal wear and tear. Unless otherwise provided, all Trade Fixtures and other personal property installed or placed by Lessee on the Premises shall remain the property of Lessee, and Lessee shall have the right at any time during the term of this Lease, and for an additional period of ten (10) days after its expiration, to remove same from DVT; provided Lessee is not in default in its payments to the City hereunder, and provided that Lessee shall repair any damage caused by such removal. In the event Lessee fails to repair any damage to the Premises caused by the removal of Lessee's Trade Fixtures or other personal property, the City shall have the right to make such repairs it deems necessary at Lessee's sole expense. Any property not removed by Lessee

within the ten (10) day period shall become a part of the Premises and title thereto shall vest in the City.

SECTION 17.2 - Holding Over

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

SECTION 18 **DAMAGE OR DESTRUCTION**

SECTION 18.1 - Damage to Shell

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

SECTION 18.2 - Damage to DVT

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

SECTION 18.3 - Total Destruction

If either the unimproved shell space, excluding Lessee's Trade Fixtures or Leasehold Improvements, or DVT, or both, be completely destroyed by fire, explosion, Act of God, the public enemy or other casualty, or so damaged as to be untenable and incapable of being repaired within six (6) months, the City shall be under no obligation to repair or reconstruct DVT or the unimproved shell space. The rental obligations of Lessee hereunder shall be paid up to the time of such damage or destruction, and thereafter shall be proportionately reduced for impaired operation, or if no operation is possible, shall cease until such time as the Premises are fully restored, and rental obligations shall thereafter resume in the same proportion as Lessee's operation on the Premises shall resume. If such damage or destruction shall not be repaired or restored within twelve (12) months after such damage or destruction, Lessee shall have the right to cancel this Lease upon written notice to the City of such election.

SECTION 18.4 - Damage to Premises

If any of the Leasehold Improvements or Trade Fixtures constructed or installed by Lessee in or at the Premises are damaged or destroyed by fire, explosion, Act of God, the public enemy or other casualty, Lessee shall repair or replace the same with due diligence at its own cost and expense. Such replacements or repairs shall be equivalent to or better in quality than the Leasehold Improvements and Trade Fixtures so destroyed or damaged. This paragraph shall not be applicable, however, if the City is not obligated and elects not to rebuild pursuant to Section 18.3. If Lessee fails to repair or replace such damaged Leasehold Improvements subject to a schedule approved by the City and provided that this Lease has not been canceled, the City may make such repairs or replacement and recover from Lessee the cost and expense of such repair or replacement, plus an additional twenty-five percent (25%) of the expenses for the City's administrative cost.

SECTION 18.5 - Protection of Contents of Premises

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

SECTION 19 **FORCE MAJEURE**

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

SECTION 20
ATTORNEYS' FEES

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

SECTION 21
AMENDMENT

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

SECTION 22
RELATIONSHIP OF PARTIES

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

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

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

SECTION 23
PROHIBITED INTERESTS

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

SECTION 24
QUIET ENJOYMENT

The City agrees that, on payment of rent and the performance of the covenants and agreements on the part of the Lessee to be performed hereunder, Lessee shall peaceably have and enjoy the Premises free from interference from the City except as

may otherwise be provided herein and the privileges granted herein for the commercial use of DVT.

SECTION 25 **COMPLIANCE WITH LAWS**

SECTION 25.1 - Rules and Regulations

Lessee, its officers, agents, employees, contractor, licensees, and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the U.S. Government, the State, the County of Maricopa, and the City and all agencies thereof which may be applicable to its operations or to the operation, management, maintenance or administration of DVT now in effect or hereafter promulgated, without limits as other conditions in this Lease. Lessee shall comply fully with the environmental requirements of **Exhibit 4** attached hereto and incorporated herein by reference.

SECTION 25.2 - Federal Requirements

Without limiting any other conditions set forth in this Lease, Lessee shall comply with the specific requirements more particularly set forth in **Exhibit 5**, attached hereto and incorporated herein by this reference.

SECTION 25.3 - Taxes and Licenses

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

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

SECTION 26 **GENERAL PROVISIONS**

SECTION 26.1 – Affirmative Action Compliance

To do business with the City, Lessee must comply with Phoenix City Code, Chapter 18, Article V, as amended, Affirmative Action Program. Lessee is responsible for maintaining its eligibility during the life of this Lease and failure to do so may result in termination of the Lease. Lessee will direct any questions in regard to the Affirmative Action Program to the Affirmative Action Contract Compliance Section of the Equal Opportunity Department at 602-262-6790.

SECTION 26.2 - Federal Aviation Act

Nothing contained in this Lease shall be deemed to grant Lessee any exclusive right or privilege within the meaning ascribed by the Federal Aviation Act or the conduct of any activity at DVT, except that, subject to the terms and provisions of this Lease, Lessee shall have the right to use and occupy the Premises under the provisions of this Lease.

SECTION 26.3 - Subordination to Agreements with the U.S.

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

SECTION 26.4 - Notices

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

If to the City: City of Phoenix Aviation Department
Phoenix Sky Harbor International Airport
3400 E. Sky Harbor Boulevard, Suite 3300
Phoenix, Arizona 85034-4405
Attention: Business & Properties Division

If to Lessee: *Enter Lessee's Contact Information Here.*

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

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

SECTION 26.5 - Approvals, Consents and Notices

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

SECTION 26.6 – Offset Provisions; Claims or Demands

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

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

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

SECTION 26.7 - Paragraph Headings

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

SECTION 26.8 - Savings Clause

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

SECTION 26.9- Waiver of Claims

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

SECTION 26.10- Corporation Authorization

In the event Lessee is a corporation, certified copies of resolutions of the Directors and Stockholders authorizing this Lease shall be furnished to the Aviation Director prior to final execution of this Lease.

SECTION 26.11 - Right to Develop DVT

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

SECTION 26.12 - Incorporation of Exhibits

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

SECTION 26.13 - Incorporation of Required Provisions

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

SECTION 26.14 - Successors and Assigns Bound

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

SECTION 26.15 - Right to Amend

In the event the FAA or its successor requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of DVT, or

otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to satisfy FAA requirements.

SECTION 26.16 - Time of Essence

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

SECTION 26.17 - Good Faith

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

SECTION 26.18 - Interpretation

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

SECTION 26.19 - Entire Lease

It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire Lease between the City and Lessee as to this Lease. It is further understood and agreed by Lessee that the City and the City's agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against the City for, and the City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or parole agreement with the City is expressly waived by Lessee. It is understood that the City requires leases to be in writing and approved by the City Council.

SECTION 26.20 - Conflicts

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

- a. Lease amendments, with later amendments superseding inconsistent provisions of earlier amendments;
- b. This Lease including all Exhibits.

SECTION 26.21- Hazard, Potential Hazard, Nuisance, or Annoyance

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

SECTION 26.22 - Security Plan

Although the FAA and Transportation Security Administration (TSA) do not have security requirements for general aviation airports at this time, Lessee shall be required to follow any subsequent requirements issued by the FAA or TSA.

SECTION 26.23 - City Improvements to DVT

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

SECTION 26.24 - Statutory Remedies

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

SECTION 26.25 - Non-Waiver

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

SECTION 26.26 - Lessee Liability Continues

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

SECTION 26.27 - Lessee Bankruptcy

In the event that a petition in bankruptcy is filed:

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

SECTION 26.28 Laws of the State of Arizona

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

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY OF PHOENIX, a municipal corporation
FRANK A. FAIRBANKS, City Manager

By: _____
Danny W. Murphy
Aviation Director

ATTEST:

City Clerk

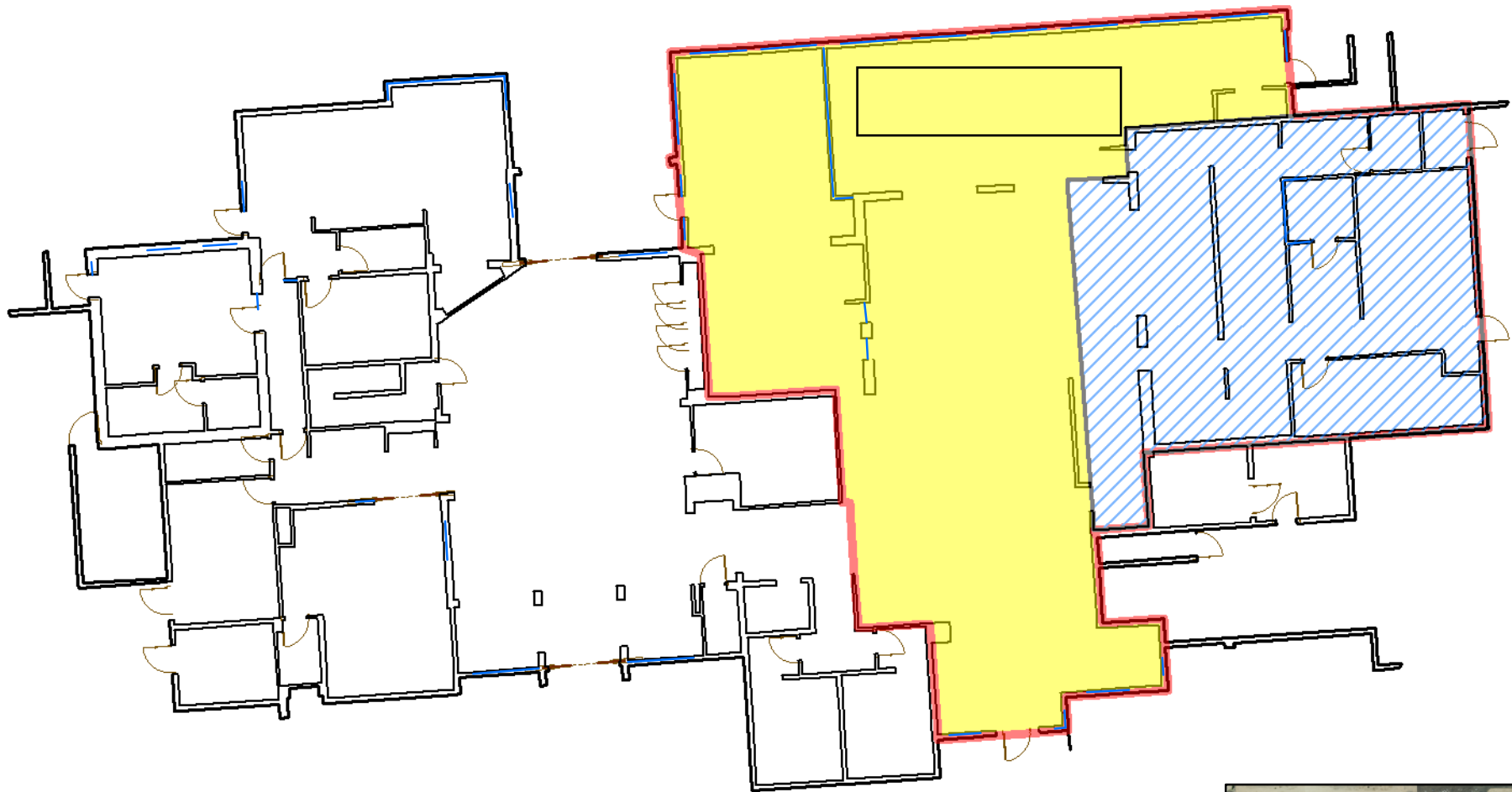
APPROVED AS TO FORM:

Acting City Attorney

(Lessee)

By: _____
Title: _____
Signature: _____

Exhibit 1 "Premises"

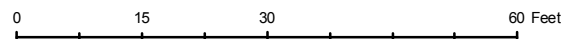


Legend

Lease Area Space Usage

-  Kitchen Area
-  Dining Area
-  Premises Boundary

Deer Valley Terminal Level 1



4/23/2009

DVT
PHOENIX DEER VALLEY AIRPORT

DISCLAIMER: DRAWINGS AND INSTRUMENTS OF SERVICE ARE THE PROPERTY OF THE CITY OF PHOENIX. ANY REPRODUCTION OR USE OF THESE DRAWINGS WITHOUT THE WRITTEN PERMISSION OF THE CITY OF PHOENIX AVIATION DEPARTMENT, VISUAL CONTACT WITH THE GROUNDWATER SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ASSAULT OF THE CITY OF PHOENIX.



EXHIBIT 2

Approved Menu

To be replaced with successful proposer's City-approved menu.

EXHIBIT 3

DEER VALLEY TERMINAL FOOD AND BEVERAGE TENANT DESIGN CRITERIA PACKAGE

- I. FOREWORD TO THE TENANT
- II. TENANT HANDBOOK GLOSSARY
- III. INTRODUCTION
- IV. DESIGN INTENT / DESIGN PHILOSOPHY
- V. TENANT DESIGN CONCEPT
- VI. STOREFRONT DESIGN CRITERIA
- VII. GRAPHIC AND SIGNAGE CRITERIA
- VIII. FOOD SERVICE INTERIOR DESIGN CRITERIA
- IX. LEASE PLANS
- X. FOOD SERVICE AND PREPARATION REQUIREMENTS
- XI. TECHNICAL CRITERIA
- XII. TENANT SUBMITTAL PROCEDURES AND CONSTRUCTION SUBMITTAL PROCEDURES
- XIII. CONSTRUCTION REQUIREMENTS

EXHIBIT 3

I. FOREWORD TO THE TENANT

The Tenant Criteria Handbook contains design standards to assist the prospective Tenant with the development of Proposals, and the construction process, for the restaurant concession unit in the Phoenix Deer Valley Airport (DVT).

The Restaurant Concessionaire food service contract at DVT has nearly expired and Airport staff is working to address the food service program.

The prospective Tenant is encouraged to use creativity in developing a design that accentuates the food and beverage concept's dominant theme.

In this process, the family-oriented theme of the DVT restaurant should be emphasized. The attractive location and appeal of the family style restaurant are held in high regard by the local public. Families come in, on a daily basis, to dine and watch the aircraft arrive and depart from DVT. People from around the State fly in to dine and relax in a casual setting. It is the restaurant's allure and charisma that set it apart from other family-oriented restaurants.

EXHIBIT 3

II. TENANT HANDBOOK GLOSSARY (ABBREVIATIONS & DEFINITIONS)

ADA:	Americans with Disabilities Act
CFM:	Cubic feet per minute
COMMON AREA:	Public space; designed and maintained by the Landlord
DEMISING WALL:	Common wall between a food and beverage unit and a common area; extends from a neutral pier
KVA:	Kilo/Volt-Amperes
LANDLORD:	Phoenix Deer Valley Airport (Airport)
LEASE LINE:	Line shown on the Tenant lease plan defining the confines of the Tenant's demised premises
NEUTRAL PIER:	Architectural element separating two adjacent storefronts, or a storefront and a service corridor; provided and installed by the Landlord
QUEUE:	Line of customers waiting to order or otherwise be served
TENANT:	Lessee; airport food & beverage or retail concessionaire
STOREFRONT:	Front face of the food and beverage unit; architectural enclosures of any Tenant-leased premise perimeter adjacent to public circulation areas of the terminal, including doorways; physically defined by base-building elements provided by the Landlord, which surround and frame the concession Tenant storefront including neutral piers, the upper fascia/bulkhead, and the floor surface at the lease line. In the case of a food and beverage unit with more than one exposure to the common area, the storefront refers to all facades.

EXHIBIT 3

III. INTRODUCTION

The Tenant Design Criteria Handbook contains specific design standards to assist the Tenant and their joint venturers, DBE partners, sublessees, and architects with the development of a proposal for space at the Phoenix Deer Valley Airport (DVT). All designs associated with the construction of the food and beverage unit must comply with City of Phoenix commercial design standards.

The design intent is to create an environment that evokes a sense of comfort through the use of contemporary materials and comforting colors to elevate the public's experiences at this airport.

The following design criteria for Tenant improvements have been established to encourage exciting concepts and design identity at DVT. They are intended to ensure an aesthetically coordinated approach to storefront and sign design in keeping with the design objectives of the Airport, and to ensure standards for storefronts, interior finishes and signage requirements are understood by Tenants, their Contractors and their designers.

The latest edition of these design criteria, together with all lease and lease drawing documentation required by the Landlord, comprise the Tenant design package. Tenants are strongly encouraged to become familiar with the intent and details of these documents prior to the submittal of the RFP Proposal and the commencement of work, and to become aware of the special characteristics of the restaurant concession area at DVT and how architectural elements, finishes, and materials will affect individual concession design solutions. Tenants must comply with the requirements and conditions set forth in the Tenant Package. Should there be any discrepancies between the Design Criteria for Tenant Improvements and the Lease, the latter shall govern.

The Landlord or Landlord's representative shall have absolute right of review and approval over all aspects of Tenant improvements, as well as the discretion to waive any of the design criteria provided the concept, quality and character of the project are not significantly affected.

IV. DESIGN INTENT / DESIGN PHILOSOPHY

The Airport is committed to providing a profitable commercial environment through the pursuit of excellence in design. Tenant designs are expected to present a character consistent with the unique character of DVT. Designs submitted for consideration must demonstrate understanding and sensitivity toward the essential character of DVT and its surroundings.

The design intent is to create an environment that brings a sense of comfort by the use of contemporary materials and comforting colors to elevate the public's experiences.

The Airport favors orderly designs for commercial facilities, providing a maximum of accessibility and convenience to the customers. Product displays and fixtures must be of consistent quality and remain contained within Tenant premises.

Designs that create a sense of openness and invitation toward customers are encouraged, as well as designs that incorporate appropriate regional themes and artistic elements. The sophisticated use of color, graphics and lighting is highly recommended. The Tenant's commercial identity should be strongly accentuated, using organized, decorative and attractive displays if appropriate.

EXHIBIT 3

Design elements of any type that are incompatible with established quality are not to be used. Displays, arrangements or point of sale counters should not show clutter. “Low-budget” materials and workmanship are not allowed, as well as any devices producing sounds, physical movements, and flashing or flickering lights. These standards apply to all commercial development located in the Airport building.

V. TENANT DESIGN CONCEPT

The design concept shall incorporate a total food and beverage image that coordinates the limited storefront and interior design concept around the unique aspects of the food and beverage operation.

This criterion includes basic objectives that the Tenant is expected to meet in the design of the concession space. These objectives are as follows:

A. FOOD AND BEVERAGE INTERIOR DESIGN MUST REFLECT A CONTEMPORARY CONCEPT

Tenant will be expected to take a fresh and innovative look at how their food and beverage unit can best be designed to present a casual, yet stylish and fashionable image of sophistication found in dining environments locally and regionally.

B. STANDARD FOOD AND BEVERAGE UNIT IMAGES MUST BE CREATIVELY ADAPTED

The special nature of DVT will require Tenant to consider a new way of communicating their image. Creative adaptations of standard food and beverage unit designs are strongly encouraged within the requirements of the criteria.

C. A TOTAL FOOD AND BEVERAGE UNIT DESIGN CONCEPT MUST BE DEVELOPED

A total food and beverage unit image coordinates interior design with the food and beverage unit plan. The Tenant must consider creative solutions to interior design to achieve a design for a food and beverage unit at DVT that is compatible with the general family-oriented theme.

D. CUSTOMER EXPERIENCE MUST BE ENHANCED

Tenant must enhance the customer experience at DVT through a commitment to an entrepreneurial pride of ownership, superior merchandising skills, excellence in customer service, and the creation of a very special food and beverage environment.

VI. STOREFRONT DESIGN CRITERIA

The following Tenant design criteria are meant to provide common points of reference for Tenant interior design at DVT. This list features materials and architectural details. A total food and beverage image coordinates the interior design concept around unique aspects of the business operation.

The Tenant will be expected to follow this “Tenant Design Criteria” to assure compatibility with the overall image of DVT.

A. GENERAL STOREFRONT CRITERIA

1. Any proposed storefront designs and plans, including materials, are subject to Landlord approval.
2. Existing closure systems may be utilized by the Tenant.
3. The level of the finished floor within the Tenant space must precisely meet the

EXHIBIT 3

airport finish floor at the storefront. No recessed or raised floors will be permitted.

4. Existing storefront may be utilized by Tenant.
5. Any alterations required to existing storefront surrounds approved by Landlord outside the Tenant lease line must be constructed and maintained by the Tenant in a manner acceptable to the Landlord.
6. Storefront construction shall not extend beyond the lease line. No display fixture or temporary signage shall protrude beyond the lease line or Tenant opening throughout the entire term of the lease.

VII. FOOD AND BEVERAGE INTERIOR DESIGN CRITERIA

The way the Tenant arranges seating and fixture layout and the fixtures themselves combine with the storefront architecture to create an image to the public. The Landlord therefore requires the interior be designed with the same care and attention to detail as the common areas. While it is not the intention of these criteria to unduly restrict the interior of the Tenant unit, some materials are unacceptable from a visual and/or maintenance standpoint. All materials, displays, etc. within the Tenant space are subject to review and approval by the Landlord.

Lease space provided is in an "As-Is" condition, including any walls, floors, finishes, storefront surrounds, equipment, devices, utility systems, or other items left from previous use of the space. The Airport expects new Tenant to demolish existing space and/or re-use existing walls, storefront surrounds, devices, utility systems, or other items left from previous use of the unit. The use of any existing "As-Is" features is subject to Landlord approval.

A. FLOOR

1. Tenant finished floor elevation must be flush with Airport flooring. Transition strips, if required, will meet ADA.
2. No vinyl, asbestos or asphalt tiles will be permitted within Tenant's public sitting area.
3. Samples of flooring must be submitted to the Landlord for approval. Carpeting will not be accepted as a flooring alternative in the public area.

B. PARTITIONS

1. All interior partitions must be constructed of non-combustible materials.
2. Tenant areas adjacent to one-hour rated exit or service corridors are required to maintain one-hour rating. Gypsum board must extend from finish floor to underside of the roof deck construction above and sealed airtight.
3. All walls and exposed surfaces within the entire restaurant area must be covered with a permanent wall finish.

C. CEILINGS

1. The ceiling must be either acoustical T-bar with 24" x 24" tile having 3/8" revealed edge, drywall or plaster construction. All ceiling materials must be noncombustible and have a Class III, 76-200 flame spread rating. Note: Acoustical tile shall only be permitted on horizontal surfaces. Any vertical, beveled, or other type fascia shall be drywall or cement plaster.
2. Tenant shall attach their ceiling wires to structural members only; attachment to the deck is prohibited unless special permission is granted, subject to approval of

EXHIBIT 3

connection methods by the Landlord.

3. The use of wood or other combustible materials above ceilings or in any other attic spaces is prohibited. Any required access panels and/or catwalks shall be installed at Tenant's expense.
4. Certain locations within the Tenant area need to be acoustical lay-in ceiling or the Tenant must provide access panels to allow the Landlord to access existing equipment above the Tenant ceiling area. The Landlord reserves the right to specify locations for access panels.
5. Only glare-free type lenses will be permitted for lighting.

D. THE FOLLOWING MATERIALS ARE NOT PERMITTED

1. Vinyl composition tile or sheet vinyl is only permitted when used as a featured design element and must be approved by the Landlord.
2. Simulated materials such as imitation brick, stone, etc.
3. Exposed bulbs other than purely decorative unless shielded from the public area.
4. Acrylic prismatic or translucent eggcrate lenses on fluorescent fixtures within the dining area.
5. Any material that would constitute a fire and/or public safety hazard.
6. Any distressed wood.
7. The Landlord reserves the right to approve all materials and finishes used within the Tenant space including display fixtures.
8. Any asbestos containing materials (ACM's) or presumed asbestos containing materials (PACM's).

E. ADDITIONAL TENANT REQUIREMENTS

1. The food and beverage unit is required to comply with the ADA and shall provide sufficient circulation to allow for wheelchair access.
2. Only premium quality, new materials shall be used in the construction of the demised premises. These materials are subject to the review and approval of the Landlord.
3. All materials used in traffic areas shall be subjected to high abuse. It is recommended that high impact durable materials be used at all traffic corners of the Tenant space.
4. The Tenant shall remove all trash and debris to centrally located trash receptacles during the construction of premises. The location of the trash receptacles is subject to review by the Landlord. The removal of construction debris shall be the responsibility of the Tenant and Tenant's Contractor. Connection to temporary power including all temporary power lines, transformers and electrical distribution is the Tenant's responsibility. All trash and waste products must be transported using sealed containers. Containers without lids are prohibited.
5. Plan check, building permits, and other City, County, State and Health Department fees in connection with all of Tenant's construction shall be at Tenant's expense. All construction shall be done in accordance with the Tenant Improvement Handbook located at www.phxskyharbor.com and all City, County and State ordinances, rules and regulations.

EXHIBIT 3

6. The approval of final drawings by the Landlord does not guarantee approval by governing authorities, and it shall be the responsibility of the Tenant to meet and comply with all national, State and local code requirements.
7. Tenant must provide portable fire extinguishers as required by the Fire Department.
8. All floor penetrations and patching shall conform to the structural and fire rating requirements; such work shall be paid for by Tenant directly and must be approved by the Landlord.
9. All floor penetrations shall be x-rayed and approved by the Landlord.
10. DVT is a non-smoking facility.

IX. LEASE PLANS

Information is included within pages to follow.

X. FOOD SERVICE AND PREPARATION REQUIREMENTS

The National Sanitation Foundation International (NSF) or its appropriate national standard organization shall certify all food service equipment that is acceptable to the Landlord and authorities having jurisdiction.

Any activities that involve the final preparation of food from raw or partially prepared ingredients, shall be concealed from public view unless otherwise acceptable to the Landlord and to the authorities having jurisdiction. Food preparation that is entertaining to watch, or commonly accepted as part of a serving operation, may be performed in public view if approved in advance by the Landlord.

Food service preparation must comply with all the regulations of food and health safety authorities having jurisdiction, including Maricopa County Health Services Department.

A. PEST CONTROL

Tenant is responsible for maintaining pest control within its lease space.

B. ODORS

All odor-producing operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public/common spaces. Objectionable odors include odors of machinery, electrical devices, food preparation, perfumes and perfume products, oils and waste disposal systems.

Exception: Tenants who regularly deal in natural products and operations having odors generally regarded as pleasing, including odors such as sweet spices, coffee, fresh herbs, fresh baking, and cedar woods, may not be required to be completely controlled, subject to approval by the Landlord. Natural odors that are judged by the Landlord to be displeasing by reason of aroma or intensity must be controlled. Artificially created odors of any sort are prohibited.

C. GREASE INTERCEPTORS

An existing grease interceptor will be provided by the Landlord. The Tenant shall be responsible for any additional connections to the Landlord provided Grease interceptor. The Tenant shall retain responsibility for the cleaning and maintenance

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of the grease interceptor.

D. SOUNDS

Sound producing operations and equipment must be enclosed or otherwise controlled to prevent audibility in common areas.

E. ACCESS

The Landlord will provide reasonable access to construction document files to the Tenant. All pertinent building documentation will be provided for purposes of describing or defining locations of lease lines and demising construction, including the location and arrangement of walls, columns, and other fixed building features, services, and systems to the extent documented. The Landlord offers no assurances or guarantees that such file documentation will be sufficient to provide all information that may be required by the Tenant. Tenant shall not rely on the accuracy of file documentation, but shall field-verify dimensions, locations, and capacities of all building features, services and systems prior to submitting an initial concept submittal.

XI. TECHNICAL CRITERIA

A. GENERAL BUILDING CRITERIA

The following criteria are outlined for the benefit of the Tenant and the Tenant's architect/engineer(s) in designing the lease space. Prospective Tenant should pay careful attention to the assignment of responsibility for each item listed below.

1. Licensed Professional Architect

A professional Architect licensed in the State of Arizona shall prepare all drawings and specifications in accordance with the Landlord's Tenant Design Criteria, all applicable City of Phoenix Codes and recognized architectural practices.

2. Structure

The construction type is V N, City of Phoenix Construction Code, remodeled in 2000. Occupancy type is A-3 / B.

3. Floor

Tenant finished floor elevation must be flush with airport flooring. Transition strips, if required, will meet ADA.

4. Partitions

Tenants adjacent to one-hour rated exit or service corridors are required to maintain one-hour rating and the gypsum board must extend from finish floor to underside of the structure above and sealed airtight. Tenants shall note location of one-hour walls on their construction documents.

Tenant interior partitions must be constructed of non-combustible materials. All walls and exposed surfaces in the sales area must be covered with a permanent wall finish.

Food service operations with excessive noise output may be required by Landlord to provide sound insulation on the ceiling and/or demising walls to protect neighboring uses from unacceptable noise levels.

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5. Ceilings

Tenants shall be responsible for construction of ceiling within their designated lease line. Tenant's ceiling must be either acoustical T-bar, drywall, or exposed structure construction. All ceiling materials must be non-combustible and have a class III 76-200 flame spread rating. Tenants shall attach their ceiling wires to structural members only.

6. Applicable Codes and Ordinances

All new construction shall comply with the most current adopted City of Phoenix Building Construction Code (based on the 2006 International Building code, the 2006 International Mechanical Code as well as the 2006 International Energy Code) and all other applicable amendments, codes, ordinances, rules and regulations.

7. Project Review

The Landlord will review drawings for general compliance with the Tenant Design Criteria, including the Mechanical System Design Criteria and Electrical Design Criteria. It is the Tenant's responsibility to ensure that the Tenant's system will perform satisfactorily and is in compliance with all applicable codes and regulations. As-built drawings are to be provided and maintained by the Tenant's mechanical Contractor and electrical Contractor and submitted to the Landlord. Tenant shall record exact pipe, duct, and equipment routing and location along with all equipment information for mechanical system design.

8. Access

The Landlord will provide reasonable access to file documentation for existing Mechanical and Electrical systems. These documents are to be used for reference only (all existing conditions must be field verified).

B. HVAC, PLUMBING & FIRE SPRINKLER SYSTEMS

The objective of the mechanical, plumbing and fire sprinkler systems design criteria is to provide the Tenant with specific instructions to meet the Landlord's basic criteria for construction materials, means and methods. The Landlord will require and maintain the same standards for all Tenants. Incomplete drawings, inferior design or poor construction are unacceptable and will not be permitted.

1. Licensed Professional Engineer

A professional engineer licensed in the State of Arizona shall prepare all calculations, drawings and specifications in accordance with the Landlord's mechanical, plumbing and fire sprinkler systems design criteria, all applicable codes and recognized engineering practices.

2. Project Review

The Landlord will review drawings for general compliance with the mechanical, plumbing and fire sprinkler systems design criteria. It is the Tenant's responsibility to ensure that the Tenant's system will perform satisfactorily and is in compliance with all applicable codes and regulations.

As-built drawings are to be submitted by the Tenant's mechanical, plumbing and fire sprinkler Contractor and submitted to the Landlord. Tenant shall record exact pipe, duct, and equipment routings and locations along with all equipment information.

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3. HVAC Description

The Landlord will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only (all existing conditions must be field verified).

HVAC installation must comply with the 2006 International Building Code, the 2006 International Mechanical Code as well as the 2006 International Energy Code and all other applicable amendments, codes, ordinances, rules and regulations.

All HVAC systems must be designed and installed to the following DVT minimum standards:

- a. **No flammable or combustible materials are permitted above the ceiling (ceiling space is to be considered a return air plenum). The ceiling, all components that make-up the ceiling, and all materials above the ceiling must be rated for installation within a ceiling return air plenum.**
- b. All new ductwork is to be sheet metal and installed per SMACNA details. Ductboard is not allowed.
- c. Flexible ductwork is to be installed without sags or kinks.
- d. Provide accessibility to all equipment (VAV boxes, valves, electrical equipment, etc.) per local code and Aviation requirements. Provide min. 3 ft. clearance to the operator side of all VAV boxes.
- e. Provide min. 2' x 2' access doors in all hard lid ceilings at all VAV boxes, valves, etc.
- f. Thermostats/sensors are to be installed in a location measuring the average temperature within the space (avoid exterior walls, confined areas, location near heat producing equipment, etc.). Location is to be per the Landlord.
- g. Any new controls are to be provided and installed by the Aviation Control Contractor. All control wiring is to be installed in conduit.
- h. Tenants having walk-in coolers, etc. are to use remote compressors located at the exterior of their unit (roof or on grade). Final location must be approved by the Landlord.
- i. The Contractor must notify the Landlord prior to welding or torch cutting.
- j. No fountains or water features are permitted within any Tenant space.
- k. All special effects features (boiler/steam, strobe lighting, etc.) must be reviewed and approved by the Landlord.

The Landlord has provided a heating and cooling system to the existing Tenant space. The Landlord will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only (all existing conditions must be field verified).

Additional cooling, if required by the Tenant, is the responsibility of the Tenant. HVAC design is to be submitted to DVT for review and approval.

5. Criteria for Commercial Kitchen Hoods in Tenant Spaces

Any kitchen hood system (hood, ductwork, exhaust fans, make-up air, fire suppression, etc.) installed is the responsibility of the Tenant and must be installed per IMC, and all applicable codes. The Tenant is responsible to install a complete kitchen hood system, including the hoods, exhaust fans, make-up air, ductwork, fire suppression, etc. The Tenant is responsible to provide full make-up air to accommodate all kitchen hood exhaust (no provision for make-up air is

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provided by the (Landlord). The Tenant is responsible to provide a balancing report to the Landlord certifying the exhaust and make-up air provided. The Landlord will not accept "hot calls" to the premises.

The Tenant is responsible to clean and maintain the interior of all kitchen hood systems (including the hood, ductwork, fans and roof), as established by the Aviation Department and the Fire Department. Lack of proper maintenance is a fire hazard, and will be addressed by the Landlord. Lack of proper maintenance, as established by the Landlord, will be addressed by the Landlord and back-charged to the Tenant.

Food service equipment shall be certified by NSF or other appropriate national standards organizations acceptable to the Landlord and authorities that have jurisdiction.

Activities involving final preparation of food from raw or partially prepared ingredients shall be concealed from public view unless otherwise acceptable to the Landlord and to authorities having jurisdiction. Food preparation that is entertaining to watch, or commonly accepted as part of a serving operation, may be performed in public view if approved in advance by the Landlord. Tenants must comply with regulations of food and health safety authorities having jurisdiction.

Exhaust systems for food preparation shall be fabricated entirely from stainless steel, shall incorporate an integral fire suppression system, and shall otherwise comply with regulations of authorities having jurisdiction.

The complete kitchen service HVAC system design is to be submitted to the Landlord for review and approval.

6. Plumbing Criteria

The Landlord will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only (all existing conditions must be field verified). Plumbing installation for these spaces must comply with the International Building Code and Uniform Plumbing Code with Arizona Amendments.

All plumbing systems must be designed and installed to the following DVT minimum standards:

- a. No flammable or combustible materials are permitted above the ceiling (ceiling space is to be considered a return air plenum).
- b. Cast iron pipe with 4-band coupling is to be used for waste and vent piping. Type L copper piping is to be used for all water services. No plastic pipe is permitted.
- c. Provide minimum code clearances for all equipment.
- d. All Tenant plumbing fixtures that are piped to a floor sink or drain must be piped to a floor sink or drain within the Tenant's space. At no time will it be acceptable to pipe a Tenant plumbing fixture into a Landlord floor drain or floor sink.
- e. The Contractor must notify the Landlord and be in possession of a "hot work" permit obtained from the Phoenix Fire Department prior to welding or torch cutting.

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The Tenant is responsible for all plumbing systems serving the Tenant space. Plumbing fixtures, water heaters, fittings, floor mounted grease interceptors, etc., and all piping beyond mains provided by the Landlord, are the responsibility of the Tenant. New plumbing equipment (fixtures, water heaters, grease traps/interceptors, etc.) must be located within the Tenant's space.

Waste and water piping mains will be provided by the Landlord to Tenant space.

The domestic water and vent pipe (where applicable) will be made available in an "As-Is" condition. The waste piping will also be made available in an "As-Is" condition. Grease waste must be addressed by the Tenant per all code requirements. The Tenant is limited to the capacities of these services. Water, waste and vent services beyond these limitations, if required by the Tenant, are the responsibility of the Tenant. Complete design must be submitted to the Landlord, including fixture calculations, for review and approval.

Tenant space will be provided with a dedicated grease waste pipe attached to an exterior buried, 2,500 gallon grease interceptor. The Tenant is responsible to core drill the floor and to coordinate with the Landlord to alter existing grease waste pipe locations. Grease waste must be addressed by the Tenant per all code requirements.

Hot water services are available to Tenant space. Water heater(s) are the responsibility of the Tenant and must be installed within the Tenant space. Water heaters are not permitted above the ceiling.

The Landlord has provided the following plumbing utilities: water, gas, sanitary, grease waste, and vents. The Landlord will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only (all existing conditions must be field verified).

The Tenant will be responsible for all utility hook-ups and services (i.e. water, gas, telephone, electrical, HVAC, etc.) and all costs associated with each. The Tenant shall make arrangements to place and bear all costs associated with metering water and electrical utilities.

Gas service. A gas system currently exists within the Tenant space. Any additional connections to the Landlord gas utilities must be coordinated with the Landlord not less than two weeks in advance, and must be performed between the hours of 11:00 p.m. and 5:00 a.m.

7. Fire Sprinkler Criteria

An automatic sprinkler system exists within the Tenant space. The Tenant is responsible to modify or revise this sprinkler system to comply with the most current applicable codes and requirements of authorities having jurisdiction, including reconfiguring any existing systems, adding and changing sprinkler heads, and relocating or changing the height of sprinkler heads to comply with the new layout of the space. Taps into the existing building sprinkler system must be coordinated with the Landlord not less than two weeks in advance, and must be performed between the hours of 11:00 p.m. and 5:00 a.m. All sprinkler work required to complete the system to accommodate the Tenant's plans shall be performed by the Tenant's fire sprinkler Contractor at the Tenant's sole cost and expense. The Tenant's fire sprinkler Contractor shall obtain the required permits, certificates of fitness, and business certificates from the Phoenix Fire

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Department prior to performing any work on the sprinkler system. Prior to installation, sprinkler shop drawings shall be submitted to the Tenant Improvement Coordinator for review and approval.

All fire sprinkler systems must be designed and installed to the following Landlord minimum standards:

- a. The Contractor must notify the Landlord prior to welding or torch cutting and be in possession of a "hot work" permit obtained from the Phoenix Fire Department.
- b. Provide accessibility to all fire protection equipment (sprinkler control valves, fire suppression system control boxes, fire control panels, fire alarm system booster panels, fire extinguishers, etc.) per local code and the Landlord's requirements. Provide min. 3 ft. clearance to the operator side of all fire protection equipment located within the Tenant space.
- c. No flammable or combustible materials are permitted above the ceiling (ceiling space is to be considered a return air plenum).

All materials must be FM approved.

- a. Pipe
 - 1) XL rated pipe is not allowed.
 - 2) All pipes up to 2" shall be schedule 40.
 - 3) Pipe larger than 2" may be schedule 10.

System tie-in and testing shall be coordinated with the fire marshal and the Landlord's plumbing department. System shall not be deemed "acceptable" until approved by the above parties. All pipe to be sized per the following (hydraulic calculations are not approved):

Steel Pipe

1 in.	2 sprinklers
1-1/4 in.	3 sprinklers
1-1/2 in.	5 sprinklers
2 in.	10 sprinklers
2-1/2 in.	30 sprinklers
3 in.	60 sprinklers

C. ELECTRICAL SYSTEM

The objective of the electrical systems design criteria is to provide the Tenant with specific instructions for meeting the Landlord's basic criteria for construction materials, means and methods. The Landlord will require and maintain the same standards for all Tenants. Incomplete drawings, inferior design or poor construction are unacceptable and will not be permitted.

1. Licensed Professional Engineer

A professional engineer licensed in the State of Arizona shall prepare all calculations, drawings and specifications in accordance with the Landlord's electrical systems Tenant design criteria, all applicable codes and recognized engineering practices.

2. Project Review

The Landlord will review drawings for general compliance with the electrical design criteria. It is the Tenant's responsibility to ensure that the Tenant's system will perform satisfactorily and is in compliance with all applicable codes

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and regulations. As-built drawings are to be maintained by the Tenant electrical Contractor and submitted to the Landlord.

3. Electrical Systems

The Landlord will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only (all existing conditions must be field verified).

Electrical installation for these spaces must comply with the latest edition of the National Electrical Code, the City of Phoenix amendments, and the local fire marshal for the fire alarm system.

The Tenant is responsible for removal, replacing, relocating and/or adding all electrical equipment and devices (i.e., panels, transformers, lighting, receptacles, wiring, conduit, conductors, fusing, etc.) serving the Tenant space. All abandoned or unused conduit, wiring, lighting, panels, etc., in the Tenant space must be removed prior to new installation. The Landlord has provided a feeder circuit and a heavy duty disconnect switch mounted in the Tenant space.

All transformation, power distribution, lighting, conduits, wiring and devices extending from the Landlord-furnished disconnect switch shall be provided by the Tenant, including temporary or standby power sources where required.

Tenants requiring power in excess of the amount listed shall pay the entire cost of installing the additional service, including any necessary power distribution equipment.

Any work being performed on the Landlord's electrical equipment shall be coordinated and under direct supervision with the Landlord's electrical division.

All electrical equipment shall be labeled by Underwriters' Laboratories, Inc. (UL) for the intended use.

Shutdown of the existing building service or any main electrical distribution must be coordinated with the Landlord not less than two (2) weeks in advance, and must be performed between the hours of 11:00 PM and 5:00 AM. These times are subject to change, Tenant to verify current restrictions. All electrical work required to complete the system to accommodate the Tenant's plans shall be performed by the Tenant's electrical Contractor at the Tenant's sole cost and expense.

No flammable materials are permitted above the ceiling (ceiling space is to be considered a return air plenum). All Tenant wiring (i.e. power, telephone, data, communications, low voltage, controls, etc.) must be in minimum of 3/4" conduit except for data lines which shall be in 1" conduit (owner cable tray may be used by the Tenant where available). All electrical conduit must be a minimum of 3/4 " trade size and use steel compression fittings. Conduit used shall be EMT in interior spaces. Type 'MC' cable may not be used without written approval from the Landlord. Any conduit routed in areas that are subject to damage from motorized vehicles, machinery, etc. shall be RGS. All special systems must be routed in separate conduit. New panel boards must have hinged covers with door-in-door construction.

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Transformers shall be mounted within the Tenant space in a visible and accessible location adjacent to the appropriate electrical panel. In no case shall a transformer be mounted above the ceiling. Floor mounted transformers must be mounted on a 4" concrete housekeeping pad. Connections to transformers are to be liquid-tight flexible conduit. Heavy duty disconnect switch shall be utilized on the primary side of transformer.

The normal power is derived from terminal building. The service utility is Arizona Public Service. There is no standby/emergency power source available. Tenant to refer to as-builts as well as field verify existing available power.

The use of mercury vapor lamps is not permitted; fluorescent lamps and ballasts shall be T8 or T5 with electronic ballasts.

D. TELEPHONE AND DATA

The Tenant is responsible for all costs associated with telephone and data requirements. Tenant to field verify existing hook-ups and locations. Network cabling and services shall be provided and installed by the Tenant.

E. TELEVISION

Television cable/satellite, if required or desired, is to be provided and installed by the Tenant. The location of satellite dish (max. of 24" diameter) is to be coordinated with the Landlord for review and approval. All costs associated with television cable/satellite are the sole responsibility of the Tenant.

F. FIRE ALARM

The fire alarm system within the Tenant space is the responsibility of the Tenant and shall be an extension of the existing Protection Service Industries (PSI) fire alarm system. Fire alarm audibility, intelligibility and visibility devices must meet the requirements of the latest edition of NFPA 72 and local Fire Marshal requirements. Fire Alarm system modifications must be documented and submitted to the local Fire Marshal for approval prior to construction. Contact Richard Reed at (480) 449-3800 ext. 223 for coordination.

XII. TENANT SUBMITTAL AND CONSTRUCTION SUBMITTAL PROCEDURES

A. TENANT SUBMITTAL PHASES

Tenant is required to submit complete and accurate construction documents for review by the Tenant Improvement Coordinator, and approval by the Landlord before starting construction.

There are three approval phases, which must be followed in sequence before final approval for construction drawings can be issued. They are Request for Proposals, Tenant Criteria/Schematic Design Review, and Construction Document Review.

1. Request for Proposal (RFP) Phase

The proposer submits conceptual design drawings, sketches, material boards and written design narratives as part of the RFP Proposal for concessionaire selection. Proposal requirements are outlined in the RFP and are submitted as part of the RFP process.

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2. Tenant Criteria/Schematic Design Review Phase

The purpose of this submittal is to accelerate the design approval process by acquainting the Business and Properties Division (B&P) with the Tenant's intended design concept and correcting any criteria compliance problems before proceeding with the final working drawing phase. Design concepts for lighting and signage must be included in this submission.

B&P will review and comment on schematic design drawings which are to be sent to Tenant Improvement Coordinator in an electronic format. If drawings are returned to the Tenant with comments and not bearing the conditional approval of the B&P, the Tenant shall revise the drawings to satisfy any comments by B&P and shall resubmit for approval as instructed.

Any construction documents received in this phase will be rejected.

If material boards have changed since the RFP Phase to the schematic design phase then they must be resubmitted to B&P.

A period of two to six weeks should be allowed for each submittal review, depending on project complexity. B&P will then provide a written response with review comments and approval status. B&P approval does not relieve the Tenant of responsibility for compliance with the lease, compliance with all governing codes and regulations, field verification of existing conditions, or proper engineering and safety.

Tenants are required to retain the services of a licensed professional to design their spaces and prepare required drawings. Each design application will be considered on its individual merit and no design will be approved until all required documents have been received.

It is the responsibility of the Tenant's architect and engineer to verify all dimensions and field conditions. They shall also thoroughly familiarize themselves with all current local building codes, and all city, county and State ordinances, rules and regulations.

Electronic background files shall be provided by the Landlord upon request, once the contract has been awarded. A signed media disclosure agreement will be required for the release of the CAD files.

For Tenant space, all communications shall be addressed to:

Paula Kucharz
Business Development Manager
Phoenix Sky Harbor International Airport
3400 Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405
602-273-4085

For schematic design submittals, send (1) half size hard copy and an electronic copy to:

Paula Kucharz
Business Development Manager
Phoenix Sky Harbor International Airport

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3400 Sky Harbor Boulevard, Suite 3300
Phoenix, AZ 85034-4405

The Tenant's submission shall include, but not necessarily be limited to, the following:

- a. Floor plans (scale 1/4" = 1'0").
- b. Sections (scale 1/4" = 1'0").
- c. Storefront elevation and section, including signage (scale 1/2" = 1'0").
Food service Tenants shall include front counter details and food presentation concept.
- d. Reflected Ceiling Plan (scale 1/4" = 1'-0")
- e. Colored perspective sketches illustrating the design concept or photographs of existing storefronts if related to this application.
- f. Materials and finishes samples firmly attached to illustration board and labeled, not to exceed 24" x 36" and weigh more than 10 lbs. per board.
Clearly label all materials and reference to plans, elevations, etc.
- g. Design and construction schedule.

3. Construction Document Review Phase

Upon approval of schematic design drawings, Tenant may prepare and submit construction documents for approval by other Landlord divisions and Development Services Department Annual Facilities Permit (AFP) program. This process includes review of code compliance and life safety requirements. Procedures and requirements for submittal for construction document review are contained in the Tenant Improvement Handbook available online at the Phoenix Sky Harbor web site at <http://phxskyharbor.com>.

B. CONSTRUCTION DOCUMENTS

Tenant shall follow procedures in the Tenant Improvement Handbook available at www.phxskyharbor.com. After receipt of Landlord's written approval of the Schematic Design drawings, Tenant shall submit to Landlord within 45 calendar days one (1) set of reproducible, one (1) set of prints of full construction drawings and six (6) sets of specifications that shall adhere to the approved design drawings. All drawings shall be 24" x 36" format and must be signed and sealed by an architect and engineer registered in the State of Arizona. Six (6) additional half size sets of construction drawings and specifications shall be provided to the Tenant Improvement Coordinator for distribution and review by division representatives of Landlord.

Construction Documents at a minimum shall consist of the following:

1. Key plan showing location of demised premises within terminal and location of electrical/telephone rooms from where Tenant is to be fed;
2. A 1/4" scale floor plan;
3. Overall sections at minimum 1/4" scale;
4. Reflected ceiling plan (including electrical lighting plan) at 1/4" scale;
5. Plan, elevation, and section of storefront at 1/4" scale including all graphics and signage;
6. Interior elevations at 1/4" scale;
7. Color and finish schedules;
8. All applicable details;
9. Electrical plan prepared by a licensed electrical engineer;
10. Electrical details and fixture and panel schedules, also include a suggested

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- electric load component conforming with technical criteria herein;
11. Mechanical/Plumbing plan;
 12. Fire protection plan must be prepared by a licensed engineer;
 13. Samples of all flooring materials;
 14. Specifications for Architectural, Electrical, Mechanical, and signage;
 15. Shop drawings from sign fabricator showing dimensions, letter style, face color, material, thickness, type of lighting, brightness, mounting hardware and location of transformer.

The Landlord will review and comment on final construction documents. Tenant may simultaneously submit construction documents to the City of Phoenix Development Services Department for permit review through the Annual Facilities Permit Process if approved by the Landlord.

If any of the construction documents and specifications are returned to the Tenant with comments and not bearing the unconditional approval of the Landlord, Tenant shall see that the drawings and specifications are revised to satisfy any comments by the Landlord, and resubmitted for approval within ten (10) days of receipt by Tenant.

B. FINAL APPROVAL

Upon final approval of the construction documents, the Landlord shall forward to the Tenant two (2) sets of prints with a letter from the Landlord granting approval. Tenant's Contractor shall have one (1) Landlord approved/permitted set at the job site at all times and may not commence work until these plans are physically within the premises. An Annual Facilities Permit will not be issued until the Tenant has received all appropriate approvals Stated in the Tenant Improvement Handbook.

C. CONSTRUCTION PROCEDURES

Refer to Tenant Improvement Handbook for complete information on construction procedures. The following is provided for overview purposes only.

D. PRE-CONSTRUCTION MEETING

Tenant is required to contact the Tenant Improvement Coordinator to arrange a pre-construction meeting prior to start of construction. The Tenant, its Contractor, and main subcontractors shall attend this meeting. This meeting should establish a project construction schedule with start and end dates, key personnel, emergency numbers and include a discussion of safety and security issues.

A copy of the Key Personnel Emergency Numbers List shall also be forwarded to the Tenant Improvement Coordinator.

E. PROJECT COORDINATION

Tenant Contractor shall be responsible for protecting existing construction. Tenant Contractor shall repair any damage to existing construction.

All noisy work or dusty work will be performed during the hours of 10:00 PM and 6:00 AM. Construction noise shall not interfere with airport business.

The Tenant Improvement Coordinator, or their designee, shall perform inspections of the project periodically to assure compliance with airport requirements.

This will not relieve the Tenant's Contractor requirements for Building Code inspection.

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F. TEMPORARY CONSTRUCTION SIGNS

No architect or Contractor signs will be allowed on the job site. Signage identifying Tenant name, and opening date must be submitted for review and approval to the Landlord prior to erection. Tenants must comply with Pardon our Dust guidelines. The guidelines can be found on-line at www.pardonourdust.com.

G. PROJECT COMPLETION

After the Tenant notifies the Landlord that the Project is completed, the Tenant Improvement Coordinator shall perform a final inspection of the project as required in the approval letter.

Tenant shall submit in the following format: two (2) sets of record drawings to the Landlord Department after completion of the project. One copy shall be submitted on compact disc (CD) and the second copy shall be as-built drawings sealed by an Arizona registrant. All construction drawings shall be delivered to the City in Autocad 2006 format. This is required by Phoenix City Ordinance G-3106 and must be met prior to authorization of future projects at the site. A .pdf file of the marked-up field copy is also required to be submitted to the Tenant Improvement coordinator upon conclusion of the tenant Improvement Project.

XII. CONSTRUCTION REQUIREMENTS

A. TENANT CONTRACTOR CHECK-IN

Prior to commencing work in the Tenant space, the Tenant's Contractor shall comply with the following:

1. Read and comply with terms defined within the Tenant Improvement Handbook, which may be found on-line at www.phxskyharbor.com. Provisions described within the on-line version take precedent over these criteria, unless noted otherwise.
2. No construction shall begin until written approval of all plans and details is received from the Landlord and such approval is on file with the Landlord. Maintain one set of construction drawings with the Landlord during construction.
3. The lease agreement between the Tenant and the Landlord must be fully executed.
4. Provide evidence of building permits for all trades as required.
5. Provide Landlord with certificates of insurance as specified in the lease agreement and the tenant improvement approval letter.
6. The Tenant's Contractor must give the Landlord a minimum of five working days notice prior to the start of construction.

B. CONTRACTORS AND SUBCONTRACTORS INSURANCE

The Contractor shall not commence work under this contract nor allow any Sub-contractor to commence work until all insurance required has been procured and such insurance approved by the Landlord. Insurance as hereinafter provided shall be kept intact and in force throughout the term of this contract.

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C. GENERAL PROCEDURES

The following provisions, with respect to construction procedures, shall be followed by all Tenant Contractors.

1. No equipment, material, or tools will be permitted in the common areas of the Airport.
2. Do not track dust onto the common area floor. The Contractor must provide means of cleaning dust from employee's shoes.
3. All equipment, material, tools, or merchandise must be brought through the nearest service entrance. Construction traffic is not permitted in the common areas.
4. No material shall be delivered to, or transported through, any common area without the express approval of the Landlord. Any material transported through public areas or stairways, etc., shall be moved on pneumatic rubber tire trucks, using adequate parking, protective cloths, etc., to safeguard existing floors. Any damage resulting from movement of materials, etc., shall be repaired by the Contractor responsible.
5. Confine storage of equipment or material to the demised premises or other locations specifically designated by the Landlord. Stored materials shall not exceed the loading capacity of the floor. Storage in service corridors, truck docks, vacant lease spaces, or other areas is not permitted at any time. Failure to comply will result in removal of all materials with the Tenant bearing responsibility for the costs incurred.
6. Smoking is not permitted anywhere in the building, including stores under construction. Smoking areas have been designated by the Landlord.
7. The Tenant Contractor shall take all necessary safety precautions to protect workers, the general public, and private and public property and comply with all requirements of the Occupation Safety and Health Act (OSHA).
8. The Landlord requires certain work activities to take place between the hours of 11:00 p.m. and 5:00 a.m. as follows:
 - a. Major service disruptions.
 - b. Jack-hammering, roto-hammering, core-drilling or other noisy operations
 - c. Work requiring blocking of public entrances.
 - d. All other work that would prevent continuous operation of the building.
 - e. Hauling of demolished material.
 - f. Erecting and removing construction partitions.
 - g. Delivery of large materials.
9. Make arrangements for temporary utility connections as directed by the Landlord and pay the cost of the connections and removal, and all utility charges incurred by the work.

D. SECURITY OF EXISTING FACILITIES

Security of existing facilities must be maintained at all times. When entrance into secure areas is required at any time by workers, it must be coordinated in advance with the Landlord and strict limitations will be set and enforced as to what areas

EXHIBIT 3

Contractor personnel can access. Any violations of these limits will subject violator to immediate discharge from this project at the Landlord's request.

E. AIRPORT SECURITY

It is essential that during the performance of this contract, Airport security be maintained and that construction operations conform to the Landlord's security requirements. Refer to the Tenant Improvement Handbook and the general aviation handbook at the following link http://phoenix.gov/skyharborairport/pdf/RR_02-06-GA-Handbook.pdf for specific requirements and general aviation guidelines.

F. INTERRUPTIONS TO EXISTING FACILITIES

All construction activities must be accomplished in such a manner as to permit normal operations within the existing facilities and roadway system at all times. The major areas to be remodeled within the existing facilities will be made available upon written request by the Contractor to the Landlord. Such request shall be made with adequate lead time so that the Landlord can make necessary adjustments to this operation. These areas must be temporarily enclosed from the remainder of the existing facilities in order that access and all services to the existing facilities can be maintained at all times. The existing interior circulation corridors and required exits must remain open and unencumbered or provisions made for temporary egress.

All work, including the abandonment or relocation of existing mechanical or electrical utilities, the relocation of existing mechanical or electrical systems or components, or the connection of new mechanical or electrical systems or components to existing facilities, which will cause interruptions to the operations of the existing building and roadway system must be scheduled for times other than normal working hours. The Contractor shall schedule and coordinate his work to minimize the required interruptions, and shall notify the Landlord in writing at least ten (10) working days prior to each intended interruption, indicating the estimated duration of the interruption.

G. KEYS AND LOCKS

When beginning a project, Contractors need to coordinate with the Tenant Improvement Coordinator/DVT Operations to attain project access.

H. ASBESTOS

Asbestos containing materials (ACMs) and presumed asbestos-containing materials (PACMs) may be present in buildings at the Airport. The Tenant must request and will be notified of the presence or presumed presence of ACMs in the Tenant Improvement Project area. The Tenant, Tenant's Architect/Engineer, and all Contractors and Subcontractors working on the project will be required to sign an Aviation form acknowledging that they have been notified of the possible presence of ACMs. Tenant shall consult all Federal regulations previously listed in this section that apply to the handling of ACMs and PACMs.

I. WELDING OR CUTTING

All welding or cutting shall be reported to the City of Phoenix Fire Department prior to the start of the job, and upon completion of the project on a daily basis. A "hot work" permit shall be obtained by the City of Phoenix Fire Department. A fire watch shall be provided by the Contractor, suitable fire extinguishers shall be on hand within 20' of the work being performed and accessible at all times. Welding or cutting shall cease 1/2 hour before closing the job site for the day and inspected prior to the employees leaving the site for the day.

EXHIBIT 3

J. CONFINED SPACE ENTRY REGULATIONS

The Contractor shall comply with applicable portions of Federal Regulation 29 CFR §1910.146 and any State regulations regarding employee entrance into confined spaces on this project.

K. BARRICADES

If a construction barricade does not exist in front of the Tenant space, the Tenant will be required to install a dustproof, solid barricade to separate the Tenant space from the common area. All barricades shall extend to the ceiling and be located a maximum of 3 feet in front of the lease line. Construction shall be with metal studs 16" on center and 1/2" gypsum board painted with primer and two finish coats the color designated by the Landlord. A clear plastic liner shall be installed on the inside to prevent dust migration to the common area. Adequate protection of the common area floor enclosed by the barricade must be provided. Refer to the Tenant Improvement Handbook for additional requirements along with the Pardon Our Dust website at www.pardonourdust.com.

All barricades shall be without opening or passage to the common area unless the demised premises has no back door. In this case a 3'-0" x 6'-8" hollow core wood door, swinging in, should be installed with a frame, closure device, and lockset. Door shall be painted to match the barricade.

L. PARKING

Refer to the Tenant Improvement Coordinator/DVT Operations.

M. TRASH REMOVAL

During construction, fixture installation, and merchandise stocking of the demised premises, the Tenant shall provide trash removal service at areas designated by the Landlord. The Tenant Contractor shall provide and pay for trash containers and disposal. It is the responsibility of the Tenant and the Tenant's Contractors to break down and remove all trash and debris from the premises on a daily basis and place in the containers supplied for that purpose.

If the Tenant's trash is allowed to accumulate for 24 hours or longer within the Tenant's space or service corridors, the Landlord shall remove the Tenant's or Tenant Contractor's trash at a charge of 1.5 times the Landlord's cost.

N. FLOOR AND ROOF PENETRATIONS

Prior to making any roof and/or floor penetrations, the Tenant Contractor must obtain approval of the proposed locations from the Landlord. All cutting, patching and core-drilling requires written approval by the Landlord before initiating this work. Tenant Contractor is responsible for repairing any damage to reinforcing steel, conduit, wiring, piping, etc., resulting from this operation.

Weatherproofing of all roof penetrations must be performed by the Landlord's authorized roofing Contractor at the Tenant's expense.

EXHIBIT 4

COMPLIANCE WITH ENVIRONMENTAL LAWS

Contractor shall, at Contractor's own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor's occupation and use of the Premises.

A. DEFINITIONS

1. "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA]**, 42 U.S.C. Sections 9601 et seq., as amended by the **Superfund Amendment and Reauthorization Act [SARA]**; the **Solid Waste Disposal Act [SWDA]**, 42 U.S.C. Sections 6901 et seq., as amended by the **Resource Conservation and Recovery Act [RCRA]** including Subtitle I, Underground Storage Tanks; the **Toxic Substances Control Act [TSCA]**, 15 U.S.C. Sections 2601 et seq.; the **Public Health Service Act (Title XIV) [PHSA]** a.k.a. the **Safe Drinking Water Act [SDWA]** and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the **Federal Water Pollution Control Act [FWPCA]**, as amended by the **Clean Water Act**, 33 U.S.C. Sections 1251 et seq.; the **Clean Air Act**, 42 U.S.C. Sections 7401 et seq.; **Title 49 of the Arizona Revised Statutes**, including the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq.; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Section 49-701 et seq.; the **Occupational Safety and Health Act of 1970** as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

2. In this Contract, the term "**regulated substances**" means:

- a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.

- b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the **Arizona Environmental Quality Act**, A.R.S. Sections 49-201 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.
 - c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.
3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PHX), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.
5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

1. Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix ("City"), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of Contractor's occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor's obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor's occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or ground water on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or in surface waters on or adjacent to the Premises results in any contamination of the Premises or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City's approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor's rights, if any, to seek contribution or indemnity from another person.

3. Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or

discharges of regulated substances on, under or from the Premises, or in surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or in surface waters on or adjacent to the Premises.

4. Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:

- a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor's occupancy or use of the Premises;
- b. Any change in Contractor's activities on the Premises that will change or have the potential to change Contractor's or City's obligations or liabilities under Environmental Laws;
- c. Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.

5. Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.

6. Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.

7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

8. Contractor shall take reasonable precautions to prevent other persons not acting under Contractor's authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or in

surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor's authority.

9. Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

C. TERMINATION OF AGREEMENT

Contractor's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

1. The City of Phoenix may, at the City's election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to Contractor, to make payments required of Contractor or perform Contractor's obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.

2. The City of Phoenix may, at the City's election, terminate this Contract upon written notice to Contractor. Upon the City's termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) eighteen percent (18%) per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

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

NPDES PERMIT COMPLIANCE

A. ACKNOWLEDGMENTS

1. A Contractor that does not perform any construction activities (“Airport Permittee”) at an Airport acknowledges as a consequence of its activities, operations or location at an Airports, Airport Permittee is required by EPA Regulations 40 C.F.R. Part 122 (“Regulations”) to obtain a NPDES storm water discharge permit, which requirement Airport Permittee can fulfill by: (a) obtaining its own permit; or, (b) joining as a co-permittee in City’s Group Permit (the “City Permit”).
2. City has obtained a storm water discharge permit, and if Airport Permittee is a co-permittee on the City Permit, Airport Permittee acknowledges that it enjoys a substantial economic benefit by joining as a co-permittee, and that such benefit serves as good and sufficient consideration for the obligations imposed upon and assumed by Airport Permittee under this NPDES Permit Compliance Article.
3. A Contractor that performs construction activities (“Construction Contractor”) at an Airport acknowledges that as a consequence of its activities, operations or location at the Airports, Construction Contractor is required by EPA Regulations 40 C.F.R. Part 122 (“Regulations”) to obtain a NPDES storm water discharge permit for its construction activities, which requirement Construction Contractor must fulfill by jointly filing for the project permit in conjunction with the City’s project manager. City will consult with and assist Construction Contractor with regard to the joint filing of the project permit as time and personnel allow. Construction Contractor will also work with the City’s project manager to develop pollution controls. Construction Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its NPDES storm water discharge permit.
4. City has adopted the “City of Phoenix Aviation Department Storm Water Enforcement Procedures and Civil Penalty Policy” (“City’s Storm Water Policy”) to achieve compliance with federal and local NPDES requirements by the Aviation Department, its Contractor and permittees. Airport Permittee and Construction Contractor are subject to the policy as a condition of their activities, operations, and location at the Airports. City shall have the right to monitor and require compliance with City’s Storm Water Policy.
5. Airport Permittee and Construction Contractor shall implement Best Management Practices (“BMPs”) for the Airports to minimize the contact of storm and other precipitation event water with “significant materials” (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used by Airport Permittee or Construction Contractor, and to document such BMPs with a written storm water management plan.

B. MATERIAL CONDITION

Full compliance with the NPDES permit program as contained in 40 C.F.R. Part 122, Chapter 32(C) of the Phoenix City Code, and the City's Storm Water Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may terminate this Contract and cause Airport Permittee to be removed from the City Permit, if Airport Permittee is a co-permittee, without recourse by Airport Permittee. This remedy is in addition to any other remedies available to the City.

C. AGREEMENT

If Airport Permittee agrees to be, and is, a co-permittee on City's NPDES storm water discharge permit, then Airport Permittee agrees that said City Permit and BMPs, as it is issued by the EPA, and as it may thereafter be amended, modified or otherwise changed, is incorporated by reference into its Contract with the City and any subsequent renewals.

City agrees that, to the extent allowed by law, Airport Permittee shall have the right to be removed from the City Permit should its Contract be canceled or terminated for other reasons, or due to Airport Permittee's relocation, noncompliance with the City Permit requirements or Airport Permittee's exercise of choice. In no event shall Airport Permittee be relieved of its obligation to comply with the requirements of the NPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Airport Permittee be excused from any obligations or indemnifications incurred and owed to City prior to Airport Permittee's removal from the City Permit, resulting from a failure of Airport Permittee to fulfill an obligation of the City Permit.

D. COMPLIANCE

1. City will provide Airport Permittee with access to a true and complete copy of the City Permit and any revisions thereto upon request, and will, as time and personnel allow, consult with and assist Airport Permittee with regard to the City Permit and City Ordinance requirements.

2. City reserves the right to impose upon Airport Permittee any BMP or any other action necessary to insure City's ability to comply with the City Permit requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Airport Permittee shall have ten (10) days from date of receipt of written notice imposing such BMPs or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Airport Permittee does not provide the specified timely notice, it will be deemed to have assented to implementation of the BMPs or other requirements. If Airport Permittee provides City with timely written notice of its objections, the parties

agree to negotiate a prompt resolution of their differences. Airport Permittee warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

Airport Permittee agrees to comply with City's Storm Water Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Airport Permittee, those requirements of the City Permit and City ordinances that pertain to its operations and activities on the Premises at the Airports. Airport Permittee warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and City's Storm Water Policy, or that are agreed to by the parties. Airport Permittee acknowledges that time is of the essence in the implementation of all City Permit requirements.

3. In this NPDES Permit Compliance Article, "extreme emergency conditions" means:

- a. Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City's direction or oversight;
- b. An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the ten (10) day period of Section D(2), but must implement BMPs before it reopens;
- c. A collapse of the storm sewer system or other event that forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

E. PERMIT CHANGES

Airport Permittee acknowledges that the terms and conditions of the City Permit may change from time to time, and upon prior written notice from City to Airport Permittee of proposed changes, Airport Permittee shall be given the opportunity to submit comments to City prior to negotiations with the appropriate governmental entity(ies) for permit modifications.

F. COVENANT OF GOOD FAITH

City and Airport Permittee covenant to act in good faith to implement any requirements imposed by the City Permit, to the end that the purposes of Section 402(P) of the Federal Water Pollution Control Act (33 U.S.C. 1342(P)) may be achieved. City and Airport Permittee acknowledge that close cooperation will be necessary to ensure compliance with any City Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of

information necessary to coordinate a storm water management and monitoring plan.

G. INDEMNIFICATION

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Exhibit.

- ☐ By signing below, Airport Permittee agrees to be a co-permittee on City's NPDES storm water discharge permit.

Print Name

Company

Signature

Its

Date

- ☐ By signing below, Airport Permittee agrees to obtain its own NPDES storm water discharge permit, opting out of the City Permit.

Print Name

Company

Signature

Its

Date

654774v2-10/17/06

EXHIBIT 5

SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

A. Definitions

1. "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and/or Phoenix Goodyear Airport, in accordance with the context of the contract.

2. "Contract" includes any and all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.

3. "Contractor" means every lessee, sublessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.

4. "Premises" means the leasehold or site occupied by Contractor pursuant to the lease, license or permit that is the subject of this Contract.

B. Assurances

1. Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.

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

3. Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contractor to the general public. Contractor further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or handicap.

4. As a part of the consideration for this Contract, Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

5. As a part of the consideration of the Contract, Contractor does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the contractor shall use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then this Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City of Phoenix shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

7. Contractor agrees to insert the foregoing six provisions in any contract by which Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.

8. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and

that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

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

10. The City of Phoenix reserves the right, but is in no way obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

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

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

13. Contractor agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1— Notice of Proposed Construction or Alteration—and provide documentation showing compliance with the federal requirements. Once the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contractor.

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

15. Contractor acknowledges that nothing contained in this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e).

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

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

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

C. City of Phoenix Affirmative Action Requirements

If Contractor is by this Contract a supplier to, or lessee of, the City, then the following requirement of the Phoenix City Code, Chapter 18, Article V, Section 18-22(G) applies:

"Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability; Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee."

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

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.

E. Conflict of Interest

Contractor acknowledges that the terms and conditions of Arizona Revised Statutes §38-511 are incorporated into this Contract.

F. Iran and Sudan

In accordance with state law, Contractor certifies that it does not have scrutinized business operations in Iran or Sudan. If Contractor's certification is found to be false, the City may terminate this Contract or impose other remedies due to false certification.

G. Legal Worker Requirements

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

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
3. The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty under paragraph 1.

H. Disadvantaged Business Enterprise Requirements

1. To the extent that this Contract is covered by 49 CFR Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 26. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Contractor agrees to include the foregoing statement in any subsequent Contract that it enters and cause those businesses to similarly include said statement in further agreements.

2. To the extent that the Contract is a concession agreement covered by 49 CFR Part 23, the concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Rev. 1/2009
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EXHIBIT 6



PHOENIX SKY HARBOR
INTERNATIONAL AIRPORT

**Food & Beverage
Customer Service
Standards Manual**

Section 1.0 – Cleanliness Standards	80
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All Food & Beverage concessions shall provide courteous service and quality products in a clean and well-maintained vicinity.

In addition to maintaining compliance with all health code requirements, the following customer service standards shall be imposed:

1.0 Cleanliness Standards

- 1.1 All areas within the tenant space shall be kept clean and well maintained.
- 1.2 Any/all debris shall be removed from counters and tables within two (2) minutes.
- 1.3 Areas shall be kept free of unpleasant odors.
- 1.4 Floors shall be kept free of debris and stains and shall be clean and well maintained.
- 1.5 Carpeting shall appear vacuumed and floors shall appear washed.
- 1.6 Entrance doors shall be free of smears, smudges, and dirt.
- 1.7 Glass windows and display cases shall be clean and free of smudges.
- 1.8 Any/all food being used for display purposes shall be rotated daily.
- 1.9 Sales and cashier areas shall appear clean and organized.
- 1.10 Tray slides (if present) shall be clean.
- 1.11 Food trays shall be washed regularly (not just wiped down).
- 1.12 Light fixtures and their attachments shall be kept clean and free of dust.
- 1.13 Exhaust hoods, fans, and filters shall be appropriately maintained and cleaned.
- 1.14 The Lessor recommends, at a minimum, that the tenant grease traps and interceptors be serviced quarterly, the jetting of the lines be conducted semi-annually and that tallow bins be pumped/cleaned monthly and inspected for leaks.
- 1.15 Tenant waste shall be placed inside garbage compactor(s) and compacted.
- 1.16 Delivery palettes and milk crates shall be neatly stacked / organized (while on loading dock or outside tenant space) when in between deliveries.

- 1.17 All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.
- 1.18 Loading docks shall be kept clean and free of tenant debris.
- 1.19 Hallways, elevators and areas just outside of tenant space shall be free of material and/or waste associated with tenant.
- 1.20 All cooking equipment shall be clean.
- 1.21 Trash receptacles shall be emptied regularly to avoid overflow of waste.
- 1.22 Air conditioning and heating registers and vents shall be clean.

2.0 Tenant Space Standards

- 2.1 All shops and kiosks shall be maintained in an “opening day” condition.
- 2.2 All food and beverage areas shall maintain a pleasant atmosphere and an inviting appearance.
- 2.3 Floors within tenant space shall be free of stains, holes, potential trip hazards.
- 2.4 All tables, chairs, booths, display cases, and fixtures shall be in good condition with no broken pieces, deep scratches or graffiti.
- 2.5 All cooking equipment shall be in good working order and well maintained.
- 2.6 Ceilings shall be free of dust, stains, and broken tiles.
- 2.7 All lights shall be in working order with burned out bulbs replaced within 24 hours.
- 2.8 Shipping materials, packaging, and delivery carts shall be stored out of the customer’s view when not in use.
- 2.9 Cleaning supplies and equipment shall be stored out of the customer’s view when not in use.
- 2.10 Closet doors shall be kept closed when not in use.
- 2.11 Trash receptacles shall be kept clean and in good condition, without dents, marks, or peeling paint.
- 2.12 The personal belongings of employee’s shall not be in the public view.

- 2.13 All concession entrances shall be free from obstruction(s) and tenant debris.
- 2.14 All walls, ceilings, and glass surfaces and fixtures shall be clean and well maintained.
- 2.15 Grease interceptors, cooking ventilation hoods, tallow bins, fire suppression systems, filters and ductwork shall be cleaned on a regular schedule. The schedule and all associated service invoices shall be retained on-site and will be provided to the Lessor upon request. Additional cleanings may be required (outside of the regular schedule) if the need arises and as recommended by the Lessor. Tenant shall also be responsible for any emergency grease interceptor cleanings and/or grease interceptor line jettings needed outside of the established schedule.
- 2.16 Tenant shall be required to utilize a “Liquid Wastewater Treatment” or a “Bio-augmentation” for all waste lines associated with the premises. The “Treatment” shall be used in accordance with manufacturers specifications, EPA approved and the Material Safety Data Sheets (MSDS) of the product are to be submitted to the Lessor for review and approval of the product prior to the initiation of its use.
- 2.17 Tenant shall also be responsible for providing a video (on a DVD disk) of the interior of the waste lines, to the Lessor, at 12 month intervals to ensure that the lines are being jetted/cleaned in accordance with Lessor standards. The 1st video is to be provided prior to Lessor immediately following the tenant improvement process. The Lessor reserves the right to request the increase of the frequency of inspections, cleanings and video’s based on Tenant’s Gross Sales and the condition in which the areas are kept.
- 2.18 Tenant shall retain, within premises, copies of all health inspection reports, line jetting/grease interceptor pumping invoices, all maintenance logs including exhaust hoods and fire suppression equipment and all pest control invoices. Tenant shall provide copies of listed documentation within Section 5.4.4 of lease agreement to Lessor upon Lessor’s request.
- 2.19 Effective methods of pest control shall be practiced within premises.
- 2.20 Air conditioning and heating units shall be maintained as required.
- 2.21 All food merchandisers and related equipment shall be in good working order maintaining the hot or cool temperature, as necessary, in accordance with Maricopa County Environmental Services Department’s Health Code.

3.0 Tenant Support Space / Delivery Standards

- 3.1 Tenant support space(s), and delivery routes, shall be kept clear of any/all debris, empty boxes, pallets & any/all miscellaneous clutter at all times, unless prior arrangements are made through Lessor.
- 3.2 Merchandise stocked in tenant support space shall not block doors or electrical panels nor hinder the fire suppression system.
- 3.3 No tenant(s) shall be allowed to erect walls within their support space to divide support space into office space, private support or additionally secured areas.
- 3.4 Tenants utilizing “tallow bins” for the deposit of used cooking oils must keep bin area(s) clean and free from debris and spilled cooking oil, must have secondary containments & must provide a schedule of cleaning and training of tenants to ensure that all cooking oil goes into bin and not on surrounding grounds.
- 3.5 Tallow bin lids shall be closed after every use.
- 3.6 Deliveries are the responsibility of the tenant. Lessor shall take no responsibility or sign for any/all types of deliveries.
- 3.7 Tenant shall be responsible for communicating with Lessor to make arrangements for tenant “escorts” to escort tenant deliveries to facilities having tenant access airside. Tenant shall “escort” their own contractors.

4.0 Functionality Standards

- 4.1 All lighting shall meet and conform to the Tenant Design Criteria standards as they pertain to the area and activity.
- 4.2 Music shall have volumes levels appropriately set.
- 4.3 All entrances to establishments shall be clear of merchandise and sales/advertising stanchions.
- 4.4 A person properly charged with responsibility shall be present in store at all times.
- 4.5 An adequate number of tenant employees shall be scheduled, daily, to ensure proper customer service.
- 4.6 Tenants taking food orders or working close with customer(s) shall be able to speak English, except, when necessary to enhance communication.

5.0 Information, Directions and Signs Standards

- 5.1 Store policies pertaining to credit cards, returns/refunds, shall be clearly displayed.
- 5.2 Tenants, whose lease agreement requires street pricing, shall prominently display “Street Pricing” signage.
- 5.3 Tenants shall clearly display a toll-free number for customer complaints or customer compliments.
- 5.4 Hours of operation shall be fully displayed and fully observed.
- 5.5 Handwritten and unprofessional signs shall not be used.
- 5.6 All approved store informational/promotional signs, menu/menu boards and displays will clearly define menu items and will be presented clear and accurate.
- 5.7 Illuminated signs shall be in proper working condition.
- 5.8 Flashing or blinking signs are not allowed.
- 5.9 Food and beverage areas under construction shall be provided with professional signs with an “opening date” and may include a logo of the new facility. Signage shall be updated as necessary.
- 5.10 When food and beverage facilities are closed, appropriate signage shall be posted advising customers of the nearest, operating facility.
- 5.11 There shall be no unauthorized postings, promotional and/or informational signs.
- 5.12 All signage/postings shall comply with the signage standards as stated in the Tenant Design Criteria and must be approved by the Lessor.
- 5.13 All necessary licenses, permits, notices and inspections certificates on the premises will be clearly displayed.

6.0 Employee General Standards

- 6.1 All customers shall be greeted in a friendly and professional manner.
- 6.2 Tenant employees shall display a positive attitude toward passengers and fellow Tenant employees at all at times.
- 6.3 Tenant employees shall project a friendly and attentive demeanor at all times.

- 6.4 Employee(s) shall remain calm when encountering an upset customer, try to calm the customer, listen carefully and show empathy with the customer's problem.
- 6.5 Tenant employees shall be capable of communicating in English when in contact with customers.
- 6.6 Tenant employees shall refrain from using foul or inappropriate language at all times.
- 6.7 Tenant employees shall use proper and courteous tone of voice and vocabulary with customers. For example, use words such as "please," "thank-you" and "hello."
- 6.8 Tenant employees shall provide customer with appropriate attention when customer is ordering, has a question, or is in need of assistance.
- 6.9 Tenant employees shall make every effort to satisfy customer's needs, even when those needs are outside the employee's scope of work.
- 6.10 Tenant employees shall address customers proactively – be friendly and approachable – anticipate customer's needs.
- 6.11 Tenant employees shall maintain appropriate eye contact and pleasant tone of voice while conversing with customers and fellow Tenant employees.
- 6.12 If appropriate to the specific job:
 - Tenant employees shall make positive eye contact at 10 feet away.
 - Tenant employees shall smile and greet the customer at 5 feet away.
- 6.13 Tenants shall focus on customer(s) and not gather in a group to chat while on duty.
- 6.14 Tenants shall not eat, drink, chew gum, or smoke in other than designated areas of the workplace, especially not in the view of customers when in uniform.
- 6.15 Tenants shall assure that the customer(s) needs are being met by providing or calling for the appropriate services.
- 6.16 No napping or sleeping while on duty or in a public area.
- 6.17 Tenants shall not use personal radios or tape/disc players while on duty.
- 6.18 Tenant employees shall always provide customer with a receipt and a "thank-you."

- 6.19 Tenant employees shall always provide customer with correct change.
- 6.20 Tenant employees shall make every effort to make correct change to customers for telephone calls.
- 6.21 All tenants shall have sufficient cash available immediately upon opening to make change for early morning sales.
- 6.22 Any complaints shall be dealt with promptly and records maintained

7.0 Employee Appearance Standards

- 7.1 Be well groomed, clean and present a professional appearance.
- 7.2 Wear only appropriate accessories, as determined by employer, while on duty.
- 7.3 Wear clean, neat and pressed uniforms while on duty.
- 7.4 When speaking to customers, remove sunglasses (unless medically required otherwise) to facilitate eye contact. Also, tenant employees shall only wear sunglasses outdoors and during daylight hours.

8.0 Employee Knowledge Standards

- 8.1 Tenant employees are to be well informed, capable of providing directions and know where and how to obtain requested information or services for customers.
- 8.2 Tenant employees will convey accurate information using clear and understandable terms.
- 8.3 When encountering an unsatisfied customer, tenant employees should obtain the facts; state any applicable policy clearly and politely; and be able to offer a solution or an adequate alternative to the customer. If unable to satisfy the customer or resolve the issue, direct the customer to the immediate supervisor.
- 8.4 Tenant employees shall know where and how to obtain assistance to resolve customer(s) questions or problems if language barriers arise.
- 8.5 Tenant employees shall know where and how to obtain assistance to respond to medical and operational emergencies.

9.0 Product Standards

- 9.1 Food displays shall be attractive, fresh and appetizing.
- 9.2 Government food quality grades and product weight should always be entirely accurate when referenced on a menu. Weight should be specifically noted as pre-cooked weight or post-cooked weight.
- 9.3 Menus shall be well designed, clean and display the correct prices.
- 9.4 No items shall remain on shelves past expiration dates/times.
- 9.5 All prepackaged food items shall be labeled with either an “expiration date” or a “born on” date.
- 9.6 Tenants shall make every attempt to ensure that all menu items are available.
- 9.7 Hot food shall be delivered hot and cold food shall be delivered cold.
- 9.8 Customer comment cards shall be readily available.
- 9.9 Merchandise shall be delivered to food and beverage areas in appropriate carts and at non-peak periods or during off-hours.

